RESOLUTION 10-05-2018

DIGEST

Insurance: Creation of a Voluntary Long-Term Care Insurance Program

Amends Insurance Code section 10231.2 and adds Article 6, section 10238, to create a voluntary long-term care insurance program administered by a non-profit public benefit corporation.

STATEMENT OF REASONS

The Problem: "Long-term care insurers collapse," says a story headline in the December 18, 2016 Wall Street Journal under Jack Craver's byline. The story concerned two Pennsylvania insurers that failed because of long-term care claims that could not be paid. It seems that the insurance industry's actuarial calculations were way off. These two insurers are leaving almost 80,000 policyholders with policies that are worthless after paying premiums faithfully over the years. The companies have reached a settlement with the Pennsylvania regulators to liquidate their assets and contribute something to the insureds' claims. The problem with the settlement is that the assets are worth about $600 million while the claims total $4 billion. It is likely these failures are the first of many that will occur in the future because the actuarial tables are generally used by all the insurers and these tables are flawed.

On August 7, 2017 Chad Terhune, writing in the Kaiser Health News, reported that the failures of the Pennsylvania insurers will impact California health insurance consumers. When an insurer fails, the other insurers around the nation are contracted through state guarantee associations to cover a part of the loss. An insurer's assessment is typically based on market share. According to Terhune, California's share of the shortfall is $400.6 million. If, indeed, other insurers begin to find the need to liquidate their assets as the premiums collected prove woefully inadequate to cover the claims made as the cohort of World War II babies begin to retire and need long-term care, we may see that the entire industry finds the shortfall too great to cover.

The Solution: When the Patient Protection and Affordable Care Act (PPACA) was introduced in 2009-10 it contained a Title VIII. However, the provision was removed before the Act became law. All that was left in the final version is the following:

"TITLE VIII—CLASS ACT
"Sec. 8001. Short title of title.
"Sec. 8002. Establishment of national voluntary insurance program for purchasing community living assistance services and support."

One of the motivations for the CLASS ACT was to take the profit out of the long-term insurance by having the program managed by a non-profit public benefit corporation under a contract with the State of California through the Insurance Commissioner's Office. Now that it was shown that the actuarial data being used by the insurance industry are unreliable, the Insurance Commissioner can commission studies to improve the actuarial tables. Since the federal program was not authorized by PPACA, this is California's opportunity to show that there is a better way to offer long-term care insurance that will be there when the insurance is required to pay for the needed care.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Insurance Code section 10231.2 and add section 10238 to read as follows:

§ 10231.2

"Long-term care insurance" includes any insurance policy, certificate, or rider advertised, marketed, offered, solicited, or designed to provide coverage for diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services that are provided in a setting other than an acute care unit of a hospital. Long-term care insurance includes all products containing any of the following benefit types: coverage for institutional care including care in a nursing home, convalescent facility, extended care facility, custodial care facility, skilled nursing facility, or personal care home; home care coverage including home health care, personal care, homemaker services, hospice, or respite care; or community-based coverage including adult day care, hospice, or respite care including such care for individuals with Alzheimer's and other dementia conditions. Long-term care insurance includes disability based long-term care policies but does not include insurance designed primarily to provide Medicare supplement or major medical expense coverage.

Long-term care policies, certificates, and riders shall be regulated under this chapter. The commissioner shall review and approve individual and group policies, certificates, riders, and outlines of coverage. Other applicable laws and regulations shall also apply to long-term care insurance insofar as they do not conflict with the provisions in this chapter. Long-term care benefits designed to provide coverage of 12 months or more that are contained in or amended to Medicare supplement or other disability policies and certificates shall be regulated under this chapter.

Article 6 Establishment of a Voluntary Long-Term Care Insurance Program Financed by Individual Enrollees and Administered by a Non-Profit Public Benefit Corporation (§10238 a. through f.)

§ 10238

The Insurance Commissioner shall create an independent state long-term care insurance option to be established in a private non-profit public benefit corporation with the provisions as stated in this Article.

(a) Access to long-term service and support under the program is to be such that the insured may receive service through a Single Entry Point State-Wide, also known as "No Wrong Door." The service provided shall be based on a conflict-free case management system.

(b) The program shall be administered by a qualified geriatric care manager and all enrollees shall be assigned to a geriatric care manager who shall direct the care needs of the enrollee.

(c) The program shall be created to allow employers to offer an employer-based alternative long-term care insurance plan as created by this Article and the employee-enrollee may sign up for the insurance or refrain from signing up.

(d) The cost to the insured for this insurance shall be determined on a sliding scale based on the accepted poverty index and shall be available to employees through payroll deduction, or, if the employer does not offer a plan, paid out-of-pocket by purchasing a plan through an independent provider.

(e) Advising and counseling shall be provided to enrollees without extra cost to the enrollees as an aid to obtaining and coordinating long-term service and support.

(f) The program shall ensure that the funds collected by the State of California through the non-profit agency administering the program are used exclusively for this program.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Gerald T. Richards, Law Office of Gerald T. Richards, 2352 Redwood Road, Hercules, CA 94547-1145 Phone: (510) 660-3512, Fax: (510) 663-4711.

RESPONSIBLE FLOOR DELEGATE: Gerald T. Richards

* * * * * * *

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Insurance Code section 10231.2 and adds Article 6, section 10238, to create a voluntary long-term care insurance program administered by a non-profit public benefit corporation. This resolution should be approved in principle because the proposal advances the dialogue and options to deal with the growing need for viable and fiscally-affordable provision of long-term care services for an increasingly aging population.

Today there are some 50 million Americans over the age of 65. According to the American Association of Retired Persons (AARP), in a few decades there will be over 80 million. Over $300 billion is spent annually on long-term care, some six times the yearly budget of the U.S. Department of Housing and Urban Development. Over $8000 a month is not an un-heard of tab for long-term care. Fewer insurers are offering long-term care coverage, while the cost of coverage continues to spiral up, with greater premiums and decreasing number of insureds. The California Partnership for Long-Term Care Programs provides education and guidance, but no substantive answers. Long-term care entails custodial services and assistance with activities of daily living. Generally most long-term care is not covered by Medicare. Medicaid does provide benefits, but it is for people with low income and assets thresholds.

The resolution proposes that the Insurance Commissioner create an independent state long-term care insurance program managed by a private non-profit public benefit corporation. A similar program for earthquake insurance currently exists in California. When insurers exited California's market for earthquake insurance, or required prohibitively high premiums for coverage, California created the California Earthquake Authority ("CEA"). (See Ins. Code, § 10089.5 et seq.) The CEA is a hugely successful A.M. Best A- rated publicly-managed, not-for-profit organization. Through careful management, partnership with traditional insurers, a gradation of offered plans, and broadly spreading the risk state-wide, the CEA has been able to provide reasonably-affordable, invaluable earthquake insurance coverage for Californians. A similar program for long-term care insurance can similarly benefit Californians.