



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

NOTICE

TO: All Admitted and Non-Admitted Insurers and Other Interested Persons

FROM: Policy Approval Bureau, California Department of Insurance

DATE: February 3, 2021

RE: Implementation of Insurance Provisions of Proposition 22

Proposition 22, enacted by California voters on November 3, 2020, added California Business & Professions Code (“B&P”) §7455 that requires Transportation Network Companies (“TNC”) and Delivery Network Companies (“DNC”) (jointly referred to herein as “App-Based Transportation Companies”) to carry, provide, or otherwise make available to their app-based drivers no later than March 16, 2021:¹

- Occupational accidental medical expense coverage. B&P §7455(a)(1).
- Occupational disability income/lost income coverage. B&P §7455(a)(2).
- Accidental death coverage for the benefit of a driver’s spouse and dependents in an amount sufficient to cover burial costs. B&P §7455(b).

On January 12, 2021, several plaintiffs petitioned the California Supreme Court to grant an emergency writ of mandate to stop enforcement of Proposition 22. Today, the

¹ Section 10 of Article II of the California Constitution specifies that “(a) An initiative statute or referendum approved by a majority of votes cast thereon takes effect on the fifth day after the Secretary of State files the statement of the vote for the election at which the measure is voted on, but the measure may provide that it becomes operative after its effective date.” On December 11, 2020, Alex Padilla, California Secretary of State, issued his full, true, and correct statement of the result of the office canvas of the returns of the Nov. 3, 2020 General Election.

Based on Secretary Padilla’s statement, Proposition 22 became effective on December 16, 2020. B&P Code §7455, added by Proposition 22, provides that no network company shall operate in California for more than ninety (90) days unless the network company carries, provides, or otherwise makes available the required insurance coverage. Therefore, App-Based Transportation Companies are required to provide the insurance benefits mandated by Proposition 22 by no later than March 16, 2021.

California Supreme Court denied the petition for writ of mandate, but informed the parties that they may refile their lawsuit in an appropriate lower court. However, pursuant to Article III, Section 3.5 of the California Constitution, the California Department of Insurance (“Department”), as the state administrative agency responsible for enforcing the insurance laws of the state, has no authority to declare a statute unenforceable or unconstitutional, or to refuse to enforce a statute on the basis of it being unconstitutional unless an appellate court has decided that such statute is unconstitutional.

Accordingly, the Department is issuing this Notice in advance of the March 16, 2021 deadline to provide guidance regarding compliance with existing California law when providing the insurance benefits that voters approved with the passage of Proposition 22, and to ensure that insurance coverages mandated by the law are provided while App-Based Transportation company drivers are online with the App-Based Transportation Company’s on-line enabled application or platform.

The occupational accidental medical expense coverage and the occupational disability income/lost income coverage are each included in the definition of “disability” insurance under existing California law. See California Insurance Code (“CIC”) §106. Current California law imposes limits on the types of groups to which a group disability policy may be issued and delivered in California, and imposes various coverage requirements that deviate, in part, from the insurance mandates of Proposition 22. As a result, set forth below is a description of the principal requirements of California law with respect to the several insurance coverages mandated by Proposition 22, and approaches to comply with the requirements of Proposition 22 that are consistent with current California law.

California law with respect to the various insurance coverages mandated by Proposition 22 provides as follows:

- **Group Disability Coverage:** A group disability policy issued and delivered in California must be issued to a group specifically authorized by the California Insurance Code. California law does not authorize a group disability policy to be issued and delivered in California to a group of independent contractors, although it does permit a group disability policy to be issued to an association whose members are independent contractors if the association complies with the applicable statutory requirements. CIC §10270.5(a)(3). Each of the disability benefits mandated by Proposition 22 may be provided through an association group. Any group disability policy issued and delivered in California is subject to the prior approval of the Department. CIC §§10270.9;10290.
- **Group Blanket Disability Insurance:** Similar to the limitations applicable to permissible disability groups, a group blanket disability insurance policy may be

issued and delivered in California only to blanket groups authorized by statute, or specifically authorized by the Insurance Commissioner in his discretion. The blanket groups authorized under the California Insurance Code do not include a group of independent contractors. CIC §10270.2. The Commissioner may, however, specifically authorize a discretionary blanket group consisting of independent contractors. CIC §10270.2.5.

A group blanket disability policy may provide coverage only for risks relating to benefits for death or dismemberment, or for hospital, medical, surgical, or nursing expenses resulting from accident and may not also include the disability income coverage required by Proposition 22. CIC §10270.2.5. Any group blanket disability policy issued and delivered in California is subject to the prior approval of the Department. CIC §§10270.9; 10290.

- **Disability Income Insurance:** Disability income coverage conforming with California law may be combined with the accidental medical expense and accidental death coverages required by Proposition 22 and provided through an association disability group, but not through a blanket disability group.
- **Accidental Death Coverage:** Although accidental death coverage does not typically provide burial benefits, combining burial benefits with accidental death coverage is not prohibited by California law. For purposes of this requirement, burial expenses and death benefit amounts must be determined in accordance with California Labor Code §§4701 and 4702.
- **Automobile Liability Insurance:** Proposition 22: (1) extends the existing laws requiring automobile liability coverage and limits for TNCs and Charter Party Carriers of Passengers (“TCP”); (2) imposes a new requirement on DNCs to maintain at least \$1 million in automobile liability coverage per occurrence where the DNC automobile is not otherwise covered by a policy that complies with CIC §11580.1; and, (3) provides that certain disability benefits required by Proposition 22 must be deducted from uninsured motorist coverage recoveries by the TNC driver. B&P Code §7455(e); CIC §11580.2(h).
- **Out-of-State Group Disability Policy:** A group disability policy that includes the coverages required by Proposition 22 may be issued and delivered outside the State of California and certificates evidencing coverage under such group policy may be issued to California residents without the prior approval by the Department of either the group disability policy form or the certificates if the group policy complies with the law of the state in which it is issued and delivered, and the insurer issuing the policy is licensed in both the state in which the group policy is issued and delivered and California. A group disability policy issued and delivered outside the State of California in compliance with the laws of the state in which it is issued and delivered would not be subject to the permissible group

and substantive coverage requirements under California law applicable to a group disability policy. CIC §10270.9.

- **Surplus Lines:** A group disability policy that includes the coverages required by Proposition 22 may also be issued pursuant to and in full compliance with the surplus lines laws of the State of California. Any coverage required by Proposition 22 placed in full compliance with the surplus lines laws of the State of California would not be subject to the permissible group and substantive coverage requirements under California law.

Any person with questions regarding this Notice, please contact either:

- Leslie Tick, Assistant Chief Counsel, at Leslie.Tick@insurance.ca.gov or
- Vanessa Davenport, Attorney IV, at Vanessa.Davenport@insurance.ca.gov