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RE: REG-2019-00015, Second Workshop on Group Insurance Plans  
Under Insurance Code Section 1861.12 (Private Passenger Auto)

Dear Mr. Wade:

The Personal Insurance Federation of California (PIFC) submits the following comments to the California Department of Insurance (CDI) regarding its "Second Workshop Draft Text of Regulation" (the "Proposal") in the above captioned matter. We are grateful that the CDI has kept this matter in workshop draft rather than proceeding to a formal rulemaking. The issues involved in the matter are very complicated and holding another workshop increases the prospects for constructive dialogue that a rulemaking often precludes.

PIFC takes seriously Commissioner Lara's desire to expand consumer opportunities to obtain group discounts. In announcing the Proposal, the Commissioner stated the purpose was to "make car insurance discounts more equitable and available to the communities who can least afford to pay more for insurance." We support this goal and believe there is a path forward on the Proposal that simultaneously 1) addresses the Insurance Commissioner's concerns over how the group insurance market is presently working and 2) modifies those parts of the Proposal that would restrict or eliminate group eligibility for current recipients.

We respectfully submit that the Proposal's current language would inadvertently restrict, not expand, opportunities for group discounts by erecting a series of barriers to existing and future discounts in the market. We offer the following suggestions and requests:

Section 2632.7(b)

We suggest deleting the language in §(4), which requires the proposed optional group membership factor to be analyzed last in the sequential analysis process. This is not done with other optional rating factors and its insertion can only reduce, not increase, the impact of group discounts.

### Section 2632.7(c)

We do not understand the purpose of requiring all coverages to be considered on a combined basis. This is contrary to existing regulations with respect to factor weights (§2632.8 (a)) and we are unsure of how this can be technically achieved. A sequential analysis and removal of variation in loss costs for other factors is typically conducted at a coverage level. We would be grateful for an explanation of what the CDI believes this provision would accomplish and how it is designed to expand group business.

### Section 2632.9(g)(2)

The last sentence of §(g)(2) can only be used to restrict group business. Under this provision, the Commissioner could prevent an insurer from creating a new group program where no credible data exists if the Commissioner does not “reasonably expect” the group to satisfy the Proposal’s new requirement (in §2644.27.5(g)(1)) that an insurer’s group business meets income and racial expectations.

Will CDI provide further guidance on the process for determining whether a new group can be “reasonably expected” to meet these new income and race requirements? How long will it take for the CDI to make such a determination? Leaving the standard ambiguous raises the specter of arbitrary treatment of proposed affinity groups.

The only possible impact of this provision is to reduce the number of group discounts.

### Section 2632.9(g)(3)

This beneficial section would allow an insurer to combine the experience of multiple groups to develop a single, credible group membership program. The standards for such a combination are not stated. Additional clarity would be helpful.

### Section 2644.27.5(b)(1)(A)

This section restricts the availability of group programs more than any other provision in the Proposal. The Proposal would ban insurers from being able to continue offering discounts based on a driver's occupation unless the driver, first, joins an organization that has already negotiated an insurer discount -- which will often require a driver to pay fees to join and annually renew its membership in the organization. Drivers would be required to pay money to save money.

Legally, it is difficult to see how this provision is consistent with the express language of Proposition 103, in Insurance Code §1861.12. Practically, this section is inconsistent with the Commissioner’s public statements that the Proposal would expand opportunities for more group discounts.

This definition of “Group” would strip hundreds of thousands, perhaps millions, of drivers of their existing discounts. Take, for example, a nurse. Today, any insurer may offer any nurse a group discount. The Proposal would limit discounts to only those particular nurses who are members of organizations that have negotiated an affinity agreement with an insurer. The nurse has no control over retaining a discount.

We respectfully suggest that a better definition of “Group” is:

*“(A) A set of individuals who:*

- 1. Choose to act and/or associate in concert for any lawful purpose,*
- 2. In the ordinary course, become members of the group by actively making a decision to join the group or automatically become members of the group by satisfying objective entry requirements or eligibility verification criteria including, but not limited to, licenses, credentials, diplomas, certificates, verification letters, or identification cards demonstrating membership in an occupational or other verifiable group, and*
- 3. Satisfy subdivisions (b)(1)(A)1. and (b)(1)(A)2. of this section; provided, however, that an insurer offering a “group plan” for purposes of Insurance Code Section 1861.12 and this section may not be the administrator of the group; or*

*(B) The employees or clients of a particular employer.”*

The above, suggested language would preserve existing discounts and opportunities for new groups while providing guard rails around group business that are consistent with Insurance Code §1861.12. The Proposal’s current language will do the opposite.

#### Section 2644.27.5(b)(2)

We respectfully request that the CDI remove subsection (B). Requiring a “written agreement” between an insurer and an organization<sup>1</sup> as the exclusive manner of conducting group business will dramatically reduce available discounts. With the above-suggested definition of “Group,” there would be many discounts preserved where the policyholder would not be obtaining a discount through an organization – which relieves the need for this type of “written agreement” requirement.

Below, in Section 2644.27.5(e), we suggest further refinements to continue the availability of many of today’s bona fide discounts without a policyholder being limited by a written agreement or attestation.

Limiting group business to discounts only when an insurer negotiates with an organization that has selected a preferred insurer for its members/employees will undoubtedly reduce options for consumers. Why should group discounts be limited to the insurer selected by management of an organization? We are presently unaware of

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<sup>1</sup> Or, allowing a “written attestation” to the existence of such an agreement.

any current affinity program where an organization has agreements with multiple insurers. There is no reason to expect this to change in the future.

The Proposal's harm to consumers is predictable. For instance, what if a consumer currently has a group discount with Insurer A, including an auto-home discount and a persistency discount, but the consumer's organization/employer only has an affinity deal with Insurer B? Under the Proposal, the consumer would be guaranteed to lose a discount when either (1) the consumer moves both the auto and home policy to Insurer B (**losing the persistency discount and being subject to the hassle of switching policies**) or (2) the consumer stays with Insurer A and loses the group discount. Far from expanding opportunities for consumers to get discounts, the Proposal would eliminate discounts that consumers enjoy today.

We respectfully submit there are other ways to demonstrate group membership beyond a written agreement between an organization and insurer. The following, additional mechanisms for ensuring group membership should include:

- “(a) Organizational documents of a group.*
- (b) The website of a group which has information about the purpose of a group and how membership is obtained.*
- (c) Any other documents, websites or materials that demonstrate that the group of individuals exist that have chosen to act in concert for a lawful purpose and demonstrate that membership exists and the benefits of the same.*
- (d) The existence of a group rate approved by the Commissioner from another insurer.*
- (e) Outline of eligibility verification criteria including, but not limited to, licenses, credentials, diplomas, certificates, verification letters, or identification cards demonstrating membership in an occupational or other verifiable group.”*

#### Section 2644.27.5(d)(2)

This section erects a significant records retention program. This new requirement increases costs with no discernable consumer benefit. Ultimately, this hurdle will discourage insurers from creating new groups.

#### Section 2644.27.5(e)(3)

This section includes no standard for how the CDI will interpret compliance with civil rights laws. How is an insurer supposed to affirmatively demonstrate that it meets an undefined standard? This provision fails to minimally satisfy the expectation that administrative agencies impose requirements that are understandable by licensees.

#### Section 2644.27.5(g)(1)

This section prohibits all group plans unless at least 25% of the insurer's total group discount recipients garage their cars in low income and supermajority non-White zip codes. The only possible result of this is to reduce the number of group discounts.

How is an insurer supposed to know who will respond to its group solicitation? Is an insurer expected to meet with an organization interested in an affinity group program, review the addresses of the organization's members and employees, and determine whether they are likely to meet this 25% threshold? If they conclude a particular group may hit the threshold and solicit them, but the applicants do not meet this threshold, what should the insurer do?

This provision is yet another mechanism for reducing, not increasing, the group market.

#### Section 2644.27.5(g)(2)

This section is the only incentive in the entire Proposal designed to encourage more, not less, affinity group business.

#### Section 2644.27.5(h)

This section requires duplicative and unnecessary verification requirements that will lead to fewer discounts. Not only would an insurer be required to verify directly with its group policyholders each year that they remain a member of the sponsoring group discount organization, the insurer would also be required to verify with the sponsoring organization every two years that each policyholder is telling the truth. This is another example of the Proposal creating hurdles to take discounts away from policyholders instead of making it easier to obtain and maintain discounts.

#### Section 2644.27.5(k)

This section imposes significant, and unnecessary, filing requirements upon insurers seeking to do group business or undo groups that this regulation effectively prohibits. It will create a significant administrative burden for both insurers and CDI rate filing staff to handle class plans from every single insurer that currently offers groups, insurers seeking to add groups, or insurers that are being forced to remove them – many of them possibly having to file three separate class plans to successfully implement the regulation.

Further, the Proposal's language explicitly recognizes the consumer harm it will cause – so this section masks the impact by capping “premium dislocation” to consumers. The Proposal would require insurers to gradually make consumers feel their higher premiums (no more than 5% per year). Insurers try in other contexts to get CDI approval for rate capping to smooth volatility, but the CDI does not permit it. Why allow it only when a CDI regulation would result in increased consumer costs? Perhaps now

is the time to consider allowing insurers to implement a rate capping function into their rating plans that applies to all rating variables, via a single filing not several consecutive class plan filings.

In subsection (k)(1)(A), we respectfully request that the CDI eliminate the need to file a full class plan with sequential analysis. Would it be possible to permit insurers to "me too" their last class plan? This is particularly important for insurers being forced to remove groups, for whom the removal of groups has no impact on the existing class plan since they are not currently part of the sequential analysis nor did their introduction require a class plan filing.

#### Approach for Increasing Discounts

Overall, the Proposal does little to encourage the formation of new group discounts. As an alternative approach, perhaps the CDI would consider transitioning away from the Proposal and, instead, commencing a working group that would engage in consistent dialogue on this topic in an effort to identify a better solution for addressing the Commissioner's goals, which we support. As part of such an effort, the CDI could begin developing a list of unmet group insurance needs and request insurers to meet with parties seeking group insurance. Further, the group could consider how the Commissioner may facilitate a public marketplace to pair specific parties with insurers capable of developing a group insurance plan and establish an expedited review process for the filing of new group insurance programs developed through the marketplace.

Thank you for the opportunity to share our perspective.



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Rex Frazier, President



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Deanna LaTour-Jarquin, Legislative Advocate