



**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

March 23, 2021

Consumer Watchdog submits the following comments in response to the second workshop draft text of regulations regarding group insurance plans under Insurance Code section 1861.12 noticed by the California Department of Insurance (the “Department” or “CDI”) on February 18, 2021 and the related March 23, 2021 workshop.

I. Key Concerns About the February 18, 2021 Draft Regulation

The second workshop draft regulations (“February 18 draft text”) noticed by the CDI move California one step closer to stopping auto insurance discrimination that has allowed insurers to overcharge lower income drivers and drivers of color for decades. Consumer Watchdog urges the Department to move forward swiftly with the formal rulemaking proceeding to notice and adopt final regulations incorporating our proposed amendments.

For more than a decade, through rate challenges, in a January 2014 petition to then-Insurance Commissioner Dave Jones, and in a February 2019 petition to Commissioner Lara, Consumer Watchdog has repeatedly brought to the Commissioner’s attention that insurers’ use of occupation and education level as rating factors to set insurance premiums for drivers violates Insurance Code sections 1861.02(a)(1)–(4) and has an unfairly discriminatory impact on low-income drivers and communities of color, and therefore violates Insurance Code section 1861.02(a)(4). Yet insurance companies continue to violate Proposition 103, cloaked in the disguise of “affinity groups,” by using education level and occupation, which are not permitted rating factors, as a back door method to charge non-white, lower-wage, less educated drivers more.

For example, clerical, cleaning, and support staff with good driving records are being charged more than the well-paid professions—such as doctors, lawyers, and engineers—they work with. In fact, 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 (Farmers, GEICO, Progressive, AAA, Allstate, Liberty Mutual, and Mercury) surcharge drivers from 3.5% to 14.31% based on occupation and education. This practice violates Proposition 103’s mandates under Insurance Code section 1861.02(a) requiring 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.

CDI's analysis of insurer data presented at the September 2019 investigatory hearing confirmed the illegal and discriminatory impacts on low-income drivers and communities of color caused by these practices. That analysis showed:

- Only 26% of drivers in the lowest per capita income ZIP codes receive so-called "affinity discounts," compared to 55% of drivers in the highest per capita income ZIP codes.¹
- In ZIP codes with the lowest average education attainment, only 28% of drivers receive an "affinity discount." By contrast, 56% of drivers residing in ZIP codes with the highest average education attainment receive a discount.²
- 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.³ Additionally, 75% of drivers in Underserved Communities as defined by California Code of Regulations title 10, section 2646.6(c)⁴ do not receive an "affinity discount."⁵

Consumer Watchdog supports the Department's goal of adopting regulations to ensure that the socioeconomic disparities and unfair discrimination arising from insurers' current practice of using occupation and education to set premiums does not continue. Under the February 18 draft text, the Department's proposal establishes rules for selling group policies to actual, legitimate groups (such as employers, organizations, associations, unions, or consumer co-ops) while prohibiting the unfairly discriminatory use of generic categories of education level and occupation to set auto insurance premiums. As a result, the proposed rules would prevent insurance companies from only offering discounts to arbitrary lists of well-paid professions or college graduates to whom they would prefer to market. At the same time, the proposed regulations would preserve discounts negotiated by legitimate groups of consumers on behalf of their members, but only if insurers can justify the discounts with appropriate data and make

¹ 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, p. 11.

² *Id.*, p. 18.

³ *Id.*, p. 23.

⁴ Section 2646.6 defines "Underserved Communities" as communities wherein: "(1)(A) the proportion of uninsured motorists is ten percentage points above the statewide average as reflected in the most recent Department of Insurance statistics regarding the statewide average of uninsured motorists; and (B) the per capita income of the community, as measured in the most recent U.S. Census, is below the fiftieth percentile for California; and (C) the community, as measured in the most recent U.S. Census, is predominately [two-thirds or more] minority."

⁵ *Id.*, p. 26.

group discounts more equitably available to low-income and predominately non-white communities.

To achieve the goals of this rulemaking process—to promote wider access to group insurance plan rates and reduce unfair discrimination in private passenger auto insurance rating—Consumer Watchdog has consistently maintained (and the Department has stated as one of its chief aims) that 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.

To this end, Consumer Watchdog supports the clear metrics set forth in proposed section 2644.27.5(g) (“Group Plans as a whole”) of the February 18 draft text. Subdivision 2644.27.5(g) is intended to supply an objective standard by which a company’s mix of proposed group plans can be measured to determine whether the company is not engaged in unfair discrimination. However, Consumer Watchdog is concerned that the percentage thresholds set in proposed subdivision (g) as currently drafted may not entirely eradicate the disproportionate and adverse impact that the current industry practice of offering “affinity group” plans has on lower-income, less-educated drivers and communities of color, and may need to be adjusted upwards once the regulations are implemented and more data becomes available. This is why it is critical that the reporting timelines under proposed section 2644.27.5(j) be shifted to the earlier dates proposed by Consumer Watchdog below so that the Commissioner and the public can gauge how the new regulations are being applied in practice and whether the metrics in subdivision (g) are achieving their intended goal. (See Parts II.H. and II.J. below for Consumer Watchdog’s specific comments and proposed edits to subdivisions (g) and (j) of the February 18 draft text.)

Additionally, Consumer Watchdog continues to advocate that the proposed regulation must set forth in clear and unambiguous terms the definitions for “group” and “group plan” under section 1861.12, as well as a provide a clear and consistent rating methodology and uniform filing requirements. In particular, the definitions and other requirements for “group” and “group plan” should apply consistently to all lines regulated by Proposition 103, not just private passenger auto, since section 1861.12 is not limited to the auto line. While other lines do not use the mandatory and optional auto rating factor methodology established under section 1861.02 and the auto rating factor regulations (section 2632.5 et seq.), the proposed text should define an acceptable rating methodology for group plans in other lines as did the December 23, 2019 draft text. Without clear and precise standards, insurers will devise new arbitrary or unfairly discriminatory ways to define and rate group plans in other lines. (See Parts II.D., II.E, and II.G. below for Consumer Watchdog’s specific comments and proposed edits to the proposed “definitions” and “filing requirement” provisions of the February 18 draft text.)

In Part II below, Consumer Watchdog provides its provision-by-provision comments on the February 18 draft text and proposed edits to address our specific concerns. We believe that with these additional changes, the proposed regulations will go far towards achieving the goal of eliminating the discriminatory use of occupation and education to set auto insurance premiums and put an end to the inequitable distribution of group insurance plans.

II. Comments on Specific Provisions of Proposed Regulations⁶

A. Section 2632.5. Rating Factors.

CDI's Proposed Draft Text

- (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) Relative claims frequency. This factor shall contain a maximum of twenty categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the ZIP codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims frequency. In the event that the data for a ZIP code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed;
- (15) Relative claims severity. This factor shall contain a maximum of twenty categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the ZIP codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims severity. In the event that the data for a ZIP code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed.
- (16) Group membership. For any group plan sold pursuant to Insurance Code section 1861.12, the insurer shall use a group membership rating factor and no other method, including separate base rates, to capture any rating differential for the group. Group plans shall conform with the provisions of Section 2644.27.5.

CWD Comment

Consumer Watchdog strongly supports this amendment. By referencing the definition of "group" and other requirements, subdivision (d)(16) makes clear that the requirements of section 2644.27.5 apply to the group membership rating factor.

⁶ All of Consumer Watchdog's proposed additions to CDI's draft regulation text are in **bold/underline** and all deletions are in ~~strikethrough~~.

B. Section 2632.7. Analysis of Rating Factors.

CDI's Proposed Draft Text

- (a) The determination of the initial relativities to associate with a rating factor shall be established by performing a sequential analysis. The sequential analysis shall remove the variation in loss costs already explained by prior factors.
- (b) The sequential analysis shall analyze the rating factors one at a time, in the following order:
- (1) The first mandatory factor;
 - (2) The second mandatory factor;
 - (3) The third mandatory factor;
 - (4) Any and all optional factors used by the insurer in accordance with subdivision section (d) of Section 2632.5(d). The order of analysis of the optional factors shall be determined by the insurer, ~~with the exception that frequency band and severity band shall be analyzed last.~~ with the following two exceptions:
 - (A) All of the optional factors except group membership shall be analyzed before frequency band and severity band; and
 - (B) The group membership factor shall be analyzed last.
- (c) ~~The initial relativities, as developed, shall be balanced to a weighted average of 1.0 for multiplicative factors or balanced to a weighted average of 0.0 for additive factors. The weighting factor for the weighted average shall be the number of exposures from the data chosen for use in section 2632.8(b).~~ The group membership rating factor shall be analyzed using the experience data of the following coverages on a combined basis:
- (1) bodily injury liability,
 - (2) property damage liability,
 - (3) medical payments,
 - (4) uninsured motorist,
 - (5) collision, and
 - (6) comprehensive coverages.
- (d) ~~The results of the sequential analysis shall be submitted to the Department in a computer file in a format specified by the Commissioner. Individual policy holder's name and street address need not be submitted provided the insurer includes a unique identifying number which permits tracking of the information should questions concerning data quality arise.~~ The initial relativities, as developed, shall be balanced to a weighted average of 1.0 for multiplicative factors or balanced to a weighted average of 0.0 for additive factors. The weighting factor for the weighted average shall be the number of exposures from the data chosen for use in Section 2632.8(b).

- (e) The group membership rating factor shall be multiplicative.

CWD Comment

In order to ensure that there are clear and consistent rating requirements, section 2632.7 should state explicitly that relativities for the group membership rating factor are based on the experience data of each individual group. Simply put, insurers should develop a separate relativity for each group based on that group's experience, unless applying the credibility standard under Section 2632.9. This would make this provision consistent with the requirement under proposed Section 2644.27(e)(2), which states: "For private passenger automobile insurance, any group rate shall be implemented as the optional rating factor "group membership" permitted by subdivision (d)(16) of section 2632.5, based on the experience of the group..." (Emphasis added.)

CWD Proposed Edits to Section 2632.7(d)

(d) ~~The results of the sequential analysis shall be submitted to the Department in a computer file in a format specified by the Commissioner. Individual policy holder's name and street address need not be submitted provided the insurer includes a unique identifying number which permits tracking of the information should questions concerning data quality arise. [striktthrough in CDI February 18 draft text]~~ **For purposes of determining the relativity to associate with each group plan, 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, except as permitted under Section 2632.9.** The initial relativities, as developed, shall be balanced to a weighted average of 1.0 for multiplicative factors or balanced to a weighted average of 0.0 for additive factors. The weighting factor for the weighted average shall be the number of exposures from the data chosen for use in Section 2632.8(b).

C. Section 2632.9. Use of Data.

CDI's Proposed Draft Text

- (g) Credibility of data.

(1) If an insurer elects to use the group membership optional rating factor pursuant to subdivision (d)(16) of Section 2632.5, 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:

(A) The balanced relativity described in subdivision (d) of Section 2632.7, or

(B) The indicated relativity from the sequential analysis pursuant to subdivision (b) of Section 2632.7 from an approved class plan of another

insurer with a similar group and a similar book of business. However, in order for the insurer to use another insurer's approved class plan pursuant to this subdivision (g) of Section 2632.9, the other insurer's class plan must satisfy all applicable legal requirements stated in Subchapter 4.7 of Chapter 5 of Title 10 of the California Code of Regulations, commencing with Section 2632.1, that are in effect at the time of the instant filing.

- (2) In the event that there is no credible experience data available for a proposed Group as defined in Section 2644.27.5(b)1., an insurer may offer a selected balanced relativity of .95 until such time as sufficient data has developed to assess the relativity, at which time the selected balanced relativity shall reflect that data. This subdivision (g)(2) shall apply only to proposed Groups that are reasonably expected to satisfy the ZIP code distribution requirement set forth in subdivision (g)(1) of Section 2644.27.5.
- (3) An insurer may combine the experience of multiple groups whose membership and risk characteristics are homogenous to develop a single group membership rating factor relativity for those groups. In this case the insurer shall provide support demonstrating the existence of such homogeneity.

CWD Comment

As currently drafted, section 2632.9(g)(1)(B) lacks a clear metric for determining whether a group of another insurer or the book of business of another insurer is “similar.” Consequently, it is unclear what criteria—objective or subjective factors, for example, or actuarial principles—will be used to make this determination of similarity. For this reason, Consumer Watchdog recommends deleting this provision and not allowing such a “me too” filing. If this provision is retained, the CDI needs to establish criteria for what is a “similar” group and book of business. In addition, the reference to “indicated” relativity in section 2632.9(g)(1)(B) is vague because a company’s indicated values presented initially in another filing may be updated over time as additional data is provided or as they are demonstrated to be actuarially unsound. As a result, it is not clear which indicated values an insurer would be allowed to “me too” for meeting this credibility standard, and this provision should be amended to require use of the approved relativity value.

Relatedly, section 2632.9(g)(3) also lacks a clear metric for determining whether the membership and risk characteristics of multiple groups are “homogeneous.” Although section 2632.9(g)(3) requires insurers to “provide support demonstrating the existence of homogeneity,” it is unclear what degree of “homogeneity” or congruity among the groups’ membership and risk characteristics would be deemed acceptable by the Department. Consumer Watchdog thus recommends that the Department provide examples and adopt a standard that would more clearly define how groups’ membership and risks characteristics would be considered “homogenous.”

Finally, this provision should be amended to make clear that combining the experience of multiple groups is allowed only if the data required to develop a relativity under section 2632.7 based on the stand-alone experience of an individual group is not fully credible.

CWD Proposed Edits to Sections 2632.9(g)(1) and (g)(3)

(1) If an insurer elects to use the group membership optional rating factor pursuant to subdivision (d)(16) of Section 2632.5, 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:

(A) The balanced relativity described in subdivision (d) of Section 2632.7; ~~or~~

(B) **[DELETE or AMEND]** The ~~indicated~~ **approved** relativity from the sequential analysis pursuant to subdivision (b) of Section 2632.7 from an approved class plan of another insurer with a similar group and a similar book of business. However, in order for the insurer to use another insurer's approved class plan pursuant to this subdivision (g) of Section 2632.9, the other insurer's class plan must satisfy all applicable legal requirements stated in Subchapter 4.7 of Chapter 5 of Title 10 of the California Code of Regulations, commencing with Section 2632.1, that are in effect at the time of the instant filing; ~~or~~

(C) The methodology for combining the experience of multiple groups in compliance with subdivision (g)(3).

(3) An insurer may combine the experience of multiple groups whose membership and risk characteristics are homogenous to develop a single group membership rating factor relativity for those groups. In this case the insurer shall provide support demonstrating the existence of such homogeneity.

D. Sections 2644.27.5(b)(1)–(2). Group Insurance Plans. Definitions.

CDI's Proposed Draft Text

(b) Definitions.

As used in this section, the following terms have the following meanings:

(1) For purposes of private passenger automobile group insurance plans sold pursuant to Insurance Code Section 1861.12, group shall mean only, and in 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, unless all group members receive lifetime membership, and
 3. Satisfy subdivisions (b)(1)(A)1. and (b)(1)(A)2. of this Section 2644.27.5 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 by the 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 private passenger automobile insurance sold pursuant to Insurance Code Section 1861.12 shall mean a method of selling private passenger automobile insurance wherein:
- (A) Such insurance is offered to members of a particular group as defined in subdivision (b)(1) of this section, and
 - (B)
 1. Such group has either:
 - a. a written agreement with the insurer detailing the terms of the group plan arrangement, or
 - b. a written attestation, signed by an authorized representative of the group, to the existence of an unwritten agreement.
 2. Subdivision (b)(2)(B)1. notwithstanding, 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 arrangement or a written attestation signed by an authorized representative of the group in order to be offered insurance under a group plan as that term is defined in this subdivision (b)(2).

CWD Comment

The definitions of “group” and “group plan,” as well as the other requirements of proposed section 2644.27.5, should apply to other lines of insurance where group plans are offered, not just private passenger auto lines. Because Insurance Code section 1861.12 does not apply only to private passenger auto, the defined terms and requirements of the proposed regulation should be construed the same across all lines of insurance where group plans are offered.

Consumer Watchdog previously raised in its February 28, 2020 comment, and reiterates here, our concern that the phrases “to act and/or associate in concert” under (b)(1)(A)1. and “interacts 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 “interacts with” the group for the purposes of offering a group plan, and prohibit the insurance company from being involved in the formation of the group. To this end, our proposal is that the regulation more clearly define a “group” as follows.

Finally, Consumer Watchdog opposes the change in the February 18 draft text that would allow an insurer to have a written attestation of the existence of an unwritten agreement as opposed to requiring a written agreement as the December 23, 2019 draft text did. The full agreements should be disclosed to the public to ensure that the terms comply with the law and to allow the public to monitor implementation of these proposed regulations. Permitting insurance companies to submit only a written attestation defeats this public scrutiny, and false “attestations” have no legal consequence.

CWD Proposed Edits to Sections 2644.27.5(b)(1)–(2)

(b) Definitions.

As used in this section, the following terms have the following meanings:

(1) For all lines subject to ~~purposes of private passenger automobile group insurance plans sold pursuant to~~ Insurance Code Section 1861.12, group shall mean only, and in 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, unless all group members receive lifetime membership, and
3. Satisfy subdivisions (b)(1)(A)1. And (b)(1)(A)2. Of this Section 2644.27.5 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 by the 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) **For all lines subject to Section 1861.12, Aa “Group Plan” for purposes of private passenger automobile insurance sold pursuant to Insurance Code Section 1861.12 shall mean a method of selling private passenger automobile 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~~ **Subject to approval by the Commissioner and the requirements of this section; and**

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

~~(BC) 1. Such group has either:~~

~~a. a written agreement with the insurer detailing the terms of the group plan arrangement, or~~

~~b. a written attestation, signed by an authorized representative of the group, to the existence of an unwritten agreement.~~

2. Subdivision (b)(2)(B)1. notwithstanding, 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 arrangement or a written attestation signed by an authorized representative of the group in order to be offered insurance under a group plan as that term is defined in this subdivision (b)(2);

(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.

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 private passenger automobile insurance sold pursuant to Insurance Code Section 1861.12, persons eligible to purchase insurance under a particular Group Plan shall include all members of the particular Group, as defined by the Group, who without regard to group membership meet the insurer's publicly filed eligibility guidelines, and all members of a Group shall be offered the rate relativity 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 publicly filed with the Department. 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.

CWD Comment

The requirements under section 2644.27.5(c) should apply not to just private passenger auto, but other lines of insurance where group plans are offered. Insurance Code Section 1861.12 does not apply only to private passenger auto, so the requirements of the proposed regulation should be construed the same across all lines of insurance where group plans are offered.

CWD Proposed Edits to Section 2644.27.5(c)

For **all lines subject to** ~~purposes of private passenger automobile insurance sold pursuant to Insurance Code~~ Section 1861.12, persons eligible to purchase insurance under a particular Group Plan shall include all members of the particular Group, as defined by the Group, who without regard to group membership meet the insurer's publicly filed eligibility guidelines, and all members of a Group shall be offered the rate relativity 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 publicly filed with the Department. 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.

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

CDI's Proposed Draft Text

(d) Group selection; records retention.

- (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 shall 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 Comment

Consumer Watchdog reiterates its belief that this section is necessary to monitor insurers' practices of assessing applications for group insurance plans and to ensure that the group plans offered by an insurer comply section 2644.27.5, subdivision (g) and Insurance Code sections 1861.02, 1861.05, and 1861.12. However, absent a mandatory disclosure requirement as to insurers' written guidelines, the Department and the public will be hindered in their ability to monitor compliance with the above statutory and regulatory provisions.

Additionally, Consumer Watchdog has concerns that the record retention requirement is only five (5) years. Due to constantly evolving digital, cloud-based storage and the declining costs associated with such storage, a ten (10)-year record retention requirement will not impose an undue record retention burden on insurers. Moreover, a longer record retention period will help guarantee that insurers will preserve records needed 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 (g) and Insurance Code sections 1861.02, 1861.05, and 1861.12. By requiring a record retention period of ten (10) years, 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. To this end, the record retention requirements should also include marketing materials and any other solicitation materials provided by an insurer or its agents to 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.

CWD Proposed Edits 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 to accept or reject applications for group plans. Such guidelines shall 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~~ **ten** 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, **as well as marketing materials and any other solicitation materials provided by an insurer or its agents to 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.** 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 2644.27.5(e). Rating and Filing Requirements.

CDI's Proposed Draft Text

Section 2644.27.5(e) Filing requirements.

(e) Filing requirements.

(1) The insurer shall file with each class plan application an attestation with the Commissioner that the written agreement described in subdivision (b)(2)(B)1.a. of this section exists. If a written agreement does not exist, the insurer shall instead file the attestation specified by subdivision (b)(2)(B)1.b. of this section. Any Group whose membership is based exclusively on military status shall be exempt from the requirements of this subdivision (e)(1).

- (2) For private passenger automobile insurance, any group rate shall be implemented as the optional rating factor “group membership” permitted by subdivision (d)(16) of section 2632.5, based on the experience of the group, supported by a class plan application subject to the requirements of sections 2632.1 through 2632.19.
- (3) The insurer shall demonstrate in each class plan application filing that the insurer offers Group Plans only to groups that afford all persons full and equal advantages, privileges, and services in conformance with civil rights laws as described in subdivision (a) of Insurance Code section 1861.03.

CWD Comment

Consumer Watchdog reiterates its support of the requirements under the prior December 23, 2019 draft of subdivision (b)(2) that insurers must have a written agreement with each group that is offered a group plan and subdivision (e)(1) that the written agreement itself be filed with the Commissioner and made available to the public. Failure to require the agreement to be filed with the Department, and instead only require an attestation by the insurer that the written agreement exists as proposed under the February 18 draft text, would thwart compliance monitoring by the Department and the public, and would undermine competition among insurers.

Moreover, as currently drafted, this provision does not address concerns raised in Consumer Watchdog’s February 28, 2020 comment about the potential for corruption or abuse between group officials or members and insurance companies in the sale of group insurance plans. Therefore, we reiterate our proposal 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 reiterates its prior comment 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 proposed subdivision 2632.5(d)(16), no groupings of groups or subcategories of groups are allowed, except as permitted by Section 2632.9; and
- Insurers must develop a separate relativity for each group based on the experience of that group, unless data is not credible.

The regulation should also specify, as did the prior December 23, 2019 draft text, that for other lines of insurance, separate base rates should be calculated for each group based on the experience of the group.

CWD Proposed Edits to Section 2644.27.5(e)

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

(1) The insurer shall file with each class plan application ~~an attestation with~~ **submitted to** the Commissioner ~~that the written agreement described in subdivision (b)(2)(B) of this section exists.~~⁷ ~~If a written agreement does not exist, the insurer shall instead file the attestation specified by subdivision (b)(2)(B)1.b. of this section.~~ **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.** Any Group whose membership is based exclusively on military status shall be exempt from the requirements of this subdivision (e)(1).

(2) 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** any group rate shall be implemented as the optional rating factor “group membership” permitted by subdivision (d)(16) of section 2632.5, based on the experience of the group, **filed and** supported by **in** 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, except as permitted by Section 2632.9. For all other lines other than private passenger automobile insurance, a separate base rate shall be calculated for each group based on the experience of the group.**

(3) The insurer shall demonstrate in each class plan application filing that the insurer offers Group Plans only to groups that afford all persons full and equal advantages,

⁷ Note that the reference to subdivision (b)(2)(B) would become (b)(2)(C) under Consumer Watchdog’s proposed revisions to Section 2644.27.5(b) above.

privileges, and services in conformance with civil rights laws as described in subdivision (a) of Insurance Code section 1861.03.

H. Section 2644.27.5(g). Group Plans as a Whole.

CDI's Proposed Draft Text

(g) Group Plans as a whole.

(1) For purposes of the optional factor group membership, an insurer may offer a balanced relativity of less than 1.0 for a group only if at least 25% of the insured vehicles under all of the insurer's Group Plans, as defined in subdivision (b)(2) of this Section 2644.27.5, combined, are rated in ZIP codes listed on the Designated ZIP Code List described in subdivision (g)(1)(A) of this section.

(A) The Commissioner will publish a list of designated ZIP codes in the Designated ZIP Code List. The Commissioner will include in the Designated ZIP Code List all and only those ZIP codes that meet both of the following criteria:

1. The per capita income of the ZIP code, is below the fiftieth percentile for California; and

2. The population of the ZIP code consists of one-third or less persons who self-designate on the US Census as White, not of Hispanic origin.

(B) Proposed Groups as described in subdivision (g)(2) of Section 2632.9 that lack credible experience data but are reasonably expected to satisfy the ZIP Code distribution requirement stated in subdivision (g)(1) of this Section 2644.27.5 shall be included in the assessment of whether an insurer's book satisfies the ZIP Code distribution requirement stated in subdivision (g)(1) of this section.

(2) In the event that 15% or more of an insurer's insured vehicles are in Group Plans, the insurer may be eligible to receive an increase in its efficiency standard, described in Section 2644.12, as specified below; the efficiency standard increases set forth in subdivisions (g)(2)(A) through (g)(2)(F) shall not be cumulative:

(A) If at least 35% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 0.5 in its efficiency standard;

- (B) If at least 36% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 0.6 in its efficiency standard;
 - (C) If at least 37% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 0.7 in its efficiency standard;
 - (D) If at least 38% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 0.8 in its efficiency standard;
 - (E) If at least 39% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 0.9 in its efficiency standard; or
 - (F) If at least 40% of vehicles insured under the insurer's Group Plans are rated in ZIP Codes listed on the Designated ZIP Code List, the insurer shall be eligible to receive an increase of 1.0 in its efficiency standard.
- (3) An insurer shall demonstrate in every rate filing, in every class plan filing, and at any other time upon request of the Commissioner, that its Group Plans comply with this subdivision (g). To make this demonstration, insurers shall submit to the Commissioner:
- (A) The number of existing Group Plan rated vehicles in the ZIP codes listed on the Designated ZIP Code List; and
 - (B) The number of existing Group Plan rated vehicles outside of the ZIP codes listed on the Designated ZIP Code List; and
 - (C) The estimated number of rated vehicles in the ZIP codes listed on the Designated ZIP Code List for the proposed Group(s); and
 - (D) The estimated number of rated vehicles outside of the ZIP codes listed on the Designated ZIP Code List for the proposed Group(s).
- (4) An insurer that receives an increase to its efficiency standard pursuant to subdivision (g)(2) of this section shall not also be eligible for a variance pursuant to subdivision (f)(2)(B) of Section 2644.27.
- (5) The Department shall, not less frequently than every ten years, update the Designated ZIP Code List required by subdivision (1)(A) using the most recent decennial census data published by the U.S. Census Bureau necessary to update

Designated ZIP Code List. The commissioner shall adopt the updated Designated ZIP Code List by bulletin.

- (6) No later than 180 days after the date of the bulletin specified in subdivision (g)(5) of this section, the insurer shall submit to the Department's Rate Regulation Branch the number of vehicles insured under the insurer's Group Plans in each of the ZIP Codes listed on the updated Designated ZIP Code List, as well as the number of vehicles insured under the insurer's Group Plans in each ZIP Code throughout the State. In the event that the insurer's proportion of Group business in designated ZIP Codes falls below 25%, the insurer must refile its rate support in a class plan filing no later than 360 days after submitting the information called for in the immediately preceding sentence.

CWD Comment

Consumer Watchdog agrees with the important goal of this provision 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. Subdivision (g)(1) as drafted now provides a clear methodology by which to objectively measure an insurer's overall mix of groups by requiring that at least 25% of an insurer's group plan customers are from communities with a per capita income of below the 50th percentile for California and with a population consisting of at least 2/3 or more persons who self-designate as non-white or of Hispanic origin. Additionally, subdivision (g)(2) creates an efficiency standard variance as an incentive for insurers to write at least 35%–40% or more of their group business in these communities.

As explained in our February 28, 2020 comments, 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 predominantly non-Hispanic white and higher income communities with an equally unfairly discriminatory system under which insurers only offer group plans to associations or unions of the same elite professions. Consumer Watchdog is concerned that the percentage thresholds set forth in (g)(1)–(2) may not be high enough, however, to achieve the goal of diversifying the groups that will benefit from group plan discounts. As noted in Section I, according to the Commissioner's September 2019 investigatory report, 75% of drivers in underserved communities as defined by section 2646.6(c)⁸ do not receive an “affinity discount” through insurers' current group plans that include the use of illegal discriminatory occupational and educational criteria.⁹ We understand that the goal of subdivision (g)(2) is to provide incentives for insurance companies to write more than the status quo of 25% of their group business in low-income and predominately minority communities, but if this goal is not attained, these values may need to be adjusted. To this end, Consumer Watchdog

⁸ See fn. 4, *supra*.

⁹ See fn. 5, *supra*.

recommends that the Commissioner reevaluate the 25% percentage threshold in (g)(1) and the percentage threshold values for the efficiency standard variance in (g)(2) after the Commissioner's first published report of insurer data is released under proposed subdivision (j)(5).

Furthermore, Consumer Watchdog supports the requirement that insurers *shall* under subdivision (g) submit data that the Department and the public can analyze to determine whether a company's group plans promote wider access to group plan rates, without regard to the driver's education level or membership in an elite profession, including a description of the groups which have approached the insurer to request a group plan and groups to which an insurer has marketed a potential group plan, and marketing practices employed.

CWD Proposed Edits to Section 2644.27.5(g)

(3) An insurer shall demonstrate in every rate filing, in every class plan filing, and at any other time upon request of the Commissioner, that its Group Plans comply with this subdivision (g). To make this demonstration, insurers shall submit to the Commissioner:

(A) The number of existing Group Plan rated vehicles in the ZIP codes listed on the Designated ZIP Code List; and

(B) The number of existing Group Plan rated vehicles outside of the ZIP codes listed on the Designated ZIP Code List; and

(C) The estimated number of rated vehicles in the ZIP codes listed on the Designated ZIP Code List for the proposed Group(s); and

(D) The estimated number of rated vehicles outside of the ZIP codes listed on the Designated ZIP Code List for the proposed Group(s); **and**

(E) 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; and

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

I. Section 2644.27.5(i). Group Plans.

CDI Proposed Draft Text

- (i) Group Plans shall constitute discounts for the purposes of the disclosure required by Insurance Code section 11580.15.

CWD Comment

Subdivision (i) should be modified to properly reflect that “group plans” are not themselves “discounts,” but simply refer to group insurance plans that were negotiated by an organized group.

CWD Proposed Edits to Section 2644.27.5(i)

- (i) ~~Group Plans~~ **The relativities associated with the group membership rating factor** shall constitute discounts for the purposes of the disclosure required by Insurance Code section 11580.15.

J. Section 2644.27.5(j). Reporting.

CDI's Proposed Draft Text

- (j) Reporting.

(1) The Commissioner may, from time to time, require a report from any insurer that offers a private passenger auto 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) Not later than September 1, 2026 all insurers that will have offered private passenger auto 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 (j)(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 that 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 (j)(2)(A) through (j)(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 (j)(2) through (j)(4) of this section not later than September 1, 2027, and on each successive three-year anniversary date of September 1, 2027 thereafter.

CWD Comment

As detailed in our February 28, 2020 comment, Consumer Watchdog strongly supports the reporting requirements under subdivision (j) 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.

We also reiterate our prior recommendation that the initial reporting date in subdivision (h)(2) should be moved up, such that insurers should be required to provide the necessary 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. This earlier reporting date will allow the Commissioner and the public to more quickly analyze whether the anticipated benefits of the contemplated regulations are being met, or whether changes need to be made to achieve the goals of ensuring that group plans are not unfairly discriminatory.

CWD Proposed Edits 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) Not later than ~~September~~ **July** 1, ~~2026~~ **2024** all insurers that will have offered private passenger auto 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 (j)(2)(A) through (j)(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 (j)(2) through (j)(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. Sections 2644.27.5(k)–(l). Compliance and Effective Date.

CDI's Proposed Draft Language

(k) Compliance.

(1) General.

(A) 180-day class plan filing requirement for all insurers that offer group plans.

Any insurer offering group plans pursuant to Insurance Code section 1861.12 shall make a class plan filing that comports with the requirements set forth in the 2021 amendments to Sections 2632.5, 2632.7, and 2632.9, and in Section 2644.27.5, (“these regulations” hereinafter) no later than 180 days after the date this section is filed with the Secretary of State. The class plan filing shall not be accompanied by a rate filing and shall be revenue-neutral by coverage and overall.

(B) Premium dislocation limitation.

1. No individual premium increase caused by the implementation of these regulations alone shall exceed 5% per year.
2. Subdivision (k)(1)(B)1. of this section shall become inoperative with respect to, and shall no longer apply to, the insurer on the three-year-anniversary date of the date it filed the class plan required by subdivision (k)(1)(A).

(C) Insurers that do not use groups. Insurers that do not offer any group plans pursuant to Insurance Code section 1861.12 as of the date these regulations are filed with the Secretary of State are exempt from the filing requirements stated in subdivisions (k)(1)(A), (k)(2) and (k)(3). Such exempt insurers shall notify the Department of Insurance that they qualify for this exemption within 180 days of the filing of these regulations with the Secretary of State.

(2) Phase-out of group plans that do not meet regulatory definition of Group Plan.

(A) In the event an insurer’s rating plan includes a group plan that does not meet the definition of “Group Plan” in subdivision (b)(1) of this section, such insurer shall make a class plan filing annually, starting with the class plan filing required by subdivision (k)(1)(A), until any such group reaches the same selected relativity for the group membership rating factor as for

insured vehicles that do not satisfy the requirements for any of the insurer's Groups

(B) The number of annual filings necessary shall be determined as follows. In the event that these regulations alone cause an individual premium increase of more than 5%, the increase shall be applied in increments of 5% per year until either of the following filings is made, at which time the entirety of the remaining increase shall be applied:

1. an annual class plan filing required pursuant to subdivision (k)(2)(A), above, that indicates a premium increase of less than 5%, or

2. the third annual class plan filing required pursuant to subdivision (k)(2)(A).

(3) Phase-in of rating requirements applicable to Groups.

(A) Phase-in of indicated relativity for Groups.

1. In the event an insurer's rating plan includes a group that meets the definition of "Group" in subdivision (b)(1) of this section, such insurer shall make a class plan filing annually, starting with the class plan filing required by subdivision (k)(1)(A) of this section, until any such group reaches the indicated relativity or three years have passed, whichever happens first.

2. The number of annual filings necessary shall be determined as follows. In the event that these regulations alone cause an individual premium increase of more than 5%, the increase shall be applied in increments of 5% per year until either of the following filings is made, at which time the entirety of the remaining increase shall be applied:

a. an annual class plan filing required pursuant to subdivision (k)(3)(A)1., above, that indicates a premium increase of less than 5%, or

b. the third annual class plan filing required pursuant to subdivision (k)(3)(A)1.

(B) Phase-in of designated ZIP code distribution requirement.

The class plan filing required by subdivision (k)(1)(A) of this section shall demonstrate that the insurer's book of group business that meets the

definition of “Group” in subdivision (b)(1) of this section is comprised of at least 13% insured vehicles rated in ZIP codes included on the Designated ZIP Code List described in subdivision (g)(1)(A) of this section. Every insurer offering group plans pursuant to Insurance Code section 1861.12 shall make a class plan filing that demonstrates the book’s full compliance with subdivision (g) of this section within two years of the submission date of its class plan filing required by subdivision (k)(1)(A).

(l) Effective Date. These regulations shall become effective immediately upon filing with the Secretary of State.

CWD Comment

Subdivision (k)(1)(A), as currently drafted, states: “The class plan filing shall **not** be accompanied by a rate filing...” (Emphasis added.) This provision should be amended to require class plans to be accompanied by a rate application by eliminating the word “not.” This is necessary because if companies are currently using separate base rates for groups, they should have to adjust their rates to uniform base rates across groups before applying group membership as a rating factor under the new regulations.

Consumer Watchdog supports an immediate effective date as stated in subdivision (l) 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 within the 180-day time period specified in subdivision (k)(1)(A).

As currently drafted, the language in subdivision (k)(2)(A) applying to the phase-out of non-compliant groups, “until any such group reaches the same selected relativity for the group membership rating factor as for insured vehicles that do not satisfy the requirements for any of the insurer’s Groups,” is not entirely clear. Consumer Watchdog believes the intent of the language is meant to be until any such noncompliant group reaches the same relativity applied to insureds who are not in group plans.

In addition, for consistency, the time periods under (k)(2)(A) for phasing out groups that do not meet regulatory definition of group plan should be the same two-year period as specified under subdivision (k)(3)(B) for the phasing in of the requirements under subdivision (g). Likewise, the time period for phasing-in of indicated relativities for groups under subdivision (k)(3)(A)2. should be the same two-year period as the phase-in of distribution of group plans under subdivision (k)(3)(B).

Finally, under subdivisions (k)(1)(B) and (2)(B), it is not entirely clear how it would be determined if an individual premium would “increase more than 5%.” For example, an individual might lose a current group membership discount that does not meet the requirements of the new regulations, but be eligible for another group membership discount that does meet the new requirements. In addition, since some companies currently apply affinity group discounts as separate base rates, these provisions should

also apply to rate increases of more than 5% that result from phasing out a non-compliant affinity group.

CWD Proposed Edits to Section 2644.27.5(k)

(k) Compliance.

(1) General.

(A) 180-day class plan filing requirement for all insurers that offer group plans.

Any insurer offering group plans pursuant to Insurance Code section 1861.12 shall make a class plan filing that comports with the requirements set forth in the 2021 amendments to Sections 2632.5, 2632.7, and 2632.9, and in Section 2644.27.5, (“these regulations” hereinafter) no later than 180 days after the date this section is filed with the Secretary of State. The class plan filing shall ~~not~~ be accompanied by a rate filing and shall be revenue-neutral by coverage and overall.

(B) Premium dislocation limitation.

1. No individual premium **or rate** increase caused by the implementation of these regulations alone shall exceed 5% per year.

2. Subdivision (k)(1)(B)1. of this section shall become inoperative with respect to, and shall no longer apply to, the insurer on the ~~three~~**two**-year-anniversary date of the date it filed the class plan required by subdivision (k)(1)(A).

(2) Phase-out of group plans that do not meet regulatory definition of Group Plan.

(A) In the event an insurer’s rating plan includes a group plan that does not meet the definition of “Group Plan” in subdivision (b)(1) of this section, such insurer shall make a class plan filing annually, starting with the class plan filing required by subdivision (k)(1)(A), until any such group reaches the same selected relativity for the group membership rating factor as for insured vehicles that **are not in group plans**~~do not satisfy the requirements for any of the insurer’s Groups~~.

(B) The number of annual filings necessary shall be determined as follows. In the event that these regulations alone cause an individual premium **or rate** increase of more than 5%, the increase shall be applied in increments of 5% per year until either of the following filings is made, at which time the entirety of the remaining increase shall be applied:

1. an annual class plan filing required pursuant to subdivision (k)(2)(A), above, that indicates a premium increase of less than 5%, or

2. the ~~third~~ **second** annual class plan filing required pursuant to subdivision (k)(2)(A).

(3) Phase-in of rating requirements applicable to Groups.

(A) Phase-in of indicated relativity for Groups.

1. In the event an insurer's rating plan includes a group that meets the definition of "Group" in subdivision (b)(1) of this section, such insurer shall make a class plan filing annually, starting with the class plan filing required by subdivision (k)(1)(A) of this section, until any such group reaches the indicated relativity or ~~three~~ **two** years have passed, whichever happens first.

2. The number of annual filings necessary shall be determined as follows. In the event that these regulations alone cause an individual **rate or** premium increase of more than 5%, the increase shall be applied in increments of 5% per year until either of the following filings is made, at which time the entirety of the remaining increase shall be applied:

a. an annual class plan filing required pursuant to subdivision (k)(3)(A)1., above, that indicates a premium increase of less than 5%, or

b. the ~~third~~ **second** annual class plan filing required pursuant to subdivision (k)(3)(A)1.

(B) Phase-in of designated ZIP code distribution requirement.

The class plan filing required by subdivision (k)(1)(A) of this section shall demonstrate that the insurer's book of group business that meets the definition of "Group" in subdivision (b)(1) of this section is comprised of at least 13% insured vehicles rated in ZIP codes included on the Designated ZIP Code List described in subdivision (g)(1)(A) of this section. Every insurer offering group plans pursuant to Insurance Code section 1861.12 shall make a class plan filing that demonstrates the book's full compliance with subdivision (g) of this section within two years of the submission date of its class plan filing required by subdivision (k)(1)(A).