

EHB 2725

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THE STATE SENATE
Monday, April 3, 2000

ENGROSSED

House Bill No. 2725

ENGROSSED HOUSE BILL NO. 2725 - By: THORNBRUGH of the House and SMITH of the Senate.

An Act relating to insurance; amending 36 O.S. 1991, Sections 4423 and 4424, as last amended by Section 1, Chapter 180, O.S.L. 1997 (36 O.S. Supp. 1999, Section 4424), which relate to the Long-Term Care Insurance Act; providing an exception for certain entities from requirements of the Long-Term Care Insurance Act; modifying certain definition; amending Section 3, Chapter 329, O.S.L. 1992, as last amended by Section 1, Chapter 360, O.S.L. 1999 (36 O.S. Supp. 1999, Section 6513), which relates to the Small Employer Health Insurance Reform Act; eliminating prohibition against certain ceding arrangements; requiring certain health benefit plans to provide coverage for wigs or other scalp prostheses; providing for procedures, requirements, and limitations; defining terms; providing for rules; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 4423, is amended to read as follows:

Section 4423. A. The requirements of the Long-Term Care Insurance Act shall apply to policies, other than life care community policies delivered or issued for delivery in this state on or after November 1, 1987. The requirements of the Long-Term Care Insurance Act shall apply to life care community policies delivered or issued for delivery in this state on or after November 1, 1989.

1 B. Notwithstanding any other provision, the Long-Term Care
2 Insurance Act shall not apply to the following:

3 1. Residential care homes licensed pursuant to the Oklahoma
4 Residential Care Act;

5 2. Assisted living centers and continuum of care facilities
6 licensed pursuant to the Oklahoma Continuum of Care and Assisted
7 Living Act; or

8 3. Facilities licensed pursuant to the Oklahoma Nursing Home
9 Care Act.

10 C. The Long-Term Care Insurance Act is not intended to
11 supersede the obligations of entities subject to said act to comply
12 with the substance of other applicable insurance laws insofar as
13 they do not conflict with the Long-Term Care Insurance Act, except
14 that laws and regulations designed and intended to apply to Medicare
15 supplement insurance policies shall not apply to long-term care
16 insurance. A policy which is not advertised, marketed or offered as
17 long-term care insurance need not meet the requirements of the
18 Long-Term Care Insurance Act. The Long-Term Care Insurance Act is
19 not intended to require life care communities to be licensed
20 insurers. Life care communities which are not licensed insurers
21 shall not be subject to the provisions of the Insurance Code or the
22 jurisdiction of the Insurance Commissioner, except as provided in
23 the Long-Term Care Insurance Act.

1 SECTION 2. AMENDATORY 36 O.S. 1991, Section 4424, as
2 last amended by Section 1, Chapter 180, O.S.L. 1997 (36 O.S. Supp.
3 1999, Section 4424), is amended to read as follows:

4 Section 4424. Unless the context requires otherwise, the
5 definitions in this section apply throughout the Long-Term Care
6 Insurance Act, ~~Section 4421 et seq. of this title.~~

7 1. a. "Long-term care insurance" means any insurance policy
8 or rider, including qualified long-term care insurance
9 contracts, which are advertised, marketed, offered or
10 designed primarily to provide coverage for not less
11 than twelve (12) consecutive months for each covered
12 person on an expense incurred, indemnity, prepaid, or
13 other basis, for one or more necessary or medically
14 necessary diagnostic, preventive, therapeutic,
15 rehabilitative, maintenance, or personal care
16 services, provided in a setting other than an acute
17 care unit of a hospital.

18 b. This term includes group and individual health
19 policies or riders or group and individual life
20 policies or annuities or riders which provide,
21 directly or as a supplement, coverage for long-term
22 care, whether issued by insurers, fraternal benefit
23 societies, nonprofit health, hospital, and medical

1 service corporations, prepaid health plans, health
2 maintenance organizations, life care communities, or
3 any similar organization.

4 c. This term also includes a policy or rider which
5 provides for payment of long-term care benefits based
6 upon cognitive impairment or the loss of functional
7 capacity.

8 d. Long-term care insurance shall not include any
9 insurance policy which is offered primarily to provide
10 basic Medicare supplement coverage, basic hospital
11 expense coverage, basic medical-surgical expense
12 coverage, hospital confinement indemnity coverage,
13 major medical expense coverage, disability income
14 protection coverage or related asset-protection
15 coverage, catastrophic coverage, comprehensive
16 coverage, accident only coverage, specified disease or
17 specified accident coverage, or limited benefit health
18 coverage.

19 e. With regard to life insurance, this term does not
20 include life insurance policies which accelerate the
21 death benefit specifically for one or more of the
22 qualifying events of terminal illness, medical
23 conditions requiring extraordinary medical

1 intervention, or permanent institutional confinement,
2 and which provide the option of a lump-sum payment for
3 those benefits and in which neither the benefits nor
4 the eligibility for the benefits is conditioned upon
5 the receipt of long-term care.

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

10 2. "Applicant" means:

11 a. in the case of an individual long-term care insurance
12 policy, the person who seeks to contract for such
13 benefits, and

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

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

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

22 a. one or more employers or labor organizations, or to a
23 trust or to the trustees of a fund established by one

1 or more employers or labor organizations, or a
2 combination thereof, for employees or former
3 employees, or a combination thereof or for members or
4 former members, or a combination thereof, of the labor
5 organizations, or
6 b. any professional, trade or occupational association
7 for its members or former or retired members, or
8 combination thereof, if such association:
9 (1) is composed of individuals, all of whom are or
10 were actively engaged in the same profession,
11 trade or occupation, and
12 (2) has been maintained in good faith for purposes
13 other than insurance, or
14 c. an association, a trust, or the trustee or trustees of
15 a fund established, created, or maintained for the
16 benefit of members of one or more associations. Prior
17 to advertising, marketing or offering such policy
18 within this state, the association or associations, or
19 the insurer of the association or associations, shall
20 file evidence with the Insurance Commissioner that the
21 association or associations shall have at the outset
22 of transacting long-term care insurance in this state
23 a minimum of one hundred (100) persons in the

1 association or associations and shall have been
2 organized and maintained in good faith for purposes
3 other than that of obtaining insurance; shall have
4 been in active existence for at least one (1) year;
5 and shall have a constitution and bylaws which provide
6 that (i) the association or associations hold regular
7 meetings not less than annually to further purposes of
8 the members, (ii) except for credit unions, the
9 association or associations collect dues or solicit
10 contributions from members, and (iii) the members have
11 voting privileges and representation on the governing
12 board and committees. Thirty (30) days after such
13 filing the association or associations shall be deemed
14 to satisfy such organizational requirements, unless
15 the Commissioner makes a finding that the association
16 or associations do not satisfy those organizational
17 requirements, or

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

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

- 1 (2) the issuance of the group policy would result in
2 economies of acquisition or administration, and
3 (3) the benefits are reasonable in relation to the
4 premiums charged.

5 5. "Life care community" means any arrangement pursuant to
6 which a person contracts for a place of residence and personal care
7 services, including but not limited to services which progress from
8 independent living to semi-dependent nursing care to acute nursing
9 care, in consideration of a payment or payments of fees prior to the
10 delivery of services and accommodations. Life care community shall
11 not include the following:

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

22 6. "Policy" means any policy, contract, certificate, subscriber
23 agreement, rider or endorsement delivered, or issued for delivery,

1 in this state by an insurer, fraternal benefit society, nonprofit
2 health, hospital, or medical service corporation, prepaid health
3 plan, health maintenance organization, life care community, or any
4 similar organization.

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

6 a. individual or group insurance contract if the contract
7 meets the requirements of Section 7702(B) of the
8 Internal Revenue Code, as amended, and if ~~it~~:

9 ~~1.~~ (1) the only insurance protection provided under the
10 contract is coverage of qualified long-term care
11 services,

12 ~~2.~~ (2) the contract does not pay or reimburse expenses
13 incurred for services or items to the extent that
14 such expenses are reimbursable under Title XVIII
15 of the Social Security Act as amended, or would
16 be so reimbursable but for the application of a
17 deductible or coinsurance amount. The
18 requirements of this subparagraph do not apply to
19 contracts where Medicare is a secondary payor, or
20 where the contract makes per diem or other
21 periodic payments without regard to expenses,

22 ~~3.~~ (3) the contract is guaranteed renewable,

1 4. (4) the contract does not provide for a cash
2 surrender value or other money that can be paid,
3 assigned, pledged as collateral for a loan, or
4 borrowed. All refunds of premiums and all
5 policyholder dividends or similar amounts, under
6 such contract are to be applied as a reduction in
7 future premiums or to increase future benefits,
8 except that a refund of the aggregate premium
9 paid under the contract may be allowed in the
10 event of death of the insured or a complete
11 surrender or cancellation of the contract, and

12 5. (5) the contract contains the consumer protection
13 provisions set forth in Section 7702(B)(g) of the
14 Internal Revenue Code~~7~~, or

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

20 8. "Qualified long-term care services" means necessary
21 diagnostic, preventive, therapeutic, curing, treating, mitigating,
22 and rehabilitative services, and maintenance for personal care
23 services for which an insured is eligible under a qualified long-

1 term care insurance contract, and which are provided pursuant to a
2 plan of care prescribed by a licensed health care practitioner.

3 SECTION 3. AMENDATORY Section 3, Chapter 329, O.S.L.
4 1992, as last amended by Section 1, Chapter 360, O.S.L. 1999 (36
5 O.S. Supp. 1999, Section 6513), is amended to read as follows:

6 Section 6513. A. The Small Employer Health Insurance Reform
7 Act shall apply to any group health benefit plan that provides
8 coverage to two (2) or more eligible employees of a small employer
9 in this state and to individual health benefits plans providing
10 coverage for the eligible employees of a small employer which may
11 include the employer when three (3) or more of such individual plans
12 are sold to a small employer if any of the following conditions are
13 met:

14 1. Any portion of the premium or benefits is paid by or on
15 behalf of the small employer;

16 2. An eligible employee or dependent is reimbursed, whether
17 through wage adjustments or otherwise, by or on behalf of the small
18 employer for any portion of the premium; or

19 3. The health benefit plan is treated by the employer or any of
20 the eligible employees or dependents as part of a plan or program
21 for the purposes of Section 162 or Section 106 of the United States
22 Internal Revenue Code.

1 B. 1. Except as provided in paragraph 2 of this subsection,
2 for the purposes of the Small Employer Health Insurance Reform Act,
3 carriers that are affiliated companies or that are eligible to file
4 a consolidated tax return shall be treated as one carrier and any
5 restrictions or limitations imposed by the Small Employer Health
6 Insurance Reform Act shall apply as if all health benefit plans
7 issued to small employers in this state by such affiliated carriers
8 were issued by one carrier, unless on or before July 1, 1992, the
9 respective affiliate carriers operated with separate books of
10 business as insurers of health benefit plans in which event each
11 such affiliate carrier shall be treated as a separate carrier.

12 2. An affiliated carrier that is a health maintenance
13 organization having a license under Section 2501 et seq. of Title 63
14 of the Oklahoma Statutes may be considered to be a separate carrier
15 for the purposes of the Small Employer Health Insurance Reform Act.

16 ~~C. Unless otherwise authorized by the Insurance Commissioner, a~~
17 ~~small employer carrier shall not enter into one or more ceding~~
18 ~~arrangements with respect to health benefit plans delivered or~~
19 ~~issued for delivery to small employers in this state if such~~
20 ~~arrangements would result in less than fifty percent (50%) of the~~
21 ~~insurance obligation or risk for such health benefit plans being~~
22 ~~retained by the ceding carrier.~~

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6060.9 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Any health benefit plan, including the State and Education
5 Employees Group Health Insurance Plan, that is offered, issued, or
6 renewed in this state on or after January 1, 2001, that provides
7 medical and surgical benefits with respect to the treatment of
8 cancer and other conditions treated by chemotherapy or radiation
9 therapy shall provide coverage for wigs or other scalp prostheses
10 necessary for the comfort and dignity of the covered person.

11 B. The coverage provided for by this section shall be subject to
12 the same annual deductibles, copayments, or coinsurance limits as
13 established for all other covered benefits under the health benefit
14 plan not to exceed Two Hundred Dollars (\$200.00).

15 C. A health benefit plan shall provide notice to each insured or
16 enrollee under such plan regarding the coverage required by this
17 section in the plan's evidence of coverage and shall provide
18 additional written notice of the coverage to the insured or enrollee
19 as follows:

20 1. In the next mailing made by the plan to the insured or
21 enrolled employee;

22 2. As part of any yearly informational packet sent to the
23 enrollee; or

1 3. Not later than December 1, 2000;
2 whichever is earlier.

3 D. As used in this act, "health benefit plan" means any plan or
4 arrangement as defined in subsection D of Section 6060.8 of Title 36
5 of the Oklahoma Statutes. However, this section shall not apply to
6 policies or certificates issued to individuals or groups with fifty
7 (50) or fewer employees.

8 E. The Insurance Commissioner shall promulgate any rules
9 necessary to implement the provisions of this section.

10 SECTION 5. This act shall become effective July 1, 2000.

11 SECTION 6. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

15 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 3-27-00 -
16 DO PASS.