

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 657

By Senators Maroney and Nelson

[Introduced February 16, 2023; referred
to the Committee on Banking and Insurance]

1 A BILL to amend and reenact §33-15A-6 of the Code of West Virginia, as amended, relating to
 2 long term care insurance, providing prohibitions regarding coverage and payment; and
 3 providing effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. WEST VIRGINIA LONG-TERM CARE INSURANCE ACT.

§33-15A-6. Disclosure and performance standards for long-term care insurance.

1 (a) The commissioner may adopt rules that include standards for full and fair disclosure
 2 setting forth the manner, content and required disclosures for the sale of long-term care insurance
 3 policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of
 4 coverage provisions, coverage of dependents, preexisting conditions, termination of insurance,
 5 continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination
 6 periods, requirements for replacement, recurrent conditions and definitions of terms.

7 (b) No long-term care insurance policy may:

8 (1) Be canceled, nonrenewed or otherwise terminated on the grounds of the age or the
 9 deterioration of the mental or physical health of the insured individual or certificate holder;

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

13 (3) Provide coverage for skilled nursing care only or provide significantly more coverage
 14 for skilled care in a facility than coverage for lower levels of care;

15 (4) Limit coverage to facility-based care only, or provide more benefits for facility-based
 16 care than benefits for home or community-based care; or

17 (5) Refuse to pay benefits for home-based or community-based care or require facility-
 18 based care as a prerequisite to paying benefits for home-based or community-based care:

19 Provided, That no long-term care insurance policy is required to pay for home-based or
 20 community-based care that is more costly than facility-based care.

21 (c) Preexisting condition:

22 (1) No long-term care insurance policy or certificate other than a policy or certificate
23 thereunder issued to a group as defined in §33-15A-4(e) (1) of this code shall ~~shall~~ may use a definition
24 of "preexisting condition" that is more restrictive than the following: Preexisting condition means a
25 condition for which medical advice or treatment was recommended by, or received from, a
26 provider of health care services within six months preceding the effective date of coverage of an
27 insured person.

28 (2) No long-term care insurance policy or certificate other than a policy or certificate
29 thereunder issued to a group as defined in §33-15A-4(e) (1) of this code may exclude coverage for
30 a loss or confinement that is the result of a preexisting condition unless loss or confinement begins
31 within six months following the effective date of coverage of an insured person.

32 (3) The commissioner may extend the limitation periods set forth in subdivision (1) and (2),
33 subsection (c) of this section as to specific age group categories in specific policy forms upon
34 findings that the extension is in the best interest of the public.

35 (4) The definition of "preexisting condition" does not prohibit an insurer from using an
36 application form designed to elicit the complete health history of an applicant, and, on the basis of
37 the answers on that application, from underwriting in accordance with that insurer's established
38 underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting
39 condition, regardless of whether it is disclosed on the application, need not be covered until the
40 waiting period described in subdivision (2), subsection (c) of this section expires. No long-term
41 care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude,
42 limit or reduce coverage or benefits for specifically named or described preexisting diseases or
43 physical conditions beyond the waiting period described in subdivision (2), subsection (c) of this
44 section.

45 (d) Prior hospitalization/institutionalization:

46 (1) No long-term care insurance policy may be delivered or issued for delivery in this state

47 if the policy:

48 (A) Conditions eligibility for any benefits on a prior hospitalization requirement;

49 (B) Conditions eligibility for benefits provided in an institutional care setting on the receipt
50 of a higher level of institutional care; or

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

53 (2)(A) A long-term care insurance policy containing post-confinement, post-acute care or
54 recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled
55 "Limitations or Conditions on Eligibility for Benefits" such limitations or conditions, including any
56 required number of days of confinement.

57 (B) A long-term care insurance policy or rider that conditions eligibility of noninstitutional
58 benefits on the prior receipt of institutional care shall may not require a prior institutional stay of
59 more than 30 days.

60 (3) No long-term care insurance policy or rider that provides benefits only following
61 institutionalization shall may condition such benefits upon admission to a facility for the same or
62 related conditions within a period of less than 30 days after discharge from the institution.

63 (e) The commissioner may adopt rules establishing loss ratio standards for long-term care
64 insurance policies provided that a specific reference to long-term care insurance policies is
65 contained in the rule.

66 (f) Right to return - free look:

67 (1) Long-term care insurance applicants shall have the right to return the policy or
68 certificate within 30 days of its delivery and to have the premium refunded if, after examination of
69 the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance
70 policies and certificates shall have a notice prominently printed on the first page or attached
71 thereto stating in substance that the applicant shall have the right to return the policy or certificate
72 within 30 days of its delivery and to have the premium refunded if, after examination of the policy or

73 certificate, other than a certificate issued pursuant to a policy issued to a group defined in §33-
74 15A-4(e) (1) of this code, the applicant is not satisfied for any reason.

75 (2) This subsection shall also apply to denials of applications and any refund must be made
76 within 30 days of the return or denial.

77 (g) Outline of coverage:

78 (1) An outline of coverage shall be delivered to a prospective applicant for long-term care
79 insurance at the time of initial solicitation through means that prominently direct the attention of the
80 recipient to the document and its purpose.

81 (A) The commissioner shall prescribe a standard format, including style, arrangement and
82 overall appearance, and the content of an outline of coverage.

83 (B) In the case of agent solicitations, an agent must deliver the outline of coverage prior to
84 the presentation of an application or enrollment form.

85 (C) In the case of direct response solicitations, the outline of coverage must be presented
86 in conjunction with any application or enrollment form.

87 (D) In the case of a policy issued to a group defined in §33-15A-4(e) (1) of this code, an
88 outline of coverage shall not be required to be delivered, provided that the information described in
89 paragraphs (A) through (F), inclusive, subdivision (2) of this subsection is contained in other
90 materials relating to enrollment. Upon request, these other materials shall be made available to
91 the commissioner.

92 (2) The outline of coverage shall include:

93 (A) A description of the principal benefits and coverage provided in the policy;

94 (B) A statement of the principal exclusions, reductions, and limitations contained in the
95 policy;

96 (C) A statement of the terms under which the policy or certificate, or both, may be
97 continued in force or discontinued, including any reservation in the policy of a right to change
98 premium. Continuation or conversion provisions of group coverage shall be specifically described;

99 (D) A statement that the outline of coverage is a summary only, not a contract of insurance,
100 and that the policy or group master policy contain governing contractual provisions;

101 (E) A description of the terms under which the policy or certificate may be returned and
102 premium refunded;

103 (F) A brief description of the relationship of cost of care and benefits; and

104 (G) A statement that discloses to the policyholder or certificate holder whether the policy is
105 intended to be a federally tax-qualified long-term care insurance contract under Section
106 7702(B)(b) of the Internal Revenue Code of 1986, as amended.

107 (h) A certificate issued pursuant to a group long-term care insurance policy that is delivered
108 or issued for delivery in this state shall include:

109 (1) A description of the principal benefits and coverage provided in the policy;

110 (2) A statement of the principal exclusions, reductions and limitations contained in the
111 policy; and

112 (3) A statement that the group master policy determines governing contractual provisions.

113 (i) If an applicant for a long-term care insurance contract or certificate is approved, the
114 issuer shall deliver the contract or certificate of insurance to the applicant no later than 30 days
115 after the date of approval.

116 (j) At the time of policy delivery, a policy summary shall be delivered for an individual life
117 insurance policy that provides long-term care benefits within the policy or by rider. In the case of
118 direct response solicitations, the insurer shall deliver the policy summary upon the applicant's
119 request, but regardless of request shall make delivery no later than at the time of policy delivery. In
120 addition to complying with all applicable requirements, the summary shall also include:

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

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

- 125 (3) Any exclusions, reductions and limitations on benefits of long-term care;
- 126 (4) A statement that any long-term care inflation protection option required by section eight
- 127 of the commissioner's rule relating to long-term care insurance is not available under this policy;
- 128 and
- 129 (5) If applicable to the policy type, the summary shall also include:
 - 130 (A) A disclosure of the effects of exercising other rights under the policy;
 - 131 (B) A disclosure of guarantees related to long-term care costs of insurance charges; and
 - 132 (C) Current and projected maximum lifetime benefits.
- 133 (k) Any time a long-term care benefit, funded through a life insurance vehicle by the
- 134 acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to
- 135 the policyholder. The report shall include:
 - 136 (1) Any long-term care benefits paid out during the month;
 - 137 (2) An explanation of any changes in the policy, for example death benefits or cash values,
 - 138 due to long-term care benefits being paid out; and
 - 139 (3) The amount of long-term care benefits existing or remaining.
- 140 (l) If a claim under a long-term care insurance contract is denied, the issuer shall, within
- 141 sixty days of the date of a written request by the policyholder or certificate holder, or a
- 142 representative thereof:
 - 143 (1) Provide a written explanation of the reasons for the denial; and
 - 144 (2) Make available all information directly related to the denial.
- 145 (m) Any policy or rider advertised, marketed or offered as long-term care or nursing home
- 146 insurance shall comply with the provisions of this article: Provided, That the requirements imposed
- 147 by subdivision (4) and (5) of subsection (b) of this section shall apply to all policies or riders that are
- 148 delivered, executed, issued, amended, adjusted, or renewed, on or after July 1, 2023.

NOTE: The purpose of this bill is to provide for prohibitions regarding long term care

insurance and provide for an effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.