



TO: The Honorable Jose Solorio, Chair
Assembly Insurance Committee
Members, Assembly Insurance Committee

FROM: John Norwood, Norwood & Associates
Shari McHugh, McHugh and Associates
Steven Lindsay, CAHU
John Lovell, CAHU

DATE: April 4, 2011

RE: **AB 736 (C. Calderon)—SPONSOR & SUPPORT**

On behalf of the **Insurance Brokers and Agents of the West (IBA West)**, the **National Association of Insurance and Financial Advisors-California (NAIFA-CA)** and the **California Association of Health Underwriters (CAHU)** we respectfully request your "AYE" vote on AB 736 by Assemblyman Calderon when it is heard before the Assembly Insurance Committee on April 13, 2011.

IBA West is comprised of 31 affiliated local associations and is the largest trade association, representing independent insurance agents and insurance brokers in California. IBA West offers its members the opportunity to become involved in local and statewide programs, including conferences, regional forums, education partnerships, community outreach programs, and political grassroots activities.

The National Association of Insurance and Financial Advisors of California (NAIFA-California), represents over 5,000 insurance professionals from all sectors of the industry, including life, health, property, casualty, and financial services.

The California Association of Health Underwriters and the insurance agents they represent are responsible for the delivery of health care services for a majority of Californians. In addition to enrolling Californian's in insurance plans that fit their needs, they advocate on their behalf whenever any coverage disputes may arise with their insurance carrier.

AB 736 would add a health insurance broker designation to California's insurance licensing statute. Specifically, the bill will create an Accident & Health Broker-Agent license to parallel the Property and Casualty Broker-Agent license.

Traditionally insurance salespersons were licensed in California as: 1) Property and Casualty Broker-Agent; 2) Life Agent; and, 3) Accident and Health Agent. Prior to January 1, 2011, property and casualty broker-agents were authorized under their license to sell health insurance. On January 1st, AB 2782 went into effect which made various changes in California's insurance licensing laws primarily to align this state with the National Association of Insurance Commissioner's Producer Licensing Model Act. This bill was sponsored by the California Department of Insurance and authored by the Assembly Insurance Committee. The bill passed both houses unanimously and was supported by our client, as well as other insurance agent and broker organizations.

A key change enacted by AB 2782 is that Property and Casualty Broker-Agents may no longer sell health insurance products without obtaining an Accident and Health Insurance Agents license. This change affects both individual licensees and organizational licensees such as local insurance agencies or brokerages. As indicated above, the coalition supported this proposal and understands the need for state regulation of

insurance for California to be in conformity with the NAIC model. However, as changes resulting from AB 2782 are taking place, our members question why they should not be authorized to offer health insurance products as either a broker or an agent as is currently the situation with property and casualty insurance products and workers compensation. Many, if not all of our client's members operate as brokers in some capacity.

An insurance broker is defined as a person who, for compensation and on behalf of another person (the consumer) transacts insurance, but not on behalf of an insurance company. An insurance agent is defined as a person who transacts insurance on behalf of an admitted insurance company. The primary difference between these two licensees is that the insurance agent represents the insurer and can only place insurance coverage with an insurer that has appointed him or her as their agent. An insurance broker represents the consumer, his or her client, and may place insurance with any insurer willing to accept business from the broker.

Technically, the current California definition of insurance broker, Section 1623 of the Insurance Code, does not allow insurance professions to offer health insurance in the capacity of a broker. However, operationally this is how health insurance and other commercial insurance products are presented by insurance professionals. This result is due to the fact that the definitions of "agent" and "broker" do not reflect the modern commercial reality. Insurance agents and broker are intermediaries; they must and do balance the occasionally competing needs of the insurance consumer and insurance company or underwriter. No agent or broker can solely represent the interests of either the consumer or the insurer in the insurance transaction. As such, there have always been de facto health "brokers", i.e. insurance professionals acting on behalf of the consumer, evaluating competing plans, insurers and health care service plans; recommending the best or most appropriate options for the consumer to choose. AB 736 proposes to add a health insurance broker designation, merely recognizing in statute what has always existed.

Changes in the health insurance marketplace support the additional flexibility that would be provided by a health insurance broker designation. Insurance professionals assist their customers in choosing from both traditional insurance products and health maintenance plans, the marketing of which does not even require licensing or agent appointments. In order to serve the needs of the consumer in this very price sensitive market, the insurance professional must present every conceivable option to his or her customer. This is the function of an insurance broker who can shop the entire market on behalf of his or her client, not restricted to presenting options only from insurers where the insurance professional has a company appointment.

Lastly, medical loss ratio restrictions on insurers and health plans unduly limit the consumer's ability to pay for and reward service. An 80 to 85 percent loss ratio leaves precious little for a health care provider to pay for operating expenses, marketing, taxes, profit and agent commissions or fees. If a health insurer cannot or will not provide adequate compensation to allow the small business insurance professional to cover his or her overhead and staff, the insurance professional should have the flexibility to offer the consumer a higher level of service and charge a fee with the consumer's approval. Because brokers represent the consumer, he or she may change a fee to cover services so long as there is prior approval by the customer. In all but very limited circumstances, insurance agents cannot charge fees. In the commercial insurance setting it would not be atypical for insurance professions to be offering the business customer a package of products consisting of commercial liability insurance, workers' compensation and health coverage if a health insurance broker designation is enacted. A very competitive market between insurance professionals and the price sensitive nature of insurance products would serve to keep any fees to a minimum.

For all the above reasons, the coalition urges an "AYE" vote on AB 736 when it is heard before the Assembly Insurance Committee. Please do not hesitate to contact our offices should you have any questions or if you would like further information.

Thank you.

cc: Mark Rakich, Chief Consultant, Assembly Insurance Committee
Kevin Hanley, Consultant, Assembly Republican Caucus
Vanessa Lugo, Legislative Assistant, Office of Assemblyman Calderon
Alysia Lynch, California Department of Insurance