

HOUSE No. 02762

The Commonwealth of Massachusetts

PRESENTED BY:

John P. Fresolo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act establishing standards for long term care insurance .

PETITION OF:

NAME:

John P. Fresolo

DISTRICT/ADDRESS:

16th Worcester

HOUSE No. 02762

By Mr. Fresolo of Worcester, a petition (accompanied by bill, House, No. 2762) of Fresolo relative to establishing standards for long term care insurance Joint Committee on Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 of long
2 term care insurance policies, to protect applicants for long term care insurance from unfair or
3 deceptive sales or enrollment practices, to establish standards for long term care insurance, to
4 facilitate public understanding and comparison of long term care insurance policies, and to
5 promote flexibility and innovation in the development of long term care insurance coverage.

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

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

11 shall be withheld from the salary or wages of the employee the premium for the insurance and
12 the
13 commonwealth shall make no contribution to the premium. The commission shall use its best
14 efforts to ensure that all premium payments by employees are eligible for favorable tax treatment
15 available under federal or state law.

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

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

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

26 CHAPTER 176Q

27 LONG TERM CARE INSURANCE

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

32 insurance policies, and to promote flexibility and innovation in the development of long-term
33 care insurance coverage.

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

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

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

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

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

47 "Commissioner", the commissioner of insurance.

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

50 (1) one or more employers or labor organizations, or to a trust or to the trustees of a fund
51 established by 1 or more employers or labor organizations, or a combination thereof, for

52 employees or former employees, or a combination thereof, or for members or former members,
53 or a combination thereof, of the labor organizations; or

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

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

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

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

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

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

70 (iii) the members have voting privileges and representation on the governing board and
71 committees.

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

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

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

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

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

81 "Long-term care insurance", any insurance policy or rider: (1) advertised, marketed, offered
82 or designed to provide coverage for not less than 12 consecutive months for each covered person
83 on an expense incurred, indemnity, prepaid or other basis; (2) for one or more necessary or
84 medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal
85 care services; and (3) provided in a setting other than an acute care unit of a hospital. The term
86 includes group and individual annuities and life insurance policies or riders that provide directly,
87 or supplement, long-term care insurance. The term also includes a policy or rider that provides
88 for payment of benefits based upon cognitive impairment or the loss of functional capacity. The
89 term shall also include qualified long-term care insurance contracts. Long-term care insurance
90 shall not include any insurance policy that is offered primarily to provide basic Medicare
91 supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage,
92 hospital confinement indemnity coverage, major medical expense coverage, disability income or

93 related asset-protection coverage, accident only coverage, specified disease or specified accident
94 coverage, or limited benefit health coverage.

95 With regard to life insurance, this term shall not include life insurance policies that accelerate the
96 death benefit specifically for 1 or more of the qualifying events of terminal illness, medical
97 conditions requiring extraordinary medical intervention or permanent institutional confinement,
98 and that provide the option of a lump-sum payment for those benefits and where neither the
99 benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

100 Notwithstanding any other provision of this chapter, any product advertised, marketed or offered
101 as long-term care insurance shall be subject to this chapter.

102 "Policy", any policy, contract, subscriber agreement, rider or endorsement delivered or
103 issued for delivery within the commonwealth by an insurer authorized to issue policies upon the
104 lives of persons in the commonwealth or to provide accident and health insurance under chapter
105 175; a fraternal benefit society authorized under chapter 176; a nonprofit hospital service
106 corporation authorized under chapter 176A, a nonprofit medical service corporation authorized
107 under chapter 176B or a health maintenance organization authorized under chapter 176G.

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

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

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

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

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

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

133 (2) "Qualified long-term care insurance contract" or "federally tax- qualified long term care
134 insurance contract" also means the portion of a life insurance contract that provides long-term
135 care insurance coverage by rider or as part of the contract and that satisfies the requirements of
136 Sections 7702B(b) and (e) of the Internal Revenue Code of 1986, as amended.

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

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

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

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

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

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

158 (c) (1) A long-term care insurance policy, or certificate other than a policy or certificate
159 thereunder, issued to a group as defined in clause (1) of the definition of "Group long-term care"
160 of section (4) shall not use a
161 definition of "preexisting condition" that is more restrictive than the following: Preexisting
162 condition means a condition for which medical advice or treatment was recommended by, or
163 received from a provider of health care services, within 24 months preceding the effective date of
164 coverage of an insured person.

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

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

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

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

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

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

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

189 (f) Long-term care insurance applicants shall have the right to return the policy or
190 certificate within 30 days of its delivery and to have the premium refunded if, after examination
191 of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance
192 policies and certificates shall have a notice prominently printed on the first page or attached
193 thereto stating in substance that the applicant shall have the right to return the policy or
194 certificate within 30 days of its delivery and to have the premium refunded if, after examination
195 of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group
196 defined in clause (1) of the definition of "Group long-term care" of section (4), the applicant is
197 not satisfied for any reason. This subsection shall also apply to denials of applications and any
198 refund must be made within 30 days of the return or denial.

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

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

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

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

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

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

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

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

226 (vii) a statement that discloses to the policyholder or certificate holder whether the
227 policy is intended to be a federally tax-qualified long-term care insurance contract under
228 7702B(b) of the Internal Revenue Code of 1986, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

273 Section 7. (a) For a policy or certificate that has been in force for less than 6 months an
274 insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid
275 long-term care insurance claim upon a showing of misrepresentation that is material to the
276 acceptance for coverage.

277 (b) For a policy or certificate that has been in force for at least 6 months but less than 2
278 years an insurer may rescind a long-term care insurance policy or certificate or deny an

279 otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both
280 material to the acceptance for coverage and which pertains to the condition for which benefits
281 are sought.

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

286 (d) A long-term care insurance policy or certificate shall not be field issued based on
287 medical or health status. For purposes of this
288 subsection the term "field issued" means a policy or certificate issued by an agent or a third-party
289 administrator pursuant to the underwriting authority granted to the agent or third party
290 administrator by an insurer.

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

293 (f) In the event of the death of the insured, this section shall not apply to the remaining
294 death benefit of a life insurance policy that accelerates benefits for long-term care. In this
295 situation, the remaining death benefits under these policies shall be governed by section 132 of
296 chapter 175 of the General Laws. In all other situations, this section shall apply to life insurance
297 policies that accelerate benefits for long-term care.

298 Section 8. (a) Except as provided in subsection (b), a long-term care insurance policy shall
299 not be delivered or issued for delivery in this state unless the policyholder or certificate holder

300 has been offered the option of purchasing a policy or certificate that includes a non-forfeiture
301 benefit. The offer of a non-forfeiture benefit may be in the form of a rider that is attached to the
302 policy. In the event the policyholder or certificate holder declines the non-forfeiture benefit, the
303 insurer shall provide a contingent benefit upon lapse that shall be available for a specified period
304 of time following a substantial increase in premium rates.

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

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

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

320 Section 10. In addition to the penalties provided in chapters 175 and 176D, any insurer and
321 any insurance producer found to have violated any requirement of this chapter or any regulations

322 promulgated hereunder, relating to the regulation of long-term care insurance or the marketing of
323 such insurance, shall be subject to a fine of up to 3 times the amount of any commissions paid for
324 each policy involved in the violation or up to \$10,000, whichever is greater.