

1 **SENATE FLOOR VERSION**

2 February 18, 2016

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 1374

6 By: Treat

7 An Act relating to long-term health care; amending 36  
8 O.S. 2011, Section 4424, which relates to  
9 definitions; modifying certain definition; modifying  
10 certain payments; defining terms; adding category of  
11 prohibited entities; and providing an effective date.

12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 36 O.S. 2011, Section 4424, is  
14 amended to read as follows:

15 Section 4424. Unless the context requires otherwise, the  
16 definitions in this section apply throughout the Long-Term Care  
17 Insurance Act.

- 18 1. a. "Long-term care insurance" means any insurance policy,  
19 certificate or rider, including qualified long-term  
20 care insurance contracts and long-term care  
21 partnership program contracts, which are advertised,  
22 marketed, offered or designed primarily to provide  
23 coverage for not less than twelve (12) consecutive  
24 months for each covered person on an expense incurred,  
indemnity, prepaid, or other basis, for one or more

1 necessary or medically necessary diagnostic,  
2 preventive, therapeutic, rehabilitative, maintenance,  
3 or personal care services, provided in a setting other  
4 than an acute care unit of a hospital.

5 b. This term includes group and individual health  
6 policies or riders or group and individual life  
7 policies or annuities or riders which provide,  
8 directly or as a supplement, coverage for long-term  
9 care, whether issued by insurers, fraternal benefit  
10 societies, nonprofit health, hospital, and medical  
11 service corporations, prepaid health plans, health  
12 maintenance organizations, life care communities, or  
13 any similar organization.

14 c. This term also includes a policy or rider which  
15 provides for payment of long-term care benefits based  
16 upon cognitive impairment or the loss of functional  
17 capacity.

18 d. Long-term care insurance shall not include any  
19 insurance policy which is offered primarily to provide  
20 basic Medicare supplement coverage, basic hospital  
21 expense coverage, basic medical-surgical expense  
22 coverage, hospital confinement indemnity coverage,  
23 major medical expense coverage, disability income  
24 protection coverage or related asset-protection

1 coverage, catastrophic coverage, comprehensive  
2 coverage, accident only coverage, specified disease or  
3 specified accident coverage, or limited benefit health  
4 coverage.

5 e. With regard to life insurance, this term does not  
6 include life insurance policies which accelerate the  
7 death benefit specifically for one or more of the  
8 qualifying events of terminal illness, medical  
9 conditions requiring extraordinary medical  
10 intervention, or permanent institutional confinement,  
11 and which provide the option of a lump-sum payment for  
12 those benefits and in which neither the benefits nor  
13 the eligibility for the benefits is conditioned upon  
14 the receipt of long-term care.

15 f. Notwithstanding any other provision contained herein,  
16 any product advertised, marketed or offered as long-  
17 term care insurance shall be subject to the provisions  
18 of this act.

19 2. "Applicant" means:

- 20 a. in the case of an individual long-term care insurance  
21 policy, the person who seeks to contract for such  
22 benefits, and  
23 b. in the case of a group long-term care insurance  
24 policy, the proposed certificate holder.

1       3. "Certificate" means any certificate issued under a group  
2 long-term care insurance policy, which certificate has been  
3 delivered, or issued for delivery, in this state.

4       4. "Group long-term care insurance" means a long-term care  
5 insurance policy which is delivered, or issued for delivery, in this  
6 state and issued to:

7           a. one or more employers or labor organizations, or to a  
8 trust or to the trustees of a fund established by one  
9 or more employers or labor organizations, or a  
10 combination thereof, for employees or former  
11 employees, or a combination thereof or for members or  
12 former members, or a combination thereof, of the labor  
13 organizations, or

14           b. any professional, trade or occupational association  
15 for its members or former or retired members, or  
16 combination thereof, if such association:

17               (1) is composed of individuals, all of whom are or  
18 were actively engaged in the same profession,  
19 trade or occupation, and

20               (2) has been maintained in good faith for purposes  
21 other than insurance, or

22           c. an association, a trust, or the trustee or trustees of  
23 a fund established, created, or maintained for the  
24 benefit of members of one or more associations. Prior

1 to advertising, marketing or offering such policy  
2 within this state, the association or associations, or  
3 the insurer of the association or associations, shall  
4 file evidence with the Insurance Commissioner that the  
5 association or associations shall have at the outset  
6 of transacting long-term care insurance in this state  
7 a minimum of one hundred (100) persons in the  
8 association or associations and shall have been  
9 organized and maintained in good faith for purposes  
10 other than that of obtaining insurance; shall have  
11 been in active existence for at least one (1) year;  
12 and shall have a constitution and bylaws which provide  
13 that (i) the association or associations hold regular  
14 meetings not less than annually to further purposes of  
15 the members, (ii) except for credit unions, the  
16 association or associations collect dues or solicit  
17 contributions from members, and (iii) the members have  
18 voting privileges and representation on the governing  
19 board and committees. Thirty (30) days after such  
20 filing the association or associations shall be deemed  
21 to satisfy such organizational requirements, unless  
22 the Commissioner makes a finding that the association  
23 or associations do not satisfy those organizational  
24 requirements, or

1 d. a group other than as described in subparagraphs a, b  
2 and c of this paragraph, subject to a finding by the  
3 Commissioner that:

4 (1) the issuance of the group policy is not contrary  
5 to the best interest of the public,

6 (2) the issuance of the group policy would result in  
7 economies of acquisition or administration, and

8 (3) the benefits are reasonable in relation to the  
9 premiums charged.

10 5. "Not-for-Profit Life care community" within the meaning of  
11 Section 1-853.1 of Title 63 of the Oklahoma Statutes means any not-  
12 for-profit organization that enters into an arrangement pursuant to  
13 which a person contracts for a place of residence and personal care  
14 services, including but not limited to services which progress from  
15 independent living to semi-dependent nursing care to acute nursing  
16 care, in consideration of a ~~an~~ an endowed prepayment, license or entry  
17 fee which has been actuarially established to meet the cost of the  
18 promised services and accommodations ~~payment or payments of fees~~  
19 ~~prior to the delivery of services and accommodations.~~ Life The  
20 amount of the endowed pre-payment must be independently, actuarially  
21 determined, in compliance with the Actuarial Board, prior to opening  
22 the community and annually thereafter to insure that sufficient  
23 payments are collected to meet the future services of the residents.  
24 The actuarial study shall take into consideration projected or

1 actual project costs, resident fees and charges, resident contract  
2 provisions and any other factors affecting the operation of the  
3 facility. It shall contain mortality and morbidity data and an  
4 actuary's signed opinion that the proposed is feasible and that the  
5 study has been prepared in accordance with standards adopted by the  
6 American Academy of Actuaries. A not-for-profit life care community  
7 shall not include the following:

- 8 a. traditional landlord and tenant agreements utilizing
- 9 periodic rental and security deposit payments,
- 10 b. residential care homes licensed pursuant to the
- 11 Oklahoma Residential Care Act,
- 12 c. assisted living centers and continuum of care
- 13 facilities licensed pursuant to the Oklahoma Continuum
- 14 of Care and Assisted Living Act, ~~or~~
- 15 d. facilities licensed pursuant to the Oklahoma Nursing
- 16 Home Care Act, or
- 17 e. any facility where the endowed prepayment, license or  
18 entry fee is less than Fifty Thousand Dollars  
19 (\$50,000.00).

20 6. "Policy" means any policy, contract, certificate, subscriber  
21 agreement, rider or endorsement delivered, or issued for delivery,  
22 in this state by an insurer, fraternal benefit society, nonprofit  
23 health, hospital, or medical service corporation, prepaid health  
24

1 plan, health maintenance organization, life care community, or any  
2 similar organization.

3 7. "Qualified long-term care insurance contract" means any:

4 a. individual or group insurance contract if the contract  
5 meets the requirements of Section 7702(B) of the  
6 Internal Revenue Code, as amended, and if:

7 (1) the only insurance protection provided under the  
8 contract is coverage of qualified long-term care  
9 services,

10 (2) the contract does not pay or reimburse expenses  
11 incurred for services or items to the extent that  
12 such expenses are reimbursable under Title XVIII  
13 of the Social Security Act as amended, or would  
14 be so reimbursable but for the application of a  
15 deductible or coinsurance amount. The  
16 requirements of this subparagraph do not apply to  
17 contracts where Medicare is a secondary payor, or  
18 where the contract makes per diem or other  
19 periodic payments without regard to expenses,

20 (3) the contract is guaranteed renewable,

21 (4) the contract does not provide for a cash  
22 surrender value or other money that can be paid,  
23 assigned, pledged as collateral for a loan, or  
24 borrowed. All refunds of premiums and all



1 policyholder dividends or similar amounts, under  
2 such contract are to be applied as a reduction in  
3 future premiums or to increase future benefits,  
4 except that a refund of the aggregate premium  
5 paid under the contract may be allowed in the  
6 event of death of the insured or a complete  
7 surrender or cancellation of the contract, and

8 (5) the contract contains the consumer protection  
9 provisions set forth in Section 7702(B)(g) of the  
10 Internal Revenue Code, or

11 b. life insurance contract which provides long-term care  
12 coverage by rider or as part of the contract if the  
13 contract complies with the applicable provisions of  
14 Section 7702(B) of the Internal Revenue Code, as  
15 amended.

16 8. "Qualified long-term care services" means necessary  
17 diagnostic, preventive, therapeutic, curing, treating, mitigating,  
18 and rehabilitative services, and maintenance for personal care  
19 services for which an insured is eligible under a qualified long-  
20 term care insurance contract, and which are provided pursuant to a  
21 plan of care prescribed by a licensed health care practitioner.

22 SECTION 2. This act shall become effective November 1, 2016.

23 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE  
24 February 18, 2016 - DO PASS AS AMENDED