



General Assembly

Amendment

February Session, 2010

LCO No. 3697

SB0001203697SD0

Offered by:

SEN. CRISCO, 17th Dist.

REP. FONTANA, 87th Dist.

To: Senate Bill No. 12

File No. 1

Cal. No. 35

"AN ACT CLARIFYING POSTCLAIMS UNDERWRITING."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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 Section 38a-477b of the general statutes is repealed and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

5 (a) As used in this section:

6 (1) "Cancellation" or "cancel" means the unilateral termination of an
7 insurance policy, contract, evidence of coverage or certificate.

8 (2) "Limitation" or "limit" means the imposition of a restriction of
9 coverage in an insurance policy, contract, evidence of coverage or
10 certificate for an existing or preexisting medical condition.

11 (3) "Preexisting conditions provision" has the same meaning as
12 provided in section 38a-476.

13 (4) "Rescission" or "rescind" means the termination of an insurance
14 policy, contract, evidence of coverage or certificate by the insurer or
15 health care center to the date of inception.

16 [(a)] (b) Unless approval is granted pursuant to subsection [(b)] (d)
17 of this section, no insurer or health care center [may] shall rescind,
18 cancel or limit any policy of insurance, contract, evidence of coverage
19 or certificate [that provides] providing coverage of the type specified
20 in subdivisions (1), (2), (4), [(6),] (10), (11) and (12) of section 38a-469,
21 and having a duration of one year or more, on the basis of written
22 information submitted on [,] or with or omitted from an insurance
23 application by the insured if the insurer or health care center failed to
24 complete medical underwriting and resolve all reasonable medical
25 questions related to the written information submitted on [,] or with or
26 omitted from the insurance application before issuing the policy,
27 contract, evidence of coverage or certificate.

28 (c) No insurer or health care center [may] shall rescind, cancel or
29 limit any such policy, contract, evidence of coverage or certificate more
30 than two years after the effective date of the policy, contract, evidence
31 of coverage or certificate.

32 [(b)] (d) An insurer or health care center shall apply for approval of
33 such rescission, cancellation or limitation by submitting such written
34 information to the Insurance Commissioner on an application in such
35 form as the commissioner prescribes. Such insurer or health care center
36 shall provide a copy of the application for such approval to the insured
37 or the insured's representative. Not later than seven business days
38 after receipt of the application for such approval, the insured or the
39 insured's representative shall have an opportunity to review such
40 application and respond and submit relevant information to the
41 commissioner with respect to such application. Not later than fifteen
42 business days after the submission of information by the insured or the
43 insured's representative, the commissioner shall issue a written
44 decision on such application. The commissioner [may] shall only
45 approve; [such rescission, cancellation]

46 (1) Such rescission or limitation if the commissioner finds that [(1)
47 (A) the written information submitted on or with the insurance
48 application was [false] fraudulent at the time such application was
49 made and the insured or such insured's representative [knew or
50 should have known of the falsity] intentionally misrepresented such
51 information therein, and such submission materially affects the risk or
52 the hazard assumed by the insurer or health care center, or [(2)] (B) the
53 information omitted from the insurance application was [knowingly]
54 intentionally omitted by the insured or such insured's representative [,
55 or the insured or such insured's representative should have known of
56 such omission,] and such omission materially affects the risk or the
57 hazard assumed by the insurer or health care center. Such decision
58 shall be mailed to the insured, the insured's representative, if any, and
59 the insurer or health care center; and

60 (2) Such cancellation in accordance with the provisions set forth in
61 the Public Health Service Act, 42 USC 300gg et seq., as amended from
62 time to time.

63 (e) When investigating a suspected preexisting condition that was
64 not disclosed by an insured, an insurer or health care center providing
65 coverage of the type specified in subdivisions (1), (2), (4), (10), (11) and
66 (12) of section 38a-469 shall limit its investigation based on a submitted
67 claim to (1) issues having a direct relationship to the alleged
68 preexisting condition that is the subject of the claim, and (2) the period
69 preceding the effective date of the policy, contract, evidence of
70 coverage or certificate permitted to be limited or excluded under the
71 preexisting conditions provision of such policy, contract, evidence of
72 coverage or certificate.

73 [(c)] (f) Notwithstanding the provisions of chapter 54, any insurer or
74 insured aggrieved by any decision by the commissioner under
75 subsection [(b)] (d) of this section may, [within] not later than thirty
76 days after notice of the commissioner's decision is mailed to such
77 insurer and insured, take an appeal therefrom to the superior court for
78 the judicial district of Hartford, which shall be accompanied by a

79 citation to the commissioner to appear before said court. Such citation
80 shall be signed by the same authority, and such appeal shall be
81 returnable at the same time and served and returned in the same
82 manner, as is required in case of a summons in a civil action. Said court
83 may grant such relief as may be equitable.

84 (g) An insurer or health care center that accepts a telephonic
85 application for individual health insurance coverage of the type
86 specified in subdivisions (1), (2), (4), (10), (11) and (12) of section 38a-
87 469 shall: (1) Disclose to the applicant, prior to the completion of the
88 application process, (A) the maximum duration of such policy or
89 contract, (B) any preexisting conditions provisions and an accurate
90 description of each such provision, (C) the relevant exclusionary
91 periods pertaining to such preexisting conditions, and (D) the amount
92 of the monthly premium; (2) retain for two years after the effective
93 date of the policy or contract, in a readily retrievable format, a
94 recording of the applicant's complete telephonic application process;
95 (3) mail the applicant a letter that contains a copy of such applicant's
96 completed application, which may include confirmation of such
97 applicant's agreement to the maximum duration of such policy or
98 contract, the preexisting conditions provisions specified in such policy
99 or contract and the relevant exclusionary periods pertaining to such
100 preexisting conditions and the monthly premium specified for such
101 policy or contract. Such letter shall include a notice that such applicant
102 shall be bound by such agreement unless such applicant rescinds such
103 agreement in writing not later than ten days after receipt of such letter;
104 and (4) retain a copy of such letter and such rescission, if applicable,
105 for two years after the effective date of the policy or contract.

106 (h) Any insurance producer or agent who completes or assists in the
107 completion of an application for health insurance providing coverage
108 of the type specified in subdivisions (1), (2), (4), (10), (11) and (12) of
109 section 38a-469, and an insured who signs such application or does not
110 object to information submitted on or with or omitted from such
111 application shall be jointly and severally liable for any claims resulting
112 from any information knowingly omitted or misrepresented by such

113 producer or agent in such application.

114 [(d)] (i) The Insurance Commissioner may adopt regulations, in
115 accordance with chapter 54, to implement the provisions of this
116 section.

117 Sec. 2. Subdivision (1) of section 38a-567 of the general statutes is
118 repealed and the following is substituted in lieu thereof (*Effective*
119 *October 1, 2010*):

120 (1) (A) Any such plan or arrangement shall be renewable with
121 respect to all eligible employees or dependents at the option of the
122 small employer, policyholder or contractholder, as the case may be,
123 except: (i) For nonpayment of the required premiums by the small
124 employer, policyholder or contractholder; (ii) for fraud or
125 misrepresentation of the small employer, policyholder or
126 contractholder or, with respect to coverage of individual insured, the
127 insureds or their representatives; (iii) for noncompliance with plan or
128 arrangement provisions; (iv) when the number of insureds covered
129 under the plan or arrangement is less than the number of insureds or
130 percentage of insureds required by participation requirements under
131 the plan or arrangement; or (v) when the small employer, policyholder
132 or contractholder is no longer actively engaged in the business in
133 which it was engaged on the effective date of the plan or arrangement.

134 (B) Renewability of coverage may be effected by either continuing in
135 effect a plan or arrangement covering a small employer or by
136 substituting upon renewal for the prior plan or arrangement the plan
137 or arrangement then offered by the carrier that most closely
138 corresponds to the prior plan or arrangement and is available to other
139 small employers. Such substitution shall only be made under
140 conditions approved by the commissioner. A carrier may substitute a
141 plan or arrangement as stated above only if the carrier effects the same
142 substitution upon renewal for all small employers previously covered
143 under the particular plan or arrangement, unless otherwise approved
144 by the commissioner. The substitute plan or arrangement shall be

145 subject to the rating restrictions specified in this section on the same
146 basis as if no substitution had occurred, except for an adjustment
147 based on coverage differences.

148 (C) Notwithstanding the provisions of this subdivision, any such
149 plan or arrangement, or any coverage provided under such plan or
150 arrangement may be rescinded for fraud, intentional material
151 misrepresentation or concealment by an applicant, employee,
152 dependent or small employer.

153 (D) Any individual who was not a late enrollee at the time of his or
154 her enrollment and whose coverage is subsequently rescinded shall be
155 allowed to reenroll as of a current date in such plan or arrangement
156 subject to any preexisting condition or other provisions applicable to
157 new enrollees without previous coverage. On and after the effective
158 date of such individual's reenrollment, the small employer carrier may
159 modify the premium rates charged to the small employer for the
160 balance of the current rating period and for future rating periods, to
161 the level determined by the carrier as applicable under the carrier's
162 established rating practices had full, accurate and timely underwriting
163 information been supplied when such individual initially enrolled in
164 the plan. The increase in premium rates allowed by this provision for
165 the balance of the current rating period shall not exceed twenty-five
166 per cent of the small employer's current premium rates. Any such
167 increase for the balance of said current rating period shall not be
168 subject to the rate limitation specified in subdivision (6) of this section.
169 The rate limitation specified in this section shall otherwise be fully
170 applicable for the current and future rating periods. The modification
171 of premium rates allowed by this subdivision shall cease to be
172 permitted for all plans and arrangements on the first rating period
173 commencing on or after July 1, 1995."

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2010	38a-477b

Sec. 2	<i>October 1, 2010</i>	38a-567(1)
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