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Recent Changes to California LTC Insurance Code

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Last year, California enacted legislation updating Insurance Code Section 10235.52, which is California's version of Section 26 of the NAIC Long-Term Care Insurance Model Regulation – Availability of New Services or Providers.

NAIC Model Section 26 requires an insurer to notify policyholders of the availability of a new long-term care (LTC) policy series that provides coverage for new LTC services or providers that are material in nature. Basically, this requirement is intended to give policyholders, who may have purchased their LTC policy years ago, the option to upgrade their benefits as carriers add new services or providers to their latest LTC product offerings. Section 26 allows a carrier to make the new coverage available to its policyholders in one of three ways:

a) adding a rider to the existing policy at the current issue age
b) issuing a new policy with premium credits to reflect past insured status
c) issuing a new policy at the original issue age

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However, California's version, first enacted in 1997, predated Section 26 and there were key differences between the two. Since most states follow the standards outlined in Section 26, industry reached out to California with the goal of updating its law to get it more aligned with the NAIC version.

In 2016, the American Council of Life Insurers (ACLI) and the Association of California Life and Health Insurance Companies (ACLHIC) worked with the California Department of Insurance on a bill (Assembly Bill 2366) that is more consistent with NAIC Model Section 26. There were three major clarifications that were accomplished with this bill:

1. It clearly defined "new benefits or benefit eligibility" to mean coverage for new LTC services or providers that are material in nature.

2. It clarified that new benefits that are material in nature do not include changes to policy structure, benefits, or provisions that are minor in nature.

3. It clarified what benefits are material in nature and what are minor in nature. Changes that are minor in nature include, but are not limited to, changes in elimination periods, benefit periods, and benefit amounts. Under California's prior version, an insurer may have decided not to offer the 0-day elimination period on new policies just to avoid having to offer the 0-day elimination period to in-force policies. This scenario has been eliminated by Assembly Bill 2366.

DIFFERENCES REMAIN

The industry made great strides in California in 2016, yet California law still does not completely track the NAIC Model, so carriers will have to make adjustments to their California LTC product filings.

More specifically, the NAIC Section 26 included a number of exemptions that are not found in California's version, including:

- policies issued prior to the effective date of the section
- policies that had previously been in claim status
- policyholders who would not be eligible to apply for coverage due to issue age limitations under the new policy
- alternative programs approved by the commissioner
- proprietary policy series

Here are three scenarios where the lack of exemptions are important for insurers to think through:

1. A carrier that wants to offer coverage for a new LTC service on new policies in California will need to determine a price for it, as usual, up to the maximum issue age. It will also need to determine a price for the new coverage at all ages since there can be no issue age cap on the offer to in-force policyholders.

2. Also, without an exemption for policies issued prior to the effective date of the regulation, the law potentially applies to all policies. This raises an interesting question of whether adding a rider to a pre-HIPAA policy jeopardizes the grandfathered tax qualification status.

3. For policies that were previously on claim, it may not be clear how to account for a new LTC service or provider. For example, the new policy may provide for 12 months of coverage of the new LTC service or provider (e.g., international coverage). If the insured only has six months of benefits remaining on the existing policy, would the new feature provide coverage for six months or 12 months? If the answer is 12 months, then is the insured only eligible for the new LTC service or provider (international) in months 7–12? If the answer is six months, the insurer will need to develop a price for only providing six months instead of 12.

A NOTE ON COMBO PRODUCTS

California did not exempt life insurance policies or riders containing accelerated long-term care benefits. Further, the option to issue a new policy with premium credits is subject to California's Insurance Code Section 10234.87. However, that section does not apply to life insurance policies that accelerate benefits for LTC so the option to issue a new policy with premium credits is not available for combo products.

CONCLUSION

The collaborative efforts of the ACLI, ACLHIC and the California Department of Insurance resulting in Assembly Bill 2366 has provided carriers with significant guidance. While this has been welcome legislation for insurers, LTC providers need to be aware that when bringing new products to market in California, there are still some administrative questions to confront. ■

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