



#INSURECA

# AGENT & BROKER ALERT

California Insurance Commissioner Ricardo Lara

## False and Misleading Long-Term Care Insurance Marketing Tactics

**August 23, 2023** — The California Department of Insurance (Department) has received several complaints regarding misleading marketing and communications by some long-term care insurers and agents in connection with the work of the California Long-Term Care Insurance Task Force (Task Force). These communications falsely assert that a new payroll tax will be imposed in the near future, and that consumers should rush to buy long-term care insurance before the end of 2023.

The Department condemns these tactics and will take all steps it deems appropriate to curtail these ploys, up to, and including, legal action. These tactics are not only unfair to the insurers and agents who are acting honestly and ethically, they are also illegal.

### The Task Force:

The Task Force was established by Assembly Bill 567 (2019) to recommend options for designing and implementing a public long-term care (LTC) insurance program. The Task Force was charged with producing two reports: one that explores the feasibility of the proposed designs, and the other that provides an actuarial analysis of the designs. The feasibility report was submitted to the Governor and the Legislature in December 2022. The actuarial report will be submitted to the Legislature by January 1, 2024. At that time, the Legislature may or may not choose to proceed with legislation to establish a public program. If the Legislature does proceed with such legislation, it may choose to adopt some, all, or none of the recommendations of the Task Force.

Unfortunately, several agents and insurers have chosen to rely on fear tactics and misleading consumer communications to persuade consumers to purchase LTC policies prior to 2024, including assertions that a program will be enacted on January 1, 2024, that the Legislature has already approved a tax, and that January 1, 2024, is the deadline to have an LTC policy in place to avoid a tax. None of these statements are true.

### Opt-Out Deadline:

Pursuant to the mandates of AB 567, the Task Force recommended various possible structures for a public LTC program, including different funding mechanisms. One potential means of funding such a program is by instituting a payroll tax on California employees. The Task Force has recommended that consideration be given to allowing residents who have a qualifying private LTC policy to opt out of the public program, which would mean they would not be subject to a payroll tax. It is possible that only policies purchased prior to a certain date would qualify to allow a resident to opt out of the program.

However, all such details are speculative at this time. The Legislature has: (1) not received the task force's final report; (2) not decided to implement a public program yet; (3) not established the means of funding such a program; (4) not decided if consumers will be allowed to opt out of such a program if they have a private policy; (5) not decided what type of coverage would qualify for opting out; and, (6) not decided what date, if any, would be the cutoff date for purchasing a private policy, among other major policy considerations.

### WHAT YOU NEED TO KNOW

- The California Department of Insurance has received complaints that several agents and insurers are misleading consumers about the need to purchase long-term care (LTC) insurance policies before a state-imposed deadline
- The Legislature has not created a public LTC insurance program
- No payroll tax is being implemented at this time
- There is no enactment date or deadline to buy LTC insurance
- California law protects consumers from false and misleading statements by insurers and agents
- Any communication that states that a public LTC program will be enacted on January 1, 2024, or on any other specific date, is untrue and a presumed knowing violation of the law.

In short, the Legislature has not made any decisions about a public program at all, no payroll tax is being implemented, and there is no “opt-out” date at this time.

### **Prohibited Conduct:**

Making or disseminating any statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading is strictly prohibited by the Insurance Code.<sup>1</sup> Advertisements for disability insurance shall be truthful and not misleading in fact or implication.<sup>2</sup> Insurers, brokers, agents and any others engaged in the business of LTC insurance owe policyholders and prospective policyholders a duty of honesty, good faith, and fair dealing.<sup>3</sup> High pressure tactics are expressly forbidden, including marketing methods that induce purchasing through undue pressure, fright, or threat, whether explicit or implied.<sup>4</sup> Violations are subject to penalties up to \$25,000 per violation for agents and brokers, and up to \$500,000 per violation for insurers.<sup>5</sup>

This alert provides notice to the industry that the Department will not tolerate these unfair tactics and intends to take all steps it deems appropriate to protect consumers. Whether a program will be enacted and the date of enactment are unknown at this time. Any communication that states that a public program will be (or is likely to be) enacted on January 1, 2024, or on any other specific date, is blatantly untrue and is presumed to be a knowing violation of the law. References to inaccurate “deadlines,” “facts,” “mandatory taxes” and other unknown details are not acceptable. Small print disclaimers are not an adequate means of redeeming an otherwise threatening, pressure-filled communication.

Insurers and producers are reminded of their duties of good faith and fair dealing. All insurers and producers are encouraged to review any communications they have already sent, and to issue corrective statements if needed. Any communications about a public insurance program should be clear that subsequent legislative action would need to be taken before any program could be established, that there is no enactment date or deadline to buy long-term care insurance at this time, and all details are yet to be determined.

For more information on the Task Force, including its reports, please visit: <https://www.insurance.ca.gov/0500-about-us/03-appointments/lcicf.cfm>

### **Filing a Request for Assistance**

CDI is committed to protecting consumers’ rights. Many questions can be answered over the phone. If we are unable to resolve the issue over the phone, you can file a Request for Assistance form by mail or online on our website. The system will allow you to attach copies of all necessary documents, such as policies, canceled checks and correspondence. Some examples of the issues the Department may be able to help with include:

- Improper Denial of Claim
- Cancellation or non-renewal of a policy
- Delay in settlement
- Alleged misappropriation of premiums paid
- Alleged misrepresentation by an Agent/Broker or solicitor
- Unfair underwriting practices
- Dishonest or deceptive insurance sales tactics

### **Contact Us**

Consumer Assistance Hotline:

1-800-927-4357

TTY 1-800-482-4833

Visit us on the web at:

[www.insurance.ca.gov](http://www.insurance.ca.gov)

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<sup>1</sup> Cal. Ins. Code § 790.03(b).

<sup>2</sup> Cal. Code Regs., tit. 10, § 2536.1(b).

<sup>3</sup> Cal. Ins. Code § 10234.8(a).

<sup>4</sup> Cal. Ins. Code § 10234.93(b)(2).

<sup>5</sup> Cal. Ins. Code § 10234.3