California Regulatory Report - September 13, 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).

- **CAARP and LCA Rates and Plan of Operation** – On August 23 the Department submitted a regulation to OAL making nonsubstantive amendments the CA Assigned Risk Program and the Low Cost Auto program Plan of Operations and the CAARP Rate Manual. 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 approved three regulations proposed by the Department.

- **CAARP Rates** – These regulations increase the premium for commercial auto insurance written through the CA Auto Assigned Risk Program. These regulations were not subject to substantive OAL review and were submitted to OAL only so that they may be published in the CA Code of Regulations.

- **Health Insurance – Gender Nondiscrimination** – These regulations to specify various circumstances which will be considered to be gender discrimination by insurers with respect to their treatment of transgender persons. The CDI file number for this rulemaking is REG-2011-00023. The regulations were approved by OAL on August 3 and took effect on September 2.

- **Premium Taxes** – These regulations adopt standards to implement the decision of the State Board of Equalization in the California Automobile Insurance Company case. In that case the BOE held that insurers are permitted to pay premium taxes on the basis of premiums received rather than on the basis of written premium. The proposed regulations establish framework for an insurer that opts to transition from reporting and paying premium taxes based on premium written to premium received, while requiring newly admitted insurers to report and pay premium taxes on premium received as provided by the California Constitution. The regulations were approved on August 22 and take effect on September 21.
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 changes to the Statistical Reporting Plan are proposed by the Workers’ Compensation Insurance Rating Bureau to allow more accurate classifications of different types of jobs. There will be a hearing on this proposal in the San Francisco office of the Department on September 24 at 9:30am.

• **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 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.

Legislation Affecting the Adoption of Regulations – The Legislature has adopted SB 1099 (Wright). It was signed by the Governor on September 11 (Chapter 295, Statutes of 2012) and will go into effect on January 1, 2012. SB 1099 will establish a system whereby newly-adopted regulations will go into effect on a quarterly schedule. Currently regulations go into effect 30 days after adoption. The schedule of quarterly effective dates is intended to give the regulated public more time to prepare for the imposition of new regulatory requirements. SB 1099 also requires state agencies to post the text of newly-adopted regulations on their web sites as soon as the approved regulations are submitted by OAL to the Secretary of State. This is intended to
eliminate the delay between approval of a new regulation and publication of that regulation in the California Code of Regulations.