

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

INITIAL STATEMENT OF REASONS

Date: October 19, 2009

Regulation File: REG-2009-00023

INTRODUCTION

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. (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.

SPECIFIC PURPOSE AND REASONABLE NECESSITY FOR THE PROPOSED AMENDMENTS TO THE REGULATIONS

The specific purpose of each amendment and the rationale for the Commissioner’s determination that each amendment is reasonably necessary to carry out the purpose for which it is proposed is set forth below.

Amendments to the fees set forth in CCR sections 2202(b), 2202(c), 2202(d), and 2203(b):

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 these CCR subsections 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.

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 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 and 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 purpose of the proposed amendments is to correct fee levels so that fees charged more accurately reflect the actual costs incurred in processing, indexing, and maintaining documents as required by law. It is reasonably necessary to make these corrections in order to stop the unsustainable cash flow imbalance currently taking place.

Amendments to CCR sections 2202(a)(12) and 2202(b):

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.

The Commissioner proposes amendments to 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 subsections 2202(a)(12) and 2202(b) were last amended. Consequently subsections 2202(a)(12) and 2202(b) contain outdated descriptions of documents which are required to be filed under California law.

The purpose of the amendments to CCR subsections 2202(a)(12) and 2202(b) is to conform the language of those subsections to the requirements of Insurance Code sections 10163.35 and 10168.93. These amendments are reasonably necessary in order to conform the existing regulations to current law.

Typographical corrections and amendments to authority and reference citations for CCR sections 2202 and 2203:

Lastly, the proposed amendments delete the comma that was inserted in error in CCR section 2202(a)(2), add the word "care" in section 2202(a)((5)(E) that was omitted in error, .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. The purpose of these amendments is to correct typographical errors and to correct the authority and reference citations to CCR sections 2202 and 2203 so that they are consistent with current law. These amendments are reasonably necessary in order to correct minor errors and to conform the authority and reference citations for CCR sections 2202 and 2203 to existing law. The authority and reference amendments are as follows:

- 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.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of the proposed amendments to the regulations would not mandate the use of specific technologies or equipment.

IDENTIFICATION OF STUDIES

There are no specific studies relied upon in the adoption of the proposed amendments to the

regulations.

REASONABLE ALTERNATIVES

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the amendments to the regulations are proposed. Performance standards were considered but were rejected as an unreasonable and impracticable alternative to simply amending the existing regulations.

ECONOMIC IMPACT ON SMALL BUSINESS

The Commissioner has identified no reasonable alternatives to the proposed regulations, nor have any such alternatives been brought to the attention of the Department, that would lessen any impact on small businesses. Although performance standards were considered as an alternative, they were rejected because they were not as effective as amendments to the regulations in revising fee amounts and in correcting legal references in the existing regulations. 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).

PRENOTICE DISCUSSIONS

The Commissioner has not conducted prenotice public discussions pursuant to Government Code Section 11346.45 because he has concluded that the proposed regulation amendments do not “involve complex proposals or a large number of proposals which cannot be easily reviewed during the comment period.” Government Code section 11346.45(a).