

Assembly Bill No. 2137

Passed the Assembly July 15, 2008

Chief Clerk of the Assembly

Passed the Senate July 10, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 10232.3 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2137, Saldana. Insurance: rescission of long-term care contracts.

Existing law provides requirements relating to long-term care insurance, including that every insurer shall maintain a record, as specified, of all policy or certificate rescissions, both state and countrywide, except those voluntarily initiated by the insured, and shall annually furnish this information to the Insurance Commissioner in a format prescribed by the commissioner.

This bill would delete the recordkeeping exception for rescissions that are voluntarily initiated by the insured, and require that the information furnished to the commissioner include the reason for rescission, the length of time the policy or certificate was in force, and the age and gender of the insured person. The bill would authorize the commissioner to make that information public, upon request.

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

SECTION 1. Section 10232.3 of the Insurance Code is amended to read:

10232.3. (a) All applications for long-term care insurance except that which is guaranteed issue, shall contain clear, unambiguous, short, simple questions designed to ascertain the health condition of the applicant. Each question shall contain only one health status inquiry and shall require only a “yes” or “no” answer, except that the application may include a request for the name of any prescribed medication and the name of a prescribing physician. If the application requests the name of any prescribed medication or prescribing physician, then any mistake or omission shall not be used as a basis for the denial of a claim or the rescission of a policy or certificate.

(b) The following warning shall be printed conspicuously and in close conjunction with the applicant's signature block:

“Caution: If your answers on this application are misstated or untrue, the insurer may have the right to deny benefits or rescind your coverage.”

(c) Every application for long-term care insurance shall include a checklist that enumerates each of the specific documents that this chapter requires be given to the applicant at the time of solicitation. The documents and notices to be listed in the checklist include, but are not limited to, the following:

(1) The “Important Notice Regarding Policies Available” pursuant to Section 10232.25.

(2) The outline of coverage pursuant to Section 10233.5.

(3) The HICAP notice pursuant to paragraph (8) of subdivision (a) of Section 10234.93.

(4) The long-term care insurance shoppers guide pursuant to paragraph (9) of subdivision (a) of Section 10234.93.

(5) The “Long-Term Care Insurance Personal Worksheet” pursuant to subdivision (c) of Section 10234.95.

(6) The “Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance” pursuant to Section 10235.16 if replacement is not made by direct response solicitation or Section 10235.18 if replacement is made by direct response solicitation. Unless the solicitation was made by a direct response method, the agent and applicant shall both sign at the bottom of the checklist to indicate the required documents were delivered and received.

(d) If an insurer does not complete medical underwriting and resolve all reasonable questions arising from information submitted on or with an application before issuing the policy or certificate, then the insurer may only rescind the policy or certificate or deny an otherwise valid claim, upon clear and convincing evidence of fraud or material misrepresentation of the risk by the applicant. The evidence shall:

(1) Pertain to the condition for which benefits are sought.

(2) Involve a chronic condition or involve dates of treatment before the date of application.

(3) Be material to the acceptance for coverage.

(e) No long-term care policy or certificate may be field issued.

(f) The contestability period as defined in Section 10350.2 for long-term care insurance shall be two years.

(g) A copy of the completed application shall be delivered to the insured at the time of delivery of the policy or certificate.

(h) Every insurer shall maintain a record, in accordance with Section 10508, of all policy or certificate rescissions, both state and countrywide, and shall annually furnish this information to the commissioner, which shall include the reason for rescission, the length of time the policy or certificate was in force, and the age and gender of the insured person, in a format prescribed by the commissioner.

(i) The commissioner may, in his or her discretion, make public the aggregate data collected under subdivision (h), upon request.

Approved _____, 2008

Governor