

2014

## Healthcare Insurance. Rate Changes.

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**Healthcare Insurance. Rate Changes. Initiative Statute.**

- Requires changes to health insurance rates, or anything else affecting the charges associated with health insurance, to be approved by Insurance Commissioner before taking effect.
- Provides for public notice, disclosure, and hearing on health insurance rate changes, and subsequent judicial review.
- Requires sworn statement by health insurer as to accuracy of information submitted to Insurance Commissioner to justify rate changes.
- Does not apply to employer large group health plans.
- Prohibits health, auto, and homeowners insurers from determining policy eligibility or rates based on lack of prior coverage or credit history.

**Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:**

- Increased state administrative costs to regulate health insurance, likely not exceeding the low millions of dollars annually in most years, funded from fees paid by health insurance companies.

**Analysis by the Legislative Analyst**

**Background**

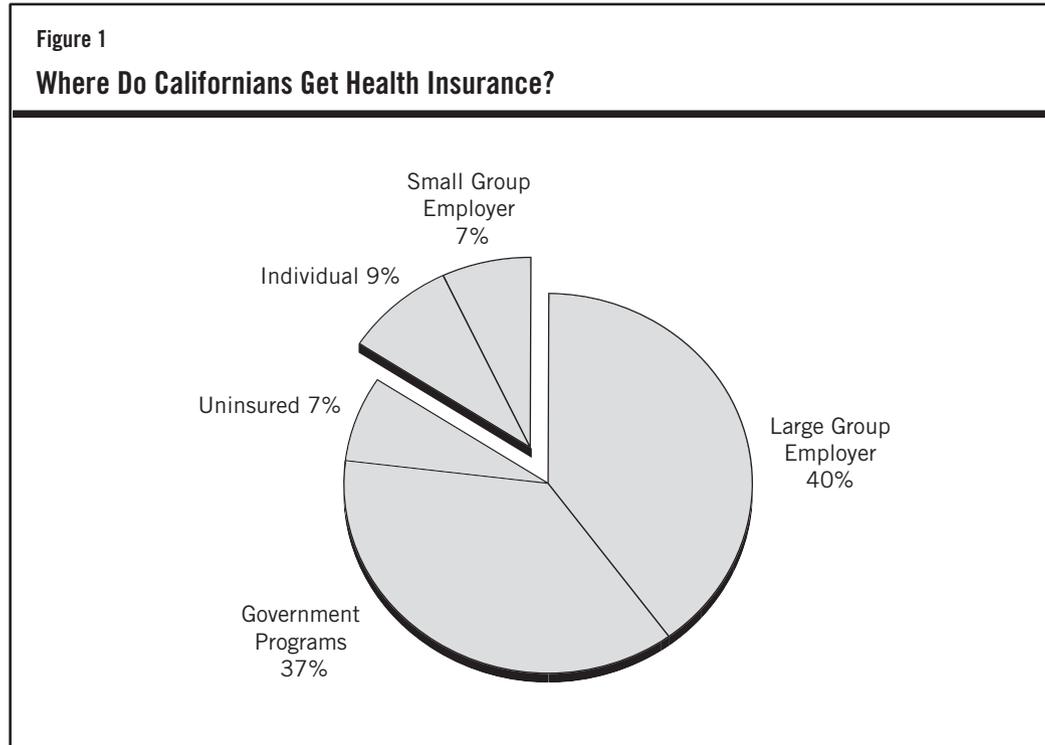
This measure requires the Insurance Commissioner (the Commissioner) to approve rates for certain types of health insurance. The rate approval process would be similar to a process that is currently used for other types of insurance, such as automobile and homeowner’s insurance. Below, we provide background information on health insurance in California and automobile and homeowner’s insurance rate regulation.

**Health Insurance in California**

**Sources of Health Insurance.** As shown in Figure 1, Californians obtain health insurance in many different ways. Some individuals and families obtain it from government programs, such as Medicare or Medicaid (known as Medi-Cal in California). Other individuals and families obtain job-based health insurance from their employers. Job-based coverage provided by companies with more than 50 employees is known as large group coverage. Coverage provided by companies with 50 or fewer employees is known as small group coverage. Still other individuals and families purchase health insurance directly from a health

insurance company (also known as individual health insurance). This measure mainly applies to individual and small group health insurance—which covers roughly 6 million Californians, or 16 percent of the population.

**Two State Departments Oversee Health Insurance in California.** Most health insurance products sold in California must be approved by state regulators to ensure they meet state requirements. For example, health insurance companies must provide basic benefits to enrollees—such as physician visits, hospitalizations, and prescription drugs—and have an adequate number of physicians available to provide care in a timely manner. These requirements are generally enforced by either the Department of Managed Health Care (DMHC) or the California Department of Insurance (CDI). The DMHC is run by a Governor-appointed director and it regulates some types of health insurance. The CDI is run by the elected Commissioner, and it regulates other types of health insurance. Most insured Californians have health insurance that is regulated by DMHC. The regulation of California’s individual or small group



health insurance is somewhat more evenly split between DMHC and CDI. The costs of each department's activities are generally funded through fees on the regulated insurance companies. Some other types of health insurance, such as the federal Medicare program, are generally not subject to state requirements and therefore not regulated by either department.

**Review, but Not Approval, of Health Insurance Rates.** As of 2011, health insurance companies must file information on proposed rates for all individual and small group health insurance with either DMHC or CDI before those rates can go into effect. (Insurance companies are not required to file large group rate information.) Both DMHC and CDI review the rate information and say whether the rate increases are reasonable or not. When evaluating the reasonableness of health insurance rates, DMHC and CDI may consider a variety of factors, such as: (1) which medical benefits are covered, (2) what portion of the costs enrollees pay through copayments and deductibles, and (3) whether a company's

administrative costs are reasonable. The departments are also required to make certain information from these reviews available to the public on their websites. However, DMHC and CDI currently have no authority to reject or approve the rates before they take effect.

**Federal Health Care Reform Creates Health Benefit Exchanges.** The federal Patient Protection and Affordable Care Act enacted in 2010, also referred to as federal health care reform, created marketplaces called health benefit exchanges. Insurance companies may sell health insurance products to individuals and small businesses on these exchanges. Certain low- to moderate-income individuals and families may receive federal subsidies to make their health insurance more affordable. These federal subsidies are not available for insurance purchased outside the exchange. California's exchange—operational since October 2013—is known as Covered California, and it is governed by a five-member board (the Board) composed of individuals appointed by the Governor and the Legislature. Covered California

is currently funded by federal funds and fees assessed on participating health insurance companies.

***Covered California Board Negotiates With Health Insurers.*** Under state law, the Board has the authority to approve which health insurance products are sold through Covered California, subject to state and federal requirements. Thus, the Board negotiates certain plan characteristics—such as rates—with health insurance companies seeking to sell products through Covered California.

***Individual Market Health Insurance Sold During “Open Enrollment.”*** Generally, persons may enroll in individual market health insurance only during certain months, or open enrollment periods. Open enrollment generally begins in the fall and lasts a few months.

### **Automobile and Homeowner’s Insurance Rate Regulation**

***Automobile and Homeowner’s Insurance Rates Subject to Rate Approval Process.*** In 1988, California voters approved Proposition 103, which requires that rates for certain types of insurance—including automobile and homeowner’s insurance—not be excessive, inadequate, or unfairly discriminatory. (Health insurance is not currently subject to Proposition 103 requirements.) Proposition 103 requires the Commissioner to review and approve proposed rates before such rates take effect. The Commissioner may hold a public hearing on any proposed rate. In addition, a consumer or a consumer representative can challenge a proposed rate and request a public hearing. The Commissioner is required to grant a request for a public hearing when proposed rate changes exceed certain percentages. The Commissioner has the final authority to approve or reject proposed rates. The Commissioner’s rate decision can be appealed to the courts by consumers, consumer representatives, or insurance companies.

### **Proposal**

#### ***Individual and Small Group Health Insurance Rates Must Be Approved by the Commissioner.***

The measure makes current and future individual and small group health insurance rates—including rates for health insurance that is regulated by CDI or DMHC—subject to the rate approval process established under Proposition 103. The measure also states that rates proposed after November 6, 2012 must be approved by the Commissioner, and payments based on rates in effect on November 6, 2012 are subject to refund. There is some legal uncertainty about whether the Commissioner could require health insurance companies to issue refunds for health insurance no longer in effect.

The measure also broadly defines “rates” in a way that includes other factors beyond premiums, such as benefits, copayments, and deductibles. While there is some uncertainty regarding how this provision would be interpreted, it likely would not give the Commissioner any new authority to approve characteristics of health insurance products beyond premiums, such as the types of benefits covered.

***Existing DMHC Regulatory Authority Would Remain in Place.*** Under the measure, DMHC would continue to regulate certain types of health insurance and have the authority to *review* certain health insurance rates. However, the Commissioner would have the sole authority to *approve* the rates.

***Insurance Filing Fees Collected to Pay for State Administrative Costs.*** Any additional administrative costs to CDI resulting from the measure would be financed by increased fees paid by health insurance companies.

***Prohibition on Consideration of Credit History and Prior Insurance Coverage.*** The measure also prohibits the use of an individual’s credit history or the absence of prior insurance coverage for determining rates or eligibility for health, automobile, or homeowner’s insurance.

Current law already generally prohibits the use of such factors when determining rates or eligibility for health insurance. Current law allows some use of credit history or prior insurance coverage when determining rates or eligibility for automobile and homeowner's insurance. However, in practice, insurance companies generally have not used such factors.

## Fiscal Effects

The most significant fiscal effects of this measure on state and local governments, described in detail below, are on state administrative costs. The net additional state administrative costs from this measure would likely **not exceed the low millions of dollars annually, but could be higher in some years**. These costs would be funded from additional fee revenues collected from health insurance companies.

***Increased State Administrative Costs for CDI.*** This measure would result in additional costs for CDI, including costs to review and approve health insurance rates and conduct public hearings on proposed rates. These ongoing costs would likely not exceed the low millions of dollars annually. The amount of additional costs would depend on several factors, including how often CDI or consumer representatives challenge proposed rates. The costs could be somewhat higher in the initial years after the measure takes effect. For example, there would be additional one-time costs if CDI reassessed rates that are currently in effect.

***Unclear Effects on DMHC's Administrative Costs.*** The measure does not directly impose new

duties on DMHC, but it could affect DMHC's administrative costs. The direction and extent of this potential effect is unclear. For example, over time, the degree to which DMHC would continue to review health insurance rates in light of the rate approval authority given to CDI under the measure is unclear. If DMHC reduced or eliminated its rate review activities, this would result in administrative savings of up to several hundred thousand dollars annually. On the other hand, some of DMHC's administrative costs could increase under the measure if actions taken by the Commissioner resulted in additional regulatory workload for DMHC.

***Potential Administrative Costs for Covered California.*** The measure does not impose new duties on Covered California, but it could result in additional administrative costs. The new rate approval process conducted by CDI would likely result in a longer approval process for some individual and small group health insurance products. To the extent there is a long delay in approval for a product, it could result in that product not being offered during an open enrollment period. This could, in turn, have fiscal effects on Covered California. For example, there could be additional costs to provide consumer assistance to individuals who switch to a different health insurance company. It is unclear whether long delays in rate approvals would occur under the measure or, if they do occur, how often they would occur.

Visit <http://cal-access.sos.ca.gov> for details about money contributed in this contest.

## ★ Argument in Favor of Proposition 45 ★

*Proposition 45 Will Stop Excessive Health Insurance Rate Hikes*  
Health insurance premiums have risen 185% since 2002, five times the rate of inflation.

Even when premium increases are found to be unreasonable, no one in California has the power to stop them!

That's why Californians recently faced \$250 million in rate hikes that state regulators found to be "unreasonable" but could not stop.

Proposition 45 requires health insurance companies to open their books and publicly justify rate hikes, under penalty of perjury, *before* they can raise premiums for 5.8 million individual consumers and small business owners.

Proposition 45 will:

- Require disclosure by making public the documents filed by insurers to justify rate increases.
- Promote transparency by allowing public hearings and the right to challenge unjustified premium increases.
- Create accountability by giving the insurance commissioner authority to reject excessive rate increases and order refunds.

Proposition 45 protects patients from health insurance company profiteering. Unaffordable insurance leads to unpaid medical bills, the leading cause of personal bankruptcy. Nearly 40% of Americans skip doctor visits or recommended care due to the cost.

Proposition 45 will stop health insurance company price gouging and lower health insurance premiums.

How do we know?

*Proposition 45 Extends The Protections Of Another Voter Approved Initiative That Has Saved Consumers Billions*

California auto and home insurance companies have been required to justify rate hikes and get permission to raise premiums since 1988.

Since voters enacted these insurance protections (Proposition 103), California is the only state in the nation where auto insurance rates went down over two decades! The Consumer Federation of America reported in November 2013 that

California's auto insurance rate regulations have saved California consumers \$102 billion by preventing excessive rate increases. Proposition 45 applies these rules to health insurers.

A nationally recognized actuary, who has reviewed health insurance rates in other states, and Consumer Watchdog estimate that Proposition 45 could save Californians \$200 million or more per year.

*Proposition 45 Is Needed Even More Now That Everyone Is Required To Have Health Insurance*

The federal healthcare law does not give regulators the power to stop excessive rate hikes.

As the *Los Angeles Times* editorial board said, "As of 2014, the healthcare reform law will require all adult Americans to obtain health coverage. Regulators ought to have the power to stop insurers from gouging that captive market."

The *San Jose Mercury News* editorialized: "California should join the majority of states across the nation, 36 of 50, that have authority to control health insurance rate hikes."

California's big health insurance companies have already contributed \$25.4 million to stop Proposition 45. They blocked legislation for greater transparency and accountability like Proposition 45 for a decade. They want to continue charging you as much as they want. Don't be misled.

Proposition 45 will lower healthcare costs by preventing health insurance companies from jacking up rates and passing on unreasonable costs to consumers.

Join us in support of Proposition 45 to save money on health insurance. Learn more: [www.yeson45.org](http://www.yeson45.org).

Thank you.

**Deborah Burger**, President  
California Nurses Association

**Jamie Court**, President  
Consumer Watchdog

**Dolores Huerta**, Civil Rights Leader

## ★ Rebuttal to Argument in Favor of Proposition 45 ★

Prop. 45 isn't about controlling health insurance rates—because California just launched a new independent commission this year responsible for controlling health insurance rates and expanding coverage.

Instead, Prop. 45 is really about who has power over health care: the independent commission, or one politician who can take campaign contributions from special interests like insurance companies and trial lawyers.

*Prop. 45—Undermines California's New Independent Commission*

The independent commission is working to control costs, providing what the *Los Angeles Times* described as "Good News About Health Costs."

But the special interests backing Prop. 45 have a different agenda: GIVE ENORMOUS POWER over health insurance benefits and rates to a single Sacramento politician.

This power grab would sabotage the independent commission with bureaucratic conflicts, lengthy delays and higher costs for consumers—and give powerful special interests more influence over health care.

*Prop. 45—Another flawed, costly, deceptive initiative*

- Under Prop. 45, ONE POLITICIAN COULD CONTROL

THE BENEFITS AND TREATMENT OPTIONS our insurance covers. We shouldn't expose treatment decisions to some politician's political agenda.

- Increases State Administrative COSTS TENS OF MILLIONS EVERY YEAR to fund costly, duplicative bureaucracy and resolve legal questions caused by sponsor's failure to qualify initiative for 2012, as intended.
- HIDDEN AGENDA—COSTLY NEW LAWSUITS. The sponsors made \$11 million off legal fees under their last sponsored Proposition; now they're back to make millions more off the costly new health care lawsuits Prop. 45 allows.
- Exempts big corporations.

Join doctors, nurses, patients, clinics and small businesses: VOTE NO on 45.

**Gail Nickerson**, President  
California Association of Rural Health Clinics

**Robert A. Moss, MD**, President  
Medical Oncology Association of Southern California

**Kim Stone**, President  
Civil Justice Association of California

★ **Argument Against Proposition 45** ★

We all want to improve our health care system, but Prop. 45 isn't the reform we need.

Instead, Prop. 45 is a flawed, costly and deceptive initiative drafted to benefit its sponsors and special interest backers—while patients, consumers and taxpayers face higher rates, more costly bureaucracy and new barriers to health care.

Prop. 45 makes things *worse*, not better. That's why California doctors, nurses, patients, clinics, hospitals, taxpayers and small businesses all oppose Prop. 45.

**GIVES ONE POLITICIAN TOO MUCH POWER—**  
Proposed Section 1861.17(g)(2)

Prop. 45 gives sweeping control over health care coverage to one elected politician—the insurance commissioner—who can take campaign contributions from trial lawyers, insurance companies and other powerful special interests.

Under Prop. 45, this single politician could **CONTROL WHAT BENEFITS AND TREATMENT OPTIONS YOUR INSURANCE COVERS**—with virtually no checks and balances to ensure decisions are made to benefit patients and consumers instead of special interests in Sacramento.

*“Prop. 45 gives one politician too much power over health care. Treatment decisions should be made by doctors and patients, not someone with a political agenda.”*—Dr. Jeanne Conry, MD, OB/GYN—Immediate Past President, American College of Obstetrics and Gynecology, District IX

**CREATES MORE DUPLICATIVE, COSTLY BUREAUCRACY—**Proposed Section 1861.17(e)

Prop. 45 creates even more expensive state bureaucracy, duplicating two other bureaucracies that oversee health insurance rates, causing costly confusion with other regulations and adding more red tape to the health care system.

The non-partisan Legislative Analyst's Office projects the measure could **INCREASE STATE ADMINISTRATIVE COSTS TENS OF MILLIONS OF DOLLARS PER YEAR**—costs ultimately paid by consumers.

We shouldn't create a costly new, duplicative state bureaucracy when we can't adequately fund our schools, children's health care

programs, or other priorities.

**CALIFORNIA ALREADY HAS A NEW INDEPENDENT HEALTH CARE COMMISSION**

California just established a new independent commission responsible for negotiating health plan rates on behalf of consumers and rejecting health plans if they're too expensive.

This independent commission is working successfully to control costs and expand coverage. We shouldn't allow a politician who can take campaign contributions from special interests to interfere with the commission's work.

**EXEMPTS BIG CORPORATIONS—**Proposed Section 1861.17(g)(3)

Prop. 45 exempts large corporations, even as it burdens small businesses with costly new regulations and bureaucracy. If we're going to reform health care, it should apply to everyone, not just small businesses and individuals.

**FINE PRINT HIDES FRIVOLOUS LAWSUITS—**Proposed Section 1861.17(a)

Prop. 45's sponsors are lawyers who made millions profiteering off legal challenges allowed by the last proposition they sponsored, according to the *San Diego Union-Tribune*. They've hidden the same provision in Prop. 45, allowing them to charge up to \$675/hour and make millions more off costly health care lawsuits.

The sponsors will get rich—consumers will pay.

Our health care system is too complex to make major changes through a proposition pushed by one special interest. If we're going to make changes, patients, doctors and hospitals should all be part of the solution.

Vote NO on Prop. 45.

[www.StopHigherCosts.org](http://www.StopHigherCosts.org)

**Monica Weisbrich, R.N.**, President  
American Nurses Association of California

**Dr. José Arévalo, M.D.**, Chair  
Latino Physicians of California

**Allan Zarembeg**, President  
California Chamber of Commerce

★ **Rebuttal to Argument Against Proposition 45** ★

Californians are being overcharged by the health insurance industry. Proposition 45 will protect consumers and help stop the insurance industry's price gouging. It applies California's existing auto insurance protections, which have saved consumers billions, to health insurance.

*Five health insurance companies that control 88% of California's insurance market have raised \$25,300,000 against Prop. 45:* Blue Cross and parent company Wellpoint, Kaiser, Blue Shield, Health Net and United Healthcare. They want to keep charging you as much as possible without accountability, transparency or disclosure.

When did health insurance companies ever spend \$25 million to save you money on your health insurance or to make your healthcare better?

Here are the facts:

- Prop. 45 will not limit your benefits or treatment options, only how much you pay for health insurance. That's why the California Nurses Association, representing 85,000 Registered Nurses, supports Prop. 45.

- There is no “commission” in California, or federally, that has the power to stop unreasonable health insurance rates. That's why Prop. 45 authorizes our elected insurance commissioner to reject excessive rate hikes. No insurance commissioner has accepted campaign contributions from insurance companies since 2000. No wonder health insurers are worried!
- Prop. 45 won't create a new bureaucracy. It requires health insurance companies to pay for its implementation and obey the same rules, from voter-approved Prop. 103, that apply to other insurance companies. The insurance companies fear these rules and the consumer challenges to excessive rates that have cancelled billions in overcharges by auto, home and business insurers. [www.yeson45.org](http://www.yeson45.org)

**Dr. Paul Song**, Co-Chair  
Campaign For A Healthy California

**Henry L. “Hank” Lacayo**, State President  
Congress of California Seniors

**Harvey Rosenfield**, Author of 1988 insurance reform Proposition 103