



April 9, 2011

The Honorable Ted Lieu  
California State Senate  
State Capitol, Room 4090  
Sacramento, CA 95814

Dear Senator Lieu:

On behalf the organizations above, we regret to inform you that we are opposed to the above-referenced bill, unless it is substantially amended as outlined below.

SB 1313 seeks to make a myriad of additions and amendments to the Health & Safety Code and Insurance Code pertaining to solicitors, insurance agents, health plans and health insurers. Our clients, local independent insurance agents and brokers, provide health insurance to employers utilizing both group and individual health insurance products. According to the Department of Insurance there are over 200,000 individuals and firms licensed as health insurance agents in California. Various provisions contained in SB 1313 would make it difficult and costly, if not impossible, for these businesses to comply.

For example, SB 1313 would prohibit an insurance agent from utilizing any advertisement or solicitation unless it is filed with the Insurance Commissioner 90 days prior to use and the Insurance Commissioner approves. Even if such a prohibition were workable, the Department of Insurance would be overwhelmed and the cost of the review process relative to the CDI budget would be cost prohibitive. There is simply no way this requirement could be applicable to some 200,000 small business insurance agents operating in this state.

SB 1313 seeks to establish a new unfair business practice violation applicable to insurance agents that advertise market, sell, solicit or negotiate health insurance contracts in any language other than English, without meeting specified requirements of the Insurance Code and Health & Safety Code that are applicable to insurance companies and health plans. Moreover, if an insurance agent or broker were to violate these sections, SB 1313 creates a new third party cause of action that would subject the agent or broker to actual damages and civil penalties up to \$1,000 per day, well as court costs and attorneys' fees and possible exemplary damages. The specified code sections referred to by these provisions of the bill apply to health insurers and health plans that have tens of thousands of customers. They are totally inapplicable to insurance agents and solicitors from both a cost and do-ability perspective. The only practical result of applying these regulations to insurance agents and solicitors is that they will only conduct business in English.

SB 1313 seeks to add new prohibitions in both the Health & Safety Code and Insurance Code relative to misrepresentation of the terms of the federal Patient Protection and Affordable Care Act (PPACA) and establish a new unfair business practice violation as part of these provisions. In addition, the bill seeks to establish a new definition of misrepresentation wherein the fact that any written or printed statement is true is not a defense to a claimed violation of the proposed statute. These proposed new laws and amendments ignore the fact that Insurance Code Section 790.03, especially (a) and (b) currently cover this type of misleading conduct and much more.

SB 1313 also proposes to establish new prohibitions relative to the sale of health insurance products that do not meet the minimum coverage provisions of the PPACA. Certainly it is appropriate that there is sufficient consumer disclosure that any particular health insurance product does not meet the minimum coverage provisions of the PPACA. However, SB 1313 would prohibit the sale of any product other than those health insurance products that meet this standard. In addition the bill would prohibit the sale of any health insurance product, such as supplemental coverage, unless a plan meeting the minimum PPACA standard is in place first. We believe these provisions go beyond the federal law.

SB 1313 proposes to enact a prohibition on any solicitor or insurance agent and broker that has been disciplined or whose license has been revoked from becoming a navigator, solicitor, solicitor firm, insurance agent or becoming a designated individual or organization authorized to receive a fee under the PPACA. These provisions are laudable, however, SB 1313 does not provide any corresponding prohibition on individuals or associations serving as navigators, assistants or organizations authorized to receive a fee pursuant to the PPACA or others who violate the Health & Safety Code, Insurance Code or who perpetrate a fraud, misrepresentation or other similar acts.

For these reasons, we must respectfully oppose SB 1313. Please do not hesitate to contact us should you have any questions or would like further information.

Thank you.

Sincerely,

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NAIFA-California

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CAHU

cc: Members, Senate Health Committee  
Jeff Gozzo, Chief of Staff, Office of Senator Ted Lieu  
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