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AB-2604 Long-term care insurance. (2021-2022)

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Assembly Bill No. 2604

CHAPTER 534

An act to amend Section 10235.50 of the Insurance Code, and to amend Section 22005.1 of the Welfare and Institutions Code, relating to long-term care.

[Approved by Governor September 25, 2022. Filed with Secretary of State September 25, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2604, Calderon. Long-term care insurance.

Existing law establishes the California Partnership for Long-Term Care Program, administered by the State Department of Health Care Services, to link private long-term care insurance policies and health care service plan contracts that cover long-term care with the In-Home Supportive Services Program and the Medi-Cal program. Existing law requires a long-term care insurance policy or a health care service plan contract to contain certain provisions certified by the department, including protection against loss of benefits due to inflation and a periodic record issued to the insured. Existing law requires an applicant to be offered one option that provides, at a minimum, protection against inflation that automatically increases benefit levels by 5% each year over the previous year, as specified, and at least one lower-cost option.

This bill would require that lower-cost option to provide protection against inflation that automatically increases benefit levels by, at a minimum, either 3% each year over the previous year or a fixed amount each year equal to 5% of the original benefit levels, but would authorize a policy or certificate to be certified if it automatically increases benefit levels by 1% each year over the previous year if the policyholder or certificate holder meets specified criteria. The bill would require policyholders and certificate holders to be offered various options, if applicable, if a premium increases, including the option to reduce the daily benefit, as specified. The bill would also make conforming changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10235.50 of the Insurance Code is amended to read:

10235.50. (a) A policy or certificate shall include a provision that gives the policyholder or certificate holder the right, exercisable any time after the first year, to retain the policy or certificate while reducing coverage and lowering the premium.

(1) The policyholder or certificate holder shall have the option to reduce coverage and lower the premium in the following ways:

(A) Reducing the lifetime maximum benefit.

(B) Reducing the daily, weekly, or monthly benefit amounts.

(C) Converting a "comprehensive long-term care" policy or certificate to a "Nursing Facility and Residential Care Facility Only" or a "Home Care Only" policy or certificate, if the insurer issues those policies or certificates for sale in the state.

(D) Reducing or eliminating the benefit adjustments provided by an inflation protection provision.

(2) Subparagraph (D) of paragraph (1) shall apply to a policy issued or delivered on or after January 1, 2020.

(3) The insurer may offer other reduction options in addition to those required by paragraph (1).

(4) For a policy issued or delivered on or after January 1, 2020, the provision shall include a description of the process for requesting and implementing a reduction in coverage. For a policy issued or delivered before January 1, 2020, an insurer shall notify the policyholder or certificate holder of the process to request and implement a reduction in coverage.

(b) (1) The premium for a policy or certificate that is reduced in coverage shall be both of the following:

(A) Based on the issue age and underwriting class used to determine the premium for the coverage currently in force.

(B) Consistent with the policy's approved rate table.

(2) This subdivision shall apply to any reduction in coverage, regardless of the original policy issue date.

(c) (1) If a policy or certificate contains an inflation protection provision, both of the following shall apply to a reduction in coverage:

(A) If a policyholder or certificate holder chooses to reduce a daily, weekly, monthly, or lifetime benefit amount, then the policyholder or certificate holder shall be given the option to continue inflation protection benefit adjustments in the same manner and in the same amount as the contract in force before the reduction in coverage.

(B) If a policyholder or certificate holder chooses to reduce or eliminate the benefit adjustments provided by an inflation protection provision, then the policyholder or certificate holder shall be given the option to continue the daily, weekly, monthly, and lifetime benefit amounts in effect at the time of the reduction.

(2) This subdivision shall apply to any reduction in coverage, regardless of the original policy issue date.

(d) If a policy or certificate is about to lapse, the insurer shall provide written notice to the insured of the options in subdivision (a) to lower the premium by reducing coverage and of the premiums applicable to the reduced coverage options. The insurer may include in the notice additional options to those required in subdivision (a). The notice shall provide the insured at least 30 days in which to elect to reduce coverage and the policy shall be reinstated without underwriting if the insured elects the reduced coverage.

(e) If a premium increases, the policyholder or certificate holder shall have the right to retain the policy or certificate while reducing coverage and lowering the premium.

(1) The policyholder or certificate holder shall be offered the option to reduce coverage as provided in subparagraphs (A), (B), and (D) of paragraph (1) of subdivision (a).

(A) At least one option to reduce coverage shall allow the policyholder or certificate holder to retain the policy for a premium reasonably equivalent to the one that was in effect before the rate increase.

(B) An insurer may offer other reduction options in addition to the option required by paragraph (1).

(C) An insurer's offer shall include a disclosure stating that all of the reduction options may not be of equal value.

(D) The policyholder or certificate holder of a policy or certificate offered under the California Partnership for Long-Term Care Program shall be offered options to reduce coverage that would maintain certification under the program, as described in subdivision (d) of Section 22005.1 of the Welfare and Institutions Code. The insurer may also offer other reduction options that may result in a loss of partnership status, but shall disclose that the options may result in a loss of partnership status and explain that loss of partnership status may reduce or eliminate policyholder or certificate holder protections.

(2) This subdivision shall apply to any premium rate increase, regardless of the original policy issue date.

SEC. 2. Section 22005.1 of the Welfare and Institutions Code is amended to read:

22005.1. (a) The State Department of Health Care Services shall only certify a long-term care insurance policy that substantially meets the requirements of Chapter 2.6 (commencing with Section 10231) of Part 2 of Division 2 of the Insurance Code, except the requirements of Sections 10232.1, 10232.2, 10232.8, 10232.9, and 10232.92 of the Insurance Code, and that provides all of the items specified in subdivision (b). The State Department of Health Care Services shall only certify a health care service plan

contract that has been approved by the Department of Managed Health Care pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code as providing substantially equivalent coverage to that required by Chapter 2.6 (commencing with Section 10231) of Part 2 of Division 2 of the Insurance Code, and that provides all of the items specified in subdivision (b). Policies issued by organizations subject to the Insurance Code and regulated by the Department of Insurance shall also be approved by the Department of Insurance.

(b) Only policies and contracts that provide all of the following items shall be certified by the department:

(1) Individual assessment and case management by a coordinating entity designated and approved by the department.

(2) Levels and durations of benefits that meet minimum standards set by the department pursuant to Section 22009.

(3) Protection against loss of benefits due to inflation. An applicant shall be offered, at the time of purchase, the following options:

(A) One option that provides, at a minimum, protection against inflation that automatically increases benefit levels by 5 percent each year over the previous year, up to an age specified by the program.

(B) At least one lower-cost option that provides protection against inflation that automatically increases benefit levels by, at a minimum, either 3 percent each year over the previous year or a fixed amount each year equal to 5 percent of the original benefit levels.

(4) A periodic record issued to the insured including an explanation of insurance payments or benefits paid that count toward Medi-Cal asset protection under this division.

(5) Compliance with any other requirements imposed by regulations adopted by the State Department of Health Care Services or the State Department of Social Services and consistent with the purposes of this division.

(c) (1) The State Department of Health Care Services may also certify a new policy or certificate, or maintain certification of a previously issued policy or certificate when the policyholder or certificate holder elects to reduce benefit levels, with a per diem benefit of at least one hundred dollars (\$100) per day for a nursing facility, residential care facility, and home care and community-based services, if the policy or certificate provides a lifetime maximum benefit of not less than seventy-three thousand dollars (\$73,000). A policy or certificate certified pursuant to this subdivision shall provide protection against inflation that automatically increases benefit levels by, at a minimum, either 3 percent each year over the previous year or a fixed amount each year equal to 5 percent of the original benefit levels, or, for a policyholder or certificate holder who elects to reduce benefit levels and is 70 years of age or older, 1 percent each year over the previous year.

(2) An insurer may offer a policy or certificate with the benefits described in paragraph (1) only if the insurer also offers the applicant policy benefits that provide at least a lifetime maximum benefit that, at the time of purchase, is equivalent in dollars to at least 365 times 70 percent of the average daily private pay rate for a nursing facility and a nursing facility per diem benefit of no less than 70 percent of the average daily private pay rate for a nursing facility.

(3) Except for the lifetime maximum benefit, per diem benefit, and inflation protection levels permitted by paragraphs (1) and (2), policies and certificates authorized by this subdivision shall comply with the standards described in paragraph (2) of subdivision (b).

(d) If a premium increases, an insurer shall offer the policyholder or certificate holder options to reduce coverage and lower the premium that would maintain partnership certification. The premium increase notification shall include the options described in paragraphs (1) to (7), inclusive, as applicable, and disclose that the policyholder or certificate holder may have additional options to lower the premium, including additional options to increase the elimination period or to reduce the daily benefit, benefit duration, and protection against inflation. Paragraphs (1) to (6), inclusive, do not require an insurer to create new benefit levels or amend its approved rate schedule. Each of the options set forth in paragraphs (1) to (7), inclusive, shall maintain partnership certification as long as the policy or certificate maintains at least the minimum benefit levels permitted by paragraph (1) of subdivision (c). Notwithstanding subdivision (b), a policy or certificate shall also maintain partnership certification if the policy or certificate is converted to a nonforfeiture benefit or a contingent benefit upon lapse. Even if a policyholder or certificate holder is not subject to a premium increase, the election of one of the available options set forth in paragraphs (1) to (7), inclusive, shall not result in a loss of partnership certification as long as the policy or certificate maintains at least the minimum benefit levels permitted by paragraph (1) of subdivision (c).

(1) Reduce the daily benefit by 50 percent, rounded up or down to the closest daily benefit level on the insurer's approved rate schedule.

(2) Reduce the daily benefit by 25 percent, rounded up or down to the closest daily benefit level on the insurer's approved rate schedule.

- (3) Reduce the benefit duration to the lowest duration on the insurer's approved rate schedule, but not below 12 months.
- (4) Reduce the benefit duration to the next highest duration on the insurer's approved rate schedule, relative to the current duration, but not below 12 months.
- (5) Increase the elimination period to 90 days for a policy or certificate with an elimination period of less than 90 days, if the insurer's approved rate schedule includes a 90-day elimination period.
- (6) Convert a policy or certificate to a minimum coverage policy or certificate as described in paragraph (1) of subdivision (c), if the insurer offers such a policy for sale in California.
- (7) Reduce the protection against inflation to a lower-cost option that automatically increases benefit levels by either 3 percent each year over the previous year or a fixed amount each year equal to 5 percent of the original benefit levels. If the policyholder or certificate holder is 70 years of age or older and experiences a 50-percent or greater increase in premium over the life of the policy or certificate, the insurer shall also offer protection against inflation that automatically increases benefit levels by 1 percent each year over the previous year. An offer made pursuant to this paragraph to reduce protection against inflation shall allow a policyholder or certificate holder, regardless of the issue date, issue age, or present age, to retain the accrued daily, weekly, monthly, and lifetime benefit amounts in effect at the time of the reduction.