

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1830 Session of 1989

INTRODUCED BY PISTELLA, ROBINSON, HALUSKA, F. TAYLOR, VAN HORNE, KOSINSKI, COLAIZZO, DeWEESE, GODSHALL, GIGLIOTTI, JOSEPHS, FOX, BELARDI, TIGUE, KUKOVICH, PRESTON, DALEY, THOMAS, RYBAK, DeLUCA, CORRIGAN, McHALE, COWELL, MELIO, BATTISTO, VEON, CAPPABIANCA, MICHLOVIC, PESCI, TRELLO, HERMAN, MAIALE, HOWLETT, HAYDEN, FREEMAN, ITKIN, J. TAYLOR AND E. Z. TAYLOR, JUNE 30, 1989

AS REPORTED FROM COMMITTEE ON YOUTH AND AGING, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 24, 1990

AN ACT

1 Relating to long-term care insurance; providing for limits,
2 disclosure and performance standards; and prescribing powers
3 and duties of the Insurance Commissioner.

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17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. Short title.

20 This act shall be known and may be cited as the Long-Term
21 Care Insurance Act.

22 Section 2. Statement of purpose.

23 The purpose of this act is to promote the public interest, to
24 promote the availability of long-term care insurance policies,
25 to protect applicants for long-term care insurance, as defined,
26 from unfair or deceptive sales or enrollment practices, to
27 establish standards for long-term care insurance, to facilitate
28 public understanding and comparison of long-term care insurance
29 policies, and to facilitate flexibility and innovation in the
30 development of long-term care insurance coverage.

1 Section 3. Scope of act.

2 This act is not intended to supersede the obligations of
3 entities subject to this act to comply with the substance of
4 other applicable insurance laws insofar as they do not conflict
5 with this act, except that laws and regulations designed and
6 intended to apply to Medicare supplement insurance policies
7 shall not be applied to long-term care insurance. A policy which
8 is not advertised, marketed or offered as long-term care
9 insurance or nursing home insurance need not meet the
10 requirements of this act.

11 Section 4. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Applicant." The term means:

16 (1) in the case of an individual long-term care
17 insurance policy, the person who seeks to contract for
18 benefits; and

19 (2) in the case of a group long-term care insurance
20 policy, the proposed certificate holder.

21 "Certificate." Any certificate issued under a group long-
22 term care insurance policy, which policy has been delivered or
23 issued for delivery in this Commonwealth.

24 "Commissioner." The Insurance Commissioner of the
25 Commonwealth.

26 "FUNCTIONALLY NECESSARY." THE TERM MEANS THE APPROPRIATENESS <—
27 OF SERVICES DIRECTED TO ADDRESS THE INDIVIDUAL'S INABILITY TO
28 PERFORM TASKS REQUIRED FOR DAILY LIVING, AS DEFINED THROUGH
29 REGULATION, AND THE INDIVIDUAL'S NEED FOR CONTINUOUS CARE OR
30 SUPERVISION.

1 "Group long-term care insurance." A long-term care insurance
2 policy which is delivered or issued for delivery in this
3 Commonwealth and issued to any of the following:

4 (1) One or more employers or labor organizations, or to
5 a trust or to the trustees of a fund established by one or
6 more employers or labor organizations, or a combination
7 thereof, for employees or former employees, or a combination
8 thereof, or for members or former members, or a combination
9 thereof, of the labor organizations.

10 (2) Any professional, trade or occupational association
11 for its members or former or retired members, or combination
12 thereof, if such association:

13 (i) is composed of individuals, all of whom are or
14 were actively engaged in the same profession, trade or
15 occupation; and

16 (ii) has been maintained in good faith for purposes
17 other than obtaining insurance.

18 (3) An association or a trust or the trustee of a fund
19 established, created or maintained for the benefit of members
20 of one or more associations. Prior to advertising, marketing
21 or offering such policy within this Commonwealth, ~~the~~ ←
22 ~~association or associations, or~~ the insurer of the
23 ~~association or associations,~~ shall file evidence with the ←
24 commissioner that the association or associations have at the
25 outset a minimum of 100 persons and have been organized and
26 maintained in good faith for purposes other than that of
27 obtaining insurance, have been in active existence for at
28 least one year, and have a constitution and bylaws which
29 provide that:

30 (i) the association or associations hold regular

1 meetings not less than annually to further purposes of
2 the members;

3 (ii) except for credit unions, the association or
4 associations collect dues or solicit contributions from
5 members; and

6 (iii) the members have voting privileges and
7 representation on the governing board and committees.

8 Thirty days after such filing, the association or
9 associations will be deemed to satisfy such organizational
10 requirements, unless the commissioner makes a finding that
11 the association or associations do not satisfy those
12 organizational requirements.

13 (4) A group other than as described in paragraphs (1),
14 (2) and (3), subject to a finding by the commissioner that:

15 (i) the issuance of the group policy is not contrary
16 to the best interest of the public;

17 (ii) the issuance of the group policy would result
18 in economies of acquisition or administration; and

19 (iii) the benefits are reasonable in relation to the
20 premiums charged.

21 "Long-term care insurance." Any insurance policy or rider
22 advertised, marketed, offered or designed to provide coverage
23 for not less than 12 consecutive months for each covered person
24 on an expense-incurred, indemnity, prepaid or other basis for
25 one or more FUNCTIONALLY necessary or medically necessary <—
26 diagnostic, preventive, therapeutic, rehabilitative, maintenance
27 or personal care services, provided in a setting other than an
28 acute care unit of a hospital. The term includes group and
29 individual policies or riders, whether issued by insurers,
30 fraternal benefit societies, nonprofit health, hospital and

1 medical service corporations, prepaid health plans, health
2 maintenance organizations or any similar organization. The term
3 does not include any insurance policy which is offered primarily
4 to provide basic Medicare supplement coverage, basic hospital
5 expense coverage, basic medical-surgical expense coverage,
6 hospital confinement indemnity coverage, major medical expense
7 coverage, disability income protection coverage, accident only
8 coverage, specified disease or specified accident coverage or
9 limited benefit health coverage.

10 "MEDICALLY NECESSARY." THE TERM SHALL BE DESCRIBED IN TERMS <—
11 OF APPROPRIATENESS OF TREATMENT OF THE INSURED'S CONDITION,
12 INCLUDING NONMEDICAL SUPPORT SERVICES, BASED ON CURRENT
13 STANDARDS OF ACCEPTABLE MEDICAL PRACTICE. THE TERM MAY EXCLUDE
14 BENEFITS FOR CARE OR SERVICES WHICH ARE PRIMARILY FOR THE
15 CONVENIENCE OF THE INSURED OR THE PERSON'S PHYSICIAN.

16 "Policy." Any policy, contract, subscriber agreement, rider
17 or endorsement delivered or issued for delivery in this
18 Commonwealth by an insurer, fraternal benefit society, nonprofit
19 health, hospital or medical service corporation, prepaid health
20 plan, health maintenance organization, or any similar
21 organization.

22 ~~Section 5. Limits of group long term care insurance.~~ <—

23 SECTION 5. EXTRATERRITORIAL JURISDICTION; GROUP LONG-TERM CARE <—
24 INSURANCE.

25 No group long-term care insurance coverage may be offered to
26 a resident of this Commonwealth under a group policy issued in
27 another state to a group described in paragraph (4) of the
28 definition of "group long-term care insurance" unless this
29 Commonwealth or another state having statutory and regulatory
30 long-term care insurance requirements substantially similar to

1 those adopted in this Commonwealth has made a determination that
2 such requirements have been met.

3 Section 6. Disclosure and performance standards for long-term
4 care insurance.

5 (a) General rule.--The commissioner may adopt regulations
6 that include standards for full and fair disclosure, setting
7 forth the manner, content and required disclosures for the sale
8 of long-term care insurance policies, terms of renewability,
9 initial and subsequent conditions of eligibility, nonduplication
10 of coverage provisions, coverage of dependents, preexisting
11 conditions, termination of insurance, continuation or
12 conversion, probationary periods, limitations, exceptions,
13 reductions, elimination periods, requirements for replacement,
14 recurrent conditions and definitions of terms.

15 (b) Prohibitions.--No long-term care insurance policy may:

16 (1) be canceled, nonrenewed or otherwise terminated on
17 the grounds of the age or the deterioration of the mental or
18 physical health of the insured individual or certificate
19 holder;

20 (2) contain a provision establishing a new waiting
21 period, in the event existing coverage is converted to or
22 replaced by a new or other form within the same company,
23 except with respect to an increase in benefits voluntarily
24 selected by the insured individual or group policyholder; or

25 (3) contain coverage for skilled nursing care only or
26 contain coverage that provides significantly more skilled
27 care in a facility than coverage for lower levels of care.

28 (c) Preexisting condition.--

29 (1) No long-term care insurance policy or certificate
30 shall use a definition of "preexisting condition" which is

1 more restrictive than a definition of "preexisting condition"
2 that means a condition for which medical advice or treatment
3 was recommended by or received from a provider of health care
4 ~~services, within:~~ <—

5 ~~(i) six months preceding the effective date of~~
6 ~~coverage of an insured person who is 65 years of age or~~
7 ~~older on the effective date of coverage; or~~

8 ~~(ii) twelve months preceding the effective date of~~
9 ~~coverage of an insured person who is under 65 years of~~
10 ~~age on the effective date of coverage. SERVICES, WITHIN~~ <—
11 SIX MONTHS PRECEDING THE EFFECTIVE DATE OF COVERAGE OF AN
12 INSURED PERSON.

13 (2) No long-term care insurance policy may exclude
14 coverage for a loss or confinement which is the result of a
15 preexisting condition unless such loss or confinement begins
16 ~~within:~~ <—

17 ~~(i) six months following the effective date of~~
18 ~~coverage of an insured person who is 65 years of age or~~
19 ~~older on the effective date of coverage; or~~

20 ~~(ii) twelve months following the effective date of~~
21 ~~coverage of an insured person who is under 65 years of~~
22 ~~age on the effective date of coverage. WITHIN SIX MONTHS~~ <—
23 FOLLOWING THE EFFECTIVE DATE OF COVERAGE OF AN INSURED
24 PERSON.

25 Section 7. Commissioner's duties.

26 The commissioner may extend the limitation periods set forth
27 in section 6 as to specific age group categories in specific
28 policy forms upon findings that the extension is in the best
29 interest of the public. ~~The commissioner may adopt regulations~~ <—
30 ~~establishing loss ratio standards for long term care insurance~~

1 ~~policies, provided that a specific reference to long term care~~
2 ~~insurance policies is contained in the regulation.~~

3 Section 8. Underwriting standards.

4 The definition of the term "preexisting condition" under
5 section 6(c) does not prohibit an insurer from using an
6 application form designed to elicit the complete health history
7 of the applicant, and, on the basis of the answers on that
8 application, from underwriting in accordance with that insurer's
9 established underwriting standards. UNLESS OTHERWISE PROVIDED IN <—
10 THE POLICY OR CERTIFICATE, A PREEXISTING CONDITION, REGARDLESS
11 OF WHETHER IT IS DISCLOSED ON THE APPLICATION, NEED NOT BE
12 COVERED UNTIL THE WAITING PERIOD DESCRIBED IN SECTION 6(C)(2)
13 EXPIRES. NO LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE MAY
14 EXCLUDE OR USE WAIVERS OR RIDERS OF ANY KIND TO EXCLUDE, LIMIT
15 OR REDUCE COVERAGE OR BENEFITS FOR SPECIFICALLY NAMED OR
16 DESCRIBED PREEXISTING DISEASES OR PHYSICAL CONDITIONS BEYOND THE
17 WAITING PERIOD DESCRIBED IN SECTION 6(C)(2).

18 Section 9. Prior institutionalization.

19 No long-term care insurance policy shall condition ANY <—
20 benefits on a prior stay in an institution or a prior chronic
21 condition.

22 ~~Section 10. Determination of benefits.~~ <—

23 ~~(a) Medical services. The determination to provide medical~~
24 ~~services to the insured under a long term care insurance policy~~
25 ~~shall be made by the attending physician following a personal~~
26 ~~evaluation of the patient's needs.~~

27 ~~(b) Nonmedical support services. The determination to~~
28 ~~provide nonmedical support services to the insured under a long~~
29 ~~term care insurance policy shall be made by the appropriate~~
30 ~~personnel, such as nurses or social workers.~~

1 SECTION 10. LOSS RATIOS. <—

2 THE COMMISSIONER MAY ADOPT REGULATIONS ESTABLISHING LOSS
3 RATIO STANDARDS FOR LONG-TERM CARE INSURANCE POLICIES PROVIDED
4 THAT A SPECIFIC REFERENCE TO LONG-TERM CARE INSURANCE POLICIES
5 IS CONTAINED IN THE REGULATION.

6 Section 11. Right to return; free look provision.

7 ~~(a) Rescission period.~~ Individual long-term care insurance <—
8 policyholders AND GROUP CERTIFICATE HOLDERS WHO CONTRIBUTE TO <—
9 THE COST OF THEIR LONG-TERM CARE COVERAGE shall have the right
10 to return the policy within 30 days of its delivery and to have
11 the premium refunded if, after examination of the ~~policy, the~~ <—
12 ~~policyholder~~ POLICY OR CERTIFICATE, THE POLICYHOLDER OR <—
13 CERTIFICATE HOLDER is not satisfied for any reason. ~~Individual~~ <—
14 ~~long term~~ LONG-TERM care insurance policies AND APPLICABLE GROUP <—
15 CERTIFICATES shall have a notice, prominently printed on the
16 first page of the policy or ~~attached thereto~~ CERTIFICATE, <—
17 stating in substance that the policyholder OR CERTIFICATE HOLDER <—
18 shall have the right to return the policy OR CERTIFICATE within <—
19 30 days of its delivery and to have the premium refunded if,
20 after examination of the policy OR CERTIFICATE, the policyholder <—
21 OR CERTIFICATE HOLDER is not satisfied for any reason. <—

22 ~~(b) Direct response solicitation.~~ A person insured under a <—
23 ~~long term care insurance policy issued pursuant to a direct~~
24 ~~response shall have the right to return the policy within 60~~
25 ~~days of its delivery and to have the premium refunded if, after~~
26 ~~examination, the insured person is not satisfied for any reason.~~
27 ~~Long term care insurance policies issued pursuant to a direct~~
28 ~~response solicitation shall have a notice, prominently printed~~
29 ~~on the first page or attached thereto, stating in substance that~~
30 ~~the insured person shall have the right to return the policy~~

1 ~~within 60 days of its delivery and to have the premium refunded~~
2 ~~if, after examination, the insured person is not satisfied for~~
3 ~~any reason.~~

4 Section 12. Outline of coverage provisions.

5 ~~An outline of coverage shall be delivered to an applicant for~~ <—
6 ~~an individual long term care insurance policy at the time of~~
7 ~~application for an individual policy. In the case of direct~~
8 ~~response solicitation, the insurer shall deliver the outline~~
9 ~~coverage upon the applicant's request but, regardless of the~~
10 ~~request, shall make the delivery no later than at the time of~~
11 ~~the policy delivery. The outline of coverage shall include all~~
12 ~~of the following:~~

13 ~~(1) A description of the principal benefits and coverage~~
14 ~~provided in the policy.~~

15 ~~(2) A statement of the principal exclusions, reductions~~
16 ~~and limitations contained in the policy.~~

17 ~~(3) A statement of the renewal provisions, including any~~
18 ~~reservation in the policy of a right to change premiums.~~

19 ~~(4) A statement that the outline of coverage is a~~
20 ~~summary of the policy issued or applied for, and that the~~
21 ~~policy should be consulted to determine governing contractual~~
22 ~~provisions.~~

23 ~~(5) A description of the method used to determine~~
24 ~~whether a service will be reimbursed by the insurer and the~~
25 ~~method by which a policyholder may appeal the determination.~~

26 ~~(6) A guarantee by the insurer that the policy of long~~
27 ~~term care insurance does not duplicate any existing coverage~~
28 ~~of the insured.~~

29 ~~(7) A guarantee that the benefits will be increased in~~
30 ~~proportion to the rate of inflation.~~

1 ~~Section 13. Additional terms in certificate.~~

2 ~~A certificate issued pursuant to a group long term care~~
3 ~~insurance policy, which policy is delivered or issued for~~
4 ~~delivery in this Commonwealth, shall include the following:~~

5 ~~(1) A description of the principal benefits and coverage~~
6 ~~provided in the policy.~~

7 ~~(2) A statement of the principal exclusions, reductions~~
8 ~~and limitations contained in the policy.~~

9 ~~(3) A statement that the group master policy determines~~
10 ~~governing contractual provisions.~~

11 (A) REQUIREMENT.--AN OUTLINE OF COVERAGE SHALL BE DELIVERED <—
12 TO A PROSPECTIVE APPLICANT FOR LONG-TERM CARE INSURANCE AT THE
13 TIME OF INITIAL SOLICITATION THROUGH MEANS WHICH PROMINENTLY
14 DIRECT THE ATTENTION OF THE RECIPIENT TO THE DOCUMENT AND ITS
15 PURPOSE.

16 (B) FORMAT.--THE COMMISSIONER SHALL PRESCRIBE A STANDARD
17 FORMAT INCLUDING STYLE, ARRANGEMENT AND OVERALL APPEARANCE, AND
18 THE CONTENT OF AN OUTLINE OF COVERAGE.

19 (C) AGENT SOLICITATIONS.--IN THE CASE OF AGENT
20 SOLICITATIONS, AN AGENT MUST DELIVER THE OUTLINE OF COVERAGE
21 PRIOR TO THE PRESENTATION OF AN APPLICATION OR ENROLLMENT FORM.

22 (D) DIRECT RESPONSE SOLICITATIONS.--IN THE CASE OF DIRECT
23 RESPONSE SOLICITATIONS, THE OUTLINE OF COVERAGE MUST BE
24 PRESENTED IN CONJUNCTION WITH ANY APPLICATION OR ENROLLMENT
25 FORM.

26 (E) CONTENTS OF OUTLINE.--THE OUTLINE OF COVERAGE SHALL
27 INCLUDE ALL OF THE FOLLOWING:

28 (1) A DESCRIPTION OF THE BENEFITS AND COVERAGE PROVIDED
29 IN THE POLICY.

30 (2) A STATEMENT OF THE EXCLUSIONS, REDUCTIONS AND

1 LIMITATIONS CONTAINED IN THE POLICY.

2 (3) A STATEMENT OF THE TERMS UNDER WHICH THE POLICY OR
3 CERTIFICATE, OR BOTH, MAY BE CONTINUED IN FORCE OR
4 DISCONTINUED, INCLUDING ANY RESERVATION IN THE POLICY OF A
5 RIGHT TO CHANGE PREMIUM. CONTINUATION OR CONVERSION
6 PROVISIONS OF GROUP COVERAGE SHALL BE SPECIFICALLY DESCRIBED.

7 (4) A STATEMENT THAT THE OUTLINE OF COVERAGE IS A
8 SUMMARY ONLY, NOT A CONTRACT OF INSURANCE, AND THAT THE
9 POLICY OR GROUP MASTER POLICY CONTAIN GOVERNING CONTRACTUAL
10 PROVISIONS.

11 (5) A DESCRIPTION OF THE TERMS UNDER WHICH THE POLICY OR
12 CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

13 (6) A BRIEF DESCRIPTION OF THE RELATIONSHIP OF COST OF
14 CARE AND BENEFITS.

15 Section ~~14~~ 13. Marketing and advertising prohibited. <—

16 No policy may be advertised, marketed or offered as long-term
17 care or nursing home insurance unless it complies with the
18 provisions of this act.

19 Section ~~15~~ 14. Administrative procedures. <—

20 Regulations adopted pursuant to this act shall become
21 effective in the manner provided in the act of July 31, 1968
22 (P.L.769, No.240), referred to as the Commonwealth Documents
23 Law.

24 Section ~~16~~ 15. Severability. <—

25 The provisions of this act are severable. If any provision of
26 this act or its application to any person or circumstance is
27 held invalid, the invalidity shall not affect other provisions
28 or applications of this act which can be given effect without
29 the invalid provision or application.

30 Section ~~17~~ 16. Applicability. <—

1 The requirements of this act shall apply to all policies
2 delivered or issued for delivery in this Commonwealth on or
3 after the effective date of this act.

4 Section ~~18~~ 17. Effective date.

←

5 This act shall take effect in 60 days.