

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 24th Floor  
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING**

**Date: October 19, 2009**

**Regulation File: REG-2009-00023**

**SUBJECT OF PROPOSED RULEMAKING**

The Insurance Commissioner proposes to adopt amendments to California Code of Regulations (“CCR”) Title 10, Chapter 5, Subchapter 2, Article 1, sections 2202(a), 2202(b), 2202(c), 2202(d), 2203(b), and the authority and reference citations for sections 2202 and 2203 after considering comments from the public. (All references to the CCR in this Notice are references to sections in CCR Title 10.) The Commissioner proposes to amend these sections under the authority granted by California Insurance Code (“CIC”) sections 742.43, 779.21, 10168.92 (for section 2202 only), 10192.3, 10234, 10327, 10506, 10506.3 (for section 2202 only), 10704, and 12973.9.

The Commissioner proposes to amend sections 2202(b), 2202(c), 2202(d), and 2203(b) to adjust the fees he charges insurance providers for processing, indexing and maintaining copies of documents defined in CCR section 2201(a).

In addition, the Commissioner proposes to amend CCR Title 10, Chapter 5, Subchapter 2, Article 1, section 2202(a)(12) and section 2202(b) to conform the language of these subsections to the filing requirement language of Insurance Code sections 10163.35 and 10168.93, which did not exist when the regulations were last amended.

Finally, the proposed amendments add, delete, or delete and replace authority and/or reference citations to CCR sections 2202 and 2203 so that the authority and reference citations for these sections conform to current law. The proposed amendments also correct typographical errors in section 2202.

**PUBLIC HEARING**

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to the proposed amendments to the regulations, as follows:

<b>Date and time:</b>	<b>Thursday, December 17, 2009 at 10:00 a.m.</b>
<b>Location:</b>	<b>Department of Insurance Administrative Hearing Bureau Hearing Room 45 Fremont Street, 22nd Floor San Francisco CA 94105</b>

The hearing will continue on the date noted above until all testimony has been submitted or until 5:00 p.m., whichever is earlier.

## **PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS**

All persons are invited to submit written comments on the proposed amendments to the regulations during the public comment period. The public comment period will end at **5:00 p.m. on December 17, 2009**. Please direct all written comments to the following contact person:

Nancy Hom, Senior Staff Counsel  
California Department of Insurance  
45 Fremont Street, 24th Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4144

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Stesha Hodges, Staff Counsel  
California Department of Insurance  
45 Fremont Street, 24<sup>th</sup> Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4428

## **DEADLINE FOR WRITTEN COMMENTS**

All written materials must be received by the Insurance Commissioner, addressed to the contact person at her address listed above, **no later than 5:00 p.m. on December 17, 2009**. Any written materials received after that time may not be considered.

## **COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE**

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: [homn@insurance.ca.gov](mailto:homn@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Nancy Hom and sent to the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

## **ACCESS TO HEARING ROOMS**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) for the hearing in order to make special arrangements, if necessary.

## **AUTHORITY AND REFERENCE**

The Insurance Commissioner proposes the adoption of amendments to Title 10, Chapter 5, Subchapter 2, Article 1, sections 2202(a), 2202(b), 2202(c), 2202(d), and 2203(b) pursuant to the rulemaking authority vested in him by Insurance Code sections 742.43, 779.21, 10168.92 (for section 2202 only), 10192.3, 10234, 10327, 10506, 10506.3 (for section 2202 only), 10704, and 12973.9.

The Commissioner's proposed amendments to CCR section 2202 will implement, interpret, and make specific the provisions of Insurance Code sections 742.42, 779.8, 795.5, 1320, 9080.1, 10112.5, 10163.35, 10168.93, 10192.15, 10192.19, 10205, 10225, 10231.2, 10231.6, 10232, 10233.9, 10234.9, 10234.93, 10234.97, 10236.11, 10236.13, 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11027, 11029, 11066, 11069, 11522, 11658, and 12250.

The Commissioner's proposed amendments to CCR section 2203 will implement, interpret, and make specific the provisions of Insurance Code sections 742.42, 779.8, 795.5, 1320, 10112.5, 10163.35, 10192.15, 10192.19, 10205, 10225, 10231.2, 10231.6, 10232, 10236.11, 10236.13, 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11066, 11069, and 11658.

## **INFORMATIVE DIGEST**

### **SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW**

Under existing law, when the Insurance Code requires that a document (defined by CCR sections 2201(a) and 2202) be filed with, submitted to, or approved by the Commissioner, "fees as provided for by [CIC section 12973.9] shall be paid to the commissioner to cover the expenses of processing and indexing the same and maintaining copies of the same." Insurance Code section 12973.9. The fees which the Commissioner may charge for actions on documents submitted to him are set forth in CCR sections 2202 and 2203.

The fees set forth in CCR sections 2202 and 2203 have not changed in over twelve years, while the cost of processing, indexing, and maintaining the documents which must be filed has increased substantially. The inadequacy of the fees has created an ongoing structural deficit for the Department of Insurance.

For the five years from fiscal year 2002-03 to fiscal year 2007-08, the cost of processing documents subject to filing as set forth in CCR 2202 and 2203 increased by 35% (from \$3.7 million to \$5 million dollars). During the same five years, the Commissioner charged insurers an average of approximately \$500,000 (\$0.5 million) per year. If the imbalance between the actual costs incurred by the Commissioner and the fees charged to cover these costs is not corrected, the Commissioner will continue to recoup from insurers just one-tenth of his actual costs.

Other revenue sources of the Department of Insurance, primarily general fees and license revenue, are currently covering the approximately \$3.8 million annual shortfall between costs

incurred and fees charged insurers for document processing. In effect, the Department's other revenues are subsidizing insurance company operating expenses because current fee levels are inadequate.

Insurance Code section 12973.9 grants the Commissioner the authority to promulgate such regulations as are necessary in order to establish the standard(s) "by which the commissioner shall determine the original fee schedule or any amended fee schedule." The standards are set forth in CCR section 2202(e). Section 2202(e) provides that the Commissioner may increase or decrease fees by issuing a Bulletin setting forth the modified fees at least 90 days prior to their effective date. The Commissioner issued such a bulletin, Bulletin 2009-5, on March 26, 2009. A copy of Bulletin 2009-5 is included in the record of this rulemaking.

In addition to the fiscal problem described above, the existing language of CCR section 2202 does not conform to changes which have taken place in the law since the regulations were last amended, specifically changes which define documents which must be filed.

Lastly, the regulations contain outdated and erroneous authority and reference citations which do not conform to existing law, a comma in CCR section 2202(a)(2) that was inserted in error, and the omission of the word "care" in section 2202(a)((5)(E) made in error.

#### EFFECT OF PROPOSED ACTION

First, the proposed amendments amend the fees set forth in CCR sections 2202(b), 2202(c), 2202(d), and 2203(b) to cover the cost of processing insurance filings. The proposed amendments correct fee levels so that fees charged more accurately reflect the actual costs incurred in processing, indexing, and maintaining documents as required by law. The fee changes do not exceed the amounts calculated by the Department of Insurance's Budget Office as necessary to cover all direct and indirect costs of the unit(s) for the next succeeding fiscal year or years thereafter. There are no other moneys received or projected to be received for the unit(s) processing the documents subject to such fees. The effect of the amendments will be to stop the unsustainable cash flow imbalance currently taking place.

Second, the Commissioner proposes to amend CCR Title 10, Chapter 5, Subchapter 2, Article 1, section 2202(a)(12) and section 2202(b) to conform the language of these subsections to the filing requirement language of Insurance Code sections 10163.35 and 10168.93. Insurance Code sections 10163.35 and 10168.93 specify life insurance and annuity documents which must be filed with the Commissioner under California's nonforfeiture statutes. Both section 10163.35 and section 10168.93 were added to the Insurance Code in 2004, after CCR sections 2202(a)(12) and 2202(b) were last amended. Consequently sections 2202(a)(12) and 2202(b) contain outdated descriptions of documents which are required to be filed under California law. The amendments to CCR subsections 2202(a)(12) and 2202(b) conform the language of those subsections to the requirements of Insurance Code sections 10163.35 and 10168.93.

Finally, the proposed amendments delete the comma that was inserted in error in CCR section 2202(a)(2), add the word "care" to section 2202(a)((5)(E), and add, delete, or delete and replace the following citations to the Insurance Code in the CCR sections listed below, for the reasons set forth below:

- a. The proposed regulations add a citation to CIC section 10168.92 as a rulemaking authority citation for section 2202. Section 10168.92 provides the commissioner with rulemaking authority with regard to annuity filings.
- b. Section 10195.1 is deleted as a rulemaking authority citation for sections 2202 and 2203 because section 10195.1 was repealed effective January 1, 2001. The proposed amendments replace the citations to section 10195.1 with citations to Insurance Code section 10192.3, which authorizes the Commissioner to promulgate regulations concerning Medicare supplement policies.
- c. The proposed regulations add a citation to CIC section 10506.3 as a rulemaking authority citation for section 2202. Section 10506.3 provides the commissioner with rulemaking authority with regard to modified guaranteed annuities.
- d. Section 10163.3 is deleted as a reference citation for section 2202 because section 10163.3 was amended effective January 1, 2005 to exclude the provisions concerning filings with the commissioner. The proposed amendment replaces the citation to section 10163.3 in CCR section 2202 with a citation to Insurance Code section 10163.35. Section 10163.35 became effective January 1, 2005 and it contains the filing requirement language which was deleted from section 10163.3.
- e. The proposed amendments add a citation to section 10168.93 as a reference citation for section 2202. Section 10168.93 requires insurers to file annuity contract forms.
- f. Section 10195.1 is deleted as a reference citation for sections 2202 and 2203 because section 10195.1 was repealed effective January 1, 2001. The proposed amendments replace the reference citations to section 10195.1 with reference citations to Insurance Code section 10192.15, which contains filing requirements for Medicare supplement documents.
- g. Section 10195.45 is deleted as a reference citation for sections 2202 and 2203 because section 10195.45 was repealed effective January 1, 2001. The proposed amendments replace the reference citations to section 10195.45 with reference citations to Insurance Code section 10192.15, which contains filing requirements for Medicare supplement documents.
- h. Section 10195.65 is deleted as a reference citation for sections 2202 and 2203 because section 10195.65 was repealed effective January 1, 2001. The proposed amendments replace the reference citations to section 10195.65 with reference citations to Insurance Code section 10192.19, which contains filing requirements for Medicare supplement advertisements.
- i. The proposed amendments add citations to Insurance Code Section 10231.2 as reference citations for sections 2202 and 2203. Section 10231.2 requires insurers to file long term care products with the commissioner. It did not exist when sections 2202 and 2203 were last amended.
- j. Section 10235.22 is deleted as a reference citation for section 2202 because section 10235.22 was repealed effective January 1, 2001.
- k. The proposed amendments add citations to section 10236.11 as reference citations for sections 2202 and 2203. Section 10236.11 requires insurers to file rates for long term care products.
- l. The proposed amendments add citations to section 10236.13 as reference citations for sections 2202 and 2203. Section 10236.13 requires an insurer to make a filing with the commissioner if it wishes to increase premium for long term care products.
- m. The proposed amendments delete the reference citation to section 10489.93 in section 2202 because the portion of section 10489.93 which required life insurance forms to be filed was deleted from that section effective January 1, 2005. The filing requirement for life insurance

forms is now set forth in section 10163.35. The proposed amendments add a citation to section 10163.35 as a reference citation for section 2202.

n. The proposed amendments add a citation to section 11011 as reference citation for sections 2202 and 2203. Section 11011 requires fraternal benefit societies to file articles of incorporation, certificates, and other documents with the commissioner.

o. The proposed amendments delete the citations to sections 11027 and 11029 as reference citations for section 2203 to resolve an inconsistency within the regulations. Under section 2202(a)(15), document filings under section 11027 and 11029 are exempt from section 2203.

## **MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

## **COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING**

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

## **ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE**

The Commissioner has made an initial determination that the adoption of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurers.

The Commissioner has considered performance standards, but the Commissioner has identified no performance standards which would be as effective as the proposed amendments to address the issue of cost recovery, to conform the existing regulations to existing law, to update and correct legal citations, and to correct typographical errors in the regulations.

The Commissioner has not considered other proposed alternatives which would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses;
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) The use of performance standards rather than prescriptive standards;

(iv) Exemption or partial exemption from the regulatory requirements for businesses.

### **POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

The Commissioner has made an initial determination that the adoption of the proposed amendments will result in overall costs to insurers who make document filings under CCR sections 2201 and 2202 of approximately 3.8 million dollars (\$3,800,000) per year. The cost for each of the approximately 1,300 insurers who make such filings is estimated to be, in the aggregate, approximately three thousand dollars (\$3,000) per year on average. The Commissioner is not aware of any cost impacts that a representative private person or business, other than the insurers described above, would necessarily incur in reasonable compliance with the proposed action.

### **EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above, but he invites interested parties to comment on this issue.

### **FINDING OF NECESSITY**

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

### **IMPACT ON HOUSING COSTS**

The proposed regulations will have no significant effect on housing costs.

### **ALTERNATIVES**

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### **IMPACT ON SMALL BUSINESS**

The Commissioner has made an initial determination that the adoption of the proposed amendments will not affect small businesses because insurers are not small businesses under Government Code section 11342.610(b)(2). However, the Department invites public comments on the question of economic impact on small businesses.

## **COMPARABLE FEDERAL LAW**

There are no existing federal regulations or statutes that are comparable to the proposed amended regulations.

## **TEXT OF REGULATIONS AND STATEMENTS OF REASONS**

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed amended regulations, the Initial Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying by prior appointment at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

## **AUTOMATIC MAILING**

A copy of the proposed amended regulations and this Notice, including the Informative Digest, which contains the general substance of the proposed amendments to the regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

## **WEBSITE POSTINGS**

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the righthand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'PROPOSED REGULATIONS ' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. Find in the list the "Policy Form Processing Cost Recovery" link, and click it. Links to the documents associated with these regulations will then be displayed.



To search, enter the Department's regulation file number for the regulations in the search field. Alternatively, search by keyword ("cost recovery" for example). Then, click on the 'Submit' button to display links to the rulemaking documents online.

### **MODIFIED LANGUAGE**

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.