CITY ATTORNEY DENNIS HERRERA

NEWS RELEASE

FOR IMMEDIATE RELEASE
THURSDAY, SEPTEMBER 3, 2009

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Herrera Urges Schwarzenegger to Sign Bill to End Health Insurance 'Gender Rating'

State legislation targets unconstitutional pricing scheme that costs women up to 39% more for health coverage than men

SAN FRANCISCO (Sept. 3, 2009)—City Attorney Dennis Herrera today urged Gov. Arnold Schwarzenegger to sign into law state legislation to prohibit health insurers in California from charging a premium or price differential based on the insured person's gender. The practice, known as "gender rating," forces women who purchase individual health insurance to pay monthly premiums up to 39 percent higher than those paid by similarly situated men—even for health insurance that excludes maternity coverage.

Herrera targeted the discriminatory pricing scheme in a lawsuit against the State of California in January, alleging that provisions of state law that allow insurers to engage in gender rating deny women their right to equal protection under the California Constitution. Herrera elected to hold his constitutional challenge in abeyance in order to work with State Sen. Mark Leno (D-San Francisco) and Assemblymember Dave Jones (D-Sacramento) to pursue a legislative solution. The resultant legislation, AB 119, was co-sponsored by Herrera's office and the American College of Obstetricians and Gynecologists. It passed out of the State Senate on Tuesday, and was finally approved by the State Assembly earlier today.

"AB 119 will rid California's health insurance laws of their open sex discrimination, help over a million Californians obtain affordable health care coverage, and assist overburdened public health systems," Herrera wrote in a letter to Gov. Schwarzenegger this afternoon. "On behalf of the City and County of San Francisco, I ask for your signature."

Herrera's letter to Schwarzenegger additionally outlined the panoply of benefits AB 119 would achieve, eliminating unlawful gender discrimination in the pricing of millions of individual health insurance policies purchased in California each year; and furthering California's policy of promoting preventive care to reduce health care costs and improve public health. Herrera also noted that both the U.S. Department of Health and Human Services and national representatives of the health insurance industry have expressed agreement that the practice of gender rating should be ended.

Organizations that have joined Herrera and ACOG in supporting AB 119 include: Access/Women's Health Rights Coalition; American Civil Liberties Union; American Federation of State, County and Municipal Employees, AFL-CIO; California Alliance for Retired Americans; California Commission on the Status of Women; California Communities United Institute; California Medical Association;

[MORE]

California National Organization for Women; California Nurses Association; California School Employees Association; California Society for Clinical Social Work; City and County of San Francisco; City of West Hollywood; Congress of California Seniors; Health Access California; MomsRising.org; National Women's Law Center; Planned Parenthood Affiliates of California and Physicians for Reproductive Choice and Health.

The constitutional challenge is *City and County of San Francisco vs. Steve Poizner et al*, San Francisco Superior Court Number 484410, filed Jan. 27, 2009. A copy of Herrera's letter and additional information on AB 119 is available on the City Attorney's Web site at http://www.sfcityattorney.org/

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CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

DENNIS J. HERRERA
City Attorney

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September 3, 2009

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol
Sacramento, CA 95814

Re: **Assembly Bill 119 (Jones)—Request for Signature**

Dear Governor Schwarzenegger:

On behalf of the City and County of San Francisco, I respectfully request your signature of AB 119, which would prevent gender discrimination in the pricing of individual health insurance policies.

- **AB 119 Eliminates Unlawful Gender Discrimination In Pricing Of The Millions Of Individual Health Insurance Policies Purchased In California Each Year.**

Currently, California statutes expressly permit insurance companies to charge women more for health insurance based solely on their sex. As a result, women in California who purchase individual health insurance pay monthly premiums up to 39% higher than those paid by similarly situated men, even for health insurance that excludes maternity coverage. This practice, called "gender rating," violates the State's constitutional guarantee of equal protection and is already illegal in many states—including New York, Washington, Montana, and Oregon. This bill would end this unconstitutional practice in California. With its well-deserved reputation for being ahead of the curve in matters of social policy, California should be leading this trend, and not lagging behind.

- **The U.S. Department of Health And Human Services And National Representatives of The Health Insurance Industry Agree That Gender Rating Should Be Eliminated.**

Health & Human Services Secretary Kathleen Sebelius has recently identified gender rating as a significant challenge for women seeking health care. A recent report published by the United States Department of Health & Human Services also concluded that women face higher costs for health insurance and, due in part to gender-based pricing, are more likely than men to experience difficulty accessing health care.

Even the national health insurance industry has publicly agreed that the industry should cease gender-based pricing. On May 6, 2009, Karen Ignagni, president of American's Health Insurance Plan, told members of the U.S. Senate Finance Committee that the practice of charging women higher premiums for the same coverage should be eliminated. California law should no longer allow health insurance companies to engage in practices that even the health insurance industry cannot defend as necessary or appropriate.

- **Higher Health Insurance Premiums For Women Are Not Explained Either By The Cost of Maternity Coverage or By Actuarial Data.**

Gender-based price differentials are not explained by increased costs associated with care relating to pregnancy and delivery. Most individual health insurance plans exclude maternity coverage. Nonetheless, the price differentials for these plans may exceed 35%. The few plans that do include maternity coverage may have lesser price differentials for women than do plans that exclude such coverage.

Nor are differential premiums explained by actuarial data. Though the health insurance industry asserts that women are charged higher premiums because women as a group incur higher health care costs than do men, gender-based price differentials for women vary dramatically, suggesting that these rate differentials are merely arbitrary and are unsupported by actuarial data.

- **AB 119 Furthers California's Policy Of Promoting Preventive Care To Reduce Health Care Costs And Improve Public Health.**

AB 119 would also prevent health insurance companies from penalizing women for seeking preventive care. Health insurance companies claim that they typically charge women higher health insurance premiums than men because women are more likely to seek preventive care. But preventive care —including screening exams for breast, cervical, and uterine cancer— is vital to women's long-term health. Indeed, such care not only is essential for the prevention of such diseases, but also is crucial to their early detection and cure. Preventive care ultimately reduces the costs of health care to the public.

In these tough economic times, more and more employers are dropping group health care coverage for their employees, leaving those individuals to purchase their own insurance, or to join the swelling ranks of the uninsured. Women are especially hard-hit by the high costs of individual health insurance, as they are more likely to work part-time, and often are paid less than men for the work they do. Women hurt by gender rating may be either forced to purchase a high-deductible plan with limited coverage or priced out of the health insurance market altogether.

Uninsured women often seek health care at public hospitals, putting greater financial strain on public health providers. They are also less likely to obtain preventive care, and are therefore more likely to seek treatment only when their health problems have become an emergency. This leads to worse patient outcomes, costs public hospitals more, and burdens already over-crowded emergency rooms. AB 119 helps prevent this from happening.

- **AB 119 Does Not Threaten The Vitality Of California's Health Insurance Industry, and Will Not Increase the Price of Health Insurance In California.**

Health insurers in California have been charging women higher health insurance premiums than men in significant numbers only since 2007. Gender rating is therefore a relatively recent practice, and halting that practice at this point should not adversely affect the health insurance industry.

The Congressional Budget Office, in an analysis of the factors affecting the price of health insurance, has concluded that the primary determinants of the amount of premium charged for private health insurance are the scope of benefits included, the policy's cost-sharing requirements (deductibles, co-pay), the health status of the plan's enrollees, and the insurer's administrative expenses and return on investment. It is these factors, not gender, that determine the cost of health insurance coverage. Some states that prohibit gender rating of health insurance premiums—such as Minnesota, Oregon, and Washington—have lower rates than those that allow the discriminatory practice. Clearly, gender-based pricing is not a key determinant of insurance prices, and the prohibition of this practice will not result in increases in the price of insurance in California.

In short, AB 119 will rid California's health insurance laws of their open sex discrimination, help over a million Californians obtain affordable health care coverage, and assist overburdened public health systems. On behalf of the City and County of San Francisco, I ask for your signature. Please contact Deputy City Attorney Erin Bernstein at (415) 554-3975 for further information.

Very truly yours,

DENNIS J. HERRERA
City Attorney

cc: Assembly Member Dave Jones
Susan Kennedy, Chief of Staff, Governor's Office
Jennifer Kent, Deputy Legislative Secretary, Governor's Office
Richard Figueroa, Policy Advisor, Health, Governor's Office
Herb Schultz, Senior Policy Advisor, Governor's Office
Lucinda Ehnes, Director, Department of Managed Health Care
Steve Poizner, Commission, Department of Insurance
Terri Thorfinnson, Chief, Office of Women's Health
Lynn M. Suter, Legislative Advocate (with enclosure)
Nancy-Kirshner-Rodriguez, Mayor's Office (with enclosure)

BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 651-1520 Fax: (916) 327-4478	AB 119

THIRD READING

Bill No: AB 119
Author: Jones (D), et al
Amended: 8/25/09 in Senate
Vote: 21

SENATE HEALTH COMMITTEE : 7-3, 6/10/09
AYES: Alquist, Cedillo, DeSaulnier, Leno, Maldonado, Negrete McLeod, Wolk
NOES: Strickland, Aanestad, Cox
NO VOTE RECORDED: Pavley

SENATE JUDICIARY COMMITTEE : 3-1, 6/23/09
AYES: Corbett, Florez, Leno
NOES: Walters
NO VOTE RECORDED: Harman

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 51-29, 05/11/09 - See last page for vote

SUBJECT : Health care coverage: pricing

SOURCE : American College of Obstetricians and Gynecologists,
District IX
City Attorneys Office, San Francisco

DIGEST : This bill, beginning January 1, 2011, eliminates the exception in current law that allows health plans and health insurers to use gender as a basis for premium, price, or charge differentials, when used on valid statistical and actuarial data.

Senate Floor Amendments of 8/25/09 extend the effective date of the bill from January 1, 2010 to January 1, 2011 and add co-authors.

ANALYSIS :

Existing Law

1. Provides for the licensure and regulation of health care service plans (health plans) by the Department of Managed Health Care (DMHC).

2. Prohibits health plans from charging premium, price, or charge differentials because of the sex of any individual, but makes an exception for differentials based on specified statistical and actuarial data.

3. Provides for the regulation of life and disability insurers by the Department of Insurance.

4. Prohibits life and disability insurers from engaging in certain discriminatory practices, but specifies that premium, price, or charge differentials because of the sex of any individual are not prohibited when based on specified statistical or actuarial data or sound underwriting practices.

5. Defines sex as having the same meaning as gender, as defined.

6. Requires health plans and health insurers (disability insurers providing health insurance) that offer, market, and sell health plan contracts or health insurance policies to small employers (generally defined as employers who employ between two and 50 employees) to use only permissible risk categories, which are limited to age, geographic region and family size, as specified.

7. Requires an employee's premium to be determined based on the rate applicable to the employee's risk category, plus an adjustment factor of not more than and not less than 10 percent.

This bill eliminates the exception in current law that allows health plans and disability insurers to use sex to base premium, price, or charge differentials for health care plan contracts and health insurance policies, when based on objective, valid, and up-to-date statistical and actuarial data, and, in the case of disability insurers, when based on sound underwriting practices in addition to the preceding criteria. This provision applies to contracts that are issued, amended or renewed on or after January 1, 2011.

For health insurance policies issued, amended, or renewed on or after January 1, 2011, the bill specifically prohibits the policy from being subject to premium, price, or charge differentials because of the sex of any

contracting party, potential contracting party, or person reasonably expected to benefit from the policy as a policyholder, insured, or otherwise.

Background

The individual health insurance market, which covers about nine percent of insured Californians, or seven percent of non-elderly Californians, is made up of individuals and families who pay for their own coverage, generally because group coverage is not available. In California, health plans and insurers conduct medical underwriting, the process of reviewing an applicant or applicants' medical history to ascertain the financial risk posed by the applicant or applicants, and may deny an applicant health insurance, limit a benefit package, or charge a higher premium based on the assessed level of risk. Each health plan has its own underwriting guidelines in the individual market, which must be filed with DMHC, but are not publicly disclosed.

In 2005, the three largest carriers offering individual health insurance products in California accounted for over 80 percent of the individual insurance products sold in the state. Sources estimate that approximately 2.6 to 2.9 million Californians are currently covered in the individual market. This represents a substantial increase from the 1.5 million Californians estimated in 2002.

In August 2004, the Kaiser Family Foundation issued a report, which documented individual health insurance policies sold nationally through eHealthInsurance, an online source of health insurance for individuals, families, and small businesses, between January and August 2003. The data showed that men accounted for approximately 52 percent of single purchasers of individual insurance, while women accounted for almost 48 percent. Purchasers of single coverage were led by 25-34 year olds (36.1 percent), followed by 18-24 year olds (21.4 percent), and then by 35-44 year olds (17.8 percent). In purchases of individual family coverage, men led women 66.4 percent to 33.6 percent, as the lead policyholder. Individual family coverage was predominately purchased by 35-44 year olds (37.4 percent), followed by 25-34 year olds (29.7 percent), and 55-65 year olds (20.2 percent).

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT : (Verified 8/25/09)

American College of Obstetricians and Gynecologists, District IX (co-source)
City Attorney's Office, San Francisco (co-source)

Access/Women's Health Rights Coalition
American Civil Liberties Union
American Federation of State, County and Municipal Employees, AFL-CIO
California Alliance for Retired Americans
California Commission on the Status of women
California Communities United Institute
California Medical Association
California National Organization for Women
California Nurses Association
California School Employees Association
California Society for Clinical Social Work
City and County of San Francisco
City of West Hollywood
Congress of California Seniors
Health Access California
MomsRising.org
National Women's Law Center
Planned Parenthood Affiliates of California
Physicians for Reproductive Choice and Health

OPPOSITION : (Verified 8/25/09)

Aetna
Association of California Life and Health Insurance Companies
California Association of Health Plans
California Chamber of Commerce
State Farm

ARGUMENTS IN SUPPORT : The American College of Obstetricians and Gynecologists, District IX, (ACOG) writes that to price premiums in the individual health insurance and HMO market on a protected class of persons, such as race, religion, sexual orientation, is discrimination. ACOG points out that, in addition to paying more for coverage, women as a group earn less than men and have less buying power, and that this combination results in affordable coverage for women being out of reach. ACOG believes that the bill will resolve the inequity of gender discrimination in health insurance premium pricing, stop and reverse the trend of more women becoming uninsured, and possibly reduce the amount of monies spent on covering women through public programs.

The National Women's Law Center (NWLC) writes that the practice of gender rating has serious implications for women's ability to find affordable health insurance in the individual health insurance market. NWLC points to a 2006 Commonwealth Fund study that showed nine out of ten people who shopped for health coverage in the individual market did not ultimately purchase a plan, a decision largely based on difficulties finding affordable coverage. NWLC asserts that cost is a particular obstacle for women

purchasing individual health insurance, because women in California continue to experience higher poverty rates on an average and earn significantly less than men. NWLC believes that gender rating is a discriminatory practice, as an individual's sex is an immutable characteristic determined by genetics. NWLC notes that a new federal law - the Genetic Information Nondiscrimination Act - prohibits insurers from using predictive genetic information to set health insurance premiums, and believes that women should not face discrimination based on the biological fact of their sex.

ARGUMENTS IN OPPOSITION : The Association of California Life and Health Insurance Companies (ACLHIC) writes that premiums reflect expected costs and utilization of services based on objective, statistical evidence, and that many factors, including family size, geographic region, health status, age, and gender are considered in this determination. ACLHIC states that, by using all these factors and tailoring the price to the individual, a more diverse and affordable marketplace is available, particularly in the individual market where people are more likely to choose coverage tailored to their own needs and price sensitivity. ACLHIC contends that young men are most likely to drop coverage when prices increase, and as more of these low-use and low-cost individuals leave the market, the remaining pool of individuals will be higher-use and higher-cost, which will lead to increases in premiums for everyone.

The California Association of Health Plans (CAHP) believes that the bill moves individual health insurance toward a community rating system that will lead to higher costs for everyone. CAHP notes that one state that previously used community rating, New Jersey, is now allowing rating factors, including gender, in its development of rates.

Aetna writes that in the current voluntary insurance market, health insurers need to appropriately and actuarially manage costs for fairness to all individuals who purchase health coverage. Aetna states men and women use health care services differently and, therefore, are charged different premiums when they purchase health insurance in the individual market.

ASSEMBLY FLOOR :
AYES: Ammiano, Arambula, Beall, Block, Blumenfield, Brownley, Buchanan, Caballero, Charles Calderon, Carter, Chesbro, Coto, Davis, De La Torre, De Leon, Eng, Evans, Feuer, Fong, Fuentes, Furutani, Galgiani, Hall, Hayashi, Hernandez, Hill, Huber, Huffman, Jones, Krekorian, Lieu, Bonnie Lowenthal, Ma, Mendoza, Monning, Nava, John A. Perez, V. Manuel Perez, Portantino, Price, Ruskin, Salas,

Saldana, Skinner, Solorio, Swanson, Torlakson, Torres, Torrico, Yamada, Bass

NOES: Adams, Anderson, Bill Berryhill, Tom Berryhill, Blakeslee, Conway, Cook, DeVore, Duvall, Emmerson, Fletcher, Fuller, Gaines, Garrick, Gilmore, Hagman, Harkey, Jeffries, Knight, Logue, Miller, Nestande, Niello, Nielsen, Silva, Smyth, Audra Strickland, Tran, Villines

CTW:cm 8/25/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****