STATE OF CALIFORNIA Dave Jones, *Insurance Commissioner*

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July 2, 2014

Senator Ed Hernandez
Chair, Senate Health Committee
State Capitol, Room 2080
Sacramento, CA 95814

Assemblymember Richard Pan
Chair, Assembly Health Committee
State Capitol, Room 6005
Sacramento, CA 95814

Re: July 2, 2014 Joint Hearing of the Senate and Assembly Committees on Health Insurance Rate Public Justification and Accountability Act: Proposition 45

Dear Chairpersons Hernandez and Pan:

Today you hold a joint hearing on the Insurance Rate Public Justification and Accountability Act, which will be voted on by California voters four months from now on Tuesday, November 4, 2014. As noted in the committee briefing document for this hearing, the State Assembly passed health insurance rate regulation legislation on three separate occasions in recent years, but all of those bills failed to pass the Senate, after which California voters qualified for the ballot the Insurance Rate Public Justification and Accountability Act, which is now designated as Proposition 45.

The California Department of Insurance (CDI) has a twenty-five year history of successfully implementing and enforcing rate regulation for property and casualty insurance after voters approved Proposition 103 in 1988. Proposition 103 requires property and casualty insurers to obtain "prior approval" of the Insurance Commissioner before raising rates. Proposition 45 would extend this authority to require "prior approval" of rates to health insurance and HMO products in the individual and small group markets. The Department of Insurance would be responsible for implementing health insurance rate regulation if the voters pass Proposition 45 in November.

The prior approval process ensures that rates are not inadequate, excessive or unfairly discriminatory. An independent report issued in November 2013 by the Consumer Federation of America concluded that under Proposition 103, the prior approval or rate regulation process has saved California consumers over $100 billion in auto, homeowners and other property and casualty insurance rates, since 1988.

The Department of Insurance has reviewed Proposition 45 and concludes that it can implement the Act, including its intervenor and hearing provisions, consistent with the Affordable Care Act and without delays to open enrollment for health insurance and HMO products sold on and off of

California's exchange, Covered California.

Although the voters won't have the opportunity to vote on Proposition 45 until November, the campaign to oppose Proposition 45 funded by health insurers has already begun spending substantial funds to commission reports and public relations campaigns against health insurance rate regulation. One such report paid for by the health insurers' opposition campaign is the so-called "Wakely Report" named after the consulting group hired by the health insurers' opposition campaign. The report seeks to raise questions about health insurance rate regulation. The Department of Insurance has analyzed the assertions contained in the report. The Department concludes that the report and its conclusions are fundamentally flawed. Had the authors of the report bothered to contact the Department, they could have avoided these errors.

There are substantial differences between health insurance rate regulation and property and casualty insurance rate regulation which undermines the Wakely Report's assertion that the timeline for health insurance rate regulation will be the same as it is for property and casualty rate regulation. First, the Department receives an average of 7000 filings under Proposition 103 annually, from 500 insurers, each of whom is permitted to change rates more than once per year. In contrast, there are only about 40 health insurers filing in total less than 100 rate filings annually with CDI and the Department of Managed Health Care (DMHC) and thanks to state law that went into effect January 1, 2014, rates can only be raised annually. Property and casualty filings are more complex, have multiple rating components, additional rating variables and more segmentation than health insurance rate filings.

Although a comparison to property and casualty insurance timelines is not justifiable given all the differences between property and casualty filings and health insurance filings, the number and percentage of intervenors in property and casualty filings is a small fraction of the overall filings. With 7,000 rate filings on average a year, there are only on average 12 intervenors annually, such that only .2% of all property and casualty filings have an intervenor. And there have only been a limited number of full blown hearings with decisions going to the Commissioner in the last ten years.

As for the groundless concerns about lawsuits, it is important to recognize that only two lawsuits have actually been litigated in the last ten years and in both the Commissioner prevailed. There is a well and long established body of law requiring the courts to give great deference to the rate decision of the Commissioner, which is one of the reasons why there have been almost no lawsuits despite 7,000 rate filings a year. Moreover, filing a lawsuit does not stay the rate decided by the Commissioner. The rate stays in effect until the court decides the lawsuit. Such was the case with the two lawsuits actually litigated – the rate remained in effect and the Commissioner prevailed. Lawsuits will not delay implementation of health insurance and HMO rates.

CDI has reviewed Proposition 45 and its intervenor and hearing provisions and concluded that it can accomplish regulation of health insurance and HMO rates under Proposition 45 without impeding open enrollment for health insurance and HMO products on and off the exchange. Health insurance rate regulation is necessary to rein in excessive health insurance rate increases that have continued and will continue even with California's successful implementation of the Affordable Care Act and Covered California.

California has seen a further consolidation of the individual health insurance market, which limits

choices for Californians and makes this market less competitive than it had been even in the recent past. Though there were as many as 33 carriers who submitted a letter to Covered California indicating interest in receiving information about the application process for becoming a Qualified Health Plan (QHPs) in California, the majority of those carriers did not ultimately submit applications to become QHPs. We have only 11 QHPs selling in the Exchange today. Only four of them (Kaiser, Anthem Blue Cross, Blue Shield and Health Net) offer health insurance statewide, and even those four are not each offering health insurance or HMO product everywhere in California. These four health insurers have further consolidated the individual market, with the four of them making up 94% of the individual market enrollment in Covered California. The other 7 carriers are regional players with a very small share of the market.

It is important to note as well that two of the largest national health insurers, Aetna and United Healthcare, left the individual market entirely at the end of 2013, further reducing choice and competition and increasing market consolidation.

CDI has been reviewing rates for health insurance products, without the authority to reject excessive rates, for approximately a decade. We now have three and a half years of experience reviewing individual and small group market rates under the Affordable Care Act and SB 1163 (Leno), including experience last year completing the review of health insurance rates in time to meet Covered California's deadlines related to open enrollment. CDI provided grant funding to the public advocacy groups that reviewed a number of rate filings and provided actuarial analysis and comments to the Department in advance of the Department announcing its findings as to whether the proposed rates were unreasonable. Unfortunately, without rate regulation authority, California families and small businesses have often paid excessive rates even after the Department's actuaries have done their review and the Department has determined that the rates are excessive. Almost 1 million Californians have paid excessive rates due to the refusal of health insurers and health plans to lower excessive rates.

Prior approval of health insurance rates is the law in more than 35 other states throughout the country for the individual and/or small group markets. Under the Affordable Care Act (ACA), the federal government makes grant funding available to states with prior approval authority.

It is California that is in the unusual position of having less consumer protective laws on the books than so many other states such that insurers have the ability to implement excessive rates, which can result in some families and businesses not being able to afford health insurance.

If the voters pass Proposition 45, rates for 2015 products for which open enrollment begins on November 15, 2014 will not be subject to the prior approval process. Prior approval would be in place for determining 2016 rates and rebates could be issued if 2015 rates were found to be excessive. The Commissioner is empowered to set timelines for the rate filings that insurers and health plans would be required to file and for the prior approval process in order to meet the deadlines associated with open enrollment both inside and outside the Exchange.

Enclosed also are answers to the each and every one of the questions posed by Covered California staff at a recent Board Meeting. Covered California chose not to meet with CDI before holding a hearing on its questions. CDI looks forward to meeting with Covered California to answer these and

any other questions Covered California might have.

The Department of Insurance is the state's largest consumer protection agency. As Insurance Commissioner I have established the successful implementation of the Affordable Care Act as the Department's and my highest priority. There is no conflict between Proposition 45 and the Affordable Care Act. If the voters pass Proposition 45, the Department will implement and enforce the law, while coordinating with other state agencies to ensure that rates are reviewed and approved to meet Covered California and open enrollment deadlines.

Sincerely,

DAVE JONES
Insurance Commissioner

CC: Members of the Senate Health Committee
Members of the Assembly Health Committee