

SENATE, NO. 2476

[Senate, June 17, 2010 - New draft of Senate, No. 462 and House, No. 979 reported from the committee on Financial Services.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND 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 **SECTION 2.** The General Laws are hereby amended by inserting after chapter 176R the
10 following chapter:-

11 CHAPTER 176S
12 LONG TERM CARE INSURANCE

13 Section 1. The purpose of this chapter is to promote the public interest and the
14 availability of long-term care insurance policies, to protect applicants for long-term care
15 insurance from unfair or deceptive sales or enrollment practices, to encourage applicants' choice
16 of long term services in the least restrictive setting appropriate to their needs, to establish
17 standards for long-term care insurance, to facilitate public understanding and comparison of
18 long-term care insurance policies, and to promote flexibility and innovation in the development
19 of long-term care insurance coverage.

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

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

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

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

33 “Commissioner”, the commissioner of insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

69 “Long-term care insurance”, any insurance policy or rider: (1) advertised, marketed, offered or
70 designed to provide coverage for not less than 12 consecutive months for each covered person on
71 an expense incurred, indemnity, prepaid or other basis; (2) for one or more necessary or
72 medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal
73 care services including home and community care services; and (3) provided in a setting other
74 than an acute care unit of a hospital. The term includes group and individual annuities and life

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

90 “Policy”, any policy, contract, subscriber agreement, rider or endorsement delivered or issued for
91 delivery within the commonwealth by an insurer authorized to issue policies upon the lives of
92 persons in the commonwealth or to provide accident and health insurance under chapter 175; a
93 fraternal benefit society authorized under chapter 176; a nonprofit hospital service corporation
94 authorized under chapter 176A, a nonprofit medical service corporation authorized under chapter
95 176B or a health maintenance organization authorized under chapter 176G.

96 (1) “Qualified long-term care insurance contract” or “federally tax-qualified long-term
97 care insurance contract” an individual or group insurance contract that meets the

98 requirements of Section 7702B(b) of the Internal Revenue Code of 1986, as amended, as
99 follows:-

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

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

113 (c) The contract is guaranteed renewable, within the meaning of section
114 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

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

118 (e) All refunds of premiums, and all policyholder dividends or similar amounts,
119 under the contract are to be applied as a reduction in future premiums or to increase
120 future benefits, except that a refund on the event of death of the insured or a complete

121 surrender or cancellation of the contract cannot exceed the aggregate premiums paid
122 under the contract; and

123 (f) The contract meets the consumer protection provisions set forth in Section
124 7702B(g) of the Internal Revenue Code of 1986, as amended.

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

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

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

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

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

142 respect to an increase in benefits voluntarily selected by the insured individual or group
143 policyholder; or

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

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

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

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

164 coverage or benefits for specifically named or described preexisting diseases or physical
165 conditions beyond the waiting period described in subsection (2).

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

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

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

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

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

177 (e) Long-term care insurance applicants shall have the right to return the policy or
178 certificate within 30 days of its delivery and to have the premium refunded if, after examination
179 of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance
180 policies and certificates shall have a notice prominently printed on the first page or attached
181 thereto stating in substance that the applicant shall have the right to return the policy or
182 certificate within 30 days of its delivery and to have the premium refunded if, after examination
183 of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group
184 defined in clause (1) of the definition of Group long-term care of section 3, the applicant is not

185 satisfied for any reason. This subsection shall also apply to denials of applications and any
186 refund must be made within 30 days of the return or denial.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

228 (i) At the time of policy delivery, a policy summary shall be delivered for an individual
229 life insurance policy that provides long-term care benefits within the policy or by rider. In the

230 case of direct response solicitations, the insurer shall deliver the policy summary upon the
231 applicant's request, but regardless of request shall make delivery no later than at the time of
232 policy delivery. In addition to complying with all applicable requirements, the summary shall
233 also include:-

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

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

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

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

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

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

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

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

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

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

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

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

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

257 (k) If a claim under a long-term care insurance contract is denied, the issuer shall, within
258 60 days of the date of a written request by the policyholder or certificate holder, or a
259 representative thereof:-

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

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

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

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

268 (b) For a policy or certificate that has been in force for at least 6 months but less than 2
269 years an insurer may rescind a long-term care insurance policy or certificate or deny an
270 otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both

271 material to the acceptance for coverage and which pertains to the condition for which benefits
272 are sought.

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

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

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

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

290 Section7. (a) Except as provided in subsection (b), a long-term care insurance policy shall
291 not be delivered or issued for delivery in this state unless the policyholder or certificate holder
292 has been offered the option of purchasing a policy or certificate that includes a non-forfeiture
293 benefit. The offer of a non-forfeiture benefit may be in the form of a rider that is attached to the

294 policy. In the event the policyholder or certificate holder declines the non-forfeiture benefit, the
295 insurer shall provide a contingent benefit upon lapse that shall be available for a specified period
296 of time following a substantial increase in premium rates.

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

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

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

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

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

315 (b) (1) The one-time training required by this Section shall be no less than 8 hours and
316 the ongoing training required by this Section shall be no less than 4 hours every 24 months and

317 said hours under this section shall be included as part of the required continuing education hours
318 as set forth in clause B of section 177E of chapter 175.

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

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

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

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

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

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

331 and

332 (F) Consumer suitability standards and guidelines.

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

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

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

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

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

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

359 (2) policy definitions and provisions, terms of renewability; initial and subsequent
360 conditions of eligibility; benefit triggers; home health and community care benefits; non-
361 duplication of coverage provisions; coverage of dependents; preexisting conditions;
362 termination of insurance; continuation or conversion; limitations; exceptions; reductions;

363 elimination and probationary periods; requirements for replacement; and unintentional
364 lapse protection;

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

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

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

370 (6) filing requirements, reporting practices and requirements, reserve standards, loss ratios
371 and penalties.

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

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

382 **SECTION 5.** The commissioner shall conduct and investigation and study as to the best
383 methods to stabilize rates and prevent exceptional rate increases with input from the Life
384 Insurance Association of Massachusetts, the Massachusetts Association of Health Underwriters,

385 the National Association of Insurance and Financial Advisers, the National Academy of Elder
386 Law Attorneys, Massachusetts Chapter and the American Association of Retired Persons. The
387 commissioner shall also seek information on the experience of other states relative to rate
388 stabilization.

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