

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 999

Introduced by Assembly Member Yamada

February 18, 2011

An act to amend ~~Section 10236.1 of Sections 10234.93, 10236.1, 10236.13, and 10236.14 of, and to add Section 10236.2 to,~~ the Insurance Code, relating to long-term care insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 999, as amended, Yamada. Long-term care insurance.

Existing law provides for *the* regulation of insurers *by the Department of Insurance*, including insurers issuing policies of long-term care insurance, ~~by the Insurance Commissioner~~. Existing law, for policies issued before new rate schedules are approved and for which rate revisions are filed on and after January 1, 2010, deems benefits reasonable in relation to premiums if the premium rate schedules have a lifetime expected loss ratio of at least 60% of the premium scale in effect on December 31, 2009, plus 70% of premium increases filed on or after January 1, 2010. Existing law, notwithstanding these provisions, authorizes the commissioner, for rate increases filed on or after January 1, 2010, to approve an application for a rate revision based on less than a 70% loss ratio, but not less than a 60% loss ratio, for the portion attributable to the rate increase if the insurer can demonstrate that the rates are necessary to protect the financial condition of the insurer, including further reductions in capital and surplus. *law regulates the marketing or solicitation of long-term care insurance policies and, in that regard, requires specified disclosures to prospective applicants or enrollees.*

This bill would require an insurer of long-term care insurance to clearly post on its Internet Web site a specimen individual policy form or group master policy and certificate form for each policy form offered by the insurer.

Existing law requires the premium rate schedules for all individual and group long-term care insurance policies issued in this state to be filed with, and receive the prior approval of, the Insurance Commissioner before the policy may be offered, sold, issued, or delivered to a resident of this state. Existing law requires an insurer of long-term care insurance to submit to the Insurance Commissioner for approval all proposed premium rate schedule increases and to include specified information with the rate application. Approval of all premium rate schedule increases is subject to specified criteria.

This bill would ~~make a nonsubstantive change to these provisions~~ provide that if the premiums calculated pursuant to those criteria produce a lifetime expected loss ratio that is less than the highest lifetime expected loss ratio for the policy form in all previous filings, the insurer is required to reduce the premiums such that the current lifetime expected loss ratio is equal to or greater than the highest of the previously filed expected loss ratios.

With regard to individual or group long-term care insurance policies issued before the approval of premium rate schedules by the Insurance Commissioner, the bill would limit those premium rate schedule increases to once every 5 years. For those policies, the bill would also prohibit an insurer from justifying a rate increase prior to approval by the Insurance Commissioner based upon asset investment yield rate changes, and would require all of the experience on long-term care policy forms issued by an insurer and its affiliates to be pooled together. With regard to the approval of other premium rate schedule increases by the Insurance Commissioner, the bill would limit premium rate schedule increases to once every 10 years, except upon a demonstration of financial hardship, as specified.

*Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.*

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

1 *SECTION 1. Section 10234.93 of the Insurance Code is*
2 *amended to read:*

1 10234.93. (a) Every insurer of long-term care in California
2 shall:

3 (1) Establish marketing procedures to assure that any comparison
4 of policies by its agents or other producers will be fair and accurate.

5 (2) Establish marketing procedures to assure excessive insurance
6 is not sold or issued.

7 (3) Submit to the commissioner within six months of the
8 effective date of this act, a list of all agents or other insurer
9 representatives authorized to solicit individual consumers for the
10 sale of long-term care insurance. These submissions shall be
11 updated at least semiannually.

12 (4) Provide the following training and require that each agent
13 or other insurer representative authorized to solicit individual
14 consumers for the sale of long-term care insurance shall
15 satisfactorily complete the following training requirements that,
16 for resident licensees, shall count toward the licensee's continuing
17 education requirement, but may still result in completing more
18 than the minimum number of continuing education hours set forth
19 in this section:

20 (A) For licensees issued a license after January 1, 1992, eight
21 hours of training in each of the first four 12-month periods
22 beginning from the date of original license issuance and thereafter
23 eight hours of training prior to each license renewal.

24 (B) For licensees issued a license before January 1, 1992, eight
25 hours of training prior to each license renewal.

26 (C) For nonresident licensees that are not otherwise subject to
27 the continuing education requirements set forth in Section 1749.3,
28 the evidence of training required by this section shall be filed with
29 and approved by the commissioner as provided in subdivision (g)
30 of Section 1749.4.

31 Licensees shall complete the initial training requirements of this
32 section prior to being authorized to solicit individual consumers
33 for the sale of long-term care insurance.

34 The training required by this section shall consist of topics related
35 to long-term care services and long-term care insurance, including,
36 but not limited to, California regulations and requirements,
37 available long-term care services and facilities, changes or
38 improvements in services or facilities, and alternatives to the
39 purchase of private long-term care insurance. On or before July
40 1, 1998, the following additional training topics shall be required:

1 differences in eligibility for benefits and tax treatment between
2 policies intended to be federally qualified and those not intended
3 to be federally qualified, the effect of inflation in eroding the value
4 of benefits and the importance of inflation protection, and NAIC
5 consumer suitability standards and guidelines.

6 (5) Display prominently on page one of the policy or certificate
7 and the outline of coverage: “Notice to buyer: This policy may not
8 cover all of the costs associated with long-term care incurred by
9 the buyer during the period of coverage. The buyer is advised to
10 review carefully all policy limitations.”

11 (6) Inquire and otherwise make every reasonable effort to
12 identify whether a prospective applicant or enrollee for long-term
13 care insurance already has accident and sickness or long-term care
14 insurance and the types and amounts of any such insurance.

15 (7) Every insurer or entity marketing long-term care insurance
16 shall establish auditable procedures for verifying compliance with
17 this subdivision.

18 (8) Every insurer shall provide to a prospective applicant, at the
19 time of solicitation, written notice that the Health Insurance
20 Counseling and Advocacy Program (HICAP) provides health
21 insurance counseling to senior California residents free of charge.
22 Every agent shall provide the name, address, and telephone number
23 of the local HICAP program and the statewide HICAP number,
24 1-800-434-0222.

25 (9) Provide a copy of the long-term care insurance shoppers
26 guide developed by the California Department of Aging to each
27 prospective applicant prior to the presentation of an application or
28 enrollment form for insurance.

29 (10) *Clearly post on its Internet Web site a specimen individual*
30 *policy form or group master policy and certificate form for each*
31 *policy form offered by the insurer.*

32 (b) In addition to other unfair trade practices, including those
33 identified in this code, the following acts and practices are
34 prohibited:

35 (1) Twisting. Knowingly making any misleading representation
36 or incomplete or fraudulent comparison of any insurance policies
37 or insurers for the purpose of inducing, or tending to induce, any
38 person to lapse, forfeit, surrender, terminate, retain, pledge, assign,
39 borrow on, or convert any insurance policy or to take out a policy
40 of insurance with another insurer.

1 (2) High pressure tactics. Employing any method of marketing
2 having the effect of or tending to induce the purchase of insurance
3 through force, fright, threat, whether explicit or implied, or undue
4 pressure to purchase or recommend the purchase of insurance.

5 (3) Cold lead advertising. Making use directly or indirectly of
6 any method of marketing which fails to disclose in a conspicuous
7 manner that a purpose of the method of marketing is solicitation
8 of insurance and that contact will be made by an insurance agent
9 or insurance company.

10 ~~SECTION 4.~~

11 *SEC. 2.* Section 10236.1 of the Insurance Code is amended to
12 read:

13 10236.1. (a) Benefits under individual long-term care insurance
14 policies issued before new premium rate schedules are approved
15 under Section 10236.11 shall be deemed reasonable in relation to
16 premiums if the expected loss ratio is at least 60 percent, calculated
17 in a manner that provides for adequate reserving of the long-term
18 care insurance risk.

19 (b) For individual long-term care insurance policies issued
20 before new premium rate schedules are approved under Section
21 10236.11, and for which rate revisions are filed on or after January
22 1, 2010, benefits shall be deemed reasonable in relation to the
23 premium if the premium rate schedules have a lifetime expected
24 loss ratio of at least 60 percent of the premium scale in effect on
25 December 31, 2009, plus 70 percent of premium increases filed
26 on or after January 1, 2010, calculated in a manner that provides
27 for adequate reserving of the long-term care insurance risk.
28 *However, if the premiums calculated in this manner produce a*
29 *lifetime expected loss ratio that is less than the highest lifetime*
30 *expected loss ratio for this policy form in all previous filings, the*
31 *insurer shall reduce the premiums such that the current lifetime*
32 *expected loss ratio is equal to or greater than the highest of the*
33 *previously filed lifetime expected loss ratios.*

34 (c) In evaluating the expected loss ratio, due consideration shall
35 be given to all relevant factors, including the following:

36 (1) Statistical credibility of incurred claims experience and
37 earned premiums.

38 (2) The period for which rates are computed to provide coverage.

39 (3) Experienced and projected trends.

40 (4) Concentration of experience within early policy duration.

- 1 (5) Expected claim fluctuation.
- 2 (6) Experience refunds, adjustments, or dividends.
- 3 (7) Renewability features.
- 4 (8) All appropriate expense factors.
- 5 (9) ~~Interest~~ *The discount rate used in the calculation of lifetime*
- 6 *expected loss ratios.*
- 7 (10) Experimental nature of the coverage.
- 8 (11) Policy reserves.
- 9 (12) Mix of business by risk classification.
- 10 (13) Product features, such as long elimination periods, high
- 11 deductibles, and high maximum limits.
- 12 (d) *Asset investment yield rate changes may not be used to justify*
- 13 *a rate increase.*
- 14 (e) *All of the experience on long-term care policy forms issued*
- 15 *in this state by an insurer and its affiliates, approved either prior*
- 16 *to approval under, or pursuant to, Section 10236.11, shall be*
- 17 *pooled together.*
- 18 (f) *Approval of all premium rate schedule increases filed on or*
- 19 *after January 1, 2012, shall be limited to no more than once every*
- 20 *five years.*
- 21 ~~(d)~~
- 22 (g) Notwithstanding any other provision of this section, for rate
- 23 revisions filed on or after January 1, 2010, the commissioner may
- 24 approve an application for a rate revision based on less than a
- 25 70-percent loss ratio, but not less than a 60-percent loss ratio, for
- 26 the portion attributable to the rate increase if an insurer can
- 27 demonstrate that the rates are necessary to protect the financial
- 28 condition of the insurer, including avoidance of further reductions
- 29 in capital and surplus.
- 30 (h) *This section applies only to long-term care insurance policies*
- 31 *issued before the approval of rate schedules under Section*
- 32 *10236.11.*
- 33 *SEC. 3. Section 10236.2 is added to the Insurance Code, to*
- 34 *read:*
- 35 *10236.2. The provisions of subdivisions (d), (e), and (f) of*
- 36 *Section 10236.1 shall apply to all group long-term care insurance*
- 37 *policies issued before the approval of premium rate schedules*
- 38 *under Section 10236.11.*
- 39 *SEC. 4. Section 10236.13 of the Insurance Code is amended*
- 40 *to read:*

1 10236.13. No insurer may increase the premium for an
2 individual or group long-term care insurance policy or certificate
3 approved for sale under this chapter unless the insurer has received
4 prior approval for the increase from the commissioner.

5 The insurer shall submit to the commissioner for approval all
6 proposed premium rate schedule increases, including at least all
7 of the following information:

8 (a) Certification by an actuary, who is a member of the American
9 Academy of Actuaries and who meets the qualification standards
10 of that organization, that:

11 (1) If the requested premium rate schedule increase is
12 implemented and the underlying assumptions, which reflect
13 moderately adverse conditions, are realized, no further premium
14 rate schedule increases are anticipated.

15 (2) The premium rate filing is in compliance with the provisions
16 of this section.

17 (b) An actuarial memorandum justifying the rate schedule
18 change request that includes all of the following:

19 (1) Lifetime projections of earned premiums and incurred claims
20 based on the filed premium rate schedule increase, and the method
21 and assumptions used in determining the projected values,
22 including reflection of any assumptions that deviate from those
23 used for pricing other forms currently available for sale.

24 (A) Annual values for the five years preceding and the three
25 years following the valuation date shall be provided separately.

26 (B) The projections shall include the development of the lifetime
27 loss ratio.

28 (C) For policies issued with premium rate schedules approved
29 under Section 10236.11, the projections shall demonstrate
30 compliance with subdivision (a) of Section 10236.14. For all other
31 policies, the projections shall demonstrate compliance with Section
32 10236.1.

33 (D) If the commissioner determines that a premium rate increase
34 is justified due to changes in laws or regulations that are
35 retroactively applicable to long-term care insurance previously
36 sold in this state, then:

37 (i) The projected experience should be limited to the increases
38 in claims expenses attributable to the changes in law or regulations.

1 (ii) If the commissioner determines that potential offsets to
2 higher claims costs may exist, the insurer shall be required to use
3 appropriate net projected experience.

4 (2) Disclosure of how reserves have been incorporated in this
5 rate increase.

6 (3) Disclosure of the analysis performed to determine why a
7 rate adjustment is necessary, which pricing assumptions were not
8 realized and why, and what other actions taken by the company
9 have been relied on by the actuary.

10 (4) A statement that policy design, underwriting, and claims
11 adjudication practices have been taken into consideration.

12 (5) *A statement that asset investment yield rate changes have*
13 *not been used to justify the rate increase.*

14 ~~(5)~~

15 (6) If it is necessary to maintain consistent premium rates for
16 new certificates and certificates receiving a rate increase, the
17 insurer shall file composite rates reflecting projections of new
18 certificates.

19 (c) A statement that renewal premium rate schedules are not
20 greater than new business premium rate schedules except for
21 differences attributable to benefits, unless sufficient justification
22 is provided to the commissioner.

23 (d) Sufficient information for approval of the premium rate
24 schedule increase by the commissioner.

25 (e) The provisions of this section are applicable to all individual
26 and group policies issued in this state on or after July 1, 2002.

27 *SEC. 5. Section 10236.14 of the Insurance Code is amended*
28 *to read:*

29 10236.14. Approval of all premium rate schedule increases
30 *filed on or after January 1, 2012, shall be limited to no more than*
31 *once every 10 years, and shall be subject to the following*
32 *requirements:*

33 (a) (1) Premium rate schedule increases shall demonstrate that
34 the sum of the accumulated value of incurred claims, without the
35 inclusion of active life reserves, and the present value of future
36 projected incurred claims, without the inclusion of active life
37 reserves, will not be less than the sum of the following:

38 ~~(1)~~

39 (A) The accumulated value of the initial earned premium times
40 58 percent.

1 ~~(2)~~
2 (B) Eighty-five percent of the accumulated value of prior
3 premium rate schedule increases on an earned basis.

4 ~~(3)~~
5 (C) The present value of future projected initial earned premiums
6 times 58 percent.

7 ~~(4)~~
8 (D) Eighty-five percent of the present value of future projected
9 premiums not in ~~paragraph (3)~~ *subparagraph (C)* on an earned
10 basis.

11 (2) *However, if the premiums calculated in this manner produce*
12 *an expected lifetime loss ratio that is less than the highest expected*
13 *lifetime loss ratio for this policy form in all previous filings, the*
14 *insurer shall reduce the premiums such that the current expected*
15 *lifetime loss ratio is equal to or greater than the highest of the*
16 *previously filed expected lifetime loss ratios.*

17 (b) In the event the commissioner determines that a premium
18 rate increase is justified due to changes in laws or regulations that
19 are retroactively applicable to long-term care insurance previously
20 sold in this state, a premium rate schedule increase may be
21 approved if the increase provides that 70 percent of the present
22 value of projected additional premiums shall be returned to
23 policyholders in benefits and the other requirements applicable to
24 other premium rate schedule increases are met.

25 (c) All present and accumulated values used to determine rate
26 increases should use the maximum valuation interest rate for
27 contract reserves. The actuary shall disclose as part of the actuarial
28 memorandum the use of any appropriate averages.

29 ~~(d) If the requested premium rate schedule increase on any new~~
30 ~~policy form approved under Section 10236.11 exceeds 15 percent~~
31 ~~or if the requested premium rate schedule increase on any policy~~
32 ~~form approved under Section 10236.11 plus all increases occurring~~
33 ~~after July 1, 2002, in the premium rate schedule for the same policy~~
34 ~~form exceed 15 percent, no~~ *No* request for a rate increase on any
35 policy form *approved under Section 10236.11* shall be approved
36 by the commissioner except as follows: all *of the insurer's*
37 ~~individual~~ *individual* experience on long-term care policy forms issued in
38 this state *by the insurer and its affiliates* that have been approved
39 *either prior to approval under, or pursuant to, Section 10236.11*
40 ~~are shall be pooled together to project future claims experience~~

1 and the combined experience ~~satisfies~~ *shall satisfy* the requirements
2 in subdivision (a). An insurer is not precluded from filing requests
3 for premium rate schedule increases on all of its policy forms if
4 the combined experiences after pooling all applicable policy forms
5 satisfies the requirements of subdivision (a).

6 (e) No approval for an increase in the premium schedule shall
7 be granted unless the actuary performing the review for the
8 commissioner certifies that if the requested premium rate schedule
9 increase is implemented and the underlying assumptions, which
10 reflect moderately adverse conditions, are realized, no further
11 premium rate schedule increases are anticipated. The certification
12 may rely on supporting data in the filing.

13 (f) *Notwithstanding any other provision of this section, for*
14 *applications for rate revisions filed on or after January 1, 2012,*
15 *the commissioner may approve the application if an insurer*
16 *demonstrates that the rates are necessary to protect the financial*
17 *condition of the insurer, including avoidance of further reductions*
18 *in capital and surplus.*

19 (f)

20 (g) The provisions of this section are applicable to all individual
21 and group policies issued in this state on or after July 1, 2002.