Rulemaking Hearing Rules
of
The Tennessee Department of Commerce and Insurance
Insurance Division

Chapter 0780-1-61
Long Term Care Insurance

Amendments

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Rule 0780-1-61-.31 Long-Term Care Insurance Partnership Program.

(1) In accordance with Section 6021 of the Deficit Reduction Act of 2005 (Pub.L. 109-171) and in addition to the applicable provisions of this Chapter, the provisions of this Rule shall apply to any Qualified State Long-Term Care Insurance Partnership Policy.

(2) As used in this Rule, “Qualified State Long-Term Care Insurance Partnership Policy” or “Partnership Policy” means an insurance policy that:

(a) Covers an insured who was a resident of Tennessee, or another state that has a Partnership Program, when coverage first became effective under the policy;

(b) Is a qualified long-term care insurance policy as defined in Section 7702B(b) of the Internal Revenue Code of 1986 and was issued no earlier than February 8, 2006;

(c) Meets all the applicable requirements of this Chapter and the requirements of the National Association of Insurance Commissioners’ Long-Term Care Insurance Model Act and Model Regulation as those requirements are set forth in Section 1917(b)(5)(A) of the Social Security Act (42 U.S.C. 1396p(b)(5)(A)); and

(d) Provides the following inflation protections:

1. For a person who is less than sixty-one (61) years of age as of the date of purchase of the policy, the policy provides compound annual inflation protection;

2. For a person who is at least sixty-one (61) years of age but less than seventy-six (76) years of age as of the date of purchase of the policy, the policy provides some level of inflation protection; and

3. For a person who is at least seventy-six (76) years of age as of the date of purchase of the policy, the policy may provide inflation protection, but is not required.

(3) (a) An insurer or its agent, soliciting or offering to sell a policy that is intended to qualify as a Partnership Policy, shall provide to each prospective applicant a Long-Term Care Insurance Partnership Program Notice in a form identical to or substantially similar to Appendix K, outlining the requirements and benefits of a

partnership policy. A similar notice may be used for this purpose if filed and approved by the commissioner. The Partnership Program Notice shall be provided with the required Outline of Coverage.

(b) An insurer or its agent, soliciting or offering to sell a policy that is intended to qualify as a Partnership Policy, shall provide to each prospective applicant a pamphlet approved by the Commissioner that explains rules regarding Medicaid eligibility. Copies of the pamphlet can be accessed through request to the Department or on the Department's web site.

(c) A Partnership Policy issued or issued for delivery in Tennessee shall be accompanied by a Long-Term Care Insurance Partnership Disclosure Notice in a form identical to or substantially similar to Appendix L explaining the benefits associated with a Partnership Policy and indicating that at the time issued, the policy is a Qualified State Long-Term Care Insurance Partnership Policy. A similar notice may be used if filed and approved by the Commissioner. The Partnership Disclosure Notice shall also include a statement indicating that by purchasing this Partnership Policy, the insured does not automatically qualify for Medicaid.

(4) (a) A Partnership Policy shall not be issued or issued for delivery in Tennessee unless filed with and approved by the Commissioner. Any policy submitted for certification as a Partnership Policy shall be accompanied by an Issuer Certification Form identical to Appendix M, or a similar form filed and approved by the Commissioner.

(b) A policy which was purchased on or after February 8, 2006 and which otherwise qualifies for Partnership status shall become a Partnership Policy on October 1, 2008. The insurer who issued such a policy shall be required to either issue a Partnership Rider for the existing policy or exchange the existing policy for a Partnership Policy. The insurer shall provide the insured with the same materials as those issued to the purchaser of a new policy, as provided in Paragraph (3) above.

(c) Insurers requesting to make use of a previously approved policy form as a Qualified State Long-Term Care Partnership Policy shall submit to the Commissioner an Issuer Certification Form signed by an officer of the company.

(5) (a) An individual may not sell, solicit or negotiate long-term care insurance unless the individual is licensed as an insurance producer who is currently licensed to sell long term care insurance and has completed a one-time training course by or before July 1, 2009. An individual who is not licensed to sell long-term care insurance by July 1, 2008, must take the one-time training course before beginning to sell long-term care products. Individuals who are not already exempt from continuing education requirements under T.C.A. § 56-6-107(c), must also complete continuing education courses every twenty-four (24) months. The training must meet the requirements set forth in subsection (b) of this Paragraph.

(b) 1. The one-time training required by this Rule shall be no less than eight (8) hours and the ongoing training required by this Rule shall be no less than four (4) hours.

2. The training required under subdivision Paragraph (5)(b)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:

(i) 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;

(ii) Available long-term services and providers;

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

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

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

(vi) Consumer suitability standards and guidelines.

3. The training required by this Rule 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.

4. Non-resident insurance producers who meet the education and training requirements of their home state will be deemed to meet the requirements for education and training in this state.

(c) 1. Insurers subject to this Chapter shall obtain verification that a producer has received training required by this Rule before a producer is permitted to sell, solicit or negotiate the insurer’s long-term care insurance products, maintain records subject to the state’s record retention requirements, and make that verification 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 Commissioner to provide assurance to the state Medicaid agency that producers have received the training contained in this Rule and that producers have demonstrated an understanding of Partnership Policies and their relationship to public and private coverage of long-term care, including Medicaid, in this state. These records shall be made available to the Commissioner upon request.

Authority**:** T.C.A. §§ 56-42-101, *et seq.*

APPENDIX K

LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAM NOTICE

IMPORTANT CONSUMER INFORMATION REGARDING THE TENNESSEE LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAM

Some long-term care insurance [policies] [certificates] sold in Tennessee may qualify for the Tennessee Long-Term Care Insurance Partnership Program (the Partnership Program). The Partnership Program is a partnership between state government and private insurance companies to assist individuals in planning their long-term care needs. Insurance companies voluntarily agree to participate in the Partnership Program by offering long-term care insurance coverage that meets certain State and Federal requirements. Long-term care insurance policies [certificates] that qualify as Partnership Policies [Certificates] may protect the [policyholder's] [certificateholder's] assets through a feature known as "Asset Disregard" under TennCare, Tennessee's Medicaid program.

Asset Disregard means that an amount of the [policyholder's] [certificateholder's] assets equal to the amount of long-term care insurance benefits received under a qualified Partnership [Policy] [Certificate] will be disregarded for the purpose of determining the insured's eligibility for Medicaid. This generally allows a person to keep assets equal to the insurance benefits received under a qualified Partnership [Policy] [Certificate] without affecting the person's eligibility for Medicaid. All other Medicaid eligibility criteria will apply and special rules may apply to persons whose home equity exceeds $500,000. Asset Disregard is not available under a long-term care insurance [policy] [certificate] that is not a Partnership [Policy] [Certificate]. Therefore, you should consider if Asset Disregard is important to you, and whether a Partnership Policy meets your needs. **The purchase of a Partnership Policy does not automatically qualify you for Medicaid.**

What are the Requirements for a Partnership [PoIicy] [Certificate]? In order for a [policy] [certificate] to qualify as a Partnership [Policy] [Certificate], it must, among other requirements:

- be issued to an individual after July 1, 2008;
- cover an individual who was a Tennessee resident when coverage first becomes effective under the policy;
- be a tax-qualified policy under § 7702(B)(b) of the Internal Revenue Code of 1986;
- meet stringent consumer protection standards; and
- meet the following inflation requirements:
    - For ages 60 or younger - provides compound **annual** inflation protection
    - For ages 61 to 65 -provides some level of inflation protection
    - For ages 76 and older - no purchase of inflation protection is required

If you apply and are approved for long-term care insurance coverage, [carrier name] will provide you with written documentation as to whether or not your [policy] [certificate] qualifies as a Partnership [Policy] [Certificate].

What Could Disqualify a [Policy] [Certificate] as a Partnership Policy. Certain types of changes to a Partnership [Policy] [Certificate] could affect whether or not such [policy] [certificate] continues to be a Partnership [Policy] [Certificate]. If you purchase a Partnership [Policy] [Certificate] and later decide to make *any* changes, you should first consult with [carrier name] to determine the effect of a proposed change. In addition, if you move to a state that does not maintain a Partnership Program or does not recognize your [policy] [certificate] as a Partnership [Policy] [Certificate], you would not receive beneficial treatment of your [policy] [certificate] under the Medicaid program of that state. The information contained in this disclosure is based on current Tennessee and Federal laws. These laws may be subject to change. Any change in law could reduce or eliminate the beneficial treatment of your [policy] [certificate] under Tennessee's Medicaid program.

Additional Information. If you have questions regarding long-term care insurance [policies] [certificates] please contact [carrier name.] If you have questions regarding current laws governing Medicaid eligibility, you should contact the Bureau of TennCare.

APPENDIX L

LONG-TERM CARE INSURANCE PARTNERSHIP STATUS DISCLOSURE NOTICE

IMPORTANT INFORMATION REGARDING YOUR [POLICY'S] [CERTIFICATE'S] LONG-TERM CARE INSURANCE PARTNERSHIP STATUS

This disclosure notice is issued in conjunction with your long-term care policy:

Some long-term care insurance [policies] [certificates] sold in Tennessee qualify for the Tennessee Long-Term Care Insurance Partnership Program. Insurance companies voluntarily agree to participate in the Partnership Program by offering long-term care insurance coverage that meets certain State and Federal requirements. Long-term care insurance [policies] [certificates] that qualify as Partnership [Policies] [Certificates] may be entitled to special treatment, and in particular an "Asset Disregard," under Tennessee's Medicaid program.

Asset Disregard means that an amount of the [policyholder's] [certificateholder's] assets equal to the amount of long-term care insurance benefits received under a qualified Partnership [Policy] [Certificates] will be disregarded for the purpose of determining the insured's eligibility for Medicaid. This generally allows a person to keep assets equal to the insurance benefits received under a qualified Partnership [Policy] [Certificate] without affecting the person's eligibility for Medicaid. All other Medicaid eligibility criteria will apply and special rules may apply to persons whose home equity exceeds $[500,000]. Asset Disregard is **not** available under a long-term care insurance [policy] [certificate] that is not a Partnership [Policy] [Certificate]

***Partnership [Policy] [Certificate] Status*. Your long-term care insurance [policy] [certificate] is intended to qualify as a Partnership [Policy] [Certificate] under the Tennessee Long-Term Care Partnership Program as of your [Policy's] [Certificate's] effective date.**

What Could Disqualify Your [Policy] [Certificate] as a Partnership Policy*.** If you make any changes to your [policy] [certificate], such changes could affect whether your [policy] [certificate] continues to be a Partnership Policy. ***Before you make any changes, you should consult with [insert name of carrier] to determine the effect of a proposed change. In addition, if you move to a State that does not maintain a Partnership Program or does not recognize your [policy] [certificate] as a Partnership [Policy] [Certificate], you would not receive beneficial treatment of your [policy] [certificate] under the Medicaid program of that State. The information contained in this Notice is based on current State and Federal laws. These laws may be subject to change. Any change in law could reduce or eliminate the beneficial treatment of your [policy] [certificate] under Tennessee's Medicaid program.

Additional Information. If you have questions regarding your insurance [policy] [certificate] please contact [insert name of carrier.] If you have questions regarding current laws governing Medicaid eligibility, you should contact the Bureau of TennCare.

APPENDIX M

ISSUER CERTIFICATION FORM
(relating to Qualified State Long-Term Care Insurance Partnership)

Under Section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)), the State insurance commissioner of a State implementing a qualified State long-term care insurance partnership ("Qualified Partnership") may certify that long-term care insurance policies (including certificates issued under a group insurance contract) covered under the Qualified Partnership meet certain consumer protection requirements, and policies so certified are deemed to satisfy such requirements. These consumer protection requirements are set forth in Section 1917(b)(5)(A) of the Social Security Act (42 U.S.C. 1396p(b)(5)(A)) and principally include certain specified provisions of the Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000) (referred to herein as the "2000 Model Regulation" and "2000 Model Act" respectively).

In order to provide each State insurance commissioner with information necessary to provide a certification for policies, this Issuer Certification Form requests information and a certification from issuers of long-term care insurance policies with respect to policy forms that may be covered under the Qualified Partnership of the State.

An insurance company may request certification of policies from time to time and, accordingly, may supplement this issuer certification form, *e.g.*, as it introduces new long-term care insurance policy forms for issuance.

I. GENERAL INFORMATION

A. Name, address and telephone number of issuer:

____
____
____

B. Name, address, telephone number, and email address (if available) of an employee of issuer who will be the contact person for information relating to this form:

____
____
____

C. Policy form number(s) (or other identifying information, such as certificate series) for policies covered by this Issuer Certification Form:

____
____
____

Specimen copies of each of the above policy forms, including any riders and endorsements, shall be provided upon request.

II. QUESTIONS REGARDING APPLICABLE PROVISIONS OF THE 2000 MODEL REGULATION AND 2000 MODEL ACT

Please answer each of the questions below with respect to the policy forms identified in Section I.C above. For purposes of answering the questions below, any provision of the 2000 Model Regulation or 2000 Model Act listed below shall be treated as including any other provision of the 2000 Model Regulation or 2000 Model Act necessary to implement the provision.

Are the following requirements of the 2000 Model Regulation met with respect to all policies (including certificates issued under a group insurance contract) intended to be covered under the Qualified Partnership that are issued on each of the policy forms identified in Section I.C above?

Yes ___ No ___ N/A ___ A. Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of Section 6B of the 2000 Model Act relating to such section 6A.

Yes ___ No ___ N/A ___ B. Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof.

Yes ___ No ___ N/A ___ C. Section 6C (relating to extension of benefits).

Yes ___ No ___ N/A ___ D. Section 6D (relating to continuation or conversion of coverage).

Yes ___ No ___ N/A ___ E. Section 6E (relating to discontinuance and replacement of policies).

Yes ___ No ___ N/A ___ F. Section 7 (relating to unintentional lapse).

Yes ___ No ___ N/A ___ G. Section 8 (relating to disclosure), other than Sections 8F, 8G, 8H, and 8I thereof.

Yes ___ No ___ N/A ___ H. Section 9 (relating to required disclosure of rating practices to consumer).

Yes ___ No ___ N/A ___ I. Section 11 (relating to prohibitions against post-claims underwriting).

Yes ___ No ___ N/A ___ J. Section 12 (relating to minimum standards).

Yes ___ No ___ N/A ___ K. Section 14 (relating to application forms and replacement coverage).

Yes ___ No ___ N/A ___ L. Section 15 (relating to reporting requirements).

Yes ___ No ___ N/A ___ M. Section 22 (relating to filing requirements for marketing).

Yes ___ No ___ N/A ___ N. Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of Section 23C.

Yes ___ No ___ N/A ___ O. Section 24 (relating to suitability).

Yes ___ No ___ N/A ___ P. Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

Yes ___ No ___ N/A ___ Q. The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in Section 7702B(g)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(g)(4)).

Yes ___ No ___ N/A ___ R. Section 29 (relating to standard format outline of coverage).

Yes ___ No ___ N/A ___ S. Section 30 (relating to requirement to deliver shopper's guide).

Are the following requirements of the 2000 Model Act met with respect to all policies (including certificates issued under a group insurance contract) intended to be covered under the Qualified Partnership that are issued on each of the policy forms identified in section I.C above?

Yes ___ No ___ N/A ___ A. Section 6C (relating to preexisting conditions).

Yes ___ No ___ N/A ___ B. Section 6D (relating to prior hospitalization).

Yes ___ No ___ N/A ___ C. The provisions of Section 8 relating to contingent nonforfeiture benefits.

Yes ___ No ___ N/A ___ D. Section 6F (relating to right to return).

Yes ___ No ___ N/A ___ E. Section 6G (relating to outline of coverage).

Yes ___ No ___ N/A ___ F. Section 6H (relating to requirements for certificates under group plans).

Yes ___ No ___ N/A ___ G. Section 6J (relating to policy summary).

Yes ___ No ___ N/A ___ H. Section 6K (relating to monthly reports on accelerated death benefits).

Yes ___ No ___ N/A ___ I. Section 7 (relating to incontestability period).

In order for a policy to be covered under the Qualified Partnership of the State, the answers to all questions above should be "yes" (or "N/A" where all requirements with respect to a provision above are not applicable). If answers differ between policy forms (*e.g.*, a requirement would be answered "Yes" for one form and "N/A" for another), you should use separate Issuer Certification Forms for such policies.

III. CERTIFICATION

I hereby certify that the answers, accompanying documents, and other information set forth herein are, to the best of my knowledge and belief, true, correct, and complete.

________________	________________________________
Date	Name and title of officer of the Issuer
	________________________________
	Signature of officer of the Issuer

Legal contact and/or party who will approve final copy for publication:

LaCosta Nicole Wix
Assistant General Counsel
Department of Commerce and Insurance
Second Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243
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Contact for disk acquisition:

LaCosta Nicole Wix
Assistant General Counsel
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Second Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243
615-741-3388 (fax) 615-741-4000

Signature of the agency or officers directly responsible for proposing and/or drafting this Chapter:

____
LaCosta Nicole Wix
Assistant General Counsel

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Commerce and Insurance on the ________ day of ___________, 2008.

Further, I certify that the provisions of Tenn. Code Ann. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing has been filed in the Department of State on the 31st day of January, 2008 and such notice of rulemaking hearing having been published in the February, 15th 2008 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 20th day of March, 2008.

____
Leslie A. Newman
Commissioner
Department of Commerce and Insurance

Subscribed and sworn to before me this the _______ day of _______________________, 2008.

____
Notary Public

My commission expires on the ______ day of ______________, _________.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

____
Robert E. Cooper, Jr.
Attorney General and Reporter

The rulemaking hearing rules set out herein was properly filed in the Department of State on the _____ day of ____________________, 2008, and will become effective on the ___________ day of _____________ _______________,2008.

____
Riley C. Darnell

Economic Impact Statement:

1. Types of small businesses directly affected:

The type or types of small businesses that might be impacted by these proposed rules may include insurance companies or producers offering long-term care policies to consumers.

2. Projected reporting, recordkeeping, and other administrative costs:

Insurers must obtain verification of a producer's training to sell Partnership policies, maintain records of that verification in accordance with the state's record retention requirements, and make such verification available to the commissioner upon request. An insurer subject to this rule should also maintain records relating to the nature of training received by producers selling its product, to ensure that such training is sufficient to achieve an understanding of Partnership policies and Medicaid. These records should also be made available to the commissioner upon request.

3. Probable effect on small businesses:

The adverse impact that will be borne by small businesses after the enactment of these rules is the same adverse impact that will be borne by all persons or entities having to comply with these regulations. The small business will have to ensure compliance with these regulations so that the public has full and complete disclosure about the products being offered. The consumer is also afforded more protections by these rules by their requiring additional education requirements for producers who would sell these products.

4. Less burdensome, intrusive, or costly alternative methods:

Alternative means to accomplishing the intent, which is to offer to consumers Partnership qualified long-term care policies, does not exist. Further, an alternative which would achieve consistency with other states' regulation of Partnership plans pursuant to the NAIC model does not exist. The Insurance Division must ensure that every person or entity selling such products does so in a manner consistent with these regulations.

5. Comparison with federal and state counterparts:

As this is a National Association of Insurance Commissioner's Model Rule, a search has been conducted to see which states have adopted either the model regulations or similar legislation or regulations. The following states have adopted this model or similar regulations: the four original partnership states of California, Connecticut, Indiana, and New York, as well as, Arkansas, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, and Virginia.

6. Effect of possible exemption of small businesses:

The Department must ensure that all annuity sales comply with these regulations. By exempting small businesses from this rule, it would raise the risk that consumers were not being adequately protected from the harm associated with unsuitable annuities.