San Diego County Taxpayers Association
Taxpayers watchdog since 1945
707 Broadway, Suite 905, San Diego, CA 92101
P: (619) 234-6423 • F: (619) 234-7403 • www.sdcta.org

Proposition 45
Insurance Rate Public Justification and Accountability Act

July 2014

SDCTA OPPOSES the Insurance Rate Public Justification and Accountability Act. Though the intent of this ballot measure is to reduce the financial burden on customers facing continued rate increases, it fails to address the causes of these increases. The causes include the growing cost shift created in part by the underfunding of MediCal and Medicaid programs to care providers and increased demand for health services. Without addressing the heart of the issue, the measure could increase the cost of business for insurance providers and ultimately exacerbate the increasing costs of health care.

- Currently, 35 states have given regulators the power to approve or reject insurance rates before they can take effect.
- Since 2002, health insurance premiums in California have increased by 153 percent, 5 times higher than the rate of inflation.
- Blue Cross cited rising medical costs as the main driver for the need to increase insurance rates.
- The implication of this ballot measure places the burden wholly on insurance providers to reduce their rates. However, the bill does not take into consideration rising medical costs, which result from factors including greater prevalence of chronic diseases as well as an aging population.
- Studies have shown increases in regulations can ultimately lead to increases in policy rates. In a 2005 study published by the Forum for Health Economics and Policy, regulations increased the cost of individual plans up to $2,000 per year.
- The proposal will only treat the symptoms, while neglecting the causes. Costs will remain high, even if the initiative is passed. Regulating the carriers will not solve the problem; it will merely deflect it, by driving carriers out of the market and transferring the problems to the government bureaucracy.
- If providers are forced to shoulder higher regulatory costs, these costs will be passed down to taxpayers and policy holders.
- This measure would result in additional costs for the California Department of Insurance to conduct health insurance rate reviews and hearings pursuant to the provisions of this measure. These additional administrative costs would likely be in the low tens of millions of dollars annually.

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SDCTA Position: **OPPOSE**

Rationale for Position:

Though the intent of this ballot measure is to reduce the financial burden on customers facing continued rate increases, it fails to address the causes of these increases. The causes include the growing cost shift, created in part by the underfunding of MediCal and Medicaid programs to care providers and increased demand for health services. Without addressing the heart of the issue, the measure could increase the cost of business for insurance providers and ultimately exacerbate the increasing costs of health care.

Title: Insurance Rate Public Justification and Accountability Act
Jurisdiction: State
Type: Initiative Statute
Vote: Simple Majority
Status: Pending Vote
Issue: Health Insurance Rates
Description: The initiative will require health insurance rate changes to be approved by the Insurance Commissioner before taking effect. Rate changes will be subject to judicial review, and health insurance companies will be prohibited from determining policy eligibility based on lack of prior coverage or credit history.
Fiscal Impact: Net neutral. According the California Legislative Analyst, this measure would result in tens of millions of dollars annually in increased administrative costs for the California Department of Insurance, which would be funded by the insurance industry through increased filing fees

Background:

Currently, thirty-five states have given regulators the power to approve or reject insurance rates before they can take effect.[1] The bill would follow up on Proposition 103, a bill passed in 1988 regulating automobile insurance rates throughout the state. Harvey Rosenfield, the author of Proposition 103, says the new bill will replicate its success by extending those same regulations to the health insurance industry.

Current Law

Existing health care coverage is governed by the Knox-Keene Health Care Service Plan Act of 1975, which provides for licensure and regulation of health care service plans by the Department of Managed Health Care (DMHC) and the regulation of health insurers by the California Department of Insurance (CDI).[2] Under existing law, there can be no premium increases in a health care policy's rate or coverage plan without written notification of change to the policy holder or contract holder. It

[1] Song, Paul. Consumer Watchdog. "California Health Insurance Rates Need Regulation." January 29, 2014
[2] Roth, Debra; Kelch, Deborah. California HealthCare Foundation. "Making Sense of Managed Care Regulation in California." November 2001.

also prohibits any increases of rates from the health insurer or health insurance policy during specific time periods of the contract. This existing law also requires the health insurer to inform DMHC or CDI on specified rate information at least 60 days before the effective date of the rate change. The State of California is permitted to regulate health care policies as a result of the federal Patient Protection and Affordable Care Act (PPACA), which allows the federal government to work with states to examine allegedly unfair rate charges from health plan groups.[3]

Related Legislation:

Proposition 103
Passed by voters in 1988, the initiative established new regulations for automobile and property/casualty insurance, allowing for the creation of a statewide, elected Insurance Commissioner to oversee and approve rate increases, while prohibiting "discrimination, price-fixing and unfair practices by insurance companies."[4]

Senate Bill 1163
Signed by Governor Schwarzenegger in 2010 and effective January 1, 2011, the bill requires health care service plans and health insurers to file with DMHC and CDI specified rate information for individual and small group insurance at least 60 days prior to implementing any rate change. It further requires rate filings to be actuarially sound and to include a certification by an independent actuary.[5]

Assembly Bill 52
A bill similar to the Insurance Rate and Public Justification and Accountability Act failed to gain traction in 2011, when Assemblymen Mike Feuer pulled the bill from the state legislature after facing widespread opposition from local governments, pension funds and Governor Jerry Brown's Department of Finance, as well as the SDCTA.

Patient Protection and Affordable Care Act
Since September 1, 2011, the PPACA has required health insurance providers to submit requests to states and/or federal reviewers if they wish to increase rates by more than 10 percent. The "Rate Review Process" is required by section 1003 of the PPACA, which states:

- (1) IN GENERAL- The Secretary in conjunction with States, shall establish a process for the annual review, beginning with the 2010 plan year and subject to subsection (b)(2)(A), of unreasonable increases in premiums for health insurance coverage.
- (2) JUSTIFICATION AND DISCLOSURE – The process established under paragraph (1) shall require health insurance issuers to submit to the Secretary and relevant State a justification for an unreasonable premium increase prior to the implementation of the increase. Such issuers shall prominently post such information on their Internet websites. The Secretary shall ensure the public disclosure of information on such increases and justification for all health insurance issuers.[6]

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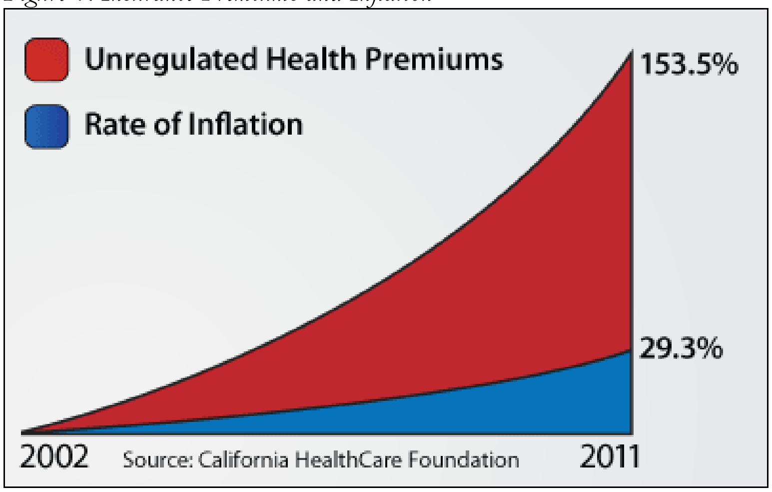
[3] Ibid.
[4] California Proposition 103, Insurance Rates and Regulation (1988). March 18, 2014
[5] Bill Number: SB 1163. February 18, 2010.
[6] H.R 3590 (111th) Patient Protection and Affordable Care Act. August 25, 2010.

Health Insurance Rate Increases

Since 2002, health insurance premiums in California have increased by 153 percent, 5 times higher than the rate of inflation.[7] In California, large insurers such as Blue Cross, Blue Shield, Aetna, and PacifiCare have regularly imposed rate increases on their policyholders, and recently came under fire from the California Department of Insurance to both reduce the rate of the increases and to delay them. For example, Blue Cross had originally proposed to increase its rates by 16.4% effective April 1, 2011, but after public opposition, it agreed to reduce the increase to 9.1% and delay its effectiveness until July 1, 2011.[8] Blue Cross cited rising medical costs as the main driver for the need to increase insurance rates.[9]

Figure 1: Insurance Premiums and Inflation



Past SDCTA Positions

Previously, San Diego County Taxpayers Association opposed Prop 103 because of its requirement that the State Insurance Commissioner be an elected official. Other measures with regards to insurance were not weighed upon by the Association.

As recently as 2011 SDCTA opposed Assembly Bill 52, which was nearly identical to this measure, with a nearly identical rationale.

Proposal:

Because health insurance is a necessity, this initiative proposes that health insurance companies should have to publicly justify their rates and law should prohibit pricing of policies based on prior coverage or credit history.

In addition, the proposal would require that rate changes be approved by the State Insurance Commissioner prior to taking affect and would require insurance companies to retroactively refund customers for "excessive rates."[10]

[7] "Health Insurance Rate Review."
[8] Falco, Tina. "Anthem Blue Cross Delays Rate Hike." March 22, 2011
[9] Sassi, Brian. Consumer Business Unit. "Anthem Blue Cross of California agrees to request from California Department of Insurance for additional time to re-review rate increase." February, 13, 2013.
[10] Legislative Analyst's Office. December 20, 2011

Policy Implications:

The implication of this initiative places the burden wholly on insurance providers to reduce their rates. However, the bill does not take into consideration rising medical costs, which result from factors including greater prevalence of chronic diseases as well as an aging population. Further, the bill fails to take into account the "cost shift," which largely results from federal and state government's routinely under-reimbursing specialists and hospitals for the cost of their services through MediCal and Medicaid programs. Providers, in turn, shift those costs to the private sector by charging higher fees for services to make up for underfunded MediCal and Medicaid rates. Those rates and fees are then submitted to insurance companies who pay for the care that they are responsible for, dependent on the type of plan carried by the policyholder. In 2010, Medicare underpaid California hospitals by $3.8 billion, while the Medi-Cal payment shortfalls totaled $4.6 billion.[11] For Californians, this translates into a 10 percent increase in health insurance premiums, with the average family paying an additional $1,886 in premiums, while individuals paid an additional $455.[12]

Increased scrutiny of health insurance providers may help to mitigate future rate increases, as health plan providers are given an incentive to first reduce overhead costs before imposing rate increases. However, the increased administrative costs associated with complying with increased regulation may have the perverse effect of adversely affecting the provider's medical loss ratio, and prove to be a further incentive to raise rates.

Studies have shown increases in regulations can ultimately lead to increases in policy rates. In a 2005 study published by the Forum for Health Economics and Policy, regulations increased the cost of individual plans up to $2,000 per year. The data was collected from 27,000 policies and showed a direct correlation between regulations and rates. Each mandate raised prices on average by 0.4 percent for individuals and 0.5 percent for families. In 2013, a study published by the Eastern Economic Journal found similar results, with the average mandate increasing premiums anywhere from 0.44 percent to 1.11 percent. Instead of lowering premiums, regulations have increased them, forcing taxpayers to shoulder even higher costs.

Fiscal Impact:

A 2011 analysis by the California Legislative Analyst projected increased administrative costs and potential changes in revenues. A summary of the analysis on these two issues follows:

> *Increased State Administrative Costs:*
> This measure would result in tens of millions of dollars annually in increased administrative costs for the California Department of Insurance, which would be funded by the insurance industry through increased filing fees.[13]
>
> *Potential Change in Revenues*
> If regulations lower insurance rates, than revenues and the taxes collected on them will be decreased. This fiscal impact is unknown and depends on the success of the initiative.

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[11] Mcleod, Annie. California Hospital Association. "The Chronic Underfunding of Government Sponsored Programs: Medi-Cal and Medicare." March 29, 2011.
[12] Harbage, Peter; Nichols, Len. New America Foundation. "A Premium Price: The hidden Costs All Californians Pay In Our Fragmented Health Care System." December 2006
[13] Legislative Analysts Office. December 20, 2011

List of Proponents:

- American River Democrats
- California Insurance Commissioner Dave Jones
- Consumer Watchdog Campaign
- Senator Dianne Feinstein

Proponent Arguments:

- The proposal gives voters the chance to take control of health insurance prices, by forcing health insurance companies to publicly open their books and justify rates.[14]
- Since 2002, health insurance premiums in California have increased by 153 percent, 5 times higher than the rate of inflation.[15]

List of Opponents:

- California Association of Health Plans
- California Association of Health Underwriters
- California Hospital Association
- California Medical Association
- Californian's Against Higher Health Care Costs
- Fresno Chamber of Commerce
- Valley Industry and Commerce Association

Opponent Arguments:

- The proposal will only treat the symptoms, while neglecting the causes. Costs will remain high, even if the proposal is passed. Regulating the carriers will not solve the problem; it will merely deflect it, by driving carriers out of the market and transferring the problems to the government bureaucracy.[16]
- If providers are forced to shoulder higher regulatory costs, these costs will be passed down to taxpayers and policy holders.[17]
- Market competition will be stifled by arbitrary regulations and special interest groups vying for influence.[18]
- Rate regulation does not address the underlying causes of rising health care costs.[19]

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[14] "To Make Health Insurance Companies Justify Their Rates."
[15] Ibid
[16] Axene, David. Insurance Though Leadership.com. "The Insurance Rate Public Justification & Accountability Act - Does It Get To The Real Problem?" August 28, 2012.
[17] "Californians Against Higher Health Care Costs."
[18] Ibid.
[19] Axene, David. Insurance Though Leadership.com. "The Insurance Rate Public Justification & Accountability Act - Does It Get To The Real Problem?" August 28, 2012