

Assembly Bill No. 389

Passed the Assembly July 13, 2009

Chief Clerk of the Assembly

Passed the Senate July 9, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 10236.1 and 10236.13 of, and to repeal and add Section 10236.12 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 389, Saldana. Long-term care insurance.

Existing law provides for regulation of insurers, including insurers issuing policies of long-term care insurance, by the Insurance Commissioner. Existing law requires benefits under individual long-term care insurance policies issued before new premium rate schedules are approved to be deemed reasonable in relation to premiums if the expected loss ratio is at least 60%, calculated in a manner that provides for adequate reserving of the risk.

This bill, for policies issued before new premium rate schedules are approved and for which rate revisions are filed on or after January 1, 2010, would deem benefits reasonable in relation to premiums if the premium rate schedules have a lifetime expected loss ratio of at least 60% of the premium scale in effect on December 31, 2009, plus 70% of premium increases filed on or after January 1, 2010. The bill would, notwithstanding these provisions, authorize the commissioner, for rate increases filed on or after January 1, 2010, to approve an application for a rate revision based on less than a 70% loss ratio, but not less than a 60% loss ratio, for the portion attributable to the rate increase if an insurer can demonstrate that the rates are necessary to protect the financial condition of the insurer.

Existing law requires actuaries used by the commissioner to review rate applications submitted by insurers relative to long-term care insurance, whether by employment or by contract, to be members of the American Academy of Actuaries with at least 5 years' relevant experience.

This bill would revise these qualifications, as specified, and would make other technical changes.

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

SECTION 1. Section 10236.1 of the Insurance Code is amended to read:

10236.1. (a) 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.

(b) For individual long-term care insurance policies issued before new premium rate schedules are approved under Section 10236.11, and for which rate revisions are filed on or after January 1, 2010, benefits shall be deemed reasonable in relation to the premium if the premium rate schedules have a lifetime expected loss ratio of at least 60 percent of the premium scale in effect on December 31, 2009, plus 70 percent of premium increases filed on or after January 1, 2010, calculated in a manner that provides for adequate reserving of the long-term care insurance risk.

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

- (1) Statistical credibility of incurred claims experience and earned premiums.
- (2) The period for which rates are computed to provide coverage.
- (3) Experienced and projected trends.
- (4) Concentration of experience within early policy duration.
- (5) Expected claim fluctuation.
- (6) Experience refunds, adjustments, or dividends.
- (7) Renewability features.
- (8) All appropriate expense factors.
- (9) Interest.
- (10) Experimental nature of the coverage.
- (11) Policy reserves.
- (12) Mix of business by risk classification.
- (13) Product features, such as long elimination periods, high deductibles, and high maximum limits.

(d) Notwithstanding any other provision of this section, for rate revisions filed on or after January 1, 2010, the commissioner may approve an application for a rate revision based on less than a 70 percent loss ratio, but not less than a 60 percent loss ratio, for the

portion attributable to the rate increase if an insurer can demonstrate that the rates are necessary to protect the financial condition of the insurer, including further reductions in capital and surplus.

SEC. 2. Section 10236.12 of the Insurance Code is repealed.

SEC. 3. 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 who are employees of the department shall be members of the American Academy of Actuaries, with at least five years' relevant experience in long-term care insurance industry pricing or alternatively shall meet the professional requirements to issue a "statement of actuarial opinion" as required by subdivision (a) of Section 10236.13.

If the department does not have sufficient employees who are actuaries meeting the requirements of this section to perform the volume of work required by this chapter, the commissioner may contract, as necessary, with independent actuaries who 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 has employees who are actuaries, and independent actuaries under contract to the department, both meeting the requirements of this section to review rate applications, an insurer may generally choose between having the rate application reviewed by either employees or independent actuaries under contract to the department. The costs and expenses of reviews by independent actuaries under contract to the department shall be charged to the insurer. However, the department shall have the discretion to require a review by independent actuaries.

Employees of the department who are actuaries and who are otherwise qualified to review rate applications but who do not meet the requirements of this section may assist an independent actuary under contract to the department.

If the commissioner contracts with independent actuaries for purposes of this section, the commissioner shall promulgate regulations to maintain the confidentiality of rate filings and proprietary insurer information and to avoid conflicts of interest.

SEC. 4. Section 10236.13 of the Insurance Code is amended 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 Academy of Actuaries and who meets the qualification standards of that organization, 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) If 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) If 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) If 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.

Approved _____, 2009

Governor