LAW360 Insurance Authority

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Calif. Rate Approvals Centered In Coverage Crisis Debate

By **Eli Flesch**

Law360 (February 2, 2024, 10:27 PM EST) -- A California law permitting public challenges to proposed premium increases is saving policyholders billions of dollars, a consumer advocacy group recently reported, a claim that has drawn scorn from industry professionals amid efforts to change the law to better favor carriers.

Experts say Prop 103's fate may ultimately come down to how it's enforced, with Insurance Commissioner Ricardo Lara signaling that he is open to reforms to speed up the rate review process. (AP Photo/Rich Pedroncelli)

The report, published Thursday by Consumer Watchdog, highlights one of the thornier issues policymakers are dealing with as insurers **pull back** from California's market: how to best protect consumers while speeding up a notoriously slow rate approval process.

Under the law, Proposition 103, members of the public, including groups like Consumer Watchdog, can challenge proposed rate increases if they exceed a certain limit. Consumer Watchdog said in its report its interventions saved consumers $5.5 billion over 21 years, while blaming insurance companies and state regulators for delays.

While industry officials say the cost of delays due to the intervention process is ultimately shouldered by consumers in the form of higher premiums and reduced insurance availability, consumer advocates say that Prop 103 helps prevent insurance companies from running roughshod over consumers by allowing advocacy groups to review how carriers justify rate hikes.

"Insurance companies do not like the public's ability to challenge rates because it saves consumers billions of dollars," Carmen Balber, Consumer Watchdog's executive director, said in a press conference Thursday. "Consumer Watchdog and other public participants bring in outside analysis and information and a different perspective from what the insurance commissioner is bringing into the situation."

Lilit Asadourian, a policyholder attorney with Barnes & Thornburg LLP, said that fostering transparency and allowing consumers to have a voice in the rating process is important, keeping bureaucrats in check and premium costs lower for consumers. But she said an unintended consequence of that could be the departure of insurers from California.

"Premium caps must be combined with incentives for insurers to stay in the market in the form of a 'carrot and a stick' for the insurance market to function competitively and fairly," the Los Angeles-based attorney told Law360. "We are currently facing an insurance crisis that is putting downward pressure on the housing market and driving residents out of this state. That cannot be the outcome we hoped for."

Approved by California voters in 1988, Prop 103 has become a sticking point in California's struggles to woo insurers back to the market. Carriers have taken a firm stance on other issues, too, as evidenced when **two Allstate officials** said the carrier's return to the market depended on insurers being able to pass reinsurance costs to policyholders.

As if to underscore the stakes involved, The Hartford recently became the latest carrier to say it wouldn't sell new homeowners policies in the state. That was another blow to competition and Californians who have been left with fewer options for home insurance.

But the attacks on Prop 103, its supporters say, could lead to poor outcomes.

Consumer advocates consider possible deregulation as a threat to low-income consumers and those belonging to historically marginalized groups. Such consumers have historically paid disproportionately high premiums, especially for auto insurance, and there's concern that a lack of quality oversight would exacerbate the problem.

Meanwhile, industry officials are blasting the report as self-serving and riddled with falsehoods. In a statement Thursday, the American Property Casualty Insurance Association, a leading industry trade group that has sought changes to Prop 103, lambasted Consumer Watchdog as "publicity hounds" uninterested in finding serious solutions.

Modernizing — not deregulating — has been the industry's pitch on Prop 103.

Rex Frazier, president of the Personal Insurance Federation of California, an industry lobbying group, said it was laughable that carriers were to blame for delays in the rate process, as Consumer Watchdog said in the report. Carriers consistently act with dispatch, Frazier said, and will often propose rates that are lower than what they need to try to avoid a lengthy and costly review process.

"The way a market is healthy is when there's competition among the companies," Frazier told Law360. "Not when there's some folks trying to use price control regulations or lawsuits in order to get a certain result. It just takes a really long time."

Since voters approved Prop 103, "Consumer Watchdog has earned millions of dollars in intervenor fees for contesting insurer rate filings," Janet Ruiz, a spokesperson for the carrier trade group Insurance Information Institute, told Law360. "The best way to achieve transparency, fairness, and rate adequacy is for regulators and lawmakers to modify a regulatory structure established in the 20th century for a 21st century insurance marketplace."

Under the law, intervening participants in rate filings are allowed to recover costs, expenses and attorney fees from insurance companies. Prop 103 holds that insurers could then pass those costs onto consumers, according to California regulators.

Michael Soller, a spokesperson for the California Department of Insurance, also took umbrage with Consumer Watchdog's findings, describing its figures as overstated, while saying regulators are focused on ensuring the integrity of the state's homeowners market.

The report accused the CDI of long delays in scheduling initial rate conferences.

"In recent weeks Consumer Watchdog has signed off on major rate increases to Californians, taking fees passed on to consumers while many cannot find insurance at any price. Commissioner [Ricardo] Lara is moving forward on regulations that will deliver more insurance options," Soller said. "We are focused on solutions, not petty games."

For its part, Consumer Watchdog acknowledged that it has been reimbursed $11.6 million for experts and attorneys. It said that amount, stood up against the $5.5 billion it says it has saved consumers, comes around to about 25 cents for every $100 in savings.

Harvey Rosenfield, who wrote Prop 103 and founded Consumer Watchdog, told Law360 that insurers routinely failed to file all the paperwork needed for the rate review process, needlessly holding things up. He also pushed back against the claim that Consumer Watchdog is ill-prepared to propose alternate rates when it initially intervenes, saying the organization often needs time to review material produced in a discovery process.

"Prop 103 is not just a roadblock in California to price gouging and profiteering," he said. "It's also a model for other states that are being abused by insurance companies."

Douglas Heller, the director of insurance for the consumer advocacy group Consumer Federation of America, said Prop 103 empowers both consumers and regulators in a landscape where carriers have significantly more resources than regulators. Heller, who served as executive director of Consumer Watchdog from 2004 to 2012, pointed to a CFA analysis from 2018 showing that Prop 103 and its intervention provisions likely saved drivers $154 billion in auto insurance from 1989 to 2015.

"There's a bargain that California voters have made with insurance companies, which is: We give you the business by requiring everybody buy your product, but we establish some rules of fair play and fair prices," Heller told Law360.

He added that Prop 103 sets California apart from most states requiring prior approval for rate changes.The law is an accountability mechanism that enhances regulators' powers but also provides a crucial check on those regulators by preventing them from simply rubber-stamping premium hikes that might be unjustified.

Prop 103's fate may ultimately come down to how it's enforced, experts say. Commissioner Lara has signaled that he is open to reforms to speed up the rate review process, among other changes that would likely include allowing carriers to use predictive underwriting models that account for the effects of climate change.

Lara has also proposed changes that would attempt to transition policyholders from California's insurer of last resort, the FAIR Plan, to the private market. Insurers have pressed for changes to the FAIR Plan, which is made up of all licensed carriers in the state, because a loss to the plan would mean those carriers would share the cost.

They say Prop 103 has effectively pushed consumers to the FAIR Plan, which is regarded as a relatively high-cost option for the minimal coverage it provides.

--Editing by Abbie Sarfo and Nick Petruncio.

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