

Assembly Bill No. 1178

CHAPTER 51

An act to amend Sections 785, 786.5, and 10232.2 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 6, 2001. Filed with
Secretary of State July 9, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1178, Calderon. Insurance.

(1) Existing law requires all brokers, agents, or other entities offering disability policies or certificates to individuals 65 years of age or older to provide these prospective insured's with a full, accurate written comparison of existing health coverage. Existing law requires the insurer to explain the proposed coverage as it relates to existing benefits provided by Medicare, Medi-Cal, or other available benefits. Existing law also provides that the Insurance Commissioner may prescribe a standard comparison form and information brochure that all insurers are required to distribute to every prospective insured when insurance is offered for sale by an agent or broker.

This bill would require disability insurers that market insurance contracts using direct response methods to include questions in their application to determine whether the prospective insured is 65 years of age or older and whether the prospective insured is covered by Medi-Cal or a Medicare supplement policy. The bill would require these direct response insurers to provide the comparison and the informational brochure to the prospective insured as early as possible in the transaction but not later than the delivery of the insurance contract. The bill would specify that these provisions become operative on January 1, 2002.

(2) Existing law provides for the regulation of long-term care insurance by the commissioner and requires, among other matters, that the commissioner review and approve those individual and group policies, certificates, riders, and outlines of coverage.

The bill would declare the Legislature's intent that the commissioner approve by July 1, 2001, all accurate and complete contracts submitted for approval and that insurers submit contracts for approval and resolve outstanding issues in order for the commissioner to meet this approval deadline. The bill would extend from July 1, 2001, to October 1, 2001, the authority for an insurer to continue to offer and market previously approved long-term care insurance contracts.



(3) The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 785 of the Insurance Code is amended to read:

785. (a) All insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is 65 years of age or older, a duty of honesty, good faith, and fair dealing. This duty is in addition to any other duty, whether express or implied, that may exist.

(b) Conduct of an insurer, broker, or agent, or other person engaged in the transaction of insurance, during the offer and sale of a policy or certificate previous to the purchase is relevant to any action alleging a breach of the duty of good faith and fair dealing.

(c) Except where explicitly provided to the contrary, this article shall not apply to any of the following:

(1) Medicare supplement insurance as defined in subdivision (l) of Section 10192.4.

(2) Long-term care insurance as defined in Section 10231.2.

(3) Disability coverage provided through the insured's employer or former employer.

(4) Disability insurance policies or certificates principally designed to provide coverage for accidents or expenses incurred while traveling if the premium for the policy or certificate is ten dollars (\$10) or less.

(5) Blanket disability insurance as defined in Section 10270.3.

(6) Credit disability insurance as defined in Section 779.2.

(7) Accidental death insurance.

(8) Until January 1, 2002, disability policies or certificates that are sold through direct response methods of delivery.

(9) Disability income insurance as defined in subdivision (i) of Section 799.01.

(d) Provided that the requirements of Section 10296 are met, this article shall not apply to transportation ticket policies and baggage insurance policy types allowable for sale by travel agents pursuant to Section 1753.

SEC. 2. Section 786.5 of the Insurance Code is amended to read:

786.5. (a) All brokers, agents, or other entities offering a contract of disability insurance to persons 65 years of age or older in this state shall provide the prospective insured with a full and accurate written comparison with existing health coverage, and shall explain the relationship of the proposed coverage to any existing health benefits provided by Medicare, Medi-Cal, or any other health benefits available to the applicant. The written comparison shall be maintained in



accordance with Section 10508.5. Disability insurers marketing through direct response to persons 65 years of age or older shall include in the application form questions to ascertain whether the prospective insured is currently 65 years of age or older, and whether the prospective insured is covered by Medi-Cal or a Medicare supplement policy. These direct response insurers shall provide the required comparison as early in the transaction as possible, but not later than the delivery of the insurance contract.

(b) The commissioner may prescribe a standard comparison form and an informational brochure that shall be distributed to every prospective insured at the time insurance is offered for sale by an agent, broker, or other producer. In the case of a transportation ticket policy, the informational brochures shall be delivered to the prospective insured not later than delivery of the insurance contract. Disability insurers marketing through direct response to persons 65 years of age or older shall provide the informational brochure as early in the transaction as possible, but not later than the delivery of the insurance contract.

(c) The amendments to this section made by Assembly Bill 1178 of the 2001–02 Regular Session shall become operative January 1, 2002.

SEC. 3. Section 10232.2 of the Insurance Code is amended to read:

10232.2. (a) Every insurer that offers policies or certificates that are intended to be federally qualified long-term care insurance contracts, including riders to life insurance policies providing long-term care coverage, shall fairly and affirmatively concurrently file, offer, and market long-term care insurance policies or certificates not intended to be federally qualified, as described in subdivision (a) of Section 10232.1.

(b) All long-term care insurance contracts, including riders to life insurance contracts providing long-term care coverage, approved after the effective date of this section shall meet all of the requirements of this chapter.

(c) Until October 1, 2001, or 90 days after approval of contracts submitted for approval pursuant to subdivision (b), whichever comes first, insurers may continue to offer and market previously approved long-term care insurance contracts.

(d) Group policies issued prior to January 1, 1997, shall be allowed to remain in force and not be required to meet the requirements of this chapter, as amended during the 1997 portion of the 1997–98 Regular Session, unless those policies cease to be treated as federally qualified long-term care insurance contracts. If a policy or certificate issued on a group policy of that type ceases to be a federally qualified long-term care insurance contract under the grandfather rules issued by the United States Department of the Treasury pursuant to Section 7702B(f) of the



Internal Revenue Code, the insurer shall offer the policy and certificate holders the option to convert, on a guaranteed-issue basis, to a policy or certificate that is federally tax qualified if the insurer sells tax-qualified policies.

(e) It is the intent of the Legislature that the commissioner approve by July 1, 2001, all accurate and complete contracts submitted for approval pursuant to subdivision (b). It is the further intent of the Legislature that insurers submit contracts for approval and resolve further outstanding issues pursuant to subdivision (b) in a timely manner in order for the commissioner to approve the contracts by July 1, 2001.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to immediately make available the protections imposed by this act and to speed the process for the approval of long-term insurance policies that protect the health of senior citizens and others, it is necessary that this act take effect immediately.

