

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 706 Session of 2007

INTRODUCED BY STACK, STOUT, WASHINGTON, KITCHEN, MUSTO, O'PAKE,
TARTAGLIONE, RAFFERTY, FONTANA, GORDNER, LOGAN, BOSCOLA,
MELLOW AND C. WILLIAMS, MARCH 29, 2007

REFERRED TO BANKING AND INSURANCE, MARCH 29, 2007

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," providing for scope of article, for
12 the definition of "long-term care insurance," for the Long-
13 Term Care Partnership Program, for authority to promulgate
14 regulations, for marketing and advertising prohibited and for
15 penalties; and further providing for coverage and
16 limitations.

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

19 Section 1. Section 1102 of the act of May 17, 1921 (P.L.682,
20 No.284), known as The Insurance Company Law of 1921, added
21 December 15, 1992 (P.L.1129, No.148), is amended to read:

22 Section 1102. Scope of Article.--This article is not
23 intended to supersede the obligations of entities subject to
24 this article to comply with the substance of other applicable

1 insurance laws insofar as they do not conflict with this
2 article, except that laws and regulations designed and intended
3 to apply to Medicare supplement insurance policies shall not be
4 applied to long-term care insurance. A policy which is not
5 advertised, marketed or offered as long-term care insurance [or
6 nursing home insurance] need not meet the requirements of this
7 article.

8 Section 2. The definition of "long-term care insurance" in
9 section 1103 of the act, amended November 30, 2004 (P.L.1690,
10 No.216), is amended to read:

11 Section 1103. Definitions.--As used in this article, the
12 following words and phrases shall have the meanings given to
13 them in this section:

14 * * *

15 "Long-term care insurance." Any insurance policy or rider
16 advertised, marketed, offered or designed to provide
17 comprehensive coverage for each covered person on an expense-
18 incurred, indemnity, prepaid or other basis for functionally
19 necessary or medically necessary diagnostic, preventive,
20 therapeutic, rehabilitative, maintenance or personal care
21 services provided in a setting other than an acute care unit of
22 a hospital. The term includes a policy, rider or prepaid home
23 health or personal care service policy which provides for
24 payment of benefits based upon cognitive impairment or the loss
25 of functional capacity. The term includes group and individual
26 policies or riders issued by insurers, fraternal benefit
27 societies, nonprofit health, hospital and medical service
28 corporations, health maintenance organizations or similar
29 organizations. The term does not include any insurance policy
30 which is offered primarily to provide basic Medicare supplement

1 coverage, basic hospital expense coverage, basic medical-
2 surgical expense coverage, hospital confinement indemnity
3 coverage, major medical expense coverage, disability income
4 protection coverage, accident-only coverage, specified disease
5 or specified accident coverage or limited benefit health
6 coverage.

7 * * *

8 Section 3. The act is amended by adding a section to read:

9 Section 1110.1. Long-Term Care Partnership Program.--(a)
10 The Department of Public Welfare, with the cooperation of the
11 department and the Department of Aging, shall seek to establish
12 a Long-Term Care Partnership Program by filing a State plan
13 amendment with the Centers for Medicare and Medicaid Services of
14 the United States Department of Health and Human Services
15 pursuant to Title XIX of the Social Security Act (49 Stat. 620,
16 42 U.S.C. § 301 et seq.).

17 (b) The department shall require all insurers to offer to
18 exchange any policy or certificate issued between February 8,
19 2006, and the date the State plan amendment takes effect, with a
20 qualified Long-Term Care Partnership Program policy. The
21 following shall apply:

22 (1) All offers of exchange shall be subject to the outline
23 of coverage provisions set forth under section 1111 and all
24 applicable regulations.

25 (2) Policies exchanged under this provision shall not be
26 subject to any medical underwriting or approval process.

27 (3) Any portion of the policy that was issued prior to the
28 exchange date shall be priced based on the policyholder's age
29 when the policy was originally issued.

30 (4) Any portion of the policy that is added as a result of

1 the exchange may be priced based on the policyholder's age at
2 the time of the exchange.

3 (5) Any addition to a policy as a result of any exchange
4 shall be subject to the right to return set forth under section
5 1110 and all applicable regulations.

6 Section 4. Sections 1112, 1113 and 1114 of the act, added
7 December 15, 1992 (P.L.1129, No.148), are amended to read:

8 Section 1112. Authority to Promulgate Regulations.--The
9 department shall promulgate reasonable regulations to establish
10 minimum standards for marketing practices, [agent] producer
11 compensation arrangements, [agent] producer testing, penalties
12 and reporting practices for long-term care insurance.

13 Section 1113. Marketing and Advertising Prohibited.--No
14 policy may be advertised, marketed or offered as long-term care
15 [or nursing home] insurance unless it complies with the
16 provisions of this article.

17 Section 1114. Penalties.--In addition to any other penalties
18 provided by the laws of this Commonwealth, an insurer or [agent]
19 producer found to have violated requirements relating to the
20 regulations of long-term care insurance or the marketing of such
21 insurance shall be subject to a civil penalty of up to three
22 times the amount of any commissions paid for each policy
23 involved in the violation or ten thousand dollars (\$10,000),
24 whichever is greater.

25 Section 5. Section 1703 of the act, added December 18, 1992
26 (P.L.1519, No.178), is amended to read:

27 Section 1703. Coverage and Limitations.--(a) This article
28 shall provide coverage to the following persons for the policies
29 and contracts specified in subsection (b):

30 (1) To persons who, regardless of where they reside, except

1 for nonresident certificate holders under group policies or
2 contracts, are the beneficiaries, assignees or payees of the
3 persons covered under paragraph (2).

4 (2) To persons who are owners of or certificate holders
5 under these policies or contracts or, in the case of unallocated
6 annuity contracts, to the persons who are the contract holders
7 and who:

8 (i) are residents; or

9 (ii) are not residents, but only under all of the following
10 conditions:

11 (A) the insurers which issued such policies or contracts are
12 domiciled in this Commonwealth;

13 (B) such insurers never held a license or certificate of
14 authority in the states in which such persons reside;

15 (C) these states have associations similar to the
16 association created by this article; and

17 (D) these persons are not eligible for coverage by those
18 associations.

19 (b) (1) This article shall provide coverage to the persons
20 specified in subsection (a) for direct, nongroup life, health,
21 annuity and supplemental policies or contracts, for certificates
22 under direct group policies and contracts and for unallocated
23 annuity contracts issued by member insurers, except as limited
24 by this article. Annuity contracts and certificates under group
25 annuity contracts include, but are not limited to, guaranteed
26 investment contracts, deposit administration contracts,
27 unallocated funding agreements, allocated funding agreements,
28 structured settlement agreements, lottery contracts and any
29 immediate or deferred annuity contracts.

30 (2) This article shall not provide coverage for any of the

1 following:

2 (i) Any portion of a policy or contract not guaranteed by
3 the insurer or under which the risk is borne by the policy or
4 contract holder.

5 (ii) Any policy or contract of reinsurance, unless
6 assumption certificates have been issued.

7 (iii) Any portion of a policy or contract to the extent that
8 the rate of interest on which it is based:

9 (A) averaged over the period of four (4) years prior to the
10 date on which the association becomes obligated with respect to
11 such policy or contract, exceeds a rate of interest determined
12 by subtracting two (2) percentage points from Moody's Corporate
13 Bond Yield Average averaged for the same four-year period or for
14 such lesser period if the policy or contract was issued less
15 than four (4) years before the association became obligated; and

16 (B) on and after the date on which the association becomes
17 obligated with respect to such policy or contract, exceeds the
18 rate of interest determined by subtracting three (3) percentage
19 points from Moody's Corporate Bond Yield Average as most
20 recently available.

21 (iv) Any plan or program of an employer, association or
22 similar entity to provide life, health or annuity benefits to
23 its employees or members to the extent that such plan or program
24 is self-funded or uninsured, including, but not limited to,
25 benefits payable by an employer, association or similar entity
26 under:

27 (A) a Multiple Employer Welfare Arrangement as defined in
28 section 514 of the Employee Retirement Income Security Act of
29 1974;

30 (B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services only contract.

(v) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits or provides that any fees or allowances to be paid to any person, including the policyholder or contract holder, in connection with the service to or administration of such policy or contract.

(vi) Any policy or contract issued in this Commonwealth by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this Commonwealth.

(vii) Any unallocated annuity contract issued to an employee benefit plan protected under the Federal Pension Benefit Guaranty Corporation.

(viii) Any portion of any unallocated annuity contract which is not issued to or in connection with a specific employee, union or association of natural persons benefit plan or a government lottery.

(c) (1) The benefits for which the association may become liable shall in no event exceed the lesser of:

(i) the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(ii) (A) With respect to any one life, regardless of the number of policies or contracts, the following shall apply:

(I) Three hundred thousand (\$300,000) dollars in life insurance death benefits, but not more than one hundred thousand (\$100,000) dollars in net cash surrender and net cash withdrawal values for life insurance.

(II) [One hundred thousand (\$100,000) dollars] Three hundred

1 thousand (\$300,000) dollars in health insurance benefits,
2 including any net cash surrender and net cash withdrawal values.

3 (III) Three hundred thousand (\$300,000) dollars in annuity
4 benefits, including one hundred thousand (\$100,000) dollars in
5 net cash surrender and net cash withdrawal values.

6 (IV) Three hundred thousand (\$300,000) dollars in long-term
7 care insurance benefits, as defined under section 1103,
8 including any cash surrender and net cash withdrawal values.

9 (B) With respect to each individual participating in a
10 governmental retirement plan established under section 401,
11 403(b) or 457 of the Internal Revenue Code of 1986 covered by an
12 unallocated annuity contract or the beneficiaries of each such
13 individual if deceased, in the aggregate, three hundred thousand
14 (\$300,000) dollars in annuity benefits, including one hundred
15 thousand (\$100,000) dollars in net cash surrender and net cash
16 withdrawal values.

17 (C) With respect to any one contract holder covered by any
18 unallocated annuity contract not included in clause (B), five
19 million (\$5,000,000) dollars in benefits, irrespective of the
20 number of such contracts held by that contract holder.

21 (2) The association shall not, however, be liable to expend
22 more than three hundred thousand (\$300,000) dollars in the
23 aggregate with respect to any one individual under subparagraph
24 (ii)(A) and (B) of paragraph (1).

25 Section 6. This act shall take effect in 60 days.