

# DEPARTMENT OF INSURANCE

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*Commissioner: Ricardo Lara ♦ Toll-Free Consumer Hotline: (800) 927-4357 ♦  
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**I**nsurance is the only interstate business wholly regulated by states rather than the federal government. In California, this responsibility rests with the Department of Insurance (DOI), organized in 1868 and headed (as of 1988) by an elected Insurance Commissioner. Insurance Code sections 12900 through 12938 set forth the Commissioner's powers and duties. Authorization for DOI is found in section 12906 of the 1,000-page Insurance Code; the Department's regulations are codified in Chapter 5, Title 10 of the California Code of Regulations (CCR).

The Department's designated purpose is to regulate the insurance industry to protect policyholders. Such regulation includes the licensing of agents and brokers, and the admission of companies to sell insurance products in the state. Nearly 1,400 employees work at DOI to oversee more than 1,400 insurance companies and license more than 420,000 agents, brokers, adjusters, and business entities. In the ordinary course of business, DOI annually processes more than 8,000 rate applications, issues approximately 200,000 licenses (new and renewals), and performs hundreds of financial reviews and examinations of insurers doing business in California. DOI annually receives more than 170,000 consumer assistance calls, investigates more than 37,000 consumer complaints, and, as a result, recovers more than \$84 million a year for consumers. DOI annually receives and processes tens of thousands of referrals regarding suspected fraud against insurers and conducts criminal investigations resulting in thousands of arrests every year.

In addition to its licensing function, DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department collects more than 175 different fees levied against insurance producers and companies.

The Department performs the following consumer protection functions:

(1) it regulates insurance companies for solvency by tri-annually auditing all domestic insurance companies and by selectively participating in the auditing of other companies licensed in California but organized in another state or foreign country;

(2) it reviews and approves/disapproves tens of thousands of insurance policies and related forms annually as required by statute, principally related to accident and health, workers' compensation, and group life insurance;

(3) it establishes rates and rules for workers' compensation insurance;

(4) it preapproves rates in certain lines of insurance under Proposition 103, and regulates compliance with the general rating law in others; and

(5) it becomes the receiver of an insurance company in financial or other significant difficulties.

The Insurance Code empowers the Commissioner to hold hearings to determine whether brokers or carriers are complying with state law, and ordering an insurer to stop doing business within the state. However, the Commissioner may not force an insurer to pay a claim; that power is reserved to the courts.

DOI's Consumer Services Division (CSD) is responsible for gathering and responding to consumer inquiries and complaints regarding insurance companies or producers. CSD maintains four separate bureaus: Consumer Communications Bureau; Claims Services Bureau; Health Claims Bureau; and Rating and Underwriting Services

Bureau. CSD operates the Department's toll-free complaint line. Through its bureaus, CSD responds to requests for general information; receives, investigates, and resolves individual consumer complaints against insurance companies, agents, and brokers; tracks trends in code violations; and cooperates with law enforcement to bring deterrent compliance actions. Cases which cannot be resolved by CSD are transferred to DOI's Legal Division, which is authorized to file formal charges against a licensee and take disciplinary action as appropriate, including cease and desist orders, fines, and license revocation.

The Department's Fraud Division was established in 1979 to protect the public from economic loss and distress by actively investigating and arresting those who commit insurance fraud. The Fraud Division is currently composed of four separate fraud programs: automobile; workers' compensation; property, life, and casualty; and disability and health care.

On November 6, 2018, Californians elected a new Insurance Commissioner, Ricardo Lara. Raised in East Los Angeles by immigrant parents, Commissioner Lara made history in 2018 by becoming the first openly gay person elected to statewide office in California's history. Commissioner Lara previously served in the California Legislature.

## **MAJOR PROJECTS**

### **Insurance Commissioner Lara Under Fire**

In a July 8, 2019 [letter](#) to Insurance Commissioner Ricardo Lara, the consumer advocacy group Consumer Watchdog addressed allegations in a San Diego Union-Tribune [article](#) that Lara's reelection campaign received funds from people tied to the insurance industry. Following the article, Lara promised to return \$54,300 in campaign contributions.

Consumer Watchdog’s letter urged Lara to explain why he accepted contributions from donors with ties to and influence over the insurance business, and to be transparent with the public about how the donations were received.

On September 6, 2019, Consumer Watchdog sent a [letter](#) to the California AG and to the district attorneys in San Francisco, Sacramento, and Los Angeles Counties alleging that Lara might have committed the crimes of using public funds for his personal benefit and fraudulently representing his expenses.

In response to Consumer Watchdog’s June 2019 request for public records, Commissioner Lara released his [calendar](#) on September 13, 2019. Consumer Watchdog asserts in a [press release](#) that the calendars show that Lara made the first contact with donors that were inappropriately tied to the insurance industry. Consumer Watchdog also alleged in a September 20, 2019 [letter](#) to the California Attorney General, and the District Attorneys of San Francisco, Sacramento, and Los Angeles, that the calendars show that Lara’s actions may amount to money laundering and bribery, and requesting a formal investigation.

## **Department Responds to California Wildfires**

The Department is taking a variety of steps to address the impact of California’s wildfires on consumers as follows:

- On August 20, 2019, the Department [reported](#) that homeowners’ insurance policies are harder to come by as a result of wildfires. DOI points to a 6–10% increase in insurance companies not renewing homeowner policies, combined with the availability of homeowner insurance dropping in high-risk counties, as a cause for concern. In the past few years, DOI has utilized FAIR Plans, which provide

insurance coverage as a last resort for homeowners who are unable to find coverage in the voluntary market. The Department reports that in communities where insurance companies are canceling insurance policies at higher rates, FAIR Plan policies are increasing and allowing homeowners who wouldn't otherwise have access to find coverage. Commissioner Lara continues to meet with community leaders and pursue ideas to reduce risks to communities through mitigation and stronger consumer protections.

- In August 2019, Commissioner Lara [met](#) with community leaders and officials from the northern California counties hardest hit by the 2018 fires. At the meeting, Lara reported that consumer complaints to DOI related to non-renewal of homeowner insurance policies were up nearly 600% since 2010 in areas with increased wildfire risk. Lara announced the formation of a DOI Strike Team to visit affected areas, connect residents to resources, and assist local governments in assessing and responding to insurance issues.
- In July 2019, DOI and the United Nations Environment Program (U.N. Environment) [announced](#) a yearlong effort to develop a Sustainable Insurance Roadmap to confront California's climate risks. This is the first time the U.N. has partnered with a state to create a comprehensive plan to fight climate change. It includes identifying risk reduction measures, insurance solutions, and investments by the insurance industry to build safer, disaster-resilient communities, and accelerate the transition to a low-carbon, sustainable economy. DOI was one of the first insurance regulatory and supervisory authorities in the world to sign the U.N. Environment's Principles for Sustainable Insurance and has committed to making

insurance sustainable and protecting California residents from the harms of climate change.

- In May 2019, Commissioner Lara [announced](#) two new actions intended to assist survivors of the North Bay fires in 2017. First, the Department issued a [notice to insurers](#) requesting they extend additional living expense coverage by a full year to survivors whose additional living expenses, such as food and housing costs, furniture rental, relocation and storage, and extra transportation expenses while a home is uninhabitable, will expire within months. New state laws extended living expense coverage from 24 to 36 months but did not apply to survivors of the October 2017 fires. The Department issued a [second notice](#) requesting that insurers not deduct the land value when survivors who suffered a total loss choose to purchase a new home in a different location. Many insurers deduct land costs, reducing the amount that a homeowner can receive.
- In May 2019, Commissioner Lara participated in the [Risk and Resilience Summit](#) along with insurance commissioners from Utah, Oregon, and Washington. The commissioners discussed possible solutions and lessons learned on how best to protect residents in high-risk areas in their respective states. The insights and best practices shared by the insurance commissioners are meant to improve outcomes in fire-prone western states.

## **Insurance Diversity Task Force**

[SB 534 \(Bradford\) \(Chapter 249, Statutes of 2019\)](#), requires that specified insurers report to the Insurance Commissioner on its minority, women, LGBT, veteran, and

disabled veteran-owned business procurement efforts in the form of survey responses. The bill also requires the Insurance Commissioner to establish and appoint an Insurance Diversity Task Force to advise the Department on the best methods to promote the success of diverse suppliers and to increase diversity on governing boards within the insurance industry and specifies the composition of the task force (see LEGISLATION). In September 2019, Commissioner Lara [appointed](#) new members to the Insurance Diversity Task Force, including the first female representative of a veteran/disabled veteran-owned business enterprise and the first woman and Latina CEO of the Los Angeles Chamber of Commerce. In April 2019, the Department [reported](#) that its surveys over the prior five year period have revealed that procurement between insurers and California’s diverse-owned businesses increased by 93%, from \$930 million in 2012 to \$1.8 billion in 2017, showing the impact of these measures.

## **Department Holds Public Hearing Regarding Automobile Insurance Premiums**

On September 17, 2019, the Department held a fact-finding [hearing](#) to investigate the impact of automobile insurance groups on driver premiums. A [press release](#) on September 24, 2019 reported the outcomes of that investigatory hearing. The Department’s [investigation](#) shows that affinity groups disproportionately affect drivers residing in ZIP codes with lower per capita incomes, lower levels of education, and larger communities of color. Commissioner Lara concluded there are disturbing disparities in auto insurance discounts for certain affinity groups including white-collar occupations and highly skilled workers. In line with its mandate under Proposition 103 to ensure that rates are fair and

based on objective factors, DOI is evaluating whether insurer affinity group discounts violate state law.

## **Commissioner Opposes Trump Administration's Proposed Changes to Health Coverage**

On August 13, 2019, Commissioner Lara issued a [letter](#) opposing the Trump Administration's release of a federal rule entitled "Nondiscrimination in Health and Health Education Programs or Activities." Commissioner Lara also signed on to an August 5, 2019 [letter](#) with seventeen other state insurance commissioners opposing the rule. Among other arguments in his letters, the Commissioner focuses on the impact to health care insurers and states "the proposed rule only prohibits discrimination in specific programs that receive federal funding, rather than requiring that all health insurers that receive federal funds must comply with anti-discrimination requirements. Thus, this administration proposes a rule that does not bar an insurer from receiving federal funding even if they are illegally discriminating on the basis of race, color, sex, national origin, age or disability in other programs." Lara calls the new rule "damaging" in a related press release, in that it "invites discrimination against and threatens the health of women, members of the LGBTQ community, and people living in communities with few medical treatment options." Further in an August 13, 2019 [press release](#), the Commissioner discusses the Administration's proposed rule, which explicitly allows health care providers to use religious freedom as a pretext to deny patients access to health care, removes sexual orientation and gender identity from the list of explicitly prohibited forms of discrimination, and removes examples of insurer misconduct from the existing regulation.



## **Commissioner Issues Statement About Earthquake Insurance**

On July 11, 2019, Commissioner Lara issued a [notice](#) requiring California Earthquake Authority (CEA) insurance companies to write CEA earthquake policies. Southern California experienced two significant earthquakes in early July which caused many residents to consider purchasing earthquake insurance. According to the statement, participating insurers were refusing to accept applications from insureds who already had an underlying residential insurance policy with that company. Some insurers were advising consumers that there was a “moratorium” on selling CEA coverage. The Commissioner’s statement clarified that CEA insurance companies provide earthquake coverage and stated that the CEA has not declared a moratorium on earthquake policy sales. DOI stated that consumers should call the complaint hotline if they experience further denials by CEA insurance companies.

## **RULEMAKING**

### **Commissioner Denies Petition for Rulemaking Pertaining to Climate Change**

On April 22, 2019, Commissioner Lara [denied](#) a March 21, 2019 [petition](#) for rulemaking initiated by Consumer Watchdog and signed by 60 environmental, consumer, and social justice organizations, to address “threats to [insurance companies’] solvency and ability to write insurance policies throughout California due to the increase in frequency and severity of wildfires, exacerbated by climate change.” Specifically, the petition requests that DOI initiate a rulemaking proceeding and promulgate emergency regulations

that would require all insurance companies licensed to conduct business in California to disclose investments in fossil fuel-related entities and all fossil fuel-related companies or projects that they underwrite or insure.

According to the petition, climate change has had a significant impact on weather-related events in California, namely wildfires. Fossil fuel-related companies and projects have an adverse effect on climate change, and many have been named as the cause of wildfires. Those wildfires have resulted in billions of dollars in damages paid out by insurance companies. The petition argues that insurers' investments in fossil fuel entities creates an unnecessary risk to the value of insurance company assets and solvency. They ask that DOI create this rule to prevent institutional, administrative, legal or legislative opposition to requests for such information, to prevent unnecessary delays in receipt of the information, and to ensure that the Insurance Commissioner effectively regulates the insurance industry. The authors cite to section 12389(h) of the Insurance Code, which provides the authority to adopt rules and regulations to maintain the solvency of title insurance companies, and section 1861.05(a) of the Insurance Code, which expressly requires the Commissioner to ensure rates are neither excessive or inadequate. Insurers' investments ultimately have an impact on rates to consumers.

In denying the petition, Commissioner Lara claims that it “only targets a single element of a much broader challenge of climate risk,” and he is pursuing a more comprehensive climate strategy. According to Lara, insurers are already required to disclosed investments publicly in financial statements and DOI has developed methods to identify those investments that are related to fossil fuels. In the decision, Lara clarifies that DOI needs to develop a way to encourage businesses to engage in best practices for

mitigating climate change. The Commissioner encourages the petitioners to assist him in developing a comprehensive climate change strategy that can be broadly applied to the California insurance industry.

## **Special Investigative Units**

On July 19, 2019, DOI published [notice](#) of its intent to amend sections 2698.30 and 2698.33–2698.41, Title 10 of the CCR, to clarify the proper procedures for insurers running Special Investigative Units. All insurers who do business in California are required to maintain a unit or division that investigates possible fraudulent claims, called a Special Investigative Units (SIU). The Commissioner originally promulgated regulations to implement section 1875.24 of the Insurance Code in 2005. Those regulations provide definitions and procedures for detecting, investigating, and referring suspected insurance fraud, establish training requirements, specify the information insurers are required to report to DOI, and provide guidelines regarding the Commissioner’s examinations of an insurer’s SIU.

The [proposed language](#) lays out additional clarification and guidance to ensure that fraud is adequately investigated by insurers. The Department’s notice identifies the following frequently occurring problems: inadequate fraud referrals made to DOI; insurers missing investigative steps; not all cases of suspected insurance fraud being investigated or reported; and lack of information necessary for DOI to determine the adequacy of insurers’ SIUs. DOI states the amended language will improve referral issues, general compliance issues, compliance issues related to sub-contracted third-party entities as SIUs, and provide clarity on issues of timing. On March 20, 2019, DOI held a [pre-notice public discussion](#) on the proposed regulations.

The public comment period expired on September 5, 2019, and the Department held a hearing the same day. At this writing, the Department has not taken additional action.

## **LEGISLATION**

[AB 1065 \(Berman\)](#), as amended July 11, 2019, repeals and amends section 38.6 of the Insurance Code to permit electronic authorization of documents relating to the business of life insurance so long as the insurer follows certain requirements, including obtaining the consent of the insured to be notified electronically. This bill also repeals a January 1, 2021 sunset date on the use of electronic authorization. The bill also requires the Insurance Commissioner, upon facts of non-compliance, to issue a statement of charges and provide the insurance company with a hearing and appeal rights. According to the author, the purpose of this bill is to facilitate the common practice of electronic authorization and protect consumers from consequences like losing coverage if they accidentally miss an email or electronic notification.

Governor Newsom signed AB 1065 on September 5, 2019 (Chapter 235, Statutes of 2019).

[AB 1538 \(Weber\)](#), as amended April 25, 2019, amends section 560 of the Insurance Code regarding payment for repairs through automobile collision coverage. This bill requires that when a covered automobile is damaged, the insurer issuing the policy for physical damage coverage make the payment in a specified manner, whether or not repairs are actually made. According to the author, the purpose of this bill is to protect low-income policy holders from being unable to front the cost of repairs and therefore unable to collect money from their insurance policy.

Governor Newsom signed AB 1538 on July 30, 2019 (Chapter 132, Statutes of 2019).

[AB 1816 \(Daly\)](#), as amended August 27, 2019, amends sections 678, 1063.1 and 10094.2 of the Insurance Code to (1) require insurers to provide notice of non-renewal for a homeowner’s insurance policy at least 75 days prior to the policy expiration date (current law requires a 45 day notice); (2) increase the limit on claims made to the California Insurance Guarantee Association (CIGA) for the loss of a dwelling from \$500,000 to \$1,000,000; (3) clarify that each claim brought under a different claim category be considered a separate claim for loss; (4) expand the regions of the state in which an insurer can accrue “writeout credits” with the Fair Access to Insurance Requirements (FAIR) Plan to include areas designated by CalFire as high or very high fire risk; (5) require the FAIR Plan to periodically provide data regarding the use of writeout credits by insurers to the Legislature, Governor, and DOI. According to the author, the California FAIR Plan helps structure the equitable apportionment among insurers of basic property insurance, so this bill is meant to support the rise of businesses participating in the FAIR plan as more people seek property insurance in high-risk fire areas.

Governor Newsom signed AB 1816 on October 12, 2019 (Chapter 833, Statutes of 2019). This bill is effective immediately as an urgency statute.

[SB 508 \(Leyva\)](#), as amended April 9, 2019, amends sections 10101 and 10104 of, and amends, repeals, and adds section 10103.5 to the Insurance Code relating to disclosures associated with residential property insurance. On and after July 1, 2020, the bill requires an insurer providing a residential insurance policy to provide a copy of the California Residential Property Insurance Bill of Rights to the consumer prior to issuing the policy.

Insurers will also have to provide the named insured owner of a mobile home or other condominium with the California Residential Property Insurance Disclosure. According to the author, the purpose of this bill is to protect mobile home and condominium owners and to make sure these owners know the rights granted to them by their insurance policies.

Governor Newsom signed AB 508 on July 30, 2019 (Chapter 151, Statutes of 2019).

[AB 1099 \(Calderon\)](#), as amended June 25, 2019, amends sections 926.1, 926.2, and 12939.2 of, and to adds section 926 to the Insurance Code, regarding community development investment practices of insurers. This bill extends these provisions through January 1, 2024, and requires an insurer with annual premiums written in California equal to or in excess of \$100,000,000 to provide investment information for the 2016, 2017, 2018, 2019, and 2020 calendar years to the Insurance Commissioner by July 1, 2021. Then the Commissioner must provide specified information on DOI's website by December 31, 2021. This bill also extends provisions through January 1, 2029 that the Commissioner is authorized to establish and appoint a 12-member California Organized Investment Network Advisory Board to advise the California Organized Investment Network (COIN) on the how to best make community investments, including advising on how to best benefit low income communities and the environment.

Governor Newsom signed AB 508 on August 30, 2019 (Chapter 186, Statutes of 2019).

[SB 534 \(Bradford\)](#), as amended July 3, 2019, adds Article 10.2 (commencing with section 927) to the Insurance Code to require that specified insurers report to the Insurance Commissioner on its minority, women, LGBT, veteran, and disabled veteran-owned

business procurement efforts in the form of survey responses. The bill also requires the Insurance Commissioner to establish and appoint an Insurance Diversity Task Force to advise the Department on the best methods to promote success of diverse suppliers and to increase diversity on governing boards within the insurance industry and specifies the composition of the task force. Of note, this bill adds section 927 to codify specific legislative findings and declarations with respect to the intent behind the bill, including that “[i]t is in the state’s interest to encourage competitive business opportunities for all of its people,” and that “[i]nsurers are uniquely positioned to build relationships within the communities they serve through the development, inclusion, and utilization of certified minority, women, LGBT, veteran, and disabled veteran-owned business enterprises whenever possible.”

Governor Newsom signed SB 534 on September 5, 2019 (Chapter 249, Statutes of 2019).

[SB 240 \(Dodd\)](#), as amended August 12, 2019, amends and adds various sections of the Insurance Code relating to licensing of insurance adjusters, as licensed insurance adjusters may register a non-licensed employee to act as an adjuster when the Commissioner declares an emergency situation. This bill requires licensed insurers to establish a primary point of contact for filed claims. It also establishes that licensure under the Insurance Adjuster Act remains in force during military service and licensees do not have to file for renewal while serving in the military. This bill also requires that DOI annually deliver to every licensee a summary of California laws most relevant to adjusting insurance claims, as well as a handbook providing guidance for adjusting claims in California. DOI must also make this information available on its website and must similarly

deliver this information to non-licensed insurance adjusters (discussed above) within 15 days of a licensee registering the non-licensed adjuster. Insurance Commissioner Lara supports SB 240 because it provides DOI with the authority to ensure that unlicensed adjusters are competent in California’s property claims laws and issues related to adjusting wildfire claims.

Governor Newsom signed SB 240 on October 3, 2019 (Chapter 502, Statutes of 2019). This bill is effective immediately as an urgency statute.

[AB 188 \(Daly\)](#), as amended May 14, 2019, amends section 2051 of the Insurance Code regarding the valuation of loss of property after a fire. This bill repeals previous requirements for the ways in which insurance companies calculate cash value to be paid for a total loss of the structure, and instead requires that the cash value of a claim, either for a total or partial loss of a structure, be the amount it would cost the insured to repair, rebuild, or replace the lost property, taking into account a deduction for physical depreciation, or the policy limit, whichever is less. These limits of physical depreciation will apply to a total loss of structure as well. According to the author, the purpose of this bill is to protect homeowners who hold “actual cash value” policies from being underinsured when they lose a whole structure rather than just partial damage.

Governor Newsom signed AB 188 on July 9, 2019 (Chapter 59, Statutes of 2019).

[AB 111 \(Committee on Budget\)](#), as amended July 8, 2019, amends sections 10089.6 and 10089.7 of, and adds section 10089.55 to the Insurance Code to create in state government the California Catastrophe Response Council (CCRC), to oversee the California Earthquake Authority. This bill requires that the CCRC appoint a Wildfire Fund Administrator and oversee the administrator’s operations, management, and administration



of the Wildfire Fund. The CCRC is composed of the Governor, the Treasurer, the Insurance Commissioner, and the Secretary of the Natural Resources Agency, or their designees, and three members of the public appointed by the Governor, one public member appointed by the Senate Committee on Rules, and one member appointed by the Speaker of the Assembly, who would serve four-year staggered terms. According to the author, the purpose of this bill is to promote energy infrastructure safety in California.

Governor Newsom signed AB 111 on July 12, 2019 (Chapter 81, Statutes of 2019), and the bill took effect immediately.

[AB 1054 \(Holden\)](#), as amended July 5, 2019, does not modify the Insurance Code, but the passing of AB 111 (see above) was contingent on the passing of this bill. Governor Newsom signed AB 1054 on July 12, 2019 (Chapter 79, Statutes of 2019).

[AB 1513 \(Holden\)](#), as amended September 6, 2019, amends sections 10089.6, 10089.7, and 11797 of the Insurance Code primarily to make minor, technical changes. However, the bill also adds a substantive provision that in the event of the Wildfire Fund terminating that excess funds would go to the state general fund. This bill also clarifies definitions related to the purchase by the board of directors of the State Compensation Insurance Fund of Property Assessed Clean Energy (PACE) bonds with excess funds. This occurs when addressing the financing of energy or water efficiency improvements through PACE bonds.

Governor Newsom signed AB 1054 on October 2, 2019 (Chapter 396, Statutes of 2019).

[AB 548 \(Rodriguez\)](#), as amended April 4, 2019, adds section 10089.396 to the Insurance Code relating to measures taken to mitigate earthquake risks. This bill requires

the California Residential Mitigation Program (CRMP) to reach out to qualifying low-income households to increase awareness of the Brace and Bolt program, and to set aside at least 10% of funds available each year for the Brace and Bolt to provide supplemental grants to low-income households who are already receiving a primary grant from the program. These grants are to be provided on a first come, first serve basis and must cover 90% of the homeowners retrofitting expenses. According to the author, the purpose of this bill is to provide extra protection for homeowners, especially in low-income, high-risk areas, from earthquake damage.

Governor Newsom signed AB 548 on September 4, 2019 (Chapter 219, Statutes of 2019).

[AB 1104 \(Calderon\)](#), as amended March 27, 2019, amends sections 1067.06 and 1067.11 of the Insurance Code to add two public members to the board of the California Life and Health Insurance Guarantee Association (CLHIGA) and creates an assessment to fund financial surveillance of long-term care insurance (LTCI) carriers. The bill also prohibits an officer, director, or employee of an insurance company or health maintenance organization, or any person engaged in the business of insurance, from serving as said public member on the board.

Governor Newsom signed AB 1104 on September 5, 2019 (Chapter 236, Statutes of 2019).

[AB 954 \(Wood\)](#), as amended July 1, 2019, as it relates to DOI, adds section 10120.4 to the Insurance Code to authorize an insurer that covers dental services to grant third-party access to a provider network contract if specified circumstances are met, such

as a notification to the health care provider about the third-party access and allowing the provider to choose not to participate in third-party access to the provider network contract.

Governor Newsom signed AB 954 on October 7, 2019 (Chapter 540, Statutes of 2019).

[SB 159 \(Wiener\)](#), as amended September 5, 2019, adds section 10123.1933 to the Insurance Code to prohibit a health insurer from subjecting antiretroviral drugs that are medically necessary for the prevention of AIDS/HIV, including preexposure prophylaxis or postexposure prophylaxis, to prior authorization or step therapy. Under the bill, notwithstanding any other law, a health insurer shall not prohibit, or permit a contracted pharmacy benefit manager to prohibit, a pharmacist from dispensing preexposure prophylaxis or postexposure prophylaxis. According to the author, data indicate that allowing access to these drugs only with a physician’s prescription is blocking access for individuals who would benefit most.

Governor Newsom signed SB 159 on October 7, 2019 (Chapter 532, Statutes of 2019).

[AB 1622 \(Carrillo\)](#), as amended September 6, 2019 and as it relates to the Department of Insurance, amends section 10123.84 of the Insurance Code to apply the “family physician” definition to provisions of relevant statute. Specifically, when policyholders seek obstetrical and gynecological physician services, they may do so directly from an obstetrician and gynecologist or directly from a participating family physician and surgeon designated by the plan as providing obstetrical and gynecological services. The bill refers to an individual who practices family medicine as a family

physician and surgeon, and would make technical, conforming, and non-substantive changes.

Governor Newsom signed AB 1622 on October 8, 2019 (Chapter 632, Statutes of 2019).

[AB 744 \(Aguiar-Curry\)](#), as amended September 10, 2019 and as it relates to DOI, adds section 10123.855 to the Insurance Code so that effective January 1, 2021, health insurance companies reimburse treating or consulting health care providers who utilize telehealth to diagnose, consult, or treat a consumer to the same extent as in-person services.

According to the author,

telehealth overcomes access and cost barriers by utilizing technology to connect patients to their physicians, no matter where they are located. Telehealth uses physicians' time and expertise more efficiently, while also improving access to all types of care for Californians. In particular, expanding access to specialty and behavioral healthcare can significantly improve health outcomes for those who currently lack providers.

A University of California San Francisco report entitled "A Path to Universal Coverage and Unified Health Care Financing in California," recommends that California encourage greater use of telehealth by reimbursing providers for telehealth visits, since most telehealth services are not covered under insurance.

Governor Newsom signed AB 744 on October 13, 2019 (Chapter 867, Statutes of 2019).

[AB 651 \(Grayson\)](#), as amended September 9, 2019 and as it relates to DOI, adds section 10126.65 to the Insurance Code to require a health insurance policy issued, amended, or renewed on or after January 1, 2020, to provide that if an individual receives covered services from a noncontracting air ambulance provider, the individual shall pay no more than the same cost sharing that the individual would pay for the same covered services

received from a contracting air ambulance provider, referred to as the in-network cost-sharing amount. The bill provides that an individual would not owe the noncontracting provider more than the in-network cost-sharing amount for services. The bill also specifies the processes for advancing unpaid bills to collections and for resolving billing disputes.

Governor Newsom signed AB 651 on October 7, 2019 (Chapter 537, Statutes of 2019).

[SB 129 \(Pan\)](#), as amended June 12, 2019, amends section 10127.19 of the Insurance Code to require annual health plan and insurer enrollment reporting to include enrollment data for products sold inside and outside of Covered California, any other business lines, and multiple employer welfare arrangements. It also requires DOI to publicly report annual enrollment data by April 15th of every year. According to the author, since the enactment of the Affordable Care Act, the health care market has undergone major transformation, as California's uninsured rate has been dramatically reduced and millions of individuals have gained coverage in the Medi-Cal program and individual and small group markets. Beginning in 2013, California tracked enrollment in different types of health care coverage products and business lines. This information helped policymakers monitor trends over time. This bill is necessary to update the insurer enrollment reporting requirement to capture additional business lines and ensure the annual availability of the data collected.

Governor Newsom signed SB 129 on September 5, 2019 (Chapter 241, Statutes of 2019).

[AB 577 \(Eggman\)](#), as amended August 14, 2019 and as it relates to DOI, amends section 10133.56 of the Insurance Code to extend the duration of the requirement that

health insurers provide continuity of care for pregnant women to up to twelve months from the diagnosis or from the end of pregnancy, whichever occurs later, if the woman presents written documentation of being diagnosed with a maternal mental health condition from the individual's treating health care provider. According to the author, maternal mental health conditions have impacts far beyond the mothers that are experiencing them; they also effect the well-being of children, families, and communities. Extending the duration of continuity of care for pregnant women with a maternal mental health condition who have had to switch health coverage plans and extending full scope Medi-Cal benefits for undocumented pregnant women will ensure that they receive important pregnancy-related and post-partum health care, including mental health care.

Governor Newsom signed AB 577 on October 12, 2019 (Chapter 776, Statutes of 2019).

[SB 583 \(Jackson\)](#), as amended June 19, 2019, repeals and adds section 10145.4 of the Insurance Code to conform California law with respect to health insurer coverage requirements for participants in clinical trials to incorporate federal requirements enacted as part of the Affordable Care Act (ACA), which includes expanding the type of clinical trials to include life-threatening diseases or conditions. According to the author, for people living with cancer or another life-threatening disease, access to a clinical trial can mean the difference between life and death. A provision of the ACA took effect in 2014 that increased the federal statutes related to coverage for clinical trial participation. The adopted federal statutes requiring insurance coverage of health care benefits related to clinical trials are broader than California's statutes in many important respects.

Importantly, this bill also prohibits discrimination against the individual's participation in clinical trials; allows an insured to participate in an approved clinical trial conducted by a nonparticipating provider, including a nonparticipating provider located outside of this state, if not offered through a participating provider; requires cost sharing for routine patient care costs to be the same as that applied to the same services not delivered in a clinical trial, but requires the in-network cost sharing and out-of-pocket maximum to apply if the clinical trial is not available through a participating provider; and expands the entities that can approve or fund the clinical trial to organizations like the National Institute for Health (NIH), the federal Centers for Disease Control and Prevention, and the Centers for Medicare and Medicaid Services.

Governor Newsom signed AB 583 on October 2, 2019 (Chapter 482, Statutes of 2019).

[AB 290 \(Wood\)](#), as amended September 5, 2019, adds sections 10176.11 and 10181.8 to the Insurance Code to establish requirements related to third-party premium payments to health care insurers made on behalf of patients by financially interested entities or providers. It also defines “financially interested” to include a chronic dialysis clinic that is operated, owned, or controlled by a parent entity or related entity that meets the definition of a large dialysis clinic organization. According to the author, this bill ends the practice where companies that provide certain types of care, e.g., a dialysis company, donate money to a nonprofit that, in turn, pays for a patient's private coverage even though they qualify for coverage under Medicare or Medi-Cal, in order to receive a higher reimbursement rate. This bill will still allow providers, like dialysis companies, to donate to nonprofit

organizations if they want to help provide premium assistance to patients, but it will not allow them to leverage those donations into higher reimbursement rates.

Governor Newsom signed AB 290 on October 13, 2019 (Chapter 862, Statutes of 2019).

[AB 731 \(Kalra\)](#), as amended August 30, 2019 and as it relates to DOI, adds section 10181.31 to the Insurance Code to expand, beginning July 1, 2020, rate filing requirements to apply to large group health insurance policies, and imposes additional rate filing requirements on large group contracts and policies. This bill requires a health insurer to disclose specified information in a rate filing by geographic region for individual, grandfathered group, and no-grandfathered group contracts and policies, including the price paid compared to the price paid by the Medicare program for the same services in each benefit category. DOI is required to determine if large group community rate changes are unreasonable or unjustified, and if so, requires health insurers to notify the purchaser of an unreasonable or unjustified rate determination. According to the author, there needs to be a review from regulators to ensure premium rate increases are reasonable or justified in order to curb the skyrocketing cost of health care, which is contributing to wage stagnation and fueling income inequality.

Governor Newsom signed AB 731 on October 12, 2019 (Chapter 807, Statutes of 2019).

[SB 343 \(Pan\)](#), as amended August 12, 2019, amends section 10181.45 of the Insurance Code to require large health insurance policies and insurers to file with DOI the weighted average rate increase for all large group benefit designs during a twelve-month period. This bill eliminates alternative reporting requirements for plans or insurers that



have no more than two medical groups or a health facility that receives the majority of its revenue from prepayment health care service plans, e.g., Kaiser Permanente. This bill results in all health care service plans reporting the same information and being held to the same standards as large health insurance plans.

Governor Newsom signed AB 343 on September 5, 2019 (Chapter 247, Statutes of 2019).

[SB 407 \(Monning\)](#), as amended September 5, 2019, amends sections 10192.91 and 10192.11 of the Insurance Code to require an issuer of a Medicare supplement contract with new or innovative benefits commencing January 1, 2020, to identify the portion of the premium attributed to the new or innovative benefits as a separate line item on the payment or invoice, and extends the Medicare supplement open enrollment period by 30 days. This bill requires DOI to collaborate with the Department of Managed Health Care to develop and implement policies that standardize new or innovative benefits for purposes of allowing consumer comparison of benefits, out-of-pocket costs, and premiums.

Governor Newsom signed SB 407 on October 7, 2019 (Chapter 549, Statutes of 2019).

[AB 1209 \(Nazarian\)](#), as amended on September 5, 2019, amends sections 10235.40 and 10236.11 of, and adds section 10235.45 to, the Insurance Code to improve consumer protections to insurance policies providing hybrid long-term care (LTC) plus life insurance benefits. Specifically, this bill requires life insurance policies offering LTC benefits to allow the policyholder to take both a policy loan and accelerate the death benefit. It also prohibits the use of attained age rating for LTC insurance policies. According to the author, in the past decade there has been significant growth in sales of “hybrid” life

insurance policies in California, where LTC laws do not adequately address aspects of hybrid policy design to protect consumers. California law allows policies to be designed for rates to increase as the policyholder ages, therefore, causing higher rates at a time when the policyholder is likely to be on a fixed income and less able to absorb the premium increase. If the policyholder is unable to afford the higher premium, the policy may lapse, and the policyholder will lose LTC coverage when it is most needed.

Governor Newsom signed AB 1209 on October 8, 2019 (Chapter 625, Statutes of 2019).

[AB 1223 \(Arambula\)](#), as amended May 6, 2019 and as it relates to DOI, adds sections 10110.8 and 10233.8 to the Insurance Code to require a private or public employer to grant an employee an additional unpaid leave of absence, not exceeding 30 business days in a single year, for the purpose of organ donation, provided that in the case of a public employee, they have exhausted all sick leave, and prohibits life, long-term care and disability insurance policies from discrimination against an organ donor. The bill specifically states that a life, long-term care or disability insurance policy that is issued, amended, renewed, or delivered on or after January 1, 2020, shall not (1) refuse to insure, or continue to insure, the person under the policy; (2) limit the amount, extent, or kind of coverage available to the person; (3) charge the person a different rate for the same coverage under a policy; or (4) otherwise discriminate in the offering, issuance, cancellation, amount of coverage, price, or any other condition of a policy for the person. According to the author, this bill results in necessary protections to individuals who are living organ donors.

Governor Newsom signed AB 1223 on September 20, 2019 (Chapter 316, Statutes of 2019).

[AB 567 \(Calderon\)](#), as amended June 13, 2019, repeals and adds section 10234.75 to the Insurance Code to establish a Long-Term Care Insurance Task Force chaired by the Insurance Commissioner or designee, and composed of specified stakeholders and representatives of government agencies, to examine the components necessary to design and implement a public, statewide long-term care insurance program. The bill requires the task force to recommend options for establishing this program and to comment on the respective degrees of feasibility in a report submitted to the Commissioner, the Governor, and the legislature by July 1, 2021. The bill requires DOI to produce, no later than July 1, 2022, an actuarial report of those recommendations, to be shared with and approved by the task force and submitted to the legislature.

According to the author, recent public surveys show that over 60% of working adults fear they will not be able to afford their own long-term care and health care costs when they are older. Most participants indicated they could not afford more than three months of care at a nursing facility with an average cost of \$6,000 per month; while 40% of participants indicated they could not afford a single month of care in a nursing home. Among the Latino population, 88% of participants do not have long-term care insurance and are unaware if they qualify for public benefits. A long-term care insurance task force would be the first step towards building a robust long-term care system in California.

Governor Newsom signed AB 567 on October 11, 2019 (Chapter 746, Statutes of 2019).

[SB 260 \(Hurtado\)](#), as amended August 12, 2019 and as it relates to DOI, amends section 10786 of the Insurance Code to require a health insurer to notify policyholders in individual or group policies who cease to be enrolled in coverage that they may be eligible for reduced-cost coverage through the California Health Benefit Exchange (Exchange) or free or low-cost coverage through Medi-Cal beginning January 1, 2021. This bill also requires the Exchange, beginning no later than July 1, 2021, to enroll an individual in the lowest cost silver plan or another plan, as specified, upon receiving the individual's electronic account from an insurance affordability program, and requires the Exchange to provide an individual who is automatically enrolled in the lowest cost silver plan with a notice that includes the right to select another available plan or to not enroll in the plan.

Governor Newsom signed SB 260 on October 12, 2019 (Chapter 845, Statutes of 2019).

[AB 1309 \(Bauer-Kahan\)](#), as amended August 22, 2019 and as it relates to DOI, adds section 10965.4 to the Insurance Code to give consumers additional time to sign up for health care coverage. This bill specifically states that a health insurer offering policies outside of the California Health Benefit Exchange (Exchange) must provide an annual enrollment period for policy years beginning on or after January 1, 2020, from November 1 of the preceding calendar year, to January 31 of the benefit year. For policy years beginning on or after January 1, 2020, a health insurer offering policies through the Exchange must provide a special enrollment period from December 16 of the preceding calendar year, through January 31 of the benefit year. An application for a health benefit plan submitted during this special enrollment period is to be treated the same as an application submitted during the annual open enrollment period.

Governor Newsom signed AB 1309 on October 12, 2019 (Chapter 828, Statutes of 2019).

[SB 740 \(Mitchell\)](#), as amended July 2, 2019, adds Article 12 (commencing with section 10509.940) to the Insurance Code to require life insurers to use the U.S. Social Security Administration's Death Master File (DMF) to match deceased Social Security recipients with insureds on life insurance policies. If an insurer is not contacted by a beneficiary within 120 days of the insurer's knowledge of death of an insured, the bill requires the insurer to conduct a thorough search for a beneficiary, to be completed within one year. The bill requires an insurer to provide appropriate claims forms or instructions to a beneficiary within fifteen days of locating the beneficiary, and requires an insurer to transfer the proceeds of a policy, annuity contract, or retained asset account to the state if a beneficiary cannot be found after a thorough search.

Governor Newsom signed SB 740 on September 12, 2019 (Chapter 286, Statutes of 2019).

[AB 1535 \(Carrillo\)](#), as amended April 25, 2019, adds section 12880.6 to the Insurance Code to require an insurer to include a written disclosure at the time a pet insurance policy is issued or delivered to a policyholder to include contact information for the Department of Insurance and for the insurer or the agent or broker of record. According to the author, this bill provides consumers with greater transparency about their pet insurance policies and ensures a straightforward process through which consumers can ask questions or complain about their policy. The disclosure requirements in this bill are similar to those in existing law for automobile, liability and property insurance.

Governor Newsom signed AB 1535 on July 31, 2019 (Chapter 166, Statutes of 2019).

[AB 993 \(Nazarian\)](#), as amended September 4, 2019, would have added section 10123.833 to the Insurance Code to allow patients to designate HIV specialists as eligible primary care physicians. According to the author, by allowing HIV specialists to serve as primary care providers for their patients, this bill eliminates administrative impediments, such as ordering tests or making additional referrals, maintains continuity of care for a disease that has become manageable today, and protects the patient against unintentionally errant treatment.

Governor Newsom [vetoed](#) AB 993 on October 12, 2019 stating that the bill was unnecessary because existing law already permits specialists to serve as primary care physicians.

[SB 163 \(Portantino\)](#), as amended September 5, 2019, would have amended section 10144.51 of the Insurance Code to revise and expand the definition of behavioral health treatment (BHT) and expand the provider qualifications to include more provider types that can provide BHT under the mandate that health plans and insurers cover BHT for pervasive developmental disorder or autism. This bill would have prohibited the setting, location, or time of treatment recommended by a qualified autism services provider from being used as the only reason to deny or reduce coverage for medically necessary services.

Governor Newsom [vetoed](#) SB 163 on October 12, 2019, suggesting that the Legislature instead complete the work begun by [SB 946 \(Steinberg\) \(Chapter 650, Statutes of 2011\)](#) to license providers of BHT.

[AB 295 \(Daly\)](#), as amended July 2, 2019, would have amended section 12389 of the Insurance Code to increase the minimum statutory capital requirements that an underwritten title company is required to maintain to \$25,000 in excess of its current liabilities. The bill also would have excluded a liability derived from an operating lease obligation from being included in the calculation of an underwritten title company’s “working capital.”

Governor Newsom [vetoed](#) AB 295 on September 9, 2019 because it went against new standards adopted by the Financial Accounting Standards Board and said, “[f]or standards to be standard, they need to apply equally to everyone. . . . For the health of the industry and protection of consumer’s hard earned savings, these companies should adhere to the new national standards published in 2016, which provided years to plan for compliance.”

[AB 1591 \(Cooley\)](#), as amended August 30, 2019, would have added section 12964 to the Insurance Code to require the Commissioner to appear before the State and Assembly Insurance Committees to provide a report on the National Association of Insurance Commissioners’ accreditation process.

Governor Newsom [vetoed](#) the bill on September 27, 2019 saying, “[w]hile I support the purpose of AB 1519, I do not believe that a statutory mandate is necessary for the Commissioner to appear before the Legislature . . . .”

## **LITIGATION**

*Adhav v. Midway Rent A Car, Inc.*, Case No. B285586 (Cal. Ct. App.) and Case No. BC485275 (Super. Ct. Los Angeles County). Rental car customers, who opted to purchase insurance coverage in connection with those rentals, brought a [class action](#)

lawsuit against Midway car rental company and insurers, alleging unlawful and fraudulent business practices. After a bench trial, the superior court entered judgment in favor of the car rental company and insurers. The customers appealed, and on July 24, 2019, the Fourth District Court of Appeals affirmed the trial court's judgment.

Midway is a car rental agency that offers insurance to its rental car customers as an optional feature of its rental agreements. Available coverages include Renters Liability Protection Insurance (RLP), Supplemental Liability Insurance (SLI), and Personal Accident Insurance-Personal Effects Coverage (PAC). Midway purchased master RLP and SLI insurance policies from National Specialty, under which Midway was the insured. Endorsements on these policies allowed Midway to offer coverage pursuant to the insurance policies to car rental customers who opted to purchase it. The sale of insurance products in California is heavily regulated and insurers must submit proposed rate filings and receive approval from the Department of Insurance before offering an insurance product. Plaintiffs acknowledge the insurer defendants complied with these requirements.

The Fourth District Court of Appeals [held](#) that an insurer that issued coverage to a rental car company was not required to ensure that a policy stating the premium was also provided to customers. Midway was not a general agent of the insurer, and thus funds received by the car rental company as customer insurance payments could not be imputed to the insurer as a premium in determining whether an insurer charged and collected more than the statutorily-approved rate. The car rental company was not precluded from charging customers more for insurance than the premium which Midway paid to the insurer. Midway's self-insured retention did not make the company an insurer, as would subject them to rate approval requirements.



*McHugh v. Protective Life Ins.*, Case No. D072864 (Cal. Ct. App.), 40 Cal. App. 5th 1166 (2019). On October 9, 2019, the California Court of Appeal [affirmed](#) the trial court’s holding in favor of Protective Life Insurance. Plaintiffs and appellants, Blakely McHugh and others, were beneficiaries of a life insurance policy belonging to McHugh’s father, William Patrick McHugh. The primary issue in the case is whether Insurance Code sections 10113.71 and 10113.72 (“the statutes”), which came into effect on January 1, 2013, apply to term life insurance policies issued before the statutes’ effective date.

Protective Life Insurance relied heavily on interpretations from the Department of Insurance (the Department) that said the statutes did not retroactively apply to policies purchased before the statutes came into effect. A jury found in favor of Protective Life Insurance and the trial judge denied plaintiffs’ motion to challenge the decision. On appeal, the judge affirmed the outcome of the trial, finding that the Department’s various publications and statements that the statutes did not retroactively apply to old insurance policies were determinative. The appeals court held that it must defer to administrative agencies’ statutory interpretation “where the agency has special expertise and its decision is carefully considered by senior agency officials,” and that this was such a situation.

*Mercury Insurance Co. v. Lara*, Case No. 30-2015-00770552-CU-JR-CXC (Super. Ct. Orange County). On September 26, 2019, DOI entered into a [settlement agreement](#) with Mercury Insurance Company in which Mercury agreed to pay \$41,188,505 in fines, penalties, interest, costs, and fees incurred by DOI throughout the course of the litigation. A majority of the funds will go to California’s General Fund and the remainder to the Proposition 103 Fund. On October 2, 2019, the Department issued a [press release](#) announcing the end of the two-decade long court battle. The lawsuit alleges that in 1998,

Mercury Insurance was involved in a scheme to evade [Proposition 103](#) protections, which require that DOI pre-approve all insurance rates. According to the original accusation the Department issued, Mercury misrepresented that its agents were brokers who worked for consumers rather than the insurance company, and then allowed agents to charge and collect unapproved fees directly from consumers on more than 180,000 transactions between 1999 and 2004. Mercury advertised that its rates were lower than the competition and did not disclose the allegedly illegal broker fees being charged on top of rates, which DOI argued, gave the company an unfair advantage over the competition.

The global settlement comes after the California Court of Appeal, Fourth District, issued an order on May 7, 2019, reversing the trial court's decision to grant Mercury's petition for writ of mandate regarding the Department's decision against Mercury, directing the writ petition to be denied in its entirety, and determining the Department of Insurance to be the prevailing party, thus upholding a \$27,593,550 penalty against Mercury. *See Mercury Insurance Co. v. Lara*, 35 Cal. App. 5th 82 (2019). The California Supreme Court denied Mercury's petition for review on August 14, 2019.