



December 16, 2009

Nancy Hom
Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105

Re: REG-2009-00023: Fees for document submission, processing and storage.

Dear Ms. Hom:

1 The Association of California Life and Health Insurance Companies (ACLHIC) is California's premier life insurance trade association, representing many of the nation's largest life and health insurance companies doing business in this state. The American Council of Life Insurers (ACLI) is the principal national trade association of life insurance companies. ACLI members write more than 90 percent of life insurance, annuities, pensions, 401(k)s, long-term care and disability income insurance, and reinsurance in the state.

On behalf of our members, we appreciate the opportunity to comment on the Department's proposed regulations (REG-2009-00023) addressing fees for document submission, processing and storage. We respectfully submit the following concerns and observations for your consideration during this formal rulemaking process.

2 **Background**

Insurance Code section 12973.9 grants the Commissioner the authority to promulgate regulations to 'establish standard(s) to determine the original fee schedule or any amended fee schedule.' The standards, set forth in CCR section 2202(e), provide that the Commissioner may increase or decrease fees by issuing a Bulletin at least 90 days prior to their effective date. The Commissioner issued such a Bulletin, 2009-05, on March 26, 2009, with new fees effective on July 1, 2009.

3 **Summary**

We understand that this proposed regulation proposes to formally implement the new fees that were established in Bulletin 2009-05, and also conforms to changes which have taken place in the law since the regulations were last amended. Our members have no problems with the technical conforming changes proposed in the regulation.

Exhibit A

4 Our initial analysis shows that the fee increase is on the order of about 3.5 times current fees, and puts a filing fee for a single policy over \$1000. Generally, filing fee increases proposed in this regulation are in the neighborhood of 350 percent. From what we have received from our members, we believe this greatly exceeds corresponding fees charged by any other state, and will result in total filing fees for most companies increasing significantly. For California domiciled companies, it is worse due to the reciprocal nature of filing fees in many states. This dramatic fee increase creates a financial disincentive to offer new and updated products that would benefit California insurance consumers.

5 We understand the Department's need to update the fees it charges to better reflect its true costs, but we feel the timing for the recent fee increase is troubling given the seemingly less costly electronic filing options the department started to offer over the past year (e.g., accepting SERFF and PDF files). This proposal looks to go in the opposite direction of the Commissioner's projected cost reductions for the industry that the department shared earlier this year; although the regulation summary indicates that general fees have been subsidizing form filing, processing and storage costs.

6 While the notice states that there has not been a fee increase in this area for twelve years, general fees for the industry have steadily increased every year, until this year. We respectfully ask that you consider amending the proposed regulation to recalculate actual costs incurred by the department to see if the increase can be scaled back or applied incrementally.

7 The rationale for this regulation states that ...'For the five years from fiscal year 2002-03 to fiscal year 2007-08, the cost of processing documents subject to filing as set forth in CCR 2202 and 2203 increased by 35% (from \$3.7 million to \$5 million dollars). During the same five years, the Commissioner charged insurers an average of approximately \$500,000 (\$0.5 million) per year. If the imbalance between the actual costs incurred by the Commissioner and the fees charged to cover these costs is not corrected, the Commissioner will continue to recoup from insurers just one-tenth of his actual costs. Other revenue sources of the Department of Insurance, primarily general fees and license revenue, are currently covering the approximately \$3.8 million annual shortfall between costs incurred and fees charged insurers for document processing. In effect, the Department's other revenues are subsidizing insurance company operating expenses because current fee levels are inadequate.'

If, as the regulation summary states, general fees and licensing revenue have been subsidizing policy processing and storage costs filing, perhaps CDI could consider imposing a modified or two-tier fee structure, to recognize any cost savings that occur for more efficient filing methods. For example, perhaps insurers that file electronically, or via the SERFF process, could receive a reduced rate since it eliminates a significant amount of paper handling and storage fee factors.

CIC section 10273.9 authorizes fees "to cover expenses of processing and indexing the same and maintaining copies of the same." It goes on to say "The commissioner shall determine the fee, or fees, by estimating in advance the commissioner's total costs of performing these services for all types of documents for a specified period of time, estimating the total number of documents of various kinds which will be submitted for processing during such time and equitably distributing the total cost on a per document basis." Did the cost analysis account for any potential savings expected with companies utilizing new electronic form filing methods such as SERFF and PDF submissions?.

8

Current Process/Existing Filings

The "Derivation of the Revised Cost-Recovery Rates" section of Bulletin 2009-05 says that "the rate increases were derived by determining the actual costs of the Department of performing the mandated form workload and comparing those costs to the actual revenue received of those efforts." In the Initial Statement of Reasons, the Department states that it determined the cost of processing documents subject to filing over a 5 year period, comparing what the department charged insurers during the same five years.

It is generally understood that the Department has a backlog of filings awaiting review. One ACLHIC member has approximately 150 filings that have been processed during the last few years, but have not been reviewed and therefore not yet charged. Therefore, if the Department did not account for filings that have been processed, indexed, and stored, but not yet charged to insurers in its analysis, the resulting proposed fee is going to be higher than actual costs to the Department. If the Department has hundreds of filings behind in review, the proposed fee could be significantly higher than the Department's actual costs.

It is important that the analysis is accurate because these fee increases ultimately impact costs to consumers.

9

Effective Date

We would like to see clarification in the regulations that the new fees apply to filings on or after the effective date. It is clear in the Bulletin, but it silent to this specific point in the regulations. Under the Effective Date section of the Bulletin, it states, "The increase cost of recovery rates will become effective for filings first received by the Department on or after July 1, 2009.

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Conclusion

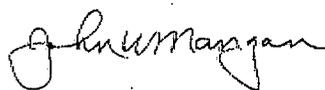
We respectfully ask the Department to consider re-evaluating the new fee schedule and also consider an incremental increase over the next few years, or a tiered method for less costly filing methods described above.

We would be happy to work with you and on these issues at your convenience.

Sincerely,



Ted M. Angelo
Legislative and Regulatory Counsel, ACLHIC



John W. Mangan
Regional Vice President, ACLI

cc: Mansour Salahu-Din, Chief, Policy Approval Bureau