

# Health Insurance (continued from front page)

The measure, modeled on Proposition 103, allows insurers to make a fair rate of return (profit).

AB 52 strengthens and expands upon existing federal and state laws for health insurance rate review. Under the federal Affordable Care Act (Public Law 111-148), the federal Secretary of Health and Human Services must establish a process for reviewing unreasonable health insurance rate increases. Before implementing an increase, health insurers must submit and publicly post online a justification for such an increase. Draft regulations for rate increase disclosure and review are pending. Federal law merely establishes rate review, with no authority to regulate excessive premium rate hikes.

State law requires health plans and insurers to submit detailed data and actuarial justification for rate increases at least 60 days in advance of increasing their customers' rates. The actuarial analysis must be performed by an independent actuary who is not employed by a plan or insurer. The departments may post online rate changes submitted by insurers, if a rate filing contains inaccurate information, or if an insurer's unreasonable rate increase is found to be unjustified.

Currently, DMHC and CDI have the authority to review whether or not proposed rate increases are excessive, unjustified, or unfairly discriminatory, but neither department has the

authority to reject such an increase. AB 52 would grant departments the authority for this crucial consumer protection. The recent enactment of federal health care reform – and the accompanying individual mandate – makes AB 52 all the more essential. Without AB 52, millions of Californians will be at the mercy of the insurance industry – forced to purchase health insurance with no restriction against premium rate profiteering.

Over 30 other states have given their insurance commissioners the authority to reject excessive health insurance rate hikes. It is time we do the same here in California.

### AB 52 Faces Opposition in the Senate

AB 52 overcame fierce industry lobbying to win approval by the State Assembly on June 2nd by a vote of 45 in favor, 28 opposed, and 7 not voting (same as voting No). On July 6th the bill cleared the Senate Health Committee by a vote of 5 in favor, 3 opposed, and 1 not voting. AB 52 is now scheduled to be heard in the Senate Appropriations Committee.

Let your State Senators know we want affordable health insurance. We can't risk having our voices drowned out by insurance lobbyists' full court press. Go to our website to take action: [www.consumercal.org](http://www.consumercal.org)

### About Us

The Consumer Federation of California (CFC) is a non-profit advocacy organization. Since 1960, CFC has been a powerful voice for consumer rights, campaigning for state and federal laws that place consumer protection ahead of corporate profit. Each year, CFC testifies before the California legislature on dozens of bills that affect millions of our state's consumers and appears before state agencies in support of consumer regulations.

Contributions are not tax deductible.



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# The California Consumer

THE NEWSLETTER OF THE CONSUMER FEDERATION OF CALIFORNIA SUMMER 2011

## Stop Health Insurance Price Gouging

A bill to regulate health insurance rate hikes faces fierce industry opposition as it moves through the legislature. AB 52 (Feuer) would rein in health and HMO premium increases that soared 131% from 1999 to 2009 – nearly five times the rate of inflation. *Source: Asm. Health Committee*

Excessive health insurance rate increases have priced coverage out of the reach of millions of Californians. Today, 8.2 million state residents have no health insurance. Businesses are finding it difficult to pay for these rate hikes, and pass the increased costs on to workers, or opt for less expensive – and less comprehensive – coverage plans.

Last year, Blue Shield, a California non-profit insurer lavished its CEO with a \$4.6 million salary and then proposed premium rate hikes as high as 59% for certain individual policies. The company retracted this proposal in the wake of a storm of public outrage. In April 2011, Anthem Blue Cross, California's largest health insurer, raised rates on 120,000 California customers by 16%, despite a finding by state regulators that the increase was unreasonable.



### AB 52: Regulating Health Insurance Rate Increases

AB 52 would give state regulators the same approval authority over health insurance and HMO rates that have been in place for homeowners and automobile insurance policies since voters approved Proposition 103 in 1988. A study by

Consumer Federation of America found that California's automobile insurance rate regulation saved motorists over \$62 billion in a 20 year period.

This critical measure would force insurers to provide proof to the Insurance Commissioner or the Department of Managed Health Care (for HMOs) that proposed rate hikes are justified. Under this bill, the Department of Managed Health Care (DMHC) and the California Department of Insurance (CDI) would have regulatory authority to

approve, deny, or modify excessive rate changes. It requires plans and insurers to submit to the departments explanatory information, allows the departments to hold public hearings, and gives the public the opportunity to comment on proposed rate changes. It also prohibits insurers from proposing rate changes on each product more than once per year.



### 2011 LEGISLATIVE SUMMARY

The following is a brief legislative report on key consumer rights bills (partial list)

#### CFC Supported Bills in the State Senate

**AB 22 (Mendoza)** would prohibit a prospective employer from using consumer credit reports in the hiring process.

**AB 52 (Feuer)** would require prior approval from the Department of Managed Health Care or the Department of Insurance before an HMO or health insurer can increase insurance rates.

**AB 56 (Hill)** would implement numerous safety-related measures regarding the operation of natural gas pipeline facilities regulated by the Public Utilities Commission (PUC).

**AB 591 (Wieckowski)** would require an oil or gas well operator to disclose a list of chemicals used in a hydraulic fracturing (fracking) extraction process.

**AB 688 (Pan)** would ban the sale of expired baby food and over-the-counter medicine.

**AB 1319 (Butler)** would prohibit the manufacturing, selling, or distribution of any liquid, food, or beverage in a can or jar containing bisphenol A at a level above 0.1 ppb if it is intended primarily for consumption by infants or children three years of age or younger.

#### CFC Supported Bills in the State Assembly

**SB 24 (Simitian)** would amend California's security breach notification law

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# Two Cheers for Proposition 25



By Richard Holober

Proposition 25 delivered just what it promised. California has an ugly budget. But for once, it arrived on-time.

Proposition 25 permitted lawmakers to adopt a balanced budget with simple majority votes of both houses of the legislature, instead of two-thirds super-majorities. By simple majority votes, Sacramento Democrats approved a 2011-2012 budget that contains tragic cuts to education, health, and human services.

Proposition 25 supporters never claimed

## 2011 LEGISLATIVE SUMMARY

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stating that any public agency, person or business required to issue a security breach notification to more than 500 residents must submit the notification electronically to the Attorney General.

**SB 558 (Simitian)** strengthens protections for California's most vulnerable consumers – seniors - by allowing elder abuse to be enforced using a preponderance of the evidence standard.

**SB 602 (Yee)** would ensure that government and third parties cannot access private book purchasing records without proper justification.

**SB 823 (Corbett)** would make a "Made in California" label available for businesses whose essential component is manufactured in California, and would allow for a marketing agreement between these businesses and the State.

**SB 914 (Leno)** would protect personal privacy of files and data on a person's cell phone by requiring law enforcement officers to obtain a search warrant when there is probable cause to believe a suspect's device contains evidence of a crime.

that the measure would reverse the collapse of a social infrastructure that once made our state the envy of the nation. But that's only half the story.

Despite the Democrats' substantial majorities in both houses of the legislature, the two-thirds vote requirement led to the annual ritual of a shrunken Republican caucus dredging up a list of ransom demands to trade for the three or four votes needed for budget approval.

These demands rarely had any connection to the budget. The minority party used the budget as a lever to attempt to reverse its legislative defeats. Budget talks became hostage negotiation dramas, with Republican lawmakers insisting on rollbacks of environmental regulation, consumer protection laws, and private sector wage and hour laws. Republicans scored big wins in 2008 and 2009, when in exchange for their votes for two-year temporary sales and income tax increases on the middle class, they extracted permanent tax loopholes for the most profitable multi-state corporations with no requirement that big business beneficiaries create California jobs. This enlarged the state's deficit hole by another two billion dollars.

In 2011, Jerry Brown was channeling President Obama, bending over backwards to find bipartisan compromise. An opening existed for the GOP to move the ball a fair distance towards their goal line of drastic public sector pension reductions and severe state spending caps. But the Republicans miscalculated. They forgot the rules had changed under Proposition 25.

Clinging to its posture of total war on government pensions, spending and environmental regulation, the GOP squandered the moment and achieved none of its goals. Once lawmakers' paychecks were withheld in June, Democrats proved they were capable of approv-

ing an austerity budget all by themselves, as much as they might dislike it. A bit more finesse with the art of political compromise, and Republicans could have had bragging rights for creating a Dickensian California that their Tea Party base would appreciate come next election day.

Proposition 25 was never intended to address the biggest structural flaw in state budgeting - the tyranny of the legislative minority on revenues. Until we eliminate the two-thirds legislative super majority required for tax fairness, the top one percent (folks earning over \$500,000 a



year) will continue to enlarge their concentration of income and wealth with no commensurate requirement to give a bit more back to make sure our colleges, libraries and police departments don't close down. California's educational opportunities, and health and safety services will continue to wither away. The state's middle class will shrink and our makeover into a state divided between the privileged few and the rest of us will keep marching along.

But with Prop 25, that decline won't be further accelerated by a handful of reactionary politicians. And in 2011 America, that's progress.

# Ban the Sale of Expired Baby Food and Drugs

In March of 2008 an undercover shopping operation by the state Attorney General's office found 48 expired products on the shelves of 26 CVS Pharmacies in Los Angeles, Orange, and San Diego counties. Some of these products, which included baby formula, toddler food, and over-the-counter medications, were six months past their expiration date - one infant formula product had been expired for a full 11 months.

A state Attorney General's investigation in New York found expired products offered for sale at 142 CVS stores and 122 Rite Aid stores in 41 counties. Last year, San Diego's ABC TV Channel 10 News found quantities of expired baby food or infant formula on the shelves of several Toys "R" Us stores.

Legislation sponsored by the Consumer Federation of California would ban the retail selling of expired baby food and medications.

Federal law requires expiration dates on over the counter medication, baby food and infant formula product labels as the manufacturer's guarantee of the product's safety and effectiveness. Infant formula or baby food that has passed its "use by" date may lose its nutritional value. Young children that consume these products may not receive adequate nutrition for proper development. For example, infants who do not consume adequate amounts of nutrients such as DHA and ARA may suffer lessened brain development. The purity and effectiveness of over the counter medications is insured by the manufacturer until the expiration date.

State and federal laws do not prohibit the sale of expired food or non-prescription medicine. California's Sherman Food, Drug, and Cosmetic Law permits a retailer to sell food or an over the counter drug as long as it is in the original, unbroken, package bearing original labeling, and the retailer has used reasonable care in the storage and handling of the product; received the product in first-class merchantable stock, and can provide a guarantee that the product is not adulterated or misbranded.

While some retailers provide a refund or replacement to a consumer who returns a product purchased after its expiration date, undercover shopping operations at three major retail chains demonstrates that the practice of selling expired

products is a pervasive industry problem.

AB 688 (Pan) is a logical companion to laws requiring expiration dates or "use by" dates, since it stops retailers from selling products after the date that a manufacturer will stand by its guarantee of safety and effectiveness.

In 2009, Governor Schwarzenegger vetoed nearly identical legislation. This year, we are hopeful Governor Brown will sign the bill if it reaches his desk. AB 688 (Pan) was approved by the Assembly on May 19th by a vote of 50-26 and the Senate Health Committee on July 6th by a vote of 8 to 1.

Adding critical testimony in support of the legislation was Dale Proctor, whose 9 month old son Kai became violently ill



after consuming recently purchased expired baby food at a Raley's Supermarket. Mr. Proctor described his traumatic experience to Senate Health Committee members and the need for the bill, stating, "... Connie and I were desperately trying to imagine what could have made him so ill. I went to the cupboard to check the baby food jars - to my surprise the jar of baby food was past the use by date - 7 months past the date. I cannot explain how upset we were. I thought that maybe this one baby jar was

just a mistake so I went back to the store to the baby food section. I picked up one of the baby food jars and was surprised to find that one expired too. Still, I thought maybe it was just something a store clerk overlooked. So I picked up another jar. Expired. 6 months. And I picked up another. Expired. Another. Expired. I kept picking and picking until I found 8 jars of expired baby food products. This was no simple careless mistake."

In order to reach the Governor's desk the bill must clear one last hurdle: the State Senate floor.

Consumers are entitled to purchase products that are safe and effective. Requiring the removal of items from store shelves after the manufacturers' guarantee has elapsed is a simple and reasonable practice that retailers should employ to protect their customers.