



## Legislative Update

March 2009

### **AB 1521 (Jones): Health Care Coverage: Solicitation**

**OPPOSE**

Two years ago, the insurance agent and broker community was successful in defeating legislation sponsored by former Insurance Commissioner John Garamendi to impose fiduciary obligations on insurance brokers and enact mandatory disclosure of producer compensation. That legislation was in response to the investigation of the activities of large national brokers by former New York Attorney General Elliott Spitzer.

Although victorious in defeating Garamendi's efforts, we find ourselves again in the midst of the debate. AB 1521 by Assemblyman Dave Jones, candidate for Insurance Commissioner in 2010, would require insurance agents to disclose all commissions received when selling health insurance products and create new fiduciary duties insurance agents would owe to their clients. Any compensation other than that amount disclosed would be prohibited under this bill.

While NAIFA-California has a long history of advocating for consumer protections measures and favors disclosure of information to help consumers make informed decisions, AB 1521 would result in drawing consumers attention away from what is most important – their insurance needs and an insurance policy's ability to meet those needs.

While we understand this is not the author's intent, it certainly could be the outcome. Mandatory commission disclosure could result in consumers choosing a policy with fewer benefits or more restrictive provisions simply because it pays a lower commission. The bill encourages consumers to look for the lowest commission rather than the best combination of policy values and service and this could also result in even fewer purchases of much needed health insurance.

A few important issues regarding commission disclosure need to be discussed:

- Health insurance is distributed in a variety of different ways. Captive agents, independent agents, insurance company employees and community groups all sell health insurance and some health insurance products do not even require the sales person to have an insurance agent license. AB 1521 discriminates against the agency distribution system and it fails to acknowledge the professional services agents provide to consumers. Is a consumer better served by an employee answering a toll-free number or is he or she better served by their local insurance agent who has served the community for many years? Why should one distribution system have an advantage over another?

Insurance companies that do not use agents incur marketing costs, which could be equal to or greater than companies that utilize agents. If only agent commissions are disclosed, they will not be competing on a level playing field but rather one that is slanted against them.

Consumers will tend to view products with no or low commissions as a better deal than those that have commissions. Such a comparison would be false and misleading – certainly not in the consumer's best interest.

- Commissions are not just profit to an insurance agent. Insurance transactions encompass many different elements, including the salesperson's advice, required product information, additional information requested by the consumer, the product itself, and the continued servicing of the product over its lifetime. Insurance commissions are but one of the many selling expenses incurred by an insurance company, and commissions are not paid directly by the consumer but by the company to the agent. This compensation is just one of the many attributes contained in the determination of the premium. The insurance transaction is more analogous to the purchase of a typical item where the cost of the salesperson's advice and service is built into the bottom-line price of the item. Information about what the individual salesperson is paid is of little relevance or benefit to a customer who wants to know the total cost of the item he or she is purchasing.
- In order for consumers to make an informed decision, they should know the amount and type of coverage they need or desire and its total cost. While an insurance company incurs many types of expenses in providing insurance, it is the total of these expenses, not any specific one that is important for consumers to understand. Customers should not be encouraged to shop for important financial products on the basis of which insurance company pays its agents the least. Disclosing agent commissions would have exactly this effect and would place those companies that market through agents at a competitive disadvantage to companies that market directly to customers through the mail or telemarketers.

AB 1521 will likely be heard in the Assembly Health Committee, where Jones is the new Chairman. However, as the bill raises the issue of producer compensation and amends the Insurance Code, producer groups are already lobbying to have the legislation at least double-referred to the Assembly Insurance Committee.

NAIFA-California has taken an **OPPOSE** position and has already begun discussing our concerns with key members of the Legislature. Furthermore, we are reaching out to agents and brokers in other lines, encouraging them to voice opposition to the bill. This is the camel's nose under the tent – although it focuses only on one line of insurance, if passed it would surely lead to similar policies with other lines of insurance. Stay tuned...

***If you have any questions regarding any of the topics mentioned in this report, or others not mentioned, please contact Shari McHugh, Legislative Advocate for NAIFA-California, at 916/440-0850. Thank you!***