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## STATE OF CALIFORNIA

### DEPARTMENT OF INSURANCE

300 Capitol Mall, 17th Floor  
Sacramento, California 95814  
RH06092874 September 22, 2006

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

#### **SUBJECT OF PROPOSED RULEMAKING**

Notice is hereby given that the Insurance Commissioner proposes to adopt Section 2653.6 and to amend Sections 2651.1, 2661.1, 2661.3, 2662.1, 2662.3, and 2662.5 of Subchapter 4.9, Title 10, of the California Code of Regulations.

#### **AUTHORITY AND REFERENCE**

The Commissioner proposes to amend the regulation under the express authority of California Insurance Code Sections 1861.05, 1861.055 and 1861.10. The proposed regulation will implement, interpret and make specific the provisions of California Insurance Code Sections 1861.05(a), 1861.05(c), 1861.055, 1861.08, 1861.10(a), 1861.10(b).

#### **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 this regulation, as follows:

**Date and time: November 6, 2006 at 10:00 a.m.**

**Location: California Department of Insurance Hearing Room**

**45 Fremont Street, 22nd Floor**

**San Francisco, CA 94105**

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

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

All persons are invited to present oral and/or written comments at the hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Lisbeth Landsman-Smith, Staff Counsel  
California Department of Insurance  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, CA 95814  
Telephone: (916) 492-3561  
E-mail: [landsmanl@insurance.ca.gov](mailto:landsmanl@insurance.ca.gov)

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

Natasha Ray, Senior Staff Counsel  
California Department of Insurance  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, CA 95814  
Telephone: (916) 492-3559

### **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 November 6, 2006. Any written materials received after that time will not be considered.

### **COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION**

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: [landsmanl@insurance.ca.gov](mailto:landsmanl@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of the contact person for this proceeding using the following facsimile number: (916) 324-1883. **Comments shall be transmitted by one method only and are subject to the deadline set forth above for written comments. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted.**

### **ACCESS TO HEARING ROOMS**

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

### **ADVOCACY OR WITNESS FEES**

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with Insurance Code Section 10089.11(c) and the provisions of Subchapter 4.9, Title 10, California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, California 95814  
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking shall also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Proposition 103, approved by California voters in 1988, established the requirement that all property-casualty insurers obtain prior approval of the Insurance Commissioner for proposed rate changes. (Insurance Code §1861.05). Proposition 103 permits consumer participation in the approval process. (Insurance Code §1861.10(a)). It further requires the Commissioner to award reasonable advocacy and witness fees to a consumer when the consumer makes a "substantial contribution" to the adoption of any order, regulation, or decision by the commissioner or a court. (Insurance Code §1861.10(b)).

As required by Insurance Code §1861.055, the Department has promulgated regulations under Title 10, Chapter 5 of the Code of Regulations (CCR) governing the prior approval process, including regulations governing consumer participation. The proposed regulations will modify those regulations contained in Subchapter 4.9 (Rules of Practice and Procedure for Rate Proceedings) in order to clarify that consumers who participate in the approval process after having filed a petition for a hearing may seek an award of reasonable advocacy fees.

For example, CCR §§2651.1 and 2661.1 contain definitions. The Department proposes to amend these definitions to clarify that a "proceeding" is established upon submission of a petition for a hearing by a consumer. In addition, existing regulations do not provide a procedure by which an insurer may withdraw its rate or class plan application while a petition for hearing is pending. The Department proposes the adoption of CCR §2653.6, which will set forth such a procedure.

Additional proposed amendments of Articles 13 (Intervention) and 14 (Intervenor's and Participant's Fees and Expenses) within Subchapter 4.9 will update sections concerning the intervention process. For example, the Department proposes to amend CCR § 2661.3(a) to clarify that a person who petitions for a hearing may combine the petition for hearing with a petition to intervene in one pleading. In addition, the Department proposes to amend CCR §2662.3(a)(3) to expand the list of the types of documents that a consumer may use to prove that it has made a substantial contribution to the adoption of any order, regulation, or decision by the Commissioner.

#### **COMPARABLE FEDERAL LAW**

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

#### **OTHER STATUTORY REQUIREMENTS**

There are no other specific statutory requirements applicable to the proposed regulations.

***The Commissioner has made the following initial determinations:***

**Mandates On Local Agencies Or School Districts** - Regulatory action imposed herein will result in no program mandates on local agencies or school districts.

**Fiscal Impact** - The regulations will involve no costs or savings to any State agency, no reimbursable costs to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no nondiscretionary costs or savings to local agencies, and no costs or savings in federal funding to the State.

**Impact On Housing Costs** - The proposed regulations will have no significant effect on housing costs.

**Economic Impact On Businesses** - The proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because it amends existing insurance regulations.

**Cost Impact On Private Persons Or Entities/Businesses** - Other than the cost impact incurred under the existing regulations, the agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Assessment Regarding Effect On Jobs/ Businesses** - Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

**Impact On Small Business** - The proposed regulations will only affect insurance companies and will therefore not affect small business. Pursuant to Government Code section 11342.610(b)(2), insurers are not small businesses.

#### **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 the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Commissioner invites public comment on alternatives to this regulation.

#### **TEXT OF REGULATIONS AND STATEMENT OF REASONS**

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based as well as the express terms of the proposed action. The initial statement of reasons and the text of the proposed amendment are available on the Department's website and may be accessed as explained below.

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address above, which currently includes this notice, the proposed text of the regulation, and the initial statement of reasons. Requests for inspection and copying should be directed to the contact person listed above. 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 also be directed to the contact person listed above.

#### **AUTOMATIC MAILING**

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulation, 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, near at the top of the leftmost column, the pull down menu under the heading "Quick Links." Select the "Legal Information" link. On the "Legal Information" page, click on the "Proposed Regulations" link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "RH06092874" (the Department's regulation file number for this regulation) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code section that the regulations implement (for instance, "2651.1"), or search by keyword ("Intervenor," for example, or "advocacy fees"). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear.

#### **AVAILABILITY OF MODIFIED TEXT OF REGULATION**

In response to public comment, the Commissioner may determine that changes to the proposed text are appropriate. If the Commissioner makes changes that are sufficiently related to the original proposed text, copies of the changed text (with the changes clearly indicated) will be made available to the public for at least 15 days before the Commissioner adopts the regulation as modified. Please send requests for copies of any changed text to the Contact Person listed above. Copies of the changed text will

automatically be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. The Commissioner will accept written comments concerning the changes only, for a period of at least 15 days after the date on which the changed text is made available.

Dated: August 22, 2006 JOHN GARAMENDI

Insurance Commissioner

By: \_\_\_\_\_/S/\_\_\_\_\_

Lisbeth Landsman-Smith  
Staff Counsel

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