



December 12, 2011

To: Bryant Henley
Rate Enforcement Bureau
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

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Re: Comment in Response to Prior Approval Notice and Workshop

Dear Mr. Henley,

The Personal Insurance Federation of California ("PIFC") appreciates the opportunity to provide comments following the November 10, 2011 workshop discussion on issues and potential regulations concerning the prior approval process for class plan and rate plan applications.

With the exception of Topic 6 of the Notice (Section 1858 Complaints and Primary Jurisdiction Referrals), which we do not address here, the workshop discussion resulted in a blending of the other topics into the primary issue of *what is approved when the California Department of Insurance ("the department"), through the authority of the Commissioner, approves a rate filing, and, conversely, what is **not** approved?*

Given the workshop discussion, as well as the current state of the law, our members do not believe that regulation in this area is necessary or appropriate at this time. Of course, should the department begin to consider moving forward with a specific concept or contemplate a formal rulemaking, we would strongly encourage a more in-depth dialogue with the industry in advance of such action.

However, we did want to take this opportunity to reiterate some of the points made by industry members at the Workshop and to again reinforce that we believe the *MacKay* case to be settled case law.

First, we submit that the department should consider the unforeseen consequences of attempting to regulate in this area of prior approval. *MacKay v. Superior Court*, 188 Cal. App. 4th 1427 (2010) addresses the issue. Any effort by the department to undermine the court's holding in *MacKay* appears misplaced.

Second, current filing guidelines, published by the department, are comprehensive and applications are subject to exhaustive review by a professional staff adept at soliciting the full range of information necessary to reach the point of approval. Regulations which would further impede and extend the process, as well as reduce its certainty, would not serve consumers, insurers, or the department well. The department's description of a filing as a "package" is fitting and, in practice, it is that package that is approved.

Third, we believe the concern that an applicant might submit extraneous material containing descriptions of non-rate practices, or that applicants might not provide sufficient information to allow informed approval, is misplaced. The length and depth of review of the California DOI for each filing makes these scenarios almost impossible.

We appreciate the opportunity to provide additional comment. While we do not believe further regulation is warranted, we would certainly want to participate in any subsequent discussions and, again, would ask that a dialogue occur prior to any action by the department.

Sincerely,

Kimberley Dellinger Dunn
General Counsel, Personal Insurance Federation of California