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SHORT TITLE: Insurance; modifying definitions relating to long-term care insurance; prohibiting long-term care policies from conditioning eligibility on certain prior hospitalization or institutionalization requirements; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 50

By: Hooper

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 1991, Sections 4424, 4426 and 4427, which relate to long-term care insurance; modifying definitions; making any product advertised, marketed or offered as long-term care insurance subject to certain provisions; prohibiting long-term care insurance policy from providing certain coverage relating to skilled nursing care; modifying meaning of preexisting condition; deleting authority of Insurance Commissioner to extend certain limitation periods; permitting preexisting conditions to not be covered until certain waiting period expires and prohibiting long-term care policies and certificates from excluding, limiting or reducing coverage or benefits beyond such waiting period; prohibiting long-term care policies from conditioning eligibility on certain prior hospitalization or institutionalization requirements; requiring certain limitations or conditions be clearly labeled; increasing time period for returning policy or certificate for premium refund and clarifying and conforming language; modifying provisions for delivering or presenting outline of coverage and requiring Commissioner prescribe standard format; modifying contents of outline of coverage; deleting provisions relating to certain certificate;

requiring delivery of policy summary under certain conditions and requiring summary include certain information; requiring monthly report for certain long-term care benefits and requiring report include certain information; authorizing insurer to rescind policy or certificate under certain conditions; making policy or certificate incontestable after certain period with certain exception; prohibiting field-issued policy or certificate and defining term; making certain paid benefits unrecoverable by insured; authorizing Commissioner to adopt rules pertaining to continuation or conversion of coverage and regulations to establish certain minimum standards; deleting certain penalty provisions and providing for administrative fine; repealing 36 O.S. 1991, Section 4425, which relates to out-of-state policies; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 4424, is amended to read as follows:

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

1. a. "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered or designed primarily to provide coverage for not less than twelve

(12) 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.

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- b. This term includes group and individual health policies or riders or group and individual life policies or annuities or riders which provide, directly or as a supplement, coverage for long-term care, whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, life care communities, or any similar organization.
- c. This term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.
- d. Long-term care insurance shall not include any insurance policy which 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 protection coverage or related asset-protection coverage, catastrophic coverage, comprehensive coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.
- e. With regard to life insurance, this term does not include life insurance policies which 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 which 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.

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

2. "Applicant" means:

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

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

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

- a. one or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees, or a combination thereof or for members or former members, or a combination thereof, of the labor organizations, or

- b. any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:
- (1) is composed of individuals, all of whom are or were actively engaged in the same profession, trade or occupation, and
 - (2) has been maintained in good faith for purposes other than insurance, or
- c. an association, a trust, or the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the Insurance Commissioner that the association or associations shall have at the outset of transacting long-term care insurance in this state a minimum of one hundred (100) persons in the association or associations and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least one (1) year; and shall have a constitution and bylaws which provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members, (ii) except for credit unions, the association or associations collect dues or solicit contributions from members, and (iii) the members have voting privileges and representation on the governing board and committees. Thirty (30) days after such filing the association or associations shall be deemed to satisfy such organizational requirements, unless

the Commissioner makes a finding that the association or associations do not satisfy those organizational requirements, or

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

- (1) the issuance of the group policy is not contrary to the best interest of the public,
- (2) the issuance of the group policy would result in economies of acquisition or administration, and
- (3) the benefits are reasonable in relation to the premiums charged.

5. "Life care community" means any arrangement pursuant to which a person contracts for a place of residence and personal care services, including but not limited to services which progress from independent living to semi-dependent nursing care to acute nursing care, in consideration of a payment or payments of fees prior to the delivery of services and accommodations. Life care community shall not include traditional residential landlord and tenant agreements utilizing periodic rental and security deposit payments.

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

SECTION 2. AMENDATORY 36 O.S. 1991, Section 4426, is amended to read as follows:

Section 4426. A. No long-term care insurance policy shall:

1. Be canceled, nonrenewed, or otherwise terminated on the grounds of age or the deterioration of the mental or physical health of the insured individual or certificate holder; ~~or~~

2. Contain a provision establishing a 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.

B. 1. No long-term care insurance policy or certificate shall use a definition of "preexisting condition" which is more restrictive than the following: Preexisting condition means ~~the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment or~~ a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within ~~the following limitation periods:~~

~~a. twelve (12) months preceding the effective date of coverage of an insured person who is sixty-five (65) years of age or older on the effective date of coverage, or~~

~~b. twenty-four (24) months preceding the effective date of coverage of an insured person who is under age sixty-five (65) on the effective date of coverage six (6) months preceding the effective date of coverage of an insured person.~~

2. No long-term care insurance policy or certificate shall exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within ~~the following periods:~~

~~a. twelve (12) months following the effective date of coverage of an insured person who is sixty-five (65)~~

~~years of age or older on the effective date of coverage, or~~

~~b. twenty-four (24) months following the effective date of coverage of an insured person who is under age sixty-five (65) on the effective date of coverage.~~

~~3. The Commissioner may extend the limitation periods set forth in this subsection as to specific age group categories or specific policy forms upon findings that the extension is in the best interest of the public six (6) months following the effective date of coverage of an insured person.~~

~~4. 3.~~ The definition of "preexisting condition" does not prohibit an insurer:

- a. from using an application form designed to elicit the complete health history of an applicant, and
- b. from underwriting, on the basis of the answers on that application, in accordance with that insurer's established underwriting standards.

4. 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 paragraph 2 of subsection B of this section expires. No long-term care insurance policy or certificate may 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 paragraph 2 of subsection B of this section.

~~C. No long-term care insurance policy which provides benefits only following institutionalization shall make such benefits dependent upon admission to a facility for the same or related condition within a period of less than thirty (30) days after discharge from the institution~~ Prior hospitalization/institutionalization:

1. No long-term care insurance policy may be delivered or issued in this state if such policy:

- a. conditions eligibility for any benefits on a prior hospitalization requirement,
- b. conditions 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. a long-term care insurance policy containing 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.
- b. a long-term care insurance policy or rider which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.

D. No law, rule or regulation shall establish loss ratio standards for long-term care insurance policies unless a specific reference to long-term care insurance policies is contained in such law, rule or regulation.

E. ~~1. Individual long-term~~ Long-term care insurance ~~policyholders~~ applicants shall have the right to return the policy or certificate within ~~ten (10)~~ thirty (30) days after its delivery and to have the premium refunded if, after examination of the policy or certificate, the ~~policyholder~~ applicant is not satisfied with the

policy, for any reason. ~~Individual long-term~~ Long-term care insurance policies and certificates shall have a notice prominently printed on the first page of the policy or attached thereto, stating in substance, that the ~~policyholder~~ applicant shall have the right to return the policy or certificate within ~~ten (10)~~ thirty (30) days after its delivery and to have the premium refunded if, after examination of the policy, or certificate, the ~~policyholder~~ applicant is not satisfied with the policy, for any reason.

~~2. A person insured under a long-term care insurance policy or certificate issued pursuant to a direct response solicitation shall have the right to return the policy or certificate within thirty (30) days after its delivery and to have the premium refunded if, after examination, the insured person is not satisfied with the policy or certificate, for any reason. Long-term care insurance policies or certificates 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 or certificate within thirty (30) days after its delivery and to have the premium refunded if after examination the insured person is not satisfied with the policy or certificate, for any reason.~~

F. An outline of coverage shall be delivered to ~~an~~ a prospective applicant for ~~an individual~~ long-term care insurance policy at the time of application for ~~an individual~~ policy. ~~In the case of direct response solicitations, 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~~ initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose. The Insurance Commissioner 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 must 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 must be presented in conjunction with any application or enrollment form.

Such outline of coverage shall include, but not be limited to:

1. A description of the principal benefits and coverage provided in the policy;
2. A statement of the principal exclusions, reductions and limitations contained in the policy;
3. A statement of the ~~renewal provisions~~ terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums; ~~and.~~ Continuation or conversion provisions of group coverage shall be specifically described;
4. A statement that the outline of coverage is a summary ~~of the policy issued or applied for,~~ only, not a contract of insurance, and that the policy ~~should be consulted to determine~~ or group master policy contains governing contractual provisions; ~~i~~
5. A description of the terms under which the policy or certificate may be returned and premium refunded; and
6. A brief description of the relationship of cost of care and benefits.

~~G. A certificate issued pursuant to a group long-term care insurance policy, which policy is delivered, or issued for delivery, in this state, shall include, but not be limited to:~~

- ~~1. A description of the principal benefits and coverage provided in the policy;~~
- ~~2. A statement of the principal exclusions, reductions and limitations contained in the policy; and~~
- ~~3. A statement that the group master policy determines governing contractual provisions~~ At the time of policy delivery, a policy summary shall be delivered for an individual life insurance

policy which 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 such 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; and

4. 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 benefit.

H. 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. Such 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.

~~H.~~ I. No policy shall be advertised, marketed or offered as long-term care insurance unless it complies with the provisions of the Long-Term Care Insurance Act.

~~I.~~ J. Policies or contracts issued by life care communities which are not licensed insurers in this state shall contain the following statement in conspicuous bold-face type on the front of the policy or contract: "The financial condition of the entity issuing this contract is not subject to review by or the jurisdiction of the Oklahoma Insurance Commissioner. This contract is not subject to the protection of any guaranty association."

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4426.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

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 conditions 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. No long-term care insurance policy or certificate may be field-issued based on medical or health status.

2. For purposes of this section, "field-issued" means a policy or certificate issued by an agent or a third-party administrator pursuant to the underwriting authority granted to the agent or third-party administrator by an insurer.

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.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 4427, is amended to read as follows:

Section 4427. A. The Insurance Commissioner may adopt rules and regulations to implement the provisions of the Long-Term Care Insurance Act. The Commissioner may adopt rules and regulations that apply to all providers of long-term care insurance coverage, whether or not a provider is otherwise subject to the provisions of the Insurance Code, and that include, but are not limited to, standards for full and fair disclosure setting forth the manner, content, and required disclosure for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definition of terms. The Commissioner may issue reasonable regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties and reporting practices for long-term care insurance.

~~B. Any insurer subject to the provisions of the Insurance Code that provides long-term care insurance coverage and that fails to comply with the provisions of the Long-Term Care Insurance Act, or any rule or regulation promulgated and adopted pursuant thereto,~~

~~shall be subject to the provisions of Section 619 of this title. Any provider of long-term care insurance coverage, not otherwise subject to the provisions of the Insurance Code, that fails to comply with the provisions of the Long-Term Care Insurance Act, or any rule or regulation promulgated and adopted pursuant thereto, shall be subject to suspension by the Commissioner of authority to transact business pursuant to the Long-Term Care Insurance Act, imposition by the Commissioner of a civil fine of not more than Five Thousand Dollars (\$5,000.00), or both such suspension and fine. The fine may be enforced in the same manner that civil judgments may be enforced~~ In addition to any other penalties provided by the laws of this state, any insurer and any agent 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 fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to Ten Thousand Dollars (\$10,000.00) whichever is greater.

C. In the exercise of all powers and the performance of all duties provided for in this section, the Commissioner shall comply with the procedures provided in the Administrative Procedures Act.

SECTION 5. REPEALER 36 O.S. 1991, Section 4425, is hereby repealed.

SECTION 6. This act shall become effective September 1, 1993.

44-1-0154 JY