

CHAPTER 52

INSURANCE

HOUSE BILL 07-1039

BY REPRESENTATIVE(S) Swalm, Buescher, Frangas, Jahn, Kefalas, Kerr J., Labuda, Levy, Loooper, Madden, Rice, Rose, Stephens, Todd, and Stafford;
also SENATOR(S) Tochtrop, Boyd, Groff, Tupa, Veiga, Williams, and Windels.

AN ACT

CONCERNING CONFORMING THE "LONG-TERM CARE INSURANCE ACT" TO THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS MODEL ACT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-19-103 (5), Colorado Revised Statutes, is amended, and the said 10-19-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

10-19-103. Definitions. As used in this article, unless the context otherwise requires:

(5) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital. "Long-term care insurance" includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance. THE TERM SHALL ALSO INCLUDE QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS. This term does not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement and that provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. "Long-term care insurance" also includes a policy or rider that provides for payment of benefits based upon cognitive

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

impairment or the loss of functional capacity. Long-term care insurance may be issued by insurers, fraternal benefit societies, nonprofit hospital, medical-surgical, and health service corporations, prepaid health plans, health maintenance organizations, or any similar organizations to the extent they are otherwise authorized to issue life or health insurance. "Long-term health care insurance" shall not include any insurance policy ~~which~~ THAT is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited-benefit health coverage. Notwithstanding any other provisions contained herein, any product advertised, marketed, or offered as long-term care insurance shall be subject to the provisions of this article.

(8) (a) "QUALIFIED LONG-TERM CARE INSURANCE CONTRACT" OR "FEDERALLY TAX-QUALIFIED LONG-TERM CARE INSURANCE CONTRACT" MEANS AN INDIVIDUAL OR GROUP INSURANCE CONTRACT THAT MEETS THE REQUIREMENTS OF 26 U.S.C. SEC. 7702B (b) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AS FOLLOWS:

(I) THE ONLY INSURANCE PROTECTION PROVIDED UNDER THE CONTRACT IS COVERAGE OF QUALIFIED LONG-TERM CARE SERVICES. A CONTRACT SHALL NOT FAIL TO SATISFY THE REQUIREMENTS OF THIS SUBPARAGRAPH (I) BY REASON OF PAYMENTS BEING MADE ON A PER DIEM OR OTHER PERIODIC BASIS WITHOUT REGARD TO THE EXPENSES INCURRED DURING THE PERIOD TO WHICH THE PAYMENTS RELATE.

(II) THE CONTRACT DOES NOT PAY OR REIMBURSE EXPENSES INCURRED FOR SERVICES OR ITEMS TO THE EXTENT THAT THE EXPENSES ARE REIMBURSABLE UNDER TITLE XVIII OF THE FEDERAL "SOCIAL SECURITY ACT", AS ADDED BY THE "SOCIAL SECURITY AMENDMENTS OF 1965", PUB.L. 89-97, AS AMENDED, OR WOULD BE SO REIMBURSABLE BUT FOR THE APPLICATION OF A DEDUCTIBLE OR COINSURANCE AMOUNT. THE REQUIREMENTS OF THIS SUBPARAGRAPH (II) DO NOT APPLY TO EXPENSES THAT ARE REIMBURSABLE UNDER SAID TITLE XVIII ONLY AS A SECONDARY PAYOR. A CONTRACT SHALL NOT FAIL TO SATISFY THE REQUIREMENTS OF THIS SUBPARAGRAPH (II) BY REASON OF PAYMENTS BEING MADE ON A PER DIEM OR OTHER PERIODIC BASIS WITHOUT REGARD TO THE EXPENSES INCURRED DURING THE PERIOD TO WHICH THE PAYMENTS RELATE.

(III) THE CONTRACT IS GUARANTEED RENEWABLE, WITHIN THE MEANING OF 26 U.S.C. SEC. 7702B (b) (1) (C) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED;

(IV) THE CONTRACT DOES NOT PROVIDE FOR A CASH SURRENDER VALUE OR OTHER MONEY THAT CAN BE PAID, ASSIGNED, PLEDGED AS COLLATERAL FOR A LOAN, OR BORROWED EXCEPT AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH (a);

(V) ALL REFUNDS OF PREMIUMS AND ALL POLICYHOLDER DIVIDENDS OR SIMILAR AMOUNTS UNDER THE CONTRACT ARE TO BE APPLIED AS A REDUCTION IN FUTURE PREMIUMS OR TO INCREASE FUTURE BENEFITS; EXCEPT THAT A CASH REFUND MAY BE ISSUED IN THE EVENT OF DEATH OF THE INSURED OR A COMPLETE SURRENDER OR CANCELLATION OF THE CONTRACT, SO LONG AS THE REFUND DOES NOT EXCEED THE

AGGREGATE PREMIUMS PAID UNDER THE CONTRACT;

(VI) THE CONTRACT MEETS THE CONSUMER PROTECTION PROVISIONS SET FORTH IN 26 U.S.C. SEC. 7702B (g) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(b) "QUALIFIED LONG-TERM CARE INSURANCE CONTRACT" OR "FEDERALLY TAX-QUALIFIED LONG-TERM CARE INSURANCE CONTRACT" ALSO MEANS THE PORTION OF A LIFE INSURANCE CONTRACT THAT PROVIDES LONG-TERM CARE INSURANCE COVERAGE BY RIDER OR AS PART OF THE CONTRACT AND THAT SATISFIES THE REQUIREMENTS OF 26 U.S.C. SEC. 7702B (b) AND (e) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

SECTION 2. 10-19-104, Colorado Revised Statutes, is amended to read:

10-19-104. Scope and applicability of article. The requirements of this article shall apply to policies delivered or issued for delivery in this state on or after July 1, 1990. This article is not intended to supersede the obligations of entities subject to this article to comply with the substance of other applicable insurance laws insofar as they do not conflict with this article; except that laws and regulations designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance. ~~A policy which is not advertised, marketed, or offered as long-term care insurance or nursing home insurance need not meet the requirements of this article.~~

SECTION 3. 10-19-107 (1) (c), Colorado Revised Statutes, is amended to read:

10-19-107. Performance standards. (1) A long-term care insurance policy may not:

(c) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care; ~~This evaluation of the amount of coverage provided shall be based on aggregate days of care covered for lower levels of care, when compared to days of care covered for skilled care;~~ or

SECTION 4. 10-19-108 (1), (2), and (4), Colorado Revised Statutes, are amended to read:

10-19-108. Requirements for preexisting conditions. (1) A long-term care insurance policy or certificate, other than a policy or certificate thereunder, issued to a group as defined in section 10-19-103 (4) (a), ~~(4) (b), or (4) (c)~~; shall not use a definition of "preexisting condition" that is more restrictive than the following: "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within six months preceding the effective date of coverage of an insured person.

(2) A long-term care insurance policy or certificate, other than a policy or certificate thereunder issued to a group as defined in section 10-19-103 (4) (a), ~~(4) (b), or (4) (c)~~; shall not exclude coverage for a loss or confinement which is the result of a preexisting condition, unless such loss or confinement begins within six

months following the effective date of coverage of an insured person.

(4) The definition of "preexisting condition" in subsection (1) of this section does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on the application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection (2) of this section expires. A long-term care insurance policy or certificate shall not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (2) of this section. ~~unless such waiver or rider has been specifically approved by the commissioner.~~

SECTION 5. 10-19-109 (1), (2) (a), and (2) (c), Colorado Revised Statutes, are amended to read:

10-19-109. Requirements prior to hospitalization or institutionalization.

(1) ~~Effective July 1, 1991,~~ A long-term care insurance policy shall not be delivered or issued for delivery in this state if such policy:

(a) Conditions the eligibility for any benefits on a prior hospitalization requirement; ~~or~~

(b) Conditions the eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; OR

(c) CONDITIONS ELIGIBILITY FOR ANY BENEFITS OTHER THAN WAIVER OF PREMIUM, POST-CONFINEMENT, POST-ACUTE CARE, OR RECUPERATIVE BENEFITS ON A PRIOR INSTITUTIONALIZATION REQUIREMENT.

(2) (a) ~~Effective July 1, 1991,~~ A long-term care insurance policy containing any limitations or conditions for eligibility, ~~other than those prohibited in subsection (1) of this section~~ ON ELIGIBILITY FOR POST-CONFINEMENT, POST-ACUTE CARE, OR RECUPERATIVE BENEFITS shall clearly label in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits" such limitations or conditions, including any required number of days of confinement.

(c) ~~Effective July 1, 1991,~~ A long-term care insurance policy ~~which~~ THAT conditions eligibility for noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty days. ~~for which benefits are paid.~~

SECTION 6. 10-19-111, Colorado Revised Statutes, is amended to read:

10-19-111. Right to return the policy - free look. ~~(1) An individual long-term care insurance policyholder shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies shall have a notice prominently printed on the first page of the~~

policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

~~(2) A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured person shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason.~~ A LONG-TERM CARE INSURANCE APPLICANT HAS THE RIGHT TO RETURN THE POLICY OR CERTIFICATE WITHIN THIRTY DAYS AFTER ITS DELIVERY AND TO HAVE THE PREMIUM REFUNDED IF, AFTER EXAMINATION OF THE POLICY OR CERTIFICATE, OTHER THAN A CERTIFICATE ISSUED PURSUANT TO A POLICY ISSUED TO A GROUP DEFINED IN SECTION 10-19-103 (4) (a), THE APPLICANT IS NOT SATISFIED FOR ANY REASON. A LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE SHALL CONTAIN A NOTICE, PROMINENTLY PRINTED ON THE FIRST PAGE OR ATTACHED THERETO, STATING IN SUBSTANCE THAT THE APPLICANT HAS THE RIGHT TO RETURN THE POLICY OR CERTIFICATE WITHIN THIRTY DAYS AFTER ITS DELIVERY AND TO HAVE THE PREMIUM REFUNDED IF, AFTER EXAMINATION OF THE POLICY OR CERTIFICATE, OTHER THAN A CERTIFICATE ISSUED PURSUANT TO A POLICY ISSUED TO A GROUP DEFINED IN SECTION 10-19-103 (4) (a), THE APPLICANT IS NOT SATISFIED FOR ANY REASON. THIS SECTION SHALL ALSO APPLY TO A DENIAL OF APPLICATION. ANY REFUND SHALL BE MADE WITHIN THIRTY DAYS AFTER THE RETURN OR DENIAL.

SECTION 7. 10-19-112 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10-19-112. Outline of coverage - certificate. (1) (e) IN THE CASE OF A POLICY ISSUED TO A GROUP DEFINED IN SECTION 10-19-103 (4) (a), AN OUTLINE OF COVERAGE SHALL NOT BE REQUIRED TO BE DELIVERED IF THE INFORMATION DESCRIBED IN SUBSECTION (2) OF THIS SECTION IS CONTAINED IN OTHER MATERIALS RELATING TO ENROLLMENT. UPON REQUEST, THESE OTHER MATERIALS SHALL BE MADE AVAILABLE TO THE COMMISSIONER.

SECTION 8. 10-19-112 (4) and (5), Colorado Revised Statutes, are amended, and the said 10-19-112 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

10-19-112. Outline of coverage - certificate. (4) ~~When a long-term care benefit becomes payable by the acceleration of a death benefit, the insurer shall provide a report to the policyholder that includes the following information:~~

~~(a) Any long-term care benefits paid out during the month;~~

~~(b) An explanation of any changes in benefits under the policy due to long-term care benefits that have been paid as provided by this subsection (4). Such changes include, but are not limited to, remaining death benefits, the cash value of the~~

~~policy, and the remaining long-term care benefits under the policy.~~

(5) Any ~~health care or life insurance~~ policy or rider that is advertised, marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of this article.

(6) IF AN APPLICATION FOR A LONG-TERM CARE INSURANCE CONTRACT OR CERTIFICATE IS APPROVED, THE ISSUER SHALL DELIVER THE CONTRACT OR CERTIFICATE OF INSURANCE TO THE APPLICANT NO LATER THAN THIRTY DAYS AFTER THE DATE OF APPROVAL.

(7) (a) PRIOR TO THE SALE OF AN INDIVIDUAL LIFE INSURANCE POLICY THAT PROVIDES LONG-TERM CARE BENEFITS EITHER WITHIN THE POLICY OR BY RIDER, A POLICY SUMMARY SHALL BE DELIVERED TO THE APPLICANT. IN THE CASE OF DIRECT RESPONSE SOLICITATIONS, THE INSURER SHALL DELIVER THE POLICY SUMMARY UPON THE APPLICANT'S REQUEST, BUT REGARDLESS OF REQUEST SHALL MAKE DELIVERY NO LATER THAN THE TIME OF THE SALE OF THE POLICY. IN ADDITION TO COMPLYING WITH ALL APPLICABLE REQUIREMENTS, THE SUMMARY SHALL ALSO INCLUDE:

(I) AN EXPLANATION OF HOW THE LONG-TERM CARE BENEFIT INTERACTS WITH OTHER COMPONENTS OF THE POLICY, INCLUDING DEDUCTIONS FROM DEATH BENEFITS;

(II) AN ILLUSTRATION OF THE AMOUNT OF BENEFITS, THE LENGTH OF BENEFIT, AND THE GUARANTEED LIFETIME BENEFITS, IF ANY, FOR EACH COVERED PERSON;

(III) ANY EXCLUSIONS, REDUCTIONS, OR LIMITATIONS ON BENEFITS OF LONG-TERM CARE;

(IV) A STATEMENT THAT ANY LONG-TERM CARE INFLATION PROTECTION OPTION REQUIRED BY SECTION 10-19-113 IS NOT AVAILABLE UNDER THE POLICY.

(b) IF APPLICABLE TO THE POLICY TYPE, THE SUMMARY SHALL ALSO INCLUDE:

(I) A DISCLOSURE OF THE EFFECTS OF EXERCISING OTHER RIGHTS UNDER THE POLICY;

(II) A DISCLOSURE OF GUARANTEES RELATED TO LONG-TERM CARE COSTS OF INSURANCE CHARGES; AND

(III) CURRENT AND PROJECTED MAXIMUM LIFETIME BENEFITS.

(c) THE PROVISIONS OF THE POLICY SUMMARY LISTED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (7) MAY BE INCORPORATED INTO A BASIC ILLUSTRATION OR INTO THE LIFE INSURANCE POLICY SUMMARY.

(8) WHENEVER A LONG-TERM CARE BENEFIT, FUNDED THROUGH A LIFE INSURANCE VEHICLE BY THE ACCELERATION OF THE DEATH BENEFIT, IS IN BENEFIT PAYMENT STATUS, A MONTHLY REPORT SHALL BE PROVIDED TO THE POLICYHOLDER. THE REPORT SHALL INCLUDE:

(a) ANY LONG-TERM CARE BENEFITS PAID OUT DURING THE MONTH;

(b) AN EXPLANATION OF ANY CHANGES IN THE POLICY, SUCH AS DEATH BENEFITS OR CASH VALUES, DUE TO LONG-TERM CARE BENEFITS BEING PAID OUT; AND

(c) THE AMOUNT OF LONG-TERM CARE BENEFITS EXISTING OR REMAINING.

(9) IF A CLAIM UNDER A LONG-TERM CARE INSURANCE CONTRACT IS DENIED, THE ISSUER SHALL, WITHIN SIXTY DAYS OF THE DATE OF A WRITTEN REQUEST BY THE POLICYHOLDER OR CERTIFICATE HOLDER, OR A REPRESENTATIVE THEREOF:

(a) PROVIDE A WRITTEN EXPLANATION OF THE REASONS FOR THE DENIAL; AND

(b) MAKE AVAILABLE ALL INFORMATION DIRECTLY RELATED TO THE DENIAL.

SECTION 9. 10-19-112 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10-19-112. Outline of coverage - certificate. (2) The outline of coverage shall include all of the following:

(g) A STATEMENT THAT DISCLOSES TO THE POLICYHOLDER OR CERTIFICATE HOLDER WHETHER THE POLICY IS INTENDED TO BE A FEDERALLY TAX-QUALIFIED LONG-TERM CARE INSURANCE CONTRACT UNDER 26 U.S.C. SEC. 7702B (b) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

SECTION 10. 10-19-113, Colorado Revised Statutes, is amended to read:

10-19-113. Option for inflation adjustment - renewability. (1) No insurer may offer a long-term care insurance policy ~~except for expense-incurred long-term care policies~~; unless the insurer also offers to the policyholder, IN ADDITION TO ANY OTHER INFLATION PROTECTION, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations ~~which~~ THAT are meaningful to account for reasonable anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(a) ~~Benefit levels are increased annually~~ THE INFLATION PROTECTION FEATURE INCREASES BENEFIT LEVELS ANNUALLY IN A MANNER SO THAT THE INCREASES ARE COMPOUNDED ANNUALLY AT A RATE NOT LESS THAN FIVE PERCENT;

(b) THE INFLATION PROTECTION FEATURE GUARANTEES the insured individual ~~is guaranteed~~ the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. THE AMOUNT OF THE ADDITIONAL BENEFIT SHALL BE NO LESS THAN THE DIFFERENCE BETWEEN THE EXISTING POLICY BENEFIT AND THAT BENEFIT COMPOUNDED ANNUALLY AT A RATE OF AT LEAST FIVE PERCENT FOR THE PERIOD BEGINNING WITH THE PURCHASE OF THE EXISTING BENEFIT AND EXTENDING UNTIL THE YEAR IN WHICH THE OFFER IS MADE; OR

(c) THE INFLATION PROTECTION FEATURE COVERS a specified percentage of actual or reasonable charges ~~are covered~~ AND DOES NOT INCLUDE A MAXIMUM SPECIFIED INDEMNITY AMOUNT OR LIMIT.

~~(2) No long-term care insurance policy issued to an individual shall contain renewal provisions less favorable to the insured than guaranteed renewable. However, the commissioner, as provided by regulation, and for cause related to long-term care policies, may authorize nonrenewal on a statewide basis, on terms and conditions deemed necessary by the commissioner, to best protect the interest of the insureds. If the policy is issued to a group, the required offer in subsection (1) of this section shall be made to the group policyholder; except that, if the policy is issued to a group defined in section 10-19-103 (4) (d) other than a continuing care retirement community, the offer shall be made to each proposed certificate holder.~~

~~(3) This section shall apply to all long-term care insurance policies issued or issued for delivery in this state on or after January 1, 1991. The offer in subsection (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.~~

(4) (a) AN INSURER SHALL INCLUDE THE FOLLOWING INFORMATION IN OR WITH THE OUTLINE OF COVERAGE:

(I) A GRAPHIC COMPARISON OF THE BENEFIT LEVELS OF A POLICY THAT INCREASES BENEFITS OVER THE POLICY PERIOD WITH THE BENEFIT LEVELS OF A COMPARABLE POLICY THAT DOES NOT INCREASE BENEFITS. THE GRAPHIC COMPARISON SHALL SHOW BENEFIT LEVELS OVER AT LEAST A TWENTY-YEAR PERIOD.

(II) ANY EXPECTED PREMIUM INCREASE OR ADDITIONAL PREMIUM TO PAY FOR AUTOMATIC OR OPTIONAL BENEFIT INCREASES.

(b) AN INSURER MAY USE A REASONABLE HYPOTHETICAL OR GRAPHIC DEMONSTRATION FOR THE PURPOSES OF THE DISCLOSURE REQUIRED BY THIS SUBSECTION (4).

(5) INFLATION PROTECTION BENEFIT INCREASES UNDER A POLICY THAT CONTAINS THESE BENEFITS SHALL CONTINUE WITHOUT REGARD TO AN INSURED'S AGE, CLAIM STATUS OR CLAIM HISTORY, OR THE TIME THE PERSON HAS BEEN INSURED UNDER THE POLICY.

(6) AN OFFER OF INFLATION PROTECTION THAT PROVIDES FOR AUTOMATIC BENEFIT INCREASES SHALL INCLUDE AN OFFER OF A PREMIUM THAT THE INSURER EXPECTS TO REMAIN CONSTANT. THE OFFER SHALL DISCLOSE, IN A CONSPICUOUS MANNER, THAT THE PREMIUM MAY CHANGE IN THE FUTURE UNLESS THE PREMIUM IS GUARANTEED TO REMAIN CONSTANT.

(7) (a) INFLATION PROTECTION AS PROVIDED IN SUBSECTION (1) OF THIS SECTION SHALL BE INCLUDED IN A LONG-TERM CARE INSURANCE POLICY UNLESS AN INSURER OBTAINS A REJECTION OF INFLATION PROTECTION SIGNED BY THE POLICYHOLDER AS REQUIRED IN THIS SUBSECTION (7). THE REJECTION MAY BE EITHER IN THE APPLICATION OR ON A SEPARATE FORM.

(b) THE REJECTION SHALL BE CONSIDERED A PART OF THE APPLICATION AND SHALL STATE:

I HAVE REVIEWED THE OUTLINE OF COVERAGE AND THE GRAPHS THAT COMPARE THE BENEFITS AND PREMIUMS OF THIS POLICY WITH AND WITHOUT INFLATION PROTECTION. SPECIFICALLY, I HAVE REVIEWED PLANS _____, AND I REJECT INFLATION PROTECTION.

SECTION 11. 10-19-113.3 (3) and (4), Colorado Revised Statutes, are amended, and the said 10-19-113.3 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

10-19-113.3. Incontestability period. (3) No long-term care insurance policy or certificate may be field issued based on medical or health status. For purposes of this subsection (3), "field issued" means a policy or certificate is issued by a producer OR THIRD PARTY ADMINISTRATOR pursuant to the underwriting authority granted to the producer OR THIRD PARTY ADMINISTRATOR by a carrier AND USING THE INSURER'S UNDERWRITING GUIDELINES.

(4) ~~No benefit payment may be recovered by the insurer in the event that the policy or certificate is rescinded pursuant to this section.~~ IF AN INSURER HAS PAID BENEFITS UNDER THE LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE, THE BENEFIT PAYMENT MAY NOT BE RECOVERED BY THE INSURER IN THE EVENT THAT THE POLICY OR CERTIFICATE IS RESCINDED.

(5) IN THE EVENT OF THE DEATH OF THE INSURED, THIS SECTION SHALL NOT APPLY TO THE REMAINING DEATH BENEFIT OF A LIFE INSURANCE POLICY THAT ACCELERATES BENEFITS FOR LONG-TERM CARE. IN THAT SITUATION, THE REMAINING DEATH BENEFITS UNDER THE POLICIES SHALL BE GOVERNED BY SECTIONS 10-7-102 AND 10-7-202. IN ALL OTHER SITUATIONS, THIS SECTION SHALL APPLY TO LIFE INSURANCE POLICIES THAT ACCELERATE BENEFITS FOR LONG-TERM CARE.

SECTION 12. Article 19 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

10-19-113.4. Nonforfeiture benefits - rules. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, A LONG-TERM CARE INSURANCE POLICY MAY NOT BE DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE UNLESS THE POLICYHOLDER OR CERTIFICATE HOLDER HAS BEEN OFFERED THE OPTION OF PURCHASING A POLICY OR CERTIFICATE INCLUDING A NONFORFEITURE BENEFIT. THE OFFER OF A NONFORFEITURE BENEFIT MAY BE IN THE FORM OF A RIDER THAT IS ATTACHED TO THE POLICY. IF THE POLICYHOLDER OR CERTIFICATE HOLDER DECLINES THE NONFORFEITURE BENEFIT, THE INSURER SHALL PROVIDE A CONTINGENT BENEFIT UPON LAPSE THAT SHALL BE AVAILABLE FOR A SPECIFIED PERIOD.

(2) WHEN A GROUP LONG-TERM CARE INSURANCE POLICY IS ISSUED, THE OFFER REQUIRED IN SUBSECTION (1) OF THIS SECTION SHALL BE MADE TO THE GROUP POLICYHOLDER; EXCEPT THAT, IF THE POLICY IS ISSUED AS GROUP LONG-TERM CARE INSURANCE AS DEFINED IN SECTION 10-19-103 (4) (d), OTHER THAN TO A CONTINUING CARE RETIREMENT COMMUNITY OR OTHER SIMILAR ENTITY, THE OFFER

SHALL BE MADE TO EACH PROPOSED CERTIFICATE HOLDER.

(3) THE COMMISSIONER SHALL PROMULGATE RULES SPECIFYING THE TYPE OR TYPES OF NONFORFEITURE BENEFITS TO BE OFFERED AS PART OF LONG-TERM CARE INSURANCE POLICIES AND CERTIFICATES, THE STANDARDS FOR NONFORFEITURE BENEFITS, AND THE RULES REGARDING CONTINGENT BENEFIT UPON LAPSE, INCLUDING A DETERMINATION OF THE SPECIFIED PERIOD DURING WHICH A CONTINGENT BENEFIT UPON LAPSE WILL BE AVAILABLE AND THE SUBSTANTIAL PREMIUM RATE INCREASE THAT TRIGGERS A CONTINGENT BENEFIT UPON LAPSE AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

10-19-113.6. Producer training requirements. (1) (a) AN INDIVIDUAL MAY NOT SELL, SOLICIT, OR NEGOTIATE LONG-TERM CARE INSURANCE UNLESS THE INDIVIDUAL IS LICENSED AS AN INSURANCE PRODUCER FOR ACCIDENT AND HEALTH OR SICKNESS OR LIFE INSURANCE AND HAS COMPLETED A ONE-TIME TRAINING COURSE ON OR BEFORE JANUARY 1, 2009, AND ONGOING TRAINING EVERY TWENTY-FOUR MONTHS THEREAFTER. THE TRAINING SHALL MEET THE REQUIREMENTS SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(b) THE TRAINING REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION MAY BE APPROVED AS CONTINUING EDUCATION COURSES UNDER SECTION 10-2-301.

(2) (a) THE ONE-TIME TRAINING REQUIRED BY THIS SECTION SHALL BE NO LESS THAN SIXTEEN HOURS, EIGHT HOURS OF WHICH SHALL CONSIST OF LONG-TERM CARE, GENERALLY, AND EIGHT HOURS OF WHICH SHALL BE SPECIFIC TO LONG-TERM CARE PARTNERSHIPS IN A CLASSROOM SETTING. THE ONGOING TRAINING REQUIRED BY THIS SECTION SHALL BE NO LESS THAN FIVE HOURS IN A CLASSROOM SETTING.

(b) THE TRAINING REQUIRED UNDER PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL CONSIST OF TOPICS RELATED TO LONG-TERM CARE INSURANCE, LONG-TERM CARE SERVICES AND, IF APPLICABLE, QUALIFIED STATE LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAMS, INCLUDING, BUT NOT LIMITED TO:

(I) STATE AND FEDERAL REGULATIONS AND REQUIREMENTS AND THE RELATIONSHIP BETWEEN QUALIFIED STATE LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAMS AND OTHER PUBLIC AND PRIVATE COVERAGE OF LONG-TERM CARE SERVICES, INCLUDING MEDICAID;

(II) AVAILABLE LONG-TERM CARE SERVICES AND PROVIDERS;

(III) CHANGES OR IMPROVEMENTS IN LONG-TERM CARE SERVICES OR PROVIDERS;

(IV) ALTERNATIVES TO THE PURCHASE OF PRIVATE LONG-TERM CARE INSURANCE;

(V) THE EFFECT OF INFLATION ON BENEFITS AND THE IMPORTANCE OF INFLATION PROTECTION; AND

(VI) CONSUMER SUITABILITY STANDARDS AND GUIDELINES.

(c) THE TRAINING REQUIRED BY THIS SECTION SHALL NOT INCLUDE TRAINING THAT IS INSURER- OR COMPANY PRODUCT-SPECIFIC OR THAT INCLUDES ANY SALES

OR MARKETING INFORMATION, MATERIALS, OR TRAINING OTHER THAN THOSE REQUIRED BY STATE OR FEDERAL LAW.

(3) (a) EACH INSURER SUBJECT TO THIS ARTICLE SHALL OBTAIN VERIFICATION THAT A PRODUCER RECEIVES TRAINING REQUIRED BY PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION BEFORE THE PRODUCER IS PERMITTED TO SELL, SOLICIT, OR NEGOTIATE THE INSURER'S LONG-TERM CARE INSURANCE PRODUCTS. THE INSURER SHALL MAINTAIN RECORDS IN ACCORDANCE WITH ALL APPLICABLE RECORD RETENTION REQUIREMENTS AND SHALL MAKE THE VERIFICATION AVAILABLE TO THE COMMISSIONER UPON REQUEST.

(b) EACH INSURER SUBJECT TO THIS ARTICLE SHALL MAINTAIN RECORDS WITH RESPECT TO THE TRAINING OF ITS PRODUCERS CONCERNING THE DISTRIBUTION OF ITS PARTNERSHIP POLICIES THAT WILL ALLOW THE DIVISION OF INSURANCE TO PROVIDE ASSURANCE TO THE STATE MEDICAID AGENCY THAT PRODUCERS HAVE RECEIVED THE TRAINING CONTAINED IN SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, AS REQUIRED BY PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, AND THAT PRODUCERS HAVE DEMONSTRATED AN UNDERSTANDING OF THE PARTNERSHIP POLICIES AND THEIR RELATIONSHIP TO PUBLIC AND PRIVATE COVERAGE OF LONG-TERM CARE, INCLUDING MEDICAID, IN THIS STATE. THESE RECORDS SHALL BE MAINTAINED IN ACCORDANCE WITH ALL APPLICABLE RECORD RETENTION REQUIREMENTS AND SHALL BE MADE AVAILABLE TO THE COMMISSIONER UPON REQUEST.

(4) THE SATISFACTION OF THESE TRAINING REQUIREMENTS IN ANY STATE SHALL BE DEEMED TO SATISFY THE TRAINING REQUIREMENTS IN THIS STATE.

SECTION 13. 10-19-113.7, Colorado Revised Statutes, is amended to read:

10-19-113.7. Rules. The commissioner shall adopt rules ~~establishing~~ TO PROMOTE PREMIUM ADEQUACY, TO PROTECT THE POLICYHOLDER IN THE EVENT OF SUBSTANTIAL RATE INCREASES, AND TO ESTABLISH minimum standards for marketing practices, producer ~~training~~ EDUCATION, PRODUCER COMPENSATION, PRODUCER EXAMINATION, PENALTIES, and reporting practices for long-term care insurance. In addition, the commissioner may issue regulations to establish minimum standards concerning suitability.

SECTION 14. Effective date - applicability. (1) This act shall take effect January 1, 2008.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and

shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to long-term care insurance policies issued on or after the applicable effective date of this act.

Approved: March 26, 2007