

PUBLIC CHAPTER NO. 1058

HOUSE BILL NO. 4206

By Representatives Yokley, Odom, DuBois, Hardaway, Moore, Fitzhugh

Substituted for: Senate Bill No. 4207

By Senators Kyle, Wilder

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 42, relative to long term care insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-42-102(b) is hereby amended by deleting the existing language in its entirety and substituting instead the following language:

(b) The requirements of this chapter apply to policies delivered or issued for delivery in this state on or after the effective date of this chapter. This chapter is not intended to supersede the obligations of entities subject to this chapter to comply with the substance of other applicable insurance laws insofar as they do not conflict with this chapter, except that laws and regulations designed and intended to apply to Medicare supplement insurance policies shall not be applied to long-term care insurance.

SECTION 2. Tennessee Code Annotated, Section 56-42-103(5) is hereby amended by inserting the following language immediately after the first sentence of the subsection:

"Long-term care insurance" includes group and individual annuities and life insurance policies or riders that provide directly or supplement long-term care insurance. "Long-term care insurance" also includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.

SECTION 3. Tennessee Code Annotated, Section 56-42-103 is hereby amended by adding the following language as subsection (7):

(7)(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 Section 7702(b) of the 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 subdivision 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 XVII of the Social Security Act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this subdivision do not apply to expenses that are reimbursable under the Title XVII of the Social Security Act only as a secondary payor. A contract shall not fail to satisfy the requirements of this subdivision 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 Section 7702B(b)(1)(C) of the 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 subdivision (v);

(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 refund on the event of death of the insured or a complete surrender or cancellation of the contract cannot exceed the aggregate premiums paid under the contract; and

(vi) The contract meets the consumer protection provisions set forth in Section 7702B(g) of the 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 Sections 7702B(b) and (e) of the Internal Revenue Code of 1986, as amended.

SECTION 4. Tennessee Code Annotated, Section 56-42-105(d)(1) is hereby amended by adding the following as a new appropriately designated subdivision:

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

SECTION 5. Tennessee Code Annotated, Section 56-42-105(d)(2) is hereby amended by adding the following as a new appropriately designated subdivision:

() No long-term care insurance policy or rider that provides benefits only following institutionalization shall condition such benefits upon admission to a

facility for the same or related conditions within a period of less than thirty (30) days after discharge from the institution.

SECTION 6. Tennessee Code Annotated, Section 56-42-105(g)(3) is hereby amended by adding the following as a new appropriately designated subdivision:

(C) In the case of a policy issued to a group defined in Section 56-42-103(4)(A), an outline of coverage shall not be required to be delivered, provided that the information described in Section 56-42-105(g)(4) is contained in other materials relating to enrollment. Upon request, these other materials shall be made available to the commissioner.

SECTION 7. Tennessee Code Annotated, Section 56-42-105(g)(4) is hereby amended by adding the following as a new appropriately designated subdivision:

(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 Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

SECTION 8. Tennessee Code Annotated, Section 56-42-105 is hereby amended by deleting the language in existing subsection (i) in its entirety and by adding the following as new appropriately designated subsections:

() 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 (30) days after the date of approval.

() At the time of the policy delivery, a policy summary shall be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider. 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 at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:

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

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

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

(4) A statement that no long-term care inflation protection option is available under the policy;

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

(A) A disclosure of the effects of exercising other rights under the policy;

(B) A disclosure of guarantees related to long-term care costs of insurance charges; and

(C) Current and projected maximum lifetime benefits; and

(6) The provisions of the policy summary listed above may be incorporated into a basic illustration, or into the life insurance policy summary which is required to be delivered in accordance with rules promulgated by the commissioner.

(l) Any time 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:

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

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

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

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

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

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

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

(o) In addition to any other requirements under this chapter, the commissioner may require by rule that other information be given to the prospective applicant for long-term care insurance at the time of initial solicitation or thereafter.

SECTION 9. Tennessee Code Annotated, Title 56, Chapter 42 is hereby amended by deleting Section 56-42-106 in its entirety and by adding SECTIONS 10 through 15 of this Act as new appropriately designated Sections:

SECTION 10. Incontestability Period.

(a) For a policy or certificate that has been in force for less than six (6) months an insurer may rescind a long-term care insurance policy or certificate or

deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance for coverage.

(b) For a policy or certificate that has been in force for at least six (6) months but less than two (2) years an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought.

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

(d)(1) A long-term care insurance policy or certificate may be field issued if the compensation to the field issuer is not based on the number of policies or certificates issued.

(2) For purposes of this section, "field issued" means a policy or certificate issued by a producer or a third-party administrator pursuant to the underwriting authority granted to the producer or third party administrator by an insurer and using the insurer's underwriting guidelines.

(e) If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer in the event that the policy or certificate is rescinded.

(f) 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 this situation, the remaining death benefits under these policies shall be governed by Section 56-7-2307(3). In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.

SECTION 11. Nonforfeiture Benefits.

(a) Except as provided in subsection (b), a long-term care insurance policy may not be delivered or issued for delivery in this state unless the policyholder or certificateholder 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. In the event the policyholder or certificateholder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period of time following a substantial increase in premium rates.

(b) When a group long-term care insurance policy is issued, the offer required in subsection (a) shall be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in Tennessee Code Annotated, Section 56-42-103(4)(D), including a continuing care retirement

community or other similar entity, the offering shall be made to each proposed certificate holder.

(c) The commissioner shall promulgate regulations 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 of time 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 (a).

SECTION 12. Producer Training Requirements.

(a)

(1) 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 and has completed a one-time, eight (8) hour training course. A person currently authorized to sell long-term care insurance may continue to sell such insurance after the effective date of this act as long as he or she completes a one-time, eight (8) hour training course by or before July 1, 2009.

(2) The training requirements of subsection (b) may be approved as continuing education courses under Section 56-6-107(c) and any rules promulgated thereunder.

(b)

(1) Continuing education, as established by rule, may be required of all licensed producers who sell, solicit or negotiate long-term care insurance, provided that they are not otherwise exempt from continuing education pursuant to Tennessee Code Annotated, Section 56-6-107(c).

(2) The training required under subdivision (1) 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:

(A) 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;

(B) Available long-term services and providers;

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

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

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

(F) Consumer suitability standards and guidelines.

(3) 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.

(c)

(1) Insurers subject to this chapter shall:

(A) Obtain verification that a producer receives training as required by subdivisions (a)(1) and (b)(1) prior to selling, soliciting or negotiating the insurer's long-term care insurance products;

(B) Maintain a record of such verification subject to the state's record retention requirements; and

(C) Make the record available to the commissioner upon request.

(2) Insurers subject to this chapter shall maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the department to provide assurance to the state Medicaid agency that producers have received the training contained in subsection (b)(2)(A) as required by subsection (a)(1) 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 the state's record retention requirements and shall be made available to the commissioner upon request.

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

SECTION 13. The commissioner shall issue reasonable regulations for the administration and enforcement of this Tennessee Code Annotated, Title 56, Chapter 42, including but not limited to rules to promote premium adequacy and to protect the policyholder in the event of substantial rate increases, and to establish minimum standards for producer education, marketing practices, producer compensation, producer testing, penalties and reporting practices for long-term care insurance.

SECTION 14. Severability. If any provision of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 15. Penalties. In addition to any other penalties provided by the laws of this state, any insurer and any producer found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a civil penalty of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

SECTION 16. For the purpose of promulgating rules, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2008.

PASSED: May 13, 2008



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY, SPEAKER
SENATE OF THE SENATE

APPROVED this 28th day of May 2008



PHIL BREDESEEN, GOVERNOR