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Code: Section:

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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 2. LIFE AND DISABILITY INSURANCE [10110 - 11549] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 1. The Contract [10110 - 10198.10] (*Chapter 1 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 1.5. Discontinuance of Group Life Insurance and Discontinuance and Replacement of Group Disability Insurance [10128 - 10128.4] (*Heading of Article 1.5 amended by Stats. 1977, Ch. 64.*)

10128. The provisions of this article shall apply to all policies of group life insurance issued in this state pursuant to the provisions of Sections 10202, 10202.7, 10202.8, 10203 and 10203.7, to all group disability policies issued in this state pursuant to the provisions of Section 10270.5, to any group nonprofit hospital service contract issued in this state pursuant to the provisions of Section 11512.2, and to any self-insured welfare benefit plan issued in this state as defined in Section 10121.

(*Amended by Stats. 1977, Ch. 64.*)

10128.1. In this article, unless the context otherwise requires:

- (a) "Carrier" means the insurance company, nonprofit hospital service corporation, or other entity responsible for the payment of benefits or provision of services under a policy.
- (b) "Dependent" shall have the meaning set forth in a policy.
- (c) "Discontinuance" shall mean the termination of a policy or the termination of coverage between an entire employer unit under a group disability policy, group nonprofit hospital service contract or self-insured welfare benefit plan, and does not refer to the termination of any agreement between any individual member under a contract and the disability insurer, nonprofit hospital service contract or self-insured welfare benefit plan.
- (d) "Employee" means all agents, employees, and members of unions or associations to whom benefits are provided under a policy.
- (e) "Extension of benefits" means the continuation of coverage under a particular benefit provided under a policy following discontinuance with respect to an employee or dependent who is totally disabled on the date of discontinuance.
- (f) "Policy" means any group insurance policy, group hospital service contract or other plan, contract or policy subject to the provisions of this article.
- (g) "Policyholder" means the entity to which a policy or contract specified in Section 10128 is issued.
- (h) "Premium" means the consideration payable to the carrier.
- (i) "Replacement coverage" means the benefits provided by a succeeding carrier.
- (j) "Totally disabled" shall have the meaning set forth in a policy.

(*Amended by Stats. 1983, Ch. 126, Sec. 2.*)

10128.2. Every policy containing a life insurance benefit shall contain a reasonable extension of such benefit upon discontinuance of the policy with respect to employees who become totally disabled while insured under the policy on or after the date this article becomes applicable to such policy and who continue to be totally disabled at the date of discontinuance of the policy. Every policy containing a loss of time benefit, a specific indemnity during hospital confinement, or a hospital, medical, or surgical expense benefit shall contain a reasonable extension of such benefits upon discontinuance of the policy with respect to employees or dependents who become totally disabled while insured under the policy on or after the date this article becomes applicable to such policy and who continue to be totally disabled at the date of discontinuance of the policy.

(a) Every policy containing a life insurance benefit which does not contain a disability benefit provision of any type (e.g. premium waiver extension, extended death benefit in event of total disability, or payment of income for a specified period during total disability), shall be deemed to include a reasonable extension of benefits upon discontinuance of the policy if it provides the totally

disabled employee the same rights of conversion to an individual life insurance policy at the time of discontinuance of the policy that such employee would have had if his employment or association membership had terminated on the same date.

The rights of conversion specified above need not be provided with regard to any amount of insurance for which the employee becomes insured under any replacement coverage.

(b) Every policy containing a life insurance benefit which contains a disability benefit provision of any type shall be deemed to include a reasonable extension of benefits upon discontinuance of the policy if it provides:

(1) Such discontinuance does not affect the disability benefit; and

(2) The rights of conversion described in (a) above shall apply to the amount the individual is insured for at the termination of the disability benefit unless the disability benefit is a payment of income for a specified period, in which event the rights of conversion would apply to the amount of life insurance, if any, remaining after the payment of income; and

(3) With respect to any amounts of life insurance provided under the policy to which no disability benefit provision applies, the rights of conversion described in (a) above shall apply.

No extension of life insurance under either a disability benefit or the rights of conversion specified above need be provided with regard to any amount of insurance for which the employee becomes insured under any replacement coverage.

(c) Every policy providing benefits for loss of time or a specific indemnity during hospital confinement, shall be deemed to include a reasonable extension of such benefits upon discontinuance of the policy if such discontinuance does not affect the benefit provided.

(d) Every policy providing hospital, medical or surgical benefits on an expense-incurred or service basis shall be deemed to include a reasonable extension of such benefits upon discontinuance of the policy if it provides benefits for covered expenses directly relating to the condition causing total disability existing at the time premium payments for the employee or dependent cease and incurred during a period of not less than 12 months thereafter, which period shall not be interrupted by discontinuance of the policy.

That extension of benefits may be terminated at such time as the employee or dependent is no longer totally disabled or at such time as a succeeding carrier may elect to provide replacement coverage to that employee or dependent without limitation as to the disabling condition.

(e) The benefits payable during any extension of benefits may be subject to all limitations or restrictions contained in the policy.

(Amended by Stats. 1983, Ch. 888, Sec. 3.)

10128.3. (a) Any carrier providing replacement coverage with respect to hospital, medical or surgical benefits on an expense-incurred or service basis within a period of 60 days from the date of discontinuance of a prior policy providing that hospital, medical or surgical benefits shall immediately cover all employees and dependents who were validly covered under the previous policy at the date of discontinuance, including all former employees entitled to continuation coverage under Section 10116.5, who are within the definitions of eligibility under the succeeding carrier's policy, and who would otherwise be eligible for coverage under the succeeding carrier's policy, regardless of any provisions of the policy relating to active full-time employment or hospital confinement or pregnancy. However, with respect to employees or dependents who are totally disabled on the date of discontinuance of the prior carrier's contract or policy and entitled to an extension of benefits pursuant to subdivision (b) of Section 1399.62 of the Health and Safety Code, or pursuant to subdivision (d) of Section 10128.2, the succeeding carrier is not required to provide benefits for services or expenses directly related to any conditions which caused the total disability.

(b) Except as otherwise provided in subdivision (a), until an employee or dependent entitled to coverage under a succeeding carrier's policy pursuant to subdivision (a) of this section qualifies for full benefits by meeting all effective date requirements of the succeeding carrier's policy, the level of benefits shall not be lower than the benefits provided under the prior carrier's policy reduced by the amount of benefits paid by the prior carrier. The employee or dependent shall continue to be covered by the succeeding carrier until the earlier of the following dates:

(1) The date coverage would terminate for an employee or dependent in accordance with the provisions of the succeeding carrier's policy.

(2) In the case of an employee or dependent who was totally disabled on the date of discontinuance of the prior carrier's policy and entitled to an extension of benefits pursuant to subdivision (b) of Section 1399.62 of the Health and Safety Code, or subdivision (d) of Section 10128.2, the date the period of extension of benefits terminates, or, if the prior carrier's policy is not subject to this article, the date to which benefits would have been extended had the prior carrier's policy been subject to this article.

(c) Except as otherwise provided in this section, and except to the extent that benefits for the condition would have been reduced or excluded under the prior carrier's policy, no provision in a succeeding carrier's policy of replacement coverage which would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted the effective date of the succeeding

carrier's policy shall be applied with respect to those employees, former employees entitled to continuation coverage under Section 10116.5, and dependents validly insured under the prior carrier's policy on the date of discontinuance.

(d) In a situation where a determination of the prior carrier's benefit is required by the succeeding carrier, at the succeeding carrier's request, the prior carrier shall furnish a statement of benefits available or pertinent information, sufficient to permit verification of the benefit determination by the succeeding carrier.

(e) For purposes of subdivision (a), a succeeding carrier's policy shall not exclude coverage of a dependent child who was covered by the previous carrier solely because the insured does not provide primary support for that dependent child.

(f) The fraudulent failure or refusal of an employee or dependent to disclose a preexisting condition to the succeeding carrier shall not be ascribed to the entire group and shall not alleviate the duty of a succeeding carrier under subdivision (a) to immediately cover all employees, former employees entitled to continuation coverage under Section 10116.5, and dependents who were validly covered under the previous policy on the date of discontinuance. Any denial of benefits on the basis of fraud shall be limited to the employee or dependent who committed the fraud.

(g) Except to the extent that benefits for the condition would have been reduced or excluded under the prior carrier's contract or policy, no provision in the succeeding carrier's contract, where an employee changes carriers due to a change in employment or other circumstances, that would operate to reduce or exclude benefits for the following congenital craniofacial anomalies: cleft lip and palate (as defined in ICD-9-CM Diagnosis Code 749, International Classification of Diseases, 9th Revision, Clinical Modification, Volume 1, Second Edition, September, 1980), acrocephalosyndactyly (as defined in ICD-9-CM Diagnosis Code 755.55, cranio only), and other congenital musculoskeletal anomalies (as defined in ICD-9-CM Diagnosis Code 756.0), on the basis that the condition giving rise to benefits preexisted the effective date of the succeeding carrier's contract, shall be applied to those employees, former employees entitled to continuation coverage under Section 10116.5, and dependents validly covered under the prior carrier's contract or policy on the date the prior contract or policy terminated when payment or services had been commenced by the previous carrier. That succeeding coverage shall otherwise be subject to all other provisions of the contract between the insured and the succeeding carrier.

(Amended by Stats. 1995, Ch. 489, Sec. 4. Effective January 1, 1996.)

10128.4. This article shall apply to all policies issued, delivered, amended, or renewed in this state after January 1, 1977. A policy subject to the provisions of this article which is issued, delivered, amended as to benefits, or renewed in this state on or after the effective date of amendments to this article made at the 1977–1978 Regular Session of the Legislature shall be construed to be in compliance with the provisions of this article and such amendments to this article.

(Amended by Stats. 1977, Ch. 64.)