SENATE COMMITTEE ON INSURANCE
Senator Richard Roth, Chair
2015 - 2016 Regular

Bill No:	SB 1091	**Hearing Date:**	April 13, 2016
Author:	Liu		
Version:	April 4, 2016 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Hugh Slayden		

Subject: Long-term care insurance

SUMMARY Establishes definitions for types of long-term care insurance (LTCI) based on the benefits provided. Also requires insurers to provide written notice when they deny a request for treatment for an alternate plan of care and to annually report the number and reasons for denial to the California Department of Insurance (CDI).

DIGEST

Existing law

1. Provides for the regulation of LTCI by CDI and prescribes various requirements and conditions governing the delivery of individual or group policies in the state.

2. Requires approval of policy forms and rate schedules by CDI before the insurer may begin issuing policies based on that form.

3. Requires insurers to provide a copy of any advertisement intended for use in California to CDI for review at least 30 days before dissemination.

This bill

1. Makes findings and declarations regarding LTCI coverage.

2. Declares that it is the intent of the Legislature that LTCI products provide benefits appropriate to consumers' needs.

3. Defines "alternate plan of care" to mean a policy that provides for benefits not specifically defined as a covered service under the policy.

4. Requires insurers to provide written notice to the insured within 40 days if they deny a request for treatment for an alternate plan of care.

5. Requires insurers to report to CDI the number of denied requests for an alternate plan of care, any reason used to deny a request, and the number of requests denied for each reason, and requires CDI to make that information available to the public upon request.

6. Prohibits insurers from marketing a policy as “family friendly” unless it contains certain benefits as specified.

7. Prohibits insurers from marketing a policy as “catastrophic” unless the insured retains substantial risk before the insured becomes eligible to receive benefits.

8. Prohibits insurers from marketing a policy as “deferred” unless the policy provides coverage only after the insured reaches an age specified in the policy.

9. Prohibits insurers from marketing a policy as “short-term” unless the policy benefits are designed to last for less than one year.

10. Prohibits insurers from selling policies as “standardized” unless the policy provides benefits and other criteria as determined by the insurance commissioner.

COMMENTS

1. Purpose of the bill According to the author, adults 65 years old and over comprise the fastest growing segment of California’s population. By 2030, this age group will make up almost 20% of the state population. Projections are that 70% of those will require some form of long-term supports and services (LTSS) and that 52% will require substantial services and supports for chronic conditions. The ideal scenario is for people to remain independent and in their homes as long as possible – to “age in place.”

   Traditional LTCI has been viewed as the primary means of protecting an individual’s quality of life and assets when a long-term, severe disability occurs. However, LTCI premiums have grown out of reach for most middle-income consumers who don’t have enough assets to afford the policies or pay out of pocket. Nor do they qualify for low-income benefits. As a result, they are left with few options other than exhausting their savings or spending down their assets to meet the strict eligibility criteria for Medi-Cal long-term care benefits such as In-Home Health Services and Supports known as IHSS.

   SB 1091 establishes a framework for the design flexibility needed to develop more affordable LTCI options for middle and low-income individuals.

2. Background LTCI covers the of nonmedical or paramedical services required when a person is unable to take care of themselves. Coverage is triggered when an insured develops (1) a “chronic illness” typically defined as an inability to perform a set number of "activities of daily living" such as feeding, dressing, and bathing themselves, or (2) a cognitive impairment (such as Alzheimer’s Disease). (Chronic illness in this context is a way to measure disability, not health.) A policy may cover facility care or home care or both. Last year CDI reported that there were approximately 600,000 policies in force in California.

   Insurers first sold LTCI covering nursing homes in the 1970s and expanded coverage in the 1980s to cover other types of facilities and home care. Many

insurers failed to accurately estimate future costs and losses. Although insurers may not increase rates based on individual claim history, they may increase rates on an entire block of policies. Increasing life expectancies, faulty assumptions on lapses and cost of care, coupled with the poor performance of investments, drove dramatic increases in LTCI premiums. Attempts to stabilize rates had limited impact and some carriers are still waiting on approval for additional rate increases.

As a means of financing LTSS, traditional LTCI is looking less and less viable, particularly for middle and lower-income people. Individuals who have not been able to save enough for retirement are unlikely to be able to afford LTCI premiums.

The LTCI market is now at a critical juncture. Every year, fewer carriers are actively issuing new policies. Six years ago, 16 insurers were actively issuing policies. Last year, there were 11 insurers actively issuing policies. Some insurers are exploring options to traditional LTCI. Some life insurers offer "accelerated benefits" that draw down the death benefit on a life insurance policy when the insured suffers from a qualifying disability. While these policies may offer a sort of two-for-one coverage, they are not necessarily more affordable, nor are they as likely to provide dollar-for-dollar equivalent coverage for LTCI.

California has a program specifically intended to target middle-income consumers, known as the California Partnership for Long-Term Care ("Partnership"). Partnership policies provide Medi-Cal eligibility and "asset protection" benefits if the insured eventually receives Medi-Cal long-term care benefits. There is general agreement that these policies are now too expensive for most middle-class consumers. SB 1384 (Liu) is intended to realign some of those standards with the Partnership's target market.

A national effort to establish affordable LTCI coverage is also under way. In 2013, the U.S. Commission on Long-term Care called for greater design flexibility in LTCI policies. More recently, the Bipartisan Policy Center, SCAN Foundation, LeadingAge, Society of Actuaries, American Academy of Actuaries, and others issued studies or reports on alternative LTCI designs. These efforts have served as the starting point for this bill. The author has worked with this committee, the Senate Select Committee on Aging and Long-term Care, the Assembly Aging and Long-Term Care Committee, and a variety of stakeholders, to explore policy design options that may provide consumers with affordable alternatives or provide existing policies with the flexibility to adapt to future challenges.

Proposed Categories of LTCI. Cost and complexity make choosing an LTCI product difficult for consumers. (Agents and brokers are required to take eight hours of training every year for the first four years they are licensed and eight hours every two years thereafter.) Consumers must chose a daily maximum benefit, coverage period, maximum lifetime benefit, inflation protection, etc. based on an estimate of need that may not arise until decades later.

To make shopping for LTCI easier and establish forms of coverage that meets specific needs, such as affordability, this bill would define categories of LTCI and prohibit marketing policies using these terms unless they meet specified criteria.

- *Catastrophic*. One way to lower the cost is to require consumers to pay upfront. For example, LTCI typically requires a waiting or "elimination" period usually 30, 90, or 100 days. Once insureds develop a qualifying disability, they must cover their own costs for that period and must pay those upfront costs through some other mechanism such as savings, other insurance, a reverse mortgage, etc. One proposal suggests an elimination or waiting period for the first three years.

- *Deferred*. Another design option would "defer coverage" so that eligibility would be locked in and premium payments would begin immediately, but coverage would not apply until after a certain age, such as a proxy retirement age. However, according to the American Association for Long-Term Care Insurance (AALTCI), over 90% of claims do not begin until after age 70, and about 59% will not begin until after age 80. To significantly reduce the cost of the policy, coverage would have to be delayed well into the 70s or longer.

- *Short-term*. Another way to decrease premium is to reduce the coverage period and shift the consumer's risk to the backend of a disability period. LTCI policies usually offer coverage of two years or more. Research by the AALTCI indicates that 41% of all LTCI claims last one year or less. This bill defines short-term policies as those that provide coverage for one year or less. Although short-term policies may be more affordable, the consumer will likely pay more in premium for every dollar in benefits.

- *Family-friendly*. According to a study by sponsored by Prudential Financial, about two-thirds of disabled older people receive chronic illness care from family caregivers, and usually wives or adult daughters. Many of these caregivers, even if they only provide care part-time, must sacrifice their jobs (including benefits, social security credit, etc.), mental and physical health, and freedom. Typically, LTCI will not pay family members to provide care. Some policies offer features that assist the family members in arranging home care. For example, Partnership policies offer a care coordination/care management benefit that provides expert assistance, independent of the insurer, in assessing care needs and obtaining services, even those not covered under the policy. These responsibilities are often left to family members unfamiliar with convoluted LTSS system. Some policies permit family members to provide the paid care and others provide caregiver training. This bill would establish standards to identify products featuring benefits targeted at family members and other informal caregivers.

- *Standard Policy*. This bill authorizes the insurance commissioner to adopt regulations that would define a basic, standard policy that would cover the needs of a typical consumer.

Alternate Plan of Care. LTCI pays for services, covered under the policy, that are determined by plan of care prepared by the insured's doctor or a medical team and describes the kind of care needed and the frequency of the required services. Some LTCI policies permit an alternate plan of care that provides benefits not otherwise covered under the policy so long as the insurer, the insured, and the

insured's doctor all agree. For example, some insurers will pay for durable medical equipment or modifications to the home if that would allow the insured to stay in their own home even though the condition might otherwise require care in a facility and the policy would not normally cover the equipment or home modification.

At this time, available data on these plans is difficult to find or nonexistent. This bill takes an initial step in normalizing the use of alternate plans of care by requiring the insurer to give written notice to the insured if it declines a request for an alternate care plan and to report specified data related to the denial of requests.

3. Support

   a. The AALTCI supports the bill and writes that its research indicates that consumers seek and are willing to buy more affordable options that enable them to receive long-term care in their own home as well as in skilled facilities. One way to provide such options would be to establish standards for policies the provide shorter-benefit periods. SB 1091 defines "short-term" policies which are an important first step for California to catch up with some 40 states that have approved short-term care insurance policies.

   b. The California Commission on Aging writes that models for long-term care are shifting away from institutional care and toward less formalized, home-based care. As more Californians live longer and require longer periods of care, alternative plans of care will be a critical piece of the long-term care regime. In fact, the commission suggests that including alternate plans of care in the list of services covered by LTCI will provide important options for families seeking to keep loved ones at home.

4. Opposition None received.

5. Questions

   a. Anticipating the types and costs of available care decades in the future poses one of the most significant challenges in financial planning for consumers and insurers alike. Alternate plans of care give the insurer and the insured flexibility to adapt to changing demands and services. Under traditional contract law, both parties can typically agree to amend the contract, however, long-term care insurance forms and premium rate schedules must be approved by CDI before an insurer can issue policies based on that form. In the absence of an express enabling provision in the policy, would it be necessary to authorize an insurer in statute to agree to an alternate care plan? If so, should additional consumer protections be in place, such as the agreement by a medical practitioner?

   b. The California Collaborative for Long Term Services and Supports ("Collaborative") suggests that a process similar to that used to model Medicare Supplement benefit packages, or "Medigap" policies, could bring variety and clarity to the LTCI market. Medigap polices are standardized and offer the same benefits regardless of the insurer. Could the Medigap model be applied to LTCI policy types defined in this bill?

6. Suggested Amendments

   a. Stakeholder discussions have revealed that deferred LTCI would not likely be more affordable unless deferred far beyond a retirement age. The author may wish strike subdivision (c) of proposed Insurance Code Section 10233.8 that defines "deferred" policies.

   b. The definition of "alternate plan of care" should be revised to mean "a plan of care authorized by a provision in a policy, rider, endorsement, or amendment ~~containing a provision~~ that allows benefits for long-term care services that are not specifically defined as a covered service under the policy."

7. Prior and Related Legislation

   a. SB 1384 (Liu, 2016) would move the Partnership from DHCS to the Department of Aging, and would require the program to certify policies that offer home care-only benefits and lower-cost inflation protection.

   b. SB 575 (Liu), Chapter 544, Statutes of 2015, requires LTCI carriers to annually remind policyholders with a vested nonforfeiture benefit, and any designated third-party, that the benefit is available.

   a. AB 332 (Calderon, 2015) would have established a task force to design a statewide, public long-term care insurance program. Vetoed. A similar bill, SB 1438 (Alquist, 2012), was held in the Senate Appropriations Committee.

   b. AB 1553 (Yamada, 2014) would have prohibited the use of gender as a factor to determine premium. Held in the Assembly Insurance Committee.

   c. AB 999 (Yamada), Chapter 627, Statutes of 2012, revised the standards to approve changes to rate schedules.

POSITIONS

Support

American Association for Long-term Care Insurance
California Commission on Aging
California Long-term Care Insurance Services/NorthStar Network Insurance Agency

Oppose

None received

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