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SENATE . . . . . No. 2134

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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:

SECTION 1. Chapter 118E of the general laws is hereby amended by striking out section 33, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

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

SECTION 2. The general laws are hereby further amended by inserting after chapter 176R the following chapter:-

CHAPTER 176S LONG TERM CARE INSURANCE

Section 1. The purpose of this chapter is to promote the public interest and the 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, 2013. 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
42 same profession, trade or occupation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

98 (a) The only insurance protection provided under the contract is coverage of
99 qualified long-term care services. A contract shall not fail to satisfy the requirements of this
100 subparagraph by reason of payments being made on a per diem or other periodic basis without
101 regard to the expenses incurred during the period to which the payments relate;

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

110 (c) The contract is guaranteed renewable, within the meaning of section
111 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

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

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

119 (f) The contract meets the consumer protection provisions set forth in Section
120 7702B(g) of the Internal Revenue Code of 1986, as amended.

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

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

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

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

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

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

142 (b) (1) A long-term care insurance policy or certificate, other than a policy or
143 certificate thereunder issued to a group as defined in clause (1) of the definition of Group long-
144 term care of section 3, shall not use a definition of "preexisting condition" that is more restrictive
145 than the following: Preexisting condition means a condition for which medical advice or
146 treatment was recommended by, or received from a provider of health care services, within 6
147 months preceding the effective date of coverage of an insured person.

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

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

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

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

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

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

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

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

182 (f) (1) An outline of coverage shall be delivered to a prospective applicant for long-
183 term care insurance through means that prominently direct the attention of the recipient to the
184 document and its purpose. In the case of producer solicitations, an insurance producer shall
185 deliver the outline of coverage prior to the presentation of an application or enrollment form. In
186 the case of direct response solicitations, the outline of coverage shall be presented in conjunction
187 with any application or enrollment form. In the case of a policy issued to a group defined in
188 clause (1) of the definition of Group long-term care of section 3, an outline of coverage shall not
189 be required to be delivered, provided that the information described in clauses (i) to (vi),
190 inclusive, of paragraph (2) is contained in other materials relating to enrollment. Upon request,
191 these other materials shall be made available to the commissioner.

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

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

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

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

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

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

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

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

212 (viii) a history of initial premium rates and proposed increases sought
213 over the subsequent five year period to establish, to the extent possible, an average expected
214 contribution for similar benefits and coverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

255 (k) If a claim under a long-term care insurance contract is denied, the issuer shall, within
256 60 days of the date of a written request by the policyholder or certificate holder, or a
257 representative thereof:-

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

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

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

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

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

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

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

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

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

283 (f) In the event of the death of the insured, this section shall not apply to the remaining
284 death benefit of a life insurance policy that accelerates benefits for long-term care. In this
285 situation, the remaining death benefits under these policies shall be governed by section 132 of

286 chapter 175. In all other situations, this section shall apply to life insurance policies that
287 accelerate benefits for long-term care.

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

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

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

304 (2) An individual already licensed and selling, soliciting or negotiating long-term
305 care insurance on the effective date of this Act may not continue to sell, solicit, or negotiate long
306 term care insurance unless the individual has completed a one-time training course as set forth in
307 section 9(b), on or before July 2, 2012.

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

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

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

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

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

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

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

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

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

329 (F) Consumer suitability standards and guidelines.

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

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

338 (2) Insurers subject to this chapter shall maintain records with respect to the
339 training of its producers concerning the distribution of its policies intended to satisfy
340 Massachusetts' minimum long term care coverage requirements for certain asset and liability
341 exemptions under the Massachusetts MassHealth Program that will allow the division of
342 insurance to provide assurance to the department of medical assistance that producers have
343 received the training contained in section 9 (b)(2)(A) as required by section 9(a) and that
344 producers have demonstrated an understanding of the policies and their relationship to public and
345 private coverage of long-term care, including MassHealth, in the commonwealth. These records
346 shall be maintained in accordance with the state's record retention requirements and shall be
347 made available to the commissioner upon request.

348 (d) The satisfaction of these training requirements in any state shall be deemed to satisfy
349 the training requirements in this state.

350 Section 9. (a) The commissioner shall, in accordance with chapter 30A, promulgate rules
351 and regulations which, at a minimum, are consistent with those set forth in the 2009 National
352 Association of Insurance Commissioners Long-Term Care Model Regulation including standards
353 for:-

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

356 (2) policy definitions and provisions, terms of renewability; initial and subsequent
357 conditions of eligibility; benefit triggers; home health and community care benefits; non-
358 duplication of coverage provisions; coverage of dependents; preexisting conditions; termination
359 of insurance; continuation or conversion; limitations; exceptions; reductions; elimination and
360 probationary periods; requirements for replacement; and unintentional lapse protection;

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

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

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

366 (6) filing requirements, reporting practices and requirements, reserve standards,
367 independent review of benefit determinations, and penalties.

368 (b) The division of insurance shall update, on a biennial basis, the consumer guide for
369 long term insurance. The division shall maintain a list of insurance companies selling long term

370 care insurance in the Commonwealth and their Massachusetts rate increase history for the last 10
371 years on their website.

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

378 SECTION 3. The commissioner shall conduct an investigation as to the best methods to
379 stabilize rates and prevent exceptional rate increases with input from the Attorney General, the
380 Life Insurance Association of Massachusetts, the Massachusetts Association of Health
381 Underwriters, the National Association of Insurance and Financial Advisers, the National
382 Academy of Elder Law Attorneys, Massachusetts Chapter, the American Academy of Actuaries,
383 and AARP. The commissioner shall also seek information on the experience of other states
384 relative to rate stabilization.

385 The commissioner shall report to the general court the results of his investigation
386 and his recommendations, if any, together with drafts of legislation necessary to carry his
387 recommendations into effect, by filing the same with the clerks of the senate and the house of
388 representatives who shall forward the same to the senate president and the speaker of the house
389 of representatives, and the minority leader of the house and senate, on or before January 1, 2013.