

AMENDED IN SENATE MAY 28, 2013

SENATE BILL

No. 214

Introduced by Senator ~~Gaines Calderon~~
(Coauthor: Senator Gaines)

February 11, 2013

~~An act to amend Section 10231.2 of the Insurance Code, relating to long-term care insurance. An act to add Section 10113.36 to the Insurance Code, and to add Section 14006.31 to the Welfare and Institutions Code, relating to long-term care.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 214, as amended, ~~Gaines Calderon. Long-term care insurance. Long-term care: financing.~~

Existing law regulates the business of life settlement contracts, and defines a life settlement contract as, among other things, a written agreement solicited, negotiated, or entered into in this state between a life settlement provider and an owner of a life insurance policy, establishing the terms under which compensation or any thing of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation. Existing law requires, however, that the minimum value for a life settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services.

The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law requires applicants to meet certain financial eligibility requirements to qualify for Medi-Cal.

This bill would authorize the owner of a life insurance policy, with a face value of more than \$10,000, to enter into a life settlement contract where the proceeds of the contract would be placed in a state or federally insured account in an irrevocable trust to be paid directly to a health care provider for qualified long-term care services, as defined, for the recipient of those services. The bill would also require, in addition to the currently applicable requirements, that under the life settlement contract the lesser of 5% of the face value of the life insurance policy or \$5,000 be reserved as a death benefit, the balance of proceeds of the life settlement contract that remain at the death of the insured be paid to the policy owner's estate or a named beneficiary, and the total amount payable on behalf of the recipient pursuant to the life settlement contract be stated in the contract.

The bill would require the life settlement provider, among other things, to maintain a surety bond, executed and issued by an insurer authorized to issue surety bonds in this state, a policy of errors and omissions insurance, or a deposit of cash, certificates of deposit or securities, or any combination thereof, in the amount of \$500,000, and that all life settlement contract forms be filed with and approved by the Department of Insurance, and any advertising and marketing materials used by a life settlement provider be filed with the department.

The bill would require the State Department of Health Care Services to provide notice of this option as part of the application for enrollment in the Medi-Cal program. The bill would prohibit state or federal Medi-Cal funds from being used until the funds in the irrevocable trust are spent down to a level where only the amount reserved as a death benefit is left. The bill would require the State Department of Health Care Services to seek any necessary federal approvals and to adopt regulations, in consultation with the Insurance Commissioner, no later than September 1, 2014, to initially implement these provisions, as provided.

~~Existing law provides for the regulation of long-term care insurance, as defined, and requires that individual and group policies, certificates, riders, and outlines of coverage be reviewed and approved by the Insurance Commissioner.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

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. *This act shall be known and may be cited as the*
2 *Long-Term Care Benefit Trust Act.*

3 SEC. 2. *Section 10113.36 is added to the Insurance Code, to*
4 *read:*

5 10113.36. (a) (1) *The owner of a life insurance policy with a*
6 *face value in excess of ten thousand dollars (\$10,000) may enter*
7 *into a life settlement contract, in accordance with Sections 10113.1*
8 *to 10113.35, inclusive, to provide for payments to be made directly*
9 *to a health care provider for qualified long-term care services for*
10 *the recipient of those services on and after the effective date of the*
11 *life settlement contract, in accordance with this section.*

12 (2) *The proceeds of a life settlement contract entered into*
13 *pursuant to this section shall not be considered a resource or an*
14 *asset for the purposes of determining Medi-Cal eligibility as long*
15 *as all proceeds of the life settlement contract, except for the amount*
16 *set forth in paragraph (1) of subdivision (b), are used solely to*
17 *pay for qualified long-term care services in accordance with this*
18 *section.*

19 (b) *In addition to the requirements of Sections 10113.1 to*
20 *10113.35, inclusive, any life settlement contract entered into*
21 *pursuant to this section shall include all of the following:*

22 (1) *A requirement that the lesser of 5 percent of the face value*
23 *of the life insurance policy or five thousand dollars (\$5,000) be*
24 *reserved as a death benefit and be payable to the owner’s estate*
25 *or a named beneficiary, upon the death of the insured under the*
26 *policy that is the subject of the life settlement contract, for burial*
27 *expenses.*

28 (2) *A requirement that the balance of proceeds of the life*
29 *settlement contract that remains at the death of the insured be paid*
30 *to the policy owner’s estate or a named beneficiary.*

31 (3) *A statement identifying the total amount payable on behalf*
32 *of the recipient pursuant to the life settlement contract.*

33 (c) *All proceeds of the life settlement contract entered into*
34 *pursuant to this section shall be held in a state or federally insured*
35 *account in an irrevocable trust for the benefit of the recipient of*

1 *the long-term care services and administered in accordance with*
2 *this section.*

3 *(d) The type of long-term care services payable from the*
4 *irrevocable trust shall be chosen only by the recipient of the*
5 *services. Any attempt by any person to require the use of a specific*
6 *long-term care provider to provide the long-term care services to*
7 *be paid for pursuant to this section is prohibited, and constitutes*
8 *an unfair method of competition and an unfair or deceptive act or*
9 *practice under this code.*

10 *(e) Any life settlement provider entering into a life settlement*
11 *contract pursuant to this section shall maintain a surety bond,*
12 *executed and issued by an insurer authorized to issue surety bonds*
13 *in this state, a policy of errors and omissions insurance, or a*
14 *deposit of cash, certificates of deposit or securities, or any*
15 *combination thereof, in the amount of five hundred thousand*
16 *dollars (\$500,000).*

17 *(f) For purposes of this section, in addition to any requirements*
18 *of Sections 10113.1 to 10113.35, inclusive, all life settlement*
19 *contract forms shall be filed with and approved by the Department*
20 *of Insurance, and any advertising and marketing materials used*
21 *by a life settlement provider pursuant to this section shall be filed*
22 *with the department.*

23 *(g) Any claim against a life settlement provider made by an*
24 *owner of a policy, the owner's estate, any beneficiary, or any other*
25 *person with respect to the life settlement contract shall not exceed*
26 *the face amount of the policy, less the proceeds paid under the life*
27 *settlement contract and less the total amount of premiums paid*
28 *subsequent to entering into the life settlement contract. Any*
29 *payment of a claim by a life settlement provider shall be made*
30 *from a funding source required by subdivision (e) of this section.*

31 *(h) The Department of Insurance may conduct periodic market*
32 *conduct examinations of each life settlement provider regarding*
33 *the life settlement contracts entered into pursuant to this section,*
34 *in accordance with subdivision (k) of section 10113.2.*

35 *(i) For the purposes of this section, "qualified long-term care*
36 *services" means those long-term care services that would be*
37 *eligible for reimbursement by the Medi-Cal program (Chapter 7*
38 *(commencing with Section 14000) of Part 3 of Division 9 of the*
39 *Welfare and Institutions Code) if the recipient of long-term care*
40 *services was a Medi-Cal beneficiary.*

1 SEC. 3. Section 14006.31 is added to the Welfare and
2 Institutions Code, to read:

3 14006.31. (a) The owner of a life insurance policy with a face
4 value in excess of ten thousand dollars (\$10,000) may enter into
5 a life settlement contract, in accordance with Section 10113.36 of
6 the Insurance Code, to provide for payments to be made directly
7 to his or her provider for qualified long-term care services on and
8 after the effective date of the life settlement contract, in accordance
9 with this section.

10 (b) The department shall provide, as part of the application for
11 enrollment in the Medi-Cal program, written notice to an applicant
12 of the option provided in subdivision (a).

13 (c) State or federal Medi-Cal funds shall not be used for an
14 applicant's care until the available proceeds are spent down.

15 (d) The amount reserved pursuant to paragraph (1) of
16 subdivision (b) of Section 10113.36 of the Insurance Code shall
17 not be considered a resource or an asset for the purposes of
18 determining Medi-Cal eligibility as long as all other proceeds of
19 the life settlement contract entered into under subdivision (a) are
20 used solely to pay for qualified long-term care services.

21 (e) The type of long-term care services payable from the
22 irrevocable trust, as described in subdivision (c) of Section
23 10113.36 of the Insurance Code, shall be chosen only by the
24 recipient of the services. Any attempt by any person to require the
25 use of a specific long-term care provider to provide the long-term
26 care services to be paid for pursuant to this section is prohibited,
27 and constitutes an unfair method of competition or an unfair and
28 deceptive act or practice.

29 (f) The department shall, no later than September 1, 2014, and
30 in consultation with the Insurance Commissioner, adopt regulations
31 necessary to initially implement this section to ensure all of the
32 following:

33 (1) The proceeds from the life settlement contract shall be
34 distributed directly to a health care provider in accordance with
35 this section.

36 (2) Eligibility for Medi-Cal shall be determined without
37 considering the proceeds of the life settlement contract as a
38 resource or an asset, in accordance with this section.

39 (3) Medi-Cal benefits shall begin on the day following the
40 exhaustion of the life settlement proceeds.

1 (g) *This section shall be implemented only to the extent permitted*
2 *by federal law. The department shall seek any federal approvals*
3 *necessary to implement this section*

4 (h) (1) *This section and Section 10113.36 of the Insurance Code*
5 *shall apply to Medi-Cal eligibility determinations made on and*
6 *after January 1, 2014, or, if federal approval is necessary to*
7 *implement this section, on and after the date federal approval is*
8 *obtained, whichever is later.*

9 (2) *A Medi-Cal eligibility determination made before January*
10 *1, 2014, or before federal approval is obtained as described in*
11 *paragraph (1), as applicable, shall be governed by the law in effect*
12 *on the date the determination was made and shall continue to*
13 *apply for that purpose.*

14 (i) *For the purposes of this section, “qualified long-term care*
15 *services” means those long-term care services that would be*
16 *eligible for reimbursement by the Medi-Cal program, pursuant to*
17 *this chapter, if the recipient of long-term care services was a*
18 *Medi-Cal beneficiary.*

19 ~~SECTION 1. Section 10231.2 of the Insurance Code is~~
20 ~~amended to read:~~

21 ~~10231.2. (a) “Long-term care insurance” includes any~~
22 ~~insurance policy, certificate, or rider advertised, marketed, offered,~~
23 ~~solicited, or designed to provide coverage for diagnostic,~~
24 ~~preventive, therapeutic, rehabilitative, maintenance, or personal~~
25 ~~care services that are provided in a setting other than an acute care~~
26 ~~unit of a hospital. Long-term care insurance includes all products~~
27 ~~containing any of the following benefit types: coverage for~~
28 ~~institutional care including care in a nursing home, convalescent~~
29 ~~facility, extended care facility, custodial care facility, skilled~~
30 ~~nursing facility, or personal care home; home care coverage~~
31 ~~including home health care, personal care, homemaker services,~~
32 ~~hospice, or respite care; or community-based coverage including~~
33 ~~adult day care, hospice, or respite care. Long-term care insurance~~
34 ~~includes disability based long-term care policies but does not~~
35 ~~include insurance designed primarily to provide Medicare~~
36 ~~supplement or major medical expense coverage.~~

37 ~~(b) Long-term care policies, certificates, and riders shall be~~
38 ~~regulated under this chapter. The commissioner shall review and~~
39 ~~approve individual and group long-term care policies, certificates,~~
40 ~~riders, and outlines of coverage. Other applicable laws and~~

1 regulations shall also apply to long-term care insurance insofar as
2 they do not conflict with the provisions in this chapter. Long-term
3 care benefits designed to provide coverage of 12 months or more
4 that are contained in or amended to Medicare supplement or other
5 disability policies and certificates shall be regulated under this
6 chapter.

O