SENATE COMMITTEE ON INSURANCE
Senator Susan Rubio, Chair
2021 - 2022 Regular

Bill No:	AB 2604	**Hearing Date:**	June 22, 2022
Author:	Calderon		
Version:	June 13, 2022 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Brian Flemmer		

SUBJECT: Long-Term Care Insurance

DIGEST: Requires long-term care (LTC) insurance providers certified by the California Partnership for Long-Term Care Program (Partnership) to provide a lower-cost option,

ANALYSIS:

Existing law:

1) Establishes the Partnership, administered by the State Department of Health Care Services (DHCS).

2) Provides for the regulation of LTC insurance by the California Department of Insurance (CDI) and prescribes various requirements and conditions governing the delivery of individual or group LTC insurance in the state.

3) Establishes the Medi-Cal program, administered by the DHCS, under which low-income individuals are eligible for LTC services.

4) Requires DHCS to claim against the estate of a deceased Medi-Cal beneficiary an amount equal to the payments for medical and LTC services received up to the value of the estate (estate recovery), subject to certain exceptions.

5) Establishes the partnership within the DHCS to link private LTC insurance with Medi-Cal and In-Home Supportive Services (IHSS) program eligibility requirements and Medi-Cal estate recovery.

6) Requires that policies certified by the Partnership program be approved by CDI as compliant with most, but not all, provisions the Insurance Code applicable to LTC insurance.

7) Disregards an equivalent value of qualified benefits received under a certified Partnership policy for the purposes of determining eligibility in the Medi-Cal or IHSS programs and in determining the amount subject to estate recovery (known as "asset protection").

8) Requires that policies and plans certified by the partnership also contain the following benefits or features:

    a) Individual assessment and case management by a coordinating entity designated and approved by DHCS.

b) Inflation protection (existing regulations require a minimum 5% annual compound inflation escalator).

c) A periodic explanation of insurance payments or benefits paid that count toward Medi-Cal asset protection.

d) Compliance with applicable regulations adopted by DHCS or DSS.

This bill:

1) Adjusts requirements for policies to get Partnership certification. Specifically adds a lower-cost inflation protection option to provide, at a minimum, protection against inflation that automatically increases benefit levels by 3 percent each year over the previous year.

2) Additionally creates a 1 percent inflation protection adjuster for policyholders who are 70 years or older. Requires insurers to offer this protection in certain circumstances (see # 4g below).

3) Allows a policy to maintain partnership certification if it is converted to a nonforfeiture benefit or contingent benefit upon lapse of the policy.

4) Requires, if a premium increases, insurers to offer policyholders specified options to reduce coverage or lower premiums. These are:

   a) To reduce the daily benefit to 70 percent of the average daily private pay rate for a nursing facility, as identified by the department, on the date the offer is sent or provided.

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

   c) Reduce the benefit duration to the lowest duration on the insurer's approved rate schedule, but not below 12 months.

   d) 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.

   e) Increase the elimination period to 90 days for a policy or certificate with an elimination period of less than 90 days. (Elimination is the length of time between injury and illness and the beginning of receiving benefit payments.)

   f) Convert a policy or certificate to a minimum coverage policy, if the insurer offers such a policy for sale in California.

   g) Reduce the protection against inflation to a lower-cost option that automatically increases benefit levels by 3 percent each year over the previous year. If the policyholder or certificate holder is 70 years of age or older and has experienced 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.

5) Requires an offer made pursuant to #4 above to reduce protection against inflation to 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.

6) Makes other technical changes.

Background

According to the Author,

> Expenses related to long-term care often become financially burdensome for individuals and their families. This is especially true for those who do not qualify for Medi-Cal, but who also aren't able to afford long-term care expenses out-of-pocket. AB 2604 clarifies existing law by requiring long-term care insurance providers participating in the Partnership to provide low-cost policies with a 3% compound inflation rider. In addition, AB 2604 provides ways for existing policyholders to mitigate a premium increase while retaining Partnership status.

Partnership. Early in the 1990s, four states (California, Connecticut, Indiana and New York) joined with the federal government to establish the four original partnership programs. The federal Deficit Reduction Act of 2005 opened the door for more states to establish their own programs and currently most states operate partnership programs. In California, the Partnership is jointly administered by CDI and DHCS as stated above under existing law.

Through the Partnership, individuals can purchase LTC insurance that provides certain benefits with respect to the state's Medi-Cal program. LTC insurance policies are issued by participating private insurance companies, not the state.

Partnership policies were intended to target middle-class consumers whose pension and savings are adequate for retirement so long as they do not experience a serious chronic disability. This approach was intended to encourage financial planning and gave consumers a way to preserve some assets if their LTC insurance coverage runs out and the consumer becomes impoverished and qualifies for Medi-Cal.

Unfortunately, middle class consumers the program was intended to help have trouble affording the policies. The inflation protection standards required by DHCS regulations make partnership policies unaffordable to all but the most affluent retirees. In 2007, the US Government Accountability Office released a study of the original partnership states and concluded that many of the consumers who could afford to purchase a partnership policy would never qualify for or use Medi-Cal, which undermines the purpose of the Partnership.

Originally, the first four partnership states required a 5% compound escalator to adjust for inflation, but now there are a variety of options in other states. For example, the New

York State partnership program, one of the original partnership states, offers a 3% inflation escalator.

Demographics. According to the Public Policy Institute of California (PPIC), the state's senior population is entering a period of rapid growth. California's over-65 population is expected to be 87 percent higher in 2030 than in 2012, an increase of more than four million people. This group will grow much faster than the rest of the population, rising from 12 percent in 2012 to 19 percent in 2030.

California will also become much more racially and ethnically diverse, with the fastest growth among Latinos and Asians. Many more seniors are likely to be single and/or childless suggesting an increased number of people living alone. All of these changes will have a significant impact on Long Term Support Services (LTSS).

The same PPIC report states by 2030 slightly more than one million seniors will require some assistance with self-care, and that the demand for nursing home care will begin to increase after decades of decline. These changes will have direct budget implications for the Medi-Cal and IHSS programs. As people age, they tend to require more medical care. They are increasingly likely to have trouble living alone, some will need home-or community-based health services, others will move into assisted living, and still others, mainly those with the most serious self-care limitations, will enter nursing homes.

A California LTC insurance brokerage firm, has provided current examples (as of 3/23/22) to illustrate the impact different inflation escalator options have on premiums. The following example is based on a policy issued by major carrier with a 3 year benefit limit, a 90-day elimination period, and $200 day benefit purchased for a single individual at age 55:

Annual Premium: Female
No Inflation Protection: $2,093.00
3% Compound Inflation Protection: $4,694.00
5% Compound Inflation Protection: $9,602.00

Annual Premium: Male
No Inflation Protection: $1,375.00
3% Compound Inflation Protection: $2,905.00
5% Compound Inflation Protection: $5,555.00

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Related/Prior Legislation

SB 1384 (Liu, Chapter 487, Statutes of 2016), established a taskforce to advise DHCS on the operation of the Partnership and revised the requirements for partnership policies. SB 1384 required Partnership policies to provide consumers with at least two inflation protection options (5% annual compound inflation protection or a less expensive inflation protection option). It required insurers offering Partnership policies to provide the consumer with graph illustrations identifying the difference in premium expenses and benefit levels associated with each inflation protection option.

AB 567 (Calderon, Chapter 746, Statutes of 2019), established the Long Term Care Insurance Task Force (Task Force) in the DOI to explore the feasibility of developing and implementing a culturally competent statewide insurance program for LTSS.

ARGUMENTS IN SUPPORT:

The Association of California Life and Health Insurance Companies (ACLHIC) and the National Association of Financial Advisors of California (NAIFA-California), sponsors of the measure, write in a joint letter:

> Existing statutes require California Partnership for Long-Term Care (CA LTC) policies to contain a 5% compound inflation rider. Such policies have become unaffordable for many, especially for lower and middle-income families. The result is that sales have ceased, and many insurance companies have stopped participating in the program.
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> For the good of existing policyholders and future policyholders, the Partnership needs to provide less expensive inflation options for their policies to become once again saleable and protect Californians. Legislation passed in 2016 (SB 1384) required Partnership policies to offer a lower-cost inflation protection at the time of application, in addition to a minimum 5% compound inflation escalator currently required. However, a question remains as to what is a "lower cost option" and whether these alternative policies will maintain their Partnership status.

Also in support, the California Retired Teachers association, "believes retirees should be given reasonable options if long-term care policy changes are needed. This measure will empower retirees with more options."

SUPPORT:

Association of California Life & Health Insurance Companies (Sponsor)
National Association of Insurance and Financial Advisors – California (Sponsor)
AARP
California Department of Insurance
California Retired Teachers Association

OPPOSITION:

None on file.

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