



**Standing Up
To Powerful Interests**

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Jan. 10, 2008

The Honorable Sheila Kuehl, Chair
Senate Health Committee
State Capitol
Sacramento, 95814

Re: SUPPORT – ABX1-1 (Núñez /Perata)

Dear Senator Kuehl,

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.

We were deeply engaged throughout 2007 in the effort to reform California's broken health care system, which fails far too many who cannot get access to quality health insurance at a fair price. We are pleased that now, at the beginning of 2008, we can support ABX1-1, a landmark bill that will catapult California out of the dark ages and towards a nation-leading health care system.

ABX1-1 will expand coverage, contain the skyrocketing costs of health care, and help consumers get a fair shake when buying insurance. Beyond the policy benefits, it also puts health care funding on a secure footing, a goal which is made all the more important by looming deficits. While we request a small number of clarifying amendments to make clear the law's intended function, we strongly urge you to approve ABX1-1 and give California the health care reform it so urgently needs.

Throughout our advocacy, we have focused on four policy areas critical to real reform. ABX1-1 makes great strides in all of them.

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 medical risk is concentrated, rather than spread out over a large population. As a result, insurers are at liberty to present them with take-it-or-leave-it deals and sky-high rates. Californians may spend four times as much for an individual plan as they would have paid for a comparable plan on the group market.¹ And while, on average, small-group plans cover over 80% of enrollees' medical costs, that number is only 54% for those with individual plans.² 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.

ABX1-1 goes far to expand group coverage through its creation of the Cal-CHIPP 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. 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.

Unsubsidized coverage through the Cal-CHIPP pool will be open to all those eligible for tax credits – Californians not offered employer-sponsored coverage with income between 250% and 400% of the federal poverty line – as well as employees of employers that pay a fee to the state rather than offer coverage themselves, and those of employers that designate the Cal-CHIPP program as the coverage option in their Section 125 plan, allowing employees to pay for their health care with pre-tax dollars. We understand that modeling shows the pool is expected to have three million or more enrollees, meaning that its negotiating clout will be substantial. While we support opening up Cal-CHIPP enrollment further in subsequent legislation, ABX1-1 right now offers millions of Californians access to a fair, group rate for health insurance.

Another strength of the pool's structure is that it gives employees of employers who choose to pay into the pool a real benefit from the choice. Employees of fee-paying employers will see at least 20% of their premium paid for by the employer contribution. Beyond the significant discount the employee receives, this also means that employers who pay the fee see 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

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 *Id.*

employees.³ This link means that both businesses who directly provide coverage and those who pay the fee will contribute to their employees' well-being.

Finally, we note that ABX1-1 sets out a framework under which insurance plans will be categorized into one of five coverage classes. Currently, consumers wishing to buy insurance are confronted with the overwhelming and confusing task of comparing plans from different insurers that can contain wildly different benefits, making it almost impossible to discover the best choice. The new tier system will simplify decision-making for consumers, and also allow insurers to experiment with providing a diverse array of choices.

The bill also provides for the setting of a baseline plan within each class of coverage. These clear benchmark plans will allow consumers to make apples-to-apples price and benefit comparisons within and between classes. Insurers would be free to offer other plans equivalent to or better than the benchmark within each tier, meaning that consumer choice and insurer innovation would not be stifled – but consumers would know what they were buying.

In a well-functioning insurance market, consumers need to be well-informed about what they're buying, and they need to be able to band together to take advantage of risk-spreading and greater bargaining strength. ABX1-1 will give consumers the power they need to get a fair price.

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

Perhaps the most perverse paradox 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. Even where a sick Californian is offered coverage, they can currently expect to pay about three times what their healthy peers are charged.⁴ This problem is especially stark in the individual market, where studies indicate that as many as 90 percent of those seeking coverage may be rejected, charged higher rates, or offered only limited coverage due to pre-existing conditions.⁵ 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.

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 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>.

⁵ 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>.

ABX1-1 is a huge step forward from the status quo. It requires insurers to offer all of their products to all comers, eliminating insurers' ability to deny coverage for pre-existing conditions or other health risks.⁶ It also phases out the power of insurers to charge increased costs based on health status, after four years allowing them to base their rates only on the services provided and the age, family size, and location of the enrollee.

Because insurers can use age as a proxy for health, we are pleased that ABX1-1 eliminates this end-run by setting out a link between the rates charged to older Californians and those charged to those in their 30s – this means that insurance companies cannot jack up premium costs on the old in an attempt to reverse-compete out of having to provide coverage to them.

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.

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

California has more uninsured – 6.7 million at any one time – 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. As mentioned above, the unsubsidized Cal-CHIPP pool provides another avenue for those otherwise unable to get coverage. Finally, the individual mandate will require all Californians who can afford coverage to buy it. 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. For this reason, we request that ABX1-1 be clarified to make clear that all plans offered in the Cal-CHIPP pool package should meet the requirements of the Knox-Keene Act, as well as providing prescription drug coverage and promoting prevention.

Similarly, we are pleased that, in line with our previous suggestions, ABX1-1 now sets guidelines for MRMIB's determination of the minimum creditable coverage that individuals must have to satisfy the mandate, requiring that it include coverage for doctor visits, hospital stays, and preventive care. As health care becomes more fairly priced and the insurance market becomes better-regulated, however, the appropriate minimum

⁶ Guaranteed issue coverage is not offered to those who violate the mandate and those exempted from coverage, in order to prevent gaming of the system that would drive up costs for all enrollees. Still, because affordability and hardship exemptions are not automatic, a person must specifically opt in before losing the benefit of guaranteed issue.

benefits package may change, so we request that the legislation be clarified to note that MRMIB has the power to revisit the minimum coverage package after it is initially set.

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 ABX1-1's focus on outreach and education in implementing the mandate.

Further, we are pleased that ABX1-1 recognizes the reality that some Californians will simply not be able to afford coverage, given the current scheme of subsidies. Individualized affordability exemptions will allow MRMIB to assess the hardship buying coverage would cause to each particular family who requests an exemption, and also allow regulators to take account of all out-of-pocket costs, rather than just premiums, when making the affordability assessment.

Affordability of coverage is critical to ensuring that ABX1-1 works, and one of the centerpieces of affordability for mid- and lower-income California families is the tax credit that will help those between 250% and 400% of the federal poverty line to pay their premiums. The size of the tax credit is pegged to the cost of a tier-3, midrange product, although consumers may use the credit to assist their purchase of more or less comprehensive plans. We understand that modeling of this provision has assumed that a tier-3 product will include coverage for important primary care outside of any deductible. Because Californians should know that they will get assistance in buying coverage that will be affordable to use, we request that ABX1-1 be clarified to make clear that the tier-3 product will include first-dollar coverage for preventive care, doctor visits, and prescription drugs.

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, ABX1-1 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.

The bill also provides for bulk purchasing of prescription drugs for the Cal-CHIPP pool. Taking advantage of the bargaining power created 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, ABX1-1'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.

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The current projected \$14 billion deficit serves as a stark warning that the best policy package in the world does no good if it is not financially sustainable. Fortunately, ABX1-1 is a responsible way to put our health care system on a secure footing. ABX1-1 brings in new money for health care that could not be used to plug the gap in the general fund, as well as limiting health care costs moving forward. And as the past shows, if it is not passed, short-term budget-balancing cuts without an eye towards systemic reform are likely to increase costs down the road, effectively mortgaging California's health care budget with no end in sight.

ABX1-1's funding mechanisms do not starve the general fund. The bill creates money for health care by opening up new funding sources that would otherwise go untapped. First, it creates a pay-or-play mandate on employers, requiring all business to contribute money to health care, either directly through providing coverage to their workers or by instead paying a fee to the state. The fee will raise approximately \$2.5 billion each year, with the size of the contribution scaled to the size of the employer. But the logic of the pay-or-play fee only makes sense in the context of health care; these revenues could only be used for health care.

Similarly, federal matching funds are another major component of ABX1-1's financing. The bill's health care expenditures will draw down \$4.4 billion in matching funds from the federal government. Giving employees buying insurance on their own the ability to deduct their health care expenditures from their income tax through Section 125 plans also acts as a de facto injection of federal cash. This money can only be used for health care purposes – again, failing to pass ABX1-1 leaves money on the table in a time of soaring deficits.

Under ABX1-1, hospitals will pay a fee to the state, which will then return to them in the form of increased Medi-Cal payments. Hospital organizations support the fee, which will generate \$2.5 billion for the state, with the corresponding Medi-Cal increases. But again, as a fee, this money would be unavailable to the state for other purposes.

Lastly, a \$1.75-per-pack tobacco tax is expected to bring in \$1.5 billion for health care. While in theory cigarette taxes can raise money for any purpose, voters have resisted balancing the budget on the backs of smokers, voting for tobacco taxes only where the money raised goes to health and smoking-cessation programs. For example, polling in 2005 showed 37% of voters in favor of using tobacco tax revenue to expand coverage to all children, 32% preferring to spend the money on emergency rooms, and only 15%

supporting use of the funds to extend college scholarships, despite 45% thinking such a program was a good idea.⁷

Beyond bringing in new revenue, ABX1-1 will also limit health care costs moving forward. Disease management and prevention programs will reduce the costs of chronic illnesses to the system. Electronic record-keeping and e-prescribing will reduce administrative costs. Transparency and quality programs will ensure that the state, as well as consumers, buys cost-effective care.

Last year's budget fight shows that health care cuts lead to short-term savings with long-term costs. The budget impasse last summer is a preview of what to expect if ABX1-1 doesn't go through – a future of penny-wise, pound-foolish cuts that balance the budget year to year but only increase the deficit in the long run.

For example, last year the prescription drug negotiation program set out by AB 2911, which aims to save money by helping the state get at least a 40% discount on the prescription drugs it purchases, was left unfunded. Similarly, cuts were made to children's coverage enrollment efforts, leading to more uninsured kids lacking preventive care and higher costs when they do get covered. And community clinics, which act as the front line of the public safety net, were underfunded, forcing overreliance on expensive, inefficient emergency-room-only care.

Finally, it's important to note that ABX1-1 is not a suicide pact, inflexibly chaining the state to billions of spending regardless of facts on the ground. First, the current budgeting packages in \$170 million as a reserve against unanticipated cost overruns. But even if there isn't enough revenue to cover all of its programs in a given year, the companion ballot initiative gives the legislature broad authority to balance the books and ensure that the most critical programs are funded without driving the state into the red. Even in this worst-case-scenario, there will still be billions more health-care dollars available to prevent the savage cuts of previous years.

Because ABX1-1 will not go into effect until it is approved by the voters in November, it unfortunately cannot fix this year's deficit. But its package of new revenues and cost containment strategies will relieve pressure on the general fund in the future, by insuring that health care is stable and adequately funded, rather than remaining dependant on ad-hoc, year-to-year cuts. Fixing the perennial deficits requires the state's spending to be put on a secure footing – which is exactly what ABX1-1 does for health care.

There are many Californians who either don't have access to or can't afford health insurance today, who would be able to after the bill comes into effect. For those Californians, ABX1-1 is the difference between sickness and health. And for those who do have insurance, ABX1-1 means security from the fear that losing your job or getting divorced or getting sick or old will also mean losing your insurance.

⁷ Center for Tobacco Control Research and Education, TOBACCO CONTROL IN CALIFORNIA 2003-2007: MISSED OPPORTUNITIES (Oct. 2007), at <http://repositories.cdlib.org/ctcre/tepmus/CA2007/>.

Facing a status quo in which 20% of Californians are uninsured, the public safety net is fraying in the heat of budget woes, and workers are held hostage to the shrinking number of jobs that come with health insurance, it's critical that we get reform now. That is why we support ABX1-1, a fiscally responsible bill that will greatly expand the number of Californians who can get useful coverage at a fair price, enhance their power to make informed choices, and contain the skyrocketing price of coverage.

Sincerely,

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