

NOTES FROM THE CDI'S WORKSHOP ON THE MEANING OF "GROUP" UNDER SECTION 1861.12

Thursday, December 9, 2010 at 03:33PM

The California Department of Insurance ("CDI") held a workshop last Friday to discuss issues relating to its consideration of promulgating regulations re: "group plans" under Section 1861.12 of the California Insurance Code. The Notice of Workshop (a copy found [here](#)) explained the purpose of this workshop:

California Insurance Code (CIC) 1861.12 is part of Proposition 103 and authorizes insurers to issue property and casualty 'insurance coverage on a group plan.' Insurers may issue such group insurance 'without restriction as to the purpose of the group, occupation or type of group.' Under 1861.12 the rates for group insurance are not 'considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan.' However, the statute does not define the term 'group' and does not specify conditions as to when insurance may be issued on a group plan. Further, the statute provides no guidance with regard to the validity of groups that exist solely for the purposes of purchasing insurance, or groups that are simply acknowledged by an insurer based on shared characteristics or status, such as everyone who has purchased a particular product from a particular vendor."

On behalf of the CDI were Dan Goodell, Joel Laucher, Pam O'Connell, Stan Bair and Betty Mohr. Doug Heller and Todd Foreman appeared on behalf of the Consumer Watchdog ("CW"). From the industry trade organizations (at least as far as I was able to identify) were Jeff Fuller (ACIC) and Kim Dellinger (PIFC). Finally, 20-25 company reps and attorneys from law firms, including myself, were present.

The CDI noted that the forum was intended to be open and invited a frank discussion of all points of view. The following is a summary of general comments made at the workshop by the CDI and CW. [Because the discussion was a bit free-form, rather than discuss the comments linearly, I set forth the positions raised by the CDI and the CW (where comments were made) as they concern the list of questions set forth in the Notice. *Also, this author apologizes if he has inartfully and/or imprecisely reiterated the positions set forth below and invite any and all corrections.*]

ISSUE 1: "What is the most appropriate definition for the word 'group' as used in CIC 1861.12?"

Unsurprisingly, this issue gave rise to the most debate.

Preliminarily, the issue of whether the CDI had authority, in the first instance, to promulgate regulations to alter what is arguably the clear and broad meaning of "group" under Section 1861.12 came up. The CDI understood that this will be a debated issue, but did not agree that this issue had merit.

The CDI's View:

With respect to the main question, the CDI's position is that a "group" must be an actual organizational group.

With respect to the "without restriction as to the purpose of the group, occupation or type of group" language, the CDI noted that it did not believe this language meant any identifiable "group" could be the subject of a group plan. Rather, the CDI believed that Section 1861.12 implies the existence of an actual bona fide group and that the "without restriction" language is intended to prevent the discrimination against any particular "group." By way of example, the CDI noted that graduates of Cal Berkeley are not a "group" but that the alumni organization for Cal Berkeley could be a qualifying group.

While the CDI appears to have a strong idea (though not necessarily fully disclosed) of what is a "group," the CDI also demonstrably appeared to have an open mind to discuss this issue. At the outset of the workshop, the CDI noted that it was inclined to require a "group" to exist for some purpose other than the purpose of purchasing insurance. Throughout the workshop, however, the CDI noted that a "group" could possibly qualify if brought specifically together for the purpose of buying insurance.

The CW's View:

For the CW, a "group" must be an authentic "group," not a "grouping" of individuals defined simply by a set of characteristics.

The CW noted that interpretation of "group" should be viewed in light of the purpose of Prop 103. Per the CW, voters pass Prop 103 to empower policyholders. Because, as the CW argues, this was the goal of Prop 103, this view should shape the discussion in understanding the meaning of 1861.12.

The CW considers this statute to be about enabling consumers to band together to wield "collective bargaining power" to obtain better insurance rates from carriers. The CW cited chambers of commerce, AARP, and alumni organizations as examples of authentic groups.

ISSUE 2: "Should insurers be allowed to issue insurance on a group plan for groups such as those based on shared characteristics or status, even if the group has no membership requirements?"

In short, both the CDI and CW would answer this question in the negative.

ISSUE 3: “Should groups have to exist for a particular purpose other than the purpose of purchasing insurance?”

While the CDI initially noted that it felt groups should be together for a purpose other than for the purpose of purchasing insurance, the CDI later noted it could be open to this type of group. The CW is fine with this type of "group" under 1861.12.

ISSUE 4: “Should insurers be permitted to form groups solely for the purpose of allowing consumers to purchase insurance a group rate?”

The CDI expressed no definitive position on this issue. While the CW strongly believed that groups could specifically be brought together to obtain a "group plan" and generally focused on consumer-created "groups," the CW did not out rightly reject an "authentic" group that may be created by an insurer.

ISSUE 5: “To what extent, if any, do the auto rating factor rules found in CIC 1861.02(a)(4) and CCR 2632.5 impact what groups may be allowable under 1861.12?”

To the extent this was discussed, it was briefly discussed in connection with the CW’s concern that "group plans," in effect can be used to employ unapproved rating factors (i.e., where insurer uses "group" characteristics to underwrite only certain risks having preferred group characteristic).

ISSUE 6: "How should group membership be determined? Should there be eligibility requirements for 'membership' in a group, such as payment of dues or voluntarily joining the group?"

This issue was not directly discussed to any material extent.

ISSUE 7: "Should an insurer ever be required to confirm group membership of an applicant who claims to be a member of a group? What should be required and under what circumstances?"

The CDI strongly believes that some process should be put in place to ensure that risks actually belong to a group and to ensure, for future renewals, that these risks are still part of a group. There was no substantive discussion on specific processes that the CDI would like to see, but the CDI noted that this would depend upon the specific circumstances for each type of group for each insurer.

ISSUE 8: "Should an insurer be required to have a formal agreement with a group before issuing insurance for the group on a group plan?"

This issue was not expressly discussed. However, based on their comments, both the CDI and CW believe that there should be an authentic/organizational "group." Further, the CW contemplated that groups could form to present RPAs to carriers for group plans. Based on these comments, the CDI and CW would appear to require some type of agreement or at least a mutual understanding that a group plan is being offered to members of a qualifying group.

ISSUE 9: "Should an insurer that offers group rates be required to notify/offer every insured/applicant of every group rate available? How often - at every renewal?"

This issue was not discussed.

ISSUE 10: "Should an insurer be required to discontinue a group rate for an individual when the insured leaves the group or otherwise becomes ineligible for the group rate? What should the insurer have to do to confirm that insured's receiving the group rate remain eligible from one policy period to the next?"

The CDI indicated that a group rate for an individual should be discontinued where an individual leaves a group. It was noted by some that this could depend upon the defined "group" (i.e., a group could include current and former members of a "group"). The CDI did not necessarily agree with the concept of a "group" that is inclusive of "former" members of a group. Further, the CDI strongly believes that some process should be in place to ensure that a risk is still part of a "group."

ISSUE 11: "What should be required to establish an initial rate for a new group that has no experience date to support a rate differential?"

This issue was not discussed to a material degree.

ISSUE 12: "What should be required to demonstrate that the group rate is justified as experience from the group develops?"

This issue was not discussed to a material degree.

ISSUE 13: "Should there be a mandatory re-filing period when an insurer makes a new group filing with no experience data?"

This issue was not discussed to a material degree.

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Depending upon the view of the next administration on the need for regulations, there may be a second workshop to invite further comment on any contemplated regulations. In advance of a second workshop, it was suggested that the CDI publish something that could provide the industry and consumer groups a more concrete idea of what may be contemplated by the CDI to sharpen any further discussion.