

## CLIENT ALERT

# The California Department of Insurance Submits Its Final Proposal on Overhauling the Prop 103 Intervenor Process

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In an effort to bring more transparency and accountability to the intervenor process under Proposition 103,<sup>1</sup> the California Department of Insurance (the “Department”) issued its final proposed **Intervenor and Administrative Hearing Bureau Fairness and Accountability** regulations and submitted them to the Office of Administrative Law (“OAL”) for approval on April 17, 2026. This submission follows months of public engagement by the Department, which included multiple comment periods and significant testimony from consumer advocates, insurance industry and the public.

As the first comprehensive modernization of the intervenor process since the enactment of Proposition 103 in 1988, the Department’s proposals seek to improve the insurance rate review process by establishing clear standards for

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<sup>1</sup> Cal. Ins. Code § 1861.10.

intervenor compensation, expanding public reporting, and reinforcing the Department's authority to oversee the rate review process.

Key proposed provisions in the regulations include:

- Public Notice of Rate Applications: A list of all rate change applications proposed within the last three (3) years must be available for public inspection on the Department's website.<sup>2</sup>
- Public Inspection: After a notice of hearing is issued, the Administrative Hearing Bureau ("AHB") must make available all nonconfidential pleadings filed, orders issued, and other nonconfidential case documents for public inspection at the Department's website no later than five (5) business days after the date of service.<sup>3</sup>
- Status of Proceeding: The AHB's administrative law judge must provide status updates not less frequently than every thirty (30) days to the parties, and the updates must be available for public inspection in the manner described above.<sup>4</sup>
- Proposal of Stipulations or Settlements: In considering whether a stipulation or settlement is "fundamentally fair, adequate, reasonable, and in the interests of justice," the administrative law judge shall consider each of the following factors:
  1. The relative strength of each party's positions;
  2. The risk, expense, complexity, likely duration of future litigation, and impact of delaying implementation of a rate;
  3. The fairness of the terms of the settlement;
  4. The sufficiency of information received and discovery undertaken;
  5. The current state of the proceedings;
  6. The experience and views of counsel and/or the parties' managers or experts;
  7. The extent of involvement of Department staff or another governmental entity; and
  8. The reaction to the proposed settlement of intervenors purporting to represent the interests of consumers in the matter at hand.

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<sup>2</sup> Cal. Code Regs. tit. 10, § 2652.8.

<sup>3</sup> Cal. Code Regs. tit. 10, § 2652.9.

<sup>4</sup> Cal. Code Regs. tit. 10, § 2654.3.

Further, the administrative law judge must issue a decision that accepts or rejects a proposed settlement or stipulation no later than 30 days after receiving such proposed settlement or stipulation.<sup>5</sup>

If any party submits a timely request for the Commissioner to review a proposed decision rejecting a proposed stipulation or settlement, the Commissioner may issue a determination concerning the proposed stipulation or settlement no later than sixty (60) days after the filing of the proposed settlement or stipulation with the administrative law judge. If the Commissioner does not issue a determination concerning the proposed stipulation or settlement, the proposed decision shall become effective sixty-one (61) days after issuance of the proposed decision by the administrative law judge.

- Reporting on Intervenor Statistics: The Department must maintain a webpage on its public website that includes an overview of Proposition 103, the intervenor process, and the role of the Public Advisor, who is the “official of the [Department] who oversees the process by which members of the public participate in the [Department’s] proceedings.”

Further, on or before March 1 of each calendar year, the Department must publish a report that describes the intervenor activities over the course of the prior calendar year. The report, to be available on the Department’s public website, must include:

- The intervenor compensation requested and awarded;
  - A description of actual or potential conflicts of interest that may have compromised the intervenor’s ability to represent the consumers’ interests independently; and
  - Rate and application information regarding intervened applications that have been approved.<sup>6</sup>
- Request for Compensation: A petitioner, intervenor or participant, whose Petition to Intervene or Participate has been granted and who has been found eligible to seek compensation, must demonstrate, by a preponderance of the evidence that, it “(1) represents the interests of consumers; (2) made a substantial contribution<sup>7</sup> to the adoption of any order, regulation or decision by the commissioner; and (3) has requested advocacy and witness fees and expenses that are reasonable.” The request must also include

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<sup>5</sup> Cal. Code Regs. tit. 10, § 2656.1(c), (g).

<sup>6</sup> Cal. Code Regs. tit. 10, § 2661.5.

<sup>7</sup> “Substantial contribution” means that “the intervenor substantially contributed, as a whole, to a decision, order, regulation, or other action of the Commissioner by presenting relevant issues, evidence, or arguments which were separate and distinct from those emphasized by the Department of Insurance staff or any other party, such that the intervenor’s participation resulted in more relevant, credible, and non-frivolous information being available for the Commissioner to make the Commissioner’s decision than would have been available to a Commissioner had the intervenor not participated. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied.” Cal. Code Regs. tit. 10, § 2661.1(k).

a description of the steps taken to ensure that its advocacy and its witness fees and expenses are reasonable.<sup>8</sup>

- Substantial Contribution: The Commissioner must determine whether the intervenor or participant has made a “substantial contribution” to the adoption of any order, regulation or decision by the Commissioner, based solely upon the evidence before the Commissioner at the time the order, regulation, or decision is adopted. If determined to be a substantial contribution, the compensation awarded must equal the “market rate of the reasonable services provided.”
- Reasonable Service<sup>9</sup> Fees: If the requested advocacy fees, witness fees and other expenses are unreasonable, the Commissioner “shall reduce the amount awarded to a reasonable amount.”<sup>10</sup>
- Services will be deemed “not reasonably necessary to the fair resolution of a matter” if they are duplicative, cumulative, wasteful, excessive, nonsubstantive, or not reasonably necessary to the fair resolution of the matter for any other reason.
  - Services are **duplicative** when they “fail to provide analytical value beyond that provided in documents already published by the Department or another party.”
  - Services are **cumulative** when “an argument of the fee requestor has been expressly rejected on the merits in a decision or order of the Commissioner, and the work product resulting from services performed after that decision or order (1) does not directly address the reasoning set forth in that prior rejection; and (2) merely repeats, restates, or paraphrases any arguments that the fee requestor previously made and that the decision or order rejected.”
  - Services are **wasteful** when they “cannot reasonably be expected to address, narrow, or resolve disputed issues material to the determination before the Commissioner.”
  - Services are **excessive** when “the amount of time spent on a task, or the level of staffing employed for a task, was not reasonably proportionate to the scope and complexity of the task.”

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<sup>8</sup> Cal. Code Regs. tit. 10, § 2662.3.

<sup>9</sup> “Services” is defined as “[s]ervices and related charges for which fees and expenses are sought,” and the performing of “services” includes the incurring of such related charges. Cal. Code Regs. tit. 10, § 2662.5(b)(1)-(2).

<sup>10</sup> Cal. Code Regs. tit. 10, § 2653.5. Advocacy fees, witness fees and other expenses are reasonable “when all of the services and related charges for which fees and expenses are sought were, at the time such services were performed or such related charges were incurred, reasonably necessary to a fair resolution of the matter in which the order, regulation, or decision was issued.” *Id.*

- Services are **nonsubstantive** when they are “peripheral, promotional, or otherwise unrelated to the substantive resolution of the issues material to the determination before the Commissioner.”<sup>11</sup>
- The Commissioner’s Authority: The Commissioner “shall have jurisdiction over any complete rate application. Neither the [AHB] nor any administrative law judge shall have any jurisdiction over any complete rate applications . . . unless and until the Commissioner commences a rate hearing by issuing a notice of hearing on the application or otherwise expressly delegates the matter to the [AHB].”

The Office of Administrative Law has up to 30 working days (i.e., June 1, 2026) to complete its review. Once approved, the regulations will be filed with the Secretary of State and take effect immediately and prospectively.<sup>12</sup>

We will continue to monitor and report on the intervenor system and other California legislative and regulatory developments in this area.

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<sup>11</sup> Cal. Code Regs. tit. 10, § 2662.5(d).

<sup>12</sup> Cal. Code Regs. tit. 10, § 2649.2.

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