

SENATE No. 2476

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act to establish 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. Chapter 118E of the General Laws is hereby amended by striking out
2 section 33, as appearing in the 2008 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 33. No claim for costs of a nursing facility and other long-term care services may
5 be made by the division under sections 31 or 32 if the individual receiving medical assistance
6 was permanently institutionalized, had notified the division that he had no intention to return
7 home and on the date of admission to the nursing facility or other medical institution, had long-
8 term care insurance that, when purchased, met the requirements of 211 C.M.R. 65.00.

9 SECTION2. The General Laws are hereby amended by inserting after chapter 176R the
10 following chapter:-

11 CHAPTER 176SLONG TERM CARE INSURANCE

12 Section 1. The purpose of this chapter is to promote the public interest and the
13 availability of long-term care insurance policies, to protect applicants for long-term care

14 insurance from unfair or deceptive sales or enrollment practices, to encourage applicants' choice
15 of long term services in the least restrictive setting appropriate to their needs, to establish
16 standards for long-term care insurance, to facilitate public understanding and comparison of
17 long-term care insurance policies, and to promote flexibility and innovation in the development
18 of long-term care insurance coverage.

19 Section 2. This chapter shall apply to policies delivered, or issued for delivery, in the
20 commonwealth on or after January 1, 2010 . This chapter is not intended to supersede the
21 obligations of entities subject to this chapter to comply with applicable insurance laws insofar as
22 they do not conflict with this chapter, except that laws and regulations designed and intended to
23 apply to Medicare supplement insurance policies governed by Chapter 176K shall not apply to
24 long-term care insurance.

25 Section 3. As used in this chapter, the following words shall, unless the context requires
26 otherwise, have the following meanings:-

27 “Applicant”, in the case of an individual long-term care insurance policy, the person who
28 seeks to contract for benefits; or in the case of a group long-term care insurance policy, the
29 proposed certificate holder.

30 “Certificate”, a certificate issued under a group long-term care insurance policy, which
31 policy has been delivered or issued for delivery within the commonwealth.

32 “Commissioner”, the commissioner of insurance.

33 “Group long-term care insurance”, a long-term care insurance policy that is delivered or
34 issued for delivery within the commonwealth and issued to:

35 (1) one or more employers or labor organizations, or to a trust or to the trustees of a fund
36 established by 1 or more employers or labor organizations, or a combination thereof, for
37 employees or former employees, or a combination thereof, or for members or former members,
38 or a combination thereof, of the labor organizations; or

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

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

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

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

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

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

55 (iii) the members have voting privileges and representation on the governing board and
56 committees.

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

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

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

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

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

66 “Long-term care insurance”, any insurance policy or rider: (1) advertised, marketed,
67 offered or designed to provide coverage for not less than 12 consecutive months for each covered
68 person on an expense incurred, indemnity, prepaid or other basis; (2) for one or more necessary
69 or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or
70 personal care services including home and community care services; and (3) provided in a setting
71 other than an acute care unit of a hospital. The term includes group and individual annuities and
72 life insurance policies or riders that provide directly, or supplement, long-term care insurance.
73 The term also includes a policy or rider that provides for payment of benefits based upon
74 cognitive impairment or the loss of functional capacity. The term shall also include qualified
75 long-term care insurance contracts. Long-term care insurance shall not include any insurance

76 policy that is offered primarily to provide basic Medicare supplement coverage, basic hospital
77 expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity
78 coverage, major medical expense coverage, disability income or related asset-protection
79 coverage, accident only coverage, specified disease or specified accident coverage, or limited
80 benefit health coverage. With regard to life insurance, this term shall not include life insurance
81 policies that accelerate the death benefit specifically for 1 or more of the qualifying events of
82 terminal illness, medical conditions requiring extraordinary medical intervention or permanent
83 institutional confinement, and that provide the option of a lump-sum payment for those benefits
84 and where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt
85 of long-term care. Notwithstanding any other provision of this chapter, any product advertised,
86 marketed or offered as long-term care insurance shall be subject to this chapter.

87 “Policy”, any policy, contract, subscriber agreement, rider or endorsement delivered or
88 issued for delivery within the commonwealth by an insurer authorized to issue policies upon the
89 lives of persons in the commonwealth or to provide accident and health insurance under chapter
90 175; a fraternal benefit society authorized under chapter 176; a nonprofit hospital service
91 corporation authorized under chapter 176A, a nonprofit medical service corporation authorized
92 under chapter 176B or a health maintenance organization authorized under chapter 176G.

93 (1) “Qualified long-term care insurance contract” or “federally tax-qualified long-term
94 care insurance contract” an individual or group insurance contract that meets the requirements of
95 Section 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows:-

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

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

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

108 (c) The contract is guaranteed renewable, within the meaning of section 7702B(b)(1)(C)
109 of the Internal Revenue Code of 1986, as amended;

110 (d) The contract does not provide for a cash surrender value or other money that can be
111 paid, assigned, pledged as collateral for a loan, or borrowed except as provided in paragraph (e);

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

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

118 (2) “Qualified long-term care insurance contract” or “federally tax-qualified long term
119 care insurance contract” also means the portion of a life insurance contract that provides long-
120 term care insurance coverage by rider or as part of the contract and that satisfies the requirements
121 of Sections 7702B(b) and (e) of the Internal Revenue Code of 1986, as amended and as set forth
122 in (1) (a)-(f)..

123 Section 4. No group long-term care insurance policy may be offered to a resident of the
124 commonwealth under a group policy issued in another state to a group described in clause (4) of
125 the definition of Group long-term care insurance of section 3, unless the commonwealth or
126 another state having statutory and regulatory long-term care insurance requirements substantially
127 similar to those adopted in the commonwealth has made a determination that the requirements
128 set forth in said clause (4) have been met.

129 Section 5. (a) A long-term care insurance policy shall not:

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

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

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

137 (b) (1) A long-term care insurance policy, or certificate other than a policy or certificate
138 thereunder, issued to a group as defined in clause (1) of the definition of Group long-term care of

139 section 3 shall not use a definition of “preexisting condition” that is more restrictive than the
140 following: Preexisting condition means a condition for which medical advice or treatment was
141 recommended by, or received from a provider of health care services, within 6 months preceding
142 the effective date of coverage of an insured person.

143 (2) A long-term care insurance policy or certificate other than a policy or certificate
144 thereunder issued to a group as defined in clause (1) of the definition of Group long-term care of
145 section 3 shall not exclude coverage for a loss or confinement that is the result of a preexisting
146 condition unless the loss or confinement begins within 6 months following the effective date of
147 coverage of an insured person.

148 (3) Notwithstanding this subsection (c), an insurer may use an application form designed
149 to elicit the complete health history of an applicant, and, on the basis of the answers on that
150 application, underwrite in accordance with that insurer’s established underwriting standards.
151 Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of
152 whether it is disclosed on the application need not be covered until the waiting period described
153 in subsection (2) expires. No long-term care insurance policy or certificate may exclude or use
154 waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically
155 named or described preexisting diseases or physical conditions beyond the waiting period
156 described in subsection (2).

157 (c) A long-term care insurance policy shall not be delivered or issued for delivery in this
158 state if the policy:

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

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

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

164 (d) The commissioner may adopt regulations establishing loss ratio standards for long-
165 term care insurance policies provided that a specific reference to long-term care insurance
166 policies is contained in the regulation.

167 (e) Long-term care insurance applicants shall have the right to return the policy or
168 certificate within 30 days of its delivery and to have the premium refunded if, after examination
169 of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance
170 policies and certificates shall have a notice prominently printed on the first page or attached
171 thereto stating in substance that the applicant shall have the right to return the policy or
172 certificate within 30 days of its delivery and to have the premium refunded if, after examination
173 of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group
174 defined in clause (1) of the definition of Group long-term care of section 3, the applicant is not
175 satisfied for any reason. This subsection shall also apply to denials of applications and any
176 refund must be made within 30 days of the return or denial.

177 (f) (1) An outline of coverage shall be delivered to a prospective applicant for long-term
178 care insurance through means that prominently direct the attention of the recipient to the
179 document and its purpose. In the case of producer solicitations, an insurance producer shall
180 deliver the outline of coverage prior to the presentation of an application or enrollment form. In
181 the case of direct response solicitations, the outline of coverage shall be presented in conjunction

182 with any application or enrollment form. In the case of a policy issued to a group defined in
183 clause (1) of the definition of Group long-term care of section 3, an outline of coverage shall not
184 be required to be delivered, provided that the information described in clauses (i) to (vi),
185 inclusive, of paragraph (2) is contained in other materials relating to enrollment. Upon request,
186 these other materials shall be made available to the commissioner.

187 (2) The commissioner shall prescribe a standard format, including style, arrangement and
188 overall appearance, and the content of an outline of coverage. The outline of coverage shall
189 include:-

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

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

194 (iii) a statement of the terms under which the policy or certificate, or both, may be
195 continued in force or discontinued, including any reservation in the policy of a right to change
196 premium; continuation or conversion provisions of group coverage shall be specifically
197 described;

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

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

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

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

206 (g) A certificate issued pursuant to a group long-term care insurance policy that is
207 delivered or issued for delivery in this state shall include:-

208 (1) a description of the principal benefits and coverage provided in the policy;

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

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

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

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

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

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

227 (3) any exclusions, reductions and limitations on benefits of long-term care including
228 elimination or probationary periods and any preexisting condition limitations;

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

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

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

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

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

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

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

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

242 (2) an explanation of any changes in the policy including death benefits or cash values,
243 due to long-term care benefits being paid out; and

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

245 (k) If a claim under a long-term care insurance contract is denied, the issuer shall, within
246 60 days of the date of a written request by the policyholder or certificate holder, or a
247 representative thereof:-

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

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

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

252 Section6. (a) For a policy or certificate that has been in force for less than 6 months an
253 insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid
254 long-term care insurance claim upon a showing of misrepresentation that is material to the
255 acceptance for coverage.

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

261 (c) After a policy or certificate has been in force for 2 years it is not contestable upon the
262 grounds of misrepresentation alone; the policy or certificate may be contested only upon a

263 showing that the insured knowingly and intentionally misrepresented relevant facts relating to
264 the insured's health.

265 (d). A long term care insurance policy or certificate may be field issued if the
266 compensation to the field issuer is not based on the number of policies or certificates issued. For
267 purposes of this subsection the term "field issued" means a policy or certificate issued by a
268 producer or a third-party administrator pursuant to the underwriting authority granted to the
269 producer or third party administrator by an insurer and using the insurer's underwriting
270 guidelines.

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

273 (f) In the event of the death of the insured, this section shall not apply to the remaining
274 death benefit of a life insurance policy that accelerates benefits for long-term care. In this
275 situation, the remaining death benefits under these policies shall be governed by section 132 of
276 chapter 175. In all other situations, this section shall apply to life insurance policies that
277 accelerate benefits for long-term care.

278 Section 7. (a) Except as provided in subsection (b), a long-term care insurance policy shall
279 not be delivered or issued for delivery in this state unless the policyholder or certificate holder
280 has been offered the option of purchasing a policy or certificate that includes a non-forfeiture
281 benefit. The offer of a non-forfeiture benefit may be in the form of a rider that is attached to the
282 policy. In the event the policyholder or certificate holder declines the non-forfeiture benefit, the
283 insurer shall provide a contingent benefit upon lapse that shall be available for a specified period
284 of time following a substantial increase in premium rates.

285 (b) When a group long-term care insurance policy is issued, the offer required in
286 subsection (a) shall be made to the group policyholder. However, if the policy is issued as group
287 long-term care insurance to a group defined in clause (4) the definition of Group long-term care
288 of section 3, other than to a continuing care retirement community or other similar entity, the
289 offering shall be made to each proposed certificate holder.

290 Section 8. (a) (1) An individual may not sell, solicit or negotiate long-term care
291 insurance unless the individual is licensed as an insurance producer for accident and sickness or
292 life and has completed a one-time training course. The training shall meet the requirements set
293 forth in section 9(b).

294 (2) An individual already licensed and selling, soliciting or negotiating long-term care
295 insurance on the effective date of this Act may not continue to sell, solicit, or negotiate long term
296 care insurance unless the individual has completed a one-time training course as set forth in
297 section 9(b), on or before July 2, 2011.

298 (3) In addition to the one-time training course required in paragraphs (1) and (2), an
299 individual who sells, solicits or negotiates long-term care insurance shall complete ongoing
300 training as set forth in section 9(b).

301 (4) The training requirements of section 9(b) may be approved as continuing education
302 courses under section 177E of chapter 175.

303 (b) (1) The one-time training required by this Section shall be no less than 8 hours and
304 the ongoing training required by this Section shall be no less than 4 hours every 24 months and
305 said hours under this section shall be included as part of the required continuing education hours
306 as set forth in clause B of section 177E of chapter 175.

307 (2) The training required under section 9(b)(1) shall consist of topics related to long-term
308 care insurance, long term care services and, Massachusetts minimum long term care coverage
309 requirements for certain asset and liability exemptions under the Massachusetts MassHealth
310 Program, including:-

311 (A) State and federal regulations and requirements and the relationship between asset and
312 liability exemptions under the Massachusetts MassHealth Program and other public and private
313 coverage of long-term care services, including MassHealth;

314 (B) Available long-term services and providers;

315 (C) Changes or improvements in long-term care services or providers;

316 (D) Alternatives to the purchase of private long-term care insurance;

317 (E) The effect of inflation on benefits and the importance of inflation protection; and

318 (F) Consumer suitability standards and guidelines.

319 (3) The training required by this section shall not include training that is insurer or
320 company product specific or that includes any sales or marketing information, materials or
321 training other than those required by state or federal law.

322 (c) (1) Insurers subject to this chapter shall obtain verification that a producer receives
323 training required by section 9(a) before a producer is permitted to sell, solicit or negotiate the
324 insurer's long-term care insurance products, maintain records subject to the state's record
325 retention requirements, and make that verification available to the commissioner upon request.

326 (2) Insurers subject to this chapter shall maintain records with respect to the training of its
327 producers concerning the distribution of its policies intended to satisfy Massachusetts' minimum
328 long term care coverage requirements for certain asset and liability exemptions under the
329 Massachusetts MassHealth Program that will allow the division of insurance to provide
330 assurance to the Department of Medical Assistance that producers have received the training
331 contained in section 9 (b)(2)(A) as required by section 9(a) and that producers have demonstrated
332 an understanding of the policies and their relationship to public and private coverage of long-
333 term care, including MassHealth, in the commonwealth. These records shall be maintained in
334 accordance with the state's record retention requirements and shall be made available to the
335 commissioner upon request.

336 (D) The satisfaction of these training requirements in any state shall be deemed to
337 satisfy the training requirements in this state.

338 Section 9. (a) The commissioner shall, in accordance with chapter 30A, promulgate rules
339 and regulations which, at a minimum, are consistent with those set forth in the 2006 National
340 Association of Insurance Commissioners Long-Term Care Model Regulation including standards
341 for:-

342 (1) full and fair disclosure setting forth the manner, content and required disclosures for
343 the sale of long-term care insurance policies and certificates;

344 (2) policy definitions and provisions, terms of renewability; initial and subsequent
345 conditions of eligibility; benefit triggers; home health and community care benefits; non-
346 duplication of coverage provisions; coverage of dependents; preexisting conditions; termination

347 of insurance; continuation or conversion; limitations; exceptions; reductions; elimination and
348 probationary periods; requirements for replacement; and unintentional lapse protection;

349 (3) the promotion of premium adequacy, protections for the policyholder or certificate
350 holder in the event of a substantial rate increase and disclosure;

351 (4) the offer of inflation and nonforfeiture coverage including rules for a contingent
352 benefit upon lapse;

353 (5) marketing practices, suitability and producer professional education;

354 (6) filing requirements, reporting practices and requirements, reserve standards, loss ratios
355 and penalties.

356 (b) The division of insurance shall update, on a biennial basis, the consumer guide
357 for long term insurance. The division shall maintain a list of insurance companies selling long
358 term care insurance in the Commonwealth and their Massachusetts rate increase history for the
359 last 10 years on their website.

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

366 SECTION 5. The commissioner shall conduct an investigation and study as to the best
367 methods to stabilize rates and prevent exceptional rate increases with input from the Life

368 Insurance Association of Massachusetts, the Massachusetts Association of Health Underwriters,
369 the National Association of Insurance and Financial Advisers, the National Academy of Elder
370 Law Attorneys, Massachusetts Chapter and the American Association of Retired Persons. The
371 commissioner shall also seek information on the experience of other states relative to rate
372 stabilization.

373 The commissioner shall report to the general court the results of his investigation
374 and study, and his recommendations, if any, together with drafts of legislation necessary to carry
375 his recommendations into effect, by filing the same with the clerks of the senate and the house of
376 representatives who shall forward the same to the senate president and the speaker of the house
377 of representatives on or before January 1, 2011