

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 559

An Act to amend and reenact §§ 38.2-5200, 38.2-5202, 38.2-5203, and 38.2-5207 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 52 of Title 38.2 sections numbered 38.2-5209 and 38.2-5210, relating to long-term care insurance.

[H 1511]

Approved April 6, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-5200, 38.2-5202, 38.2-5203, and 38.2-5207 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 52 of Title 38.2 sections numbered 38.2-5209 and 38.2-5210 as follows:

§ 38.2-5200. Definitions.

As used in this chapter:

"Applicant" means in the case of an individual long-term care insurance policy, the person who seeks to contract for such benefits, or in the case of a group long-term care insurance policy, the proposed certificateholder.

"Certificate" means any certificate or evidence of coverage issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this Commonwealth.

"Group long-term care insurance" means a long-term care insurance policy delivered or issued for delivery in this Commonwealth to any group which complies with § 38.2-3521.1.

"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, personal care, mental health or substance abuse services, provided in a setting other than an acute care unit of a hospital. Such term includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance. *Such term shall also include qualified long-term insurance contracts.* Long-term care insurance may be issued by insurers, fraternal benefit societies, health services plans, health maintenance organizations, cooperative nonprofit life benefit companies or mutual assessment life, accident and sickness insurers to the extent they are otherwise authorized to issue life or accident and sickness insurance. Health maintenance organizations, cooperative nonprofit life benefit companies and mutual assessment life, accident and sickness insurers may apply to the Commission for approval to provide long-term care insurance.

"Policy" means any individual or group policy of insurance, contract, subscriber agreement, certificate, rider or endorsement delivered or issued for delivery in this Commonwealth by an insurer, fraternal benefit society, health services plan, health maintenance organization or any similar organization.

"Qualified long-term care insurance policy" or "federally tax-qualified long-term care insurance contract" means an individual or group insurance policy or contract that meets the requirements of § 7702 B (b) of the Internal Revenue Code of 1986, as amended. Such term shall also include the portion of a life insurance policy or contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of §§ 7702 B (b) and 7702 B (e) of the Internal Revenue Code of 1986, as amended.

§ 38.2-5202. Promulgation of regulations; standards for policy provisions.

A. The Commission may adopt regulations to establish specific standards for policy provisions of long-term care insurance policies. These standards shall be in addition to and in accordance with applicable laws of this Commonwealth. The standards shall address terms of renewability, nonforfeiture provisions if applicable, initial and subsequent conditions of eligibility, continuation or conversion, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms and may address any other standards considered appropriate by the Commission.

B. The Commission shall promulgate such regulations regarding long-term care insurance policies and certificates as it deems appropriate.

~~B.~~ C. Regulations issued by the Commission shall:

1. Recognize the unique, developing and experimental nature of long-term care insurance;
2. Recognize the appropriate distinctions necessary between group and individual long-term care insurance policies;
3. Recognize the unique needs of both those individuals who have reached retirement age and those

preretirement individuals interested in purchasing long-term care insurance products; and

4. Recognize the appropriate distinctions necessary between long-term care insurance and accident and sickness insurance policies, prepaid health plans, and other health service plans.

§ 38.2-5203. Prohibited provisions.

No long-term care insurance policy may:

1. Be cancelled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificateholder;

2. Contain a provision establishing any new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

3. 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;

4. *Be issued based on medical or health status when the policy is issued by an agent or third-party administrator pursuant to the underwriting authority granted to the agent or third-party administrator by the insurer; or*

5. *Provide that an insurer who has paid benefits under a long-term care insurance policy or certificate may recover the benefit payments in the event that the policy or certificate is rescinded.*

§ 38.2-5207. Disclosure.

In order to provide for fair disclosure in the sale of long-term care insurance policies:

1. An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solicitation, the insurer shall deliver the outline of coverage upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. The Commission shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of an outline of coverage. In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form. In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

Such outline of coverage shall include:

- a. A description of the principal benefits and coverage provided in the policy;
- b. A statement of the exclusions, reductions and limitations contained in the policy;
- c. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of group coverage shall be specifically described;
- d. A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions;
- e. A description of the terms under which the policy may be returned and premium refunded; and
- f. A brief description of the relationship of cost of care and benefits.

2. A certificate delivered or issued for delivery in this Commonwealth shall include:

- a. A description of the principal benefits and coverage provided in the policy;
- b. A statement of the exclusions, reductions and limitations contained in the policy; and
- c. A statement that the group master policy should be consulted to determine governing contractual provisions.

3. The Commission shall adopt and publish a Long-Term Care Insurance Consumer Guide. After adoption and publication by the Commission, a copy of the Consumer Guide shall be provided at the time of delivery of the policy or certificate.

4. *No long-term care insurance policy or certificate shall be marketed as a qualified long-term care insurance policy or federally tax-qualified long-term care insurance contract unless the policy or contract contains a statement prominently disclosing that such policy or certificate is a qualified long-term care insurance policy or federally tax-qualified long-term care insurance contract.*

§ 38.2-5209. Incontestability.

Each long-term care policy or certificate shall include an incontestability provision that includes the following:

1. *For a policy or certificate that has been in force for less than six 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 of coverage.*

2. *For a policy or certificate that has been in force for at least six months but less than two 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 of coverage and that pertains to the condition for which benefits are sought.*

3. *After a policy or certificate has been in force for two years, it is not contestable upon the grounds of misrepresentation alone, and 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.*

4. *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 such event, the contestability of the remaining death benefits under such a life insurance policy shall be governed by the provisions of*

§ 38.2-3305 or § 38.2-3326. *In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.*

§ 38.2-5210. *Nonforfeiture benefit.*

A long-term care insurance policy or certificate shall not be delivered or issued for delivery in this Commonwealth unless the policyholder or certificateholder has been offered the option of purchasing a policy including a nonforfeiture benefit, as provided in regulations promulgated by the Commission. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy or certificate. If 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.

2. That the Joint Commission on Health Care and the Bureau of Insurance of the State Corporation Commission shall study the work of the National Association of Insurance Commissioners' study group on, and survey other states with respect to, measures in other states that address reporting requirements and comparative disclosures of information for long-term care insurance policies. The Commission and Bureau shall present their report to the members of the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor prior to the 2001 Session of the General Assembly.

3. That the provisions of this act shall apply to any long-term care insurance policy or certificate delivered, issued for delivery, or renewed in this Commonwealth on or after July 1, 2000. However, the requirements of § 38.2-5210 shall take effect sixty days following the first to occur of (i) the promulgation of regulations by the State Corporation Commission providing for required nonforfeiture benefits or (ii) January 1, 2001.