

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Insurance**

**Regulatory Action:**

**Title 10, California Code of Regulations**

**Adopt sections:**

**Amend sections: 2222.12**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL File No. 2011-1014-01 EE**

---

This action by the Department of Insurance is the second re-adoption of emergency rulemaking no. 2011-0112-01E, which amended section 2222.12 of title 10 of the California Code of Regulations. This emergency action was first re-adopted in rulemaking no. 2011-0714-01EE.

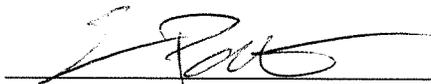
This amendment was prompted by the enactment of the federal Affordable Care Act, a series of health market reforms, and the Interim Final Rule, 45 Code of Federal Regulations Part 158, which describes the factors, scope, and method used in the calculation of loss ratios. The federal rules provide, among other things, that beginning January 1, 2011, health insurers offering coverage in the individual market must achieve at least an 80% loss ratio. Those insurers that do not meet this standard will be required to provide a refund the following calendar year.

As a result of this amendment, insurers in California will have to demonstrate both (1) compliance with the existing 70% lifetime anticipated loss ratio standard prescribed by section 2222.12, so that consumers are assured of receiving reasonable benefit value for their premium dollars on a policy-form basis, as well as (2) compliance with the 80% federal standard on a market-segment basis at the time of DOI's rate review, so that consumers can have the benefit of the federal medical loss ratio from the outset of the rate, rather than having to wait from eight to twenty months for a premium refund.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 10/20/2011 and will expire on 1/19/2012. The Certificate of Compliance for this action is due no later than 1/18/2012.

Date: 10/20/2011



---

Eric Partington  
Staff Counsel

For: DEBRA M. CORNEZ  
Assistant Chief Counsel/Acting Director

Original: Dave Jones  
Copy: Bruce Hinze

# EMERGENCY

TD 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2011-1014-01EE</b>
------------------	---------------------------------	--------------------------	---

For use by Office of Administrative Law (OAL) only

2011 OCT 20 PM 1:20

2011 OCT 14 AM 9:52  
OFFICE OF ADMINISTRATIVE LAW

*John E. Brown*  
JOHN E. BROWN  
SECRETARY OF STATE

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
Department of Insurance

AGENCY FILE NUMBER (if any)  
ER-2011-00001

### I. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

### II. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

a. SUBJECT OF REGULATION(S) Loss Ratio Regulation for Individual Health Insurance Policies	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2011-0112-01 E, 2011-0714-01EE
---	--

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 2222.12
	REPEAL
TITLE(S) 0	

I. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

II. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
--	---	---	--

CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

CONTACT PERSON Bruce Hinze	TELEPHONE NUMBER (415) 538-4392	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) HinzeB@insurance.ca.gov
-------------------------------	------------------------------------	-----------------------	--

3. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Dave Jones</i>	DATE October 12, 2011
TYPED NAME AND TITLE OF SIGNATORY Dave Jones, Insurance Commissioner	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 20 2011

Office of Administrative Law

## TEXT OF PROPOSED AMENDMENT TO REGULATION

### Title 10. Investment

#### Chapter 5. Insurance Commissioner

##### Subchapter 2. Policy Forms and Other Documents

#### Article 1.9. Standards for Determining Whether Benefits of an Individual Hospital, Medical or Surgical Policy Are Unreasonable in Relation to the Premium Charged Pursuant to Subdivision (C) of Section 10293

Amend Title 10, Section 2222.12 to read:

#### § 2222.12. Standards of Reasonability.

The authority of the commissioner under Insurance Code Section 10293 being to withdraw approval of policy forms the benefits of which are not reasonable in relation to the premium charged, whether the approval of any form of an insurer should be withdrawn pursuant to said section shall be determined by an analysis of actual loss experience, giving due consideration to all factors relevant to the determination of how the past loss experience may be used to reasonably indicate the average loss experience which should develop. Some of such factors which will be considered by the commissioner are hereinafter in this article set forth, but their listing does not preclude an insurer from urging any other factors which it considers relevant to the issue involved.

(a) Benefits provided by a hospital, medical or surgical policy shall be deemed to be reasonable in relation to premiums ~~if either~~ if both of the criteria in subdivisions (1) and (2), below, are satisfied:

(1) ~~(A)~~ (A) the lifetime anticipated loss ratio is not less than 70%, and ~~(2) (B)~~ (B) in the case of a rate revision, the anticipated loss ratio over the future period for which the revised rates are computed to provide coverage is also not less than 70%, or, if the insurer chooses to include disease management expenses in determining compliance with these standards, ~~(3) (C)~~ (C) the sum of the lifetime anticipated loss ratio and the lifetime anticipated disease management ratio is not less than 70%, and ~~(4) (D)~~ (D) in the case of a rate revision, the sum of the anticipated loss ratio over the future period for which the revised rates are computed to provide coverage and the anticipated disease management ratio over the future period for which revised rates are computed to provide coverage is also not less than 70%~~;~~and;

(2) the insurer's projected medical loss ratios in the individual market, calculated using the method described in the interim final rule entitled "Health Insurance Issuers Implementing Medical Loss Ratio Requirements Under the Patient Protection and Affordable Care Act," (45 C.F.R. §§ 158.220-158.232, 75 Fed. Reg. 74927-74928, (December 1, 2010)) and incorporated herein by reference, are not less than 80%.

(b) Benefits provided by a hospital, medical, or surgical policy delivered or issued for delivery to any person in this State prior to July 1, 2007 and not subject to any rate revision effective on or after July 1, 2007 shall be deemed to be reasonable in relation to premiums if the lifetime anticipated loss ratio is not less than 50%.

(c) Benefits provided by supplemental policies of individual health insurance that provide coverage for vision care expenses only, dental care expenses only, or short-term limited duration health insurance with coverage durations of 6 months or less shall be deemed to be reasonable in relation to premiums if the lifetime anticipated loss ratio is not less than 50%.

(d) Benefits provided by a hospital, medical or surgical policy designed to supplement Medicare, as defined in subdivision (1) of Insurance Code section 10192.4, must meet the loss ratio standards established in Subdivision (a)(1)(A) of Section 10192.14 of the Insurance Code.

NOTE: Authority cited: Insurance Code section 10293.  
Reference: Insurance Code section 10293(a).