



**Comments of Consumer Watchdog Regarding
California Department of Insurance Workshop and Draft Text of Regulation
Group Insurance Plans Under Insurance Code Section 1861.12**

REG-2019-00015

February 28, 2020

Consumer Watchdog submits the following comments in response to the Department of Insurance's December 23, 2019 workshop draft regulation regarding group insurance plans under Insurance Code section 1861.12 and the related January 28, 2020 workshop.

I. General Comments on Draft Regulation

We see this workshop and the draft regulation as positive outgrowths of Consumer Watchdog's February 2019 petition to Commissioner Lara calling for a ban on the practice of arbitrarily surcharging drivers based on their education level and occupation. Through our numerous challenges to insurers' illegal use of occupation- and education-based discounts in their rate and class plan filings, as well as our January 2014 petition to then-Commissioner Dave Jones, Consumer Watchdog has repeatedly brought to the Department's attention that insurers' use of occupation and education level to rate drivers has an *unfairly discriminatory* impact on low-income drivers and communities of color, and is therefore unlawful.

Consumer Watchdog's analysis of online premium quotes provided to the Department in January and June 2019 revealed that seven of the ten largest auto insurers in California overcharge drivers without college degrees and those without white-collar or other highly skilled occupations. The surcharges at Farmers, GEICO, Progressive, AAA, Allstate, Liberty Mutual, and Mercury ranged from 3.5% to 14.31% based on a person's occupation and education level. This violates Proposition 103's mandates under section 1861.02 that auto insurance premiums be based primarily on factors most within the driver's control—driving safety record, annual mileage, and years driving experience—and only such other factors that have a substantial relationship to risk of loss and that the Commissioner has adopted by regulation. Education and occupation are not approved rating factors under California Code of Regulations, title 10, section 2632.5(d) of the auto rating factor regulations, nor are these generic classifications a "group" under Insurance Code section 1861.12.

In September 2019, the Department's investigatory hearing and analysis of industry data confirmed the discriminatory impacts that Consumer Watchdog highlighted in our petitions for rulemaking and in our previous challenges to insurers' rate and class plan filings: that insurance companies' use of "affinity discounts" based on generic occupation and education classifications results in higher premiums for drivers who have lower levels of educational attainment and reside in ZIP codes with lower per capita incomes (reflecting job status) and in which

communities of color predominate. In particular, drivers who live in ZIP codes with higher average incomes are more than twice as likely to receive “affinity discounts;”¹ drivers who reside in ZIP codes with lower average educational attainment are more likely to *not qualify* for “affinity discounts;”² and drivers who reside in predominately minority ZIP codes are less likely to qualify for “affinity discounts” compared to those who live in ZIP codes with a predominately white population.³ The racial and economic disparities caused by this rating practice are unfairly discriminatory under Proposition 103 and violate Californians’ civil rights by allowing insurers to charge non-white, lower-wage drivers more.

Still, rate applications with these disparities continue to be approved by the Commissioner and the Department today. Consequently, low-income Californians are paying unjustified and discriminatory surcharges based on their occupation or education. Consumer Watchdog urges the Commissioner to rid California’s insurance marketplace of this pernicious form of discrimination. It is imperative that the Department’s proposed regulation directly address the disparities caused by the use of occupation and education, or any generic classification pertaining to either, to set auto insurance premiums.

While Consumer Watchdog urges the Department to move forward swiftly with the rulemaking process, we are concerned that the proposed regulation, as currently drafted, does not yet guarantee that insurers’ discriminatory use of education and occupation ends, or that insurance companies are required to comply with the plain text of Proposition 103 and the intent of California voters when they passed this ballot initiative. To achieve the goals of this rulemaking process, the proposed regulation must ensure that the discriminatory impact caused by the current use of occupation and education level is not merely replicated and maintained by insurers under a new regulatory framework.

In particular, section 2644.27.5(f) of the proposed regulation is critical to achieving this goal. Section 2644.27.5(f) is intended to supply a legal standard by which a company’s mix of proposed group plans can be measured to determine whether the company is complying with the anti-discrimination protections of Proposition 103. One of the Department’s stated aims is to ensure that the socioeconomic disparities and unfair discrimination arising from insurers’ current

¹ Only 26% of drivers in the lowest per capita income ZIP codes receive these “affinity discounts,” compared to 55% of drivers in the highest per capita income ZIP codes. (See California Department of Insurance, Investigatory Hearing on the Use of Group Rating in Private Passenger Automobile Insurance [Sept. 17, 2019], http://www.insurance.ca.gov/0400-news/0200-studies-reports/upload/CDI-Affinity-Group-Hearing-Powerpoint-9_17_19_Public.pdf.)

² In ZIP codes with the lowest average education attainment, 72% of drivers do not receive an “affinity discount.” By contrast, only 44% of drivers residing in ZIP codes with the highest average education attainment do not receive a discount. (*Id.*)

³ Only 29% of those in predominately minority ZIP codes receive “affinity discounts” as compared with 47% of drivers living in ZIP codes with a predominately white population. Additionally, 75% of drivers in Underserved Communities as defined by California Code of Regulations title 10, section 2646.6(c) do not receive an “affinity discount.” (*Id.*)

practice of using occupation and education to set premiums does not continue under the regulatory framework proposed by the Department. However, Consumer Watchdog has concerns that the proposed subdivision (f) as currently drafted will not eradicate the disproportionate and adverse impact that the current industry practice of offering group plans has on lower-income, less-educated drivers and communities of color. (See Part III.H. below for Consumer Watchdog's specific comments and proposed edits to subdivision (f)'s "groups as a whole" provision of the December 23 draft text.)

Additionally, the proposed regulation must set forth in unambiguous terms the definitions for "group" and "group plans," as well as a clear and consistent rating methodology and uniform filing requirements. Otherwise, insurers will attempt new arbitrary or unfairly discriminatory ways to rate group plans. (See Part III.C., D. and G. below for Consumer Watchdog's specific comments and proposed edits to the proposed "definitions" and "filing requirement" provisions of the December 23 draft text.)

If done right, the proposed regulations will eliminate the discriminatory use of occupation and education to set auto insurance premiums and put an end to the inequitable distribution of the benefits of group insurance plans. To achieve this goal, Consumer Watchdog has provided in Part III below provision-by-provision comments on the proposed regulation and proposed edits to address specific concerns with the December 23 draft text.

II. "Group Insurance Plans" Under Proposition 103: The Statutory Framework

Insurance companies have invoked Insurance Code section 1861.12 to support the use of generic "occupation" and "education" classifications to provide discounted rates and premiums, even though those rating factors are unlawful because they have never been adopted pursuant to the stringent requirements of section 1861.02 and thus are "unfairly discriminatory" under section 1861.05(a). The insurance companies' argument creates a conflict between section 1861.12 and the other two sections and, in effect, argues that section 1861.12 overrides sections 1861.02 and 1861.05.

The industry's interpretation of the statutes is incorrect. For the purpose of promulgating a regulation concerning the use of "affinity groups," it is critical that the Commissioner adopt the correct interpretation of the statutory framework.

Section 1861.02. When it comes to Proposition 103's regulation of auto insurance, section 1861.02(a) is the place to start. It states:

- (a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:
- (1) The insured's driving safety record.
 - (2) The number of miles he or she drives annually.
 - (3) The number of years of driving experience the insured has had.

(4) Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums. *Notwithstanding any other provision of law, the use of any criterion without approval shall constitute unfair discrimination.* (Italics added.)

The Department's regulations define a rating factor as "any factor, including discounts, used by an insurer which establishes or affects the rates, premiums, or charges assessed for a policy of automobile insurance." (10 CCR § 2632.2.)

Insurance companies are currently utilizing generic "occupation" and "education" classifications to set drivers' premiums under the guise of "affinity group" discounts, but no insurance company has presented *any evidence* that education level or occupation bears *any* relationship to the risk of loss, much less the "*substantial* relationship" to the risk of loss required by the statute. More importantly, the Commissioner has never adopted, by regulation, any such classification as an optional automobile rating factor.

Section 1861.05. Section 1861.02(a)(4) directly invokes the "unfairly discriminatory" standard set forth in section 1861.05(a), which governs the regulation of all lines of property-casualty insurance that are subject to Proposition 103. It states:

(a) No rate shall be approved or remain in effect which is excessive, inadequate, *unfairly discriminatory* or *otherwise in violation of this chapter.* (Italics added.)

Although Proposition 103 adopted some language common to the regulation of insurance that preceded it in California and elsewhere in the United States, Proposition 103's statutory framework is "unique" in the nation. (*20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 289.) Its application of the "unfairly discriminatory" standard is a good example. Section 1861.02 forbids the use of any characteristic of a driver to set premiums except the three mandatory factors and approved optional rating factors. For purposes of section 1861.05(a), the *use* of an unapproved rating factor is per se "unfair discrimination." (Ins. Code § 1861.02(a)(4).)

Thus, whereas in other states, "unfair discrimination" typically refers to the impact of rates, Proposition 103 establishes a normative standard for "unfair discrimination" that extends beyond rates, to the *use* of rating factors and other practices.

Finally, Proposition 103 explicitly makes the Unruh Civil Rights Act apply to the insurance industry. (Ins. Code § 1861.03(a).) While the Unruh Civil Rights Act does not directly govern the regulation of rates under Proposition 103, it specifies the kinds of practices or classifications that would constitute "unfair discrimination" for purposes of section 1861.05(a), in addition to the unfair rating practices prohibited directly by sections 1861.02 and 1861.05(a). Citing sections 1861.02, 1861.05 and 1861.03, and Proposition 103's stated purpose of ensuring that insurance is "fair, available, and affordable for all Californians," the California Supreme Court has determined that Proposition 103 "also addresses the underlying factors that may impermissibly affect rates charged by insurers and lead to insurance that is unfair, unavailable,

and unaffordable.” (*State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1041–1042.)

Section 1861.12. In this workshop, the Department has chosen to address the issue of insurers’ unlawful use of occupation and education not by the enforcement of section 1861.02, but rather through proposed regulations to implement a third provision of Proposition 103, section 1861.12, pertaining to “group plans.” That section states:

Any insurer may issue any insurance coverage on a group plan, without restriction as to the purpose of the group, occupation or type of group. *Group insurance rates shall not be considered to be unfairly discriminatory*, if they are averaged broadly among persons insured under the group plan. (Italics added.)

In defense of insurers’ use of occupation and education to grant discounts predominantly to white-collar and other highly-skilled occupations requiring college degrees, the industry asserts that the language “without restriction as to the purpose of the group, occupation or type of group” in section 1861.12 authorizes insurance companies to base premiums on a driver’s occupation and education.

The industry’s interpretation of the statute creates two irreconcilable conflicts: the first, between the mandate of section 1861.02(a), which states that *only approved rating factors may be used* to set auto insurance premiums, and section 1861.12, which the industry claims authorizes their practice of using generic occupational and educational classifications to set rates and premiums, even though those rating factors have never been authorized. Second, the industry’s argument manufactures an irreconcilable conflict between the directive in section 1861.02(a)(4), which holds that the use of unapproved rating factors is “unfairly discriminatory,” and section 1861.12, which says that “group insurance rates shall not be considered to be unfairly discriminatory.”

Statutes must not be construed to conflict with each other, and in fact, the plain language of the Proposition 103 statutory framework, correctly construed, is not ambiguous, and contains *none* of the conflicts that the insurance industry’s interpretation relies upon. The key to the correct interpretation of section 1861.12 is its plain language and historical context. A detailed analysis of the text of section 1861.12 bears this out:

“issue any insurance coverage on a group plan”

Section 1861.12 authorizes insurance companies to sell “group plan[s].” A group insurance plan is properly understood as an insurance policy that provides insurance coverage to members of a legitimate organized group,⁴ not to generic classifications of occupations as the

⁴ As a landmark study of group insurance described it in 1970, “Group insurance, as its name implies, seeks to utilize in marketing and administering insurance for large numbers of people the sponsorship, resources, and other assistance of an organized group to which the prospective

majority of the top ten insurers are doing now. The phrase “issue any insurance coverage on a group plan” was intended to authorize insurers to issue a specific “insurance plan” to an organized group. It does *not* authorize insurance companies to base any particular driver’s rate or premium on their occupation, education, or any other impermissible rating factor; such rating factors are governed by section 1861.02.

Insurance companies have been permitted by the Department to style their categorization of people by their occupation and education as “*affinity groups*,” but that term appears nowhere in the statute, and while it invokes the word “groups,” the industry’s use of occupation or education has nothing to do with a “insurance coverage on a group plan.” “Affinity groups” are not “group plans.” “Affinity groups” are merely marketing schemes concocted by insurance companies based on impermissible characteristics such as occupational and educational status.

“without restriction as to the purpose of the group, occupation or type of group”

This phrase authorizes “group plans” to be issued to organized groups without restriction as to (or regardless of) the group’s purpose, type of group, or occupation. The word “occupation” does not refer to a generic listing of occupations divorced from any organized group, nor does it authorize the use of generic occupation classifications as a rating factor. Rather, the reference is properly understood in its historical context to refer to a group plan issued to an employer.

The purpose of this phrase was to eliminate historical barriers to the sale of “group insurance plans” to employers or other organized groups. In the early 1930s, some insurers began writing what were then called “fictitious fleet” auto insurance policies to employers. Under the terms of these policies, employees were allowed to insure personal vehicles under an employer’s fleet automobile policy.⁵ Employees would receive the benefit of fleet discounts and experience credits.⁶ This fictitious grouping of “fleet vehicles” met with political resistance, and some insurance commissioners sought to prohibit this arrangement.⁷ The practice largely fell dormant in the face of that opposition, but reemerged during the 1950s. Once again, insurance agents successfully lobbied for legal prohibitions – statutes or administrative rulings – against this practice.⁸

The ground upon which group insurance plans were barred by regulators in the 1950s was the determination that by suppressing differences in risks or expenses, rates for group insurance plans were “unfairly discriminatory.” By the early 1970s, however, many state

insureds belong.” (Spencer Kimball & Herbert Denenberg, *Mass Mktg. of Prop. and Liab. Ins.* 1 (1970), p. 6.)

⁵ Jon S. Hanson, Nat’l Ass’n of Ins. Commissioners, *The Regulation of Mass Mktg. in Prop. and Liab. Ins.* (1971), reprinted in *Proceedings of the Nat’l Ass’n of Ins. Commissioners, 1972–74* (pts. 1–2) NAIC Proc. 90 (1971) [hereinafter “NAIC Report”], at 114.

⁶ Bernard L. Webb, *Mass Merch. of Auto. Ins.* (1969), at 10.

⁷ NAIC Report at 196.

⁸ NAIC Report at 197.

regulators either quietly acquiesced or expressly authorized group insurance plans for automobile insurance.

“Group insurance rates shall not be considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan.”

An extensive report on group insurance plans published by the NAIC in 1972 addressed the “unfairly discriminatory” argument this way:

Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are *averaged broadly* among persons insured under a group, franchise or blanket policy.⁹ (Italics added.)

As is clear from the preceding historical analysis, prior to Proposition 103 group insurance plans were considered “unfairly discriminatory” on the ground that they did not correctly account for differences between individuals’ risk of loss (or the differential in expenses associated with writing policies for various customers). As an influential 1986 report by J. Robert Hunter to the California Assembly explained:

For decades most states have had anti-group laws: laws that prohibit businesses or individuals from banding together to buy insurance as a group or to form a self-insurance group.

...

California does not have an anti-group law. However, the Department of Insurance (DOI) has issued conflicting opinions regarding group auto insurance, asserting that group rating may violate unfair discrimination statutes. Our research found no large private passenger auto groups in existence in California.¹⁰

Proposition 103 repealed Insurance Code section 1852, and replaced it, in a significantly modified form, with section 1861.05, and added section 1861.12.

To enable and encourage organized groups to negotiate group insurance plans, section 1861.12 expressly rejects the pre-Proposition 103 reasoning that rates for group insurance plans are inherently “unfairly discriminatory.” It specifies that the rates for a “group insurance plan” shall not be “considered unfairly discriminatory” simply because they are “averaged broadly” among members of the “group insurance plan.”

⁹ Act of Aug. 21, 1969, ch. 144, 1969 Wis. Sess. Laws 249 (emphasis added) (codified as Wis. Ins. Laws § 625.11(4)).

¹⁰ J. Robert Hunter, Nat’l Ins. Consumers Org. (NICO), *Ins. in California: A 1986 Status Report for The Assembly* (October 1986), pp. V–16.

Some group insurance plans in lines of insurance outside of property casualty insurance historically charged the same average base rate to all group members; an example is group legal insurance plans. However, other group plans rely on classifications to set premiums on top of the overall average group rate – life insurance (age), disability (smoker/non-smoker). For private passenger automobile insurance, Proposition 103 established the rating factor system under section 1861.02, which created a new methodology for setting auto insurance premiums. It determines not only which rating factors can be used, but also their “weight” when applied to an insurance company’s customers. Consistent with section 1861.02’s requirements, insurers must still apply the mandatory and any permissible optional rating factors in determining the final premiums of individuals in group plans issued for private passenger automobile insurance after the group rate is determined under section 1861.12.

The Proposition 103 Statutory Framework Is a Consistent, Unified Whole

To summarize, Proposition 103 enacted an internally consistent statutory framework governing auto insurance rates and premiums. The voters established stringent regulation of rates and practices (applicable to all lines of property-casualty) in section 1861.05(a), utilizing not only the common metrics of “excessive and inadequate,” but an expanded prohibition on rates and practices that are “unfairly discriminatory.”

In section 1861.02(a), the voters supplemented section 1861.05 with a more detailed regulatory framework for determining individuals’ premiums in auto insurance, specifying both the rating factors that insurers must use and may use, and their weight. The use of unauthorized rating factors—such as the insurers’ use of occupation or education today—is made per se “unfairly discriminatory” for purposes of section 1861.05.

Finally, section 1861.12 was enacted to authorize and encourage consumers to band together in organized groups to leverage their collective negotiating power just as large corporations do: to negotiate group insurance to lower rates under a “group plan.” In the context of auto insurance, group insurance plans established under section 1861.12 must still set their members’ premiums in compliance with section 1861.02 and the auto rating factor regulations under section 2632.1 et seq.

III. Comments on Specific Provisions of Proposed Regulations

A. Section 2632.9(g) – Use of Data

CDI’s Proposed Draft Text

(g) If an insurer elects to use the optional rating factor Group Membership pursuant to section 2632.5(d)(14) and the data used to perform the Analysis of Rating Factors required by section 2632.7 is not fully credible, the data shall be credibility-adjusted using the balanced relativity described in section 2632.7(c) or the indicated relativity from an approved class plan of another insurer with a similar group and a similar book of business.

CWD Comments

There may be potential ambiguity as to whether the term “insurer” as used in this provision and throughout the draft text means a specific company, or all insurance companies within the group of insurance companies. To avoid any confusion, we suggest that this term either be defined or clarified.

Additionally, there is no clear metric for determining whether a group of another insurer or the book of business of another insurer is “similar.” To avoid this problem, the group plans of each insurer should be based on their own data, using the methodology described in Section 2632.7(c) if the data is not credible. In other words, insurers should not be allowed to “me too” relativities in other insurers’ approved class plans.

However, if insurance companies are permitted to utilize other insurers’ data, the reference to “indicated” relativity is vague. Sometimes filings will contain indicated, selected, and approved values. Consumer Watchdog suggests that “indicated” be changed to “approved” or “implemented” relativity.

CWD Proposed Edit to Section 2632.9(g)¹¹

(g) If an insurer elects to use the optional rating factor Group Membership pursuant to section 2632.5(d)(14) and the data used to perform the Analysis of Rating Factors required by section 2632.7 is not fully credible, the data shall be credibility-adjusted using the balanced relativity described in section 2632.7(c) ~~or the indicated relativity from an approved class plan of another insurer with a similar group and a similar book of business.~~

B. Section 2644.27.5(a) – Group Insurance Plans – Overview

CDI’s Proposed Draft Text

Pursuant to Insurance Code Section 1861.12, insurers may issue any insurance coverage on a group plan, without restriction as to the purpose of the group, occupation, or type of group. Group insurance rates shall not be considered unfairly discriminatory if they are averaged broadly among persons insured under the group plan. Private passenger automobile insurance group plans remain subject to Section 1861.02 in accordance with this section 2644.27.5; insurers may use only rating factors adopted by the Commissioner. Pursuant to Section 1861.03, subdivision (a), the Unruh Civil Rights Act applies to any group insurance plans issued pursuant to Section 1861.12. The Unruh Civil Rights Act entitles all persons to full and equal advantages, privileges, and services in the business of insurance, no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. The Unruh Civil

¹¹ All CWD proposed additions to CDI draft regulation text are in **bold/underline** and all deletions are in strikethrough.

Rights Act prohibits pricing differentials in the business of insurance if they are unreasonable, arbitrary, or invidious.

CWD Comments

In addition to referencing the Unruh Civil Rights Act, Consumer Watchdog believes section 2644.27.5(a) should reference the prohibition against unfairly discriminatory rates under Insurance Code section 1861.05(a). This provision of the Insurance Code establishes the primary standards under Proposition 103 governing rates and premiums and other factors that may render insurance unfair, unavailable, or unaffordable. The Unruh Civil Rights Act, made applicable to insurance companies under section 1861.03, prohibits businesses, including insurers, from engaging in arbitrary and invidious discrimination against individuals on the basis of specified grounds, such as race or religion. Use of such classifications to rate or underwrite individuals would be per se unfairly discriminatory and prohibited under Proposition 103. The Unruh Civil Rights Act also establishes standards for civil liability, which are the subject of a significant body of case law. While the Unruh Civil Rights Act's civil liability standards and case law concerning when "pricing differentials" would be unreasonable, arbitrary, or invidious under that Act could be applied as a separate basis for establishing that an insurer's rating or underwriting practices are discriminatory *in addition to section 1861.05*, the voters did not import those standards directly into section 1861.05 or 1861.12. Accordingly, Consumer Watchdog believes that the draft "Group Insurance Plans – Overview" subdivision (a) language must be amended as proposed below to avoid possible confusion concerning which standards apply.

CWD Proposed Edit to Section 2644.27.5(a)

Pursuant to Insurance Code Section 1861.12, insurers may issue any insurance coverage on a group plan, without restriction as to the purpose of the group, occupation, or type of group. **Rates for Group insurance rates plans** shall not be considered unfairly discriminatory if they are averaged broadly among persons insured under the group plan. Private passenger automobile insurance group plans remain subject to Sections 1861.02 **and 1861.05** in accordance with this section 2644.27.5; **and Subchapter 4.7. Insurers may use only rating factors adopted by the Commissioner, and failure to comply with this section 2644.27.5 shall constitute unfair discrimination under Section 1861.02, subdivision (a)(4) and Section 1861.05, subdivision (a).** Pursuant to Section 1861.03, subdivision (a), the Unruh Civil Rights Act applies to any group insurance plans issued pursuant to Section 1861.12. The Unruh Civil Rights Act, **applicable to the business of insurance under Section 1861.03**, entitles all persons to full and equal advantages, privileges, and services in the business of insurance, no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. ~~The Unruh Civil Rights Act prohibits pricing differentials in the business of insurance if they are unreasonable, arbitrary, or invidious.~~

C. Section 2644.27.5(b)(1)–(2) – Definitions – “Group” and “Group Plan”

CDI’s Proposed Draft Text

(b) Definitions.

(1) For purposes of Section 1861.12, and this section, “group” shall mean only:

(A) A set of individuals who:

1. Choose to act and/or associate in concert for any lawful purpose;
2. In the ordinary course, renew their membership in, or pay dues to, the group at regular intervals, and
3. Satisfy subdivision (b)(1)(A)1. and (b)(1)(A)2. of this section before any insurer, insurance producer, insurer trade association, or any other entity or person required to be licensed or granted a Certificate of Authority by the Insurance Commissioner interacts with the group. This subdivision (b)(1)(A)3. does not apply to groups consisting entirely of insurance producers, or consisting entirely of any other entities or persons required to be licensed or granted a Certificate of Authority by the Insurance Commissioner, which groups fall within the definition of “group” set forth in this subdivision (b)(1) provided that they satisfy the requirements stated in subdivisions (b)(1)(A)1. and (b)(1)(A)2. of this section; or

(B) The employees of a particular employer.

(2) A “group plan” for purposes of 1861.12 and this section shall mean a method of selling property-casualty insurance wherein:

(A) Such insurance is offered to members of a particular group as defined in subdivision (b)(1) of this section; and

(B) Such group has a written agreement with the insurer detailing the terms of the group plan relationship. However, groups whose membership is based exclusively on military status need not have a written agreement with the insurer detailing the terms of the group plan relationship in order to be offered insurance under a group plan as that term is defined in this subdivision (b)(2).

CWD Comments

Consumer Watchdog’s primary concern is that the definitions of “group” and “group plan” must clearly preclude what insurance companies currently do, which is simply to create lists of generic occupations with related educational requirements and call that an

“affinity group,” contrary to the language and intent of section 1861.12 and in violation of section 1861.02, which requires that all such rating factors be adopted by regulation and have a substantial relationship to risk of loss. As proposed below, we recommend adding a provision to make this prohibition explicit.

Consumer Watchdog has concerns that the phrases “to act and/or associate in concert” under (b)(1)(A)1 and “interact with” under (b)(1)(A)3 may not be sufficiently clear to prevent abuses. We understand these provisions as requiring, consistent with the statute, that any “group” to which an insurer may offer a “group plan” under section 1861.12 must be an actual, legitimate group (such as an employer, organization, association, union, or consumer co-op) that is in existence before the insurance company or its agent or consultant “interact with” the group for the purposes of offering a group plan, and prohibiting the insurance company from being involved in the formation of the group. To this end, our proposal is that the regulation more clearly define what a “group” is and what it is not.

Additionally, the regulation should define a “group plan” as a plan that is subject to approval by the Commissioner under which insurance coverage is offered to a group, and such group insurance plans must be offered and sold (“issue[d]”) equally to all eligible members of the group.

CWD Proposed Edit to Section 2644.27.5(b)(1)–(2)

(1) For purposes of Section 1861.12, and this section, “group” shall mean only:

(A) A set of individuals who:

1. ~~Choose to act and/or associate in concert for any lawful purpose~~ **Are members of an organization, association, union, cooperative, or other membership group formed for a lawful purpose,**
2. In the ordinary course, renew their membership in, or pay dues to, the group at regular intervals, and
3. Satisfy subdivisions (b)(1)(A)1. and (b)(1)(A)2. of this section before any insurer, insurance producer, insurer trade association, or any other entity or person required to be licensed or granted a Certificate of Authority by the Insurance Commissioner ~~interacts with~~ **offers a group plan to** the group. ~~This subdivision (b)(1)(A)3. does not apply to groups consisting entirely of insurance producers, or consisting entirely of any other entities or persons required to be licensed or granted a Certificate of Authority~~

~~by the Insurance Commissioner, which groups fall within the definition of “group” set forth in this subdivision (b)(1) provided that they satisfy the requirements stated in subdivisions (b)(1)(A)1 and (b)(1)(A)2 of this section; or~~

(B) The employees of a particular employer.

(2) A “group plan” for purposes of 1861.12 and this section shall mean a ~~method of selling property casualty insurance wherein~~ **plan that provides insurance coverage to members of a group as defined in subdivision (b)(1) of this section, and is:**

~~(A) Such insurance is offered to members of a particular group as defined in subdivision (b)(1) of this section, and~~

(A) subject to approval by the Commissioner and the requirements of this section;

(B) offered and sold equally to all members of the group;

~~(BC) Such group has set forth in a written agreement with the group the insurer detailing the terms of the group plan relationship under which the group has agreed to offer such insurance coverage to its members or employees.~~ However, groups whose membership is based exclusively on military status need not have a written agreement with the insurer detailing the terms of the group plan relationship in order to be offered insurance under a group plan as that term is defined in this subdivision (b)(2); **and**

(D) not based upon occupational status, groupings of occupations, or education level attained, or any other criterion that has not been adopted as a rating factor pursuant to the requirements of Insurance Code section 1861.02 and Subchapters 4.7 and 4.8.

D. Section 2644.27.5(b)(3) – Definitions – “Averaged Broadly”

CDI’s Proposed Draft Text

(3) “Averaged broadly among members of the group” for purposes of Insurance Code Section 1861.12 and this section means that:

(A) The group rate relativities for the private passenger automobile rating factor “group membership” permitted by subdivision (d)(14) of Section 2632.5, and the group base rate for all other lines of insurance, are derived from the credible loss experience of the group that is issued a group plan, and

(B) All members of the group are offered the group rate relativity or group base rate referenced in subdivision (b)(3)(A) of this section.

CWD Comments

As noted in our general comments in Part I, it is critical that the regulations clearly set forth the rating methodology for group plans so that there will be a consistent methodology applied to all insurers during the rate application and class plan review and approval process. Therefore, the definition of “averaged broadly among members of the group” under section 2644.27(b)(3)(A), together with the rating/reporting requirements in section 2644.27.27.5(e)(2) (discussed further at Part III.G. below) must be amended to make clear that:

- For auto insurance, all groups and non-groups are subject to the same base rates by coverage pursuant to a rate application approved under Insurance Code section 1861.05 and the prior approval ratemaking formula under section 2644.1 et seq., and that any rating differential for each group plan shall be applied as a rating factor under proposed section 2632.5(d)(14) with one relativity per group developed using the experience of all members of the group;
- Insurers cannot aggregate groups to develop rate relativities or have different relativities for subcategories of groups; and
- For lines other than auto, each group plan shall have a separate base rate based on the loss experience of the group and which shall be subject to prior approval under section 1861.05 and the ratemaking formula.

We also suggest that the text reference the credibility standard to be applied when data is not credible.

CWD Proposed Edit to Section 2644.27.5(b)(3)

(3) “Averaged broadly among members of the group” for purposes of Insurance Code Section 1861.12 and this section means that:

(A) The group rate ~~relativities~~ **relativity** for **each group plan implemented under** the private passenger automobile rating factor “group membership” permitted by subdivision (d)(14) of Section 2632.5, and the group base rate **for each group plan** for all other lines of insurance, are derived from the **credible** loss experience of **all members of** the group that is issued a group plan, **adjusted as appropriate for credibility in accordance with subdivision (g) of Section 2632.9 for private passenger automobile insurance and as actuarially appropriate for all other lines of insurance**, and

(B) All members of the group are offered the group rate relativity or group base rate referenced in subdivision (b)(3)(A) of this section.

See also proposed edits to section 2644.27.5(e)(2) in Part III.G. below.

E. Section 2644.27.5(c) – Persons Insured Under a Group Plan

CDI's Proposed Draft Text

(c) Persons insured under the group plan.

For purposes of Insurance Code Section 1861.12, persons eligible to purchase insurance under a group plan shall include all members of the group, as defined by the group. Nothing in this section shall prohibit a group from including retirees, including former members of the military, within the group's definition of the group. All group and non-group applicants and insureds shall be subject to the same new and renewal eligibility guidelines for the rating plan.

CWD Comments

Consistent with the requirements for all rate and class plan applications under the rate filing instructions and current regulations, the proposed text of section 2644.27.5(c) should specify that all new and renewal eligibility guidelines shall be filed and made publicly available.

CWD Proposed Edit to Section 2644.27.5(c)

For purposes of Insurance Code Section 1861.12, persons eligible to purchase insurance under a group plan shall include all members of the group, as **membership is** defined by the group. Nothing in this section shall prohibit a group from including retirees, including former members of the military, within the group's definition of the group. All group and non-group applicants and insureds shall be subject to the same new and renewal eligibility guidelines for the rating plan, **which shall be filed with rate and class plan applications and made publicly available.**

F. Section 2644.27.5(d) – Group Selection – Records Retention

CDI's Proposed Draft Text

(1) Any insurer that offers coverage on a group plan shall maintain written guidelines prescribing the standards used to accept or reject applications for group plans. Such guidelines must be clear, objective, and afford all groups full and equal advantages, privileges, and services, no matter their members' sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status,

education, occupation or income level.

(2) Insurers shall retain for five years records regarding every group that has sought a group plan, and every group for which the insurer has accepted or rejected a request for a group plan; the records shall include all materials provided to the insurer by any group in connection with the group's request for the group plan in question. For each such group seeking a group plan or for which the insurer has accepted or rejected a request for a group plan, the insurer shall produce a written statement of the reason or reasons why the group was accepted or rejected, making specific reference to the applicable provisions of the insurer's guidelines maintained pursuant to subdivision (d)(1) of this section. The statement required by the immediately preceding sentence shall be included among the records required to be retained pursuant to this subdivision (d)(2).

CWD Comments

This section is necessary to monitor an insurer's practices of assessing applications for group insurance plans and to ensure that the group plans offered by an insurer comply with section 2644.27.5, subdivision (f) and Insurance Code sections 1861.02, 1861.05, and 1861.12. By requiring mandatory disclosure and retention requirements as to insurers' written guidelines, the Department and the public will have access to information necessary to ensure that an insurer's group insurance plans—both individually and collectively—are not unfairly discriminatory.

CWD Proposed Edit to Section 2644.27.5(d)

(1) Any insurer that offers coverage on a group plan shall maintain **and file with the Department** written guidelines prescribing the standards used **by the insurer** to accept or reject ~~applications~~ **requests from any group** for **a group plan** **and the standards used by the insurer to select groups to offer, market, or issue a group plan**. Such guidelines **shall not be unfairly discriminatory**, ~~must~~ **shall** be clear, and objective, ~~and~~ **without restrictions as to the purpose or type of group to which an insurer issues a group plan, and shall** afford all groups **that request a group plan or that are otherwise selected by the insurer for issuance of a group plan all** full and equal advantages, privileges, and services, **including the opportunity to participate in a group plan that otherwise meets the requirements of this section, no matter** **without regard to** their members' sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status, education, occupation, or income level.

(2) Insurers shall retain for five years records regarding every group that has sought a group plan, ~~and~~ every group for which the insurer has accepted or rejected a request for a group plan, **and every group to which an insurer has offered a group plan**; the records shall include all materials provided to the insurer by any group in connection with the group's request for the group plan in question. For each such group seeking a group

plan or for which the insurer has accepted or rejected a request for a group plan, the insurer shall produce a written statement of the reason or reasons why the group was accepted or rejected, making specific reference to the applicable provisions of the insurer's guidelines maintained pursuant to subdivision (d)(1) of this section. The statement required by the immediately preceding sentence shall be included among the records required to be retained pursuant to this subdivision (d)(2).

G. Section 2632.5(d)(14) and Section 2644.27.5(e) – Rating and Filing Requirements

CDI's Proposed Draft Text

Section 2632.5. Rating Factors.

(d) In addition to the rating factors set forth in subdivision (c), an insurer's class plan, and all rates and premiums determined in accordance therewith, may utilize the following optional rating factors (the "Optional Factors"):

(14) Group membership, pursuant to Insurance Code Section 1861.12 and subject to the requirements of section 2644.27.5.

Section 2644.27.5(e) Filing requirements.

(1) The insurer shall file with the Commissioner the written agreement described in subdivision (b)(2)(B) of this section, which agreement shall be available for public inspection. The agreement must be signed by the insurer and a representative of the group. Groups whose membership is based exclusively on military status are exempt from this requirement.

(2) Group insurance plans offered pursuant to Insurance Code Section 1861.12 are subject to the Commissioner's prior approval under Insurance Code Section 1861.05. For private passenger automobile insurance, the group rate discount or surcharge shall be implemented as the optional rating factor "group membership" permitted by subdivision (d)(14) of section 2632.5, supported in a rate filing by a class plan application subject to the requirements of sections 2632.1 through 2632.19. For all other lines of business, a separate base rate shall be calculated for each group based on the experience of the group.

(3) The insurer shall demonstrate in each rate filing that:

(A) The insurer's group rates, or the group rate relativities for the private passenger automobile rating factor "group membership" permitted by subdivision (d)(14) of section 2632.5, for each group are averaged broadly among members of the group, as that phrase is defined in subdivision (b)(3) of this section,

(B) The insurer's group rates, or the group rate relativities for the private passenger automobile rating factor "group membership" permitted by subdivision (d)(14) of section 2632.5, do not create pricing differentials between or among groups that are unreasonable, arbitrary, or invidious, and

(C) The insurer offers group plans only to groups that afford all persons full and equal advantages, privileges, and services, no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status.

CWD Comments

Consumer Watchdog supports the requirements under subdivision (b)(2)(B) that insurers must have written agreements with each group that is offered a group plan, and under subdivision (e)(1) that such written agreement be filed with the Commissioner and made available to the public. To address concerns about the potential for corruption or abuse between group officials or members and insurance companies in the sale of group insurance plans, we propose that subdivision (e) include a disclosure requirement in the written agreement regarding any payments to group officials or members in connection with offering, marketing, or sale of group insurance plans. These requirements taken together will allow public scrutiny of the terms of such group plan agreements and help to confirm that insurers are complying with all provisions of proposed section 2644.27.5, including that insurers are only offering group plans to legitimate groups that have agreed to participate in such a group plan and that insurers are offering the group plan equally to all members of the group.

To ensure there are clear and consistent rating and filing requirements, Consumer Watchdog proposes that subdivisions (e)(2)–(3) of the draft regulation be amended to further clarify the rating methodology and filing requirements for group plan rate and class plan applications to make clear that for private passenger auto group plans:

- Base rates for all group and regular plans must be the same, as filed in a rate application subject to prior approval under Insurance Code section 1861.05(a) and the ratemaking formula, section 2644.1 et seq.;
- For application of the group plan rating factor under section 2632.5(d)(14), no groupings of groups or subcategories of groups are allowed; and
- Insurers must develop a separate relativity for each group based on the experience of that group.

For reasons discussed above (see comment regarding section 2644.27.5(a)), we propose that the Unruh Civil Rights Act "unreasonable, arbitrary, or invidious" standard in subdivision (e)(3)(B) be changed to "unfairly discriminatory" to conform with the standard set forth by Insurance Code section 1861.05(a).

Additionally, Consumer Watchdog believes that the standard under subdivision (e)(3)(B) for ensuring “pricing differentials” (rate or premium differentials) between group plans are fair should also apply to pricing differentials between group plans and non-group plans.

Consumer Watchdog also proposes deleting the term “among” in subdivision (e)(3)(B). If there is only one group rate relativity for each auto insurance group plan or one base rate for group plan in lines other than auto as required, then there should be no rate or premium differentials among groups, so the use of “among” is unnecessary here.

CWD Proposed Edit to Section 2644.27.5(e)

(e) **Rating and** Filing requirements.

(1) The insurer shall file with the Commissioner the written agreement described in subdivision (b)(2)(B) of this section, which agreement shall be available for public inspection. The agreement must be signed by the insurer and a representative of the group. **The agreement must disclose whether the insurer, an insurance producer, insurer trade association, or any other entity or person required to be licensed or granted a Certificate of Authority by the Insurance Commissioner, or anyone acting on their behalf, provided funds or any other benefit of value to the group or any single member of the group in connection with the offer or sale of the group plan.** Groups whose membership is based exclusively on military status are exempt from this requirement.

(2) Group insurance plans offered pursuant to Insurance Code Section 1861.12 **shall be filed in rate and class plan applications that** are subject to the Commissioner’s prior approval under Insurance Code Section 1861.05 **and 1861.02.** For private passenger automobile insurance, **insurers shall file rate applications applying the same base rates by coverage for all group and regular plans subject to the requirements of 2644.1 et seq. and** the group rate discount or surcharge **for each group plan** shall be implemented as the optional rating factor “group membership” permitted by subdivision (d)(14) of section 2632.5, **filed and** supported in a rate filing by a class plan application subject to the requirements of Sections 2632.1 through 2632.19. **For purposes of determining the relativity to associate with each group plan under Section 2632.7, insurers shall analyze the loss experience of each group separately and shall not aggregate the loss experience of more than one group or subdivide any group into separate categories.** For all other lines of business, a separate base rate shall be calculated for each group **plan** based on the experience of the group, **subject to the requirements of section 2644.1 et seq.**

(3) The insurer shall demonstrate in each rate **and class plan** filing that:

(A) The insurer's group **base rates for each group plan for lines other than private passenger automobile insurance**, or the group rate **relativity** ~~relativities~~ for **each group plan implemented under** the private passenger automobile rating factor "group membership" permitted by subdivision (d)(14) of section 2632.5, ~~for each group~~ are averaged broadly among members of the group, as that phrase is defined in subdivision (b)(3) of this section;

(B) The insurer's group **base rates for each group plan for lines other than private passenger automobile insurance**, or the group rate **relativity** ~~relativities~~ for **each group plan implemented under** the private passenger automobile rating factor "group membership" permitted by subdivision (d)(14) of Section 2632.5, do not create ~~pricing~~ **rate or premium** differentials between ~~or among~~ groups **plans or between any group plan and regular plan** that are ~~unreasonable, arbitrary, or invidious~~ **unfairly discriminatory**; and

(C) The insurer offers group plans only to groups that afford all persons full and equal advantages, privileges, and services, ~~no matter what~~ **without regard to** their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status.

H. Section 2644.27.5(f) – Groups as a Whole

CDI's Proposed Draft Text

(1) An insurer's group plans, taken as a whole, shall afford all persons full and equal advantages, privileges, and services, no matter their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status, education, occupation or income level.

(2) The insurer shall demonstrate in every rate filing, and in every class plan filing for private passenger automobile insurance, and at any time upon request of the Commissioner, that its group plans comply with subdivision (f)(1) of this section.

(3) To determine whether the insurer's group plans comply with subdivision (f)(1) of this section, the Commissioner may require the insurer to provide the following types of information:

(A) The number of exposures, by ZIP Code groupings determined by the Commissioner and publicly communicated to the insurance industry for each of the insurer's group plans. The Commissioner shall consult U.S. Census Bureau data, among other sources, in determining the appropriate groupings of ZIP Codes,

(B) Group plans the insurer has considered, including both groups the insurer has approached with the intent to offer a group plan, and groups that have approached the insurer with a proposal for a group plan,

(C) The sales and marketing practices employed by the insurer related to the insurer's group plans, and

(D) Any other data that tends to show the insurer's group plans do or do not comply with subdivision (f)(1) of this section.

CWD Comments

Consumer Watchdog understands that the CDI's draft "Groups as a whole" provision under subdivision (f) is intended to provide a standard to determine whether an insurer's practices in issuing group plans results in a mix of group plans that is not unfairly discriminatory on the basis of the specified grounds of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status, education, occupation, or income level. In other words, for example, are insurers offering group plans to a range of groups made up of individuals from diverse economic and ethnic backgrounds, or are insurers continuing to only issue group plans (and their corresponding lower rates) to groups made up of predominately higher income or non-Hispanic white individuals? Consumer Watchdog agrees that this is an important goal of the proposed regulations to ensure that low-income individuals and communities of color are not excluded from the benefits of lower rates or premiums offered through group plans under section 1861.12, as the Commissioner's September 2019 investigatory report found that 75% of drivers in Underserved Communities as defined by California Code of Regulations title 10, section 2646.6(c) do not receive an "affinity discount" through insurers' current group plans.

Consumer Watchdog believes it is critical that insurers not be allowed to simply replicate their current illegal and unfairly discriminatory system of offering "affinity group" discounts predominantly to drivers in white-collar occupations and who reside in ZIP codes with a predominantly non-Hispanic white population with an equally unfair system under which insurers only offer group plans to associations or unions of the same elite professions. This section as drafted, however, does not provide a clear methodology by which to objectively measure an insurer's overall mix of groups. As a result, an insurer's compliance will be difficult to measure and therefore to enforce.

As noted in Part II above, the Commissioner's authority to adopt regulations to address insurers' unfairly discriminatory underwriting practices has been upheld by the California Supreme Court. Citing Proposition 103's purpose of "ensur[ing] that insurance is fair, available, and affordable for all Californians," and Insurance Code sections 1861.02, 1861.05, and 1861.03, the Court determined:

[A]rticle 10 is not limited in scope to rate regulation. It also addresses the underlying factors that may impermissibly affect rates charged by insurers and lead to insurance that is unfair, unavailable, and unaffordable. As such, the Commissioner undoubtedly has the authority under article 10 to gather any information necessary for determining whether these factors are impermissibly affecting the fairness, availability, and affordability of insurance.

(*State Farm Mut. Auto. Ins. Co.*, *supra*, 32 Cal.4th at 1041–1042 [upholding Commissioner’s authority to promulgate 10 CCR § 2646.6(c) requiring the reporting and public inspection of “statistical data relevant to the Commissioner’s determination that a California community is underserved by the insurance industry”].) Accordingly, Consumer Watchdog believes that the standard under subdivision (f) should be tied to these provisions of Proposition 103 and their underlying purpose as confirmed by the California Supreme Court. Our proposed revisions to the draft text below are aimed at addressing our concerns.

Furthermore, insurers must be *required* under subdivision (f) to submit data that the Department and the public can analyze to determine whether a company’s group plans—both proposed and taken as a whole—continue to unfairly discriminate against lower-income, less-educated drivers and communities of color.

Consumer Watchdog also believes that subdivision (f)(3)(B) of this section and the language “Group plans the insurer has considered” is vague. The Department should clarify the type and extent of the interaction between an insurer and a group necessary for it to rise to the level of “considered.” Consumer Watchdog would recommend that the Department make clear that if, for example, an insurer’s employee or agent suggests a possible group for a group plan to the insurer’s management, and the manager rejects that group, then that constitutes a group plan the insurer “considered.”

CWD proposed edit to Section 2644.27.5(f)

(1) An insurer’s practice of issuing groups plans shall not be unfairly discriminatory. An insurer’s practice of issuing groups plans is unfairly discriminatory if (A) the group plans the insurer has offered or issued are not uniformly promoted and offered to the public, or (B) the majority of groups to which an insurer issues group plans are composed predominately of members who do not reside in underserved communities as defined in section 2646.6(c).

(2) An insurer’s group plans, taken as a whole, shall afford all persons full and equal advantages, privileges, and services, including the opportunity to participate in a group plan, no matter without regard to their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status, education, occupation or

income level. **An insurer shall not refuse to offer, promote, or issue a group plan based on any of these factors.**

(23) The insurer shall demonstrate in every rate filing, and in every class plan filing for private passenger automobile insurance, and at any time upon request of the Commissioner, that its group plans comply with subdivisions (f)(1) **and (f)(2)** of this section.

(34) To determine whether the insurer's group plans comply with subdivisions (f)(1) **and (f)(2)** of this section, the Commissioner **shall** ~~may~~ require the insurer to provide the following ~~types of~~ information:

(A) The number of exposures, by ZIP Code groupings determined by the Commissioner and publicly communicated to the insurance industry **for each rating factor category for each private passenger automobile group plan and** for each of the insurer's group plans **for other lines of business**. The Commissioner shall consult U.S. Census Bureau data, among other sources, in determining the appropriate groupings of ZIP Codes,

(B) Group plans the insurer has considered, including both groups the insurer has approached with the intent to offer a group plan, and groups that have approached the insurer with a proposal for a group plan,

(C) The sales and marketing practices employed by the insurer related to the insurer's group plans, and

(D) Any other data that tends to show the insurer's group plans do or do not comply with subdivision (f)(1) of this section.

(4) An insurer's failure to establish compliance with this subdivision (f) or any other subdivision of this section shall constitute unfair discrimination under Insurance Code section 1861.05(a).

I. Section 2644.27.5(g) – Verification and Renewal of Group Membership

CDI's Proposed Draft Text

(g) Verification and renewal of group membership.

(1) An insurer that offers coverage on a group plan shall verify with the group at each renewal that the insured continues to be a member of the group.

(2) An insured who is no longer a member of a group shall not be renewed at the group's rate.

(3) No insured who was previously a member of a group and received the group rate or group rate relativity shall be denied renewal at the group rate or with the group rate relativity on the basis that the insured is no longer a member of the group unless the insurer has received written verification from the group that the insured is no longer a member.

(4) Notwithstanding any other provision of this subdivision (g) to the contrary, however, insurers may verify continued membership in the military directly with the insured.

CWD Comments

Subdivision (g)(2) should make clear that upon renewal, the insured should be offered and sold the lowest rate for which they qualify under other provisions of Proposition 103.

CWD Proposed Edit to Section 2644.27.5(g)(2)

(1) An insurer that offers coverage on a group plan shall verify with the group at each renewal that the insured continues to be a member of the group.

(2) An insured who is no longer a member of a group shall not be renewed at the group's rate.

(3) Upon application for coverage and at each renewal, the insurer shall offer and make available for sale to the applicant or insured the lowest rate for which the applicant or insured qualifies as required by section 1861.02, subdivision (b) and section 1861.16, subdivision (b), regardless of whether the applicant or insured is a member of a group.

~~(3)~~ No insured who was previously a member of a group and received the group rate or group rate relativity shall be denied renewal at the group rate or with the group rate relativity on the basis that the insured is no longer a member of the group unless the insurer has received written verification from the group that the insured is no longer a member.

~~(4)~~ Notwithstanding any other provision of this subdivision (g) to the contrary, however, insurers may verify continued membership in the military directly with the insured.

J. Section 2644.27.5(h) – Reporting

CDI's Proposed Draft Text

(h) Reporting.

(1) The Commissioner may, from time to time, require a report from any insurer that offers a group plan pursuant to Insurance Code Section 1861.12, so that the Commissioner may

determine whether the insurer's groups comply with this article and/or evaluate the impact of group plans on the California insurance market.

(2) For private passenger automobile insurance, not later than September 1, 2026 all insurers who will have offered group plans at any time during the preceding three calendar years (January 1 through December 31) shall provide to the Commissioner the following information for each of accident years 2023 through 2025:

- (A) Earned exposure for each ZIP Code, by coverage for each group plan and for the insurer's non-group book of business,
- (B) Earned premium for each ZIP Code, by coverage for each group plan and for the insurer's non-group book of business,
- (C) Paid losses for each ZIP Code, by coverage for each group plan and for the insurer's non-group book of business,
- (D) Incurred losses for each ZIP Code, by coverage for each group plan and for the insurer's non-group book of business,
- (E) Claims closed for each ZIP Code, by coverage for each group plan and for the insurer's non-group book of business,
- (F) Claims reported for each ZIP Code, by coverage for each group plan and for the insurer's non-group book of business, and
- (G) Such other information as the Commissioner may require.

(3) Coverages as referenced in subdivision (h)(2) of this section shall include bodily injury, property damage liability, medical payments, uninsured motorist bodily injury, and uninsured motorist property damage liability, comprehensive, and collision.

(4) For private passenger automobile insurance, not later than September 1, 2029, and not later than each three-year anniversary date of September 1, 2029 thereafter, all insurers who will have offered group plans at any time during the preceding three calendar years (January 1 through December 31) shall provide to the Commissioner the information specified in subdivisions (h)(2)(A) through (h)(2)(G) of this section for the three preceding accident years, so that not later than September 1, 2029 such insurers shall provide the specified information for each of accident years 2026 through 2028, not later than September 1, 2032 such insurers shall provide the specified information for each of accident years 2029 through 2031, and so forth.

(5) The Commissioner shall prepare and publish an aggregate report based on data collected pursuant to subdivisions (h)(2) through (h)(4) of this section not later than September 1, 2027, and on each successive three-year anniversary date of September 1, 2027 thereafter.

CWD Comments

Consumer Watchdog strongly supports the reporting requirements under subdivision (h) so that the Commissioner and the public have the necessary data to evaluate the impact of group plans authorized by the new regulations on the California insurance marketplace, particularly on low-income communities and communities of color, and to publish his findings in reports to be issued periodically. Given the Commissioner's findings in his September 2019 investigatory report of the discriminatory impact of the current system under which insurers have been allowed to give "affinity discounts" to certain preferred professional occupations with college degrees under the guise of group plans, it is imperative that a similar investigation be conducted after implementation of the new regulations to determine if the new regulation has eliminated the discriminatory system as intended and whether there is a more equitable distribution of the benefits of group plans.

We recommend that the initial reporting date in subdivision (h)(2) should be moved up, such that insurers should be required to provide the required information within three years of the new regulations taking effect, and every three years thereafter, and the Commissioner's first report would be due within four years of the regulations taking effect.

CWD Proposed Edit to Section 2644.27.5(h)

(1) The Commissioner may, from time to time, require a report from any insurer that offers a group plan pursuant to Insurance Code Section 1861.12, so that the Commissioner **and the public** may determine whether the insurer's groups comply with this article and/or evaluate the impact of group plans on the California insurance market.

(2) For private passenger automobile insurance, not later than ~~September~~ **July 1, 2026** **2024** all insurers who will have offered group plans at any time during the preceding three calendar years (January 1 through December 31) shall provide to the Commissioner the following information for each of accident years ~~2023~~ **2021** through ~~2025~~ **2023**:

...

(4) For private passenger automobile insurance, not later than September 1, ~~2029~~ **2027**, and not later than each three-year anniversary date of September 1, ~~2029~~ **2027** thereafter, all insurers who ~~will~~ have offered group plans at any time during the preceding three calendar years (January 1 through December 31) shall provide to the Commissioner the information specified in subdivisions (h)(2)(A) through (h)(2)(G) of this section for the three preceding accident years, so that not later than September 1, ~~2029~~ **2027** such insurers shall provide the specified information for each of accident years ~~2026~~ **2024** through ~~2028~~ **2026**, not later than September 1, ~~2032~~ **2030** such insurers shall provide the specified information for each of accident years ~~2029~~ **2027** through ~~2031~~ **2029**, and so forth.

(5) The Commissioner shall prepare and publish an aggregate report based on data collected pursuant to subdivisions (h)(2) through (h)(4) of this section not later than September 1, ~~2027~~ **2025**, and on each successive three-year anniversary date of September 1, ~~2027~~ **2025** thereafter.

K. Section 2644.27.5(i) – Compliance Dates

CDI's Proposed Draft Language

(i) Compliance dates.

(1) The provisions of this article shall become effective immediately upon filing with the Secretary of State for new filings under subdivision (d) of this section.

(2) Any insurer using a group rating plan on the effective date of this article shall file a new group coverage and rating plan under sections 2632.1 through 2632.19, and subdivision (d) of this section, no later than January 1, 2021. After January 1, 2022, no insurer may offer, sell, renew, or collect a premium for insurance coverage on a group plan that is not part of an approved rating plan that complies with this article.

CWD Comments

Consumer Watchdog supports an immediate effective date with requirements for all insurers who offer coverage on a group plan to file new rate and class plan applications in compliance with the new regulations promptly by a certain date. There are some minor technical drafting errors that need to be corrected with respect to subdivisions and articles/subchapters referenced as suggested below. (Note also that at the top of the December 23, 2019 draft regulation text, it references subchapter 4.9 – Review of Rates, but the correct subchapter containing article 4 – Determination of Reasonable Rates is subchapter 4.8 – Review of Rates.)

CWD Proposed Edit to Section 2644.27.5(i)

(i) Compliance dates.

(1) The provisions of this article shall become effective immediately upon filing with the Secretary of State for new filings under subdivision (~~de~~) of this section.

(2) Any insurer using a group rating plan on the effective date of this article shall file a new group coverage and rating plan **in a rate and class plan application** under sections 2632.1 through 2632.19, and subdivision (~~de~~) of this section, no later than January 1, 2021. After January 1, 2022, no insurer may offer, sell, renew, or collect a premium for insurance coverage on a group plan that is not part of an approved rating plan that complies with this article **subchapter 4.8 and subchapter 4.7.**