

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2650 Session of
1988

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BARLEY, DURHAM, CHADWICK, LASHINGER, FREEMAN AND FARGO,
AUGUST 8, 1988

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, AUGUST 8, 1988

AN ACT

1 Relating to long-term care insurance; providing for limits,
2 disclosure and performance standards; prescribing powers and
3 duties of the Insurance Commissioner; establishing a Long-
4 Term Health Care Review Board; and authorizing a reduction of
5 certain taxes.

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12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Short title.

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

17 Section 2. Definitions.

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

21 "Applicant."

22 (1) In the case of an individual long-term care
23 insurance policy, the person who seeks to contract for
24 benefits.

25 (2) In the case of a group long-term care insurance
26 policy, the proposed certificate holder.

27 "Board." The Long-Term Health Care Review Board established
28 by this act.

29 "Certificate." Any certificate issued under a group long-
30 term care insurance policy, which policy has been delivered or

1 issued for delivery in this Commonwealth.

2 "Commissioner." The Insurance Commissioner of the
3 Commonwealth.

4 "Group long-term care insurance." A long-term care insurance
5 policy which is delivered or issued for delivery in this
6 Commonwealth and issued to one of the following:

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

13 (2) Any professional, trade or occupational association
14 for its members or former or retired members, or a
15 combination thereof, if such association:

16 (i) is composed of individuals, all of whom are or
17 were actively engaged in the same profession, trade or
18 occupation; and

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

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

1 least one year; and have a constitution and bylaws which
2 provide that:

3 (i) the association or associations hold regular
4 meetings not less than annually to further purposes of
5 the members;

6 (ii) except for credit unions, the association or
7 associations collect dues or solicit contributions from
8 members; and

9 (iii) the members have voting privileges and
10 representation on the governing board and committees.

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

16 (4) A group other than those described above, subject to
17 a finding by the commissioner that:

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

20 (ii) the issuance of the group policy would result
21 in economies of acquisitions or administration; and

22 (iii) the benefits are reasonable in relation to the
23 premiums charged.

24 (5) An individual subscriber.

25 "Long-term care." Includes all medical and nonmedical
26 services not provided in acute care settings. Medical services
27 include, but are not limited to, in-home services, skilled and
28 intermediate nursing care, licensed personal care facilities,
29 therapeutic care and rehabilitative care. Nonmedical services
30 include, but are not limited to, attendant care, case

1 management, respite care, homemaker services and adult day care.

2 "Long-term care insurance." Any insurance policy or rider
3 advertised, marketed, offered or designed to provide coverage
4 for not less than three consecutive months for each covered
5 person on an expense-incurred, indemnity, prepaid or other
6 basis, for functionally necessary and/or medically necessary
7 diagnostic, physical therapy, preventive, therapeutic,
8 rehabilitative, intermediate care, custodial care, maintenance
9 or personal care services, provided in a setting other than an
10 acute care unit of a hospital. The term includes group and
11 individual policies or riders, whether issued by insurers,
12 fraternal benefit societies, nonprofit health, hospital and
13 medical service corporations, prepaid health plans, health
14 maintenance organizations or any similar organization. The term
15 does not include any insurance policy which is offered primarily
16 to provide basic Medicare supplement coverage, basic hospital
17 expense coverage, basic medical-surgical expense coverage,
18 hospital confinement indemnity coverage, major medical expense
19 coverage, disability income protection coverage, accident only
20 coverage, specified disease or specified accident coverage or
21 limited benefit health coverage.

22 "Policy." Any policy, contract, subscriber agreement, rider
23 or endorsement delivered or issued for delivery in this
24 Commonwealth by an insurer, fraternal benefit society, nonprofit
25 health, hospital or medical service corporation, prepaid health
26 plan, health maintenance organization or any similar
27 organization.

28 Section 3. Limits of group long-term care insurance.

29 No group long-term care insurance coverage may be offered to
30 a resident of this Commonwealth under a group policy issued in

1 another state to a group described in section 2 unless this
2 Commonwealth or another state having statutory and regulatory
3 long-term care insurance requirements substantially similar to
4 those adopted in this Commonwealth has made a determination that
5 such requirements have been met.

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

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

18 (b) Prohibited clauses and conditions.--No long-term care
19 insurance policy offered by an insurance company may:

20 (1) Be refused, canceled, nonrenewed or otherwise
21 terminated on the grounds of age or the deterioration of
22 mental or physical health.

23 (2) Be refused, canceled, nonrenewed or otherwise
24 terminated by reason of an unintentional omission of
25 information requested for the insurance policy application.

26 (3) Contain a provision establishing a new waiting
27 period in the event existing coverage is converted to or
28 replaced by a new or other policy within the same company,
29 except with respect to an increase in benefits voluntarily
30 selected by the insured individual or group policyholder.

1 (c) Preexisting conditions.--No long-term care insurance
2 policy or certificate shall:

3 (1) Use a definition of "preexisting condition" which is
4 more restrictive than the following: Preexisting condition
5 means the existence of symptoms which would cause an
6 ordinarily prudent person to seek diagnosis, care or
7 treatment or a condition for which medical and/or mental
8 health advice or treatment was recommended by, or received
9 from, a provider of health care services within the
10 limitation periods specified in subparagraphs (i), (ii) and
11 (iii) below:

12 (i) Three months preceding the effective date of
13 coverage of an insured person who is 65 years of age or
14 older on the effective date of coverage.

15 (ii) Twelve months preceding the effective date of
16 coverage of an insured person who is 50 years of age or
17 older and 64 years of age or under, inclusive on the
18 effective date of coverage.

19 (iii) Twenty-four months preceding the effective
20 date of coverage of an insured person who is under 50
21 years of age on the effective date of the coverage.

22 (2) Exclude coverage for a loss or confinement which is
23 the result of a preexisting condition unless such loss or
24 confinement begins within the periods specified in
25 subparagraph (i), (ii) or (iii) below:

26 (i) Three months following the effective date of
27 coverage of an insured person who is 65 years of age or
28 older on the effective date of coverage.

29 (ii) Twelve months following the effective date of
30 coverage of an insured person who is 50 years of age or

1 older and 64 years of age or under, inclusive on the
2 effective date of coverage.

3 (iii) Twenty-four months following the effective
4 date of coverage of an insured person who is under 50
5 years of age on the effective date of the coverage.

6 Section 5. Commissioner's duties.

7 The commissioner may extend the limitation periods set forth
8 in section 4(c) as to specific age group categories in specific
9 policy forms upon findings that the extension is in the best
10 interest of the public. The commissioner may adopt regulations
11 establishing loss ratio standards for long-term care insurance
12 policies provided that a specific reference to long-term care
13 insurance policies is contained in the regulation. Any decision
14 of the commissioner regarding long-term care insurance policies
15 may be appealed to the Long-Term Health Care Review Board.

16 Section 6. Long-Term Health Care Review Board.

17 (a) Establishment.--There is hereby established within the
18 Insurance Department a board to be known as the Long-Term Health
19 Care Review Board.

20 (b) Composition and appointment.--The board shall be
21 composed of seven members as follows:

22 (1) Two members of the Senate appointed by the President
23 pro tempore.

24 (2) Two members of the House of Representatives
25 appointed by the Speaker.

26 (3) Three public members appointed by the Governor.

27 (c) Term.--

28 (1) The terms of office of members of the General
29 Assembly shall be coterminous with their elective terms of
30 office.

1 (2) The terms of office of public members shall be for
2 four years, except that of the public members first
3 appointed; one shall serve for four years, one shall serve
4 for three years and one shall serve for two years.

5 (d) Vacancies.--Vacancies in the membership of the board
6 shall be filled in the same manner as the original appointments.
7 Vacancies in public member positions shall be filled for the
8 remainder of the unexpired term.

9 (e) Officers and business.--The board shall elect a
10 chairperson every year from among the public members. All
11 business transacted by the board shall be conducted in
12 accordance with the act of July 3, 1986 (P.L.388, No.84), known
13 as the Sunshine Act.

14 (f) Meetings.--The board shall meet at least three times
15 annually or at the call of the chairperson.

16 (g) Expenses.--The public members of the board shall not be
17 entitled to compensation but shall be entitled to reimbursement
18 for all reasonable and necessary expenses.

19 (h) Powers and duties.--The board shall have the power and
20 its duties shall be to:

21 (1) Review decisions of the commissioner relating to
22 long-term care insurance policies, either upon its own
23 initiative or upon the complaint or appeal of interested
24 parties.

25 (2) Review decisions of the commissioner relating to the
26 denial of benefits under long-term care insurance policies.
27 The decision of the Long-Term Health Care Review Board shall
28 take precedence over the decision of the commissioner.

29 Section 7. Underwriting standards.

30 The definition of "preexisting condition" does not prohibit

1 an insurer from using an application form designed to elicit the
2 complete health history of an applicant, and, on the basis of
3 the answers on that application, from underwriting in accordance
4 with that insurer's established underwriting standards.

5 Section 8. Prior institutionalization.

6 No long-term care insurance policy shall condition benefits
7 on a prior stay in an institution or prior chronic condition.

8 Section 9. Determination of benefits.

9 (a) Medical services.--The determination to provide medical
10 services to the insured under a long-term care insurance policy
11 shall be made by the attending physician following a personal
12 evaluation of the patient's needs.

13 (b) Nonmedical supportive services.--The determination to
14 provide nonmedical supportive services to the insured under a
15 long-term care insurance policy shall be made by the appropriate
16 personnel, such as the patient's nurse or social worker.

17 Section 10. Right to return; free look provision.

18 (a) Rescission period.--Individual long-term care insurance
19 policyholders shall have the right to return the policy within
20 30 days of its delivery and to have the premium refunded if,
21 after examination of the policy, the policyholder is not
22 satisfied for any reason. Individual long-term care insurance
23 policies shall have a notice, prominently printed on the first
24 page of the policy or attached thereto, stating in substance
25 that the policyholder shall have the right to return the policy
26 within 30 days of its delivery and to have the premium refunded
27 if, after examination of the policy, the policyholder is not
28 satisfied for any reason.

29 (b) Direct response solicitation.--A person insured under a
30 long-term care insurance policy issued pursuant to a direct

1 response shall have the right to return the policy within 30
2 days of its delivery and to have the premium refunded if, after
3 examination, the insured person is not satisfied for any reason.
4 Long-term care insurance policies issued pursuant to a direct
5 response solicitation shall have a notice prominently printed on
6 the first page or attached thereto stating in substance that the
7 insured person shall have the right to return the policy within
8 30 days of its delivery and to have the premium refunded if,
9 after examination, the insured person is not satisfied for any
10 reason.

11 (c) Rights of persons acting on behalf of policyholders.--
12 When long-term care insurance is purchased by a child of the
13 policyholder or by any other person on behalf of the
14 policyholder, the person purchasing the policy shall have the
15 rights provided for in this section.

16 Section 11. Outline of coverage provisions.

17 An outline of coverage shall be delivered to an applicant for
18 an individual long-term care insurance policy at the time of
19 application for an individual policy. In the case of direct
20 response solicitations, the insurer shall deliver the outline of
21 coverage upon the applicant's request but, regardless of
22 request, shall make the delivery no later than at the time of
23 policy delivery. The outline of coverage shall include:

24 (1) A description of the principal benefits and coverage
25 provided in the policy.

26 (2) A statement of the principal exclusions, reductions
27 and limitations contained in the policy.

28 (3) A statement of the renewal provisions, including any
29 reservation in the policy of a right to change premiums and
30 required notification of such change.

1 (4) A statement that the outline of coverage is a
2 summary of the policy issued or applied for, and that the
3 policy should be consulted to determine governing contractual
4 provisions.

5 (5) A description of the method used to determine
6 whether a service will be reimbursed by the insurer and the
7 method by which a policyholder may appeal that determination.

8 (6) A guarantee by the insurer that the policy of long-
9 term care insurance does not duplicate any existing coverage
10 of the insured.

11 (7) A guarantee that the benefits will be increased in
12 proportion to the rate of inflation.

13 (8) Assurance that the insured will be informed of any
14 rate changes.

15 Section 12. Additional terms in certificate.

16 A certificate issued pursuant to a group long-term care
17 insurance policy, which policy is delivered or issued for
18 delivery in this Commonwealth, shall include:

19 (1) A description of the principal benefits and coverage
20 provided in the policy.

21 (2) A statement of the principal exclusions, reductions
22 and limitations contained in the policy.

23 (3) A statement that the group master policy determines
24 governing contractual provisions.

25 Section 13. Marketing and advertising prohibited.

26 No policy may be advertised, marketed or offered as long-term
27 care or nursing home insurance unless it complies with the
28 provisions of this act. The commissioner shall review
29 advertising and marketing materials.

30 Section 14. 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 15. Reduction of tax on premiums.

5 The Department of Revenue is hereby authorized and directed
6 to reduce by one-half the tax imposed by section 902 of the act
7 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
8 1971, on gross premiums received from the sale of long-term care
9 insurance within this Commonwealth.

10 Section 16. Effective date.

11 This act shall take effect in 60 days.