

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, CA 94105**

File No. RH05048846

Date: June 14, 2006

**Regulations Re: Law Enforcement Access
to Insurance Claims Information**

INITIAL STATEMENT OF REASONS

INTRODUCTION

The Insurance Commissioner hereby proposes to adopt California Code of Regulations, Title 10, Chapter 5, Sections 2698.80-89. The subchapter originally designated as Title 10, Chapter 5, Sections 2698.80-86 continues to appear in the California Code of Regulations but has been rendered inoperative by the repeal of former California Insurance Code Section 1872.8.

STATEMENT OF THE PUBLIC PROBLEM

In 1991, the California Legislature enacted legislation that established the Automobile Insurance Claims Depository also known as the AICD. The AICD was to serve as a database for use by law enforcement and insurers for the purpose of investigating and prosecuting automobile insurance fraud. Insurers were required to submit specified insurance claims information either directly to the AICD or through licensed claims analysis bureau.

In 1997, the Commissioner promulgated and adopted regulations found at California Code of Regulations, Title 10, and Sections 2698.80-86 regarding the deposit of claims information to the AICD as well as law enforcement access to the AICD. After the 1997 adoption of the regulations, the California Legislature determined that the AICD was duplicative of already existing databases and that the funds allocated to the operation of the AICD could be more efficiently spent on enhancing investigation and prosecution of automobile insurance fraud. Accordingly, the California Legislature repealed the statute authorizing the AICD (California Insurance Code Section 1872.8) and enacted the provisions of California Insurance Code Section 1875.18.

California Insurance Code Section 1875.18 requires automobile insurers to deposit all bodily injury, medical payment or uninsured motorist information with a licensed claims analysis bureau (hereinafter referred to as a CAB). The statute goes on to provide that a

CAB must make all deposited claims information available to law enforcement agencies within the state upon the request of the law enforcement agency. Further, the claims information requested by law enforcement (pursuant to this statute) is to be used solely for the purposes of investigating and prosecuting insurance fraud. The statute goes on to provide that such requests by law enforcement agencies should be narrowly formulated in order to protect the privacy interests of the citizens of the state, while allowing the agency to obtain the information necessary to conduct specific investigations. Finally, the statute requires that the Insurance Commissioner establish rules governing the access and use of any information requested or obtained pursuant to this statute and the circumstances under which that information can be inspected or corrected.

The public problem to be addressed by these regulations arises in the interpretation and implementation of the provisions of California Insurance Code Section 1875.18. While the language of Section 1875.18 clearly states that the intent of the Legislature is to allow law enforcement access to insurance claims information maintained by a licensed CAB, the statute provides no guidance as to the actual mechanisms, and procedures a CAB must put into place, in order to fully effectuate the Legislature's intent. California Insurance Code Section 1875.18 requires that the requests for insurance claims information made by law enforcement be narrowly formulated to protect the privacy rights of the citizens of this state. At the same time such requests should allow law enforcement agencies to obtain the information necessary to conduct specific investigations. The statute, however, provides no guidance as to the actual mechanisms, and procedures that a CAB must put into place, in order to fully effectuate the Legislature's intent.

Finally, California Insurance Code Section 1875.18(d)(2) requires the Insurance Commissioner to establish rules governing the access to, and use of, any information requested or obtained pursuant to this section, and the circumstances under which that information may be inspected or corrected; however, the statute, again, provides no guidance as to the actual mechanisms, and procedures a CAB must put into place, in order to fully effectuate the Legislature's intent.

The regulations proposed herein attempt to remedy the lack of specificity of California Insurance Code Section 1875.18, as described above, by setting forth regulations that will provide the clarity necessary to implement the statute.

The newly proposed regulations propose to establish the following:

- (1) the requirement for prior approval of a plan of operation for a Claims Analysis Bureau;
- (2) the mechanism for deposit by insurers of claims information to Claims Analysis Bureaus;
- (3) the content of a written request by law enforcement for specific insurance claims information;
- (4) the time within which a CAB must respond to law enforcement requests for information;

- (5) the manner in which a CAB may respond to an incomplete request for information from law enforcement;
- (6) the procedure to be followed when a person believes that information pertaining to that person and deposited to a CAB is incorrect;
- (7) the security procedures to be implemented by a Claims Analysis Bureau when handling insurance claims information;
- (8) the security procedures to be used by the CAB when subcontractors perform any function of the CAB;
- (9) the manner in which a CAB must respond to Public Records Act Request and subpoenas and examinations by the Insurance Commissioner; and
- (10) the penalty for non-compliance with these regulations.

(Adopt) Proposed Section 2698.80(a)

Proposed Section 2698.80(a) defines the term “claims analysis bureau” or “CAB” to mean a licensed, non-profit corporation that receives, compiles and transmits insurance claims information pursuant to California Insurance Code 1875.10 (et. seq.) This section is reasonably necessary as it provides a definition of term that is used through out these regulations.

(Adopt) Proposed Section 2698.80(b)

Proposed Section 2698.80(b) defines the term “Commissioner” as the Insurance Commissioner of the State of California. This section is reasonably necessary as it provides a definition of a term that is used throughout these regulations so that the reader can easily understand it and applied by the regulated entities.

(Adopt) Proposed Section 2698.80(c)

Proposed Section 2698.80(c) specifies that “Department” means the California Department of Insurance. The term is used throughout these regulations. This definition avoids confusion that may be caused by a term that is otherwise susceptible to multiple interpretations.

(Adopt) Proposed Section 2698.80(d)

Proposed Section 2698.80(d) clarifies that “Fraud Division” refers to the California Department of Insurance Fraud Division, formerly known as the Bureau of Fraudulent Claims. This definition is reasonably necessary in that it clarifies that “Fraud Division was formerly known as the Bureau of Fraudulent Claims and is now known as the Fraud Division. Further, the proposed subsection provides a definition of a term that is used through out these regulations so that the reader can easily understand it and applied by the regulated entities.

(Adopt) Proposed Section 2698.80(e)

Proposed Section 2698.80(e) defines the term “insurance claims information” to mean the information that insurers are required to report to a licensed claims analysis bureau pursuant to California Insurance Code Section 1876. This definition is reasonably necessary to provide a uniform definition that can be used consistently throughout these regulations. California Insurance Code Section 1876 requires:

That every insurer who receives any bodily injury, medical payment or uninsured motorist claim made under a policy of liability insurance [defined in Section 660 or 11622] shall within 20 days of receipt of that claim deposit the information with a licensed claims analysis bureau.

The statutory subsection then goes on to provide that:

The claims information deposited pursuant to this subsection shall include at least one of the following: (1) the claimant’s driver’s license number or California identification card number if applicable; (2) the vehicle license number; and (3) the vehicle identification number and the claimant’s social security number, if known to the insurer.

The Commissioner believes that the proposed definition is sufficiently descriptive to allow the regulated entities to easily understand the reporting obligation imposed on the insurer and yet at the same time this definition is narrowly drafted so that it is consistent with the statutory language of California Insurance Code Section 1876 and thereby limits the information that must be made available to law enforcement to that which is allowed by statute.

(Adopt) Proposed Section 2698.80(f)

Proposed Section 2698.80(f) defines the term “insurer” to have the same meaning as set forth in California Insurance Code Section 1874.1. Section 1874.1 provides that an insurer is the automobile assigned risk plan established pursuant to California Insurance Code Section 11620 as well as any insurer writing insurance for any motor vehicles or otherwise liable for any loss due to motor vehicle theft or motor vehicle insurance fraud. This subsection is reasonably necessary in that it establishes that the definition of “insurer” to be used in these regulations that is a specific and uniform definition of a term that would otherwise be susceptible to various interpretations. Further, the definition set forth herein, is clear and can be easily understood by regulated entities, thus, enhancing, the ability of the regulated entity to comply with these regulations.

(Adopt) Proposed Section 2698.80(g)

Proposed Section 2698.80(g) defines the term “Law Enforcement” to have the same meaning as given in Penal Code Sections 830.1. This subsection is reasonably necessary in that it establishes the applicable definition “Law Enforcement” to be used in these

regulations. This definition is reasonably necessary in that it provides clarity and consistency and a uniform definition of a term used throughout these regulations that would otherwise be susceptible to various interpretations. Further, the definition set forth herein, is clear, consistent with the underlying statute and can be easily understood by regulated entities, thus enhancing, the ability of the regulated entity to comply with these regulations.

(Adopt) Proposed Section 2698.80(h)

Proposed Section 2698.80(h) defines the term “Match Report or Matched Claims Data that would otherwise be susceptible to various interpretations. To mean the manner in which the Claims Analysis Bureau as a result of a match between claims information provides data to insurers submitted by one insurer and information previously submitted by another insurer. This definition is reasonably necessary in that it provides clarity and uniform definition of a term used throughout these regulations that would otherwise be susceptible to various interpretations.

(Adopt) Proposed Section 2698.80(i)

Section 2698.80(i) defines the term “supplemental information” to mean any claims information provided to the insurer after the initial claim has been filed. This definition is reasonably necessary as it provides a uniform definition of a term that is used throughout these regulations that would otherwise be susceptible to various interpretations. Further, a precise definition of this term is necessary to ensure that regulated entities can fully understand and comply with their obligation to forward both claims information received at the outset of the claim and that which is received subsequent to the initial filing of the claim.

(Adopt) Proposed Section 2698.81(a)

Proposed Section 2698.81(a) provides that every CAB shall obtain the prior approval of a plan of operation as a CAB from the Insurance Commissioner before it may perform any of the functions described in California Insurance Code Section 1875.11. This section is reasonably necessary as)???) and subdivision (d)(1) further provides that that claims information requested by law enforcement pursuant to CIC 1875.18 shall be used solely for the purpose of investigating and prosecuting automobile insurance fraud. While the language of 1875.18(d)(1) indicates the scope as well as limitations on the information to be provided to law enforcement in broad and general terms, the cited statutes are silent as to actual mechanisms or processes that the CAB must use in order to ensure full compliance with the law.

Proposed Section 2698.81(a) sets forth a preliminary requirement that allows the Commissioner to review and approve of a plan of operation prior to the performance any of the functions described in California Insurance Code Section 1875.11. The Commissioner believes that the requirement of prior approval of the plan of operation is particularly critical because of the sensitive information.

(Adopt) Proposed Section 2698.81(a)

Proposed Section 2698.81(a) provides that every CAB shall obtain the prior approval of a plan of operation as a CAB from the Insurance Commissioner before it may perform any of the functions described in California Insurance Code Section 1875.11(b). This section is reasonably necessary as Section 1875.18(c)(1) requires that a claims analysis bureau shall provide automobile claims information upon request to law enforcement agency and subdivision (d)(1) further provides that that claims information requested by law enforcement shall be used solely for the purpose of investigating and prosecuting automobile insurance fraud. While the language of 1875.18(d)(1) indicates the scope as well as limitations on the information to be provided to law enforcement in broad and general terms, the cited statutes are silent as to actual mechanisms or processes that the CAB must use in order to ensure full compliance with the law. Proposed Section 2698.81(a) sets forth a preliminary requirement that allows the Commissioner to review and approve of a plan of operation prior to the performance any of the functions described in California Insurance Code Section 1875.11.

The Commissioner believes that it is critical that a review of a CAB's potential plan of operation occur prior to beginning actual operations to ensure that the written procedures and physical controls required by 2698.81(b)(1-3) in full compliance with the law and are ready to be implemented. The Commissioner, further believes that it not the best practice to eliminate either the prior approval requirement or initiate review of a CAB's the plan of operation after operations have begun because of the sensitive nature of insurance claims information and the immediate harm that may result if such information (such as a social security number) is used by unauthorized user or in an unauthorized manner.

(Adopt) Proposed Section 2698.81(b)(1)

Proposed Section 2698.81(b)(1) requires that every plan of operation submitted to the Insurance Commissioner for approval pursuant to Section 2698.81 shall expire two years from the initial date of approval by the Insurance Commissioner. This requirement is necessary to fully implement the provisions of California Insurance Code Section 1875.18. The expiration period was selected by the Insurance Commissioner to ensure that each plan of operation is regularly updated by the CAB and to ensure that all procedures set forth within the plan of operation are current and remain in full compliance with the regulations set forth in this subchapter.

(Adopt) Proposed Section 2698.81(b)(2)

To ensure that the required written procedures are adequate, the Commissioner has Proposed Section 2698.81(b)(2) requires that every plan of operation submitted to the Insurance Commissioner for approval (pursuant to Section 2698.81) shall set forth written procedures and physical controls to prevent the unauthorized access to its system of records, to prevent unauthorized disclosure of records and to prevent physical damage to or destruction of records. The subsection goes on to provide that at a minimum the policies set forth in the plan of operation shall fully comply with the provisions of

Section 2698.87(a)(1-5). The Commissioner believes that the requirement imposed by this section is critically important as insurance claims information deposited to a CAB may contain social security numbers or other sensitive information that if compromised could pose serious and immediate financial harm to individuals whose information is compromised.

The Insurance Commissioner has preliminarily determined that at a minimum the standards imposed by Section 2698.87(a)(1-5) should be used. These standards are loosely based on federal regulations (28 U.S.C 16.50-1) that regulate contracts for the operation of record systems. The Commissioner believes that these federal regulations, although they are not comparable in scope (the federal regulations cover a far broader set of issues), set forth some basic and sound parameters for the protection of information. (See Discussion re: Sections 2698.87(a)(1-5)) Finally, the Commissioner believes that the prior approval requirement of this section is also vital to ensure that all policies are in place from the beginning of operations.

(Adopt) Proposed Section 2698.81(b)(3)

Proposed Section 2698.81(b)(3) requires that every plan of operation submitted to the Insurance Commissioner for approval (pursuant to Section 2698.81) shall set forth written procedures regarding the use of subcontractors to perform any of the functions of the claims analysis bureau. The subsection goes on to provide that at a minimum the policies set forth in the plan of operation shall fully comply with the provisions of Section 2698.87(c)(1-2).

The Commissioner believes that the requirements imposed by this section are critically important as insurance claims information deposited to a CAB may contain social security numbers or other sensitive information that if compromised could pose serious and immediate financial harm to individuals whose information is compromised. The Commissioner has specifically selected the requirements of Section 2698.87(c)(1-2) as the minimum standard to be used as it requires not only that subcontractors receive the same training required of employees regarding security issue but also requires that the CAB provide a list of names, addresses and taxpayer identification numbers of subcontractors used on an annual basis to the Insurance Commissioner. Finally, the Commissioner believes that the prior approval requirement of this section is necessary to ensure that all policies are in place from the beginning of operations to ensure that no information is compromised.

(Adopt) Proposed Section 2698.82(a)

Proposed Section 2698.82(a) requires that insurers deposit claims information to a licensed Claims Analysis Bureau within 20 calendar days of receipt of insurance claims information. This section is a restatement of the statutory provision found at California Insurance Code Section 1876 and is not duplicative as it provides clarity and context as the proposed subsection is a predicate to the operation of California Insurance Code Section 1875.18. The Commissioner believes that subsection will enhance the regulated

entities ability to understand the statutory origins of the database and comply with the requirements of California Insurance Code Section 1875.18.

(Adopt) Proposed Section 2698.82(b)

Proposed Section 2698.82(b) requires insurers to deposit any supplemental claims information provided to the insurer during the life of the claim to the CAB within 30 days of receipt of the supplemental claims information. This section is reasonably necessary because 1876 requires that insurers report all automobile claims information to a licensed claims analysis bureau within 20 days of receipt of the information but does not specify the time within which an insurer must report supplemental claims information to the licensed CAB.

This section is reasonably necessary as the statutory scheme established by California Insurance Code Section.1875.18 does not any requirement regarding supplemental insurance claims information. The Commissioner has selected 30 days as he believes it is an appropriate amount of time within which an insurer must act and is long enough to allow the insurer to act and at the same time is not so unduly long that it impedes the flow of information to the Claims Analysis Bureau and ultimately to law enforcement.

(Adopt) Proposed Section 2698. 82(c)

Proposed Section 2698.82(c) prohibits any licensed claims analysis bureau from charging a fee to an insurer for the deposit of any claims information. This section is reasonably necessary in order to clarify that the statutory prohibition against charging fees to insurers set forth in 1875.12(b)(6) is operative here. Further, this regulation contains a necessary to fully implement the statutory scheme established by California Insurance Code Section.1875.18.

(Adopt) Proposed Section 2698.82(d)

Proposed Section 2698.82(d) provides that the Commissioner may perform audits (as he or she deems necessary) to determine that the appropriate insurance claims information is deposited within the time frames specified by these regulations. This section is reasonably necessary in order to fully implement the statutory scheme established by California Insurance Code Section.1875.18 and to ensure full compliance by all regulated entities.

(Adopt) Proposed Section 2698.83(a)

Proposed Section 2698.83(a) specifies that access to insurance claims information shall be made available to law enforcement agencies solely for the purpose of detection and investigation of insurance fraud. This section is a restatement of California Insurance Code Section 1875.18(d)(1). This section is not duplicative as it is reasonably necessary in order to fully implement the statutory scheme established by California Insurance

Code Section.1875.18 and to clarify that the insurance claim information specified by Section 1875.18 is only to be made available for specified purposes.

(Adopt) Proposed Section 2698.83(b)

Proposed Section 2698.83(b) clarifies that claims analysis bureaus shall not charge law enforcement any fee for access to insurance claims information. This proposed subsection is essentially a restatement of current law found at California Insurance Code Section 1875.12(b)(6)(B)(6); the cited statutory provision that requires claims analysis bureaus to stipulate that the information from the claims analysis bureau data base will be provided free of charge to law enforcement. The proposed subsection is reasonably necessary as it provides clarity by specifying that the claims analysis bureau shall not charge any fee to law enforcement.

(Adopt) Proposed Section 2698.83(c)

Proposed Section 2698.83(c) requires that a claims analysis bureau provide claims information to law enforcement in the form of a “match report” within 10 calendar days of receipt by the claims analysis bureau of a properly executed request. Insurance Code Section.1876 requires that insurers deposit claims information into a licensed claims analysis bureau and California Insurance Code Section 1875.18(d)(1) requires that claims analysis bureau provide law enforcement information reported by insurers; however, the statute is silent as to the time, and manner in which the claims analysis bureau must respond to law enforcement’s request for information. The proposed subsection is reasonably necessary as it provides clarity by specifying that a claims analysis bureau shall provide insurance claims information to law enforcement in the form of a “match report” within 10 calendar days of receipt of the request by law enforcement.

The Commissioner believes that the 10 day time period within which a match report must be generated is a sufficient amount of time within which a CAB would be able to generate the required match report. At the same time the Commissioner believes, the 10 day time period within which to provide information is brief enough that it does not unduly impede or slow down the investigation or prosecution processes. Finally, it should be noted that although the Commissioner is promulgating new regulations (herein) pursuant to California Insurance Code Section 1875.18(d)(2) and did not readopt any of the prior regulations regarding the Automobile Insurance Claims Depository, the time period within which a claims analysis bureau must provide a match report remains consistent with the time period specified in the repealed regulations as the Commissioner continues to believe that it is appropriate (regardless of whether it is the AICD or a CAB that provides the match report to law enforcement).

(Adopt) Proposed Section 2698.83(d)

Proposed Section 2698.83(d) requires that a properly executed written request for insurance claims information (required by Proposed Section 2698.82(c)) shall contain the

following information: (1) the specific insurance claims information requested; and 2) the identity of the requesting party including contact information.

The proposed section is necessary because, while California Insurance Code Section 1875.18(a) requires that claims analysis bureau provide law enforcement with access to insurance claims information reported to the claims analysis bureau the statute is silent as to the procedure to be followed by law enforcement that seek insurance claims information. The proposed subsection is reasonably necessary as it sets forth the procedure to be followed by specifying the necessary elements to be contained in the written request. Moreover, in drafting this particular subsection the Commissioner has sought to effectuate the stated legislative intent of the statute by assisting law enforcement in the investigation and prosecution of insurance fraud. The Commissioner has specifically limited the required information that must be set forth in the request to a minimal level to increase efficiency and the speed at which match reports can be generated.

(Adopt) Proposed Section 2698.83(e)

Section 2698.83(e) provides that where a claims analysis bureau receives a written request for information from a law enforcement agency that does not comply with the provisions of 2698.83(e)(1)-(2)) the claims analysis bureau shall specify the manner of non-compliance and return the request to the law enforcement agency making the request for either correction, amendment and re-submittal or withdrawal of the request.

(Adopt) Proposed Section 2698.84(a)

Section 2698.84(a) provides that any person who believes that any information deposited or maintained by a (CAB) is incorrect may proceed under the provisions of California Insurance Code Section 12929 and request in writing that the Commissioner investigate whether or not the information set forth is correct. This provision is reasonably necessary as California Insurance Code Section 1875.18 (d)(2) specifically requires that the Commissioner establish rules governing the access to and use of information requested or obtained pursuant to California Insurance Code Section 1875.18 and the circumstances under which that information may be inspected or corrected ,yet, the statute provides no guidance as to those circumstances. This proposed section provides specificity in that it clearly directs the individual that believes that records with respect to that individual, or any vehicle owned by that individual, are incorrect, to proceed under the provisions of California Insurance Code Section 12929.

(Adopt) Proposed Section 2698.84(b)

Proposed Section 2698.84(b) provides that if after an investigation conducted by the Commissioner, pursuant to California Insurance Code Section 12929, the Commissioner determines that the information deposited or maintained by the CAB is incorrect the Commissioner shall issue an order that requires the claims analysis bureau (CAB) to correct the information within the time period specified by order .This provision is

necessary as California Insurance Code Section 1875.18(d)(2) specifically requires that the Commissioner establish rules governing the access to and use of information requested or obtained pursuant to California Insurance Code Section 1875.18 and the circumstances under which that information may be inspected or corrected.

This proposed section provides specificity and clarity as it describes the procedure the Commissioner is required to follow if the Commissioner's investigation reveals that the information deposited or maintained in a (CAB) is incorrect. This subsection is not merely duplicative of California Insurance Code Section 12929 as it provides clear guidance regarding the applicability of the section and makes the regulation easier to understand and apply.

(Adopt) Proposed Section 2698.84(c)

Proposed Section 2698.84(c) requires that any Claims Analysis Bureau that is ordered by the Commissioner to correct claims information (pursuant to Section 2698.84(b)) shall send a copy of the order of the Commissioner to any person requesting verification that an order of the Commissioner has been issued within 10 days of the receipt of the request. This section is necessary as it provides needed specificity to fully implement California Insurance Code Section 1875.18 and clarifies the obligations of the Claims Analysis Bureau to send a copy of the order of the Commissioner to any person requesting verification of the order within ten days of receipt of the request.

(Adopt) Proposed Section 2698.85(a)

Proposed Section 2698.85(a) sets forth the Commissioner's authority to perform an examination of insurance claims information transmitted to any CAB that the Commissioner may deem necessary. The subsection goes on to provide that the Commissioner shall have access to all reports and audit reports and audit working papers relating to the insurer's receipt, compilation and transmission and of insurance claims information. This section is necessary to fully implement California Insurance Code Section 1875.18 in that it delineates the full scope of the Insurance Commissioner's statutory powers (under California Insurance Code Section 1875.18) to examine insurance claims information as well as all reports and audit reports and audit working papers relating to the insurer's receipt, compilation and transmission and of insurance claims information.

This section allows the regulated entities to understand the statutory power of the Commissioner to enforce the regulations.

(Adopt) Proposed Section 2698.85(b)

Proposed Section 2698.85(b) provides that the expenses of any examination of insurance claims information conducted pursuant to 1875.18 shall be borne by the examinee. This section is necessary to fully implement California Insurance Code Section 1875.18 in that it clarifies and delineates the scope of the Insurance Commissioner's statutory powers

that are conferred upon him by California Insurance Code Sections 736 and Sections 1875.18 to examine insurance claims information and to require the examinee to bear the cost. This section is also necessary for purposes of clarity as this section specifies who shall bear the cost of examination the Claims Analysis Bureau for compliance with this subchapter.

(Adopt) Proposed Section 2698.86(a)

Proposed Section 2698.86(a) provides that a CAB shall not release any insurance claims information in response to a Public Records Act Request. This section is necessary as it sets forth the statutory prohibition found at California Insurance Code 1875.16 (against disclosure of insurance claims information in response to a Public Records Act Request). The Commissioner believes that this subsection is not merely duplicative of the statute as it enhances clarity and compliance by the regulated entities of all applicable requirements to be followed by the regulated entities set forth in the regulations.

Proposed Section 2698.86(b)

Proposed Section 2698.85(a) provides that a CAB shall not release any insurance claims information for public inspection unless: (1) such time as its release is required in connection with a criminal or civil proceeding; or 2) is necessary to analyze or present information for release in an insurance claims information annual report.

This section is necessary as it delineates the circumstances under which a CAB may disclose insurance claims information in accordance with the provisions of California Insurance Code 1875.16. This section is not duplicative of 1875.16 as it simply clarifies the applicability of statutory provisions and allows regulated entities to more easily understand the scope of permissible conduct.

Proposed Section 2698.87(a)

Proposed Section 2698.87(a) provides that every CAB shall establish and adopt administrative policies and procedures and physical controls to prevent: unauthorized access to its system of records, unauthorized disclosure of records; and physical damage to or destruction of records. The subsection goes on to provide that at a minimum:

- (1) the records are protected from public view;
- (2) the area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;
- (3) the records are inaccessible to unauthorized persons outside of business hours
- (4) the records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form; and,
- (5) direct access to the records is restricted to only those individuals who must have direct access to records in order to perform their duties.

In drafting this subsection the Commissioner sought to balance the two competing statutory objectives set forth in California Insurance Code 1875.18. The Commissioner is attempting to harmonize the privacy interests of persons that may have a privacy interest in certain insurance claims information deposited with a CAB with the needs of law enforcement to have secure access to the subject insurance claims information. In seeking to reconcile these two objectives, the Commissioner reviewed other current regulations that govern the security of records systems. The Commissioner determined that federal regulations issued by the Department of Justice that are found at 28 Code of Federal Regulation 16.51-2 contain appropriate language and the Commissioner has used the language set forth in the cited federal regulation as the basis for the rules set forth at Section 2698.87(a). It should be noted, however, that the Commissioner has made a determination that the federal regulations cited herein, are not “comparable regulations” within the meaning of the California Government Code as the federal regulations are far broader in scope and regulate a multitude of complex issues pertaining to the operations and personnel and document classification issues specific to the Office of the U.S Attorney General.

Section 2698.87(b)

Section 2698.87(b) provides that every Claims Analysis Bureau shall provide annual training regarding its administrative policies and procedures and physical controls to all employees to prevent: unauthorized access to its system of records, unauthorized disclosure of records; and physical damage to or destruction of records. The Commissioner has imposed this requirement in order to fully implement California Insurance Code Section 1875.18. The Commissioner selected the requirement of annual training regarding security procedures in order to ensure that the training is current and the employees of the CAB have a relatively frequent chance to refresh and enhance their knowledge of applicable security procedures.

Section 2698.87(c)

Section 2698.87(c) provides that a CAB may delegate any functions described in California Insurance Code 1875.11(b) to another entity providing: (1) the CAB provides annual training and instruction required by subsection 2698.87(b) to all individuals performing any aspect of the function delegated by the CAB; and 2) the CAB annually provides to the Insurance Commissioner a list of the names, addresses and the Taxpayer Identification Number (TIN) of the individuals that perform any aspect of the function delegated by the CAB. The Commissioner has imposed this requirement as he recognizes the possibility that a CAB may enter into subcontracts in the performance of statutory functions.

The Commissioner believes that the requirements imposed by subsections 2698.87(c)(1) will ensure all subcontractors have an adequate level of knowledge regarding the security procedures adopted by the CAB and that the provisions of subsection 2698.87(c)(2) that requires that the CAB provide the Commissioner with the names, addresses and Taxpayer Identification Numbers of subcontractors will assist the Commissioner in

conducting a full examination of any CAB pursuant to the provisions of subsection 2698.85.

Section 2698.87(d)

Proposed Section 2698.87(d) provides that every Claims Analysis Bureau shall maintain records establishing full compliance with the provisions of subsection 2698.87 and shall provide any requested information regarding any insurance claims information deposited with a CAB to the Insurance Commissioner upon request. The Commissioner drafted this section to ensure not only that the CAB maintains adequate records for the Commissioner to review but that if the Commissioner requests additional information it shall be furnished upon the Commissioner's request.

These provisions are necessary to fully implement California Insurance Code Section 1875.18 and ensure that it can be adequately enforced. The Commissioner believes that because insurance claims information contains sensitive information, the Commissioner must be able to quickly and effectively monitor the flow of insurance claims information and determine if violations of the regulations are occurring to avoid potentially irreparable financial consequences that may flow from the unauthorized release of insurance claims information. Accordingly, the regulation allows the Commissioner to obtain documents upon request without specifying a particular length of notice.

Proposed Section 2698.88(a)

Proposed Section 2698.88(a) provides that a claims analysis bureau or any employee of a claims analysis bureau that provides insurance claims information to another person or entity [pursuant to California Insurance Code section 1875.18] shall have the same immunity provided under California Insurance Code Section 791.21 to any person that discloses personal or privileged information. This subsection goes on to provide, however, that the immunity provided by this subsection shall not be provided for the disclosure of false information with malice or willful intent to injure any person.

This section is necessary as it sets forth the scope of statutory immunity afforded by California Insurance Code Section 1875.16 from civil actions for persons that disclose insurance claims information in accordance with the provisions of California Insurance Code 1875.18. This section is not duplicative of existent law as it is necessary to clarify and inform the regulated entities of the immunities provided by law.

Proposed Section 2698.89(a)

Proposed Section 2698.89(a) provides that the Commissioner may suspend or revoke the license of a CAB if the CAB fails to comply with any provision of this subchapter. This section is necessary to clarify the law and fully implement California Insurance Code Section 1875.18. It should be noted that the licensing scheme that grants licensure to Claims Analysis Bureaus [California Insurance Code Section, 1875.11-16] does not contain an explicit provision authorizing the revocation or suspension of licensure. To

remedy this problem the Commissioner included an explicit provision setting forth his implied powers pursuant to California Insurance Code 12921(a) and 12926 as the statutory basis for revocation and suspension of licensure.

Proposed Section 2698.89(b)

Proposed Section 2698.89(b) provides that penalties for noncompliance with these regulations are cumulative and shall be in addition to any other penalties or remedies provided by the Insurance Code. This section is necessary to clarify the law and fully implement California Insurance Code Section 1875.18.

IDENTIFICATION OF STUDIES AND REPORTS

The Commissioner did not rely on any reports or studies in the development of the regulations proposed herein.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of the proposed regulations would not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

The Commissioner has not considered any other alternatives to the regulations proposed herein.

IMPACT ON SMALL BUSINESSES

The Commissioner has preliminarily determined that the regulations proposed herein will not have an impact on small business as defined in the California Government Code.