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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 2.6. Long-Term Care Insurance [10231 - 10237.6] (*Chapter 2.6 added by Stats. 1988, Ch. 1342, Sec. 1.*)

ARTICLE 3. Administration and Enforcement [10234 - 10234.7] (*Article 3 added by Stats. 1989, Ch. 1273, Sec. 15.*)

10234. The commissioner shall, as required by this chapter, or from time to time as conditions warrant, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt reasonable regulations, and amendments and additions thereto, as are necessary to administer this chapter.

(*Added by Stats. 1989, Ch. 1273, Sec. 15.*)

10234.2. (a) In addition to all other powers and remedies vested in the commissioner by law, the commissioner shall have administrative authority to assess the penalties prescribed in this article for violation of any provision in this chapter against insurers, brokers, agents, and other entities which have been determined by the commissioner to be engaged in the business of insurance.

(b) Upon a showing of a violation of this chapter in any civil action, a court may also assess the penalties prescribed in this article. The court shall award reasonable attorney's fees and costs to a prevailing plaintiff who establishes a violation of this chapter.

(c) Actions for injunctive relief, penalties prescribed in this article, damages, restitution, and all other remedies in law or equity, may be brought in superior court by the Attorney General, a district attorney, or city attorney on behalf of the people of the State of California for violation of any provision in this chapter. The court shall award reasonable attorney's fees and costs to a prevailing plaintiff who establishes a violation of this chapter.

(*Added by Stats. 1992, Ch. 1132, Sec. 18. Effective January 1, 1993.*)

10234.3. (a) Any broker, agent, or other entity determined by the commissioner to engage in the business of insurance, other than an insurer, who violates this chapter is liable for an administrative penalty of not less than two hundred fifty dollars (\$250) for each first violation. The penalty for committing a subsequent or a knowing violation of this chapter shall be not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000) for each violation. The penalty for inappropriate replacement of long-term care coverage shall be not more than five thousand dollars (\$5,000) for each violation.

(b) Any insurer that violates this chapter is liable for an administrative penalty of not less than five thousand dollars (\$5,000) for each first violation. The penalty for committing a subsequent or knowing violation shall be not less than ten thousand dollars (\$10,000) for each violation. The penalty for violating this chapter in a manner indicating a general business practice shall reflect the magnitude of the violation against the public interest and shall be not less than ten thousand dollars (\$10,000) and not more than five hundred thousand dollars (\$500,000).

(c) Penalties shall be paid to the Insurance Fund.

(*Added by Stats. 1992, Ch. 1132, Sec. 19. Effective January 1, 1993.*)

10234.4. In addition to the assessment of penalties and other applicable remedies, the commissioner may take the following actions upon determination that a violation of this chapter, or a regulation adopted pursuant to this chapter, has occurred:

(a) Suspend or revoke the license of any broker, agent, or other producer licensed by the department.

(b) Suspend an insurer's certificate of authority to transact disability insurance.

(c) Order any broker, agent, insurer, or other entity determined by the commissioner to be engaged in the business of insurance, to cease marketing in California a particular policy form of long-term care insurance, to cease marketing any long-term care insurance, or to take such actions as are necessary to comply with this chapter.

(*Repealed and added by Stats. 1992, Ch. 1132, Sec. 21. Effective January 1, 1993.*)

10234.5. (a) Any broker, agent, insurer, or other entity within the jurisdiction of the department who is charged with a violation of this chapter shall be afforded due process through proper notice and public hearing, if requested, before a penalty may be assessed under Section 10234.3, an order issued under Section 10234.4, or other remedy imposed by the commissioner.

(b) Written notice, served by registered mail, shall include:

- (1) A summary of the facts establishing reasonable cause that a violation has occurred.
- (2) Citation of the code section or other standard allegedly violated.
- (3) A statement of the commissioner's intent to assess a penalty including the amount of the penalty, or to seek another remedy.
- (4) A statement of the respondent's right to elect any of the following:
 - (A) To accept assessment of the penalty or other remedy as stated in the notice.
 - (B) To respond to the charge in writing, after which the commissioner may issue a final order or set a hearing.
 - (C) To request, within 10 days of receipt of the notice, a public hearing.

(c) If timely requested by the respondent or ordered by the commissioner, a public hearing before the Administrative Law Bureau of the department shall be held within 30 days after the notice is served. Within 20 days after the hearing, the administrative law judge shall issue findings of fact and a proposed order. The commissioner shall issue his or her final order or the proposed order shall become the final order of the commissioner within 30 working days after the hearing unless reconsideration is granted for good cause by the administrative law judge. If the notice issued to the respondent assessed a penalty of one hundred thousand dollars (\$100,000) or more and the respondent has timely requested, the hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein.

(d) The final order of the commissioner may contain one or more of the remedies set forth in this article. The amount of any penalty assessed need not be limited to the amount stated in the notice to the respondent.

(e) In addition to the penalties set forth in this section and any other penalties provided by law, the commissioner may suspend an insurer's certificate of authority under Section 704 or assess a penalty under Section 704.7 if the commissioner finds, after notice and hearing, that the insurer has violated this chapter or regulations adopted pursuant to this chapter or that the insurer has knowingly permitted any person or entity to do so.

(Repealed and added by Stats. 1992, Ch. 1132, Sec. 23. Effective January 1, 1993.)

10234.6. (a) The commissioner shall, by June 1 of each year, jointly design the format and content of a consumer rate guide for long-term care insurance with a working group that includes representatives of the Health Insurance Counseling and Advocacy Program, the insurance industry, and insurance agents. The commissioner shall annually prepare the consumer rate guide for long-term care insurance that shall include, but not be limited to, the following information:

- (1) A comparison of the different types of long-term care insurance and coverages available to California consumers and a specimen outline of coverage for each product currently marketed by each insurer listed in the rate guide.
- (2) A premium history of each insurer that writes long-term care policies for all the types of long-term care insurance and coverages issued by the insurer in California.

(b) The consumer rate guide to be prepared by the commissioner shall consist of two parts: a history of the rates for all policies issued in California for the current year and for nine preceding years, and a comparison of the policies, benefits, and sample premiums for all policies currently being issued for delivery in California.

(1) For the rate history portion of the rate guide required by this section, the department shall collect, and each insurer shall provide to the department, all of the following information for each long-term care policy, including all policies, whether issued by the insurer or purchased or acquired from another insurer, issued in California for the current year and for nine preceding years:

- (A) Company name.
- (B) Policy type.
- (C) Policy form identification.

- (D) Dates sold.
- (E) Date acquired (if applicable).
- (F) Premium rate increases requested.
- (G) Premium rate increases approved.
- (H) Dates of premium rate increase approvals.
- (I) Any other information requested by the department.

(2) For the policy comparison portion of the rate guide required by this section, the department shall collect, and each insurer shall provide to the department, the information needed to complete the following form, along with any other information requested by the department, for each long-term care policy currently issued for delivery in California, including all policies, whether issued by the insurer or purchased or acquired from another insurer:

NOTICE OF INCOMPLETE TEXT: The Insurance Company Policy Information form appears in the hard-copy publication of the chaptered bill. See Sec. 12, Chapter 304 (p. 13), Statutes of 2016.

If an insurer does not offer a policy for sale that fits the criteria set forth in the sample premium portion of the policy comparison section of the rate guide, the department shall include in that section of the form for that policy a statement explaining that a policy fitting that criteria is not offered by the insurer and that the consumer may seek, from an agent, sample premium information for the insurer's policy that most closely resembles the policy in the sample.

The department shall use the format set forth in this section for the policy comparison portion of the rate guide, unless the working group convened pursuant to subdivision (a) designs an alternative format and agrees that it should be used instead.

In compiling the policy comparison portion of the rate guide, the department shall separate the group policies from the individual policies available for sale so that group policies for all insurers appear together in the guide and individual policies for all insurers appear together in the guide.

The policy comparison portion of the rate guide shall contain a cross-reference for each policy form listed indicating the page in the rate guide where rate information on the policy form can be found.

(c) The department shall publish, on the department's Internet Web site, a premium history of each insurer that writes long-term care policies for all the types of long-term care insurance and coverages issued by the insurer in each state. Each insurer shall provide to the department all of the information listed in paragraph (1) of subdivision (b) for each long-term care policy, including all policies, whether issued by the insurer or purchased or acquired from another insurer, issued in the United States for the current year and for the nine preceding years.

(d) Insurers shall provide the information required pursuant to subdivisions (b) and (c) no later than July 31 of each year, commencing in 2000.

(e) The consumer rate guide shall be published no later than December 1 of each year commencing in 2000, and shall be distributed using all of the following methods:

- (1) Through Health Insurance Counseling and Advocacy Program (HICAP) offices.
- (2) By telephone using the department's consumer toll-free telephone number.
- (3) On the department's Internet Web site.
- (4) A notice in the Long-Term Care Insurance Personal Worksheet required by Section 10234.95.

(f) Notwithstanding any other provision of law, the data submitted by insurers to the department pursuant to this section are public records, and shall be open to inspection by members of the public pursuant to the procedures of the California Public Records Act. However, a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, is not subject to this subdivision.

(Amended by Stats. 2016, Ch. 304, Sec. 12. (AB 2884) Effective January 1, 2017. Note: See published chaptered bill for complete section text. The Insurance Company Policy Information form appears on page 13 of Ch. 304.)

10234.7. The commissioner's annual report to the Legislature, as required by Section 10234.6, shall be compiled in consultation with a task force designated by the commissioner for this purpose, which shall include insurance industry representatives, other individuals deemed appropriate by the commissioner, and one or more representatives from each of the following:

(a) The Health Insurance Counseling and Advocacy Program.

(b) The California Health Policy and Data Advisory Commission.

The commissioner shall have the responsibility, in consultation with the task force, to develop analytic methods and to select indicators for evaluation of the impact of long-term care insurance on the public share of costs for long-term care.

(Added by Stats. 1989, Ch. 1273, Sec. 15.)