

## [California Department of Managed Health Care Releases Draft Guidance Concerning SB 1163](#)

Posted on April 26, 2011 by [John LeBlanc](#)

By [John M. LeBlanc](#) and [Jason C. Love](#)

On April 22, 2011, the [California Department of Managed Health Care](#) (“DMHC”) released [draft Letter No. 8-K](#), which is designed to provide health care service plans with guidance concerning [SB 1163](#). This follows the [California Department of Insurance’s](#) (“CDI”) release on April 5, 2011, of [Guidance 1163:2 concerning SB 1163](#).

SB 1163, effective January 1, 2011, amended the California Health and Safety Code and the California Insurance Code to provide for review of rate increases by health care service plans and health insurers for purposes of determining whether the rate increase is unreasonable.

SB 1163 was adopted in response to a provision in the federal [Patient Protection and Affordable Care Act](#) (“PPACA”) that requires health care service plans and health insurers’ rate increases to be reviewed by the federal government to determine whether the rate increase is unreasonable, unless a state has established its own rate review process. The key implementing provisions of SB 1163 are located at [California Health and Safety Code Sections 1385.01 to 1385.13](#) and [California Insurance Code Sections 10181 to 10181.13](#).

[California Health and Safety Code Section 1385.08\(a\)](#) states that the DMHC, “may issue guidance to health care service plans regarding compliance with this article.” This tracks the language found in [California Insurance Code Section 10181.9\(a\)](#), which states that the CDI, “may issue guidance to health insurers regarding compliance with this article.”

Both Health and Safety Code Section 1385.08(a) and Insurance Code Section 10181.9(a) exempt the DMHC and the CDI from following the formal procedures employed for the adoption of regulations in California when issuing guidance concerning compliance with Health and Safety Code Sections 1385.01 to 1385.13 and Insurance Code Sections 10181 to 10181.13.

Guidance 1163:2 issued by the CDI purports to define the factors the CDI will consider in determining whether a rate increase is “unreasonable” in the individual and small group markets, in addition to attempting to implement certain procedural aspects of SB 1163 for these markets.

A comparison of the DMHC’s draft Letter No. 8-K with the CDI’s Guidance 1163:2 reveals that the DMHC has preliminarily adopted most of the provisions contained in the CDI’s Guidance, without modification, for these same markets.