



Nov. 13, 2007

The Honorable Mervyn Dymally
Assembly Health Committee Chair
State Capitol
Sacramento, 95814

Re: SUPPORT – AB X1-1

Dear Assemblymember Dymally,

CALPIRG is a statewide membership-based public interest group that stands up to powerful interests, working to win concrete results for Californians' health and well-being. With researchers, advocates, organizers and students, we advocate on behalf of consumers and all California's residents.

The current health care system fails far too many Californians who cannot get access to quality health insurance at a fair price. We supported AB 8 because it would have expanded coverage, contained the skyrocketing costs of health care, and helped consumers get a fair shake when buying insurance. For these same reasons, we also support AB X1-1. The special session on comprehensive health care reform is an important opportunity to fix system-wide problems that hurt all Californians, and we are committed to continuing to work to make sure California gets the comprehensive health care reform it so urgently needs.

While there are a host of important policy implications to consider, we are primarily focused on four outcomes:

1. Giving consumers effective tools to get a fair rate for health insurance
2. Giving all consumers access to health insurance, regardless of whether they are sick or healthy
3. Increasing the number of Californians who have useful health insurance
4. Containing the rising costs of health care

1. GIVING CONSUMERS EFFECTIVE TOOLS TO GET A FAIR RATE FOR HEALTH INSURANCE

Currently, individuals find it next to impossible to get a fair price for health insurance. Alone, they lack any bargaining power, and risk is concentrated, rather than spread out

over a large population. As a result, insurers are at liberty to confront them with take-it-or-leave-it deals and sky-high rates. Some Californians may spend four times as much for an individual plan as they would have paid for the same plan on the group market.¹ That's why reform must shrink the number of Californians who buy insurance on their own – presently 2.6 million, according to recent estimates – rather than through a group plan.

We are pleased that AB X1-1 also includes AB 8's CalCHIPP purchasing pool. This pool would provide subsidized coverage to low-income Californians, and also offer unsubsidized coverage, allowing those ineligible for financial assistance to come together and take advantage of the greater bargaining power and risk-spreading offered by group coverage. The pool would be an attractive option, since most consumers would have no reason to obtain coverage on their own rather than take advantage of the group rate. Further, it would increase the competitiveness of the individual market – viable access to the purchasing pool would give consumers the ability to say no to insurance company offers and hold out for a better deal, forcing insurers to compete for their business.

However, the current eligibility rules make the pool a less powerful tool than it could be for shrinking and reforming the individual market. Only employees of employers who choose to pay a fee to the state instead of providing coverage, and individuals eligible for health care tax credits,² qualify for access to the unsubsidized pool.

This will leave some Californians to fend for themselves on the individual market, with all the excessive costs and inefficiencies that entails. Because the purchasing pool simply allows enrollees to coordinate their health care expenditures, expanding eligibility does not cost the state anything. Indeed, to the extent that a larger number of participants increases the pool's bargaining power when negotiating with providers, such a step could save money. The unsubsidized CalCHIPP pool should therefore be open to all Californians.

It is true that fully open eligibility could create a problem of adverse selection – the sick among the self-employed, for example, would enter the pool, while the healthy might opt out, since they might be able to get a better rate on the individual market. More sick people and fewer healthy in the pool would increase rates. But this will be a very small effect – the number of self-employed people who would be ineligible for a tax credit will likely be very low, compared to the number of people in the pool, for example. Any rate increases due to opening up the pool would be modest – but making group coverage open to Californians who would otherwise have to buy coverage as individuals would make a very large difference to them.

¹ See California Health Care Foundation, SNAPSHOT: HEALTH INSURANCE: CAN CALIFORNIANS AFFORD IT? 2007 EDITION (June 2007), available at <http://www.chcf.org/topics/healthinsurance/index.cfm?itemID=133313>.

² Although the legislation does not provide for such tax credits, documents released by the Speaker's office indicate that they will be available to those with incomes between 250 and 450 percent of the Federal Poverty Line.

We strongly urge, therefore, that all Californians be eligible for CalCHIP, to help those who otherwise would lack access to group coverage afford health care.

Under AB X1-1 as written, no details are provided about the mechanics of the employer fee. In AB 8, the fee paid by businesses that do not offer coverage was specifically earmarked to ensure that that employer's employees had coverage. This was a strong model for spreading the costs of health care, since employer dollars would help employees pay for coverage, and also meant that employers who paid the fee saw a concrete benefit in the form of a healthier workforce. Businesses, in general, want to cover their workers – in fact, a recent survey of small business owners found that 80 percent believed that they should pay to provide health care for their employees.³ The legislature should help them realize this goal by creating a link between employer contributions and employee benefits, as in AB 8.

Finally, we note that AB X1-1 sets out a framework under which all insurance plans will be categorized into one of five coverage classes. Such a system will simplify decision-making for consumers and allow insurers to experiment with providing a diverse array of choices, both of which we support. The bill also provides for the setting of a baseline plan within each class. These clear benchmark plans will allow consumers to make apples-to-apples price and benefit comparisons within and between classes. Because insurers would be free to offer other plans equivalent to or better than the benchmark within each tier, consumer choice and insurer innovation would not be stifled – but consumers would know what they were buying. We wholeheartedly support the use of coverage classes plus baseline plans to increase the ability of consumers to make informed decisions.

2. GIVING ALL CONSUMERS ACCESS TO HEALTH INSURANCE, REGARDLESS OF WHETHER THEY ARE SICK OR HEALTHY

Perhaps the most perverse flaw of our health care system is that those who most need care – the old and the sick – find it hardest and most expensive to get. This problem is especially stark in the individual market, since studies indicate that as many as 90 percent of those wishing to obtain coverage there may be rejected, charged higher rates, or offered only limited coverage due to pre-existing conditions.⁴ Reform must prevent insurance companies from discriminating against consumers with existing health conditions. The purpose of health insurance is to spread the risks and the costs of poor health among a large pool of people, not to take the healthy and refuse the sick.

AB X1-1, like AB 8 and to a lesser extent ABX1-2, is a huge step forward from the status quo. It requires insurers to offer all of their products to all comers, eliminating insurers'

³ Small Business for Affordable Health Care, CALIFORNIA SMALL BUSINESS HEALTH CARE SURVEY (Aug. 23, 2007), *available at* http://www.smallbusinessforhealthcare.org/2007_california_healthcare_survey_report.php.

⁴ See Kaiser Family Foundation, HOW ACCESSIBLE IS INDIVIDUAL HEALTH INSURANCE FOR CONSUMERS IN LESS-THAN-PERFECT-HEALTH? (June 2001), *available at* <http://www.kff.org/insurance/upload/How-Accessible-is-Individual-Health-Insurance-for-Consumers-in-Less-Than-Perfect-Health-Executive-Summary-June-2001.pdf>.

ability to deny coverage for pre-existing conditions or other health risks. It also eliminates out the power of insurers to charge increased costs based on health status, allowing them to base their rates only on the services provided and the age, family size, and location of the enrollee. These reforms will make a critical difference to the many Californians who lack access to health care because they have the bad luck to need it – and the many more who fear losing coverage or being charged higher rates if they do become sick.

It is true that the guaranteed issue of coverage, combined with the affordability exemption from the individual mandate, may create a problem of adverse selection. Exempted Californians who are sick will obtain coverage even though they are not required to, while the healthy exempts are less likely to choose to buy insurance. As always, more sick and fewer healthy people will lead to higher rates. But any attempts to address this fear must not deny Californians the benefit of guarantee issue and community rating. Systemic approaches, such as programs of reinsurance or tying windows of enrollment to qualifying events, are more appropriate. Any compromises that would allow insurers to continue their discriminatory practices would be disproportionately borne by those Californians most in need of help.

Community rating and guarantee issue will not be enough to mend these practices, however. Because age is strongly correlated with overall health, insurers could make an end-run around these reforms by simply forcing up the prices they charge to the old, reverse-competing to avoid covering them. In order for guarantee issue and community rating to be meaningful promises, this loophole must be closed.

A convenient way of doing so is to create a link between the rates insurers charge to members of different age bands. The Governor's health care reform proposal, AB X1-2 contains such a connection, stipulating that insurance companies cannot charge 60-to-64-year-olds too much more than they do 30-35 year olds

A link between the two rates would also make the insurance market more competitive. Because insurers vie for the business of the young, tying the rates together would mean that the old would also benefit from the bargaining power enjoyed by the young. Pooling consumers' negotiating clout is simply good policy. A rate band link should be included in AB X1-1, with the aim of preventing insurers from de facto refusing to cover older Californians.

3. INCREASING THE NUMBER OF CALIFORNIANS WHO HAVE USEFUL HEALTH INSURANCE

California has more uninsured – 6.7 million – than any other state. Thus, expanding coverage is another keystone of reform. Expanding the Medi-Cal and Healthy Families programs will allow more of the neediest Californians to obtain the coverage they need to be healthy. Subsidized coverage through the purchasing pool, combined with tax credits for those making slightly more, will decrease the costs of health insurance for those who are eligible, and also reduce the number of uninsured residents. If the unsubsidized pool is changed as recommended above, it will provide another avenue for those otherwise

unable to get coverage. Finally, the individual mandate will require those who currently forego insurance coverage as a matter of choice to buy insurance. All of these policies will reduce the number of uninsured Californians.

However, it is not simply enough that Californians obtain coverage – giving the uninsured access to low-quality insurance plans that provide no substantial health benefits and making them insured in name only does little to solve the real problems in our health care system. That is why we are pleased that all plans offered in the CalCHIPP pool package meets the requirements of the Knox-Keene Act, as well as providing prescription drug coverage and promoting prevention.

Currently, AB X1-1 contemplates that the minimum benefit package necessary to satisfy the individual mandate will be determined by MRMIB. It may be that a later administrative process is the best way to resolve this complex question. However, the agency should not have unfettered discretion to choose a plan. The bill should stipulate a floor of benefits below which MRMIB cannot go, so that Californians can know the bare outlines of what mandated coverage must provide. In setting such a floor, due consideration must be paid to the benefits of preventive care and chronic disease management in promoting wellness and reducing costs.

The individual mandate will ensure that those who can afford health coverage obtain it, thereby spreading risk over a larger pool of Californians, reducing rates, and protecting people from unforeseen illness. An appropriate enforcement scheme for the mandate is critically important, however, as too punitive an approach could cause individuals to forego public services and move to the underground economy to avoid the consequences of failure to comply. As such, we welcome AB X1-1's focus on outreach and education in implementing the mandate.

While the legislature may determine that some more stringent enforcement mechanisms may be useful, it is important to ensure that such mechanisms are not counterproductive. In particular, failure to comply with the mandate should not disqualify an individual from obtaining coverage better than the minimum offered, or from taking advantage of guarantee issue and community rating. For late-enrollees with real medical needs, high-deductible coverage will provide no substantial benefit – and without guarantee issue and community rating, some might not even be able to obtain that. Consumers who need care will underutilize medical services, especially prophylactic ones, due to the high out-of-pocket costs, eventually compounding the costs when they move up to a higher level of coverage and get treatment for the conditions that have developed or worsened during the time they've spent languishing at the bottom level of care. Violating the law's requirements should lead to a fine or other financial penalty, rather than a ban on obtaining quality health care.

Finally, we are pleased that AB X1-1 recognizes the reality that some Californians will simply not be able to afford coverage, given the current scheme of subsidies. Tying the affordability trigger to total out-of-pocket costs is also welcome, because unless premiums, deductibles, and coinsurance are all included in the assessment, insurance

companies will find it easy to game the threshold by shifting costs from one category to the other.

However, taking full account of all health care expenditures may be administratively difficult, without simply assuming *a priori* that all consumers will use the entire deductible of the minimum coverage and reach their out-of-pocket maximum for the year. Another possibility would be to tie the affordability exemption not to the total cost of the minimum coverage, but to the premium cost of a benchmark plan that provides a reasonable value, with a comparatively low deductible and non-punitive coinsurance. That way, both sick and healthy could be assured that their expenditures would buy them useful coverage, and the administration of the exemption would be simplified.

4. CONTAINING THE RISING COSTS OF HEALTH CARE

One of the most fundamental difficulties in the effort to reform health care is that prices continue to rise. Slowing this increase is a necessary part of a sustainable program. Fortunately, AB X1-1 contains many provisions that will keep costs under control.

First, it requires insurance companies to allocate significant resources to health care, rather than administrative overhead or excess profits, by mandating them to spend at least 85 percent of premium dollars on patients' health. HMOs are already required to meet this threshold, but currently, some insurers spend as little as 50 cents per premium dollar on health care, contributing to the rising cost of care. We welcome the inclusion of this strong, realistic requirement, and urge that no loopholes that would allow insurers to escape its force be added.

The bill also provides for bulk purchasing of prescription drugs for the CalCHIP pool. Taking advantage of the bargaining power held by Californians coming together is simple common sense, and fully in keeping with free market principles. Similarly, the establishment of a public insurer will promote competition and accountability in the private insurance market. Finally, AB X1-1's robust transparency provisions will help consumers make informed decisions, and ensure that they get the care that they pay for, in addition to promoting high standards of care and efficient best practices.

As the year of health care reform comes to a close, we are pleased that progress continues to be made. AB X1-1, much like its regular-session predecessor, will expand the number of Californians who can get coverage that's useful for them at a fair price, enhance their power to make informed choices, and contain the skyrocketing price of coverage. The changes outlined above will make it even better for our state's consumers.

Obviously, we will also want to evaluate the corresponding ballot initiative on financing, but the intent language is promising. We would support a tobacco tax increase, as a proven way of reducing smoking – especially teen smoking. Similarly, we are supportive of a hospital fee, and the corresponding use of federal matching funds. An employer assessment that fairly shares the cost of health care reform is also essential. We will make a final determination of our support after fully evaluating proposed language.

We look forward to working with you to make comprehensive health care reform a reality, and make sure that we take advantage of this opportunity to ensure that all Californians have access to quality, affordable coverage.

Sincerely,

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