Date of Hearing: July 7, 2015

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE
Cheryl Brown, Chair
SB 575 (Liu) – As Amended June 29, 2015

SENATE VOTE: 36-0

SUBJECT: Long-term care insurance.

SUMMARY: Establishes annual notifications, and an opportunity to designate alternative recipients of annual notifications for long-term care insurance (LTCI) policy and certificate holders who are entitled to benefits after lapsing premium payment, or reducing premium payment. Specifically, **this bill**:

1) Requires annual notifications to policy and certificate holders of LTCI who have been deemed eligible for either shortened benefit period nonforfeiture benefits, or contingent benefits upon lapse.

2) Requires insurers offer those policy or certificate holders the opportunity to elect, or confirm a third-party recipient of the annual notification of benefits.

3) Requires the annual notification of benefits to describe those benefits in dollar amounts.

EXISTING LAW:

1) Establishes the position of Insurance Commissioner (IC), elected by the people, with jurisdiction over the California Department of Insurance, as specified.

2) Provides for "long-term care insurance" which 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. LTCI includes any insurance or indemnity product containing: coverage for institutional care including care in a convalescent facility, extended care facility, custodial care facility, or a skilled nursing facility. LTCI also includes products providing home care coverage including home health care, personal care, homemaker services, or hospice. LTCI additionally covers community-based coverage including adult day care, adult day health care, hospice care at home or a hospice facility, or respite care. LTCI includes disability based long-term care policies but does not include insurance designed primarily to provide Medicare supplement or major medical expense coverage.

3) Requires the IC to approve any rate or any rate adjustment applied to LTCI policies before the policy may be offered, sold, issued, or delivered in California.

4) Permits the IC to require that an insurer maintain a "contingent benefit upon lapse," or a benefit valued by the amount of premiums paid before the policy or certificate holder was unable to continue making premium payments, and subsequently lapsed.

5) Requires insurers to obtain from applicants and enrollees a written designation of at least one third-party recipient, in addition to the applicant, who is to receive notice of lapse or termination for nonpayment of premium.

6) Requires insurers to notify insureds of the right to change a written designation at least every two years.

7) Prohibits insurers from terminating an LTCI policy or certificate until 30 days after a notice of lapse has been sent to the policyholder and any designee(s).

FISCAL EFFECT: This measure has not been analyzed by a fiscal committee.

COMMENTS:

1) *Author's Statement:* "This bill will protect consumers and more specifically, the elderly and their caregivers. It requires long-term care insurers to provide annual notification of the availability and amount of contingent benefits to the insured and, upon the insured's designation, at least one other person. Consumers may be eligible for contingent benefits if their long-term care insurance premium rate dramatically increases and they don't have a non-forfeiture option. Consumers who are eligible for the contingent benefit option stop paying premiums and "bank" these benefits.

   "Individuals who lapse their LTC policies do not receive periodic notification from the insurer that these benefits are available. Without notification, these individuals and their families can easily lose track of the existence of the benefits, especially if the insured suffers from cognitive impairment. These individuals and families likely end up paying for care or doing without when, in fact, benefits are available. This notification will give seniors and their loved ones a clearer understanding of benefits available to help finance and provide long term care.

   "This bill is sponsored by the California Department of Insurance. This bill is part of a package of legislation recommended by the Senate Select Committee on Aging and Long-Term Care."

2) *Background on Dementia in California:* According to the California Department of Public Health, there are now more than 5.2 million people in the United States living with Alzheimer's disease (AD). As the population ages, this number is expected to triple by the year 2050. Among baby boomers aged 55 and over, one in eight will develop AD and one in six will develop a dementia. Half of all persons 85 years and older will develop the disease. Although the illness usually develops in people age 65 or older, it is estimated that over 500,000 people in their 30s, 40s, and 50s have Alzheimer's disease or a related dementia. It is the sixth leading cause of death in the country. Currently, there are 588,208 Californians 55 and over living with Alzheimer's disease; one-tenth of the nation's Alzheimer's patients reside in this state. By 2030, this number will nearly double in California; growing to over 1.1 million. Due to a rapidly aging population, the number of California's Latinos and Asians living with Alzheimer's disease will triple by 2030. The number of African-Americans living with Alzheimer's disease will double in this timeframe.

As the population of people afflicted with Alzheime's Disease, or other dementia, increases, so will the likelihood that these citizens may be owners of long-term care insurance benefits. Many may have lost their ability meet the premium payment demands on a monthly basis, particularly given the recent increases in premiums. Existing state law assures that those who were conscientious enough to purchase LTCI, thereby reducing the likelihood that they will become dependent upon government services at some point in the future due to poverty, are entitled to benefits, though truncated. SB 575 assures that those earned benefits are not forgotten.

3) *Caregivers in California:* Caregivers support the needs of dependent individuals in a variety of ways, performing a range of tasks, including companionship, light house-keeping, meal preparation, and personal care tasks. More complex and sensitive tasks include money management, medication management, communicating with health professionals, and coordinating care. The Family Caregiver Alliance finds that many family members and friends do not consider such assistance and care "caregiving" - they are just doing what comes naturally to them: taking care of someone they love. But that care may be required for months or years, and may take an emotional, physical and financial toll on caregiving families.

   The value of the services family caregivers provide for "free," when caring, was estimated to be $450 billion in 2009. The estimated value of unpaid care in California is $47 billion, (accounting for over 3.8 billion hours of care at $12.17, the average caregiver wage in 2009). On the personal side, long term caregiving has significant financial consequences for caregivers, particularly for women. Informal caregivers personally lose about $659,139 over a lifetime: $25,494 in Social Security benefits; $67,202 in pension benefits; and $566,443 in forgone wages. Caregivers face the loss of income of the care recipient, loss of their own income if they reduce their work hours or leave their jobs, loss of employer-based medical benefits, shrinking of savings to pay caregiving costs, and a threat to their retirement income due to fewer contributions to pensions and other retirement vehicles. The toll and costs of caregiving can be partially mitigated through the purchase of LTCI. Residual LTCI contingency or nonforfeiture benefits can offer relief to caregiving families already burdened by unfavorable economic conditions and family care demands.

   A 2012 report issued by the California Commission on Aging (CCoA) noted that the state faces serious caregiver challenges in today's economic climate. As budgets are cut at the state level, state policies are moving rapidly toward providing more services to frail elders in the home, according to the report, entitled "Celebrating Caregiving in California." The CCoA cautioned that policymakers must weigh the value of protecting the interest of family caregivers against the cost of institutionalization. SB 575 offers California caregivers a margin of potential relief from the unremitting demands associated with placing one's life aside in order to care for another.

4) *What is Long-Term Care?* Long-term care (LTC) is a broad range of services provided by paid or unpaid providers that can support people who have limitations in their ability to care for themselves due to a physical, cognitive, or chronic health condition that is expected to continue for an extended period of time. These care needs may arise from an underlying health condition as is most common among older adults, an inherited or acquired disabling condition among younger adults, and/or a condition present at birth. LTC services can be provided in a variety of settings including one's home (e.g., home care or personal care

services), in the community (e.g., adult day care), in residential settings (e.g., assisted living or board and care homes), or in institutional settings (e.g., intermediate care facilities or nursing homes). The term home-and-community-based services (HCBS) refer collectively to those services that are provided outside of institutional settings. Generally, a person needing LTC is one who requires assistance with activities of daily living (ADLs), including bathing, dressing, eating, transferring, and walking; or instrumental activities of daily living (IADLs), which may include meal preparation, money management, house cleaning, medication management, and transportation.

5) *What is Long-term care insurance?* Long-term care insurance (LTCI) covers the costs of some or all long-term care services when insureds are unable to take care of themselves. Coverage is triggered when an insured develops a "chronic illness" typically defined as an inability to perform a set number of activities of daily living. A policy may cover facility care or home care or both. Approximately 599,000 policies are currently in force in California, up from about 497,000 five years ago. Once a consumer purchases a policy, the insurer may not raise the premium on an individual policy due to a change in the individual's circumstances, such as the development of a health condition. Subject to the approval of the Insurance Commissioner, the insurer may raise the rate on a "block of business" (a group of policies sold by the same insurer using the same forms and rates) if the insurer demonstrates that an increase is warranted. All policyholders in that group will receive the same increase.

   LTCI is relatively new form of insurance. Insurers first sold LTC covering nursing homes in the 1970s and expanded coverage in the 1980s to cover a wider variety of settings. Unfortunately, those insurers failed to accurately estimate future costs and losses. (Some consumer advocates also argue that some insurers underpriced the product as a "teaser rate" to induce consumers into purchasing policies.) Regardless, increasing life expectancies, faulty assumptions on lapse ratios and the cost of care, as well as the poor performance of insurer investments, have conspired to drive dramatic increases in LTCI premiums recently, increasing the likelihood of individuals lapsing their payments; a policy lapse places the consumer in an extremely disadvantageous position since the insured will likely lose all benefits under the policy unless the consumer purchased an optional "nonforfeiture benefit" that provides a very limited vested benefit. When consumers lose their original coverage, they also lose most of their bargaining position. Obtaining a new or replacement policy may require additional underwriting and the potential for much higher premium since a new policy will be priced at the consumer's attained age. Consumers with poor health may not be able to purchase a policy at all.

   Market Condition: Many LTCI carriers, such as Prudential and MetLife, have already stopped offering new LTCI policies in California. Presently, only 12 insurers are writing new business in California, a drop from the 16 insurers that were active five years ago. Genworth Financial, with 32 percent of California's individual LTCI market, warns that its ability to continue to offer LTCI nationally depends on its ability to obtain approval on pending rate increases.

   LTCI Alternatives: Insurance as a tool has many uses and LTCI products are not the only insurance-based approach to addressing the needs of the chronically ill. Some life and disability insurer offers products timed to be helpful during a chronic illness, but are not specifically designed to pay for long-term care services. For example, some life insurance policies offer accelerated benefits triggered by a chronic illness that pay insureds all or a portion of the death benefit of a life insurance policy when they develop a chronic illness.

6) *Contingent Benefit on Lapse*: Another consumer protection, the contingent benefit on lapse "contingent benefit", provides minimum coverage for some policyholders who did not purchase a nonforfeiture benefit and are forced to lapse their policies because of a substantial rate increase. If over the life of a policy, the insurer increases premiums beyond a specified threshold, the IC may require the insurer to offer the policyholder a contingent benefit, along with other options (such as a shorter coverage period), that the policyholder may elect instead of a rate increase. The policyholder may elect the contingent benefit or will be deemed to have elected the contingent benefit if the policy lapses within 120 days of the due date of the increased premium. The thresholds are based on the age of the policyholder and the premium at the time the policy was issued; the older the policyholder, the lower the threshold.

7) *Previous Legislation*
   - AB 1804 (Perea) Chapter 380, Statutes of 2014, requires insurers to maintain a process that allows policyholders to designate in writing or electronic transmission at least one third-party recipient to receive a notice of lapse or nonrenewal for nonpayment of premium for private passenger auto, certain residential property, and individual disability income insurance policies.

   - AB 1747 (Feuer), Chapter 315, Statutes of 2012, requires insurers to permit holders of life insurance policies to designate in writing at least one other person to receive notice of lapse for nonpayment.

   - SB 1810 (Dunn), Chapter 312, Statutes of 2006, authorizes the IC to require a LTCI carrier to offer a contingent benefit, as specified, as a condition of approval of a modification to a rate schedule.

   - SB 1052 (Vasconcellos), Chapter 699, Statutes of 1997, requires insurers to permit holders of long-term care policies to designate in writing at least one other person to receive notice of lapse for nonpayment and prohibits termination of a LTCI policy for nonpayment until that notice has been mailed 30 days before termination of the policy.

REGISTERED SUPPORT / OPPOSITION:

Support
California Department of Insurance – Sponsor
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
California Commission on Aging
California Health Advocates
California Retired Teachers Association (CalRTA)
National Association of Social Workers, California Chapter (NASW-CA)

Opposition
None on file.

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