

HOUSE No. 2740

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act establishing standards for long term care insurance..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The purpose of this act is to promote the public interest and the availability
2 of long term care insurance policies, to protect applicants for long term care insurance from
3 unfair or deceptive sales or enrollment practices, to establish standards for long term care
4 insurance, to facilitate public understanding and comparison of long term care insurance policies,
5 and to promote flexibility and innovation in the development of long term care insurance
6 coverage.

7 SECTION 2. Ch. 32A OF THE General Laws is hereby amended by inserting after
8 section 10E, the following section:-

9 Section 10F. The commission shall establish a plan of long term care insurance on the
10 terms and conditions it considers to be in the best interest of the commonwealth and its
11 employees. With respect to any long term care insurance which is in effect for an employee there
12 shall be withheld from the salary or wages of the employee the premium for the insurance and
13 the

14 commonwealth shall make no contribution to the premium. The commission shall use its
15 best efforts to ensure that all premium payments by employees are eligible for favorable tax
16 treatment available under federal or state law.

17 SECTION 3. Paragraph (b) of Part B of section 3 of chapter 62 of the General
18 Laws, as so appearing, is hereby amended by adding the following subparagraph:-

19 (6) In the case of an individual who purchases a qualified long-term care
20 insurance policy, as defined by chapter 176Q, including both nursing facility and home health
21 benefits, an amount equal to 100 per cent of the annual premium of the insurance policy not to
22 exceed \$5,000, if the policy has been approved for sale in the commonwealth by the division of
23 insurance. Married individuals filing jointly or separately are each entitled to an exemption from
24 taxable income equal to 100 per cent of the annual premium but not more than \$5,000.

25 SECTION 4. The General Laws are hereby amended by inserting after chapter
26 176P the following chapter:-

27 CHAPTER 176Q

28 LONG TERM CARE INSURANCE

29 Section 1. The purpose of this chapter is to promote the public interest and the
30 availability of long-term care insurance policies, to protect applicants for long-term care
31 insurance from unfair or deceptive sales or enrollment practices, to establish standards for long-
32 term care insurance, to facilitate public understanding and comparison of long-term care
33 insurance policies, and to promote flexibility and innovation in the development of long-term
34 care insurance coverage.

35 Section 2. This chapter shall apply to policies delivered, or issued for delivery, in the
36 commonwealth on or after January 1, 2005. This chapter is not intended to supersede the
37 obligations of entities subject to this chapter to comply with applicable insurance laws insofar as
38 they do not conflict with this chapter, except that laws and regulations designed and intended to
39 apply to Medicare supplement insurance policies shall apply to long-term care insurance.

40 Section 3. This chapter may be known and cited as the "Long-Term Care Insurance
41 Act."

42 Section 4. Unless the context requires otherwise, the following words and phrases as
43 used in this chapter shall have the following meanings.

44 "Applicant", in the case of an individual long-term care insurance policy, the person
45 who seeks to contract for benefits; or, in the case of a group long-term care insurance policy, the
46 proposed certificate holder.

47 "Certificate", a certificate issued under a group long-term care insurance policy,
48 which policy has been delivered or issued for delivery within the commonwealth.

49 "Commissioner", the commissioner of insurance.

50 "Group long-term care insurance", a long-term care insurance policy that is
51 delivered or issued for delivery within the commonwealth and issued to:

52 (1) one or more employers or labor organizations, or to a trust or to the trustees of
53 a fund established by 1 or more employers or labor organizations, or a combination thereof, for
54 employees or former employees, or a combination thereof, or for members or former members,
55 or a combination thereof, of the labor organizations; or

56 (2) any professional, trade or occupational association for its members or former
57 or retired members, or combination thereof, if the association:

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

60 (ii) has been maintained in good faith for purposes other than obtaining
61 insurance; or

62 (3) an association, or a trust, or the trustees of a fund established, created or
63 maintained for the benefit of members of one or more associations; but, before advertising,
64 marketing or offering the policy within the commonwealth, the association, or the insurer of the
65 association, shall file evidence with the commissioner that the association has at the outset a
66 minimum of 100 persons and has been organized and maintained in good faith for purposes other
67 than that of obtaining insurance; has been in active existence for at least 1 year; and have a
68 constitution and bylaws that provide that:

69 (i) the association holds regular meetings not less than annually to further
70 purposes of the members;

71 (ii) except for credit unions, the association collects dues or solicits contributions
72 from members; and

73 (iii) the members have voting privileges and representation on the governing
74 board and committees.

75 Thirty days after the filing, the association shall be considered to have satisfied the
76 organizational requirements, unless the commissioner makes a finding that the association does
77 not satisfy those organizational requirements.

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

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

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

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

85 "Long-term care insurance", any insurance policy or rider: (1) advertised, marketed,
86 offered or designed to provide coverage for not less than 12 consecutive months for each covered
87 person on an expense incurred, indemnity, prepaid or other basis; (2) for one or more necessary
88 or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or
89 personal care services; and (3) provided in a setting other than an acute care unit of a hospital.

90 The term includes group and individual annuities and life insurance policies or riders that
91 provide directly, or supplement, long-term care insurance. The term also includes a policy or
92 rider that provides for payment of benefits based upon cognitive impairment or the loss of
93 functional capacity. The term shall also include qualified long-term care insurance contracts.
94 Long-term care insurance shall not include any insurance policy that is offered primarily to
95 provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-
96 surgical expense coverage, hospital confinement indemnity coverage, major medical expense

97 coverage, disability income or related asset-protection coverage, accident only coverage,
98 specified disease or specified accident coverage, or limited benefit health coverage.

99 With regard to life insurance, this term shall not include life insurance policies that
100 accelerate the death benefit specifically for 1 or more of the qualifying events of terminal illness,
101 medical conditions requiring extraordinary medical intervention or permanent institutional
102 confinement, and that provide the option of a lump-sum payment for those benefits and where
103 neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-
104 term care. Notwithstanding any other provision of this chapter, any product advertised, marketed
105 or offered as long-term care insurance shall be subject to this chapter.

106 "Policy", any policy, contract, subscriber agreement, rider or endorsement delivered
107 or issued for delivery within the commonwealth by an insurer authorized to issue policies upon
108 the lives of persons in the commonwealth or to provide accident and health insurance under
109 chapter 175; a fraternal benefit society authorized under chapter 176; a nonprofit hospital service
110 corporation authorized under chapter 176A, a nonprofit medical service corporation authorized
111 under chapter 176B or a health maintenance organization authorized under chapter 176G.

112 (1) "Qualified long-term care insurance contract" or "federally tax- qualified long-
113 term care insurance contract" an individual or group insurance contract that meets the
114 requirements of Section 7702B(b) of the Internal Revenue Code of 1986, as amended, as
115 follows:

116 (a) The only insurance protection provided under the contract is coverage of
117 qualified long-term care services. A contract shall not fail to satisfy the requirements of this

118 subparagraph by reason of payments being made on a per diem or other periodic basis without
119 regard to the expenses incurred during the period to which the payments relate;

120 (b) The contract does not pay or reimburse expenses incurred for services or items
121 to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as
122 amended, or would be so reimbursable but for the application of a deductible or coinsurance
123 amount. The requirements of this subparagraph do not apply to expenses that are reimbursable
124 under Title XVIII of the Social Security Act only as a secondary payor. A contract shall not fail
125 to satisfy the requirements of this subparagraph by reason of payments being made on a per diem
126 or other periodic basis without regard to the expenses incurred during the period to which the
127 payments relate;

128 (c) The contract is guaranteed renewable, within the meaning of section
129 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended; (d) The contract does
130 not provide for a cash surrender value or other money that can be paid, assigned, pledged as
131 collateral for a loan, or borrowed except as provided in paragraph (e);

132 (e) All refunds of premiums, and all policyholder dividends or similar amounts,
133 under the contract are to be applied as a reduction in future premiums or to increase future
134 benefits, except that a refund on the event of death of the insured or a complete surrender or
135 cancellation of the contract cannot exceed the aggregate premiums paid under the contract; and

136 (f) The contract meets the consumer protection provisions set forth in Section
137 7702B(g) of the Internal Revenue Code of 1986, as amended.

138 (2) "Qualified long-term care insurance contract" or "federally tax- qualified long
139 term care insurance contract" also means the portion of a life insurance contract that provides

140 long-term care insurance coverage by rider or as part of the contract and that satisfies the
141 requirements of Sections 7702B(b) and (e) of the Internal Revenue Code of 1986, as amended.

142 Section 5. No group long-term care insurance policy may be offered to a resident of
143 the commonwealth under a group policy issued in another state to a group described in clause (4)
144 of the definition of "Group long-term care insurance" of section 4, unless the commonwealth or
145 another state having statutory and regulatory long-term care insurance requirements substantially
146 similar to those adopted in the commonwealth has made a determination that the requirements
147 set forth in said clause (4) have been met.

148 Section 6. (a) The commissioner shall promulgate regulations that include standards
149 for full and fair disclosure setting forth the manner, content and required disclosures for the sale
150 of long-term care insurance policies and certificates, terms of renewability, initial and subsequent
151 conditions of eligibility, non-duplication of coverage provisions, coverage of dependents,
152 preexisting conditions, termination of insurance, continuation or conversion, probationary
153 periods, limitations, exceptions, reductions, elimination periods, requirements for replacement,
154 offer of inflation protection, recurrent conditions and definitions of terms.

155 (b) A long-term care insurance policy shall not:

156 (1) be cancelled, non-renewed or otherwise terminated on the grounds of the age
157 or the deterioration of the mental or physical health of the insured individual or certificate
158 holder;

159 (2) contain a provision establishing a new waiting period in the event existing
160 coverage is converted to, or replaced by, a new or other form within the same company, except

161 with respect to an increase in benefits voluntarily selected by the insured individual or group
162 policyholder; or

163 (3) provide coverage for skilled nursing care only or provide significantly more
164 coverage for skilled care in a facility than coverage for lower levels of care.

165 (c) (1) A long-term care insurance policy, or certificate other than a policy or
166 certificate thereunder, issued to a group as defined in clause (1) of the definition of "Group long-
167 term care" of section (4) shall not use a

168 definition of "preexisting condition" that is more restrictive than the following:

169 Preexisting condition means a condition for which medical advice or treatment was
170 recommended by, or received from a provider of health care services, within 24 months
171 preceding the effective date of coverage of an insured person.

172 (2) A long-term care insurance policy or certificate other than a policy or
173 certificate thereunder issued to a group as defined in clause (1) of the definition of "Group long-
174 term care" of section (4) shall not exclude coverage for a loss or confinement that is the result of
175 a preexisting condition unless the loss or confinement begins within 6 months following the
176 effective date of coverage of an insured person.

177 (3) Notwithstanding this subsection (c), an insurer may use an application form
178 designed to elicit the complete health history of an applicant, and, on the basis of the answers on
179 that application, underwrite in accordance with that insurer's established underwriting standards.
180 Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of
181 whether it is disclosed on the application need not be covered until the waiting period described
182 in subsection (2) expires. No long-term care insurance policy or certificate may exclude or use

183 waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically
184 named or described preexisting diseases or physical conditions beyond the waiting period
185 described in subsection (2).

186 (d) A long-term care insurance policy shall not be delivered or issued for delivery
187 in this state if the policy:

188 (1) conditions eligibility for any benefits on a prior hospitalization requirement;

189 (2) conditions eligibility for benefits provided in an institutional care setting on
190 the receipt of a higher level of institutional care; or

191 (3) conditions eligibility for any benefits other than waiver of premium, post-
192 confinement, post-acute care or recuperative benefits on a prior institutionalization requirement.

193 (e) The commissioner may adopt regulations establishing loss ratio standards for
194 long-term care insurance policies provided that a specific reference to long-term care insurance
195 policies is contained in the regulation.

196 (f) Long-term care insurance applicants shall have the right to return the policy or
197 certificate within 30 days of its delivery and to have the premium refunded if, after examination
198 of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance
199 policies and certificates shall have a notice prominently printed on the first page or attached
200 thereto stating in substance that the applicant shall have the right to return the policy or
201 certificate within 30 days of its delivery and to have the premium refunded if, after examination
202 of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group
203 defined in clause (1) of the definition of "Group long-term care" of section (4), the applicant is

204 not satisfied for any reason. This subsection shall also apply to denials of applications and any
205 refund must be made within 30 days of the return or denial.

206 (g) (1) An outline of coverage shall be delivered to a prospective applicant for long-
207 term care insurance at the time of initial solicitation through means that prominently direct the
208 attention of the recipient to the document and its purpose. In the case of producer solicitations,
209 an insurance producer shall deliver the outline of coverage prior to the presentation of an
210 application or enrollment form. In the case of direct response solicitations, the outline of
211 coverage shall be presented in conjunction with any application or enrollment form. In the case
212 of a policy issued to a group defined in clause (1) of the definition of "Group long-term care" of
213 section 4, an outline of coverage shall not be required to be delivered, provided that the
214 information described in subsections (i) to (vi) of this section, inclusive, is contained in other
215 materials relating to enrollment. Upon request, these other materials shall be made available to
216 the commissioner.

217 (2) The commissioner shall prescribe a standard format, including style,
218 arrangement and overall appearance, and the content of an outline of coverage. The outline of
219 coverage shall include:

220 (i) a description of the principal benefits and coverage provided in the policy or
221 certificate;

222 (ii) a statement of the principal exclusions, reductions and limitations contained
223 in the policy or certificate;

224 (iii) a statement of the terms under which the policy or certificate, or both, may
225 be continued in force or discontinued, including any reservation in the policy of a right to change

226 premium; continuation or conversion provisions of group coverage shall be specifically
227 described;

228 (iv) a statement that the outline of coverage is a summary only, not a contract of
229 insurance, and that the policy or group master policy contains governing contractual provisions;

230 (v) a description of the terms under which the policy or certificate may be
231 returned and premium refunded;

232 (vi) a brief description of the relationship of cost of care and benefits; and

233 (vii) a statement that discloses to the policyholder or certificate holder whether
234 the policy is intended to be a federally tax-qualified long-term care insurance contract under
235 7702B(b) of the Internal Revenue Code of 1986, as amended.

236 (h) A certificate issued pursuant to a group long-term care insurance policy that is
237 delivered or issued for delivery in this state shall include: (1) a description of the
238 principal benefits and coverage provided in the policy;

239 (2) a statement of the principal exclusions, reductions and limitations contained in
240 the policy; and

241 (3) a statement that the group master policy determines governing contractual
242 provisions and that the policy is available for viewing in the offices of the policyholder and will
243 be copied for the certificate holder upon request at no cost.

244 (i) If an application for a long-term care insurance contract or certificate is
245 approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later
246 than 30 days after the date of approval.

247 (j) At the time of policy delivery, a policy summary shall be delivered for an
248 individual life insurance policy that provides long-term care benefits within the policy or by
249 rider. In the case of direct response solicitations, the insurer shall deliver the policy summary
250 upon the applicant's request, but regardless of request shall make delivery no later than at the
251 time of policy delivery. In addition to complying with all applicable requirements, the summary
252 shall also include:

253 (1) an explanation of how the long-term care benefit interacts with other
254 components of the policy, including deductions from death benefits;

255 (2) an illustration of the amount of benefits, the length of benefit, and the
256 guaranteed lifetime benefits if any, for each covered person;

257 (3) any exclusions, reductions and limitations on benefits of long-term care;

258 (4) a statement indicating whether any long term care inflation
259 protection option required by law is available under this policy;

260 (5) if applicable to the policy type, the summary shall also include:

261 (i) a disclosure of the effects of exercising other rights under the policy;

262 (ii) a disclosure of guarantees related to long-term care costs of insurance
263 charges; and

264 (iii) current and projected maximum lifetime benefits; and

265 (6) the policy summary listed above may be incorporated into a basic illustration
266 or into the life insurance policy summary which is required to be delivered in accordance with
267 applicable regulation.

268 (k) Any time a long-term care benefit, funded through a life insurance vehicle by
269 the acceleration of the death benefit, is in benefit payment status, a monthly report shall be
270 provided to the policyholder. The report shall include:

271 (1) any long-term care benefits paid out during the month;

272 (2) an explanation of any changes in the policy, e.g. death benefits or cash values,
273 due to long-term care benefits being paid out; and

274 (3) the amount of long-term care benefits existing or remaining.

275 (l) If a claim under a long-term care insurance contract is denied, the issuer shall,
276 within 60 days of the date of a written request by the policyholder or certificate holder, or a
277 representative thereof:

278 (1) provide a written explanation of the reasons for the denial; and

279 (2) make available all information directly related to the denial.

280 (m) Any policy or rider advertised, marketed or offered as long-term care or nursing
281 home insurance shall comply with the provisions of this chapter.

282 Section 7. (a) For a policy or certificate that has been in force for less than 6 months
283 an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid

284 long-term care insurance claim upon a showing of misrepresentation that is material to the
285 acceptance for coverage.

286 (b) For a policy or certificate that has been in force for at least 6 months but less
287 than 2 years an insurer may rescind a long-term care insurance policy or certificate or deny an
288 otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both
289 material to the acceptance for coverage and which pertains to the condition for which benefits
290 are sought.

291 (c) After a policy or certificate has been in force for 2 years it is not contestable
292 upon the grounds of misrepresentation alone; the policy or certificate may be contested only
293 upon a showing that the insured knowingly and intentionally misrepresented relevant facts
294 relating to the insured's health.

295 (d) A long-term care insurance policy or certificate shall not be field issued based
296 on medical or health status. For purposes of this

297 subsection the term "field issued" means a policy or certificate issued by an agent or a
298 third-party administrator pursuant to the underwriting authority granted to the agent or third
299 party administrator by an insurer.

300 (e) If an insurer has paid benefits under the long-term care insurance policy or
301 certificate, the insurer may not recover the benefit payments if the policy or certificate is
302 rescinded.

303 (f) In the event of the death of the insured, this section shall not apply to the
304 remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In

305 this situation, the remaining death benefits under these policies shall be governed by section 132
306 of chapter 175 of the General Laws. In all other situations, this section shall apply to life
307 insurance policies that accelerate benefits for long-term care.

308 Section 8. (a) Except as provided in subsection (b), a long-term care insurance policy
309 shall not be delivered or issued for delivery in this state unless the policyholder or certificate
310 holder has been offered the option of purchasing a policy or certificate that includes a non-
311 forfeiture benefit. The offer of a non-forfeiture benefit may be in the form of a rider that is
312 attached to the policy. In the event the policyholder or certificate holder declines the non-
313 forfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available
314 for a specified period of time following a substantial increase in premium rates.

315 (b) When a group long-term care insurance policy is issued, the offer required in
316 subsection (a) shall be made to the group policyholder. However, if the policy is issued as group
317 long-term care insurance to a group defined in clause (4) the definition of "Group long-term
318 care" of section 4, other than to a continuing care retirement community or other similar entity,
319 the offering shall be made to each proposed certificate holder.

320 (c) The commissioner shall promulgate regulations specifying the type or types of
321 non-forfeiture benefits to be offered as part of long-term care insurance policies and certificates,
322 the standards for non-forfeiture benefits, and the rules regarding contingent benefit upon lapse,
323 including a determination of the specified period of time during which a contingent benefit upon
324 lapse will be available and the substantial premium rate increase that triggers a contingent benefit
325 upon lapse as described in subsection a.

326 Section 9. The commissioner shall promulgate reasonable regulations in accordance
327 with chapter 30A to promote premium adequacy and to protect the policyholder in the event of
328 substantial rate increases, and to establish minimum standards for marketing practices, agent
329 compensation, agent testing, penalties and reporting practices for long term care insurance.

330 Section 10. In addition to the penalties provided in chapters 175 and 176D, any
331 insurer and any insurance producer found to have violated any requirement of this chapter or any
332 regulations promulgated hereunder, relating to the regulation of long-term care insurance or the
333 marketing of such insurance, shall be subject to a fine of up to 3 times the amount of any
334 commissions paid for each policy involved in the violation or up to \$10,000, whichever is
335 greater.