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December 1, 2009

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California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, California 95814

Via E-Mail and First Class Mail

Subject: REG-2009-00006 - Proposed Amendments to Commissioner's Report On
Underserved Communities Regulations, Title 10 C.C.R. Section 2646.6

Dear Ms. Ray,

The following comments are submitted by the American Insurance Association (AIA). We welcome the opportunity to comment on the proposed changes to Title 10 C.C.R. Section 2646.6, the regulation pertaining to the Commissioner's Report On Underserved Communities.

AIA is a national trade association representing over 350 major property and casualty insurers that write insurance in every jurisdiction in the United States. U.S. premiums for AIA member companies exceed \$117 billion annually. AIA member companies offer all types of property and casualty insurance, including personal and commercial motor vehicle insurance, commercial property and liability coverage, workers' compensation, homeowners' insurance, medical malpractice coverage and product liability insurance. AIA companies, for personal and commercial lines of business, in California write over \$17 billion in premiums, comprising nearly 30 percent of the property/casualty insurance market.

Under the proposed regulation changes, an insurer failing to comply with an information or data request under Tit. 10 C.C.R. Sec. 2646.6 would be fined up to \$5,000 for each 30 day period it fails to comply – with no limit. Willful failures to comply would result in civil fines up to \$10,000 for each 30 day period, up to a total not to exceed \$100,000.

These proposed changes are not authorized by law and are excessive. Furthermore, the Department has not demonstrated why there is a need for such disproportionate fines.

Under Government Code Section 11349.1, a state agency must have the authority to adopt a regulation and a regulation must not conflict with existing law. In Government Code Sec. 11349 authority is defined to be the provision of law that permits or obligates a state agency to adopt, amend or repeal a regulation, and consistency means that a regulation must be in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

For Sec. 2646.6, Insurance Code Sections 12921 and 12926 and CalFarm v. Deukmejian 48 Cal.3d 805 (1989) are cited as authority. Neither Insurance Code section, nor the decision, authorizes, obligates or permits the adoption of regulations that impose monetary penalties where none existed before. Further, neither statute specifically mentions the authority to adopt regulations at all.

Government Code Sec. 11145 forbids a state agency from adopting or enforcing any rule or regulation a violation of which can result in the imposition of a fine, unless specifically authorized by statute to impose a fine for a violation of the rule or regulation.

The penalty provisions in the amendments to Sec. 2646.6 are unauthorized under, and conflict with, Government Code Sec. 11145, and, therefore, fail to comply with the authority and consistency requirements of Government Code Sec. 11349.1.

Also, under Government Code Section 11349.1, a state agency must demonstrate the necessity for a proposed regulation. Under the Government Code Section 11349 definition, a state agency must demonstrate by substantial evidence the need for a regulation. Nothing has been presented as to why new fines are needed. No information supporting setting the penalties at such an excessive level, much less any level at all, has been provided. We note that the Insurance Commissioner currently has the ability to enforce the provisions of the Insurance Code, which also makes these proposed amendments unnecessary redundant.

We are also concerned that as written the regulations would impose severe penalties for inadvertent or minor errors. It appears that fines could be levied for simple mistakes. Regulations imposing large penalties for inconsequential errors are unreasonable and burdensome.

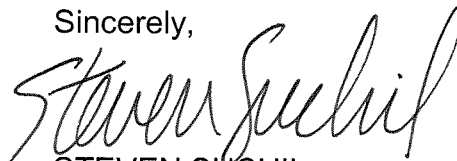
The Department should withdraw the unauthorized penalty provisions.

Page 3
Natasha Ray
December 1, 2009

In addition, the regulations should also provide a requirement that, when an insurer requests an exemption from complying with Sec. 2646.6, such request must be granted or denied by the Department within 30 business days of the request, or be deemed approved, and there could be no enforcement action while an exemption request is pending. There have been instances of companies awaiting a grant of an exemption being penalized for non-compliance.

Thank you for considering our comments. If you have any questions or need further information please contact me.

Sincerely,

A handwritten signature in black ink that reads "Steven Suchil". The signature is written in a cursive, flowing style.

STEVEN SUCHIL
Assistant Vice President