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Re: Rate Filings for 2018 Individual Health Insurance Coverage

To All California Health Insurers:

The deadline for the submission of preliminary rate information<sup>i</sup> and policy forms for the 2018 individual health insurance market is fast approaching (May 1, 2017).

I have written President Trump asking that he and his Administration stop undermining the Affordable Care Act and health insurance markets. Health insurers are legitimately concerned that the President's actions are undermining the ACA and health insurance markets. For example, the President's first Executive Order directing federal agencies to "waive, defer, grant exemptions from, or delay" requirements of the Affordable Care Act created a great deal of uncertainty about what the market rules will be in 2018.<sup>ii</sup> In particular, the Trump Administration's Internal Revenue Service has announced that it would accept tax returns which did not demonstrate compliance with the individual mandate (the Individual Shared Responsibility Requirement).<sup>iii</sup> The individual mandate is a critically necessary component of health insurance market stability. The Trump Administration's actions to date undermining the mandate create uncertainty about who will purchase health insurance next year, and an increased likelihood that healthy persons will not purchase health insurance while only those with illnesses will -- an outcome that could cause the risk pool to deteriorate and result in health insurers raising premiums on the remaining insureds.

The Trump Administration and House Leadership have also cast doubt on whether they will continue to make the Cost-Sharing Reduction payments upon which approximately half of the 1.5 million Californians who purchase health insurance through Covered California rely. President Trump suggested in a recent interview that he may stop making the Cost-Sharing Reduction payments in order to obtain political leverage. His statements and actions cause great uncertainty and doubt about the continuance of the Cost-Sharing Reduction payments in 2018. Further, unless the House Leadership resolves the issues regarding Cost-Sharing Reduction payments as a part of the budget continuing resolution this week, for 2017 coverage, and permanently for 2018 and thereafter, the continued pendency of the *House v. Price* litigation casts a further pall of uncertainty over the market.<sup>iv</sup>

These are but a few examples of actions taken by the Trump Administration and House Leadership which undermine the Affordable Care Act and health insurance markets in California and across the nation. It has been widely reported that health insurance executives met with the President on February 17th, yet received no assurances that the Administration would stop undermining the ACA.<sup>v</sup> Further, I understand that last week executives met with CMS

Administrator Verma seeking information regarding the fate of funding for Cost-Sharing Reduction assistance, but also received no assurance.<sup>vi</sup>

In light of all the actions taken by the Trump Administration and House Leadership to undermine the ACA, I expect that health insurers will consider filing significant rate increases for 2018. Further, I am concerned that this needless uncertainty may, in some cases, cause insurers to leave markets entirely. I hope and urge that insurers work with me, Governor Brown's Administration, and Covered California before insurers make decisions that would impact the affordability and/or availability of coverage in California's individual market for 2018.

I request that California health insurers develop and submit preliminary rate information filings that reflect continued maintenance and enforcement of the ACA, including Cost-Sharing Reduction payments and enforcement of the individual mandate. If a premium load factor reflecting enforcement of the individual mandate only on an audit basis (rather than at the time the return is filed) is included, that factor should be specified in the filing. In addition, given health insurers' legitimate concerns about Trump Administration and House Leadership actions undermining the ACA and health insurance markets, the Department will accept a separate preliminary rate information filing that anticipates discontinuation of Cost-Sharing Reduction payments, and lack of enforcement of the individual mandate. Within the Actuarial Memorandum for the latter filing, separate estimates of the additional premium loads that the products' rate would bear if (1) Cost-Sharing Reduction payments are not funded for 2018, and (2) the individual mandate is not enforced should be included.

My continued hope is that President Trump stops undermining the ACA and instead enforces and funds it, and that the House Leadership stops efforts to pass legislation to repeal or otherwise undermine the ACA. It is with this hope that I ask insurers to file rates that would reflect the President reversing course and enforcing and funding the ACA, which is the law. However, the Department will accept a separate preliminary rate filing reflecting rates should the President not change his current course.

For questions, please feel free to contact Janice Rocco, Deputy Commissioner for Health Policy and Reform, at (916) 492-3576.

DAVE JONES  
Insurance Commissioner

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<sup>i</sup> Pursuant to Guidance 1163:4, "Submission of Preliminary Rate Information," <https://www.insurance.ca.gov/0250-insurers/0500-legal-info/0200-regulations/HealthGuidance/PrelimSubmitFinal.cfm>

<sup>ii</sup> Executive Order 13765, "Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal" January 20, 2017, 82 Federal Register 8351 <https://www.gpo.gov/fdsys/pkg/FR-2017-01-24/pdf/2017-01799.pdf>

<sup>iii</sup> "Individual Shared Responsibility Provision" Internal Revenue Service, <https://www.irs.gov/affordable-care-act/individuals-and-families/individual-shared-responsibility-provision>

<sup>iv</sup> *United States House of Representatives v. Thomas E. Price et al.* (formerly *United States House of Representatives v. Sylvia M. Burwell, et al.*) USDC, DC Circuit case no. 1:14-cv-01967, US

<sup>v</sup> “Remarks by President Trump in Listening Session with Health Insurance Company CEOs”, February 27, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/27/remarks-president-trump-listening-session-health-insurance-company-ceos>

<sup>vi</sup> Abelson, “Health Insurers Make Case for Subsidies, but Get Little Assurance from Administration” April 18, 2017, New York Times, <https://www.nytimes.com/2017/04/18/health/health-insurers-make-case-for-subsidies-but-get-little-assurance-from-administration.html?smprod=nytcore-iphone&smid=nytcore-iphone-share&r=0>