California Regulatory Report - October 8, 2012

Prepared for the State Bar Insurance Law Subcommittee by Bill Gausewitz, Michelman and Robinson, LLP

The following is a report of recent significant regulatory actions by the California Department of Insurance (CDI). The information is current as of the date of the report. Additional information about any of these proposals may be obtained from the CDI web site at www.insurance.ca.gov/0250-insurers/0500-legal-info/0200-regulations/proposed-regulations.cfm.

Department of Insurance Regulations under Review by OAL – There is one Department of Insurance regulation affecting insurers under review by the California Office of Administrative Law (OAL).

- Amendments to the CAARP Plan of Operation – On October 1 the Department submitted a regulation to OAL making nonsubstantive amendments the CA Assigned Risk Program Plan of Operations. Since these are considered by the Department to be nonsubstantive changes, they were submitted pursuant to 10 CCR 100 and are not subject to the public participation provisions of the APA.

Recently Approved Regulations – Since our last committee meeting OAL has not approved any regulations proposed by the Department.

Regulations Proposed by the Department of Insurance – The following proposals are currently active in the Department of Insurance. That is, the Department has issued a formal Notice of Proposed Action on these proposals but has not yet submitted them for OAL review.

- Workers’ Compensation Pure Premium Rates and Statistical Plan – On September 7 the notice was published that the Department proposes to adopt a new workers’ Compensation Pure Premium Rate and to adopt amendments to the California Workers’ Compensation Uniform Statistical Reporting Plan. The pure premium rate is advisory only. The September 7 notice scheduled a hearing on September 24 On September 10 the Department issued a notice cancelling the 9/24 hearing pending an analysis by the Workers Compensation Insurance Rating Bureau of the projected rate impact of SB 863, the workers comp reform bill which will take effect on 1/1/13.

- Annuity Nonforfeiture – On February 6 the Department proposed regulations to implement Insurance Code § 10168.25 regarding annuity nonforfeiture to regulate annuity nonforfeiture amounts. The proposed regulations adopt, with some modifications, the NAIC Model #806.
Credit Life Insurance Minimum Reserves – The Department has proposed changes to 10 CCR 2248.14 regarding setting reserves for credit life insurance. This section was last amended 18 years ago and requires reserving practices which are no longer CA State Bar Insurance Subcommittee Regulatory Report October 8, 2012 Page 2 of 2 current. The proposed amendments are derived from and based upon relevant portions of the National Association of Insurance Commissioners’ (“NAIC”) Model law titled “Determining Reserve Liabilities for Credit Life Insurance Model Regulation” (“NAIC Model # 818”) and relevant portions of the NAIC Model law titled “Health Insurance Reserves Model Regulation” (“NAIC Model # 10”). A hearing on this proposal will be held on July 31 in San Francisco.

Auto Repair Standards and After-market Part – The Department has proposed rules dealing with repair of private passenger automobiles. Among other things, the regulations require adjustment of claims to be based upon an estimate received by the car owner, in the event of conflict. The regulations also require to assume certain responsibilities for the use of after-market parts. These regulations are likely to be very controversial with private passenger auto insurers. There will be a hearing on this proposal in Sacramento on August 9.

Workshops on potential Regulations – The Department of Insurance has issued notices of workshops pursuant to Government Code section 11346.45. A workshop is an informal part of the rulemaking process in which the rulemaking agency discusses possible regulations with interested parties. This allows the agency to obtain feedback on a proposal before the formal rulemaking process begins. The proceedings of a workshop are not included in the formal record of the rulemaking, which begins when and if the agency publishes formal notice of the rulemaking.

Scope of Insurance Rate Approval – On October 15 the Department will hold a workshop to discuss a draft regulation to modify the insurance rate approval process. Among other things, the draft regulation would require a bifurcated rate filing system in which different types of documents would be filed in different categories and only those documents in the category designated for approval would be deemed approved. The draft would also provide that all documents filed would be made available for inspection by intervenors in the proceeding with documents containing trade secrets reviewed by intervenors only upon their agreement not to disclose the information. The workshop will be held in the Department’s San Francisco office at 10:30am.

Specialty Insurance Definition – On October 25 the Department will hold a workshop to discuss a draft regulation limiting the definition of “specialty” insurance. Lines of insurance defined as specialty insurance are not subject to review under the strict prior approval formula but are, instead, reviewed under general standards of
actuarial soundness. The draft regulation would allow fewer lines to be treated as
specialty insurance. The principal reason for the change is to require lender-placed
property insurance to be subject to the more rigid prior approval process. The
workshop will be held at 10:30am in the Department’s San Francisco office.