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Kaiser Foundation Health Plan, Inc.

June 14, 2011

The Honorable Ed Hernandez, Chair
Senate Health Committee
State Capitol, Room 2191
Sacramento, CA 95814

Re: AB 52 – Oppose

Dear Senator Hernandez:

On behalf of the Kaiser Permanente Medical Care Program, I am writing to oppose AB 52 (Feuer), which establishes costly and potentially harmful rate regulation for California health plans and insurers.

In our view, AB 52, modeled after Proposition 103, creates burdensome requirements for health plans and insurers, and on the state's entire health care delivery system, without helping consumers. Like Proposition 103, the bill requires the Department of Managed Health Care (DMHC) or the Department of Insurance (DOI) to approve any premium or cost sharing changes. AB 52 also creates retrospective review to attempt regulation of rates already in effect. The bill compels an extensive legal and regulatory process at the wish of any individual, and allows attorney groups, including prominent supporters of the bill, to collect millions in intervener fees. These costs, regrettably, are ultimately borne by the very individuals the bill's supporters wish to protect: health care consumers.

AB 52 is Unnecessary; California Premiums Already Below Most Rate-Regulated States.
Though health care costs are expensive and are understandably cause for concern among policy makers, we note that California's competitive system works better than rate regulation, and has resulted in health insurance premiums that are below the national average. According to the U.S. Department of Health and Human Services Agency for Healthcare Research, health premiums in California rank 26th in the 50 states, despite our much higher cost of living, for individual coverage, and 31st for family coverage. Comparing California premiums to the major states with rate regulation requirements, the results are not persuasive for proponents of AB 52 – premiums in states with rate regulation are more likely to be <u>higher</u> than California premiums as they are to be lower, by a margin of 11 to 2. Massachusetts, New York, New Jersey, Connecticut, Florida, Illinois, North Carolina, Washington, Oregon, Wisconsin, and Pennsylvania all have rate regulation and higher premiums than California. Just Hawaii and Virginia enjoy lower premiums and, by happenstance, have rate regulation.

Supporters of this bill assert that Proposition 103 has lowered auto insurance rates – by an astonishing $23 billion in 10 years – as a reason to impose rate regulation on health insurance. We believe the evidence for this claim is dubious. For example, proponents give no consideration to the much more likely causal factors of dramatically reduced accident rates and decreased liability costs after the California Supreme Court prohibited third-party bad faith lawsuits. The assertion of proponents also ignores the dramatic *increase* in homeowner insurance rates, also regulated under Proposition 103.

AB 52 Ignores the Underlying Drivers of Health Care Costs
Regrettably, AB 52 does not address the underlying health care costs that are driving premium increases — the number of uninsured, increasing hospital and pharmaceutical costs, new technologies, an aging population, healthcare workforce shortages including among nurses, legislative mandates and seismic retrofit requirements. We note, for example that there are presently six new mandated benefit bills pending in the Legislature. Independent researchers demonstrate that health insurance premiums are rising in conjunction with these underlying cost increases.

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AB 52 Diverts Critical Resources Away From Health Care Delivery
AB 52 creates an expensive bureaucracy that will siphon millions of dollars from an already-struggling health care system. Rate regulation for auto and homeowners insurance under Proposition 103, for example, is budgeted to cost $22 million in the current fiscal year. The bill will also divert health care resources to pay interveners, which were awarded over $4 million in the early 90's.

Kaiser Permanente is a nonprofit health plan. Any revenues left over after providing health care to our members go directly into hospitals and clinics, new technology, research, community benefit programs and improvements in care to our patients. Our program's margin is consistently low. Over the last several years, our margins ranged from 0.3 percent to 3.8 percent. Moreover, our margin supports health care delivery and community benefit only. Kaiser Permanente has spent over $6.8 billion building new health care facilities since 2003. Similarly, our community benefit program for 2008, benefiting the uninsured and other non-profits and providing subsidized training to health care professionals (including those who work outside Kaiser Permanente, was $971 million. Despite the recession, we continue these efforts at similar funding levels. Rate regulation potentially undermines our ability to build for the future and support the community, including, for example, grants to safety net hospitals and community clinics, and free health coverage for 77,000 children.

AB 52 Will Have Negative Unintended Consequences
Given the many components of providing health care, including providers, hospitals, technologies and pharmaceuticals, rate setting in health care is extremely complicated. Adequate financial reserves are critical, as evidenced by the failures of non-profit health plans such as Lifeguard and Health Plans of the Redwoods. If the regulators set inadequate rates, health insurers will leave the market or go out of business or lower their costs by decreasing provider reimbursement and lowering benefits for consumers. It's potential adverse effect on access to quality health care in future years could be the most serious unintended consequence of AB 52, and of concern to Kaiser Permanente.

Ink Barely Dry On Newly-Enacted MLR, Transparency, and Independent Actuarial Certification Law
We believe rate increases in California are driven by the underlying health care costs that health care premiums cover. Accordingly, we are skeptical of the ability of a regulator to improve those cost trends through a bill that does nothing to address them. Nonetheless, if government is to play a role in rate review, we believe SB 1163 (Leno), enacted just last year, is the appropriate approach. This legislation requires extensive disclosure, and requires an independent certification that a health plan's rates are actuarially sound. We believe the Legislature should not plunge ahead to radically expand this approach before the proverbial ink on this new law is dry. Moreover, we note the new federal health care reform law's requirement that health plans and insurers spend 85 percent of the premium dollar on direct medical care. SB 51 (Alquist) would codify that requirement in California law – an approach we support.

For these reasons, we must oppose AB 52. Please contact me at (916) 448-6513 if you would like to discuss this issue further. Thank you for considering our concerns.

Sincerely,

Teresa Stark

Teresa Stark
Director, State Government Relations

cc: Assembly Member Mike Feuer
Members, Senate Health Committee
Gareth Elliott, Legislative Affairs Secretary, Governor Jerry Brown
Joe Parra, Consultant, Senate Republican Caucus