

Props 101, 104 Require Benefit Spreading

BY SIGRID BATHEN
RECORDER CAPITAL CORRESPONDENT

SACRAMENTO — Hidden within Propositions 101 and 104 are obscure provisions that critics say would require auto accident victims to exhaust other insurance benefits before seeking reimbursement of injury costs through their auto insurance policies.

Those provisions, called "spreading of benefits," are prime reasons both initiatives are opposed by public entities and health insurers. Those groups contend that the provisions could mean huge unknown costs in private health insurance and workers' compensation.

As written, Proposition 101, backed by Assemblyman Richard Polanco, D-Los Angeles, and Coastal Insurance Co. of Los Angeles, even could require that sick leave and vacation benefits be exhausted before auto insurance benefits kick in, critics say.

Backers of 101, as well as 104, the no-fault initiative sponsored by the insurance industry, dismiss the concerns of critics as unrealistic and exaggerated — yet another ploy, they say, by trial lawyers and backers of competing initiatives to avoid responsibility for escalating insurance rates.

"The vacation and sick leave arguments are attorneys' arguments that are specious," said 101 spokeswoman Paula Willins. "That argument is being proffered by people whose livelihood would be affected. They have an interest in protecting their income and keeping the bodily injury tort system intact."

She said the impact of 101 on workers' compensation reimbursement would be "minimal." The use of vacation and sick leave benefits, she added, "is not the intent [of 101] at all . . . If you were asked to do that by your [auto] insurance company, it would become a legal matter. The point is moot. It's not going to happen, in our opinion. It is not the intent of the legislation that sick leave or vacation be used."

But Willins conceded that private health insurance "would have to be used" be-

VERBATIM:

101: 3333.6 (2) "Economic losses" means objectively verifiable monetary past and future losses not compensable from other sources, including medical expenses, loss of earnings, including future loss, burial costs, loss of business, loss of employment opportunity . . .

104: 12010 (b) All benefits paid or payable under any state for federal workers' compensation law or any state or federal occupational or non-occupational disability law (including Social Security) on account of disability produced by personal injury shall be deducted from the basic loss benefits otherwise payable . . . and no basic loss benefits for work loss shall be payable if such other benefits payable for the same period equal or exceed the benefits otherwise payable for work loss during that period.

fore benefits for bodily injury could be paid by auto insurance under the provisions of Proposition 101.

Will Glennon, a key strategist for the California Trial Lawyers' Association in its fight to defeat 101 and 104 and to pass Proposition 100, a competing insurance rate-regulation initiative on the November ballot, says the intent of 101 backers "is very clearly to shift all of the costs out of the [auto insurance] system to other people, and the way they do that is by their definition of economic losses.

"For purposes of the auto policy, economic losses includes only those economic losses that are not compensable from other sources," Glennon says. "That includes workers comp, health, private disability, HMOs, sick leave, vacation. They argue that they never meant that. But sick leave and vacation are clearly [benefits] compensable from other sources."

An analysis by the state Senate Office of Research cites opposition arguments to 101 that claim the initiative "would require victims to obtain compensation from their sick leave, health insurance, work-

ers' compensation and other injury coverage before receiving compensation from a negligent driver."

In its analysis of opposition to 104, the office of research cited concerns by state and local governments that reimbursement to employers for medical expenses and wage losses under workers' compensation in motor vehicle accident cases would be "restricted."

Monterey County Supervisor Barbara Shipnuck, president of the County Supervisors Association of California (CSAC), said the association opposes both 101 and 104 in large measure because of the restriction of reimbursement to employers for workers' compensation expenses in auto accident cases.

"They may want to say it's not a problem because it only occurs in a few cases," Shipnuck said, "but in those cases it is a very high dollar amount."

Scott Carpenter, spokesman for 104, countered by insisting that "the benefits of no-fault to cities far outweigh any impact on workers' compensation."

Don Benninghoven, executive director of the League of California Cities, said

his group opposes Propositions 101 and 104 in part because of the "spreading of benefits" provisions of both initiatives. He said the league is concerned both about workers' compensation reimbursement and increased health benefit costs to cities. He disputed contentions by supporters of the two initiatives that the costs involved are minimal.

"The costs are by no means minimal," he said. "There are major costs involved."

Merle Rabine, a Santa Ana workers' compensation attorney who is president of the California Applicants' Attorneys Association, a workers' comp lawyers' group which opposes 101 and 104, said the initiatives' provisions will result in increased workers' compensation insurance rates and undue demands on the pocketbooks of auto accident victims.

"They will force individuals involved in injuries caused by other people to shoulder the burden themselves and to lose whatever rights they have to compensation, in exchange for illusory promises of rate reduction," Rabine said. "This will just shift more cost to the workers' compensation system, and it will certainly result in a rise in workers' comp rates."

"From the point of view of the employer, if it starts to establish the principle that the employer pays for other people's negligence, that can shift to other areas of tort law," he added. "If I were an employer I'd be concerned."

Joe V. Criscione, vice president and lobbyist for Kaiser Foundation Health Plan, which opposes both 101 and 104, said the "spreading of benefits" provisions of 101 are "somewhat less clear" than 104, but "both would do essentially the same thing — they would make health insurers primary and permit insurers to sell auto insurance without coverage for bodily injury."

"To that extent, it would not represent a cost decrease, but a transfer of the cost from one [insurance carrier] to another," he added. "Our estimate is that it would cost us in the neighborhood of \$7 million to \$10 million a year."