



General Assembly

January Session, 2009

Raised Bill No. 6531

LCO No. 3257

03257_____INS

Referred to Committee on Insurance and Real Estate

Introduced by:
(INS)

AN ACT CLARIFYING POSTCLAIMS UNDERWRITING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-477b of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective January 1, 2010*):

3 (a) As used in this section:

4 (1) "Cancellation" or "cancel" means the prospective termination of
5 an insurance policy from a date certain.

6 (2) "Completion of medical underwriting" means the evaluation of
7 an applicant's application for insurance for which medical
8 underwriting has been completed and all reasonable questions related
9 to written information submitted on or with, or information omitted
10 from, an insurance application have been resolved. For the purposes of
11 this section, "completion of medical underwriting" is not required for
12 an individual short-term health insurance policy issued on a
13 nonrenewable basis with a duration of six months or less.

14 (3) "Insurance producer" and "agent" have the same meanings as

15 provided in section 38a-702a.

16 (4) "Limitation" or "limit" means the imposition of a restriction or
17 refusal of coverage in an insurance policy for an existing medical
18 condition.

19 (5) "Preexisting conditions provision" has the same meaning as
20 provided in section 38a-476.

21 (6) "Rescission" or "rescind" means the retroactive termination of an
22 insurance policy to the date of its inception, in which all premiums
23 already paid by an insured are refunded to such insured and all claims
24 paid by the insurer or health care center are recouped from providers
25 to whom payment was made.

26 [(a)] (b) (1) Unless approval is granted pursuant to [subsection (b)
27 of] this section, no insurer or health care center [may] shall rescind,
28 cancel or limit any policy of insurance, contract, evidence of coverage
29 or certificate [that provides] providing coverage of the type specified
30 in subdivisions (1), (2), (4), (6), (10), (11) and (12) of section 38a-469 on
31 the basis of written information submitted on, with or omitted from an
32 insurance application by the insured. [if the insurer or health care
33 center failed to complete medical underwriting and resolve all
34 reasonable medical questions related to the written information
35 submitted on, with or omitted from the insurance application before
36 issuing the policy, contract, evidence of coverage or certificate.] No
37 insurer or health care center [may] shall rescind, cancel or limit any
38 such policy, contract, evidence of coverage or certificate more than two
39 years after the effective date of the policy, contract, evidence of
40 coverage or certificate.

41 [(b) An] (2) (A) Any insurer or health center that intends to rescind,
42 cancel or limit a policy, contract, evidence of coverage or certificate on
43 the basis of written information submitted on, with or omitted from an
44 insurance application by the insured shall first apply for approval for
45 such rescission, cancellation or limitation from the commissioner on

46 such form as the commissioner may approve.

47 (B) Such insurer or health care center shall prove to the satisfaction
48 of the commissioner that such insurer or health care center has
49 completed its medical underwriting, unless such policy sought to be
50 rescinded, cancelled or limited is an individual short-term health
51 insurance policy issued on a nonrenewable basis with a duration of six
52 months or less.

53 (C) Any evidence and materials to be used to satisfy the
54 requirement set forth in subparagraph (B) of this subdivision shall be
55 submitted to the commissioner prior to any action by the insurer or
56 health care center to rescind, cancel or limit a policy, contract, evidence
57 of coverage or certificate.

58 (D) (i) The commissioner shall review any evidence or materials
59 submitted pursuant to subparagraph (C) of this subdivision, and shall
60 take into consideration the circumstances surrounding the completion
61 of the application for insurance that is the basis of the rescission,
62 cancellation or limitation, including, but not limited to, the wording of
63 such application, whether such application was completed
64 telephonically and by whom, whether the applicant had a chance to
65 review the application prior to the inception of the policy, whether the
66 applicant was asked about other potential covered persons and any
67 other information the commissioner deems relevant. The
68 commissioner shall also review whether the applicant was informed of
69 any preexisting conditions provision in the policy and whether such
70 preexisting conditions provision and applicable exclusionary periods
71 are in compliance with section 38a-476 and are consistently applied.

72 (ii) Any insurance producer or agent who completes or assists in the
73 completion of an application for insurance shall be liable for any
74 information knowingly omitted or misrepresented by such producer or
75 agent in such application. If the policy would not have been issued had
76 such omission or misrepresentation been known to the insurer or
77 health care center, the insured shall be held harmless for any claims

78 arising from a rescission, cancellation or limitation of a policy, contract,
79 evidence of coverage or certificate.

80 (3) (A) Regardless of any alleged omission or misrepresentation in
81 an application for insurance, an insurer or health care center that
82 intends to rescind, cancel or limit a policy, contract, evidence of
83 coverage or certificate on the basis of the discovery of a preexisting
84 condition based on a submitted claim shall first apply for approval for
85 such rescission, cancellation or limitation from the commissioner on
86 such form as the commissioner may approve. Such insurer or health
87 care center shall limit any investigation on such preexisting condition
88 to (i) issues having a direct relationship with the condition that is the
89 subject of the claim, and (ii) the period preceding the effective date of
90 the policy, contract, evidence of coverage or certificate permitted for
91 limitation or exclusion specified in the preexisting conditions provision
92 in such policy.

93 (B) Failure to limit an investigation as set forth in subparagraphs
94 (A)(i) and (A)(ii) of this subdivision shall be a violation of this section
95 and section 38a-816.

96 (C) The commissioner shall review whether the applicant was
97 informed of any preexisting conditions provision in the policy and
98 whether such preexisting conditions provision and applicable
99 exclusionary periods are in compliance with section 38a-476 and are
100 consistently applied.

101 (4) (A) If the commissioner: (i) Is satisfied that the insurer or health
102 care center has (I) completed medical underwriting and resolved all
103 reasonable questions related to written information submitted on, with
104 or omitted from an insurance application, or (II) conducted a proper
105 preexisting conditions investigation as set forth in subparagraph (A) of
106 subdivision (3) of this subsection and is in compliance with section
107 38a-476; or (ii) determines that the policy at issue is an individual
108 short-term health insurance policy issued on a nonrenewable basis
109 with a duration of six months or less, the commissioner shall notify the

110 insurer or health care center.

111 (B) Upon receiving notification from the commissioner pursuant to
112 subparagraph (A) of this subdivision, an insurer or health care center
113 shall apply for approval of [such] a rescission, cancellation or
114 limitation by submitting such written information to the Insurance
115 Commissioner on an approval request application in such form as the
116 commissioner prescribes. Such insurer or health care center shall
117 provide a copy of [the] such approval request application [for such
118 approval] to the insured or the insured's representative. Not later than
119 seven business days after receipt of [the] such approval request
120 application, [for such approval,] the insured or the insured's
121 representative shall have an opportunity to review such approval
122 request application and respond and submit relevant information to
123 the commissioner. [with respect to such application.] Not later than
124 fifteen business days after the submission of information by the
125 insured or the insured's representative, the commissioner shall issue a
126 written decision on such approval request application. The
127 commissioner may approve such rescission, cancellation or limitation
128 if the commissioner finds that [(1)] (i) the written information
129 submitted on or with the insurance application was false at the time
130 such application was made and the insured or such insured's
131 representative knew or should have known of the falsity therein, and
132 such submission materially affects the risk or the hazard assumed by
133 the insurer or health care center, or [(2)] (ii) the information omitted
134 from the insurance application was knowingly omitted by the insured
135 or such insured's representative, or the insured or such insured's
136 representative should have known of such omission, and such
137 omission materially affects the risk or the hazard assumed by the
138 insurer or health care center. Such decision shall be mailed to the
139 insured, the insured's representative, if any, and the insurer or health
140 care center.

141 (c) Notwithstanding the provisions of chapter 54, any insurer, health
142 care center or insured aggrieved by any decision by the commissioner

143 under subparagraph (B) of subdivision (4) of subsection (b) of this
144 section may, [within] not later than thirty days after notice of the
145 commissioner's decision is mailed to such insurer and insured, take an
146 appeal therefrom to the superior court for the judicial district of
147 Hartford, which shall be accompanied by a citation to the
148 commissioner to appear before said court. Such citation shall be signed
149 by the same authority, and such appeal shall be returnable at the same
150 time and served and returned in the same manner, as is required in
151 case of a summons in a civil action. Said court may grant such relief as
152 may be equitable.

153 (d) The Insurance Commissioner may adopt regulations, in
154 accordance with chapter 54, to implement the provisions of this
155 section.

156 Sec. 2. Section 38a-8 of the general statutes is repealed and the
157 following is substituted in lieu thereof (*Effective from passage*):

158 (a) The commissioner shall see that all laws respecting insurance
159 companies and health care centers are faithfully executed and shall
160 administer and enforce the provisions of this title. The commissioner
161 has all powers specifically granted, and all further powers that are
162 reasonable and necessary to enable the commissioner to protect the
163 public interest in accordance with the duties imposed by this title. The
164 commissioner shall pay to the Treasurer all the fees which he receives.
165 The commissioner may administer oaths in the discharge of his duties.

166 (b) The commissioner shall recommend to the General Assembly
167 changes which, in his opinion, should be made in the laws relating to
168 insurance.

169 (c) In addition to the specific regulations which the commissioner is
170 required to adopt, the commissioner may adopt such further
171 regulations as are reasonable and necessary to implement the
172 provisions of this title. Regulations shall be adopted in accordance
173 with the provisions of chapter 54.

174 (d) The commissioner shall develop a program of periodic review to
175 ensure compliance by the Insurance Department with the minimum
176 standards established by the National Association of Insurance
177 Commissioners for effective financial surveillance and regulation of
178 insurance companies operating in this state. The commissioner shall
179 adopt regulations, in accordance with the provisions of chapter 54,
180 pertaining to the financial surveillance and solvency regulation of
181 insurance companies and health care centers as are reasonable and
182 necessary to obtain or maintain the accreditation of the Insurance
183 Department by the National Association of Insurance Commissioners.
184 The commissioner shall maintain, as confidential, any confidential
185 documents or information received from the National Association of
186 Insurance Commissioners, or the International Association of
187 Insurance Supervisors, or any documents or information received from
188 state or federal insurance, banking or securities regulators or similar
189 regulators in a foreign country which are confidential in such
190 jurisdictions. The commissioner may share any information, including
191 confidential information, with the National Association of Insurance
192 Commissioners, the International Association of Insurance
193 Supervisors, or state or federal insurance, banking or securities
194 regulators or similar regulators in a foreign country so long as the
195 commissioner determines that such entities agree to maintain the same
196 level of confidentiality in their jurisdiction as is available in this state.
197 The commissioner may engage the services of [, at the expense of a
198 domestic, alien or foreign insurer,] attorneys, actuaries, accountants
199 and other experts not otherwise part of the commissioner's staff, at the
200 expense of a domestic, alien or foreign insurer, as may be necessary to
201 assist the commissioner in the financial analysis of the insurer, the
202 review of the insurer's license applications, and the review of
203 transactions within a holding company system involving an insurer
204 domiciled in this state. No duties of a person employed by the
205 Insurance Department on November 1, 2002, shall be performed by
206 such attorney, actuary, accountant or expert.

207 (e) The [Insurance Commissioner] commissioner shall establish a

208 program to reduce costs and increase efficiency through the use of
209 electronic methods to transmit documents, including policy form and
210 rate filings, to and from insurers and the Insurance Department. The
211 commissioner may sit as a member of the board of a consortium
212 organized by or in association with the National Association of
213 Insurance Commissioners for the purpose of coordinating a system for
214 electronic rate and form filing among state insurance departments and
215 insurers.

216 (f) The commissioner shall maintain, as confidential, information
217 obtained, collected or prepared in connection with examinations,
218 inspections or investigations, and complaints from the public received
219 by the Insurance Department if such records are protected from
220 disclosure under federal law or state statute or, in the opinion of the
221 commissioner, such records would disclose, or would reasonably lead
222 to the disclosure of: (1) Investigative information the disclosure of
223 which would be prejudicial to such investigation, until such time as
224 the investigation is concluded; or (2) personal, financial or medical
225 information concerning a person who has filed a complaint or inquiry
226 with the Insurance Department, without the written consent of the
227 person or persons to whom the information pertains.

228 (g) Not later than January 1, 2006, the [Insurance Commissioner]
229 commissioner shall develop a plan to maintain a viable medical
230 malpractice insurance industry in this state for physicians and
231 surgeons, hospitals, advanced practice registered nurses and physician
232 assistants. Such plan shall be submitted to the Governor upon its
233 completion.

234 (h) Not later than December 31, 2009, the commissioner shall
235 develop, in consultation with the Office of the Healthcare Advocate
236 and the Office of the Attorney General, uniform and readable
237 applications for insurance for each line of insurance authorized to be
238 sold in this state and shall make such applications for insurance
239 available to each insurer and health care center doing business in this

240 state. Such applications for insurance shall be utilized by each insurer
241 and health care center doing business in this state for all policies
242 written on or after January 1, 2010.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2010</i>	38a-477b
Sec. 2	<i>from passage</i>	38a-8

Statement of Purpose:

To require prior approval from the Insurance Commissioner before an insurer or health care center may rescind, cancel or limit a policy, contract, evidence of coverage or certificate, to specify the procedures pertaining to such approval process, and to require the Insurance Commissioner, in consultation with the Office of the Healthcare Advocate and the Office of the Attorney General, to develop uniform and readable applications for insurance for each line of insurance authorized to be sold in this state.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]