

AMENDED IN ASSEMBLY AUGUST 18, 2016

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 14, 2016

AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE MARCH 29, 2016

SENATE BILL

No. 1384

Introduced by Senator Liu

February 19, 2016

An act to amend Section 10232.1 of, and to add Section 10232.81 to, the Insurance Code, and to amend Sections 22002, 22003, 22004, 22005, 22005.1, 22006, 22009, and 22010 of, to amend, repeal, and add Section 22005.2 of, to add Section 22005.3 to, and to add and repeal Section 22011 of, the Welfare and Institutions Code, relating to long-term care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1384, as amended, Liu. California Partnership for Long-Term Care Program.

Existing law establishes the California Partnership for Long-Term Care Program administered by the State Department of Health Care Services. The purpose of the program is to link private long-term care insurance and health care service plan contracts that cover long-term care with the In-Home Supportive Services program and Medi-Cal and to provide Medi-Cal benefits to certain individuals who have income and resources above the eligibility levels for receipt of medical assistance, but who have purchased certified private long-term care insurance policies. Existing law provides criteria for certification of a

long-term care insurance policy, including a requirement that it provide protection against loss of benefits due to inflation. Existing law requires each organization issuing certified policies to contribute a specified amount to a fund to be used for common educational and marketing expenses, as specified.

This bill would require the department to adopt regulations requiring that a long-term care insurance policy or health care service plan contract that includes long-term care services include nursing and residential care facility coverage only, home care and community-based care coverage only, or comprehensive coverage. The bill would also require that a health care service plan contract or long-term care insurance policy, as a condition of certification, include specified protections against loss of benefits due to inflation. The bill would also, until January 1, 2019, require the formation of an executive and legislative task force to provide advice and assistance in implementing reforms to the California Partnership for Long-Term Care Program and to consider other means to assist consumers in paying for long-term care services and supports, as specified. The task force would be composed of representatives of various state agencies and departments, including the State Department of Health Care Services, the State Department of Social Services, and the California Department of Aging. The bill would, until January 1, 2019, authorize the ~~department~~ *department, under specified conditions*, to use moneys in the fund described above to administer the task force, implement recommendations made by the task force, and facilitate review of policy forms for certification by the program and the Department of Insurance.

Existing law requires long-term care insurance policies or certificates to provide certain coverage and to make certain disclosures, as specified.

This bill would require an insurance policy, certificate, or rider that is offered under the California Partnership for Long-Term Care Program to be called a home and community-based services ~~policy and~~ *policy, certificate, or rider and for it* to prominently display that it is for home and community-based services only, as specified. The bill would require those policies, certificates, or riders to provide specified coverage.

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

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

1 SECTION 1. Section 10232.1 of the Insurance Code is
2 amended to read:

3 10232.1. (a) Every policy that is intended to be a qualified
4 long-term care insurance contract as provided by Public Law
5 104-191 shall be identified as such by prominently displaying and
6 printing on page one of the policy form and the outline of coverage
7 and in the application the following words: “This contract for
8 long-term care insurance is intended to be a federally qualified
9 long-term care insurance contract and may qualify you for federal
10 and state tax benefits.” Every policy that is not intended to be a
11 qualified long-term care insurance contract as provided by Public
12 Law 104-191 shall be identified as such by prominently displaying
13 and printing on page one of the policy form and the outline of
14 coverage and in the application the following words: “This contract
15 for long-term care insurance is not intended to be a federally
16 qualified long-term care insurance contract.”

17 (b) Any policy or certificate in which benefits are limited to the
18 provision of institutional care shall be called a “nursing facility
19 and residential care facility only” policy or certificate and the
20 words “Nursing Facility and Residential Care Facility Only” shall
21 be prominently displayed on page one of the form and the outline
22 of coverage. The commissioner may approve alternative wording
23 if it is more descriptive of the benefits.

24 (c) Any policy or certificate in which benefits are limited to the
25 provision of home care services, including community-based
26 services, shall be called a “home care only” policy or certificate
27 and the words “Home Care Only” shall be prominently displayed
28 on page one of the form and the outline of coverage. The
29 commissioner may approve alternative wording if it is more
30 descriptive of the benefits.

31 (d) Any policy, certificate, or rider in which benefits are limited
32 to the provision of all care settings, except nursing facility care,
33 and that is offered under the California Partnership for Long-Term
34 Care Program established by Section 22000 of the Welfare and
35 Institutions Code shall be called a home and community-based
36 services policy, certificate, or rider and the words “Home and
37 Community-Based Services Only” shall be prominently displayed
38 on the first page of the form and the outline of coverage. The

1 commissioner may approve an alternative version of those words
2 if the alternative version is more descriptive of the benefits
3 provided.

4 (e) Only those policies or certificates providing benefits for both
5 institutional care and home care may be called “comprehensive
6 long-term care” insurance.

7 SEC. 2. Section 10232.81 is added to the Insurance Code, to
8 read:

9 10232.81. (a) Every long-term care policy, certificate, or rider
10 that purports to provide benefits of home and community-based
11 services under the California Partnership for Long-Term Care
12 Program established by Section 22000 of the Welfare and
13 Institutions Code shall provide at least the following:

- 14 (1) Residential care facility.
- 15 (2) Assisted living facility.
- 16 (3) Home health care.
- 17 (4) Adult day care.
- 18 (5) Personal care.
- 19 (6) Homemaker services.
- 20 (7) Hospice services.
- 21 (8) Respite care.

22 (b) For purposes of this section, policy definitions of the benefits
23 described in subdivision (a) may be no more restrictive than the
24 following:

25 (1) “Residential care facility” means a facility that is licensed
26 as a residential care facility for the elderly or a residential care
27 facility as defined in the Health and Safety Code. Outside
28 California, an eligible provider is a facility that meets licensure
29 standards applicable to the facility, if any, and is engaged primarily
30 in providing ongoing care and related services sufficient to support
31 needs resulting from impairment in activities of daily living or
32 impairment in cognitive ability and which also provides care and
33 services on a 24-hour basis, has a trained and ready-to-respond
34 employee on duty in the facility at all times to provide care and
35 services, provides three meals per day and accommodates special
36 dietary needs, has agreements to ensure that residents receive the
37 medical care services of a physician or nurse in case of emergency,
38 and has appropriate methods and procedures to provide necessary
39 assistance to residents in the management of prescribed
40 medications.

1 (2) “Assisted living facility” means a facility licensed as an
2 assisted living facility as defined in the Health and Safety Code.
3 Outside California, an eligible provider is a facility that meets
4 licensure standards applicable to the facility, if any, and is engaged
5 primarily in providing food and shelter and providing personal
6 care services, or in administering medication by a person licensed
7 or otherwise authorized to administer the medication.

8 SEC. 3. Section 22002 of the Welfare and Institutions Code is
9 amended to read:

10 22002. The State Department of Health Care Services shall
11 seek any federal waivers and approvals necessary to accomplish
12 the purposes of this division.

13 SEC. 4. Section 22003 of the Welfare and Institutions Code is
14 amended to read:

15 22003. (a) Individuals who participate in the program and
16 have resources above the eligibility levels for receipt of medical
17 assistance under Title XIX of the Social Security Act (Subchapter
18 XIX (commencing with Section 1396) of Chapter 7 of Title 42 of
19 the United States Code) shall be eligible to receive those in-home
20 supportive services benefits specified by the State Department of
21 Social Services, and those Medi-Cal benefits specified by the State
22 Department of Health Care Services, for which they would
23 otherwise be eligible, if, prior to becoming eligible for benefits,
24 they have purchased a long-term care insurance policy or a health
25 care service plan contract covering long-term care that has been
26 certified by the State Department of Health Care Services pursuant
27 to this division.

28 (b) Individuals may purchase approved and certified long-term
29 care insurance policies or health care service plan contracts which
30 cover long-term care services in amounts equal to the resources
31 they wish to protect, so long as the amount of insurance purchased
32 exceeds the minimum level set by the State Department of Health
33 Care Services pursuant to Section 22009.

34 (c) The resource protection provided by this division shall be
35 effective only for long-term care policies, and health care service
36 plan contracts that cover long-term care services, when the policy
37 or contract is delivered, issued for delivery, or renewed on July 1,
38 1993, and thereafter.

39 SEC. 5. Section 22004 of the Welfare and Institutions Code is
40 amended to read:

1 22004. Notwithstanding other provisions of law, the resources,
2 to the extent described in subdivision (c), of an individual who
3 purchases an approved and certified long-term care insurance
4 policy or health care service plan contract which covers long-term
5 care services shall not be considered by:

6 (a) The State Department of Health Care Services in
7 determining:

- 8 (1) Medi-Cal eligibility.
- 9 (2) The amount of any Medi-Cal payment.
- 10 (3) The amount of any subsequent recovery by the state of
11 payments made for medical services.

12 (b) The State Department of Social Services in determining:

- 13 (1) Eligibility for in-home supportive services provided pursuant
14 to Article 7 (commencing with Section 12300) of Chapter 3 of
15 Division 9.
- 16 (2) The amount of any payment for in-home supportive services.

17 (c) The resources not to be considered as provided by this
18 section shall be equal to, or in some proportion set by the State
19 Department of Health Care Services or State Department of Social
20 Services that is less than equal to, the amount of long-term care
21 insurance payments or benefits made as described in Section 22006.

22 SEC. 6. Section 22005 of the Welfare and Institutions Code is
23 amended to read:

24 22005. The State Department of Health Care Services shall
25 only certify a long-term care insurance policy or a health care
26 service plan contract that meets the Medi-Cal asset protection
27 requirements.

28 SEC. 7. Section 22005.1 of the Welfare and Institutions Code
29 is amended to read:

30 22005.1. (a) The State Department of Health Care Services
31 shall only certify a long-term care insurance policy that
32 substantially meets the requirements of Chapter 2.6 (commencing
33 with Section 10230) of Part 2 of Division 2 of the Insurance Code,
34 except the requirements of Sections 10232.1, 10232.2, 10232.8,
35 10232.9, and 10232.92 of the Insurance Code, and that provides
36 all of the items specified in subdivision (b). The State Department
37 of Health Care Services shall only certify a health care service
38 plan contract that has been approved by the Department of
39 Managed Health Care pursuant to Chapter 2.2 (commencing with
40 Section 1340) of Division 2 of the Health and Safety Code as

1 providing substantially equivalent coverage to that required by
2 Chapter 2.6 (commencing with Section 10230) of Part 2 of Division
3 2 of the Insurance Code, and that provides all of the items specified
4 in subdivision (b). Policies issued by organizations subject to the
5 Insurance Code and regulated by the Department of Insurance
6 shall also be approved by the Department of Insurance.

7 (b) Only policies and contracts that provide all of the following
8 items shall be certified by the department:

9 (1) Individual assessment and case management by a
10 coordinating entity designated and approved by the department.

11 (2) Levels and durations of benefits that meet minimum
12 standards set by the State Department of Health Care Services
13 pursuant to Section 22009.

14 (3) Protection against loss of benefits due to inflation. An
15 applicant shall be offered, at the time of purchase, the following
16 options:

17 (A) One option that provides, at a minimum, protection against
18 ~~an inflation rate of 5 percent or more~~, *inflation that automatically*
19 *increases benefit levels by 5 percent each year over the previous*
20 *year*, up to an age specified by the program.

21 (B) At least one lower cost option.

22 (4) A periodic record issued to the insured including an
23 explanation of insurance payments or benefits paid that count
24 toward Medi-Cal asset protection under this division.

25 (5) Compliance with any other requirements imposed by
26 regulations adopted by the State Department of Health Care
27 Services or the State Department of Social Services and consistent
28 with the purposes of this division.

29 SEC. 8. Section 22005.2 of the Welfare and Institutions Code
30 is amended to read:

31 22005.2. (a) Each organization issuing policies certified by
32 the State Department of Health Care Services under this division
33 shall each year contribute to a fund to be used for common
34 educational and marketing expenses for reaching the target
35 population designated by the California Partnership for Long-Term
36 Care Program. The amount of each participating issuer's required
37 annual contribution shall be determined by the department and
38 shall not be less than twenty thousand dollars (\$20,000).

39 (b) ~~The~~ *Only to the extent that all activities identified in*
40 *subdivision (a) and additional activities identified in Section 58051*

1 *of Title 22 of the California Code of Regulations have been fully*
2 *funded for the fiscal year in which contributions are received, the*
3 fund may also be used to administer the task force established by
4 Section 22011, implement recommendations made by the task
5 force, and facilitate review of policy forms for certification by the
6 program and approval by the Department of Insurance. Use of
7 these funds shall be consistent with the purpose of the program as
8 established by Section ~~22011~~, 22001.

9 (c) This section shall remain in effect only until January 1, 2019,
10 and as of that date is repealed, unless a later enacted statute, that
11 is enacted before January 1, 2019, deletes or extends that date.

12 SEC. 9. Section 22005.2 is added to the Welfare and
13 Institutions Code, to read:

14 22005.2. (a) Each organization issuing policies certified by
15 the State Department of Health Care Services under this division
16 shall each year contribute to a fund to be used for common
17 educational and marketing expenses for reaching the target
18 population designated by the California Partnership for Long-Term
19 Care Program. The amount of each participating issuer's required
20 annual contribution shall be determined by the department and
21 shall not be less than twenty thousand dollars (\$20,000).

22 (b) This section shall become operative on January 1, 2019.

23 SEC. 10. Section 22005.3 is added to the Welfare and
24 Institutions Code, to read:

25 22005.3. The insurer or producer shall, at the time of
26 application, provide to the individual a graph that illustrates the
27 difference in premium rates and policy benefits payable in
28 accordance with the inflation protection provisions described in
29 Section 22005.1.

30 SEC. 11. Section 22006 of the Welfare and Institutions Code
31 is amended to read:

32 22006. The State Department of Health Care Services, in
33 determining eligibility for Medi-Cal, and the State Department of
34 Social Services, in determining eligibility for in-home supportive
35 services, shall exclude resources up to, or equal to, the amount of
36 insurance payments or benefits paid by approved and certified
37 long-term care insurance policies or health care service plan
38 contracts which cover long-term care services to the extent that
39 the benefits paid are for all of the following:

1 (a) In-home supportive services benefits specified in regulations
2 adopted by the State Department of Social Services pursuant to
3 Section 22009, or those services that Medi-Cal approves or benefits
4 that Medi-Cal provides as specified in regulations adopted by the
5 State Department of Health Care Services pursuant to Section
6 22009.

7 (b) Services delivered to insured individuals at home or in a
8 community setting as part of an individual assessment and case
9 management program provided by coordinating entities designated
10 and approved by the State Department of Health Care Services.

11 (c) Services the insured individual receives after meeting the
12 disability criteria for eligibility for long-term care benefits
13 established by the State Department of Health Care Services.

14 SEC. 12. Section 22009 of the Welfare and Institutions Code
15 is amended to read:

16 22009. (a) The State Department of Health Care Services shall
17 adopt regulations to implement this division, including, but not
18 limited to, regulations that establish:

19 (1) The population and age groups that are eligible to participate
20 in the program.

21 (2) The minimum level of long-term care insurance or long-term
22 care coverage included in health care service plan contracts that
23 must be purchased to meet the requirement of subdivision (b) of
24 Section 22003.

25 (3) (A) The amount and types of services that a long-term care
26 insurance policy or health care service plan contract that includes
27 long-term care services must cover to meet the requirements of
28 this division. The types of policies or plans shall include nursing
29 and residential care facility coverage only, home care and
30 community-based care coverage only, and comprehensive
31 coverage.

32 (B) Policies that provide only home care benefits shall include
33 coverage for electronic or other devices intended to assist in
34 monitoring the health and safety of an insured.

35 (4) Which coordinating entities are designated and approved to
36 deliver individual assessment and case management services to
37 individuals at home or in a community setting, as required by
38 subdivision (b) of Section 22006.

1 (b) The State Department of Health Care Services shall also
2 adopt regulations to implement this division, including, but not
3 limited to, regulations that establish:

4 (1) The disability criteria for eligibility for long-term care
5 benefits as required by subdivision (c) of Section 22006.

6 (2) The specific eligibility requirements for receipt of the
7 Medi-Cal benefits provided for by the program, and those Medi-Cal
8 benefits for which participants in the program shall be eligible.

9 (c) The State Department of Social Services shall also adopt
10 regulations to implement this division, including, but not limited
11 to, regulations that establish:

12 (1) The specific eligibility requirements for in-home supportive
13 services benefits.

14 (2) Those in-home supportive services benefits for which
15 participants in the program shall be eligible.

16 (d) The State Department of Health Care Services and the State
17 Department of Social Services shall also jointly adopt regulations
18 that provide for the following:

19 (1) Continuation of benefits pursuant to Section 22008.5.

20 (2) The protection of a participant’s resources pursuant to
21 Section 22004, and the ratio of resources to long-term care benefit
22 payments as described in subdivision (c) of Section 22004.

23 (e) (1) The departments shall adopt emergency regulations
24 pursuant to Chapter 3.5 (commencing with Section 11340) of Part
25 1 of Division 3 of Title 2 of the Government Code to implement
26 this division. The adoption of regulations pursuant to this section
27 in order to implement this division shall be deemed to be an
28 emergency and necessary for the immediate preservation of the
29 public peace, health, or safety.

30 (2) Notwithstanding Chapter 3.5 (commencing with Section
31 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
32 emergency regulations adopted pursuant to this section shall not
33 be subject to the review and approval of the Office of
34 Administrative Law. The regulations shall become effective
35 immediately upon filing with the Secretary of State. The regulations
36 shall not remain in effect more than 120 days unless the adopting
37 agency complies with all of the provisions of Chapter 3.5
38 (commencing with Section 11340) as required by subdivision (c)
39 of Section 11346.1 of the Government Code.

1 SEC. 13. Section 22010 of the Welfare and Institutions Code
2 is amended to read:

3 22010. (a) In implementing this division, the State Department
4 of Health Care Services may contract, on a bid or nonbid basis,
5 with any qualified individual, organization, or entity for services
6 needed to implement the project, and may negotiate contracts, on
7 a nonbid basis, with long-term care insurers, health care service
8 plans, or both, for the provision of coverage for long-term care
9 services that will meet the certification requirements set forth in
10 Section 22005.1 and the other requirements of this division.

11 (b) In order to achieve maximum cost savings, the Legislature
12 declares that an expedited process for issuing contracts pursuant
13 to this division is necessary. Therefore, contracts entered into on
14 a nonbid basis pursuant to this section shall be exempt from the
15 requirements of Chapter 1 (commencing with Section 10100) and
16 Chapter 2 (commencing with Section 10290) of Part 2 of Division
17 2 of the Public Contract Code.

18 SEC. 14. Section 22011 is added to the Welfare and Institutions
19 Code, to read:

20 22011. (a) An executive and legislative task force shall be
21 formed to provide advice and assistance in implementing reforms
22 to the California Partnership for Long-Term Care Program and to
23 consider other means to assist consumers in paying for long-term
24 care services and supports.

25 (b) The task force formed pursuant to subdivision (a) shall be
26 composed of representatives designated by each of the following:

- 27 (1) The State Department of Health Care Services.
- 28 (2) The State Department of Social Services.
- 29 (3) The California Department of Aging.
- 30 (4) The Department of Insurance.
- 31 (5) The Department of Managed Health Care.
- 32 (6) The Senate Committee on Rules.
- 33 (7) The Speaker of the Assembly.

34 (c) The task force shall consult with persons knowledgeable of
35 and concerned with long-term care, including, but not limited to,
36 the following:

- 37 (1) Consumer representatives.
- 38 (2) Long-term care providers.

- 1 (3) Representatives of long-term care insurance companies and
- 2 administrators of health care service plans which cover long-term
- 3 care.
- 4 (4) Private employers.
- 5 (5) Academic specialists in long-term care and aging.
- 6 (6) Representatives of the Public Employees' Retirement System
- 7 and the State Teachers' Retirement System.
- 8 (d) This section shall remain in effect only until January 1, 2019,
- 9 and as of that date is repealed, unless a later enacted statute, that
- 10 is enacted before January 1, 2019, deletes or extends that date.