



General Assembly

Amendment

February Session, 2010

LCO No. 4550

SB0001204550SD0

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 Section 38a-477b of the general statutes is repealed and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 insured or such insured's representative submitted the written
48 information [submitted] on or with the insurance application that was
49 [false] fraudulent at the time such application was made, [and] (B) the
50 insured or such insured's representative [knew or should have known
51 of the falsity] intentionally misrepresented information therein [,] and
52 such [submission] misrepresentation materially affects the risk or the
53 hazard assumed by the insurer or health care center, or [(2)] (C) the
54 information omitted from the insurance application was [knowingly]
55 intentionally omitted by the insured or such insured's representative [,
56 or the insured or such insured's representative should have known of
57 such omission,] and such omission materially affects the risk or the
58 hazard assumed by the insurer or health care center. Such decision
59 shall be mailed to the insured, the insured's representative, if any, and
60 the insurer or health care center; and

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

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

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

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

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

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

113 from any information intentionally omitted or intentionally
114 misrepresented by such producer or agent in such application.

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

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

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

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

145 by the commissioner. The substitute plan or arrangement shall be
146 subject to the rating restrictions specified in this section on the same
147 basis as if no substitution had occurred, except for an adjustment
148 based on coverage differences.

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

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

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2010</i>	38a-477b
Sec. 2	<i>October 1, 2010</i>	38a-567(1)