

AMENDED IN ASSEMBLY JULY 23, 1997

**SENATE BILL**

**No. 1052**

**Introduced by Senator Vasconcellos**

February 27, 1997

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An act to amend Sections 10232.1, 10234.93, and 10237.1 of, to amend and renumber Section 10232.8 of, to add Sections 10232.2, ~~10232.8, 10232.95~~ 10232.92, 10232.93, 10232.95, 10232.96, 10234.86, 10234.87, 10235.9, 10235.30, 10235.40, 10235.50, 10235.51, 10235.52, 10235.90, 10237.4, ~~and 10237.5~~ 10237.5, and 10237.6 to, and to repeal and add Section 10234.95 of, the Insurance Code, relating to health insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1052, as amended, Vasconcellos. Insurance: long-term care.

Existing California law regulates long-term care insurance, and requires that insurance to provide certain benefits. Existing law authorizes the Insurance Commissioner to waive certain of those requirements under certain circumstances.

Existing federal law provides that long-term care insurance is entitled to certain favorable tax treatment if it meets certain requirements.

This bill would require every policy ~~or certificate to be identified as either federally tax qualified or federally non tax qualified. It would require insurers that offer federally tax qualified coverage to also offer federally non tax qualified coverage that is intended to be a qualified long-term care insurance contract as provided by federal law to be identified as such with a specified disclosure statement, and, similarly~~

would require every policy that is not intended to be a qualified long-term care insurance contract as provided by federal law be identified as such. It would require insurers that policies that are intended to be federally qualified long-term care insurance to fairly and affirmatively concurrently offer, market, and sell policies that are not intended to be federally qualified long-term care contracts.

The bill would ~~set forth eligibility criteria for federally tax qualified and federally non tax qualified policies. The bill would~~ revise various definitions.

Existing law imposes various requirements on the marketing of long-term care insurance, including various disclosure requirements.

This bill would require that a specific shoppers guide be provided to prospective applicants.

The bill would require insurers to make certain reports regarding lapses and replacements.

The bill would require that premium adjustments be made for replacement policies.

The bill would require insurers and other marketers of long-term care insurance to utilize specified suitability standards. It would require that insurers provide notifications regarding denial of claims.

The bill would require insurers to offer or provide certain rights and benefits in connection with long-term care insurance, including rights to increase and decrease benefits. The bill would impose requirements on inflation protection benefits.

The bill would enact related provisions.

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. (a) The Legislature finds as follows:
- 2 (1) Current California law requires that long-term
- 3 care insurance policies and certificates provide
- 4 substantial benefits to consumers in return for the
- 5 premiums paid.



1 (2) Recent changes in federal law allow for the sale of  
2 long-term care policies and certificates that may be  
3 eligible for favorable federal tax treatment. However, to  
4 be eligible for favorable tax treatment, the policies and  
5 certificates must conform to federal standards for  
6 eligibility, benefits, and consumer protections.

7 (3) Pursuant to federal law, the eligibility  
8 requirements for benefits under a “federally tax  
9 qualified” policy are more restrictive than the eligibility  
10 requirements for benefits in policies authorized under  
11 the current California Insurance Code. This means that  
12 persons who purchase federally tax qualified policies and  
13 certificates may be required to have a greater level of  
14 disability before qualifying for benefits than individuals  
15 who purchase coverage that conforms to the more  
16 permissive eligibility requirements of the California  
17 Insurance Code as of January 1, 1997.

18 (4) The tax benefits of federally tax qualified policies  
19 may not be of value to every Californian, as the tax  
20 benefits vary by the age, income, and other medical  
21 expenses of the insurance purchaser.

22 (5) Many Californians purchase long-term care  
23 insurance to protect themselves against the expenses of  
24 needing long-term care due to an illness or physical  
25 disability.

26 (6) The protection a consumer receives against future  
27 long-term care expenses by purchasing long-term care  
28 insurance depends in large part upon the inclusion in the  
29 policy of certain key consumer protection provisions:  
30 protection against erosion of the value of benefits from  
31 inflation, against unintentional lapse, and against changes  
32 in the personal and financial situation of the purchaser.

33 (7) The National Association of Insurance  
34 Commissioners (NAIC) and other distinguished groups  
35 have developed standards that insurers and states can  
36 adopt to enhance the value of long-term care insurance  
37 and protect long-term care insurance purchasers against  
38 inflation, lapses, rate increases, and other potential  
39 problems.



1 (8) The recently enacted federal Health Insurance  
2 Portability and Accountability Act of 1996 mandates that  
3 certain consumer protections be included in all policies  
4 that are intended to be federally tax qualified but these  
5 standards do not apply to policies that are not federally  
6 tax qualified.

7 (9) California lags behind many other states in the  
8 adoption of important consumer protection standards  
9 recommended by the National Association of Insurance  
10 Commissioners, the Health Insurance Portability and  
11 Accountability Act, and other distinguished groups.

12 (b) The Legislature declares it is in the interest of the  
13 people of California that:

14 (1) California consumers should be given  
15 opportunities to purchase both types of policies or  
16 certificates—those meeting the current requirements of  
17 the California Insurance Code and those meeting the  
18 requirements to be federally tax qualified.

19 (2) California consumers should be informed of the  
20 choices available and insurers, brokers, agents, and other  
21 entities engaged in the marketing of long-term care  
22 insurance should fully evaluate each applicant's situation  
23 and work to ensure that the applicant purchases a policy  
24 best suited to that applicant's personal and financial  
25 circumstances.

26 (3) All long-term care insurance policies sold in  
27 California, including those intended to be tax qualified  
28 and those that are not, should be governed by a single set  
29 of standards that afford California insurance purchasers  
30 a high level of consumer protection.

31 (4) The laws governing the sale of long-term care  
32 insurance in California should be updated to incorporate  
33 the latest and best consumer protection standards  
34 available.

35 (5) It is the purpose of this act to authorize *the sale in*  
36 *California of a new—category of federally tax qualified*  
37 ~~policies and certificates to be sold in California and to~~  
38 ~~require that insurers~~ *category of long-term care*  
39 *insurance policies and certificates intended to qualify*  
40 *under the federal Health Insurance Portability and*



1 *Accountability Act of 1996, Public Law 104-191, and to*  
2 *require that insurers continue to make available to*  
3 *California consumers policies and certificates that*  
4 *comply with the more permissive eligibility*  
5 *requirements of the current law. It is also the intent of the*  
6 *Legislature that consumers be informed of the choice of*  
7 *policies available and given appropriate information to*  
8 *make informed choices.*

9 SEC. 2. Section 10232.1 of the Insurance Code is  
10 amended to read:

11 ~~10232.1. (a) Every policy or certificate shall be~~  
12 ~~identified as either “federally tax qualified” or “federally~~  
13 ~~non tax qualified.” A “federally tax qualified” policy or~~  
14 ~~certificate shall comply with the requirements of the~~  
15 ~~Health Insurance Portability and Accountability Act of~~  
16 ~~1996, Public Law 104-191, in addition to all of the~~  
17 ~~requirements of this chapter. A policy or certificate that~~  
18 ~~does not comply with the requirements of Public Law~~  
19 ~~104-191 and all amendments and regulations thereto shall~~  
20 ~~be labeled as “federally non tax qualified.” The words~~  
21 ~~“Federally Tax Qualified” or “Federally Non Tax~~  
22 ~~Qualified” shall be prominently displayed on page one of~~  
23 ~~the policy form and the outline of coverage, and in the~~  
24 ~~application.~~

25 *10232.1. (a) Every policy that is intended to be a*  
26 *qualified long-term care insurance contract as provided*  
27 *by Public Law 104-191 shall be identified as such by*  
28 *prominently displaying and printing on page one of the*  
29 *policy form and the outline of coverage and in the*  
30 *application the following words: “This contract for*  
31 *long-term care insurance is intended to be a federally*  
32 *qualified long-term care insurance contract and may*  
33 *qualify you for federal tax benefits.” Every policy that is*  
34 *not intended to be a qualified long-term care insurance*  
35 *contract as provided by Public Law 104-191 shall be*  
36 *identified as such by prominently displaying and printing*  
37 *on page one of the policy form and the outline of coverage*  
38 *and in the application the following words: “This contract*  
39 *for long-term care insurance is not intended to be a*  
40 *federally qualified long-term care insurance contract.”*



1 (b) Any policy or certificate in which benefits are  
2 limited to the provision of institutional care shall be called  
3 a “nursing facility only” policy or certificate and the  
4 words “Nursing Facility Only” shall be prominently  
5 displayed on page one of the form and the outline of  
6 coverage. The commissioner may approve alternative  
7 wording if it is more descriptive of the benefits.

8 (c) Any policy or certificate in which benefits are  
9 limited to the provision of home care services, including  
10 community-based services, shall be called a “home care  
11 only” policy or certificate and the words “Home Care  
12 Only” shall be prominently displayed on page one of the  
13 form and the outline of coverage. The commissioner may  
14 approve alternative wording if it is more descriptive of  
15 the benefits.

16 (d) Only those policies or certificates providing  
17 benefits for both institutional care and home care may be  
18 called “comprehensive long-term care” insurance.

19 SEC. 3. Section 10232.2 is added to the Insurance  
20 Code, to read:

21 10232.2. Every insurer that offers—~~“federally tax~~  
22 ~~qualified” policies shall~~ *policies that are intended to be*  
23 *federally qualified long-term care insurance contracts*  
24 *shall, at the same time, fairly and affirmatively*  
25 *concurrently offer, market, and sell policies that are*  
26 ~~“federally non tax qualified” as defined~~ *not intended to*  
27 *be a federally qualified long-term care contracts as*  
28 *described in subdivision (a) of Section 10232.1. These tax*  
29 *qualified and non tax qualified policies shall be identical*  
30 *except for the thresholds establishing eligibility for home*  
31 *care benefits as provided by this chapter. (a) of Section*  
32 *10232.1. All long-term care insurance contracts approved*  
33 *after the effective date of this section shall meet the*  
34 *requirements of this chapter.*

35 SEC. 4. Section 10232.8 is added to the Insurance  
36 Code, to read:

37 10232.8. ~~(a) In every long-term care policy or~~  
38 ~~certificate issued before December 31, 1997, and in every~~  
39 ~~policy or certificate issued after January 1, 1998, that is~~  
40 ~~“federally non tax qualified” and provides home care~~



1 ~~benefits, the threshold establishing eligibility for home~~  
2 ~~care benefits shall be at least as permissive as a provision~~  
3 ~~that the insured will qualify if either one of two criteria~~  
4 ~~are met:~~

5 ~~(1) Impairment in two activities of daily living.~~

6 ~~(2) Impairment of cognitive ability.~~

7 ~~The policy or certificate may provide for lesser but not~~  
8 ~~greater eligibility criteria. The commissioner, at his or her~~  
9 ~~discretion, may approve other criteria or combinations of~~  
10 ~~criteria to be substituted, if the insurer demonstrates that~~  
11 ~~the interest of the insured is better served.~~

12 ~~“Activities of daily living” in every “federally non tax~~  
13 ~~qualified” policy or certificate that provides home care~~  
14 ~~benefits include eating, bathing, dressing, ambulating,~~  
15 ~~transferring, toileting, and continence; “impairment”~~  
16 ~~means that the insured needs human assistance, or needs~~  
17 ~~continual substantial supervision; and “impairment of~~  
18 ~~cognitive ability” means deterioration or loss of~~  
19 ~~intellectual capacity due to organic mental disease,~~  
20 ~~including Alzheimer’s disease or related illnesses, that~~  
21 ~~requires continual supervision to protect oneself or~~  
22 ~~others.~~

23 ~~(b) In every long-term care policy or certificate issued~~  
24 ~~after January 1, 1998, that is “federally tax qualified” as~~  
25 ~~described in subdivision (a) of Section 10232.1, the~~  
26 ~~threshold establishing eligibility for benefits shall provide~~  
27 ~~that a chronically ill insured will qualify if either one of~~  
28 ~~two criteria are met:~~

29 ~~(1) Impairment in two activities of daily living.~~

30 ~~(2) Impairment of cognitive ability.~~

31 ~~Other criteria shall be used in establishing eligibility if~~  
32 ~~the Secretary of the United States Department of the~~  
33 ~~Treasury prescribes such by regulation.~~

34 ~~A licensed health care professional must certify that the~~  
35 ~~insured meets the threshold establishing eligibility for~~  
36 ~~benefits and must prepare a written plan of care. The~~  
37 ~~written certification must be renewed every 12 months.~~  
38 ~~The costs to have a licensed health care professional~~  
39 ~~certify the insured’s initial and continued eligibility for~~



1 ~~benefits and prepare written plans of care shall not count~~  
2 ~~against the lifetime maximum of the policy or certificate.~~

3 ~~“Activities of daily living” in every “federally tax~~  
4 ~~qualified” policy or certificate include eating, bathing,~~  
5 ~~dressing, transferring, toileting, and continence;~~  
6 ~~“impairment in activities of daily living” means the~~  
7 ~~insured needs substantial human assistance due to a loss~~  
8 ~~of functional capacity to perform the activity, as the most~~  
9 ~~permissive interpretation of these terms under federal~~  
10 ~~law and regulations allows; “impairment of cognitive~~  
11 ~~ability” means the insured needs substantial human~~  
12 ~~supervision to protect self or others from threats to health~~  
13 ~~and safety due to severe cognitive impairment, including~~  
14 ~~Alzheimer’s disease or related illnesses, as the most~~  
15 ~~permissive interpretation of these terms under federal~~  
16 ~~law and regulations allows; “licensed health care~~  
17 ~~practitioner” means a physician, registered nurse,~~  
18 ~~licensed social worker, or other individual whom the~~  
19 ~~Secretary of the United States Department of the~~  
20 ~~Treasury may prescribe by regulation; and “plan of care”~~  
21 ~~means a written description of the insured’s needs and a~~  
22 ~~specification of the type, frequency, and providers of all~~  
23 ~~formal and informal long-term care services required by~~  
24 ~~the insured, and the cost if any.~~

25 ~~(e) The definitions of “activities of daily living” to be~~  
26 ~~used in policies and certificates issued after January 1,~~  
27 ~~1998, include the following:~~

28 ~~(1) Eating, which shall mean reaching for, picking up,~~  
29 ~~and grasping a utensil and cup; getting food on a utensil,~~  
30 ~~and bringing food, utensil, and cup to mouth;~~  
31 ~~manipulating food on plate; and cleaning face and hands~~  
32 ~~as necessary following meal.~~

33 ~~(2) Bathing, which shall mean cleaning the body using~~  
34 ~~a tub, shower, or sponge bath, including getting a basin~~  
35 ~~of water, managing faucets, getting in and out of tub or~~  
36 ~~shower, and reaching head and body parts for soaping,~~  
37 ~~rinsing, and drying.~~

38 ~~(3) Dressing, which shall mean putting on, taking off,~~  
39 ~~fastening, and unfastening garments and undergarments~~  
40 ~~and special devices such as back or leg braces, corsets,~~



1 ~~elastic stockings or garments, and artificial limbs or~~  
2 ~~splints.~~

3 ~~(4) Toileting, which shall mean getting on and off a~~  
4 ~~toilet or commode and emptying a commode, managing~~  
5 ~~clothing and wiping and cleaning the body after toileting,~~  
6 ~~and using and emptying a bedpan and urinal.~~

7 ~~(5) Transferring, which shall mean moving from one~~  
8 ~~sitting or lying position to another sitting or lying position;~~  
9 ~~for example, from bed to or from a wheelchair or sofa,~~  
10 ~~coming to a standing position, or repositioning to~~  
11 ~~promote circulation and prevent skin breakdown.~~

12 ~~(6) Continence, which shall mean the ability to control~~  
13 ~~bowel and bladder as well as use ostomy or catheter~~  
14 ~~receptacles, and apply diapers and disposable barrier~~  
15 ~~pads.~~

16 ~~(7) Ambulating, which shall mean walking or moving~~  
17 ~~around inside or outside the home.~~

18 ~~SEC. 5.~~

19 *SEC. 4.* Section 10232.8 of the Insurance Code is  
20 amended and renumbered to read:

21 10232.9. (a) Every long-term care policy or certificate  
22 that purports to provide benefits of home care or  
23 community-based services, shall provide at least the  
24 following:

- 25 (1) Home health care.
- 26 (2) Adult day care.
- 27 (3) Personal care.
- 28 (4) Homemaker services.
- 29 (5) Hospice services.
- 30 (6) Respite care.

31 (b) For purposes of this section, policy definitions of  
32 these benefits may be no more restrictive than the  
33 following:

- 34 (1) "Home health care" is skilled nursing or other  
35 professional services in the residence, including, but not  
36 limited to, part-time and intermittent skilled nursing  
37 services, home health aid services, physical therapy,  
38 occupational therapy, or speech therapy and audiology  
39 services, and medical social services by a social worker or  
40 social work assistant.



1 (2) “Adult day care” is medical or nonmedical care on  
2 a less than 24-hour basis, provided in a licensed facility  
3 outside the residence, for persons in need of personal  
4 services, supervision, protection, or assistance in  
5 sustaining daily needs, including eating, bathing,  
6 dressing, ambulating, transferring, toileting, and taking  
7 medications.

8 (3) “Personal care” is assistance with the activities of  
9 daily living, including the instrumental activities of daily  
10 living, provided by a skilled or unskilled person under a  
11 plan of care developed by a physician or a  
12 multidisciplinary team under medical direction.  
13 “Instrumental activities of daily living” include using the  
14 telephone, managing medications, moving about outside,  
15 shopping for essentials, preparing meals, laundry, and  
16 light housekeeping.

17 (4) “Homemaker services” is assistance with activities  
18 necessary to or consistent with the insured’s ability to  
19 remain in his or her residence, that is provided by a skilled  
20 or unskilled person under a plan of care developed by a  
21 physician or a multidisciplinary team under medical  
22 direction.

23 (5) “Hospice services” are outpatient services not paid  
24 by Medicare, that are designed to provide palliative care,  
25 alleviate the physical, emotional, social, and spiritual  
26 discomforts of an individual who is experiencing the last  
27 phases of life due to the existence of a terminal disease,  
28 and to provide supportive care to the primary care giver  
29 and the family. Care may be provided by a skilled or  
30 unskilled person under a plan of care developed by a  
31 physician or a multidisciplinary team under medical  
32 direction.

33 (6) “Respite care” is short-term care provided in an  
34 institution, in the home, or in a community-based  
35 program, that is designed to relieve a primary care giver  
36 in the home. This is a separate benefit with its own  
37 conditions for eligibility and maximum benefit levels.

38 (c) Home care benefits shall not be limited or  
39 excluded by any of the following:



1 (1) Requiring a need for care in a nursing home if  
2 home care services are not provided.

3 (2) Requiring that skilled nursing or therapeutic  
4 services be used before or with unskilled services.

5 (3) Requiring the existence of an acute condition.

6 (4) Limiting benefits to services provided by  
7 Medicare-certified providers or agencies.

8 (5) Limiting benefits to those provided by licensed or  
9 skilled personnel when other providers could provide the  
10 service, except where prior certification or licensure is  
11 required by state law.

12 (6) Defining an eligible provider in a manner that is  
13 more restrictive than that used to license that provider by  
14 the state where the service is provided.

15 (7) Requiring “medical necessity” or similar standard  
16 as a criteria for benefits.

17 (d) Every comprehensive long-term care policy or  
18 certificate that provides for both institutional care and  
19 home care and that sets a daily, weekly, or monthly  
20 benefit payment maximum, shall pay a maximum benefit  
21 payment for home care that is at least 50 percent of the  
22 maximum benefit payment for institutional care, and in  
23 no event shall home care benefits be paid at a rate less  
24 than fifty dollars (\$50) per day. Insurance products  
25 approved for residents in continuing care retirement  
26 communities are exempt from this provision.

27 Every such comprehensive long-term care policy or  
28 certificate that sets a durational maximum for  
29 institutional care, limiting the length of time that benefits  
30 may be received during the life of the policy or  
31 certificate, shall allow a similar durational maximum for  
32 home care that is at least one-half of the length of time  
33 allowed for institutional care.

34 *SEC. 5.5. Section 10232.92 is added to the Insurance*  
35 *Code, to read:*

36 *10232.92. No insurer shall deliver or issue for delivery*  
37 *a long-term care insurance policy in this state unless the*  
38 *insurer offers to the policyholder, at time of application,*  
39 *an option to purchase a long-term care insurance policy*  
40 *that covers assisted living care in a licensed residential*



1 care facility or a residential care facility for the elderly as  
2 defined in the Welfare and Institutions Code.

3 SEC. 6. Section 10232.93 is added to the Insurance  
4 Code, to read:

5 10232.93. Every long-term care policy of certificate  
6 shall define the maximum lifetime benefit as a single  
7 dollar amount that may be used interchangeably for any  
8 benefits covered by the policy with no limit on any  
9 specific covered benefit except for a daily, weekly, or  
10 monthly limit set for home and community-based care  
11 and the per diem limits for institutional care.

12 SEC. 6. Section 10232.95 is added to the Insurance  
13 Code, to read:

14 10232.95. Every long-term care policy or certificate  
15 that provides reimbursement for care in a nursing facility  
16 shall cover and reimburse for per diem expenses, as well  
17 as the costs of ancillary supplies and services, up to but not  
18 to exceed the maximum lifetime daily facility benefit of  
19 the policy or certificate.

20 SEC. 6.5. Section 10232.96 is added to the Insurance  
21 Code, to read:

22 10232.96. When a policy or certificate holder of an  
23 insurance contract issued prior to December 31, 1996,  
24 requests a material modification to the contract as  
25 defined by federal law or regulations, the insurer, prior to  
26 approving such a request, shall provide written notice to  
27 the policy or certificate holder that the contract change  
28 requested may constitute a material modification that  
29 jeopardizes the federal tax status of the contract and  
30 appropriate tax advice should therefore be sought.

31 SEC. 7. Section 10234.86 is added to the Insurance  
32 Code, to read:

33 10234.86. (a) Every insurer shall maintain records for  
34 each agent of that agent's amount of replacement sales as  
35 a percent of the agent's total annual sales and the amount  
36 of lapses of long-term care insurance policies sold by the  
37 agent as a percent of the agent's total annual sales.

38 (b) Every insurer shall report annually by June 30, the  
39 10 percent of its agents in the state with the greatest



1 percentage of ~~involuntary~~ lapses and replacements as  
2 measured by subdivision (a).

3 (c) Every insurer shall report annually by June 30, the  
4 number of ~~involuntary~~ lapsed policies as a percent of its  
5 total annual sales in the state, as a percent of its total  
6 number of policies in force in the state, and as a total  
7 number of each policy form in the state, as of the end of  
8 the preceding calendar year.

9 (d) Every insurer shall report annually by June 30, the  
10 number of replacement policies sold as a percent of its  
11 total annual sales in the state and as a percent of its total  
12 number of policies in force in the state as of the end of the  
13 preceding calendar year.

14 ~~(e) Every insurer shall report annually by June 30 the  
15 total number of claims denied by each class of business in  
16 the state and the number of these claims denied for  
17 failure to meet the waiting period or because of a  
18 preexisting condition as of the end of the preceding  
19 calendar year. The department shall annually make  
20 public the denial rate of claims by insurer.~~

21 *(e) Reported replacement and lapse rates do not alone  
22 constitute a violation of insurance laws or necessarily  
23 imply wrongdoing. The reports are for the purpose of  
24 reviewing more closely agent activities regarding the sale  
25 of long-term care insurance.*

26 SEC. 8. Section 10234.87 is added to the Insurance  
27 Code, to read:

28 10234.87. If an insurer replaces a policy or certificate  
29 that it has previously issued, the insurer shall recognize  
30 past insured status by granting premium credits toward  
31 the premiums for the replacement policy or certificate.  
32 The premium credits shall equal five percent of the  
33 annual premium of the prior policy or certificate for each  
34 full year the prior policy or certificate was in force. The  
35 premium credit shall be applied toward all future  
36 premium payments for the replacement policy or  
37 certificate, but the cumulative credit allowed need not  
38 exceed 50 percent. No credit need be provided if a claim  
39 has been filed under the original policy or certificate.



1 SEC. 9. Section 10234.93 of the Insurance Code is  
2 amended to read:

3 10234.93. (a) Every insurer of long-term care in  
4 California shall:

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

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

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

15 (4) Provide the following continuing education and  
16 require that each agent or other insurer representative  
17 authorized to solicit individual consumers for the sale of  
18 long-term care insurance shall satisfactorily complete the  
19 following continuing education requirements which shall  
20 be part of, and not in addition to, the continuing  
21 education requirements in Section 1749.3:

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

27 (B) For licensees issued a license before January 1,  
28 1992, eight hours of education prior to each license  
29 renewal.

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

34 The continuing education required by this section shall  
35 consist of topics related to long-term care services and  
36 long-term care insurance, including, but not limited to,  
37 California regulations and requirements, available  
38 long-term care services and facilities, changes or  
39 improvements in services or facilities, differences in  
40 eligibility for benefits and tax treatment between—~~tax~~



~~1 qualified and non tax qualified policies, the effect of  
2 inflation in eroding the value of benefits and the  
3 importance of inflation protection, and alternatives to the  
4 policies intended to be federally qualified and those not  
5 intended to be federally qualified, the effect of inflation  
6 in eroding the value of benefits and the importance of  
7 inflation protection, NAIC consumer suitability standards  
8 and guidelines, and alternatives to the purchase of private  
9 long-term care insurance.~~

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

16 (6) Inquire and otherwise make every reasonable  
17 effort to identify whether a prospective applicant or  
18 enrollee for long-term care insurance already has  
19 accident and sickness or long-term care insurance and the  
20 types and amounts of any such insurance.

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

24 (8) Every insurer shall provide to a prospective  
25 applicant, at the time of solicitation, written notice that  
26 the Health Insurance Counseling and Advocacy Program  
27 (HICAP) provides health insurance counseling to senior  
28 California residents free of charge. Every agent shall  
29 provide the name, address, and telephone number of the  
30 ~~local HICAP program. Where this is impractical, the~~  
31 ~~prospective applicant shall be given the department’s~~  
32 ~~hotline telephone number, 1-800-927-HELP, through~~  
33 ~~which the consumer can get information about HICAP.~~  
34 *local HICAP program and the statewide HICAP number,*  
35 *1-800-434-0222.*

36 (9) Provide a copy of the long-term care insurance  
37 ~~shoppers guide developed by the National Association of~~  
38 ~~Insurance Commissioners or a copy of the shoppers guide~~  
39 ~~prepared~~ *shoppers guide developed by the California*  
40 Department of Aging to each prospective applicant prior



1 to the presentation of an application or enrollment form  
2 for insurance.

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

6 (1) Twisting. Knowingly making any misleading  
7 representation or incomplete or fraudulent comparison  
8 of any insurance policies or insurers for the purpose of  
9 inducing, or tending to induce, any person to lapse,  
10 forfeit, surrender, terminate, retain, pledge, assign,  
11 borrow on, or convert any insurance policy or to take out  
12 a policy of insurance with another insurer.

13 (2) High pressure tactics. Employing any method of  
14 marketing having the effect of or tending to induce the  
15 purchase of insurance through force, fright, threat,  
16 whether explicit or implied, or undue pressure to  
17 purchase or recommend the purchase of insurance.

18 (3) Cold lead advertising. Making use directly or  
19 indirectly of any method of marketing which fails to  
20 disclose in a conspicuous manner that a purpose of the  
21 method of marketing is solicitation of insurance and that  
22 contact will be made by an insurance agent or insurance  
23 company.

24 SEC. 10. Section 10234.95 of the Insurance Code is  
25 repealed.

26 SEC. 11. Section 10234.95 is added to the Insurance  
27 Code, to read:

28 10234.95. (a) Every insurer or other entity  
29 marketing long-term care insurance shall:

30 (1) Disclose at the time of application the differences  
31 in eligibility for benefits and tax treatment between  
32 ~~“federally tax qualified” and “federally non tax qualified”~~  
33 policies and certificates *that are intended to be, and*  
34 *policies and certificates that are not intended to be,*  
35 *federally qualified long-term care insurance contracts*  
36 *pursuant to Public Law 104-191* and to advise applicants  
37 and policyholders to consult with an accountant or tax  
38 adviser.



1 (2) Develop and use suitability standards to determine  
2 whether the purchase or replacement of long-term care  
3 insurance is appropriate for the needs of the applicant.

4 (3) Train its agents in the use of its suitability  
5 standards.

6 (4) Maintain a copy of its suitability standards and  
7 make them available for inspection upon request by the  
8 commissioner.

9 (b) The agent and insurer shall develop procedures  
10 that take into consideration, when determining whether  
11 the applicant meets the standards developed by the  
12 insurer, the following:

13 (1) The ability to pay for the proposed coverage and  
14 other pertinent financial information related to the  
15 purchase of the coverage.

16 (2) The applicant's goals or needs with respect to  
17 long-term care and the advantages and disadvantages of  
18 insurance to meet these goals or needs.

19 (3) The value, benefits, and costs of the applicant's  
20 existing insurance, if any, when compared to the values,  
21 benefits, and costs of the recommended purchase or  
22 replacement.

23 (c) The issuer, and where an agent is involved, the  
24 agent, shall make reasonable efforts to obtain the  
25 information set out in subdivision (b). The efforts shall  
26 include presentation to the applicant, at or prior to  
27 application, of the "Long Term Care Insurance Personal  
28 Worksheet," ~~Appendix B~~, Long Term Care Insurance  
29 Model Regulations, National Association of Insurance  
30 Commissioners, ~~1996~~. *The personal worksheet used by*  
31 *the insurer shall contain, at a minimum, the information*  
32 *in the NAIC worksheet in not less than 12-point type.* The  
33 insurer may request the applicant to provide additional  
34 information to comply with its suitability standards. A  
35 copy of the issuer's personal worksheet shall be filed and  
36 approved by the commissioner.

37 (d) A completed personal worksheet shall be returned  
38 to the issuer prior to the issuer's consideration of the  
39 applicant for coverage, except the personal worksheet



1 need not be returned for sale of employer group  
2 long-term care insurance to employees and their spouses.

3 (e) The sale or dissemination outside the company or  
4 agency by the issuer or agent of information obtained  
5 through the personal worksheet is prohibited.

6 (f) The issuer shall use the suitability standards it has  
7 developed pursuant to this section in determining  
8 whether issuing long-term care insurance coverage to an  
9 applicant is appropriate.

10 (g) Agents shall use the suitability standards  
11 developed by the insurer in marketing long-term care  
12 insurance.

13 (h) If the issuer determines that the applicant does not  
14 meet its financial suitability standards, or if the applicant  
15 has declined to provide the information, the issuer may  
16 reject the application. Alternatively, the issuers shall send  
17 the applicant a letter similar to Appendix D. However, if  
18 the applicant has declined to provide financial  
19 information, the issuer may use some other method to  
20 verify the applicant's intent. Either the applicant's  
21 returned letter or a record of the alternative method of  
22 verification shall be made part of the applicant's file.

23 (i) The insurer shall report annually to the  
24 commissioner the total number of applications received  
25 from residents of this state, the number of those who  
26 declined to provide information on the personal  
27 worksheet, the number of applicants who did not meet  
28 the suitability standards, and the number who chose to  
29 conform after receiving a suitability letter.

30 (j) This section shall not apply to life insurance policies  
31 that accelerate benefits for long-term care.

32 SEC. 12. Section 10235.9 is added to the Insurance  
33 Code, to read:

34 10235.9. ~~The~~ *(a) Every insurer shall report annually*  
35 *by June 30 the total number of claims denied by each class*  
36 *of business in the state and the number of these claims*  
37 *denied for failure to meet the waiting period or because*  
38 *of a preexisting condition as of the end of the preceding*  
39 *calendar year. The department shall make available to*  
40 *the public the denial rate of claims by insurer.*



1 (b) The insurer shall provide every policyholder or  
2 certificate holder whose claim is denied a written notice  
3 within ~~60~~ 40 days of the date of denial of the reasons for  
4 the denial and all information directly related to the  
5 denial. Insurers shall annually report to the department  
6 the number of denied claims. The department shall  
7 ~~annually make public the denial rate of claims by insurer.~~  
8 *make available to the public the denial rate of claims by*  
9 *insurer.*

10 SEC. 13. Section 10235.30 is added to the Insurance  
11 Code, to read:

12 10235.30. No insurer may deliver or issue for delivery  
13 a long-term care policy in this state unless the insurer  
14 offers at the time of application an option to purchase a  
15 shortened benefit period nonforfeiture benefit with the  
16 following features:

17 (a) Eligibility begins no later than after 10 years of  
18 premium payments.

19 (b) The lifetime maximum benefit is no less than the  
20 dollar equivalent of three months of care at the nursing  
21 facility per diem benefit contained in the policy.

22 (c) The same benefits are payable, including the  
23 amounts and frequency in effect at the time of lapse, for  
24 a qualifying claim.

25 (d) The lifetime maximum benefit may be reduced by  
26 the amount of any claims already paid.

27 (e) Cash back, extended term, and reduced paid-up  
28 forms of nonforfeiture benefits shall not be allowed.

29 SEC. 14. Section 10235.40 is added to the Insurance  
30 Code, to read:

31 10235.40. (a) No individual long-term care policy or  
32 certificate shall be issued until the applicant has been  
33 given the right to designate at least one individual, in  
34 addition to the applicant, to receive notice of lapse or  
35 termination of a policy or certificate for nonpayment of  
36 premium. The insurer shall receive from each applicant  
37 one of the following:

38 (1) A written designation listing the name, address,  
39 and telephone number of at least one individual, in  
40 addition to the applicant, who is to receive notice of lapse



1 or termination of the policy or certificate for nonpayment  
2 of premium.

3 (2) A waiver signed and dated by the applicant  
4 electing not to designate additional persons to receive  
5 notice. The required waiver shall read as follows:

6  
7 “Protection Against Unintended Lapse.

8  
9 I understand that I have the right to designate at least one  
10 person other than myself to receive notice of lapse or  
11 termination of this long-term care insurance policy for  
12 nonpayment of premium. I understand that notice will  
13 not be given until 30 days after a premium is due and  
14 unpaid. I elect not to designate any person to receive the  
15 notice.

16  
17 \_\_\_\_\_  
18 Signature of Applicant Date” Date”

19  
20 (b) The insurer shall notify the insured of the right to  
21 change the written designation, no less often than once  
22 every two years.

23 (c) When the policyholder or certificate holder pays  
24 the premium for a certified long-term care insurance  
25 policy or certificate through a payroll or pension  
26 deduction plan, the requirements contained in  
27 subdivision (a) need not be met until 60 days after the  
28 policyholder or certificate holder is no longer on that  
29 deduction payment plan. The application or enrollment  
30 form for a certified long-term care insurance policy or  
31 certificate shall clearly indicate the deduction payment  
32 plan selected by the applicant.

33 (d) No individual long-term care policy or certificate  
34 shall lapse or be terminated for nonpayment of premium  
35 unless the insurer, at least 30 days prior to the effective  
36 date of the lapse or termination, gives notice to the  
37 insured and to the individual or individuals designated  
38 pursuant to subdivision (a), at the address provided by  
39 the insured for purposes of receiving notice of lapse or  
40 termination. Notice shall be given by first-class United



1 States mail, postage prepaid, not less than 30 days after a  
2 premium is due and unpaid. Notice shall be deemed to  
3 have been given as of five days after the date of mailing.

4 (e) Each long-term care insurance policy or certificate  
5 shall include a provision which, in the event of lapse,  
6 provides for reinstatement of coverage, if the insurer is  
7 provided with proof of the insured's cognitive  
8 impairment *or the loss of functional capacity*. This option  
9 shall be available to the insured if requested within five  
10 months after termination and shall allow for the  
11 collection of past due premium, where appropriate. *The*  
12 *standard of proof of cognitive impairment or loss of*  
13 *functional capacity shall not be more stringent than the*  
14 *benefit eligibility criteria on cognitive impairment or the*  
15 *loss of functional capacity contained in the policy*  
16 *certificate.*

17 SEC. 15. Section 10235.50 is added to the Insurance  
18 Code, to read:

19 10235.50. (a) Every policy or certificate shall include  
20 a provision that gives the policyholder or certificate  
21 holder a ~~one-time~~ right, exercisable any time after the  
22 first year, to retain a policy or certificate while lowering  
23 the premium in one or more of the following ways:

- 24 (1) Reducing the lifetime maximum benefit.  
25 (2) Reducing the nursing facility per diem and  
26 reducing the home- and community-based service  
27 benefits of a home care only policy and of a  
28 comprehensive long-term care policy.  
29 (3) Converting a “comprehensive long-term care”  
30 policy or certificate to a “Nursing Facility Only” or a  
31 “Home Care Only” policy or certificate, *if the insurer*  
32 *issues those policies or certificates for sale in the state.*

33 (b) The premium for the policy or certificate that is  
34 reduced in coverage will be based on the age of the  
35 insured at issue age and the premium rate applicable to  
36 the amount of reduced coverage at the original issue date.

37 (c) If the contract in force at the time a reduction in  
38 coverage is made provides for benefit adjustments for  
39 anticipated increases in the costs of long-term care  
40 services, then the reduced nursing facility per diem,



1 lifetime maximum benefit, and daily, weekly, or monthly  
2 home care benefits shall be adjusted in the same manner  
3 and in the same amount as the contract in force prior to  
4 the reduction in coverage.

5 (d) In the event a policy or certificate is about to lapse,  
6 the insurer shall advise the insured of the options to lower  
7 the premium by reducing coverage and of the premiums  
8 applicable to the reduced coverage. The notice shall  
9 provide the insured at least 30 days in which to elect to  
10 reduce coverage and the policy shall be reinstated  
11 without underwriting if the insured elects the reduced  
12 coverage.

13 (e) In the event of a premium increase, the insured  
14 who has already exercised the right to ~~a one-time~~  
15 ~~lowering of premiums and reduction of lower premiums~~  
16 ~~and reduce~~ coverage shall be offered one additional  
17 option to lower premiums and reduce coverage.

18 SEC. 16. Section 10235.51 is added to the Insurance  
19 Code, to read:

20 10235.51. (a) Every policy or certificate shall include  
21 a provision that gives the insured the option to elect, no  
22 less frequently than on each anniversary date after the  
23 policy or certificate is issued, to pay an extra premium for  
24 one or more riders that increase coverage in any of the  
25 following ways:

26 (1) Increase the amount of the per diem benefits.

27 (2) Increase the lifetime maximum benefit.

28 (3) Increase the amount of both the nursing facility  
29 per diem benefit and the home- and community-based  
30 care benefits of a comprehensive long-term care  
31 insurance policy or certificate.

32 (b) The premiums for the riders to increase coverage  
33 will be based on the attained age of the insured. The  
34 premium for the original policy or certificate will not be  
35 changed and will continue to be based on the insured's  
36 age when the original policy or ~~certified~~ *certificate* was  
37 issued.

38 (c) The insurer may require the insured to undergo  
39 new underwriting, in addition to the payment of an  
40 additional premium, to qualify for the additional



1 coverage. The insurer may restrict the age for issuance of  
2 additional coverage and restrict the aggregate amount of  
3 additional coverage an insured may acquire to the  
4 maximum age and coverage the insurer allows when  
5 issuing a new policy or certificate.

6 SEC. 17. Section 10235.52 is added to the Insurance  
7 Code, to read:

8 10235.52. (a) Every policy or certificate shall contain  
9 a provision that, in the event the insurer develops new  
10 benefits and provisions not included in the previously  
11 issued policy or certificate, the insurer will grant current  
12 holders of its policies or certificates who are not in benefit  
13 or within the elimination period the following rights:

14 (1) The insured will be notified of the availability of  
15 the new benefits and provisions within 12 months.

16 (2) The insured will be afforded an opportunity to  
17 acquire the new benefits and provisions in one of the  
18 following ways:

19 (A) By adding a rider to the ~~original existing~~ policy or  
20 certificate and paying a separate premium for the new  
21 coverage based on the insured's attained age. The  
22 premium for the ~~original existing~~ policy or certificate will  
23 remain unchanged based on the insured's age at issuance.

24 (B) By replacing the existing policy or certificate with  
25 a new policy or certificate in which case consideration for  
26 ~~past insured status shall be recognized by giving a~~  
27 ~~premium credit equal to 5 percent for each full year the~~  
28 ~~original policy or certificate was in force toward all~~  
29 ~~subsequent premium payments for the replacement~~  
30 ~~policy or certificate.~~ *past insured status shall be*  
31 *recognized by granting premium credits toward the*  
32 *premiums for the replacement policy or certificate. The*  
33 *premium credits shall equal 5 percent of the annual*  
34 *premium of the prior policy or certificate for each full*  
35 *year the prior policy or certificate was in force. The*  
36 *premium credits shall be applied toward all subsequent*  
37 *premium payments for the replacement policy or*  
38 *certificate, but the cumulative credits allowed need not*  
39 *reduce the premium for the replacement policy or*  
40 *certificate to less than the premium for the prior policy*



1 or certificate. No credit need be provided if a claim has  
2 been filed under the prior policy or certificate.

3 (C) By replacing the existing policy or certificate with  
4 a new policy or certificate in which case consideration for  
5 past insured status shall be recognized by setting the  
6 premium for the replacement policy or certificate at the  
7 issue age of the policy or certificate being replaced.

8 (b) The insured may be required to undergo new  
9 underwriting, but the underwriting can be no more  
10 restrictive than if the policyholder or certificate holder  
11 were applying for a new policy or certificate.

12 (c) The insurer of a ~~policy issued to a group policy~~  
13 ~~issued to an employer~~ group must offer the group  
14 policyholder the opportunity to have the new benefits  
15 and provisions extended to existing certificate holders,  
16 but the insurer is relieved of the obligations imposed by  
17 this section if the holder of the group policy declines the  
18 issuer's offer.

19 SEC. 18. Section 10235.90 is added to the Insurance  
20 Code, to read:

21 ~~10235.90. Every long-term care insurance policy or~~  
22 ~~certificate shall contain a provision that, in the event a~~

23 10235.90. In the event a non-medicaid national or  
24 state long-term care program is created through public  
25 funding that substantially duplicates benefits covered by  
26 the policy or certificate, the policyholder or certificate  
27 holder will be entitled to select either a reduction in  
28 future premiums or an increase in future benefits. An  
29 actuarial method for determining the premium  
30 reductions and increases in future benefits will be  
31 mutually agreed upon by the department and insurers.  
32 The amount of the premium reductions and future  
33 benefit increases to be made by each insurer will be based  
34 on the extent of the duplication of covered benefits, the  
35 amount of past premium payments, and claims  
36 experience. Each insurer's premium reduction and  
37 benefit increase plans shall be filed and approved by the  
38 department.

39 SEC. 19. Section 10237.1 of the Insurance Code is  
40 amended to read:



1 10237.1. No insurer may deliver or issue for delivery  
2 a long-term care insurance policy in this state unless the  
3 insurer offers to the policyholder, *in addition to any other*  
4 *inflation protection*, the option to purchase a long-term  
5 care insurance policy that provides for benefit levels to  
6 increase *with benefit maximums or reasonable durations*  
7 *that are meaningful* to account for reasonably anticipated  
8 increases in the costs of long-term care services covered  
9 by the policy. Insurers shall offer to each policyholder, at  
10 the time of purchase, the option to purchase a long-term  
11 care insurance policy containing an inflation protection  
12 feature which is no less favorable than one that does one  
13 or more of the following:

14 (a) Increases benefit levels annually in a manner so  
15 that the increases are compounded annually at a rate of  
16 not less than 5 percent.

17 (b) Guarantees the insured individual the right to  
18 periodically increase benefit levels without providing  
19 evidence of insurability or health status so long as the  
20 option for the previous period has not been declined. The  
21 amount of the additional benefit shall be no less than the  
22 difference between the existing policy benefit and that  
23 benefit compounded annually at a rate of at least 5  
24 percent for the period beginning with the purchase of the  
25 existing benefit and extending until the year in which the  
26 offer is made.

27 (c) Covers a specified percentage of actual or  
28 reasonable charges *and does not include a maximum*  
29 *specified indemnity amount limit*.

30 SEC. 20. Section 10237.4 is added to the Insurance  
31 Code, to read:

32 10237.4. (a) Inflation protection benefit increases  
33 under a policy that contains these benefits shall continue  
34 without regard to an insured's age, claim status or claim  
35 history, or the length of time the person has been insured  
36 under the policy.

37 (b) An offer of inflation protection that provides for  
38 automatic benefit increases shall include an offer of a  
39 premium which the insurer expects to remain constant.  
40 The offer shall disclose in a conspicuous manner that the



1 premium may change in the future unless the premium  
2 is guaranteed to remain constant.

3 SEC. 21. Section 10237.5 is added to the Insurance  
4 Code, to read:

5 10237.5. (a) An inflation protection provision that  
6 increases benefit levels annually in a manner so that the  
7 increases are compounded annually at a rate not less than  
8 5 percent shall be included in a long-term care insurance  
9 policy unless an insurer obtains a rejection of inflation  
10 protection signed by the policyholder.

11 (b) The rejection, to be included in the application or  
12 on a separate form, shall state:

13  
14 “I have reviewed the outline of coverage and the graphs  
15 that compare the benefits and premiums of this policy  
16 with and without inflation protection. Specially, I have  
17 reviewed the plan, and I reject inflation protection.  
18

19 \_\_\_\_\_  
20 Signature of Applicant Date”

21  
22 SEC. 22. Section 10237.6 is added to the Insurance  
23 Code, to read:

24 10237.6. (a) An insurer shall include the following  
25 information in or with the outline of coverage:

26 (1) A graphic comparison of the benefit levels of a  
27 policy that increases benefits at a compounded annual  
28 rate of not less than 5 percent over the policy period with  
29 a policy that does not increase benefits. The graphic  
30 comparison shall show benefit levels over at least a  
31 20-year period.

32 (2) Any expected premium increases or additional  
33 premiums to pay for automatic or optional benefit  
34 increases.

35 (b) An insurer may use a reasonable hypothetical or  
36 graphic demonstration for purposes of this disclosure.

