Date of Hearing: April 19, 2016

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE
Cheryl Brown, Chair
AB 2366 (Dababneh) – As Amended March 16, 2016

SUBJECT: Long-term care insurance.

SUMMARY: Exempts insurers that offer a policy which combines both life and long-term care (LTC) coverage from the requirement to offer the new policy to their existing long-term care policy holders. Specifically, **this bill:**

1) Maintains the requirement that insurers must notify its existing insureds of the right to be notified of new benefits or benefit eligibility.

2) Maintains the requirement that insurers must provide the notice above within 12 months.

3) Maintains the requirement that the insurer must continue to file notice with the Department of Insurance.

4) Exempts the insurer from providing this notice for life insurance-based combination policies that include long-term care coverage provisions.

EXISTING LAW:

1) Requires long-term care insurance policies to provide the policy holder with the right to be notified of any new long-term care benefit or benefit eligibility rule offered by the insurer.

2) Requires the insurer to offer the new benefit or benefit eligibility rule by the insurer as either a replacement policy or a rider on the existing policy.

3) Provides for the regulation of LTC insurance by the Insurance Commissioner and prescribes various requirements and conditions governing the delivery of individual or group long-term care insurance in the state.

4) Establishes the California Partnership for Long-Term Care Program to link private long-term care insurance and health care service plan contracts that cover long-term care with the In-Home Supportive Services program and Medi-Cal and to provide Medi-Cal benefits to certain individuals who have income and resources above the eligibility levels for receipt of medical assistance, but who have purchased certified private long-term care insurance policies and subsequently exhausted the benefits of these private policies.

FISCAL EFFECT: Unknown

COMMENTS:

Long-Term Care Services and Supports:

By 2030, nearly 20 % of California's population will be 65 years or older. The vast majority of these seniors will one day need some type of long-term care services and supports, meaning a high level of help with nonmedical basic daily activities, like walking, eating, and bathing. For older adults and their families, providing this level of support can take a sizable toll on both quality of life and personal finances, given the lack of affordable, accessible financing solutions.

Preference for Home-Based Care:

The AARP Public Policy Institute has conducted numerous focus groups and surveys of people age 50 and over to ascertain their views about various issues with which they will grapple as they age. Nearly 90 % of people over age 65 want to stay in their home for as long as possible, and 80 % believe their current residence is where they will always live.

When asked to think specifically about their own personal situation as they get older, a slight majority of Americans 40 years or older are a great deal or quite a bit concerned about losing their independence (52%) and losing their memories or other mental abilities (51%). Forty-four percent are at least quite a bit concerned about being able to pay for the care or help they might need as they age, having to move to a nursing home (42%), being a burden on their family (41%), leaving debts to their family (32%), and being alone without family or friends around them (33%).

While a large share of Californians age 40 and older recognize the future need, many also state they have done little or no planning for their care needs and lack knowledge and confidence on the financial aspects of long-term care. Among California adults age 40 and over, only 27% are confident they have the financial resources to pay for long-term care. This is significantly lower than the rest of the country. In addition, nearly 3 in 10 mistakenly believe Medicare covers ongoing care in the home by a licensed home health care aid; a full one-third of individuals 40 and over do not know what Medicare provides for home-based care. What the survey does show without question is that the vast majority of older adults want to remain in their homes and communities as they age.

Several substantial and collaborative policy efforts are underway to explore innovative strategies to solving the Rubik's cube puzzle of how to finance long term services and support. These efforts seek to provide information to help policymakers and stakeholders create a viable set of policy solutions that will meet the needs of individuals, families, state and federal governments, and society at large.

In February 2016, three organizations – the *Bipartisan Policy Center (BPC), LeadingAge*, and the *Long-Term Care Financing Collaborative (the Collaborative)* released information regarding how to approach better providing LTC services and supports. First, increasing insurance-based coverage would require multiple solutions, utilizing the strengths of both the private and public sectors. The private insurance marketplace needs to identify lower priced policies insuring against the risk of needing a high level of LTSS over a relatively short period of time. Next, it should include a public component of a catastrophic insurance program where all Americans would be covered. And finally, Medicaid should be strengthened as the safety net program, which would have an important but smaller role in a refashioned, insurance-based LTC financing system.

The federal Patient Protection and Affordable Care Act established the Community Living Assistance Services and Supports program (CLASS). The CLASS program was intended to be a national, voluntary insurance program designed to cover long-term care services and support.

However, the federal government has since determined that the national program established under the CLASS Act would not be viable.

Long-term care (LTC) insurance is a product with a troubled history that has resulted in a rigorous regulatory regime. Long-term care policies are subject to regulatory controls including prior approval requirements for policies and advertisements, rate regulation, mandatory benefits, and detailed requirements governing the sale of LTC products to name a few. These stringent controls resulted from controversies involving prior LTC products in both product design (what services are covered and in what quantity) and pricing. Many early products were quite expensive for the narrow range of services and an emphasis on mostly institutional care that resulted in many policyholders owning policies that didn't cover the services they needed. LTC services are increasingly provided at home and in non-institutional, lesser restrictive settings and at the same time ever-increasing premiums that are unaffordable for the elderly with fixed incomes.

In addition, LTC insurance coverage is inherently difficult for both the consumer and the insurer to estimate what LTC services will be needed, how long they will be needed, and when they will be needed. The typical insurance coverage framework pressures the consumer to provide answers based on what their physical and financial condition will be 10, 20, or 30 years from now. It is tremendously difficult to anticipate what an individual might need over the last decades of one's life. What is becoming clearer is that the vast majority of older adults want to remain in their homes and communities as they age.

Author's Statement: According to the author, "Americans are increasingly concerned about how to pay for long-term care costs, if the need arises. At the same time, some consumers are hesitant to purchase and pay premiums on a traditional long-term care policy they may never use. In response to these concerns, some insurance companies began offering a hybrid product, which combines the benefits of a long-term care policy and a life insurance policy. Popular among consumers, premiums for these types of hybrid products reached $1.2 billion in 2014.

"Despite the popularity and evident desire for these types of hybrid products, California customers are unable to access some of these hybrid products because of a provision in California law that requires companies to offer existing long-term care policyholders the ability to upgrade their benefits any time new policies are developed with new long-term care benefits. Since hybrid products are treated as one policy and not separate components, there is confusion when new long-term care policy upgrades are available.

"Current law was intended to ensure that all stand-alone long-term care insurance consumers would continue to be able to compare and contrast their existing coverage against new products. However, hybrid products were not prevalent when the original mandate was passed, and applying it to combination products is not in consumers' best interest and hinders new products from being offered.

"AB 2366 will exempt hybrid products from this mandatory "offer" requirement. This will give customers more access to hybrid products."

Arguments in Support: According to the sponsor, the Association of California Life and Health Insurance Companies, "AB 2366 simply exempts hybrid products from the current offer requirement. This solution is not unique. There are other sections in CA law that carve out hybrid products from some of the LTC requirements that are typically put in place for standalone LTC policies." The bill "will help remove a confusing replacement coverage requirement and pave the way for more innovative Long-Term Care products. Existing law requires insurers offering new long-term care (LTC) policies to offer the "new" coverage to their existing LTC policyholders whenever a new product is developed and approved for sale in the state. The offer statute (CIC 10235.52) was established in 2002 at a time when individual standalone LTC policies were more the focus of policymakers. We believe it is inappropriate to apply this requirement to "hybrid" products as it hinders the ability of companies to make new products available for consumers and can also be confusing or misleading to existing policyholders. ACLHIC is sponsoring AB 2366 to offer a simple solution to ensure that insurance consumers are offered the latest innovative insurance products, and protect existing consumers from being forced to review and contemplate a potentially inappropriate replacement product. In fact, a number of existing insurance code sections require significant protections for consumers against potential unnecessary LTC replacement sales. We believe this modest change in the law will assist in the development of new innovative LTC products, and protect many existing policyholders from being needlessly confused by an updated offer every time a new LTC product is developed. All products an insurer offers are always available for review online, or by calling a trusted insurance agent or representative."

Related Legislation:

SB 1438 (Alquist) of 2012, called for a Long-Term Care Task force convened by the Commissioner of the Department of Insurance. SB 1438 was held in Senate Appropriations Committee.

AB 999 (Yamada), Chapter 627, Statutes of 2012 revised long-term care (LTC) insurance oversight to enhance consumer information and revise rate calculation requirements.

AB 1553 (Yamada) of 2014 prohibited the use of gender as a factor to determine the premium for LTC insurance. AB 1553 was held in the Assembly Insurance Committee.

AB 332 (Calderon) of 2015 established a task force to design a statewide, public long-term care insurance program. AB 332 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Life and Health Insurance Companies - Sponsor
National Association of Insurance and Financial Advisors – California (NAIFA-California)

Opposition

None on file.

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