November 17, 2025

Before the California Insurance Commissioner

RE: REG-2025-00006. INTERVENOR AND ADMINISTRATIVE HEARING BUREAU FAIRNESS AND ACCOUNTABILITY

Comments of coalition of consumer, labor, senior, immigrant, low-income, and public advocates and concerned civic organizations on proposed regulations.

The undersigned organizations are pleased to submit our joint comments for the consideration of the Department of Insurance in the above-referenced matter.

Interest of the signers of these comments

The undersigned organizations represent millions of California workers and their families, retirees, low-income and middle-income consumers, immigrants, and non-profit public interest organizations. We have long-established records working to protect everyday Californians from unfair and abusive practices, whether at work, as consumers, or in our communities.

The Californians we represent and for whom we advocate have experienced skyrocketing premium rates in automobile, homeowner's, renter's, condominium owner's, and other lines of

personal property and casualty insurance. California insurance policyholders deserve rates that are not excessive or unfairly discriminatory and need strong and effective representation in California's insurance ratemaking and rulemaking proceedings. The proposed Reg-2025-00006 would undermine effective consumer representation in insurance rate setting and other matters, adversely affect these policyholders, and violate the language and intent of Proposition 103.

No foundation to justify the proposed regulations

The Department of Insurance's Initial Statement of Reasons fails to offer a rationale for adopting sweeping changes to the Department's intervenor program, which Californians adopted to ensure their voices were represented when insurers sought rate hikes and changes to insurance regulations. The Department states that during a ten-year period through the end of 2024, the Department processed 102 matters in which consumer intervention occurred. The Department neglects to note that this average of 10 consumer challenges per year occurred during a period in which insurance companies filed several hundred rate increase demands each year. According to CDI data, insurers filed some 400 rate increase applications in 2015 and about 500 in 2024. At the rate of ten interventions per year, consumer organizations intervened in fewer than three percent of rate increase applications per year, while over 97 percent of insurance rate increase applications were processed without a consumer intervention.

This data shows that consumer intervention does not impact the vast majority of rate change requests insurers bring to the Department, but in the rare instances in which public interest organizations intervened on behalf of policyholders, consumer representatives have saved California policyholders about seven billion dollars since 2002. For the time invested in this work over the past two decades, consumer advocates and their independent actuaries and other technical experts have been compensated about $15 million, or about 25 cents per every one hundred dollars that policyholders saved.

The data related to consumer participation in the California ratemaking process illustrate that the existing intervention system provides an effective check on the power of the insurance industry even though it is only used in a tiny fraction of rate filings. At a cost of one quarter of one percent of the amount consumers saved, it is a remarkably efficient way for Californians to hold insurers accountable and prevent the most egregious insurer efforts to gouge policyholders.

Not only do we believe that the right to intervention is under attack with these draft rules, but we are also alarmed by the apparent punitive mindset underlying the Department's reason for proposing them. The Department has failed to articulate a genuine problem with the intervention process; instead, it has insinuated something sinister is afoot, asserting that its goal is to target "vexatious" intervenors with nebulous "conflicts of interest" and "ideological agendas." These ad hominem attacks on consumer participants betray a hostile intent rather than a public interest motivation.

Before the Department published the regulations, it should have engaged in a public process, including workshops, with input from stakeholders and the public where such allegations would have been aired and would have been subject to scrutiny. Instead, the Department developed regulatory proposals designed to impede effective consumer participation without laying the necessary foundation that a problem exists that requires a regulatory solution. The Initial Statement of Reasons states "(t)he Commissioner has not conducted pre-notice public discussions pursuant to Government Code Section 11346.45, because many of the affected parties who would have been invited to participate in such discussions – primarily insurers and intervenors – have historically proven themselves to be extremely sophisticated participants in the Department's rulemaking process." This neglect of public process betrays the Department's predisposition to limit public participation, which also seems to be the chief goal of the proposed regulation itself. Rather than an open process that evaluated input from organizations that represent consumer interests, including the signers of these comments, to assess the need for changes and what changes might best serve consumers, the Department sought no public input before presenting a draft regulation that itself attacks the power of public input.

Specific objections

The proposed regulations contain two key attacks designed to undermine the intervenor process. First it alters the definition of a "substantial contribution," to allow the Commissioner to ignore the input of the intervenor in virtually every case, even when the intervenor produced a changed outcome. Second, it establishes a new battery of tests that offer the Commissioner several novel ways to disqualify the intervenor or reduce the value of the intervenor's efforts.

Under current law and regulation, an intervenor qualifies for compensation when it makes a "substantial contribution" to the Commissioner's consideration of a case. Current California Code of Regulations Title 10, Section 2661.1 states "'Substantial Contribution' means that the intervenor substantially contributed, as a whole, to a decision, order, regulation, or other action of the Commissioner by presenting relevant issues, evidence, or arguments which were separate and distinct from those emphasized by the Department of Insurance staff or any other party, such that the intervenor's participation resulted in more relevant, credible, and non-frivolous information being available for the Commissioner to make the Commissioner's decision than would have been available to a Commissioner had the intervenor not participated. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied."

In *State Farm v Lara* (2021) 71 Cal.App.5th 148, the Court of Appeal ruled "…(T)he regulations for Commissioner fee awards … **do not require any particular level of impact on the decision or order at issue"** (emphasis added). In other words, the Court found that a substantial contribution covers a range of impacts, provided the intervenor brings to the case distinct, relevant evidence, issues and arguments.

The intervenor program established by the voters is not like the system that governs attorney's fee awards in certain civil litigation, which requires a "prevailing party" to "win" a case in order

to be compensated. On the contrary, the system under Proposition 103 is designed to encourage consumer advocates to *participate* in ways that are relevant, adding value to the Commissioner's consideration of a matter. The proposed regulation, however, alters the definition of a Substantial Contribution to add the phrase "makes a significant, distinct contribution to the Commissioner's adoption of a decision, order, or regulation," as a new requirement for finding that an intervenor's work is worthy. Since a Commissioner could simply assert that any regulation, decision or order adopted relied only on the work of the Department, a statement which is impossible to refute absent a ruling stemming from a hearing before an Administrative Law Judge, a hostile Commissioner would gain unrestricted authority to deny a compensation request.

In addition, the proposed regulations empower a Commissioner – without any further elaboration - to disqualify an intervenor based on the Commissioner's determination that the organization has actual or *potential* conflicts of interest that somehow compromise the intervenor's ability to represent consumers independently. They empower a Commissioner to disqualify a fee request if the Commissioner labels the intervention as "vexatious" for such legitimate behavior as seeking information in a proceeding, if the Commissioner claims the information is unnecessary. The proposal allows the Commissioner to disqualify a fee request as "cumulative" if the same issue is raised in more than one proceeding, even though the same actuarial techniques are used to justify exaggerated rate increases by multiple insurers in multiple rate filings.

The proposed regulations limit the number of staff an intervenor can employ in a compensable matter to five, which can include no more than one administrative support staff, two technical staff, two experts, and one supervisor, with no corresponding limits on the number of experts, attorneys, actuaries, supervisors, clericals, and executives an insurer can bring to a case. Insurers are free to, and often do, employ busloads of staff, consultants and lawyers to make their case, but representatives of consumers would now be limited by an arbitrary cap on the team they can put on the field.

The regulations also remove the current requirement that an insurer opposing a compensation request must also reveal its own costs for the attorneys, actuaries, economists, executives and others it employs or contracts with as consultants. Removing this check, which levels the playing field in terms of a consumer group's ability to hire qualified professionals, would allow insurers to press for reductions in their opponent's fees without having to divulge that their own fees likely exceed what a consumer group is paying.

We have listed above some, but not all, of the faults in the proposed regulation. The regulation is a solution in search of a problem that seems to offer little more than comfort for insurers that prefer not to face the scrutiny that comes when consumer groups bring their own experts to the table.

The regulation violates not only the plain language but the spirit of voter-enacted Proposition 103, which states "(t)his act shall be liberally construed and applied in order to fully promote its underlying purposes" – which are to "protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an

accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians." Reg-2025-00006 militates against an accountable Commissioner, weakens consumer protections from arbitrary and excessive insurance rates and muzzles the ability of policyholders to have their own representatives in matters that affect their access to insurance that is fair and affordable.

We respectfully urge the Insurance Commissioner to protect the important consumer protection tool that intervention provides and withdraw Reg-2025-00006.

Sincerely,

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