INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] *(Division 1 enacted by Stats. 1935, Ch. 145.)*

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] *(Part 2 enacted by Stats. 1935, Ch. 145.)*

CHAPTER 1. General Regulations [680 - 1113] *(Chapter 1 enacted by Stats. 1935, Ch. 145.)*

ARTICLE 6.3. Senior Insurance [785 - 789.10] *(Article 6.3 added by Stats. 1990, Ch. 1454, Sec. 1.)*

785. (a) All insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is 65 years of age or older, a duty of honesty, good faith, and fair dealing. This duty is in addition to any other duty, whether express or implied, that may exist.

(b) Conduct of an insurer, broker, or agent, or other person engaged in the transaction of insurance, during the offer and sale of a policy or certificate previous to the purchase is relevant to any action alleging a breach of the duty of good faith and fair dealing.

(c) Except where explicitly provided to the contrary, this article shall not apply to any of the following:

(1) Medicare supplement insurance as defined in subdivision (m) of Section 10192.4.

(2) Long-term care insurance as defined in Section 10231.2.

(3) Disability coverage provided through the insured's employer or former employer.

(4) Disability insurance policies or certificates principally designed to provide coverage for accidents or expenses incurred while traveling if the premium for the policy or certificate is ten dollars ($10) or less.

(5) Blanket disability insurance as defined in Section 10270.3.

(6) Credit disability insurance as defined in Section 779.2.

(7) Accidental death insurance.

(8) Until January 1, 2002, disability policies or certificates that are sold through direct response methods of delivery.

(9) Disability income insurance as defined in subdivision (c) of Section 799.01.

(d) Provided that the requirements of Section 10296 are met, this article shall not apply to transportation ticket policies and baggage insurance policy types allowable for sale by travel agents pursuant to Section 1753.

(Amended by Stats. 2022, Ch. 424, Sec. 10. (SB 1242) Effective January 1, 2023.)

785.1. (a) (1) An insurance broker or agent shall not participate in, be associated with, or employ any party that participates in, or is associated with, the origination of a reverse mortgage, unless the insurance agent or broker maintains procedural safeguards designed to ensure that the agent or broker transacting insurance has no direct financial incentive to refer the policyholder or prospective policyholder to a reverse mortgage lender.

(2) Except as provided in subdivision (b), individuals transacting insurance shall not receive compensation, commission, or direct incentive for providing reverse mortgage borrowers with a noncasualty insurance product that is connected to or a result of the reverse mortgage.

(b) This section does not prevent an agent or broker from offering title insurance, hazard, flood, or other peril insurance, or other similar products that are customary and normal under a reverse mortgage loan.

(Added by Stats. 2011, Ch. 223, Sec. 1. (AB 793) Effective January 1, 2012.)

785.4. (a) It shall be unlawful for any insurance agent who is not licensed as an attorney to deliver to a person who is 65 years of age or older, a living trust or other legal document, other than an insurance contract or other insurance product document, if a purpose of the delivery is to sell an insurance product.

(b) It shall be unlawful for any insurance agent who is licensed as an attorney to deliver to a person who is 65 years of age or older, a living trust or other legal document, other than an insurance contract or other insurance product document, unless the insurance agent complies with Section 6175.3 of the Business and Professions Code.

(Added by Stats. 2012, Ch. 653, Sec. 2. (SB 1170) Effective January 1, 2013.)

785.5. An insurance broker or agent shall not participate in, be associated with, or employ any party that participates in, or is associated with, obtaining veterans benefits for a senior, unless the insurance agent or broker maintains procedural safeguards designed to ensure that the agent or broker transacting insurance has no direct financial incentive to refer the policyholder, or prospective policyholder, to any veterans benefits program offered through the government.

(Added by Stats. 2012, Ch. 222, Sec. 1. (SB 1184) Effective January 1, 2013.)

786. All individual and group disability insurance policies and certificates, and all group life insurance policies and certificates offered for sale to individuals age 65 or older in California shall provide an examination period of 30 days after the receipt of the policy or certificate for purposes of review of the contract. If the policyholder or certificate holder chooses to cancel the policy or certificate and returns the policy or certificate for cancellation, by mail or other delivery method, within the 30-day examination period, the return shall void the policy or certificate from the beginning, and the parties shall be in the same position as if a policy or certificate had not been issued. All premiums paid and any policy or membership fee paid shall be fully refunded to the policyholder or certificate holder by the insurer or entity in a timely manner.

(a) For the purposes of this section, a timely manner is no later than 30 days after the insurer or entity issuing the policy or certificate receives the returned policy or certificate.

(b) If the insurer or entity issuing the policy or certificate fails to refund all of the premiums and any policy or membership fee paid, in a timely manner, the policyholder or certificate holder shall receive interest on the paid premium and policy or membership fee at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil Procedure. The interest shall be paid from the date the insurer or entity received the returned policy or certificate.

(c) Each policy or certificate shall have a notice prominently printed in no less than 12-point bold print, on the front of the policy jacket or on the cover page of the policy or certificate and the outline of coverage, stating that the policyholder or certificate holder, as applicable, has the right to return the policy or certificate, by mail or other delivery method, within 30 days after its receipt, and to have the full premium and any policy or membership fee paid refunded.

(d) If, at the time of application or at the time of delivery of a group term life insurance policy or certificate, an insurer, its agent, group master policyowner, or association collects more than one month's premium from an individual who is 60 years of age or older on the date he or she purchased coverage, the insurer shall provide the individual with a prorated refund of the premium if the individual delivers a cancellation request to the insurer during the first 30 days of the policy period.

(e) This section shall become operative on July 1, 2015.

(Repealed (in Sec. 1) and added by Stats. 2014, Ch. 166, Sec. 2. (AB 2347) Effective January 1, 2015. Section operative July 1, 2015, by its own provisions.)

786.5. (a) All brokers, agents, or other entities offering a contract of disability insurance to persons 65 years of age or older in this state shall provide the prospective insured with a full and accurate written comparison with existing health coverage, and shall explain the relationship of the proposed coverage to any existing health benefits provided by Medicare, Medi-Cal, or any other health benefits available to the applicant. The written comparison shall be maintained in accordance with Section 10508.5. Disability insurers marketing through direct response to persons 65 years of age or older shall include in the application form questions to ascertain whether the prospective insured is currently 65 years of age or older, and whether the prospective insured is covered by Medi-Cal or a Medicare supplement policy. These direct response insurers shall provide the required comparison as early in the transaction as possible, but not later than the delivery of the insurance contract.

(b) The commissioner may prescribe a standard comparison form and an informational brochure that shall be distributed to every prospective insured at the time insurance is offered for sale by an agent, broker, or other producer. In the case of a transportation ticket policy, the informational brochures shall be delivered to the prospective insured not later than delivery of the insurance contract. Disability insurers marketing through direct response to persons 65 years of age or older shall provide the informational brochure as early in the transaction as possible, but not later than the delivery of the insurance contract.

(c) The amendments to this section made by Assembly Bill 1178 of the 2001–02 Regular Session shall become operative January 1, 2002.

(Amended by Stats. 2001, Ch. 51, Sec. 2. Effective July 9, 2001. Amended version operative January 1, 2002, pursuant to immediate operation of new subdivision (c).)

787. Any advertisement or other device designed to produce leads based on a response from a potential insured that is directed towards persons 65 years of age or older shall prominently disclose that an agent may contact the applicant if that is the fact. In addition, an agent who makes contact with a person as a result of acquiring that person's name from a lead generating device shall disclose that fact in the initial contact with the person.

(a) An insurer, agent, broker, solicitor, or other person or other entity shall not solicit persons 65 years of age and older in this state for the purchase of disability insurance, life insurance, or annuities through the use of a true name or fictitious name that is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

(b) For the purposes of this section, an advertisement includes envelopes, stationery, business cards, worksheets, questionnaires, or other materials designed to describe and encourage the purchase of a policy or certificate of disability insurance, life insurance, or an annuity, or to collect personal or financial information about a prospective insured or purchaser of an annuity.

(c) Advertisements shall not employ words, letters, initials, symbols, or other devices that are so similar to those used by governmental agencies, a nonprofit or charitable institution, veterans organization or agency, senior organization, or other insurer that they could have the capacity or tendency to mislead the public. Examples of misleading materials include, but are not limited to, those which imply any of the following:

(1) The advertised coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institutions, veterans organizations or agencies, or senior organizations.

(2) The advertiser is the same as, is connected with, or is endorsed by governmental agencies, nonprofit or charitable institutions, veterans organizations or agencies, or senior organizations.

(d) An advertisement may not use the name of a state or political subdivision thereof in a policy name or description.

(e) An advertisement may not use any name, service mark, slogan, symbol, or any device in any manner that implies that the insurer, or the policy or certificate advertised, or that any agency that may call upon the consumer in response to the advertisement, is connected with a governmental agency, such as the federal Social Security Administration or the United States Department of Veterans Affairs.

(f) An advertisement may not imply that the reader may lose a right, or privilege, or benefits under federal, state, or local law if he or she fails to respond to the advertisement.

(g) An insurer, agent, broker, or other entity may not use an address so as to mislead or deceive as to the true identity, location, or licensing status of the insurer, agent, broker, or other entity.

(h) An insurer may not use, in the trade name of its insurance policy or certificate, any terminology or words so similar to the name of a governmental agency, governmental program, or veterans organization or agency as to have the capacity or the tendency to confuse, deceive, or mislead a prospective purchaser.

(i) All advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer shall have written approval of the insurer before they may be used.

(j) An insurer, agent, broker, or other entity may not solicit a particular class by use of advertisements which state or imply that the occupational or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the policy or certificate being advertised is sold on an individual basis at regular rates.

(k) In addition to any other prohibition on untrue, deceptive, or misleading advertisements, no advertisement for an event where insurance products will be offered for sale at, or as a result of, the event may use the terms "seminar," "class," "informational meeting," "benefits assistance," "qualification information," or substantially equivalent terms to characterize the purpose of the public gathering or event unless it adds the words "and insurance sales presentation" immediately following those terms in the same type size and font as those terms.

(l) Any advertisement for an event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements is required to comply with the requirements of paragraph (25) of subdivision (a) of Section 1770 of the Civil Code.

(Amended by Stats. 2012, Ch. 653, Sec. 3. (SB 1170) Effective January 1, 2013.)

787.1. (a) The following definitions apply to this section:

(1) “Senior designation” means any degree, title, credential, certificate, certification, accreditation, or approval, that expresses or implies that a broker or agent possesses expertise, training, competence, honesty, or reliability with regard to advising seniors in particular on finance, insurance, or risk management.

(2) “Use” means utilizing a word, phrase, acronym, or logo, in any oral or written communication from which a sale of insurance to a senior may directly or indirectly result, that states or suggests, alone or in context, that a broker or agent holds a senior designation.

(b) (1) A broker or agent may not use a senior designation unless all of the following conditions have been met:

(A) The broker or agent has been granted the right to use the senior designation by the organization that issues the senior designation, and the broker or agent is currently authorized by the organization to use the designation.

(B) The senior designation has been approved by the commissioner for use by brokers and agents in the sale of insurance to seniors.

(C) The broker or agent has been licensed for at least four years in any state or United States territory to sell the types of insurance with which the designation is used.

(2) A broker or agent may not use a senior designation in a manner that misleads a person as to the significance of the senior designation. Each time a broker or agent uses a senior designation in a writing, the writing shall also contain the words “California” or “CA” next to “Insurance Agent” or “Insurance Broker Agent” and “License,” and these words shall be located immediately prior to the broker’s license number or the agent’s license number, in type that is in the same font and at least the same size as the type used for the senior designation. The requirements set forth in this subdivision are in addition to the requirements of Section 1725.5 and shall apply regardless of whether the broker or agent is an insurance agent, as defined in Section 1621. For purposes of this paragraph, “writing” means business cards, written price quotations, and print advertisements distributed exclusively in this state.

(c) The commissioner shall approve a senior designation only if the organization that issues the designation satisfies all of the following requirements with respect to the designation:

(1) The organization has applied for approval on a form prescribed by the commissioner.

(A) The department may require the filing of any supplementary documents and declarations it deems necessary to determine whether the prerequisites for approval have been met.

(B) Before or after approval, an organization shall notify the department in writing within 45 days following any material change in information recorded on the application form or in declarations or documents submitted along with it or in response to a department request.

(2) The designation is accredited by the National Commission for Certifying Agencies, or the organization or the designation is accredited by an agency that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes” and it is established to the satisfaction of the commissioner that the agency is qualified to accredit an organization or designation involved with financial services provided to seniors.

(3) The organization requires California candidates for the designation to demonstrate superior expertise in advising seniors in particular in finance, insurance, or risk management by passing examinations that are based on applicants with no prior insurance education or experience completing at least 75 hours of study covering at least the following topics: aspects of aging, health care coverage, long-term care insurance, financial planning for retirement, investments, estate planning, and ethics. Textbooks or other study materials may use chapter and subchapter titles that differ from those general topics as long as the essential content is the same. No part of the examinations, textbooks, or other study materials may concern techniques on how to increase the amount of insurance or financial products one sells, or recommend the selling of products offered by specific companies.

(d) (1) In determining whether to approve a senior designation for use in the sale of insurance to seniors, the commissioner shall also ensure that the organization that issues the senior designation fulfills the following:

(A) Is exclusively an educational or certification organization, and is not directly or indirectly, through an affiliate or partner, involved in selling insurance, nor receives any compensation directly or indirectly from any sale of insurance, other than the receipt of charitable gifts by a nonprofit institution.

(B) Maintains standards and procedures for disciplining its designees for improper or unethical conduct, as established by proven complaints or by disciplinary action by a government licensing agency or a quasi-governmental licensing and regulatory organization. The standards and procedures shall include, at a minimum:

(i) A written procedure to receive, log, and conduct a preliminary review of complaints alleging improper, illegal, or unethical conduct.

(ii) Written standards for determining when a complaint warrants further investigation into the merits of the allegations contained therein.

(iii) Written standards and procedures to ensure that, once a complaint is determined to warrant further investigation, the investigation is diligently conducted.

(iv) Written standards for determining when to file disciplinary charges based on the results of an investigation.

(v) Written standards and procedures to ensure due process in the adjudication of disciplinary charges by adjudicators who are fair, knowledgeable, and otherwise qualified.

(vi) Written standards and procedures for the imposition of appropriate sanctions, including, when warranted, revocation of the designation.

(C) Maintains a code of ethics for its California designees consistent with that of one of the designations recited in Section 1749.4.

(e) (1) A word, phrase, acronym, or logo shall be deemed a senior designation if it contains the word “senior,” “Medicare,” “Medi-Cal,” “retire,” “mature,” “gerontology,” or “elder,” or any variation or synonym of one of these words within several words of the word “certified,” “chartered,” “registered,” “adviser,” “specialist,” “consultant,” “agent,” “broker,” “insurance,” “planner,” “professional,” “enrolled,” “accredited,” “analyst,” or “fellow,” or any variation or synonym of one of these words. A word, phrase, acronym, or logo may constitute a senior designation if it meets the definition in paragraph (1) of subdivision (a) regardless of whether it contains one of the words recited in this subdivision.

(2) A word, phrase, acronym, or logo shall not constitute a senior designation if it is a job title or description of an employee of a governmental entity, or of an organization with a contract with that governmental entity to provide free counseling to seniors.

(3) No exemption exists under this section for use of a senior designation that constitutes a job title or description or part of a job title or description, except as provided in paragraph (2).

(4) An advanced academic degree, such as a Ph.D., M.B.A., or M.S., may be used without compliance with subdivision (d), if the degree was awarded by an institution of higher education that has been accredited by an organization that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes.”

(f) A violation of subdivision (b) by a broker or agent shall be grounds for suspension or revocation of the broker’s or agent’s license pursuant to Sections 1668 and 1738. Such a violation also shall be grounds for a cease and desist order and monetary penalty pursuant to Section 12921.8, as if the broker or agent had acted in a capacity for which a license was required but not possessed.

(g) Any person who grants to a California resident the right to use a senior designation that has not been approved by the commissioner, without reasonably attempting to determine whether California is one of the designee’s residences, shall be subject to a cease and desist order and monetary penalty pursuant to Section 12921.8, as if the person had acted in a capacity for which a license was required but not possessed.

(h) The disciplinary and remedial authority recited in this subdivision shall be in addition to any other disciplinary and remedial authority included in this code.

(i) Notwithstanding any other provision of this code, the criteria in Sections 1668 and 1668.5 apply to an organization that issues a senior designation, and the commissioner may deny or rescind approval of an organization issuing a senior designation based on that criteria.

(j) The commissioner shall maintain a list of senior designations approved pursuant to subdivisions (c), (d), and (e) and shall publish the current list on the Internet Web site of the Department of Insurance.

(k) This section shall apply to all types of insurance, including those listed in paragraphs (1) and (2) of subdivision (c) of Section 785, except those listed in paragraphs (3) to (7), inclusive, and paragraph (9) of subdivision (c) of Section 785 and subdivision (d) of Section 785.

(l) The commissioner may, upon receipt of a petition from an organization, issue written confirmation that a designation issued by that organization is exempt from the requirement of approval pursuant to this section. The commissioner may issue confirmation if the designation, according to its title or curriculum, or in its actual use, concerns almost exclusively subject matters other than insurance or financial services sold to seniors in particular.

(m) (1) The commissioner may rescind approval of a designation whenever there has been a material change in the management or operation of the organization that issues the designation, or in the procedures or criteria for issuance of the designation, such that if the organization were to apply for approval of the designation subsequent to the change, approval would be denied.

(2) Any rescission of the approval of a designation shall be after notice and a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, as if the approval were a license, and

the commissioner shall have all of the powers granted therein.

(Amended by Stats. 2011, Ch. 296, Sec. 182. (AB 1023) Effective January 1, 2012.)

788. An insurer, agent, broker, or other person engaged in the transaction of insurance shall not knowingly recommend for sale, or sell, disability insurance providing health benefits directly to a Medi-Cal beneficiary who is age 65 or older. For disability insurance providing health benefits sold to a person age 65 or older, the application or other supplemental record signed by the applicant shall contain a question designed to determine if the applicant is receiving Medi-Cal benefits.

(Added by Stats. 1990, Ch. 1454, Sec. 1.)

788.5. No insurer, broker, agent, or other person shall cause an insured aged 65 years or older to replace a disability insurance policy or certificate unnecessarily.

(a) No insurer, broker, agent, or other entity within the jurisdiction of the department shall promote or cause overloading of disability coverage to persons aged 65 years or older. For purposes of this section, “overloading” means possession by an insured of functionally identical coverages that overlap or duplicate benefits to the extent that a reasonable person would not consider their ownership to be cost-effective.

(b) It shall be presumed that the sale of disability insurance that is the subject of this article, sold to a person aged 65 years or older, is overloading, as defined in subdivision (a), if the insured is already covered by Medicare Parts A and B as well as one Medicare supplement policy, certificate, or contract and coverage for excess charges under Part B.

(c) The application for disability insurance for a person age 65 years or older shall contain a question or questions designed to elicit information regarding all other existing health and disability coverage in force by type and company.

(Amended by Stats. 1991, Ch. 1116, Sec. 3.)

788.7. No insurer, broker, agent, or other person shall knowingly recommend for purchase or sell disability insurance to a person age 65 or older which results in the insured having coverage, for medical benefits, for more than 100 percent of actual medical expenses.

(Added by Stats. 1990, Ch. 1454, Sec. 1.)

789. (a) The commissioner shall have the administrative authority to assess penalties against insurers, brokers, agents, and other entities engaged in the transaction of insurance or any other person or entity for violations of this article.

(b) Upon a showing of a violation of this article in any civil action, a court may also assess the penalties prescribed in this article.

(c) Whenever the commissioner has reasonable cause to believe or determines after a public hearing that any insurer, agent, broker, or other person or entity engaged in the transaction of insurance, has violated this article the commissioner shall make and serve upon the insurer, broker, agent, or other person or entity a notice of hearing. The notice shall state the commissioner’s intent to assess the administrative penalties, the time and place of the hearing, and the conduct, condition, or ground upon which the commissioner is holding the hearing, and assessing the penalties. The hearing shall occur within 30 days after the notice is served. Within 30 days after the hearing the commissioner shall issue an order specifying the amount of the penalties to be paid. The penalties resulting from the hearing shall be paid to the Insurance Fund.

(d) The powers vested in the commissioner by this section shall be in addition to any and all powers and remedies vested in the commissioner by law.

(e) Actions for injunctive relief, penalties specified in Section 789.3, damages, restitution, and all other remedies in law, may be brought in superior court by the Attorney General, district attorney, or city attorney on behalf of the people of California. The court shall award reasonable attorney’s fees and court costs to the prevailing plaintiff who establishes a violation of this article.

(Amended by Stats. 2016, Ch. 304, Sec. 3. (AB 2884) Effective January 1, 2017.)

789.3. (a) Any broker, agent, or other person or other entity engaged in the transactions of insurance, other than an insurer, who violates this article is liable for an administrative penalty of no less than one thousand dollars ($1,000) for the first violation.

(b) Any broker, agent, other person, or other entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this article a second or subsequent time or who commits a knowing violation of this article, is liable for an administrative penalty of no less than five thousand dollars ($5,000) and no more than fifty thousand dollars ($50,000) for each violation.

(c) If the commissioner brings an action against a licensee pursuant to subdivision (a) or (b) and determines that the licensee may reasonably be expected to cause significant harm to seniors, the commissioner may suspend his or her license pending the outcome of the hearing described in subdivision (c) of Section 789.

(d) Any insurer who violates this article is liable for an administrative penalty of ten thousand dollars ($10,000) for the first violation.

(e) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for an administrative penalty of no less than thirty thousand dollars ($30,000) and no more than three hundred thousand dollars ($300,000) for each violation.

(f) The commissioner may require rescission of any contract found to have been marketed, offered, or issued in violation of this article.

(Amended by Stats. 2003, Ch. 546, Sec. 3. Effective January 1, 2004.)

789.5. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the article which can be given effect, without the invalid provision or application, and to this end the provisions of the article are severable.

(Added by Stats. 1990, Ch. 1454, Sec. 1.)

789.6. (a) Insurance policies or certificates of disability insurance sold to persons age 65 or older shall return to policyholders or certificate holders benefits that have a minimum loss ratio of 60 percent for individual policies and 75 percent for group policies. The loss ratio shall be on the basis of incurred claims experience and earned premiums.

(b) The commissioner shall require every entity providing insurance policies or certificates of disability insurance sold to persons age 65 or older in this state to maintain detailed experience data for policies and certificates subject to this section and require them to make an annual filing with the commissioner disclosing the loss ratio for each policy form or certificate subject to this section. The annual filing shall, at a minimum, include rates, rating schedules, and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration. That information shall demonstrate that each policy form or certificate is in compliance with the applicable loss ratio standards.

(c) The commissioner shall assure that reserves are reasonable and based on sound actuarial principles with respect to the aggregate dollar amount of reserves for claims that are incurred but not yet paid, and for claims that are incurred but not yet reported.

(d) Policy forms or certificates shall be deemed to comply with the purposes of this section if the expected losses in relation to premiums over the entire period for which the policy form or certificate is rated comply with the requirements of this section and either of the following applies:

(1) For policies or certificates that have been in force for three years or more, for the most recent year the ratio of incurred losses to earned premiums is greater than or equal to the minimum loss ratios established by this section.

(2) For policies or certificates that have been in force for three years or less, the expected third year loss ratio can be demonstrated to be greater than or equal to the minimum loss ratio.

(e) If the annual filing or other information received by the commissioner indicates that the actual loss ratio for a policy or certificate is less than the minimum loss ratio established by this section, the commissioner shall require that the insurer or entity providing the insurance file and implement a corrective plan. This plan shall include the utilization of premium reductions, dividends, benefit increases, or any combination of these or other methods so that the minimum loss ratio can be reasonably expected to be achieved. Any corrective plan shall be reviewed and approved by the commissioner prior to implementation.

(f) If, in the opinion of the commissioner, a policy's or certificate's failure to meet the minimum loss ratio requirements is due to unusual reserve fluctuations, economic conditions, or other nonrecurring conditions, the commissioner may exempt the policy or certificate from the need for a corrective plan for that year. Any exemption shall be in writing and shall specify the reasons for the granting of the exemption.

(g) If the insurer or other entity providing disability insurance to persons 65 years of age or older in this state fails to file and implement a corrective plan in a timely manner, the commissioner shall withdraw approval of the policy or certificate according to the procedures set forth in Section 10293. This remedy is in addition to any remedy available in that section or under other laws of this state. Any report, plan, exemption, or other document prepared pursuant to this section shall be accessible to the public as a public record.

(h) The commissioner may adopt regulations to implement or administer this article.

(Amended by Stats. 1992, Ch. 427, Sec. 111. Effective January 1, 1993.)

789.7. (a) Sales of disability insurance regulated by this article, as well as Medicare supplement insurance and long-term care insurance sold to persons aged 65 years or older, shall be registered by the insurer with the commissioner. The commissioner shall provide facilities for the computerized recordkeeping of all registered policies and certificates. The commissioner shall adopt regulations to implement and administer registration pursuant to this section. Regulations shall include, but need not be limited to, a system for assessing insurers in accordance with each insurer's market share in order to finance the cost of registration, an appropriate method and schedule for the filing of data with the commissioner, the content and format required for each filing in accordance with subdivision (d), appropriate sanctions for failure to comply with this section or with regulations promulgated under this section, and criteria for releasing the registered information to parties outside the department.

(b) Access to the registered information, including the identity of policyholders, shall be strictly limited to the department, with the exception that the Attorney General, a district attorney, or city attorney may be granted access upon request for the purpose of investigating or prosecuting suspected unlawful practices or for purposes of this article. The commissioner may, at his or her discretion, allow access to the registered information to the Health Insurance Counseling and Advocacy Program in the Department of Aging.

(c) Access to registered information in a purely statistical format, which neither identifies nor enables identification of a particular policyholder, may be released at the discretion of the commissioner to any party who demonstrates that the information will be used only for other than commercial purposes.

(d) The content of the filing shall contain no more than the following information:

(1) Policyholder's Medicare identification number or social security number. The policyholder's name shall be specifically excluded from the filing.

(2) A description of the policy as being Medicare supplemental insurance; long-term care insurance; or disability insurance.

(3) Date of sale.

(4) Date of lapse.

(5) Whether the policy is in force as of the date of the filing.

(6) The policy form number, if applicable.

(7) The name of any insurer, broker, agent, or other person engaged in the transaction of insurance who was responsible for the sale of the policy.

(Added by Stats. 1991, Ch. 1116, Sec. 5.)

789.8. (a) "Elder" for purposes of this section means any person residing in this state who is 65 years of age or older.

(b) If a life agent offers to sell to an elder any life insurance or annuity product, the life agent shall advise an elder or elder's agent in writing that the sale or liquidation of any stock, bond, IRA, certificate of deposit, mutual fund, annuity, or other asset to fund the purchase of this product may have tax consequences, early withdrawal penalties, or other costs or penalties as a result of the sale or liquidation, and that the elder or elder's agent may wish to consult independent legal or financial advice before selling or liquidating any assets and prior to the purchase of any life or annuity products being solicited, offered for sale, or sold. This section does not apply to a credit life insurance product as defined in Section 779.2.

(c) A life agent who offers for sale or sells a financial product to an elder on the basis of the product's treatment under the Medi-Cal program may not negligently misrepresent the treatment of any asset under the statutes and rules and regulations of the Medi-Cal program, as it pertains to the determination of the elder's eligibility for any program of public assistance.

(d) A life agent who offers for sale or sells any financial product on the basis of its treatment under the Medi-Cal program shall provide, in writing, the following disclosure to the elder or the elder's agent:

"NOTICE REGARDING STANDARDS FOR MEDI-CAL ELIGIBILITY AND RECOVERY

If you or your spouse are considering purchasing a financial product based on its treatment under the Medi-Cal program, read this important message!

You or your spouse do not have to use up all of your savings before applying for Medi-Cal.

RECOVERY

An annuity purchased on or after September 1, 2004, shall be subject to recovery by the state upon the annuitant's death under the regulations of the Medi-Cal Recovery Program. Income derived from the annuity must be used to meet the annuitant's share of costs and, if the annuitant is married, the income derived from the annuity may impact the minimum monthly maintenance needs of the annuitant's community spouse. An annuity purchased by a community spouse on or after September 1, 2004, may also be subject to recovery if that spouse is the recipient of past or future Medi-Cal benefits.

UNMARRIED RESIDENT

An unmarried resident may be eligible for Medi-Cal benefits if he or she has less than (insert amount of individual's resource allowance) in countable resources.

The Medi-Cal recipient is allowed to keep from his or her monthly income a personal allowance of (insert amount of personal needs allowance) plus the amount of any health insurance premiums paid. The remainder of the monthly income is paid to the nursing facility as a monthly share of cost.

MARRIED RESIDENT

COMMUNITY SPOUSE RESOURCE ALLOWANCE: If one spouse lives in a nursing facility, and the other spouse does not live in a facility, the Medi-Cal program will pay some or all of the nursing facility costs as long as the couple together does not have more than (insert amount of community countable assets).

MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE: If a spouse is eligible for Medi-Cal payment of nursing facility costs, the spouse living at home is allowed to keep a monthly income of at least his or her individual monthly income or (insert amount of the minimum monthly maintenance needs allowance), whichever is greater.

FAIR HEARINGS AND COURT ORDERS

Under certain circumstances, an at-home spouse can obtain an order from an administrative law judge or court that will allow the at-home spouse to retain additional resources or income. The order may allow the couple to retain more than (insert amount of community spouse resource allowance plus individual's resource allowance) in countable resources. The order also may allow the at-home spouse to retain more than (insert amount of the monthly maintenance needs allowance) in monthly income.

REAL AND PERSONAL PROPERTY EXEMPTIONS

Many of your assets may already be exempt. Exempt means that the assets are not counted when determining eligibility for Medi-Cal.

REAL PROPERTY EXEMPTIONS

ONE PRINCIPAL RESIDENCE: One property used as a home is exempt. The home will remain exempt in determining eligibility if the applicant intends to return home someday.

The home also continues to be exempt if the applicant's spouse or dependent relative continues to live in it.

Money received from the sale of a home can be exempt for up to six months if the money is going to be used for the purchase of another home.

REAL PROPERTY USED IN A BUSINESS OR TRADE: Real estate used in a trade or business is exempt regardless of its equity value and whether it produces income.

PERSONAL PROPERTY AND OTHER EXEMPT ASSETS

IRAs, KEOGHs, AND OTHER WORK-RELATED PENSION PLANS: These funds are exempt if the family member whose name it is in does not want Medi-Cal. If held in the name of a person who wants Medi-Cal and payments of principal and interest are being received, the balance is considered unavailable and is not counted. It is not necessary to annuitize, convert to an annuity, or otherwise change the form of the assets in order for them to be unavailable.

PERSONAL PROPERTY USED IN A TRADE OR BUSINESS.

ONE MOTOR VEHICLE.

IRREVOCABLE BURIAL TRUSTS OR IRREVOCABLE PREPAID BURIAL CONTRACTS.

THERE MAY BE OTHER ASSETS THAT MAY BE EXEMPT.

This is only a brief description of the Medi-Cal eligibility rules. For more detailed information, you should call your county welfare department. Also, you are advised to contact a legal services program for seniors or an attorney who is not connected with the sale of this product.

I have read the above notice and have received a copy.

Dated: ________________ Signature: _________________"

The statement required in this subdivision shall be printed in at least 12-point type, shall be clearly separate from any other document or writing, and shall be signed by the prospective purchaser and that person's spouse, and legal representative, if any.

(e) The State Department of Health Services shall update this form to ensure consistency with state and federal law and make the disclosure available to agents and brokers through its Internet Web site.

(f) Nothing in this section allows or is intended to allow the unlawful practice of law.

(g) Subdivisions (b) and (d) shall become operative on July 1, 2001.

(Amended by Stats. 2006, Ch. 405, Sec. 1.5. Effective September 22, 2006.)

789.9. (a) In addition to any other reasons that a sale of an individual annuity to a senior may violate any provision of law, an annuity shall not be sold to a senior in any of the following circumstances:

(1) The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and either of the following is true:

(A) The purchaser's assets are equal to or less than the community spouse resource allowance established annually by the State Department of Health Services pursuant to the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(B) The senior would otherwise qualify for Medi-Cal.

(2) The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and, after the purchase of the annuity, the senior or the senior's spouse would not qualify for Medi-Cal.

(b) In the event that a fixed annuity specified in subdivision (a) is issued to a senior, the issuer shall rescind the contract and refund to the purchaser all premiums, fees, any interest earned under the terms of the contract, and costs paid for the annuity. This remedy shall be in addition to any other remedy that may be available.

(Added by Stats. 2003, Ch. 547, Sec. 2. Effective January 1, 2004.)

789.10. (a) This section applies to the sale, offering for sale, or generation of leads for the sale of life insurance, including annuities, to senior insureds or prospective insureds by any person.

(b) A person who meets with a senior in the senior's home is required to deliver a notice in writing to the senior no less than 24 hours and no more than 14 days prior to that individual's initial meeting in the senior's home. If the senior has an existing insurance relationship with an agent and requests a meeting with the agent in the senior's home the same day, a notice shall be delivered to the senior prior to the meeting. The notice shall be a stand-alone document, with the appropriate information inserted and without any attachments. It shall be written in 16-point bold type and include all of the following, but no other, information:

(1) The agent's full name as it appears on his or her California insurance license.

(2) The agent's license number.

(3) The agent's mailing address and telephone number listed on his or her California insurance license.

(4) The following disclosure:

(A) "I am a licensed insurance agent. My purpose for coming to your home is to sell, discuss, and/or deliver one of the following [indicate all that apply]:

( ) Life insurance, including annuities.

( ) Other insurance products [specify]: _________________.

(B) You have the right to have other persons present at the meeting, including family members, financial advisors, or attorneys.

(C) You have the right to end the meeting at any time.

(D) You have the right to contact the Department of Insurance for information, or to file a complaint. [The notice shall include the consumer assistance telephone numbers at the department]

(E) The following individuals will be coming to your home: [list all attendees, and insurance license information, if applicable]"

(c) Upon contacting the senior in the senior's home, the person shall, before making any statement other than a greeting, or asking the senior any other questions, state that the purpose of the contact is to talk about insurance, or to gather information for a followup visit to sell insurance, if that is the case, and state all of the following information:

(1) The name and titles of all persons arriving at the senior’s home.

(2) The name of the insurer represented by the person, if known.

(d) Each person attending a meeting with a senior shall provide the senior with a business card or other written identification stating the person’s name, business address, telephone number, and any insurance license number.

(e) The persons attending a meeting with a senior shall end all discussions and leave the home of the senior immediately after being asked to leave by the senior.

(f) A person may not solicit a sale or order for the sale of an annuity or life insurance policy at the residence of a senior, in person or by telephone, by using any plan, scheme, or ruse that misrepresents the true status or mission of the contact.

(Amended by Stats. 2012, Ch. 653, Sec. 4. (SB 1170) Effective January 1, 2013.)