

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 1374

By: Treat of the Senate

and

Denney of the House

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9 COMMITTEE SUBSTITUTE

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

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

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

18 Section 4424. Unless the context requires otherwise, the
19 definitions in this section apply throughout the Long-Term Care
20 Insurance Act.

- 21 1. a. "Long-term care insurance" means any insurance policy,
22 certificate or rider, including qualified long-term
23 care insurance contracts and long-term care
24 partnership program contracts, which are advertised,

1 marketed, offered or designed primarily to provide
2 coverage for not less than twelve (12) consecutive
3 months for each covered person on an expense incurred,
4 indemnity, prepaid, or other basis, for one or more
5 necessary or medically necessary diagnostic,
6 preventive, therapeutic, rehabilitative, maintenance,
7 or personal care services, provided in a setting other
8 than an acute care unit of a hospital.

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

18 c. This term also includes a policy or rider which
19 provides for payment of long-term care benefits based
20 upon cognitive impairment or the loss of functional
21 capacity.

22 d. Long-term care insurance shall not include any
23 insurance policy which is offered primarily to provide
24 basic Medicare supplement coverage, basic hospital

1 expense coverage, basic medical-surgical expense
2 coverage, hospital confinement indemnity coverage,
3 major medical expense coverage, disability income
4 protection coverage or related asset-protection
5 coverage, catastrophic coverage, comprehensive
6 coverage, accident only coverage, specified disease or
7 specified accident coverage, or limited benefit health
8 coverage.

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

19 f. Notwithstanding any other provision contained herein,
20 any product advertised, marketed or offered as long-
21 term care insurance shall be subject to the provisions
22 of this act.

23 2. "Applicant" means:
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1 a. in the case of an individual long-term care insurance
2 policy, the person who seeks to contract for such
3 benefits, and

4 b. in the case of a group long-term care insurance
5 policy, the proposed certificate holder.

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

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

12 a. one or more employers or labor organizations, or to a
13 trust or to the trustees of a fund established by one
14 or more employers or labor organizations, or a
15 combination thereof, for employees or former
16 employees, or a combination thereof or for members or
17 former members, or a combination thereof, of the labor
18 organizations, or

19 b. any professional, trade or occupational association
20 for its members or former or retired members, or
21 combination thereof, if such association:

22 (1) is composed of individuals, all of whom are or
23 were actively engaged in the same profession,
24 trade or occupation, and

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

1 filing the association or associations shall be deemed
2 to satisfy such organizational requirements, unless
3 the Commissioner makes a finding that the association
4 or associations do not satisfy those organizational
5 requirements, or

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

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

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

13 (3) the benefits are reasonable in relation to the
14 premiums charged.

15 5. "Not-for-Profit Life care community" within the meaning of
16 Section 1-853.1 of Title 63 of the Oklahoma Statutes means any not-
17 for-profit organization that enters into an arrangement pursuant to
18 which a person contracts for a place of residence and personal care
19 services, including but not limited to services which progress from
20 independent living to semi-dependent nursing care to acute nursing
21 care, in consideration of a ~~payment or payments of fees prior to the~~
22 ~~delivery of services and accommodations.~~ Life an endowed
23 prepayment, license or entry fee which has been actuarially
24 established to meet the cost of the promised services and

1 accommodations. For communities commencing operations after January
2 1, 2016, the amount of the endowed prepayment must be independently,
3 actuarially determined, in compliance with the Actuarial Board,
4 prior to opening the community and annually thereafter to ensure
5 that sufficient payments are collected to meet the future services
6 of the residents. The actuarial study shall take into consideration
7 projected or actual project costs, resident fees and charges,
8 resident contract provisions and any other factors affecting the
9 operation of the facility. It shall contain mortality and morbidity
10 data and an actuary's signed opinion that the proposed is feasible
11 and that the study has been prepared in accordance with standards
12 adopted by the American Academy of Actuaries. A not-for-profit life
13 care community shall not include the following:

- 14 a. traditional landlord and tenant agreements utilizing
- 15 periodic rental and security deposit payments,
- 16 b. residential care homes licensed pursuant to the
- 17 Oklahoma Residential Care Act,
- 18 c. assisted living centers and continuum of care
- 19 facilities licensed pursuant to the Oklahoma Continuum
- 20 of Care and Assisted Living Act, ~~or~~
- 21 d. facilities licensed pursuant to the Oklahoma Nursing
- 22 Home Care Act, or

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1 e. any facility where the endowed prepayment, license or
2 entry fee is less than Fifty Thousand Dollars
3 (\$50,000.00).

4 6. "Policy" means any policy, contract, certificate, subscriber
5 agreement, rider or endorsement delivered, or issued for delivery,
6 in this state by an insurer, fraternal benefit society, nonprofit
7 health, hospital, or medical service corporation, prepaid health
8 plan, health maintenance organization, life care community, or any
9 similar organization.

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

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

14 (1) the only insurance protection provided under the
15 contract is coverage of qualified long-term care
16 services,

17 (2) the contract does not pay or reimburse expenses
18 incurred for services or items to the extent that
19 such expenses are reimbursable under Title XVIII
20 of the Social Security Act as amended, or would
21 be so reimbursable but for the application of a
22 deductible or coinsurance amount. The
23 requirements of this subparagraph do not apply to
24 contracts where Medicare is a secondary payor, or

1 where the contract makes per diem or other
2 periodic payments without regard to expenses,
3 (3) the contract is guaranteed renewable,
4 (4) the contract does not provide for a cash
5 surrender value or other money that can be paid,
6 assigned, pledged as collateral for a loan, or
7 borrowed. All refunds of premiums and all
8 policyholder dividends or similar amounts, under
9 such contract are to be applied as a reduction in
10 future premiums or to increase future benefits,
11 except that a refund of the aggregate premium
12 paid under the contract may be allowed in the
13 event of death of the insured or a complete
14 surrender or cancellation of the contract, and
15 (5) the contract contains the consumer protection
16 provisions set forth in Section 7702(B)(g) of the
17 Internal Revenue Code, or

18 b. life insurance contract which provides long-term care
19 coverage by rider or as part of the contract if the
20 contract complies with the applicable provisions of
21 Section 7702(B) of the Internal Revenue Code, as
22 amended.

23 8. "Qualified long-term care services" means necessary
24 diagnostic, preventive, therapeutic, curing, treating, mitigating,

1 and rehabilitative services, and maintenance for personal care
2 services for which an insured is eligible under a qualified long-
3 term care insurance contract, and which are provided pursuant to a
4 plan of care prescribed by a licensed health care practitioner.

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

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