

CHAPTER 24 ETHICS

Ethics involves a number of topics—many of which were discussed in Chapter 23 dealing with the Insurance Code. Some of these items addressed in the previous chapter are unfair trade and claims practices, fiduciary duty, fraudulent claims, misrepresentation, and concealment.

PROFESSIONAL ORGANIZATIONS

The insurance industry is regulated by the state government and the federal government and through self-regulation. This self-regulation comes from the NAIC as well as through company and individual memberships in a number of professional organizations and trade associations.

- CLU—Chartered Life Underwriters (life and disability agents who have earned the CLU designation).
- CPCU—Chartered Property and Casualty Underwriters (property and casualty agents who have earned the CPCU designation)
- PIA—Professional Insurance Agents
- CIC—Certified Insurance Counselors
- NAIFA—National Association of Insurance and Financial Advisors
- IBA West—Insurance Brokers and Agents of the West
- American Agents Alliance

These professional groups offer programs to their members to foster better knowledge concerning insurance products, laws, and regulations in order to improve the professional stature of their members. Each of these organizations has developed a code of ethics. These codes usually will include placing the insured's interest first, adhering to laws and regulations, and educating the public about insurance.

PAYMENT OF COMMISSIONS AND FEES

In general, only licensed insurance agents with a current agency contract can receive commissions. However, an heir of a licensed agent may receive commission after the death of the agent. An agent also may service and continue to receive renewal commissions for auto policies up to two years following termination of the agent's contract with the insurer.

An insurer may charge a policy fee to cover the administrative expense involved in issuing the insurance contract. Only insurers are allowed to charge a policy fee—not agents or brokers.

A licensed life agent may present a proposal for insurance to a prospective policyholder on behalf of a life insurer for which the life agent is not specifically appointed and may send an application for insurance to that insurer. (Life agents cannot transmit an application to an insurer that only uses exclusive agents.) If a policy of insurance is issued, the insurer is considered to have authorized the agent to act on its behalf. The insurer must forward to the commissioner a notice of appointment of the life agent not more than 14 days after the life agent submits an application for insurance to the insurer for which the insurer issues a policy. Any payment made by the prospective insured must be made in the form of a draft, check, cashier's check, traveler's check, money order, or similar instrument made payable to the insurer. (CIC 1704.5)

Premium Finance Considerations: If an agent/broker is going to be compensated for arranging, directing, or performing services in connection with a premium financing agreement, he must disclose to the insured in writing the amount of compensation he will receive from the premium financier before the premium finance agreement is executed. The agent/broker must maintain records regarding premium finance arrangements for three years and make available to the commissioner a list of accounts in connection with which he has accepted compensation. These requirements do not apply with respect to interest paid to the broker/agent by the premium financier based upon delay in payment of the premium due the insurer. (CIC 778.2)

Policy Replacement:

Life and annuity policies: replacement rules (CIC 10509-10509.9)

Purpose of Replacement Rules applicable to all individual life insurance and annuity policies are:

1. To regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities.
2. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by: (a) assuring that the purchaser receives information with which a decision can be made in his best interest; (b) reducing the opportunity for misrepresentation and incomplete disclosures; and (c) establishing penalties for failure to comply with the requirements of the code.

Definition: Replacement is a transaction in which new life insurance or a new annuity is purchased and it is known or should be known by the proposing agent, broker, or insurer that as a result of the transaction existing life insurance or annuity will be:

- Lapsed, forfeited, surrendered or otherwise terminated.
- Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by using non-forfeiture benefits or other policy values.
- Changed to effect either a reduction in benefits or in the length of time for which coverage would remain in force or for which benefits would be paid.
- Reissued with any reduction in cash value.
- Pledged as collateral for a loan or subjected to total loans for an aggregate amount exceeding 25% of the loan value.

Transactions Excluded

- 1) Credit life insurance.
- 2) Group life insurance or group annuities.
- 3) An application to the existing insurer to exercise a contractual change or conversion privilege.
- 4) Life insurance to replace life insurance under a binding or conditional receipt issued by the same insurer.
- 5) Transactions where the replacing insurer and the existing insurer are the same or subsidiaries under common ownership and control as long as replacing agents perform their required duties. These duties include to provide and leave with the applicant a written statement containing information relating to premiums, cash values, death benefits, and outstanding indebtedness, and dividends and dividend accumulations, if any, for the existing policy, both immediately before and after replacement, and for the proposed life insurance or annuity.

Duties of Agents in Replacement Transactions

An agent must submit to the insurer with an application for insurance:

1. A statement signed by the applicant as to whether or not replacement of existing life insurance or annuity is involved.
2. A statement signed by the agent as to whether the agent knows if replacement is involved or not.

If replacement is involved, the agent must obtain two copies of a “Notice Regarding Replacement of Life Insurance” signed by both the agent and the applicant. One copy must be left with the applicant. The second copy must be submitted to the replacing insurer with the application. The agent must also submit a list of all existing life insurance or annuity policies to be replaced with the name of the insurer, the insured, and the policy number for each. The agent must leave with the applicant the original or a copy of all printed communications used in his presentation.

The “Notice Regarding Replacement” states:

REPLACING YOUR LIFE INSURANCE OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

We are required by law to notify your existing company that you may be replacing their policy.

(applicant)

(agent)

(date)

Duties of Life Insurers

Every life insurance company must:

1. Inform its field personnel of the requirements regarding replacement transactions.
2. Require that agents submit, with every application for life insurance or annuity, a statement signed by the applicant indicating if the proposed policy will replace any existing life insurance or annuity.

Duties of Life Insurers Using Agents

A life insurer that uses agents must:

1. Require the agent to submit a signed statement as to whether he knows if replacement is involved or not.
2. If replacement is involved, require the agent to submit a list of all policies to be replaced with the names of insurers, insureds, and contract numbers.
3. Within 3 working days after receiving the application, the replacing insurer must send to an existing insurer a written notice of the policies to be replaced and information about the replacement

policy. When the policy is delivered, the replacing insurer must notify the policyholder that he is entitled to a 20-day free look.

4. An existing insurer or agent that tries to conserve the existing business must give the policyholder a complete summary of the existing policy within 20 days after being notified of the replacement. If the replacing insurer asks for it, the existing insurer must provide a copy of the policy summary or ledger statement used in the conservation within 5 working days after the request is received.
5. The replacing insurer must maintain evidence of the “notice regarding replacement”, the policy summary, the contract summary, and any ledger statements used. The existing insurer must maintain evidence of policy summaries, contract summaries, or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least 3 years.

Direct Response Sales

Although an insurer who markets on a direct response basis does not propose replacement of any policies, if replacement is involved, the company must send the applicant a “Notice Regarding Replacement of Life Insurance”. If the insurer proposed the replacement, the insurance company must:

1. Send the applicant a “Notice Regarding Replacement”.
2. Ask the applicant to provide with the application a list of all existing life insurance or annuity policies to be replaced including the name of the insured and insurer for each contract.
3. After the list of policies is received, notify an existing insurer of policies to be replaced and information about the replacement policy.

Materially Inaccurate Presentations

It is a violation if an agent or insurer recommends the replacement or conservation of an existing policy by use of a materially inaccurate presentation or comparison of an existing contract’s premiums and benefits or dividends and values, if any.

Patterns of action by policyowners who purchase replacement policies from the same agent after indicating on applications that replacement is not involved, shall constitute a rebuttable presumption of the agent’s knowledge that replacement was intended in connection with the sale of

those policies, and such patterns of action shall constitute a rebuttable presumption of the agent's intent to violate the insurance code.

Penalties

An agent or other person or entity engaged in the business of insurance, other than an insurer, who violates replacement rules is liable for administrative penalties of no less than \$1,000 for the first violation. If there is a second or subsequent violation of these rules, the penalty is no less than \$5,000 and no more than \$50,000 for each violation.

Any insurer who violates replacement rules is liable for administrative penalties of no less than \$10,000 for the first violation. Any insurer who violates the rules with a frequency as to indicate a general business practice or commits a knowing violation of the rules, is liable for administrative penalties of no less than \$30,000 and no more than \$300,000 for each violation.

Medicare Supplements

Requirements for Replacement of Coverage

No insurer, broker, agent, or other person shall cause an insured to replace a Medicare supplement insurance policy unnecessarily. In recommending replacement of any Medicare supplement insurance, an agent shall make reasonable efforts to determine the appropriateness to the potential insured.

Application forms shall include the following statements and questions designed to elicit information as to whether, as of the date of the application, the applicant has other Medicare supplement insurance in force, or whether the Medicare supplement policy or certificate is intended to replace any other disability coverage presently in force.

Statements:

1. You do not need more than one Medicare supplement policy.
2. If you are 65 or older, you may be eligible for benefits under Medi-Cal or Medicaid and may not need a Medicare supplement policy.
3. Benefits and premiums under your Medicare supplement policy will be suspended during your entitlement to Medi-Cal or Medicaid for up to 24 months. You must request this suspension within 90 days of becoming eligible for Medi-Cal or Medicaid. Once you are no longer eligible for Medi-Cal or Medicaid, your insurance policy will be reinstated if you request it within 90 days after losing entitlement.

4. "If you want to discuss buying Medicare supplement insurance with a trained insurance counselor, call the California Department of Insurance's toll-free number 1-800-927-HELP and ask how to contact your local Health Insurance Counseling and Advocacy Program (HICAP) office. HICAP is a service provided free of charge by the state of California."

Questions:

1. Do you have any other Medicare supplement insurance coverage, including an HMO contract? If so, with what company?
2. Do you have any other health or disability insurance coverage? If so, what company? What kind of policy? Would the benefits duplicate the benefits in this Medicare supplement policy?
3. Do you intend to replace any health or disability insurance coverage with this policy?
4. Are you eligible for or receiving benefits from Medi-Cal?

Each agent shall list on the same form any other disability insurance policies he or his company has sold to the applicant. The list shall include all policies that are still in force and all policies sold in the last five years that may no longer be in force.

In the case of the direct response insurer, a copy of the application, signed by the applicant and acknowledged by the insurer, shall be returned to the applicant upon or before delivery of the policy.

Upon determining that a sale will involve replacement, an insurer or its agent, shall furnish the applicant, prior to issuing or delivering the Medicare supplement policy or certificate, a replacement notice. Direct response insurers shall deliver the replacement notice along with the policy or certificate. One copy of the notice signed by the applicant and the agent or insurer shall be provided to the applicant and an additional signed copy shall be retained by the insurer. The replacement notice shall be printed in no less than 10-point type in substantially the following form: (CIC 10197)

(Insurer's name and address)

NOTICE TO APPLICANT PLANNING TO REPLACE MEDICARE SUPPLEMENT COVERAGE

SAVE THIS NOTICE! IT MAY BE IMPORTANT IN THE FUTURE.

If you intend to cancel or terminate existing Medicare supplement insurance and replace it with coverage issued by (company name),

please review the new coverage carefully and replace the existing coverage ONLY if the new coverage materially improves your position. DO NOT CANCEL YOUR PRESENT COVERAGE UNTIL YOU HAVE RECEIVED YOUR NEW POLICY AND ARE SURE THAT YOU WANT TO KEEP IT.

If you decide to purchase the new coverage, you will have 30 days after you receive the policy to return it to the insurer, for any reason, and receive a refund of your money.

If you want to discuss buying Medicare supplement insurance with a trained insurance counselor, call the California Department of Insurance's toll-free number 1-800-927-HELP, and ask how to contact your local Health Insurance Counseling and Advocacy Program (HICAP) office. HICAP is a service provided free of charge by the state of California.

STATEMENT TO APPLICANT FROM THE INSURER AND AGENT: I have reviewed your current health insurance coverage. To the best of my knowledge, the replacement of insurance involved in this transaction does not duplicate coverage. In addition, the replacement coverage contains benefits that are clearly and substantially greater than your current benefits for the following reasons:

_____ Additional benefits that are:_____

_____ No change in benefits, but lower premiums.

_____ Fewer benefits and lower premiums.

_____ Other reasons specified here:_____

DO NOT CANCEL YOUR PRESENT POLICY UNTIL YOU HAVE RECEIVED YOUR NEW POLICY AND ARE SURE THAT YOU WANT TO KEEP IT.

(Signature of Agent, Broker, or Other Representative)

(Signature of Applicant)

(Date)

Standards for Marketing (CIC 10197.1)

Every insurer marketing Medicare supplement insurance coverage in this state, directly or through its producers, shall do all of the following:

1. Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.
2. Establish marketing procedures to assure excessive insurance is not sold or issued.
3. Establish marketing procedures which set forth a mechanism or formula for determining whether a replacement policy or certificate contains benefits that are of clearly and substantially greater benefit to the insured than the replaced coverage, for purposes of triggering first-year commissions.
4. Display prominently on the first page of the policy the following:
“Notice to buyer: This policy may not cover all of your medical costs.”
5. Inquire and otherwise make every reasonable effort to identify whether a prospective purchaser for Medicare supplement insurance already has insurance and the types and amounts of that insurance.
6. Establish auditable procedures for verifying compliance with the code.

In addition to other unfair trade practices identified in the code, the following acts and practices are prohibited:

1. **Twisting:** Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies of insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
2. **High Pressure Tactics:** Employing any method of marketing having the affect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
3. **Cold Lead Advertising:** Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

Multiple Policies or Certificates Prohibited (CIC 10197.2)

Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

Reporting of Multiple Policies (CIC 10197.3)

On or before March 1, every insurer providing Medicare supplement insurance coverage in California shall report the following information for every individual resident of this state for which the insurer has in force more than one Medicare supplement insurance policy or certificate:

1. Policy and certificate number.
2. Date of issuance.

The items set forth above shall be grouped by individual policyholder.

Long-Term Care Insurance

All insurers, brokers, agents and other engaged in the business of selling long-term care insurance owe a policyholder or a prospective policyholder a duty of honesty, and a duty of good faith and fair dealing. (CIC 10234.8)

Cold leading advertising does not disclose in a conspicuous manner that the purpose of the marketing is solicitation of insurance and that contact will be made by agent or insurance company. An agent, broker, or other person who contacts a consumer as a result of receiving information generated by a cold lead device shall immediately disclose that fact to the consumer. (CIC 10234.9(c))

When a long-term care policy is replaced, the sales commission that is paid by the insurer must be calculated based on the difference between the annual premium of the replacement coverage and that of the original coverage. If the premium on the replacement product is less than or equal to the premium for the product being replaced, the sales commission is limited to the percentage of sale normally paid for renewal of long-term care policies or certificates. Replacement is contingent upon the insurer's declaration that the replacement policy materially improves the position of the insured. This provision does not apply to replacement of group insurance. (CIC 10234.97(a))

For the purposes of this section, "commission or other compensation" includes financial or non-financial remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, bonuses, gifts, prizes, awards, and finder's fees. (CIC 10234.97(b))

Replacement of Long-Term Care

No insurer, broker, agent, or other person shall cause a policyholder to replace a long-term care insurance policy unnecessarily. Nothing in the code shall be construed to allow an insurer, broker, agent, or other person to cause a policyholder to replace a long-term care insurance policy that will result in a decrease in benefits and an increase in premium.

It shall be presumed that any third or greater policy sold to a policyholder in any 12-month period is unnecessary. This does not apply to those instances in which a policy is replaced solely for the purpose of consolidating policies with a single insurer. (CIC 10234.85)

Replacement of Existing Insurance: Notice (CIC 10235.16)

Long-term care insurance application forms shall include a question designed to elicit information as to whether the proposed insurance is intended to replace any other accident and sickness or long-term care insurance presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agent shall furnish the applicant, prior to issuance or delivery of a policy or certificate, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of this notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following form:

“NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance coverage to be issued by (company name) Insurance Company. Your new coverage provides thirty (30) days within which you may decide, without cost, whether you desire to keep the coverage. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new coverage.

Health conditions which you may presently have (pre-existing conditions), may not be immediately or fully covered under the new coverage. This could result in denial or delay in payment of benefits under the new coverage, whereas a similar claim might have been payable under your present coverage.

You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present coverage. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

If, after due consideration, you still wish to terminate your present coverage and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your coverage had never been in force. After the application has been completed and before you sign it, re-read it carefully to be certain that all the information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

(Date)

(Applicant's Signature)"

The replacement notice shall include the following statement:

COMPARISON TO YOUR CURRENT COVERAGE: I have reviewed your current long-term care coverage. To the best of my knowledge, the replacement of insurance involved in this transaction materially improves your position for the following reasons:

_____Additional or different benefits (please specify)_____

_____No change in benefits, but lower premiums.

_____Fewer benefits and lower premiums.

_____Other (please specify)_____

(Signature of Agent and Name of Insurer)

(Signature of Applicant)

(Date)

Replacement of Existing Insurance Notice: Direct Response Solicitation (CIC 10235.18)

Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy or certificate. The required notice shall be provided in the following form:

“NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care coverage delivered herewith issued by (company name) Insurance Company. Your new coverage provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy or certificate. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new coverage.

Health conditions which you may presently have (pre-existing conditions), may not be immediately or fully covered under the new coverage. This could result in denial or delay in payment of benefits under the new coverage, whereas a similar claim might have been payable under your present coverage.

You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy coverage. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(To be included only if the application is attached to the policy or certificate). If, after due consideration, you still wish to terminate your present coverage and replace it with new coverage, read the copy of the application attached to your new coverage and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (company name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)”

For group coverage not subject to the 30-day return provision, the notice shall be modified to reflect the appropriate time period in which the policy may be returned and premium refunded.

Free Look

Every policy of individual life insurance with a face value of less than \$10,000 which is delivered or issued after July 1, 1974 must have printed on it or attached to it a notice stating that after receipt of the policy by the owner, the policy may be returned by the owner for cancellation by delivering it or mailing it to the insurer or to the agent through whom it was purchased. The period set forth to return the policy cannot be less than 10 days nor more than 30 days. The insured can return the policy any time during this specified period. This voids the policy from the beginning and all premiums paid and any policy fee paid for the policy must be refunded to the owner. This section does not apply to individual life insurance policies issued in connection with a credit transaction or issued under a contractual policy change or conversion privilege provision contained in the policy. (CIC 10127.7)

Every policy of individual life insurance delivered after January 1, 1990 must have a notice printed on the policy or attached to the policy stating that, after receipt of the policy by the owner, the policy may be returned by the owner for cancellation by delivering it or mailing it to the insurer or to the agent through whom it was purchased. The period of time set forth by the insurer for return of the policy by the insured shall not be less than 10 days nor more than 30 days. By delivering or mailing the policy during the cancellation period, the owner shall void the policy from the beginning, and all premiums paid and any policy fee paid for the policy shall be refunded by the insurer to the owner within 30 days from the date the insurer is notified that the owner has canceled the policy. In the case of variable annuity contracts, variable life insurance contracts, and modified guaranteed contracts, if the policy is returned during the specified period, the owner is entitled to a refund of account value and any policy fee paid for the policy. The refund shall be made by the insurer within 30 days of notice of cancellation by the owner. (CIC 10127.9)

Every policy of individual life insurance and individual annuity contract initially delivered or issued to a senior citizen in this state on and after July 1, 2004 must have a notice printed or attached to the policy stating that the policy may be returned by the owner for cancellation by delivering it or mailing it to the insurer or agent from whom it was purchased. In this context, a senior citizen means an individual who is 60 years of age or older on the date of policy purchase. This period of free look shall not be less than 30 days. During the 30-day cancellation period, the premium for a variable annuity may be invested only in fixed-income investments and money market funds unless the investor specifically directs that the premium be invested in the mutual funds underlying the variable annuity contract. In the case of individual life insurance policies and variable annuity contracts for which the owner did not direct that the premium be invested in the

mutual fund underlying the contract, the owner is entitled to be refunded all premiums paid and any policy fee paid. In the case where the owner directed that the premium be invested in the mutual funds underlying the contract during the 30-day cancellation period, the owner will be entitled to a refund of the account value. In all cases, the insurer is to make the refund to the owner within 30 days. (CIC 10127.10)

After January 1, 1995 every insurer and life agent offering the sale of individual life insurance policies or individual annuity contracts to senior citizens in this state who uses non-preprinted illustrations of non-guaranteed values shall disclose on those illustrations or on an attached cover sheet, in a manner that makes the notice more prominent than the surrounding material, the following statement:

“THIS IS AN ILLUSTRATION ONLY. AN ILLUSTRATION IS NOT INTENDED TO PREDICT ACTUAL PERFORMANCE. INTEREST RATES, DIVIDENDS, OR VALUES THAT ARE SET FORTH IN THE ILLUSTRATION ARE NOT GUARANTEED, EXCEPT FOR THOSE ITEMS CLEARLY LABELED AS GUARANTEED.”

All pre-printed policy illustrations must contain this notice in 12-point bold print on the illustration form itself or on an attached cover sheet in a conspicuous manner. All pre-printed illustrations containing non-guaranteed values shall show the columns of guaranteed values in bold print. All other columns used in the illustration shall be in standard print. “Values” includes cash value, surrender value, and death benefit. (CIC 10127.11)

Advertising of Term Life Insurance

There are rules to assure truthful and adequate disclosure of all material and relevant information in the advertising of term life insurance that is directed at individuals age 55 or older. Such advertisements shall:

- ❑ Clearly distinguish basic life insurance benefits from supplemental benefits such as accidental death benefits.
- ❑ Prominently disclose any limitations, exceptions, or reductions affecting each benefit.
- ❑ Prominently disclose any condition affecting the insured’s continued insurability. If term coverage ends at a stated age or end of a specified period, that fact must be disclosed.
- ❑ Prominently disclose any change in benefits resulting from aging of the insured, policy duration, or any other factor.

- Prominently disclose any change in premium due to aging of the insured, policy duration, and any other factor. If the insurer has the right to modify premiums in the future, that fact must be disclosed.

If the benefits of an advertised policy decrease based on the insured's age or duration of the policy while premiums remain the same, that fact must be disclosed in either a print or broadcast advertisement. Such disclosure must be in the same form and with the prominence or visible duration that is given to any positive description of benefits or the telephone number and address provided to receive further information. A television or radio advertisement must include in the spoken text the following warning: "Policy (or certificate) benefits and limitations should be carefully examined prior to purchase."

The commissioner may adopt a term life insurance monetary value index similar to the Life Insurance Surrender Cost Index to be disclosed in all advertisements of term life insurance for persons age 55 and older and on all policies and certificates of that insurance. This index shall take into consideration actual premiums and policy benefits and the manner in which they are affected with the passage of time. The index will be based on the assumption that policies will be retained at least 10 years.

In addition to any other penalty provided by law, the commissioner may suspend an insurer's certificate of authority to transact life insurance for violation of the rules regarding the advertisement of term life insurance. (CIC 10127.8)

Acceptable Methods of Delivery

Policy delivery is required in order to begin a statutory free-look period. Delivery may be accomplished by:

- Registered or certified mail
- Personal delivery with a signed, written receipt of delivery
- First-class mail with a signed, written receipt of delivery
- Other reasonable means determined by the Commissioner

If one of the above methods is not used, the burden of proof is on the insurer to establish that the policy was delivered. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid the policy premiums. (CIC 10113.6)

SPECIAL CONCERNS—SENIOR CITIZENS (CIC 785-789.10)

All insurers and licensees owe a prospective insured who is 65 years of age or older, a duty of honesty, good faith, and fair dealing.

All brokers, agents, or other entities offering disability to persons 65 or older shall provide the prospective insured with a full and accurate written comparison with health coverage, and shall explain the relationship of the proposed coverage to any existing health benefits provided by Medicare, Medi-Cal, or any other health benefits available to the applicant. The commissioner may prescribe a standard comparison form and informational brochure to be distributed to every prospective insured at the time insurance is offered.

Any advertisement or other device designed to produce leads based on a response from a potential insured which is directed towards persons 65 or older shall prominently disclose that an agent may contract the applicant. No insurer, licensee, or other entity shall solicit seniors by using a true or fictitious name that is deceptive or misleading. Advertisements shall not use names or symbols that are similar to government agencies, non-profit or charitable institutions, or senior organizations as this could mislead the public. No advertisement for an event where insurance products will be offered for sale may use the terms "seminar," "class," "informational meeting," or other similar words unless it adds "and insurance sales presentation" in the same size and font.

All advertisements used by insurance licensees shall have written approval of the insurer before they may be used. Advertisements may not imply that members of a particular class will receive reduced rates when the insurance is in fact being sold on an individual basis.

An insurer or other licensee shall not knowingly sell disability insurance providing health benefits directly to a Medi-Cal beneficiary who is 65 or older. Nor shall an insurer or licensee replace a disability insurance policy or certificate unnecessarily or sell a disability policy that results in the insured having coverage for medical benefits for more than 100% of actual medical expenses. No insurer or licensee shall promote overloading. "Overloading" is the possession by an insured of functionally identical coverages that overlap or duplicate benefits. The application to sell disability insurance to seniors shall contain questions designed to discover if other health and disability coverage is in force.

Any licensee or other entity (other than an insurer) that violates these rules is liable for an administrative penalty of no less than one thousand dollars (\$1,000) for the first violation. For a second or subsequent violation the administrative penalty is no less than five thousand dollars (\$5,000) and nor more than fifty thousand dollars (\$50,000) for each violation. An insurer violating these rules is liable for an administrative penalty of ten thousand dollars (\$10,000) for a first violation. If an insurer violates these rules with a frequency as to indicate a general business practice, the administrative penalty is no less than thirty thousand dollars

(\$30,000) and no more than three hundred thousand dollars (\$300,000) for each violation.

Insurance policies or certificates of disability insurance sold to persons age 65 or older shall return to policyholders or certificate holders benefits that have a minimum loss ratio of 60% for individual policies and 75% for group policies. The loss ratio shall be on the basis of incurred claims experience and earned premiums.

Sales of disability insurance as well as Medicare supplement insurance and long-term care insurance sold to persons aged 65 years or older, shall be registered by the insurer with the commissioner.

If a life agent offers to sell an elder (anyone 65 or older) any life insurance or annuity product, the life agent shall advise in writing that the liquidation of any assets to fund the purchase may have tax consequences and that the elder or elder's agent may wish to consult independent legal or financial advice.

The following applies to the sale, offering for sale, or generation of leads for the sale of life insurance, including annuities, to senior insureds or prospective insureds by any person.

Any person who meets with a senior in the senior's home is required to deliver a notice in writing to the senior no less than 24 hours prior to that individual's initial meeting in the senior's home. If the senior has an existing insurance relationship with an agent and requests a meeting with the agent in the senior's home the same day, a notice shall be delivered to the senior prior to the meeting. The notice shall be in substantially the following form, with the appropriate information inserted, in 14-point type:

(1) During this visit or a follow-up visit, you will be given a sales presentation on the following (indicate all that apply):

____ Life insurance, including annuities

____ Other insurance products (specify):_____.

(2) You have the right to have other persons present at the meeting, including family members, financial advisors or attorneys.

(3) You have the right to end the meeting at any time.

(4) You have the right to contact the Department of Insurance for information, or to file a complaint. (The notice shall include the consumer assistance telephone numbers at the department.)

(5) The following individuals will be coming to your home: (list all attendees, and insurance license information, if applicable)

Upon contacting the senior in the senior's home, the person shall, before making any statement other than a greeting, or asking the senior any other questions, state that the purpose of the contact is to talk about insurance, or to gather information for a follow-up visit to sell insurance, if that is the case, and state all of the following information:

____The name and titles of all persons arriving at the senior's home.

____The name of the insurer represented by the person, if known.

Each person attending a meeting with a senior shall provide the senior with a business card or other written identification stating the person's name, business address, telephone number, and any insurance license number.

The persons attending a meeting with a senior shall end all discussions and leave the home of the senior immediately after being asked to leave by the senior.

A person may not solicit a sale or order for the sale of annuity or life insurance policy at the residence of a senior, in person or by telephone, by using any plan, scheme, or ruse that misrepresents the true status or mission of the contact.

Post Sales Contact

Agents should maintain post sales contact with clients. This is especially true when dealing with senior citizens. Elderly individuals might not understand their policies' coverage, might not understand the procedure for making a claim, or might even forget they own a policy and have coverage.

Pretext Interviews

Pretext interviews are illegal. A pretext interview is when the interviewer does not reveal his true identity, pretends to be someone who he is not, or misrepresents the true purpose of the interview. The insurance industry does not want unscrupulous agents preying on senior citizens by selling them unnecessary policies or policies that are over-priced.

Pretext interviews are legal when conducted by insurance adjusters when there is sufficient evidence of fraud or material misrepresentation. (CIC 791.03)

Post Claims Underwriting

No insurer issuing or providing any policy of disability insurance covering hospital, medical, or surgical expenses shall engage in the practice of post claims underwriting. Post claims underwriting means the rescinding, canceling, or limiting of a policy or certificate due to the insurer's failure to complete medical underwriting and resolve all reasonable questions arising from written information submitted on or with an application before issuing the policy or certificate. (CIC 10384)

Insurers cannot legally refuse to pay a claim which is not excluded by the contract. As long as the applicant for insurance answered all questions on the application form truthfully, the insurer must cover the claim. Of course, if the applicant lied or concealed material information, the insurer would have the right to refuse coverage or to rescind the policy.

The applications for Medicare supplement insurance and long-term care insurance contain questions to elicit information concerning the applicant's health status. This is to make sure that there is not a problem in the future regarding his/her coverage.

DISCLOSURE OF FEES

An insurance company can charge a policy fee to cover the expense of issuing the policy. Only insurers are allowed to charge a policy fee.

It is against the law for any person to charge a fee for performing the services of an agent. An example would be a broker in delivering a policy is doing a service normally done by an agent. The broker cannot charge a fee for this service.

A broker does not represent an insurer. A broker represents his client in insurance transactions and is paid for his services. The broker must have a written agreement signed by the client for whom services are performed.

If an analyst sells a policy, he may not charge a fee for any activity usually associated with the duties of an agent (e.g. servicing a policy). To charge a fee, the licensee must have a written agreement signed by the party to be charged. The agreement must include:

1. A statement that information and services about insurance policies may be obtained directly from insurers without cost.
2. A statement outlining the services to be performed by the analyst for which a fee is to be charged.
3. The fee to be charged.

4. A statement indicating that if the analyst also holds an insurance license that he may receive commissions for the sale of products.

A copy of such agreement must be retained by the licensee for not less than three years after the services have been fully performed. (CIC 1848)

PROFESSIONAL IMAGE CONSIDERATIONS

In order to improve the knowledge and image of insurance agents, the state of California requires pre-licensing education as a prerequisite to obtaining a license. Individuals wishing to apply for a property broker/agent license must complete 20 hours of instruction in the area of property insurance. Those wishing to sell casualty insurance will need to obtain a casualty broker/agent license and complete 20 hours of instruction in that area. Applicants for both the property and casualty broker/agent license will need to complete 40 hours of training. Individuals wishing to apply for a life-only license must complete 20 hours of instruction in the area of life insurance. This license allows the agent to transact insurance coverage on human lives including benefits of endowment and annuities and may include benefits in the event of death or dismemberment by accident and benefits for disability income. Individuals wishing to apply for an accident and health agent license must complete 20 hours of instruction relating to health insurance. The accident and health license entitles the agent to transact insurance coverage for sickness, bodily injury, and accidental death including benefits for disability income, 24-hour care coverage and long-term care. Applicants for both life-only and accident and health licenses must complete 40 hours of pre-licensing material.

The accident and health curriculum shall also include instruction in workers' compensation and general principles of employers' liability. This requirement is to make sure the licensee understands 24-hour coverage. "Twenty-four coverage" is the joint issuance of a workers' compensation policy with a disability insurance policy, health care service plan contract or other medical insurance coverage for non-occupational injuries and illnesses. (CIC 1626) Under twenty-four hour coverage, the employee is covered whether the injury or illness is work-related or not. There are some savings since only one source coordinates the insurance benefits. There also are disadvantages as there may be conflicts in conversion privileges, dispute resolution, and waiting periods. The twenty-four hour coverage product shall not include a life insurance policy. (CIC 1749.02)

In addition to the above hours, all applicants must complete 12 hours of instruction on ethics and the California Insurance Code. An individual who is currently licensed in another state and has completed a pre-licensing course equivalent in hours to that required by California need only take a 12-hour course on code and ethics. (CIC 1749)

The pre-licensing requirements do not apply to a life agent who is limited by contract to selling funeral and burial expense policies or annuities with face amounts of \$15,000 or less. These individuals must still pass a licensing examination. (CIC 1749.01) Although these licensees are not required to complete any continuing education, they are required to complete the same annuity training as a life agent mentioned on page 23. (CIC 1749.8)

Licensees are subject to continuing education requirements. A life-only and/or accident and health agent, a property/casualty broker-agent, and a personal lines broker-agent are required to complete 24 hours of continuing education per two-year license term. An agent who holds both a life-only and/or accident and health license and a property/casualty license needs only to complete 24 hours of continuing education per license term and may take subjects relating to any insurance license held. A license year upon initial licensing starts on the date the license is issued. After that, each license year starts the first day of the month following the month in which the initial license was issued. A license year ends the following calendar year on the last calendar day of the month in which the initial license was issued. A license term is for two years. (CIC 1629-1630)

Failing to complete the continuing education requirements results in termination of license. In order to reactivate the license, the individual must complete the necessary continuing education requirements, pay late penalties and fees, and reinstate all appointments and endorsements. (CIC 1749.3)

The personal lines agent-broker license is issued for a 2-year term. An individual holding a personal lines agent-broker license shall be required to complete 24 hours of continuing education each license term. The 24 hours must include two hours of ethics continuing education.

A personal lines licensee who wishes to become a property/casualty broker-agent must do the following:

1. Submit an application on a form provided by the commissioner.
2. Complete 20 hours of pre-licensing education in the area of commercial products.
3. Take and pass a qualifying examination covering commercial products. (CIC 1625.5)

Accident and health licensees selling long-term care must complete eight hours of long-term care education every year for the first four years and thereafter eight hours of LTC education prior to each license renewal. These courses shall consist of topics related to long-term care services and long-term care insurance, including, but not limited to, California regulations and requirements, available long-term care services and facilities, changes or improvements in services or facilities, and alternatives to the purchase of private long-term care insurance. (CIC 10234.93) Agents who sell California Partnership must meet long-term care

requirements plus eight hours every two years of California Partnership education. These hours of long-term care and partnership continuing education count toward the required continuing education hours needed by licensees.

A life licensee who wishes to sell annuities must complete 8 hours of continuing education on annuities prior to selling an annuity. This 8 hours counts toward the necessary continuing education requirements. Subsequent renewals will require 4 hours of continuing education on annuities. (CIC 1749.8)

A property/casualty broker-agent and a personal lines broker-agent who sell flood insurance policies under the National Flood Insurance Program (NFIP) need to be properly trained and educated about the NFIP to ensure producers know how to best serve their clients. This requirement may be satisfied by taking a continuing education course relating to the NFIP which may be approved for 3 hours of continuing education. This is a one-time required course and it counts toward the necessary total hours of continuing education.

A property broker-agent or personal lines broker-agent who sells homeowners' insurance policies will need to take a 3-hour course dealing with homeowners' valuation. The reason for this course is to set out the requirements applicable to replacement value and replacement cost estimates in order to create a more consistent, comprehensive, and accurate replacement cost calculation. Agents are only required to take this course once and it counts toward continuing education credits.

Property/casualty broker-agents and life-only and/or accident and health agents must complete 4 hours of ethics training each license term. Personal lines broker-agents must complete 2 hours of ethics continuing education each license term. (CCR 2188.6)

REVIEW QUESTIONS

1. The only continuing education that a licensee selling long-term care needs is 8 hours per licensing period.
 - A. True
 - B. False
2. An insurer can refuse to accept an application based on:
 - A. Ancestry
 - B. Religion
 - C. National origin
 - D. None of the above

3. The purpose of replacement rules regarding life insurance is:
 - A. To protect the rights of the insurance agent to collect commissions.
 - B. To protect the interests of insurers against fraud.
 - C. To protect the interests of life insurance purchasers by establishing standards of conduct to be observed in replacement transactions.
 - D. None of the above.

4. Any insurer who violates replacement rules with such frequency as to indicate that it is a general business practice may be fined up to _____ for each violation.
 - A. \$ 10,000
 - B. \$ 50,000
 - C. \$100,000
 - D. \$300,000

5. A marketing technique that does not disclose that the purpose is to sell insurance and that contact will be made later by an insurance agent is referred to as:
 - A. Twisting
 - B. Cold lead advertising
 - C. High pressure tactics
 - D. Concealment

6. Who is allowed to do a pretext interview under special circumstances?
 - A. An insurance agent
 - B. An underwriter
 - C. An insurance adjuster
 - D. An attorney

7. Regarding post sales contact:
 - A. An agent should never engage in post sales contact.
 - B. Insurers are not allowed to engage in post sales contact.
 - C. Post sales contact is an unfair trade practice.
 - D. Agents should have post sales contact with their clients.

8. Who is allowed to charge a policy fee?
 - A. An insurer
 - B. An insurance agent
 - C. An insurance broker
 - D. All of the above

9. The written agreement of an insurance analyst must include:
- A. The fee to be charged.
 - B. The services to be performed for the fee to be charged.
 - C. Disclosure if the analyst also holds a life insurance license.
 - D. All the above.
10. Replacement of a long-term care policy is considered unnecessary if done:
- A. Once during a 12-month period.
 - B. Twice during a 12-month period.
 - C. Three times during a 12-month period.
 - D. It should never be replaced.
11. Any individual may have more than one Medicare supplement policy regardless of how much of the risk is covered. It is impossible to have too much insurance.
- A. True
 - B. False
12. Agents should attempt to sell Medicare supplement policies and long-term care policies to:
- A. People eligible for Medi-Cal.
 - B. People who might need and can afford the insurance.
 - C. Anyone who is willing to buy such contracts.
 - D. None of the above.