investment Act; **SB 179 (Hughes)**, which would have prohibited the Treasurer from depositing or investing state moneys with financial institutions that receive specified ratings from federal authorities pursuant to the federal Community Reinvestment Act; **AB 1995 (Archie-Hudson)**, which would have authorized state-chartered banks, savings associations, and credit unions to restructure a loan or extend credit terms and obligations to minority or women business enterprises in accordance with safe and sound financial operations; **AB 2165 (Areias)**, which would have required the Secretary of Trade and Commerce, in conjunction with SBD, to develop a program to assist and encourage the banking industry to form a privately owned consortium to assist business relocation in California; **AB 2232 (McDonald)**, which would have directed SBD to conduct a study and make recommendations to the legislature on or before July 1, 1994 on the regulatory process and procedures for banks engaged in making small business loans; **AB 2349 (Polanco)**, which would have provide that specified fees which are charged for services performed by the Superintendent, including a $400 dollar per day fee for the services of an examiner, must be paid by a licensee within twelve days after receipt of a statement from the Superintendent for those services; **SB 161 (Deddeh)**, which would have—among other things—required banks to furnish depositors, if not physically present at the time of the initial deposit into an account, with a statement concerning charges and interest not later than seven business days after the date of the initial deposit; **SB 203 (Deddeh)**, which would have provided that the failure of a bank or trust company to open a branch office within one year after the Superintendent of Banks approves the application terminates the right to open the office, except that prior to the expiration of the one-year period a one-year extension may be granted by the Superintendent in which to open and operate a branch office upon filing an application with the Superintendent and the payment of a $350 fee; and **SB 632 (Deddeh)**, which would have provided that in addition to existing law which provides that if a draft, such as a check, is unaccepted by the bank and is dishonored, the drawer is obliged to pay the draft according to its terms, the drawer would be obligated to pay any service charges resulting from dishonor of the draft.

■ LITIGATION

Badie v. Bank of America, No. 944916, filed in San Francisco Superior Court in August 1992, challenges BofA's policy which requires that customer disputes over deposit and credit card accounts be sent to binding arbitration. *[14:1 CRLR 95; 13:4 CRLR 103]* The three-week court trial ended in March; attorneys filed post-trial briefs in April. Among other things, BofA's attorneys have argued that the Federal Arbitration Act preempts the state laws relied upon by plaintiffs in contending that the binding arbitration provision is unfair, unconscionable, and deceptive. At this writing, closing argument began on May 13 and is scheduled to continue on May 19.

In ***Leary v. Wells Fargo Bank***, No. 866229 (Aug. 17, 1993), plaintiffs alleged that defendants Wells Fargo Bank, First Interstate Bank, Crocker National Bank, and Bank of America conspired to fix interest rates on bank credit cards; in August 1993, the jury found for BofA, the only defendant which did not settle. *[13:4 CRLR 103]* Last December, BofA filed a motion seeking more than $500,000 in sanctions and attorneys' fees from the plaintiffs. *[14:1 CRLR 96]* On January 14, San Francisco Superior Court Judge Laurence Kay refused to impose sanctions on the plaintiffs and their attorneys, finding that BofA had not met its burden of showing that the plaintiffs acted in bad faith; Kay also denied plaintiffs' motion for a new trial.

In ***Youngberg v. Bank of America***, No. 953812, filed July 30, 1993 in San Francisco Superior Court, plaintiff alleges that Security Pacific Bank, now owned by Bank of America after a 1992 merger, overcharged its trust account customers. *[14:1 CRLR 96]* On May 5, the case was transferred to Los Angeles County Superior Court pursuant to a motion for change of venue. At this writing, no trial date has been set.

On January 10, the First District Court of Appeal granted plaintiff's motion for rehearing in ***California Grocers Association, Inc., v. Bank of America***, 20 Cal. App. 4th 1355 (Dec. 9, 1993); in its original ruling, the First District found that the $3 deposited item return (DIR) fee charged by BofA to the California Grocers Association (CGA) is not unconscionable and does not violate the implied covenant of good faith and fair dealing; and that the injunction issued by the trial court which required BofA to lower its DIR fee to not more than $1.73 for a ten-year period was an improper use of the unconscionability doctrine and an inappropriate exercise of judicial authority. *[14:1 CRLR 96]* On February 4, the First District released its decision on the rehearing, 22 Cal. App. 4th 205, again finding for BofA in each of the issues described above. At this writing, CGA is awaiting the California Supreme Court's decision on its petition for review.

DEPARTMENT OF CORPORATIONS

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The Department of Corporations (DOC) is a part of the cabinet-level Business, Transportation and Housing Agency and is empowered under section 25600 of the California Code of Corporations. The Commissioner of Corporations, appointed by the Governor, oversees and administers the duties and responsibilities of the Department. The rules promulgated by the Department are set forth in Chapter 3, Title 10 of the California Code of Regulations (CCR).

The Department administers several major statutes. The most important is the Corporate Securities Act of 1968, which requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934, and 1940. If the securities are not under federal qualification, the commissioner must issue a "permit" for their sale in California.

The commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable."

The commissioner may refuse to grant a permit unless the securities are properly and publicly offered under the federal securities statutes. A suspension or stop order gives rise to Administrative Procedure Act notice and hearing rights. The commissioner may require that records be kept by all securities issuers, may inspect those records, and may require that a prospectus or proxy statement be given to each potential buyer unless the seller is proceeding under federal law.

The commissioner also licenses agents, broker-dealers, and investment advisors. Those brokers and advisors without a place of business in the state and operating under federal law are exempt. Deception, fraud, or violation of any regulation of the commissioner is cause for license suspension of up to one year or revocation.

The commissioner also has the authority to suspend trading in any securities by

summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The commissioner has particularly broad civil investigative discovery powers; he/she can compel the deposition of witnesses and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The commissioner can also issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony, as is securities fraud. These criminal violations are referred by the Department to local district attorneys for prosecution.

The commissioner also enforces a group of more specific statutes involving similar kinds of powers: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal Property Brokers Law, Health Care Service Plan Law, Workers' Compensation Health Care Provider Law, Escrow Law, Check Sellers and Cashers Law, California Commodity Law, Securities Depositor Law, Consumer Finance Lenders Law, Commercial Finance Lenders Law, and Security Owners Protection Law.

MAJOR PROJECTS

DOC Adopts Workers' Compensation Health Care Provider Organization Regulations. On January 21, the Commissioner adopted emergency regulations under the Workers Compensation Health Care Provider Organization Act of 1993, which allows providers of work-related injury and illness health care to seek authorization from the Commissioner as a workers' compensation health care provider organization. After authorization, an organization may apply to the Administrative Director of the Division of Workers' Compensation of the Department of Industrial Relations for certification by that agency; only certified organizations may offer workers' compensation health care to an employer's employees. *[13:4 CRLR 106, 115–16]*

To implement these provisions, DOC adopted sections 1956 through 1999, Title 10 of the CCR, which set forth the procedure for filing an application for authorization, the standards required to be met for authorization, and the ongoing standards for continued authorization. Among other things, the regulations provide that no person subject to the Act shall offer or otherwise distribute any bonus or gratuity to a potential self-insured employer, group of self-insured employers, or insurer of an employer for the purpose of inducing enrollment or to an existing self-insured employer, group of self-insured employers, or insurer of an employer for the purpose of inducing the continuation of enrollment; within each service area of an organization, workers' compensation health care shall be readily available and accessible to each employee; and each organization shall provide for—among other things—the separation of medical services from fiscal and administrative management sufficient to assure the Commissioner that medical decisions will not be unduly influenced by fiscal and administrative management.

On February 4, DOC published notice of its intent to permanently adopt sections 1956 through 1999; the Department received public comments on the regulations through March 25. DOC subsequently adopted the regulatory package, which was approved by the Office of Administrative Law (OAL) on April 15 and became effective that day.

Proposed Regulatory Action Under the Corporate Securities Act of 1968. Last November, the Commissioner published notice of his intent to adopt new section 260.140.80.5, Title 10 of the CCR. Based on guidelines adopted by the North American Securities Administrators Association (NASAA), the proposed rule would allow the offer and sale of contractual plans in California, under certain conditions; if approved, the rule would be in effect for 36 months. *[14:1 CRLR 97]* Among other things, section 260.140.80.5 would provide the following:

• The section would require a broker-dealer to determine whether a contractual plan is suitable for the purchasing investor and retain the documentation used in determining investor suitability for five years. Suitability requirements include, but are not limited to, an investor's age, marital status, number of dependents, major investment goals and the timeframe for achieving these goals, current and anticipated future financial status, anticipated short- and long-term liabilities or other obligations, likelihood of the investor's continued income, ability to address burdensome financial situations, and the investor's understanding of the risks involved in investing in securities and the usefulness of short-term savings instruments or accounts.

• The section would also allow an investor to withdraw from the plan within 28 months of his/her initial payment. An investor who chooses to withdraw from the plan shall receive the value of his/her account and a refund of all sales charges, commissions, or other selling or redemption charges which exceed 15% of the total payments made.

• The regulation would also set forth the disclosure form which must be executed by a broker-dealer and an investor; require issuers to file quarterly and annual persistency reports; state the investment objective for contractual plans; and provide that the rule shall expire 36 months after it becomes effective. This sunset provision is necessary to allow DOC to evaluate the performance of contractual plans in California.

At this writing, section 260.140.80.5 still awaits adoption by the Commissioner and review and approval by OAL.

Last December, DOC published notice of its intent to amend section 260.141.11, Title 10 of the CCR, to allow the transfer of one-class voting common stock issued pursuant to Corporations Code section 25102(h) without the consent of the Commissioner, if the stock could have been originally issued pursuant to the exemption from qualification afforded by section 25102(f); as amended, section 260.141.11 would require that a notice, statement of transferee, and opinion of counsel be filed with the Commissioner. *[14:1 CRLR 98]* At this writing, these proposed changes await adoption by the Commissioner and review and approval by OAL.

DOC Rulemaking Under the Franchise Investment Law. On April 6, OAL approved DOC's amendments to sections 310.111, 310.114.1, 310.122, 310.125, 310.156.1, and 310.210, Title 10 of the CCR, which redefine the term "Uniform Franchise Registration Application" for the purpose of incorporating recent changes to the Uniform Franchise Offering Circular Guidelines as amended by NASAA on April 25, 1993; additionally, the changes make technical language revisions to those sections. *[14:1 CRLR 98]*

On January 20, OAL approved DOC's amendments to section 310.100.2, Title 10 of the CCR, regarding the exemption from the registration requirements of Corporations Code section 31110 for the offer and sale of a franchise if certain conditions are met, and amendments to section 310.114.1, Title 10 of the CCR, which include guidance on how to describe the franchisee and the franchisor(s) in an offering circular. *[14:1 CRLR 98; 13:4 CRLR 105]*

Conflict of Interest Code Update. On February 14, the Fair Political Practices Commission approved DOC's amendments to its conflict of interest code, the appendix to section 250.30, Title 10 of the CCR, which designates DOC employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the making of governmental deci-

sions affecting those interests. *[14:1 CRLR 98; 13:4 CRLR 106]*

DOC Reviews "Local Area Name" Usage by Brokers. On January 7, DOC issued Release No. 91-C (Revised), commenting on the practice of broker-dealer branch offices operating under a "local area name" and on the status of so-called "independent contractors." According to DOC, the term "local area name" refers to the practice of an agent operating out of a branch office of a broker-dealer but using a name different from that used by the broker-dealer; frequently, the name used by an agent is an "umbrella" name under which an agent conducts securities transactions under the supervision of a broker-dealer in addition to conducting other businesses, such as investment advisory activities unaffiliated with the broker-dealer. According to DOC, strict supervisory responsibilities are imposed on broker-dealers with respect to agents employed by them; further, existing law provides that an agent may effect transactions in securities only under the name of the broker-dealer, not under another business name. Further, DOC opined that a broker-dealer may not seek to disavow or limit its supervisory responsibilities under existing law by encouraging or permitting an agent to represent himself/herself as an "independent contractor." DOC concluded that "all communications used by, or on behalf of, a broker-dealer and the persons representing the broker-dealer should clearly, prominently and distinctly disclose the services being offered by the broker-dealer, the identity of the broker-dealer, and the relationship between the broker-dealer, the agents and other entities, such as an investment adviser."

DOC Sets Forth Procedure for Requesting Interpretive Opinions. The Commissioner has the discretion to issue interpretive opinions through DOC's Office of Policy to determine questions of law arising under the Corporate Securities Law of 1968, the California Commodity Law of 1990, the Franchise Investment Law, the Knox-Keene Health Care Service Plan Act of 1975, and the Workers' Compensation Health Care Provider Organization Act of 1993; interpretive opinions are issued primarily for the purpose of providing a means by which members of the public can protect themselves against liability for acts done or omitted in good faith reliance upon the administrative determination made in the opinion.

On February 14, DOC issued Release No. 61-C (Revised), which sets forth the procedures which should be followed by individuals seeking a DOC interpretive opinion under one of the above-mentioned laws. Among other things, the procedures require the requesting party to specifically state that he/she is requesting an interpretive opinion; the request must name the principal parties to the proposed transaction; and the person requesting the opinion must clearly set forth the facts regarding the proposed transaction or activity. The release also states that attorneys are strongly urged to set forth their views with respect to the questions presented.

DOC Settlement With Prudential Finalized. On April 22, Commissioner Mendoza signed a settlement agreement with Prudential Securities, ending more than six months of negotiations stemming from allegations against Prudential regarding sales practices in the sale of more than 700 limited partnerships from 1980 to 1990. *[14:1 CRLR 98]* In so doing, California became the last among the fifty states to agree to the nationwide fraud settlement which will return $371 million to hundreds of thousands of investors across the nation—including 42,000 Californians—who invested more than $8 billion in Prudential's limited partnerships. According to Commissioner Mendoza, he held out for "assurances that California investors will get a fair shake in the national claims process, and compliance safeguards that will prevent future abuses."

Under the terms of the agreement, Prudential must establish and maintain an information repository, which will make information available to DOC as a means of monitoring the fairness and progress of the national claims process for individual investors, as well as to California investors with pending claims; Prudential will make quarterly progress reports to DOC regarding California claims; and Prudential will pay a $500,000 civil fine to the state, and reimburse DOC for expenses incurred in the investigation and settlement process.

Other DOC Enforcement Activity. On February 22, Commissioner Gary Mendoza ordered Fullerton-based North American Ostrich Group and its owners, Alex Wilson and Dennis Campbell, to halt the offer and sale of limited partnerships in an ostrich ranching venture. According to company promotional materials, Wilson and Campbell sought to raise $250,000 from California investors by selling twenty units of $12,500 in a limited partnership; the partnership, which promised returns of 200–300% on investor dollars, would then purchase pairs of one-year-old ostriches, and breed and sell the offspring from a ranch owned and operated by Campbell. According to Mendoza, Wilson and Campbell failed to comply with the Corporate Securities Law of 1968, which requires all securities offered and sold in California to be qualified with DOC, or to have obtained an exemption from the Department; because Wilson and Campbell did neither, Mendoza issued an order to desist and refrain from the offer and sale of these securities in violation of the law.

On March 3, Commissioner Mendoza announced a series of administrative, civil, and criminal actions against Lida International Financial Data of San Gabriel, Worth Financial Data of San Francisco, and Topworth International of Hong Kong, stemming from alleged violations of the federal Commodity Exchange Act and the California Commodity Law of 1990. According to Mendoza, the companies were engaging in the illegal sale of futures contracts in gold, silver, and foreign currencies to members of California's Asian community; Mendoza characterized the companies' activity as "a classic example of affinity group fraud" (members of an ethnic or minority group preying upon members of their own community). Investigators believe that during the last three years, the companies received over $10 million in investments from 5,000 customers. In a joint filing in federal court, DOC and the U.S. Commodity Futures Trading Commission obtained a temporary restraining order, appointment of a receiver, and orders freezing assets and preventing the destruction or alteration of books and records. The Commissioner also issued desist and refrain orders against Lida and Worth under the California Commodity Law.

On March 24, Commissioner Mendoza ordered L.A. Pethahiah of Wisconsin and O.M.B., W.D. McCall of Texas to desist and refrain from the unlicensed sale of money orders in California; according to Mendoza, Pethahiah and McCall both issued fraudulent money orders to customers of a number of California lending institutions without a check sellers license. In conjunction with his announcement, Mendoza issued an alert detailing how to avoid accepting fraudulent money orders. Among other things, the alert states that a money order should include the value of the money order, the date, the signature of the purchaser, and the identification of all three parties to the money order—the remitter (the purchaser of the money order), the payee (the party to be paid), and the drawee (the institution from which funds will be paid). Also, a legitimate money order will have a nine-digit routing/transit number printed in magnetic ink on the bottom of the order; consumers should note this number and the drawee before accepting any money order as payment, and contact DOC to determine if a drawee is licensed to sell checks in California.

On April 11, Commissioner Mendoza announced the results of a week-long series of raids that took place in southern California in an effort to crack down on telemarketing fraud. Investigators from DOC and the securities departments of four other states raided ten locations in Los Angeles, Orange, and San Diego counties, seizing business records and promotional materials for two businesses believed to be selling wireless cable investments to the general public in violation of the California Corporate Securities Law of 1968 and the Telephonic Sellers Law. Mendoza stated that at least 3,000 individuals had invested a total of $30 million in the offerings from the two businesses; in both cases, the sales were made in telemarketing boiler rooms with promises of financial returns of more than 600% over five years, at very low risk. Investigators are now searching through 125 boxes of business records seized in the raids of the offices of attorney Richard A. Weintraub of San Diego and Jon H. Marple of Newport Beach, who are believed to be responsible for the offerings, to determine if any California laws have been violated.

On April 15, Commissioner Mendoza announced a settlement agreement filed in Santa Clara County Superior Court, ending the civil and administrative proceedings the Department had initiated against San Jose-based Congress Mortgage last October; according to DOC, Congress Mortgage and its President, Robert Gaddis, committed numerous violations of the California Financial Code in connection with the making of consumer loans. For example, DOC contended that the defendants routinely engaged in unconscionable lending practices, such as charging up-front loan origination fees ranging up to 17% of the gross loan amount; charging a "$10 per check" fee, and then failing to disclose that fee to consumer borrowers as part of the estimated fees and charges in defendants' Mortgage Loan Disclosure Statements; charging a "no insurance info" fee of $150 to any consumer borrower who cannot produce evidence of a home insurance policy listing the defendants as an additional named insured; and, when making or negotiating loans, repeatedly failing to take into consideration their size and duration in determining the financial ability of the consumer borrower to repay the loan in the time and manner provided in the loan contract or to refinance the loan at maturity. *[14:1 CRLR 98–99]*

Without admitting or denying the allegations against it, Congress Mortgage and Gaddis consented to a final judgment that includes a permanent injunction enjoining them from specific acts which may constitute violations of the Consumer Finance Lenders Law, enhanced compliance reporting to DOC (including written quarterly reports), the payment of restitution to certain Congress Mortgage borrowers totalling over $120,000, and a ten-day suspension of its Consumer Finance Lender and Broker license.

On May 3, Commissioner Mendoza announced that the Los Angeles County District Attorney filed felony charges against six people associated with Tri-State Financial Group, accusing them of defrauding more than 400 investors, many of them elderly or retired, of more than $25 million. According to Mendoza, the six people are charged with 84 felony counts related to the offer and sale of limited partnerships and promissory notes for commercial real estate investments, including the following: 69 counts of violations of California Corporate Securities Laws, including the requirement that the offer and sale of securities be qualified with DOC; 11 counts of grand theft; three counts of issuing checks without sufficient funds; and one count of willfully using a scheme, device, or artifice to commit fraud in connection with the sale of securities. According to Mendoza, a joint investigation was conducted by DOC and the District Attorney's Office after DOC served search warrants and a desist and refrain order against Tri-State and its related businesses in November 1991; DOC referred the case to the Major Fraud Division of the District Attorney's Office later that year, when elements of serious criminal activity became apparent.

On May 17, Commissioner Mendoza announced his issuance of a desist and refrain order against Mike Harsini, an individual doing business as V.I.P Money Order Company of Lomita, after finding that Harsini was not complying with the Check Sellers Law. Mendoza noted that because money orders are an important and economical source of checks, particularly for low-income individuals without checking accounts, "it is essential that the Department license and regulate these businesses to make certain that California money order companies have sufficient funds to cover the checks they write on behalf of clients." Mendoza also urged consumers to contact DOC to inquire whether a check seller is properly licensed.

LEGISLATION

AB 2885 (Committee on Banking and Finance), as amended April 26, would consolidate the Personal Property Brokers Law, the Consumer Finance Lenders Law, and the Commercial Finance Lenders Law by repealing the latter two, and regulating consumer and commercial loans under the Personal Property Brokers Law, to be renamed the California Finance Lenders Law. *[A. W&M]*

AB 2940 (Aguiar). Existing law prohibits a credit union from paying any commission or compensation for securing members. As amended April 7, this bill would, pursuant to regulations adopted by the Commissioner, authorize a credit union to offer an incentive or inducement to individuals who wish to become members of the credit union, or to its employees or members who assist in adding new members to the credit union. *[S. BC&IT]*

AB 3244 (Epple). Existing law requires health care service plans (HCSPs), nonprofit hospital service plans, and disability insurers that cover hospital, medical, or surgical expenses to offer coverage for specified procedures and services. As introduced February 24, this bill would require HCSPs, nonprofit hospital service plans, and certain disability insurers that deny coverage for an experimental medical procedure or plan of treatment for an enrollee or claimant with a terminal illness to notify the enrollee or claimant of specified information and rights. It would require a HCSP or certain disability insurers covered by the bill to hold a conference on the matter if requested by the enrollee. *[S. Ins Cl&Corps]*

AB 3572 (Martinez), as amended April 25, would require HCSP contracts, disability insurance policies providing coverage for hospital, medical, and surgical benefits, and nonprofit hospital service plan contracts issued, amended, delivered, or renewed in this state on or after January 1, 1995, to provide coverage for the participation of an enrollee, insured, or subscriber in a clinical trial that meets certain criteria. This bill would further require HCSPs, disability insurers, and nonprofit hospital service plans to approve and provide reimbursement for the patient care costs, as defined, of participation of an enrollee, insured, or subscriber who gives voluntary informed consent to participate in an approved clinical trial. *[A. Floor]*

AB 3260 (Bornstein), as amended April 26, would require a HCSP, disability insurance policy, or nonprofit hospital service plan whose terms that require binding arbitration to settle disputes and restrict, or provide for a waiver of, the right to a jury trial, to include a specified disclosure. This bill would require any HCSP, disability insurance policy, or nonprofit hospital service plan that includes a term requiring binding arbitration in case of a medical malpractice claim or dispute to provide for the selection of a neutral arbitrator. This

bill would authorize a petition to be filed with the court to appoint an arbitrator in certain instances. In the case of HCSPs, this bill would limit the requirement for selection of a neutral arbitrator to cases or disputes involving $50,000 or less. In the case of disability insurers and nonprofit hospital service plans, it would expressly prohibit waiver of these requirements.

Existing law requires certain judgments against specified licensed health care professionals by a court to be reported by the clerk of the court to the appropriate licensing agency. This bill would require an arbitration under a HCSP contract for any death or personal injury resulting in an award for an amount in excess of $30,000 to be a judgment for purposes of the above-described provision of law. *[A. W&M]*

SB 1832 (Bergeson), as amended May 17, would require certain HCSPs to permit women enrollees to seek obstetrical and gynecological physician services directly from an obstetrician and gynecologist under terms and conditions as may be agreed upon between the contractholder and the plan; provide that the terms and conditions of the plan contract shall not discriminate against obstetricians and gynecologists as primary care physicians relative to other physicians designated as primary care physicians; require HCSPs to reimburse physicians for emergency services and care without prior authorization in specified circumstances; and provide procedures for obtaining authorization and resolving disagreements in circumstances where, in the opinion of the emergency or attending physician, a patient who has received emergency care may not be safely discharged without receiving additional, necessary medical care.

Existing law requires every HCSP to establish procedures in accordance with DOC regulations for continuously reviewing the quality of care, performance of medical personnel, utilization of services and facilities, and costs. This bill would require a HCSP to disclose to the Commissioner and providers under contract with the plan the processes the HCSP uses to authorize health care services by a provider pursuant to the benefits provided by the plan, with certain exceptions. It also would require that those processes be disclosed to enrollees upon request.

This bill would prohibit certain disability insurers, a HCSP, or a nonprofit hospital service plan that authorizes a specific type of treatment by a provider from rescinding or modifying this authorization after the provider renders the health care service in good faith and pursuant to the authorization.

Existing law requires a HCSP to establish and maintain a grievance system approved by DOC under which enrollees may submit grievances, and imposes procedures for this system. This bill would require that the grievance system allow providers to assist enrollees with submitting and pursuing grievances, and would require that the plan inform its providers upon contract arrangement or affiliation with a plan, and annually thereafter, of the procedures for processing and resolving grievances. It would also require the HCSP to provide the Commissioner with additional information relating to individual grievances upon request. This bill would require the Commissioner to adopt regulations setting forth criteria to be applied by the Department to determine if certain complaints against providers are justified prior to the public release of a complaint against a plan. This bill would also require the Commissioner to provide a description of certain complaints against a HCSP to the plan prior to public release, and would authorize the release of certain complaint data by the Commissioner. The bill would also provide that upon appeal to the HCSP of a contested claim, the claim would be referred by the plan to the medical director or other appropriately licensed health care provider, and sets forth procedures for this appeal.

Existing law requires a HCSP to reimburse claims or any portion thereof as soon as practical, but no later than 30 working days for a HCSP and 45 working days for a health maintenance organization after receipt of the claim unless the claim or portion thereof is contested. It deems a claim or portion thereof to be reasonably contested where the plan has not received the completed claim and all information necessary to determine payor liability for the claim. This bill would require a HCSP to complete reconsideration of the claim within 30 working days and would require a health maintenance organization to complete reconsideration of the claim within 45 working days after receipt of this additional information.

Existing law requires conversion coverage for employees whose health benefits under a group contract have been terminated by the employer. This bill would require a plan to continue to cover services by a terminated provider for at least 60 days following notification of the termination date of a contract between a plan and a provider under contract in specified circumstances. This bill would require disclosure of the reasons for a termination, dismissal, or expulsion of a provider under contract by a HCSP.

This bill would, with certain exceptions, prohibit the release of any information by certain disability insurers, a HCSP, or a nonprofit hospital service plan to an employer that would directly or indirectly indicate to the employer that an employee is receiving or has received services from a health care provider that are covered by the plan, unless authorized to do so by the employee.

This bill would state the intent of the legislature to establish standards for disability insurers and HCSPs to use in assessing claims and requests for authorization of services. This bill would require DOC and the Department of Insurance to jointly establish a cost-benefit panel to consider whether particular procedures, services, drugs, or devices may be excluded from coverage by HCSP contracts or disability insurance policies because they are considered experimental or not medically necessary or appropriate. *[S. Appr]*

AB 3571 (Margolin), as introduced February 25, would state the intent of the legislature to establish standards for disability insurers and HCSPs to use in assessing claims and requests for authorization of services. This bill would require the Department of Insurance and DOC to jointly establish a cost-benefit panel to consider whether particular procedures, services, drugs, or devices may be excluded from coverage by HCSP contracts or disability insurance policies because they are considered experimental or not medically necessary or appropriate. *[A. W&M]*

AB 3681 (Margolin), as amended May 17, would prohibit HCSPs and disability insurers from awarding bonus compensation to any employee on the basis of that employee's performance in denying authorization or payment for costly services. This bill would authorize the imposition of a civil penalty on any person, under the Knox-Keene Health Care Service Plan Act of 1975, who engages in any unfair method of competition or any unfair or deceptive act or practice, as determined by regulation of the Commissioner, in an amount not to exceed $25,000 or, if the act was willful, not to exceed $100,000, for each act. This bill would require that when the issuance, amendment, or servicing of a plan contract is inadvertent, all those acts constitute a single act for this purpose.

This bill would require the Commissioner of Corporations to establish and maintain a toll-free telephone number for the purpose of receiving complaints and inquiries regarding HCSPs, and would require every HCSP to publish this toll-free number on every plan contract together with a statement explaining that the toll-free number is available for the purpose of

receiving complaints and inquiries about plans. *[A. Inactive File]*

AB 2649 (Woodruff). Existing law requires a licensed HCSP, within thirty days after any change in the information contained in its application for licensure, other than financial or statistical information, to file an amendment thereto in the manner the Commissioner of Corporations may by rule prescribe setting forth the changed information. As amended May 4, this bill would, instead, authorize a licensed plan to give written notice to the Commissioner annually, as provided, of specified changes. *[S. InsCl&Corps]*

AB 3749 (Margolin), as amended April 14, would require all HCSPs and policies of disability insurance to provide coverage for screening, diagnosis, treatment of, and surgery for cervical cancer and cervical dysplasia, as well as a screening test for cervical cancer and sexually transmitted disease. The bill would also require all HCSPs and policies of disability insurance to provide coverage for contraceptive management and methods and preconception care management. An employer that is a religious organization, or an insurer that is a subsidiary of a religious organization, would not be required to offer coverage for forms of contraception that are inconsistent with the religious organization's religious and ethical principles. *[A. Floor]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 99–100:

SB 930 (Killea), as introduced March 4, 1993, and **SB 469 (Beverly)**, as amended September 10, 1993, would—among other things—enact the California Limited Liability Company Act, authorizing a limited liability company to engage in any lawful business activity; set forth the duties and obligations of the managers of a limited liability company; and establish requirements and procedures for membership interests in limited liability companies, including voting, meeting, and inspection rights. SB 469 is expected to be amended to prohibit law firms from forming limited liability companies, in light of concerns over how such arrangements would affect the financial responsibility of law firm partners in legal malpractice claims. *[A. Rev&Tax; A. Rev&Tax]*

AB 1057 (Conroy). Existing law requires applicants for an escrow agent's license to file, and escrow agents to maintain, a bond. Under existing law, an applicant or licensee may obtain an irrevocable letter of credit approved by the Commissioner of Corporations in lieu of the bond. As introduced March 2, 1993, this bill would instead permit an applicant or licensee to obtain an irrevocable letter of credit in a form which shall be approved by the Commissioner in lieu of the bond. The bill would also provide that the Commissioner shall be entitled to recover the administrative costs that are specific to processing claims against irrevocable letters of credit. *[S. BC&IT]*

AB 1031 (Aguiar). Existing law requires licensed escrow agents to annually submit to the Commissioner of Corporations an audit report containing audited financial statements covering the calendar year. As amended May 17, this bill would provide that if the independent accountant who was engaged to complete those reports and financial statements resigns or is dismissed, the licensed agent must so notify the Commissioner. The bill would also require the independent accountant to submit a copy of the report and statements at the same time that a copy is submitted to the licensed escrow agent. *[S. BC&IT]*

AB 1125 (Johnson), as amended April 12, 1993, would require the Commissioner to conduct an inspection and examination of a new escrow agent licensee within six months of licensure. The costs of the inspection and examination would be paid by the licensee to the Commissioner. *[S. BC&IT]*

AB 1923 (Peace). Existing state law provides for the disclosure of certain account charges and deposit information relative to savings associations, credit unions, and industrial loan companies. As amended April 7, this bill repeals those provisions in deference to recent federal regulatory changes. This bill was signed by the Governor on May 9 (Chapter 68, Statutes of 1994).

AB 2306 (Margolin), as amended May 19, 1993, would add to the acts that constitute grounds for HCSP disciplinary action the failure of a plan to correct prescribed deficiencies identified by the Commissioner. *[S. InsCl&Corps]*

AB 2002 (Woodruff), as amended January 26, is no longer relevant to the Department of Corporations.

The following bills died in committee: **AB 1533 (Tucker)**, which would have reduced the maximum charge which check cashers may impose for cashing a payroll check with identification from 3% to 1% and without identification from 3.5% to 1.5%, or $3, whichever is greater; **SB 719 (Craven)**, which would have provided that no specialized HCSP that provides or arranges for dental services shall request reimbursement for overpayment or reduce the level of payment to a provider based on the fact that the provider has entered into a contract with any other HCSP for participation in a supplemental dental benefit plan that has been approved by the Commissioner; **SB 1118 (Rogers)**, which would have exempted any offer of a security for which an offering statement under Regulation A of the Securities Act of 1933 has been filed but has not yet been qualified; and **SB 666 (Beverly)**, which would have specifically required the Commissioner to adopt rules containing specified requirements to implement existing law which permits certain securities to be qualified by permit if the application is a small company application and meets certain requirements.

LITIGATION

At this writing, the California Supreme Court is reviewing the Second District Court of Appeal's decision in ***People v. Charles H. Keating***, 16 Cal. App. 4th 280 (1993). In its ruling, the Second District affirmed a jury verdict in which the former savings and loan boss was found guilty of defrauding 25,000 investors out of $268 million by persuading them to buy worthless junk bonds instead of government-insured certificates. *[12:2&3 CRLR 169]*

In his appeal (No. S033855), Keating primarily challenges the trial court's jury instructions stating that Keating could be convicted under theories that he was either the direct seller of false securities in violation of Corporations Code sections 25401 and 25540, or a principal who aided and abetted the violations. Keating was convicted on 17 counts, all violations of sections 25401 and 25540. The major issue raised by Keating is whether aiding and abetting of a section 25401 crime statutorily exists; Keating claims that criminal liability is restricted to direct offerors and sellers, and that the evidence failed to prove he personally interacted with any of the investors. The Supreme Court unanimously voted to hear Keating's appeal of his state conviction, for which he received a ten-year prison term and a $250,000 fine. However, even if his state conviction is set aside by the court, Keating must serve a twelve-year term in federal prison based on his January conviction by a federal jury for racketeering, conspiracy, and fraud. *[13:4 CRLR 110]* At this writing, the matter has been fully briefed; the court has not yet scheduled oral argument.

DEPARTMENT OF INSURANCE

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