Senate Bill No. 898

CHAPTER 812

An act to amend Sections 10231.2 and 10236 of, to add Sections 10236.1, 10236.11, 10236.12, 10236.13, and 10236.15 to, to add, repeal, and add Section 10236.14 of, and to repeal Section 10235.22 of, the Insurance Code, relating to long-term care insurance.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 898, Dunn. Long-term care renewal provisions.

Existing law provides that every individual long-term care insurance policy shall contain a renewal provision that is either guaranteed renewable or noncancelable.

This bill would also require group long-term care policies and certificates to be either guaranteed renewable or noncancelable.

This bill would require approval of the Insurance Commissioner before individual or group long-term care insurance may be offered, sold, issued, or delivered in this state, and would specify the duties of insurers and the commissioner in this regard. This bill would limit premium increases for these policies, as specified. The bill would enact other related provisions. These provisions would apply to policies and certificates issued on or after July 1, 2002, as specified.

This bill would also require premium rate schedules and new policy forms to be filed with the commissioner by January 1, 2002, for all group long-term care policies to be sold on or after January 1, 2003, and for all previously approved individual long-term care policies to be sold on or after January 1, 2003, unless the deadline is extended by the commissioner.

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

SECTION 1. It is the intent of the Legislature that certain premiums and conditions for long-term care insurance shall be subject to the prior approval of the Insurance Commissioner.

SEC. 2. Section 10231.2 of the Insurance Code is amended to read:

10231.2. ''Long-term care insurance'' includes any insurance policy, certificate or rider advertised, marketed, offered, solicited, or designed to provide coverage for diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services which are provided in a setting other than an acute care unit of a hospital. Long-term care insurance includes all products containing any of the following benefit types: coverage for institutional care including care

in a nursing home, convalescent facility, extended care facility, custodial care facility, skilled nursing facility, or personal care home; home care coverage including home health care, personal care, homemaker services, hospice, or respite care; or community-based coverage including adult day care, hospice, or respite care. Long-term care insurance includes disability based long-term care policies but does not include insurance designed primarily to provide Medicare supplement or major medical expense coverage.

Long-term care policies, certificates, and riders shall be regulated under this chapter. The commissioner shall review and approve individual and group policies, certificates, riders, and outlines of coverage. Other applicable laws and regulations shall also apply to long-term care insurance insofar as they do not conflict with the provisions in this chapter. Long-term care benefits designed to provide coverage of 12 months or more that are contained in or amended to Medicare supplement or other disability policies and certificates shall be regulated under this chapter.

SEC. 3. Section 10235.22 of the Insurance Code is repealed.

SEC. 4. Section 10236 of the Insurance Code is amended to read:

10236. Every individual and group long-term care policy and certificate under a group long-term care policy shall be either guaranteed renewable or noncancelable.

(a) ''Guaranteed renewable'' means that the insured has the right to continue coverage in force if premiums are timely paid during which period the insurer may not unilaterally change the terms of coverage or decline to renew, except that the insurer may, in accordance with provisions in the policy, and in accordance with Section 10236.1, change the premium rates to all insureds in the same class. The ''class'' is determined by the insurer for the purpose of setting rates at the time the policy is issued.

(b) ''Noncancelable'' means the insured has the right to continue the coverage in force if premiums are timely paid during which period the insurer may not unilaterally change the terms of coverage, decline to renew, or change the premium rate.

(c) Every long-term care policy and certificate shall contain an appropriately captioned renewability provision on page one, which shall clearly describe the initial term of coverage, the conditions for renewal and, if guaranteed renewable, a description of the class and of each circumstance under which the insurer may change the premium amount.

SEC. 5. Section 10236.1 is added to the Insurance Code, to read:

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

consideration shall be given to all relevant factors, including the following:

(a) Statistical credibility of incurred claims experience and earned premiums.

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

(c) Experienced and projected trends.

(d) Concentration of experience within early policy duration.

(e) Expected claim fluctuation.

(f) Experience refunds, adjustments, or dividends.

(g) Renewability features.

(h) All appropriate expense factors.

(i) Interest.

(j) Experimental nature of the coverage.

(k) Policy reserves.

(*l*) Mix of business by risk classification.

(m) Product features, such as long elimination periods, high deductibles, and high maximum limits.

SEC. 6. Section 10236.11 is added to the Insurance Code, to read:

10236.11. The premium rate schedules for all individual and group long-term care insurance policies issued in this state shall be filed with and receive the prior approval of the commissioner before the policy may be offered, sold, issued, or delivered to a resident of this state.

All initial rate filings shall be subject to the following:

(a) No approval for an initial premium schedule shall be granted unless the actuary performing the review for the commissioner certifies that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated. The certification may rely on supporting data in the filing. The actuary performing the review may request an actuarial demonstration that the assumptions the insurer has used are reasonable. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and creditable data from other studies, or both.

(b) The insurer shall submit to the commissioner for approval a rate filing for each policy form that includes at least all of the following information:

(1) An actuarial memorandum that describes the assumptions the insurer used to develop the premium rate schedule. The actuarial assumptions shall include, but not be limited to, a sufficiently detailed description of morbidity assumptions, voluntary lapse rates, mortality assumptions, asset investment yield rates, a description of all expense components, and plan and option mix assumptions. The memorandum shall also include the expected lifetime loss ratio and

projections of yearly earned premiums, incurred claims, incurred claim loss ratios, and changes in contract reserves.

(2) An actuarial certification consisting of at least all of the following:

(A) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated.

(B) A statement that the policy design and coverage provided have been reviewed and taken into consideration.

(C) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration.

(D) A complete description of the basis for contract reserves that are anticipated to be held under the form, to include all of the following:

(i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held.

(ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience.

(iii) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted).

(iv) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses, or if that statement cannot be made, a complete description of the situations in which this does not occur and the type and level of change in the reserve assumptions that would be necessary for the difference to be sufficient. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship. If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under subdivision (a) based on a standard age distribution.

(E) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits or a comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(c) Premium rate schedules and new policy forms shall be filed by January 1, 2002, for all group long-term care insurance policies that an insurer will offer, sell, issue, or deliver on or after January 1, 2003, and for all previously approved individual long-term care insurance policies that an insurer will offer, sell, issue, or deliver on or after January 1, 2003, unless the January 1, 2002, deadline is extended by

the commissioner. Insurers may continue to offer and market long-term care insurance policies approved prior to January 1, 2002, until the earlier of (1) 90 days after approval of both the premium rate schedules and new policy forms filed pursuant to this section or (2) January 1, 2003.

SEC. 7. Section 10236.12 is added to the Insurance Code, to read:

10236.12. All actuaries used by the commissioner to review rate applications submitted by insurers pursuant to this chapter, whether employed by the department or secured by contract, shall be members of the American Academy of Actuaries with at least five years' relevant experience in long-term care insurance industry pricing. If the department does not have actuaries with the experience required by this section, the commissioner shall contract with actuaries to review all rate applications submitted by insurers pursuant to this chapter. If the department has actuaries that have experience required by this section, but not enough of those experienced actuaries to perform the volume of work required by this chapter, the commissioner may contract with independent actuaries, as necessary.

If the commissioner contracts with independent actuaries, the commissioner shall promulgate regulations no later than January 1, 2002, to maintain the confidentiality of rate filings and proprietary insurer information and to avoid conflicts of interest.

SEC. 8. Section 10236.13 is added to the Insurance Code, to read:

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

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

(a) Certification by an actuary, who is a member of the American Society of Actuaries and who is in good standing with that society, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer shall file composite rates reflecting projections of new certificates.

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

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

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

SEC. 9. Section 10236.14 is added to the Insurance Code, to read:

10236.14. Approval of all premium rate schedule increases shall be subject to the following requirements:

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

(1) The accumulated value of the initial earned premium times 58 percent.

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

(3) The present value of future projected initial earned premiums times 58 percent.

(4) Eighty-five percent of the present value of future projected premiums not in paragraph (3) on an earned basis.

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

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

(d) If the requested premium rate schedule increase on any new policy form approved under Section 10236.11 exceeds 15 percent or if the requested premium rate schedule increase on any policy form approved under Section 10236.11 plus all increases occurring after July 1, 2002, in the premium rate schedule for the same policy form exceed 15 percent, no request for a rate increase on any policy form shall be approved by the commissioner except as follows: all the insurer's individual experience on long-term care policy forms issued in this state that have been approved pursuant to Section 10236.11 are pooled together to project future claims experience and the combined experience satisfies the requirements in subdivision (a). An insurer is not precluded from filing requests for premium rate schedule increases on all of its policy forms if the combined experiences after pooling all applicable policy forms satisfies the requirements of subdivision (a).

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

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

(g) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 10. Section 10236.14 is added to the Insurance Code, to read:

10236.14. Approval of all premium rate schedule increases shall be subject to the following requirements:

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

(1) The accumulated value of the initial earned premium times 58 percent.

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

(3) The present value of future projected initial earned premiums times 58 percent.

(4) Eighty-five percent of the present value of future projected premiums not in paragraph (3) on an earned basis.

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

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

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

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

(f) This section shall become operative on January 1, 2008.

SEC. 11. Section 10236.15 is added to the Insurance Code, to read:

10236.15. Premium rate schedule increases that have been approved shall be subject to the following:

(a) For each rate increase that is implemented, the insurer shall file for approval by the commissioner updated projections, as defined in paragraph (1) of subdivision (b) of Section 10236.13, annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years.

(b) (1) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subdivision (a), the commissioner may require the insurer to implement any of the following:

(A) Premium rate schedule adjustments.

(B) Other measures to reduce the difference between the projected and actual experience.

(2) In determining whether the actual experience adequately matches the projected experience, consideration should be given to paragraph (5) of subdivision (b) of Section 10236.13, if applicable.

(c) If the commissioner demonstrates, based upon credible evidence, that an insurer has engaged in a persistent practice of filing inadequate premium schedules, the commissioner may, in addition to any other authority of the commissioner under this chapter, and after the insurer is afforded proper notice and due process, prohibit the insurer from filing and marketing comparable coverage for a period of up to five years or from offering all other similar coverages, and may limit marketing of new applications to the products subject to recent premium rate schedule increases.

(d) This section shall not apply to life insurance policies and certificates that accelerate benefits for long-term care.

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

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