12.18.08: In Case you Missed It: Critics say Poizner changes could boost rates

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SACRAMENTO—State Insurance Commissioner Steve Poizner is under fire from his predecessor and a consumer group for proposing regulation changes that they say would increase rates for automobile, homeowner and most other kinds of coverage by millions of dollars.
The proposed rules would alter how insurers calculate the rates they can charge, allow them to cut rates without facing a full review from the Department of Insurance and allow the commissioner to phase in big rate changes.

Opponents say the rules would allow companies to "cook their books" to justify rate hikes, make smaller rate cuts than they should and keep excessive rates in place longer than justified.

"Insurance rates will go through the roof at a time when we can hardly afford to deregulate another industry in the financial sector," said Harvey Rosenfield, founder of the Consumer Watchdog group and the author of Proposition 103, a rate-regulation initiative approved by voters in 1988.

Lt. Gov. John Garamendi, Poizner's predecessor as commissioner, said Poizner's actions "threaten to gut the consumer agency we worked so hard to rebuild after the Quackenbush scandal," a reference to former Commissioner Chuck Quackenbush, a Republican who was forced from office in 2000 amid corruption allegations.

A spokesman for Poizner, Darrel Ng, said Thursday that Poizner's proposals were mainly intended to make it easier for insurers to lower rates.

"The current system is filled with red tape and other obstacles that discourage insurance companies from lowering rates as they would like," he said.
Ng said the changes would also allow companies to accurately reflect their costs when they apply for rate adjustments.

"Right now in the formula, companies having wildly different cost structures are given credit for having the same costs," he said. "This proposal would allow low-cost operators to pass on that lower cost. On the flip side, those who choose a higher level of service would have that reflected in the rates also."

The department held an informal hearing on the changes on Dec. 12. Ng said Poizner would consider comments from consumer advocates and insurers before he issues final rules, which need approval from the Office of Administrative Law.

"If a group or person believes that the regulations are drafted in a way that would allow (unjustified rate hikes), we welcome their input to amend the language," Ng said.

The changes deal with six aspects of rate-setting regulated by the department.

One amendment would give the commissioner up to two years to phase in rate changes of 15 percent or more instead of ordering that they take effect immediately.

In an analysis of Poizner's proposals, Consumer Watchdog said phasing in rate decreases would let insurers continue to charge rates that the commissioner had found were excessive. On the other hand, allowing companies to charge rates that are too low could cause some companies to become insolvent, the Santa Monica-based group said.

The department, in an explanation of the potential amendments, said phasing in rate changes would avoid hardships for consumers facing large rate increases and prevent market instability when insurers propose big cuts.

Another change would allow insurers to cut their rates without full review by the department, a step that Rosenfield said would let insurers avoid bigger rate cuts the commissioner could order.

"What they are proposing is like saying to a crook, 'You can steal 50 cents from me as long as you don't steal a dollar from me,'" he said.

The department acknowledged that change could lead to insurers charging rates that are higher than they would be if they were subject to a full department rate review.

"The trade-off that makes this acceptable is that under the present system it is largely left to the discretion of insurers whether or not to seek a rate reduction in the first place," the department said in its explanation.

If insurers fear that a full review will require a bigger rate cut, they won't request a reduction at all, the department added.

Ng said insurers would still face a full rate review every three years.

Rosenfield said Poizner can review a company's rates whenever he wants but there's no requirement that they be checked every three years.

"If they won't enforce the law now, why will Poizner enforce the law three years from now?" he asked.

Other amendments would alter factors insurers use in calculating allowable rates, changes Rosenfield contended would enable companies to "cook their books."

The pending amendments come on the heels of a series of changes Poizner issued in May. Rosenfield and Garamendi say those regulations have raised auto insurance rates by $26 million and triggered applications for another $305.2 million in increases to auto and homeowner coverage.

Ng said homeowner and auto insurance rates have dropped about $1.4 billion since Poizner took office in 2007. Rosenfield attributes those cuts to regulations adopted under Garamendi.

Poizner is proposing to scrap one of his May changes, which allowed him to adjust an insurer's after-tax rate of return as much as 2 percent based on financial market conditions.

The department said it had been unable to find "an objective and realistic method" to do that. It asked for suggestions that would be "administratively feasible" without leaving insurers with a rate of return so low it stopped them from acquiring capital.

The debate over Poizner's handling of insurance rates is likely to become a major issue if he runs for governor in 2010.

Garamendi could end up as his opponent.

Garamendi, a Democrat, has already announced his candidacy for governor. Poizner, a Republican, has formed an exploratory committee to consider running.