

# CALIFORNIA ADVOCATES, INC.



August 19, 2014

TO: Members, California State Senate

FROM: Julianne Broyles  
On Behalf of California Association of Health Underwriters

SUBJECT: **AB 2088 (HERNANDEZ)--SUPPLEMENTAL HEALTH POLICIES:  
UNREASONABLE BARRIERS – OPPOSE  
SENATE THIRD READING**

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The California Association of Health Underwriters (CAHU) is **OPPOSED** to **AB 2088 (Hernandez)**, as amended August 19, 2014, because the bill reduces affordable health insurance options for large employers in California by removing choice in coverage options.

The California Association of Health Underwriters is the state's largest association of health insurance agent, brokers and other health insurance industry professionals. Our members help millions of individual Californians and businesses evaluate, select, purchase and use their health care coverage plans, resulting in greater health and financial security. CAHU agents and brokers also act as advocates for policyholders and their families when coverage disputes arise. CAHU agents and brokers perform many functions for small employers with respect to managing their employee benefits program--at no additional cost to the small employer.

**CAHU supports giving employers the utmost flexibility to meet their legal requirements under the Affordable Care Act, as not all employers have the same resources to provide benefits. AB 2088** attempts to say anything having less than a 60% actuarial value medical plan as a "supplemental plan" that does not meet minimum actuarial value plan standards --and therefore cannot be offered, purchased, amended or renewed in California. **AB 2088** takes away employer choice saying insurers may not sell--and employers with 50 or more employees may not buy--a limited benefit health plan unless that plan is supplemental to coverage that meets the bronze level of coverage as defined by the federal Affordable Care Act (ACA).

**Many grandfathered plans still qualify under the ACA as viable health insurance alternatives to the Minimum Essential Coverage requirement.** Today, if an employer has a high deductible plan that is at least 40 percent of the minimum actuarial value, the grandfathered plan meets the definition of an acceptable plan under the ACA – even if it is not a “bronze” plan. The ACA also allows employers to opt out of having compliant coverage and simply pay the per employee tax penalty. These grandfathered plans also meet the Internal Revenue Service (IRS) definition of being an acceptable plan for ACA purposes. This raises significant questions on how **AB 2088** will impact tax issues for those who have purchased those plans. Some California large employers will lose their ability to keep their legally compliant grandfathered plan if **AB 2088** becomes law.

**A much more reasonable solution would be to reduce the bill's scope to a notice provision to require any carrier offering these plans include a notice that the product does not meet bronze plan standards under the ACA.** At that point, the employee is informed the coverage is non-compliant supplemental plan coverage and can make a personal decision on whether or not to accept/decline employer coverage. If the employee declines the employer coverage, the employee is then able to seek and obtain subsidized coverage

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Members, California State Senate  
**AB 2088 (Hernandez) – OPPOSE**  
August 19, 2014  
Page 2

from Covered California or in the private market. Unfortunately, the sponsors have flatly refused to contemplate this reduction in the scope of the bill to permit large employers to keep their grandfathered plans. CAHU would support **AB 2088** if it was amended to only contain the notice/disclosure that the plans in question do not meet the guidelines for minimum actuarial value.

**The federal government is already weighing this:** CMS is currently seeking comments on the proposed federal rules, including whether fixed indemnity coverage should only be sold to individuals with other coverage that includes EHBs. Why create state rules which may not align with pending federal law?

**No data to show bill is needed.** **AB 2088** claims to fill a gap in current legislation which already limits this product in the individual and small group market. However, no evidence has been produced that shows insurers are inappropriately selling supplemental plans as a substitute for minimum value plans. California should not be removing products from the market merely because the sponsor does not like them.

**CAHU believes that AB 2088 unnecessarily closes off employer choice in coverage options.** California policymakers should ensure that employers of 50 or more employees are allowed to continue to use their grandfathered plan to provide coverage in a manner that works for their business as a cost effective solution --regardless if it is ACA compliant coverage or not.

For these reasons, CAHU must urge a “**NO**” vote on **AB 2088 (Hernandez)** when it comes before you for consideration.

cc: The Honorable Roger Hernandez  
Lark Park, Office of Governor Brown  
Teri Boughton, Senate Health Committee  
Joe Parra, Senate Republican Caucus