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No

P.L. 2003, CHAPTER 207, *approved January 8, 2004*
Senate Committee Substitute for
Senate, Nos. 2532 and 2594

1 **AN ACT** concerning the regulation of long-term care insurance.

2

3 **BE IT ENACTED** *by the Senate and General Assembly of the State*
4 *of New Jersey:*

5

6 1. The purpose of this act is to promote the public interest, to
7 promote the availability of long-term care insurance policies, to
8 protect applicants for long-term care insurance from unfair or
9 deceptive sales or enrollment practices, to establish standards for
10 long-term care insurance, to facilitate public understanding and
11 comparison of long-term care insurance policies, and to facilitate
12 flexibility and innovation in the development of long-term care
13 insurance coverage.

14

15 2. The requirements of this act shall apply to policies delivered or
16 issued for delivery in this State on or after the effective date of this act
17 intended for use as long-term care insurance. This act is not intended
18 to supersede the obligations of entities subject to this act to comply
19 with the substance of other applicable insurance laws insofar as they
20 do not conflict with this act, except that laws and regulations designed
21 and intended to apply to Medicare supplement insurance policies shall
22 not be applied to long-term care insurance.

23

24 3. This act shall be known and may be cited as the "New Jersey
25 Long-Term Care Insurance Act."

26

27 4. As used in this act, unless the context requires otherwise:

28 "Applicant" means:

29 (1) In the case of an individual long-term care insurance policy,
30 the person who seeks to contract for benefits; and

31 (2) In the case of a group long-term care insurance policy, the
32 proposed certificate holder.

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

36 "Commissioner" means the Commissioner of Banking and
37 Insurance.

38 "Group long-term care insurance" means a long-term care
39 insurance policy which is delivered or issued for delivery in this State
40 and issued to:

1 (1) a group conforming to one of the descriptions set forth at
2 N.J.S. 17B:27-2 through 17B:27-8 inclusive, or N.J.S. 17B:27-27; or

3 (2) any group not set forth in paragraph (1) of this definition,
4 which in the opinion of the commissioner may be insured for group
5 long-term care insurance in accordance with sound underwriting
6 principles.

7 "Long-term care insurance" means any insurance policy, certificate
8 or rider advertised, marketed, offered or designed to provide coverage
9 for not less than 12 consecutive months for each covered person on an
10 expense incurred, indemnity, prepaid or other basis, for one or more
11 necessary or medically necessary diagnostic, preventive, therapeutic,
12 rehabilitative, maintenance or personal care services, provided in a
13 setting other than an acute care unit of a hospital. The term includes
14 group and individual annuities and life insurance policies or riders
15 which provide directly or which supplement long-term care insurance.
16 The term also includes a policy or rider which provides for payment of
17 benefits based upon cognitive impairment or the loss of functional
18 capacity. The term shall also apply to qualified long-term care
19 insurance contracts. Long-term care insurance may be issued by
20 insurers; fraternal benefit societies; health, hospital, or medical service
21 corporations; prepaid health plans; or health maintenance
22 organizations. Long-term care insurance shall not include any
23 insurance policy which is offered primarily to provide basic Medicare
24 supplement coverage, basic hospital expense coverage, basic
25 medical-surgical expense coverage, hospital confinement indemnity
26 coverage, major medical expense coverage, disability income or
27 related asset-protection coverage, accident only coverage, or limited
28 benefit health coverage. With regard to life insurance, this term does
29 not include life insurance policies which accelerate the death benefit
30 specifically for one or more qualifying events, and which provide the
31 option of a lump-sum payment for those benefits and in which neither
32 the benefits nor the eligibility for the benefits is conditioned upon the
33 receipt of long-term care. Notwithstanding any other provision
34 contained herein, any product advertised, marketed or offered as
35 long-term care insurance shall be subject to the provisions of this act.

36 "Policy" means any policy, contract, subscriber agreement, rider or
37 endorsement providing long-term care insurance coverage delivered
38 or issued for delivery in this State by an insurer; fraternal benefit
39 society; health, hospital, or medical service corporation; prepaid health
40 plan; health maintenance organization or any similar organization.

41 "Qualified long-term care insurance contract" or "federally
42 tax-qualified long-term care insurance contract" means an individual
43 or group insurance contract that meets the requirements of 26 U.S.C.
44 s. 7702B(b), as follows:

45 (1) The only insurance protection provided under the contract is
46 coverage of qualified long-term services. A contract shall not fail to

1 satisfy the requirements of this paragraph by reason of payments being
2 made on a per diem or other periodic basis without regard to the
3 expenses incurred during the period to which the payments relate;

4 (2) The contract does not pay or reimburse expenses incurred for
5 services or items to the extent that the expenses are reimbursable
6 under Title XVIII of the Social Security Act (42 U.S.C. s. 1395 et
7 seq.) or would be so reimbursable but for the application of a
8 deductible or coinsurance amount. The requirements of this paragraph
9 do not apply to expenses that are reimbursable under Title XVIII of
10 the Social Security Act (42 U.S.C. s. 1395 et seq.) only as a secondary
11 payor. A contract shall not fail to satisfy the requirements of this
12 paragraph by reason of payments being made on a per diem or other
13 periodic basis without regard to the expenses incurred during the
14 period to which the payments relate;

15 (3) The contract is guaranteed renewable, within the meaning of
16 26 U.S.C. s. 7702B(b)(1)(C);

17 (4) The contract does not provide for a cash surrender value or
18 other money that can be paid, assigned, pledged as collateral for a
19 loan, or borrowed except as provided in paragraph (5) of this
20 definition;

21 (5) All refunds of premiums, and all policyholder dividends or
22 similar amounts, under the contract are to be applied as a reduction in
23 future premiums or to increase future benefits, except that a refund on
24 the event of death of the insured or a complete surrender or
25 cancellation of the contract shall not exceed the aggregate premiums
26 paid under the contract; and

27 (6) The contract meets the consumer protection provisions set
28 forth in 26 U.S.C. s. 7702B(g).

29 "Qualified long-term care insurance contract" or "federally
30 tax-qualified long-term care insurance contract" also means the portion
31 of a life insurance contract that provides long-term care insurance
32 coverage by a rider or as part of the contract and that satisfies the
33 requirements of 26 U.S.C. s. 7702B(b) and (e).

34
35 5. a. Any policy, certificate or rider advertised, marketed or
36 offered as long-term care insurance shall comply with the provisions
37 of this act.

38 b. No group long-term care insurance coverage shall be offered to
39 a resident of this State under a group policy issued in another state to
40 a group described in paragraph (2) of the definition of "group long-
41 term care insurance" in section 4 of this act, unless this State, or
42 another state having statutory and regulatory long-term care insurance
43 requirements substantially similar to those adopted in this State, has
44 made a determination that those requirements have been met.

1 6. a. No long-term care insurance policy or certificate shall:

2 (1) Be cancelled, nonrenewed or otherwise terminated on the
3 grounds of the age or the deterioration of the mental or physical health
4 of the insured individual or certificate holder; or

5 (2) Contain a provision establishing a new waiting period in the
6 event existing coverage is converted to or replaced by a new or other
7 form within the same company or affiliated company, except with
8 respect to an increase in benefits voluntarily selected by the insured
9 individual or group policyholder; or

10 (3) Provide coverage for skilled nursing care only or provide
11 significantly more coverage for skilled nursing care in a facility than
12 coverage for lower levels of care.

13 b. (1) No long-term care insurance policy or certificate shall use
14 a definition of "preexisting condition" which is more restrictive than
15 the following: preexisting condition means a condition for which
16 medical advice or treatment was recommended by, or received from
17 a provider of health care services, within six months preceding the
18 effective date of coverage of an insured person.

19 (2) No long-term care insurance policy or certificate shall exclude
20 coverage for a loss or confinement which is the result of a preexisting
21 condition unless that loss or confinement begins within six months
22 following the effective date of coverage of an insured person.

23 (3) The definition of "preexisting condition" shall not prohibit an
24 insurer from using an application form designed to elicit the complete
25 health history of an applicant, and, on the basis of the answers on that
26 application, from underwriting in accordance with that insurer's
27 established underwriting standards. Unless otherwise provided in the
28 policy or certificate, a preexisting condition, regardless of whether it
29 is disclosed on the application, need not be covered until the waiting
30 period described in paragraph (2) of this subsection b. expires. No
31 long-term care insurance policy or certificate shall exclude or use
32 waivers or riders of any kind to exclude, limit or reduce coverage or
33 benefits for specifically named or described preexisting diseases or
34 physical conditions beyond the waiting period described in paragraph
35 (2) of this subsection b..

36 (4) A preexisting condition limitation shall only apply to the
37 long-term care insurance coverage and shall not apply to any death
38 benefit or other life insurance benefit provided by a long-term care
39 insurance policy or certificate.

40 c. (1) No long-term care insurance policy or certificate shall be
41 delivered or issued for delivery in this State if that policy or certificate:

42 (a) Conditions eligibility for any benefits on a prior hospitalization
43 requirement;

44 (b) Conditions eligibility for benefits provided in an institutional
45 care setting on the receipt of a higher level of institutional care; or

46 (c) Conditions eligibility for any benefits, other than waiver of

1 premium, post-confinement, post-acute care or recuperative benefits,
2 on a prior institutionalization requirement.

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

8 (b) A long-term care insurance policy or certificate which
9 conditions eligibility for non-institutional benefits on the prior receipt
10 of institutional care shall not require a prior institutional stay of more
11 than 30 days.

12 d. Long-term care insurance applicants shall have the right to
13 return the policy or certificate within 30 days of its delivery and to
14 have the premium refunded if, after examination of the policy or
15 certificate, the applicant is not satisfied for any reason. Long-term
16 care insurance policies and certificates shall have a notice prominently
17 printed on the first page or attached thereto stating in substance that
18 the applicant shall have the right to return the policy or certificate
19 within 30 days of its delivery and to have the premium refunded if,
20 after examination of the policy or certificate, the applicant is not
21 satisfied for any reason.

22 e. (1) An outline of coverage shall be delivered to a prospective
23 applicant for long-term care insurance at the time of initial solicitation
24 through means which prominently direct the attention of the recipient
25 to the document and its purpose.

26 (a) The commissioner shall prescribe a standard format, including
27 style, arrangement and overall appearance, and the content of an
28 outline of coverage.

29 (b) In the case of insurance producer solicitations, an insurance
30 producer shall deliver the outline of coverage prior to the presentation
31 of an application or enrollment form.

32 (c) In the case of direct response solicitations, the outline of
33 coverage shall be presented in conjunction with any application or
34 enrollment form.

35 (2) The outline of coverage shall include:

36 (a) A description of the principal benefits and coverage provided
37 in the policy;

38 (b) A statement of the principal exclusions, reductions, and
39 limitations contained in the policy;

40 (c) A statement of the terms under which the policy or certificate,
41 or both, may be continued in force or discontinued, including any
42 reservation in the policy of a right to change premium. Continuation
43 or conversion provisions of group coverage shall be specifically
44 described;

45 (d) A statement that the outline of coverage is a summary only,
46 not a contract of insurance, and that the policy or group master policy

1 contains governing contractual provisions;

2 (e) A description of the terms under which the policy or certificate
3 may be returned and the premium refunded;

4 (f) A brief description of the relationship of cost of care and
5 benefits; and

6 (g) A statement that discloses to the policyholder or certificate
7 holder whether the policy is intended to be a federally tax-qualified
8 long-term care insurance contract under 26 U.S.C. s. 7702B(b).

9 f. A certificate issued pursuant to a group long-term care
10 insurance policy, which policy is delivered or issued for delivery in this
11 State, shall include:

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

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

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

18 g. At the time of policy delivery, a policy summary as prescribed
19 by the commissioner pursuant to subsection e. of this section shall be
20 delivered for an individual life insurance policy which provides
21 long-term care benefits within the policy or by rider. In the case of
22 direct response solicitations, the insurer shall deliver the policy
23 summary upon the applicant's request, but regardless of request shall
24 make that delivery no later than at the time of policy delivery. In
25 addition to complying with all applicable requirements, the summary
26 shall also include:

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

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

32 (3) Any exclusions, reductions and limitations on benefits of
33 long-term care;

34 (4) A statement as to whether any long-term care inflation
35 protection option is available under this policy;

36 (5) If applicable to the policy type, the summary shall also include:

37 (a) A disclosure of the effects of exercising other rights under the
38 policy;

39 (b) A disclosure of guarantees related to long-term care costs of
40 insurance charges;

41 (c) Current and projected maximum lifetime benefits; and

42 (6) The provisions of the policy summary listed above may be
43 incorporated into a basic illustration required to be delivered in
44 accordance with regulations promulgated by the commissioner or into
45 the life insurance policy summary which is required to be delivered in
46 accordance with regulations promulgated by the commissioner.

1 h. Whenever a long-term care benefit, funded through a life
2 insurance policy by the acceleration of the death benefit, is in benefit
3 payment status, a monthly report as specified by the commissioner
4 shall be provided to the policyholder or certificate holder. The report
5 shall include:

- 6 (1) Any long-term care benefits paid out during the month;
7 (2) An explanation of any changes in the policy, such as death
8 benefits or cash values, due to long-term care benefits being paid out;
9 and
10 (3) The amount of long-term care benefits existing or remaining.
11

12 7. a. For a policy or certificate that has been in force for less than
13 six months, an insurer may rescind a long-term care insurance policy
14 or certificate or deny an otherwise valid long-term care insurance
15 claim upon a showing of misrepresentation that is material to the
16 acceptance for coverage.

17 b. For a policy or certificate that has been in force for at least six
18 months but less than two years, an insurer may rescind a long-term
19 care insurance policy or certificate or deny an otherwise valid
20 long-term care insurance claim upon a showing of misrepresentation
21 that is both material to the acceptance for coverage and which pertains
22 to the condition for which benefits are sought.

23 c. After a policy or certificate has been in force for two years, it
24 is not contestable upon the grounds of misrepresentation alone; such
25 a policy or certificate may be contested only upon a showing that the
26 insured knowingly and intentionally misrepresented relevant facts
27 relating to the insured's health.

28 d. If an insurer has paid benefits under the long-term care
29 insurance policy or certificate, the benefit payments shall not be
30 recovered by the insurer if the policy or certificate is rescinded.

31 e. In the event of the death of the insured, this section shall not
32 apply to the remaining death benefit of a life insurance policy that
33 accelerates benefits for long-term care. In this situation, the remaining
34 death benefits under these policies shall be governed by
35 N.J.S.17B:25-4 or 17B:27-12, as appropriate. In all other situations,
36 this section shall apply to life insurance policies that accelerate benefits
37 for long-term care.
38

39 8. a. Except as provided in subsection b. of this section, a
40 long-term care insurance policy shall not be delivered or issued for
41 delivery in this State unless the policyholder or certificate holder has
42 been offered the option of purchasing a policy or certificate including
43 a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in
44 the form of a rider that is attached to the policy. If the policyholder
45 or certificate holder declines the nonforfeiture benefit, the insurer shall
46 provide a contingent benefit upon lapse that shall be available for a

1 specified period of time following a substantial increase in premium
2 rates.

3 b. When a group long-term care insurance policy is issued, the
4 offer required in subsection a. of this section shall be made to the
5 group policyholder

6
7 9. The commissioner shall promulgate regulations, pursuant to the
8 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
9 seq.), necessary to effectuate the purposes of this act including, but
10 not limited to, regulations dealing with disclosure requirements,
11 eligibility, renewability, non-duplication of coverage, dependent
12 coverage, preexisting conditions, termination of coverage,
13 continuation or conversion, loss ratio, and other information that the
14 commissioner feels necessary.

15
16 10. a. Every long-term care insurance policy or contract,
17 including any application, certificate, rider or endorsement to be issued
18 or delivered in this State shall be filed with the commissioner for prior
19 approval as provided in this section.

20 b. A policy, contract or related form filed with the commissioner
21 for approval pursuant to this section shall be deemed approved upon
22 the expiration of 60 days after the submission of the form unless
23 disapproved in writing by the commissioner within that time. Any
24 such disapproval shall be based only on the specific provisions of
25 applicable statutes or regulations. A disapproved policy, contract or
26 related form may be resubmitted.

27 c. A long-term care insurance policy, contract or related form
28 submitted for approval pursuant to this section and disapproved by the
29 commissioner before the expiration of 60 days after its submission
30 shall be deemed withdrawn at the expiration of 60 days after the
31 transmittal of the commissioner's specific objections unless the filer
32 submits a complete written response to all of the commissioner's
33 objections regarding the submission within the 60-day period.

34 d. A long-term care insurance policy, contract or related form
35 resubmitted in response to the commissioner's objections pursuant to
36 subsection b. of this section shall be deemed approved upon the
37 expiration of 30 days after its resubmission unless disapproved in
38 writing by the commissioner within that time. No disapproval by the
39 commissioner of a resubmission shall be based on any objection not
40 specified by the commissioner in his initial disapproval of the filing,
41 except that the commissioner may disapprove that form based on any
42 new provisions introduced in the resubmission or, if in addressing the
43 specific objections cited in the commissioner's disapproval, the insurer
44 changes or modifies any substantive provisions of the form. Any
45 policy, contract or related form resubmitted for approval pursuant to
46 this section and disapproved by the commissioner before the expiration

1 of 30 days after its submission shall be deemed withdrawn at the
2 expiration of 30 days after the transmittal of the commissioner's
3 specific objections, unless the filer submits a complete written
4 response to all of the commissioner's objections regarding the
5 submission within the 30-day period.

6 e. Any form which is filed with the commissioner and approved or
7 deemed approved may be so delivered or issued for delivery until such
8 time as any subsequent withdrawal of the filing by the commissioner,
9 following an opportunity for a hearing held in accordance with the
10 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
11 and any rules adopted thereunder, becomes final in accordance
12 therewith.

13 f. For the purposes of this section, "days" means calendar days,
14 except that when the last day of any specified time period is a
15 Saturday, Sunday, or State holiday, then the time period shall end on
16 the next following business day. With respect to any specified time
17 period pertaining to correspondence between an insurer and the
18 commissioner, the time period shall commence on the date that
19 correspondence is postmarked or submitted to a private delivery
20 service.

21

22 11. An insurer providing long-term care insurance issued on an
23 individual basis in this State shall file, for the commissioner's approval,
24 its rates, rating schedule and supporting documentation demonstrating
25 that it is in compliance with the applicable loss ratio standards of this
26 State. All filings of rates and rating schedules shall demonstrate that
27 the benefits are reasonable in relation to the premium charged and that
28 the rates are not excessive, inadequate or unfairly discriminatory.

29

30 12. In addition to any other penalties provided by the laws of this
31 State, any insurer and any insurance producer found to have violated
32 any requirement of this State relating to the regulation of long-term
33 care insurance or the marketing of that insurance shall be subject to a
34 fine of up to three times the amount of any commissions paid for each
35 policy or certificate involved in the violation, or \$10,000, whichever
36 is greater.

37

38 13. This act shall take effect on the 180th day following
39 enactment.

40

41

42

43 _____
Provides for the regulation of long-term care insurance.

SENATE, No. 2532

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 15, 2003

Sponsored by:

Senator JOSEPH CONIGLIO

District 38 (Bergen)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Provides for the regulation of long-term care insurance.

CURRENT VERSION OF TEXT

As introduced.



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2

3 **BE IT ENACTED** *by the Senate and General Assembly of the State*
4 *of New Jersey:*

5

6 1. The purpose of this act is to promote the public interest, to
7 promote the availability of long-term care insurance policies, to
8 protect applicants for long-term care insurance from unfair or
9 deceptive sales or enrollment practices, to establish standards for
10 long-term care insurance, to facilitate public understanding and
11 comparison of long-term care insurance policies, and to facilitate
12 flexibility and innovation in the development of long-term care
13 insurance coverage.

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15 2. The requirements of this act shall apply to policies delivered or
16 issued for delivery in this State on or after the effective date of this act
17 intended for use as long-term care insurance. This act is not intended
18 to supersede the obligations of entities subject to this act to comply
19 with the substance of other applicable insurance laws insofar as they
20 do not conflict with this act, except that laws and regulations designed
21 and intended to apply to Medicare supplement insurance policies shall
22 not be applied to long-term care insurance.

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24 3. This act shall be known and may be cited as the "New Jersey
25 Long-Term Care Insurance Act."

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27 4. As used in this act, unless the context requires otherwise:

28 "Applicant" means:

29 (1) In the case of an individual long-term care insurance policy, the
30 person who seeks to contract for benefits; and

31 (2) In the case of a group long-term care insurance policy, the
32 proposed certificate holder.

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

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37 Insurance.

38 "Group long-term care insurance" means a long-term care insurance
39 policy which is delivered or issued for delivery in this State and issued
40 to:

41 (1) a group conforming to one of the descriptions set forth at
42 N.J.S. 17B:27-2 through 17B:27-8 inclusive, or N.J.S. 17B:27-27; or

43 (2) any group not set forth in paragraph (1) of this definition,
44 which in the opinion of the commissioner may be insured for group
45 long-term care insurance in accordance with sound underwriting
46 principles.

1 "Long-term care insurance" means any insurance policy, certificate
2 or rider advertised, marketed, offered or designed to provide coverage
3 for not less than 12 consecutive months for each covered person on an
4 expense incurred, indemnity, prepaid or other basis, for one or more
5 necessary or medically necessary diagnostic, preventive, therapeutic,
6 rehabilitative, maintenance or personal care services, provided in a
7 setting other than an acute care unit of a hospital. The term includes
8 group and individual annuities and life insurance policies or riders
9 which provide directly or which supplement long-term care insurance.
10 The term also includes a policy or rider which provides for payment of
11 benefits based upon cognitive impairment or the loss of functional
12 capacity. Long-term care insurance may be issued by insurers;
13 fraternal benefit societies; health, hospital, and medical service
14 corporations; prepaid health plans; or health maintenance
15 organizations. Long-term care insurance shall not include any
16 insurance policy which is offered primarily to provide basic Medicare
17 supplement coverage, basic hospital expense coverage, basic
18 medical-surgical expense coverage, hospital confinement indemnity
19 coverage, major medical expense coverage, disability income or
20 related asset-protection coverage, accident only coverage, or limited
21 benefit health coverage. With regard to life insurance, this term does
22 not include life insurance policies which accelerate the death benefit
23 specifically for one or more qualifying events, and which provide the
24 option of a lump-sum payment for those benefits and in which neither
25 the benefits nor the eligibility for the benefits is conditioned upon the
26 receipt of long-term care. Notwithstanding any other provision
27 contained herein, any product advertised, marketed or offered as
28 long-term care insurance shall be subject to the provisions of this act.

29 "Policy" means any policy, contract, subscriber agreement, rider or
30 endorsement providing long-term care insurance coverage delivered
31 or issued for delivery in this State by an insurer; fraternal benefit
32 society; health, hospital, or medical service corporation; prepaid health
33 plan; health maintenance organization or any similar organization.

34 "Qualified long-term care insurance contract" or "federally
35 tax-qualified long-term care insurance contract" means an individual
36 or group insurance contract that meets the requirements of 26 U.S.C.
37 s. 7702B(b), as follows:

38 (1) The only insurance protection provided under the contract is
39 coverage of qualified long-term services. A contract shall not fail to
40 satisfy the requirements of this paragraph by reason of payments being
41 made on a per diem or other periodic basis without regard to the
42 expenses incurred during the period to which the payments relate;

43 (2) The contract does not pay or reimburse expenses incurred for
44 services or items to the extent that the expenses are reimbursable
45 under Title XVIII of the Social Security Act (42 U.S.C. s. 1395 et
46 seq.) or would be so reimbursable but for the application of a

1 deductible or coinsurance amount. The requirements of this paragraph
2 do not apply to expenses that are reimbursable under Title XVIII of
3 the Social Security Act (42 U.S.C. s. 1395 et seq.) only as a secondary
4 payor. A contract shall not fail to satisfy the requirements of this
5 paragraph by reason of payments being made on a per diem or other
6 periodic basis without regard to the expenses incurred during the
7 period to which the payments relate;

8 (3) The contract is guaranteed renewable, within the meaning of 26
9 U.S.C. s. 7702B(b)(1)(C);

10 (4) The contract does not provide for a cash surrender value or
11 other money that can be paid, assigned, pledged as collateral for a
12 loan, or borrowed except as provided in paragraph (5) of this
13 definition;

14 (5) All refunds of premiums, and all policyholder dividends or
15 similar amounts, under the contract are to be applied as a reduction in
16 future premiums or to increase future benefits, except that a refund on
17 the event of death of the insured or a complete surrender or
18 cancellation of the contract shall not exceed the aggregate premiums
19 paid under the contract; and

20 (6) The contract meets the consumer protection provisions set
21 forth in 26 U.S.C. s. 7702B(g).

22 "Qualified long-term care insurance contract" or "federally
23 tax-qualified long-term care insurance contract" also means the portion
24 of a life insurance contract that provides long-term care insurance
25 coverage by a rider or as part of the contract and that satisfies the
26 requirements of 26 U.S.C. s. 7702B(b) and (e).

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29 offered as long-term care insurance shall comply with the provisions
30 of this act.

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32 a resident of this State under a group policy issued in another state to
33 a group described in paragraph (2) of the definition of "group long-
34 term care insurance" in section 4 of this act, unless this State, or
35 another state having statutory and regulatory long-term care insurance
36 requirements substantially similar to those adopted in this State, has
37 made a determination that those requirements have been met.

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41 grounds of the age or the deterioration of the mental or physical health
42 of the insured individual or certificate holder; or

43 (2) Contain a provision establishing a new waiting period in the
44 event existing coverage is converted to or replaced by a new or other
45 form within the same company or affiliated company, except with
46 respect to an increase in benefits voluntarily selected by the insured

1 individual or group policyholder; or

2 (3) Provide coverage for skilled nursing care only or provide
3 significantly more coverage for skilled nursing care in a facility than
4 coverage for lower levels of care.

5 b. (1) No long-term care insurance policy or certificate shall use
6 a definition of "preexisting condition" which is more restrictive than
7 the following: preexisting condition means a condition for which
8 medical advice or treatment was recommended by, or received from
9 a provider of health care services, within six months preceding the
10 effective date of coverage of an insured person.

11 (2) No long-term care insurance policy or certificate shall exclude
12 coverage for a loss or confinement which is the result of a preexisting
13 condition unless that loss or confinement begins within six months
14 following the effective date of coverage of an insured person.

15 (3) The definition of "preexisting condition" shall not prohibit an
16 insurer from using an application form designed to elicit the complete
17 health history of an applicant, and, on the basis of the answers on that
18 application, from underwriting in accordance with that insurer's
19 established underwriting standards. Unless otherwise provided in the
20 policy or certificate, a preexisting condition, regardless of whether it
21 is disclosed on the application, need not be covered until the waiting
22 period described in paragraph (2) of this subsection b. expires. No
23 long-term care insurance policy or certificate shall exclude or use
24 waivers or riders of any kind to exclude, limit or reduce coverage or
25 benefits for specifically named or described preexisting diseases or
26 physical conditions beyond the waiting period described in paragraph
27 (2) of this subsection b..

28 (4) A preexisting condition limitation shall only apply to the
29 long-term care insurance coverage and shall not apply to any death
30 benefit or other life insurance benefit provided by a long-term care
31 insurance policy or certificate.

32 c. (1) No long-term care insurance policy or certificate shall be
33 delivered or issued for delivery in this State if that policy or certificate:

34 (a) Conditions eligibility for any benefits on a prior hospitalization
35 requirement;

36 (b) Conditions eligibility for benefits provided in an institutional
37 care setting on the receipt of a higher level of institutional care; or

38 (c) Conditions eligibility for any benefits, other than waiver of
39 premium, post-confinement, post-acute care or recuperative benefits,
40 on a prior institutionalization requirement.

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

46 (b) A long-term care insurance policy or certificate which

1 conditions eligibility for non-institutional benefits on the prior receipt
2 of institutional care shall not require a prior institutional stay of more
3 than 30 days.

4 d. Long-term care insurance applicants shall have the right to
5 return the policy or certificate within 30 days of its delivery and to
6 have the premium refunded if, after examination of the policy or
7 certificate, the applicant is not satisfied for any reason. Long-term
8 care insurance policies and certificates shall have a notice prominently
9 printed on the first page or attached thereto stating in substance that
10 the applicant shall have the right to return the policy or certificate
11 within 30 days of its delivery and to have the premium refunded if,
12 after examination of the policy or certificate, the applicant is not
13 satisfied for any reason.

14 e. (1) An outline of coverage shall be delivered to a prospective
15 applicant for long-term care insurance at the time of initial solicitation
16 through means which prominently direct the attention of the recipient
17 to the document and its purpose.

18 (a) The commissioner shall prescribe a standard format, including
19 style, arrangement and overall appearance, and the content of an
20 outline of coverage.

21 (b) In the case of insurance producer solicitations, an insurance
22 producer shall deliver the outline of coverage prior to the presentation
23 of an application or enrollment form.

24 (c) In the case of direct response solicitations, the outline of
25 coverage shall be presented in conjunction with any application or
26 enrollment form.

27 (2) The outline of coverage shall include:

28 (a) A description of the principal benefits and coverage provided
29 in the policy;

30 (b) A statement of the principal exclusions, reductions, and
31 limitations contained in the policy;

32 (c) A statement of the terms under which the policy or certificate,
33 or both, may be continued in force or discontinued, including any
34 reservation in the policy of a right to change premium. Continuation
35 or conversion provisions of group coverage shall be specifically
36 described;

37 (d) A statement that the outline of coverage is a summary only, not
38 a contract of insurance, and that the policy or group master policy
39 contains governing contractual provisions;

40 (e) A description of the terms under which the policy or certificate
41 may be returned and the premium refunded;

42 (f) A brief description of the relationship of cost of care and
43 benefits; and

44 (g) A statement that discloses to the policyholder or certificate
45 holder whether the policy is intended to be a federally tax-qualified
46 long-term care insurance contract under 26 U.S.C. s. 7702B(b).

1 f. A certificate issued pursuant to a group long-term care insurance
2 policy, which policy is delivered or issued for delivery in this State,
3 shall include:

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

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

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

10 g. At the time of policy delivery, a policy summary as prescribed
11 by the commissioner pursuant to subsection e. of this section shall be
12 delivered for an individual life insurance policy which provides
13 long-term care benefits within the policy or by rider. In the case of
14 direct response solicitations, the insurer shall deliver the policy
15 summary upon the applicant's request, but regardless of request shall
16 make that delivery no later than at the time of policy delivery. In
17 addition to complying with all applicable requirements, the summary
18 shall also include:

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

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

24 (3) Any exclusions, reductions and limitations on benefits of
25 long-term care;

26 (4) A statement as to whether any long-term care inflation
27 protection option is available under this policy;

28 (5) If applicable to the policy type, the summary shall also include:

29 (a) A disclosure of the effects of exercising other rights under the
30 policy;

31 (b) A disclosure of guarantees related to long-term care costs of
32 insurance charges;

33 (c) Current and projected maximum lifetime benefits; and

34 (6) The provisions of the policy summary listed above may be
35 incorporated into a basic illustration required to be delivered in
36 accordance with regulations promulgated by the commissioner or into
37 the life insurance policy summary which is required to be delivered in
38 accordance with regulations promulgated by the commissioner.

39 h. Whenever a long-term care benefit, funded through a life
40 insurance policy by the acceleration of the death benefit, is in benefit
41 payment status, a monthly report as specified by the commissioner
42 shall be provided to the policyholder or certificate holder. The report
43 shall include:

44 (1) Any long-term care benefits paid out during the month;

45 (2) An explanation of any changes in the policy, such as death
46 benefits or cash values, due to long-term care benefits being paid out;

1 and

2 (3) The amount of long-term care benefits existing or remaining.

3

4 7. a. For a policy or certificate that has been in force for less than
5 six months, an insurer may rescind a long-term care insurance policy
6 or certificate or deny an otherwise valid long-term care insurance
7 claim upon a showing of misrepresentation that is material to the
8 acceptance for coverage.

9 b. For a policy or certificate that has been in force for at least six
10 months but less than two years, an insurer may rescind a long-term
11 care insurance policy or certificate or deny an otherwise valid
12 long-term care insurance claim upon a showing of misrepresentation
13 that is both material to the acceptance for coverage and which pertains
14 to the condition for which benefits are sought.

15 c. After a policy or certificate has been in force for two years, it is
16 not contestable upon the grounds of misrepresentation alone; such a
17 policy or certificate may be contested only upon a showing that the
18 insured knowingly and intentionally misrepresented relevant facts
19 relating to the insured's health.

20 d. If an insurer has paid benefits under the long-term care insurance
21 policy or certificate, the benefit payments shall not be recovered by the
22 insurer if the policy or certificate is rescinded.

23 e. In the event of the death of the insured, this section shall not
24 apply to the remaining death benefit of a life insurance policy that
25 accelerates benefits for long-term care. In this situation, the remaining
26 death benefits under these policies shall be governed by N.J.S.
27 17B:25-4 or 17B:27-12, as appropriate. In all other situations, this
28 section shall apply to life insurance policies that accelerate benefits for
29 long-term care.

30

31 8. a. Except as provided in subsection b. of this section, a
32 long-term care insurance policy shall not be delivered or issued for
33 delivery in this State unless the policyholder or certificate holder has
34 been offered the option of purchasing a policy or certificate including
35 a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in
36 the form of a rider that is attached to the policy. If the policyholder
37 or certificate holder declines the nonforfeiture benefit, the insurer shall
38 provide a contingent benefit upon lapse that shall be available for a
39 specified period of time following a substantial increase in premium
40 rates.

41 b. When a group long-term care insurance policy is issued, the
42 offer required in subsection a. of this section shall be made to the
43 group policyholder

44

45 9. The commissioner shall promulgate regulations, pursuant to the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.), necessary to effectuate the purposes of this act including, but
2 not limited to, regulations dealing with disclosure requirements,
3 eligibility, renewability, non-duplication of coverage, dependent
4 coverage, preexisting conditions, termination of coverage,
5 continuation or conversion, loss ratio, and other information that the
6 commissioner feels necessary.

7
8 10. a. Every long-term care insurance policy or contract, including
9 any application, certificate, rider or endorsement to be issued or
10 delivered in this State shall be filed with the commissioner for prior
11 approval as provided in this section.

12 b. A policy, contract or related form filed with the commissioner
13 for approval pursuant to this section shall be deemed approved upon
14 the expiration of 60 days after the submission of the form unless
15 disapproved in writing by the commissioner within that time. Any
16 such disapproval shall be based only on the specific provisions of
17 applicable statutes or regulations. A disapproved policy, contract or
18 related form may be resubmitted.

19 c. A long-term care insurance policy, contract or related form
20 submitted for approval pursuant to this section and disapproved by the
21 commissioner before the expiration of 60 days after its submission
22 shall be deemed withdrawn at the expiration of 60 days after the
23 transmittal of the commissioner's specific objections unless the filer
24 submits a complete written response to all of the commissioner's
25 objections regarding the submission within the 60-day period.

26 d. A long-term care insurance policy, contract or related form
27 resubmitted in response to the commissioner's objections pursuant to
28 subsection b. of this section shall be deemed approved upon the
29 expiration of 30 days after its resubmission unless disapproved in
30 writing by the commissioner within that time. No disapproval by the
31 commissioner of a resubmission shall be based on any objection not
32 specified by the commissioner in his initial disapproval of the filing,
33 except that the commissioner may disapprove that form based on any
34 new provisions introduced in the resubmission or, if in addressing the
35 specific objections cited in the commissioner's disapproval, the insurer
36 changes or modifies any substantive provisions of the form. Any
37 policy, contract or related form resubmitted for approval pursuant to
38 this section and disapproved by the commissioner before the expiration
39 of 30 days after its submission shall be deemed withdrawn at the
40 expiration of 30 days after the transmittal of the commissioner's
41 specific objections, unless the filer submits a complete written
42 response to all of the commissioner's objections regarding the
43 submission within the 30-day period.

44 e. Any form which is filed with the commissioner and approved or
45 deemed approved may be so delivered or issued for delivery until such
46 time as any subsequent withdrawal of the filing by the commissioner,

1 following an opportunity for a hearing held in accordance with the
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
3 and any rules adopted thereunder, becomes final in accordance
4 therewith.

5 f. For the purposes of this section, "days" means calendar days,
6 except that when the last day of any specified time period is a
7 Saturday, Sunday, or State holiday, then the time period shall end on
8 the next following business day. With respect to any specified time
9 period pertaining to correspondence between an insurer and the
10 commissioner, the time period shall commence on the date that
11 correspondence is postmarked or submitted to a private delivery
12 service.

13
14 11. An insurer providing long-term care insurance issued on an
15 individual basis in this State shall file, for the commissioner's approval,
16 its rates, rating schedule and supporting documentation demonstrating
17 that it is in compliance with the applicable loss ratio standards of this
18 State. All filings of rates and rating schedules shall demonstrate that
19 the benefits are reasonable in relation to the premium charged and that
20 the rates are not excessive, inadequate or unfairly discriminatory.

21
22 12. In addition to any other penalties provided by the laws of this
23 State, any insurer and any insurance producer found to have violated
24 any requirement of this State relating to the regulation of long-term
25 care insurance or the marketing of that insurance shall be subject to a
26 fine of up to three times the amount of any commissions paid for each
27 policy or certificate involved in the violation, or \$10,000, whichever
28 is greater.

29
30 13. This act shall take effect on the 180th day following enactment.

31 32 33 STATEMENT

34
35 The bill is based on a Model Act adopted by the National
36 Association of Insurance Commissioners (NAIC) to regulate long-term
37 care insurance. The bill is based on the most current version of the
38 NAIC Model Act - April 2000. At present, New Jersey has no specific
39 statute governing long-term care insurance, but has relied on
40 regulations (N.J.A.C. 11:4-34.1 et seq.) that are based upon a NAIC
41 Model Regulation that was drafted in the 1980s. Those regulations
42 have not been updated to reflect later changes in the NAIC Model Act
43 and Regulation.

44 Statutory authority is now needed, not only to update the
45 requirements imposed on such coverage, but also to authorize the
46 offering of products which combine long term care products and life

1 insurance. New Jersey law does not currently permit approval of
2 combination life and health policies.

3 The bill contains a number of provisions intended to promote
4 greater public understanding and comparison of long-term care
5 coverage, protect applicants from unfair or deceptive sales practices,
6 promote greater availability of long-term care coverage and encourage
7 the development of innovative long-term care products.

8 Among the more important consumer protection measures included
9 in the bill are provisions that:

10 (1) Require a standard outline of coverage be delivered to a
11 prospective insured at the time of initial solicitation. The standard
12 outline highlights a policy's benefits and points out its important
13 features and facilitates comparison shopping by consumers.

14 (2) Prohibit termination of coverage on grounds of age or
15 deterioration of health (mental or physical).

16 (3) Require disclosure of conditions imposed on eligibility for
17 benefits, such as prior hospitalization or institutionalization.
18 Consumers will better understand what triggers coverage (usually the
19 inability to perform a certain number of activities of daily living, or
20 "ADLs"), what services are covered or excluded, and what services
21 are covered (such as nursing home or home health care).

22 (4) Require a 30-day free look at the policy with right to return
23 and have the premium refunded. Consumers will be able to study and
24 review the policy with family or professionals.

25 (5) Restrict preexisting condition limitations.

26 (6) Require the offering of a nonforfeiture benefit. A nonforfeiture
27 benefit means that if a person drops coverage, for whatever reason, the
28 person will still receive some value for the money already paid into the
29 policy.

30 (7) Establish an incontestability period.

31 The bill enhances the NAIC Model Act by including provisions
32 which establish form filing procedures and impose rate filing
33 requirements for long-term care policies issued on an individual basis
34 in New Jersey.

SENATE, No. 2594

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 29, 2003

Sponsored by:

Senator BARBARA BUONO
District 18 (Middlesex)
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS

Regulates long-term care insurance.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT regulating long-term care insurance and supplementing Title
2 17B of the New Jersey Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. This act shall be known and may be cited as the "New Jersey
8 Long-Term Care Insurance Act."

9
10 2. The purpose of this act is to promote the public interest, to
11 promote the availability of long-term care insurance policies, to
12 protect applicants for long-term care insurance from unfair or
13 deceptive sales or enrollment practices, to establish standards for
14 long-term care insurance, to facilitate public understanding and
15 comparison of long-term care insurance policies, and to facilitate
16 flexibility and innovation in the development of long-term care
17 insurance coverage.

18
19 3. The requirements of this act shall apply to policies delivered or
20 issued for delivery in this State on or after the effective date of this
21 act. This act is not intended to supersede the obligations of entities
22 subject to this act to comply with the substance of other applicable
23 insurance laws insofar as they do not conflict with this act, except that
24 laws and regulations designed and intended to apply to Medicare
25 supplement insurance policies shall not be applied to long-term care
26 insurance.

27
28 4. As used in this act, unless the context requires otherwise:
29 "Applicant" means, in the case of an individual long-term care
30 insurance policy, the person who seeks to contract for benefits and, in
31 the case of a group long-term care insurance policy, the proposed
32 certificate holder.

33 "Certificate" means any certificate issued under a group long-term
34 care insurance policy, which has been delivered or issued for delivery
35 in this State.

36 "Commissioner" means the Commissioner of Banking and
37 Insurance.

38 "Group long-term care insurance" means a long-term care insurance
39 policy that is delivered or issued for delivery in this State and issued
40 to:

41 (1) One or more employers or labor organizations, or to a trust or
42 to the trustees of a fund established by one or more employers or labor
43 organizations, or a combination thereof, for employees or former
44 employees or a combination thereof or for members or former
45 members or a combination thereof, of the labor organizations; or

46 (2) Any professional, trade or occupational association for its

1 members or former or retired members, or combination thereof, if the
2 association is composed of individuals, all of whom are or were
3 actively engaged in the same profession, trade or occupation; and has
4 been maintained in good faith for purposes other than obtaining
5 insurance; or

6 (3) An association or a trust or the trustees of a fund established,
7 created or maintained for the benefit of members of one or more
8 associations. Prior to advertising, marketing or offering the policy
9 within this State, the association or associations, or the insurer of the
10 association or associations, shall file evidence with the commissioner
11 that the association or associations have at the outset a minimum of
12 100 persons and have been organized and maintained in good faith for
13 purposes other than that of obtaining insurance; have been in active
14 existence for at least one year; and have a constitution and bylaws that
15 provide that:

16 (a) The association or associations hold regular meetings not less
17 than annually to further purposes of the members;

18 (b) Except for credit unions, the association or associations collect
19 dues or solicit contributions from members; and

20 (c) The members have voting privileges and representation on the
21 governing board and committees; or

22 (4) Any other group, subject to a finding by the commissioner that:

23 (a) The issuance of the group policy is not contrary to the best
24 interest of the public;

25 (b) The issuance of the group policy would result in economies of
26 acquisition or administration; and

27 (c) The benefits are reasonable in relation to the premiums
28 charged.

29 "Long-term care insurance" means any insurance policy or rider
30 advertised, marketed, offered or designed to provide coverage for not
31 less than 12 consecutive months for each covered person on an
32 expense incurred, indemnity, prepaid or other basis, for one or more
33 necessary or medically necessary diagnostic, preventive, therapeutic,
34 rehabilitative, maintenance or personal care services, provided in a
35 setting other than an acute care unit of a hospital. The term includes
36 group and individual annuities and life insurance policies or riders that
37 provide directly or supplement long-term care insurance. The term
38 also includes a policy or rider that provides for payment of benefits
39 based upon cognitive impairment or the loss of functional capacity.
40 The term shall also include qualified long-term care insurance
41 contracts. Long-term care insurance may be issued by insurers;
42 fraternal benefit societies; health, hospital and medical service
43 corporations; prepaid health plans; health maintenance organizations
44 or any similar organization to the extent they are otherwise authorized
45 to issue life or health insurance. Long-term care insurance shall not
46 include any insurance policy which is offered primarily to provide basic

1 Medicare supplement coverage, basic hospital expense coverage, basic
2 medical-surgical expense coverage, hospital confinement indemnity
3 coverage, major medical expense coverage, disability income or
4 related asset-protection coverage, accident only coverage, specified
5 disease or specified accident coverage, or limited benefit health
6 coverage. With regard to life insurance, this term does not include life
7 insurance policies that accelerate the death benefit specifically for one
8 or more of the qualifying events of terminal illness, medical conditions
9 requiring extraordinary medical intervention or permanent institutional
10 confinement, and that provide the option of a lump-sum payment for
11 those benefits and in which neither the benefits nor the eligibility for
12 the benefits is conditioned upon the receipt of long-term care.
13 Notwithstanding any other provision of this act, any product
14 advertised, marketed or offered as long-term care insurance shall be
15 subject to the provisions of this act.

16 "Policy" means any policy, contract, subscriber agreement, rider or
17 endorsement delivered or issued for delivery in this State by an insurer;
18 fraternal benefit society; health, hospital or medical service
19 corporation; prepaid health plan; health maintenance organization or
20 any similar organization.

21 "Qualified long-term care insurance contract" or "federally
22 tax-qualified long-term care insurance contract" means an individual
23 or group insurance contract that meets the requirements of 26 U.S.C.
24 s. 7702B(b), as follows:

25 (1) The only insurance protection provided under the contract is
26 coverage of qualified long-term services. A contract shall not fail to
27 satisfy the requirements of this paragraph by reason of payments being
28 made on a per diem or other periodic basis without regard to the
29 expenses incurred during the period to which the payments relate;

30 (2) The contract does not pay or reimburse expenses incurred for
31 services or items to the extent that the expenses are reimbursable
32 under Title XVIII of the Social Security Act (42 U.S.C. s.1395 et
33 seq.) or would be so reimbursable but for the application of a
34 deductible or coinsurance amount. The requirements of this paragraph
35 do not apply to expenses that are reimbursable under Title XVIII of
36 the Social Security Act (42 U.S.C. s.1395 et seq.) only as a secondary
37 payor. A contract shall not fail to satisfy the requirements of this
38 paragraph by reason of payments being made on a per diem or other
39 periodic basis without regard to the expenses incurred during the
40 period to which the payments relate;

41 (3) The contract is guaranteed renewable, within the meaning of 26
42 U.S.C. s. 7702B(b)(1)(C);

43 (4) The contract does not provide for a cash surrender value or
44 other money that can be paid, assigned, pledged as collateral for a
45 loan, or borrowed except as provided in paragraph (5) of this
46 definition of "qualified long-term care insurance contract";

1 (5) All refunds of premiums, and all policyholder dividends or
2 similar amounts, under the contract are to be applied as a reduction in
3 future premiums or to increase future benefits, except that a refund on
4 the event of death of the insured or a complete surrender or
5 cancellation of the contract shall not exceed the aggregate premiums
6 paid under the contract; and

7 (6) The contract meets the consumer protection provisions set
8 forth in 26 U.S.C. s.7702B(g).

9 "Qualified long-term care insurance contract" or "federally
10 tax-qualified long-term care insurance contract" also means the portion
11 of a life insurance contract that provides long-term care insurance
12 coverage by a rider or as part of the contract and that satisfies the
13 requirements of 26 U.S.C. s. 7702B(b) and (e).

14
15 5. a. Any policy or rider advertised, marketed or offered as long-
16 term care or nursing home insurance shall comply with the provisions
17 of this act.

18 b. No group long-term care insurance coverage shall be offered to
19 a resident of this State under a group policy issued in another state to
20 a group described in paragraph 4 under the definition of "group long-
21 term care insurance" in section 4 of this act, unless this State or
22 another state having statutory and regulatory long-term care insurance
23 requirements substantially similar to those adopted in this State has
24 made a determination that those requirements have been met.

25
26 6. a. The commissioner may adopt regulations that include
27 standards for full and fair disclosure setting forth the manner, content
28 and required disclosures for the sale of long-term care insurance
29 policies, terms of renewability, initial and subsequent conditions of
30 eligibility, non-duplication of coverage provisions, coverage of
31 dependents, preexisting conditions, termination of insurance,
32 continuation or conversion, probationary periods, limitations,
33 exceptions, reductions, elimination periods, requirements for
34 replacement, recurrent conditions and definitions of terms.

35 b. No long-term care insurance policy shall:

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

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

44 (3) Provide coverage for skilled nursing care only or provide
45 significantly more coverage for skilled nursing care in a facility than
46 coverage for lower levels of care.

1 c. (1) No long-term care insurance policy or certificate, other than
2 a policy or certificate thereunder issued to a group as defined in
3 paragraph 1 of the definition of "group long-term care insurance" in
4 section 4 of this act, shall use a definition of "preexisting condition"
5 that is more restrictive than the following: preexisting condition means
6 a condition for which medical advice or treatment was recommended
7 by, or received from a provider of health care services, within six
8 months preceding the effective date of coverage of an insured person.

9 (2) No long-term care insurance policy or certificate, other than a
10 policy or certificate thereunder issued to a group as defined in
11 paragraph 1 of the definition of "group long-term care insurance" in
12 section 4 of this act, shall exclude coverage for a loss or confinement
13 which is the result of a preexisting condition unless the loss or
14 confinement begins within six months following the effective date of
15 coverage of an insured person.

16 (3) The commissioner may extend the limitation periods set forth
17 in this subsection as to specific age group categories in specific policy
18 forms upon findings that the extension is in the best interest of the
19 public.

20 (4) The definition of "preexisting condition" shall not prohibit an
21 insurer from using an application form designed to elicit the complete
22 health history of an applicant, and, on the basis of the answers on that
23 application, from underwriting in accordance with that insurer's
24 established underwriting standards. Unless otherwise provided in the
25 policy or certificate, a preexisting condition, regardless of whether it
26 is disclosed on the application, need not be covered until the waiting
27 period described in paragraph (2) of this subsection expires. No
28 long-term care insurance policy or certificate may exclude or use
29 waivers or riders of any kind to exclude, limit or reduce coverage or
30 benefits for specifically named or described preexisting diseases or
31 physical conditions beyond the waiting period described in paragraph
32 (2) of this subsection.

33 d. (1) No long-term care insurance policy shall be delivered or
34 issued for delivery in this State if the policy:

35 (a) Conditions eligibility for any benefits on a prior hospitalization
36 requirement;

37 (b) Conditions eligibility for benefits provided in an institutional
38 care setting on the receipt of a higher level of institutional care; or

39 (c) Conditions eligibility for any benefits other than waiver of
40 premium, post-confinement, post-acute care or recuperative benefits
41 on a prior institutionalization requirement.

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

1 (b) A long-term care insurance policy or rider that conditions
2 eligibility for non-institutional benefits on the prior receipt of
3 institutional care shall not require a prior institutional stay of more
4 than 30 days.

5 e. The commissioner may adopt regulations establishing loss ratio
6 standards for long-term care insurance policies provided that a specific
7 reference to long-term care insurance policies is contained in the
8 regulation.

9 f. Long-term care insurance applicants shall have the right to return
10 the policy or certificate within 30 days of its delivery and to have the
11 premium refunded if, after examination of the policy or certificate, the
12 applicant is not satisfied for any reason. Long-term care insurance
13 policies and certificates shall have a notice prominently printed on the
14 first page or attached thereto stating in substance that the applicant
15 shall have the right to return the policy or certificate within 30 days of
16 its delivery and to have the premium refunded if, after examination of
17 the policy or certificate, other than a certificate issued pursuant to a
18 policy issued to a group defined in paragraph (1) under the definition
19 of "group long-term care insurance" in section 4 of this act, the
20 applicant is not satisfied for any reason. This subsection shall also
21 apply to denials of applications and any refund shall be made within 30
22 days of the return or denial.

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

27 (a) The commissioner shall prescribe a standard format, including
28 style, arrangement and overall appearance, and the content of an
29 outline of coverage.

30 (b) In the case of insurance producer solicitations, an insurance
31 producer shall deliver the outline of coverage prior to the presentation
32 of an application or enrollment form.

33 (c) In the case of direct response solicitations, the outline of
34 coverage shall be presented in conjunction with any application or
35 enrollment form.

36 (d) In the case of a policy issued to a group defined in paragraph
37 (1) under the definition of "group long-term insurance" in section 4 of
38 this act, an outline of coverage shall not be required to be delivered,
39 provided that the information described in subparagraph (a) of
40 paragraph (2) of this subsection g. through subparagraph (f) of that
41 paragraph (2) is contained in other materials relating to enrollment.
42 Upon request, these other materials shall be made available to the
43 commissioner.

44 (2) The outline of coverage shall include:

45 (a) A description of the principal benefits and coverage provided
46 in the policy;

- 1 (b) A statement of the principal exclusions, reductions and
2 limitations contained in the policy;
- 3 (c) A statement of the terms under which the policy or certificate,
4 or both, may be continued in force or discontinued, including any
5 reservation in the policy of a right to change premium. Continuation
6 or conversion provisions of group coverage shall be specifically
7 described;
- 8 (d) A statement that the outline of coverage is a summary only, not
9 a contract of insurance, and that the policy or group master policy
10 contains governing contractual provisions;
- 11 (e) A description of the terms under which the policy or certificate
12 may be returned and the premium refunded;
- 13 (f) A brief description of the relationship of cost of care and
14 benefits; and
- 15 (g) A statement that discloses to the policyholder or certificate
16 holder whether the policy is intended to be a federally tax-qualified
17 long-term care insurance contract under 26 U.S.C. s.7702B(b).
- 18 h. A certificate issued pursuant to a group long-term care insurance
19 policy delivered or issued for delivery in this State shall include:
- 20 (1) A description of the principal benefits and coverage provided
21 in the policy;
- 22 (2) A statement of the principal exclusions, reductions and
23 limitations contained in the policy; and
- 24 (3) A statement that the group master policy determines governing
25 contractual provisions.
- 26 i. If an application for a long-term care insurance policy or
27 certificate is approved, the issuer shall deliver the policy or certificate
28 of insurance to the applicant no later than 30 days after the date of
29 approval.
- 30 j. At the time of policy delivery, a policy summary shall be
31 delivered for an individual life insurance policy that provides long-term
32 care benefits within the policy or by rider. In the case of direct
33 response solicitations, the insurer shall deliver the policy summary
34 upon the applicant's request, but regardless of request shall make
35 delivery no later than at the time of policy delivery. In addition to
36 complying with all applicable requirements, the summary shall also
37 include:
- 38 (1) An explanation of how the long-term care benefit interacts with
39 other components of the policy, including deductions from death
40 benefits;
- 41 (2) An illustration of the amount of benefits, the length of benefit,
42 and the guaranteed lifetime benefits if any, for each covered person;
- 43 (3) Any exclusions, reductions and limitations on benefits of
44 long-term care;
- 45 (4) A statement as to whether any long-term care inflation
46 protection option is available under this policy;

1 (5) If applicable to the policy type, the summary shall also include:

2 (a) A disclosure of the effects of exercising other rights under the
3 policy;

4 (b) A disclosure of guarantees related to long-term care costs of
5 insurance charges; and

6 (c) Current and projected maximum lifetime benefits; and

7 (6) The provisions of the policy summary may be incorporated into
8 a basic illustration required to be delivered in accordance with
9 regulations promulgated by the commissioner or into the life insurance
10 policy summary which is required to be delivered in accordance with
11 regulations promulgated by the commissioner.

12 k. Whenever a long-term care benefit, funded through a life
13 insurance policy by the acceleration of the death benefit, is in benefit
14 payment status, a monthly report shall be provided to the policyholder.
15 The report shall include:

16 (1) Any long-term care benefits paid out during the month;

17 (2) An explanation of any changes in the policy, such as death
18 benefits or cash values, due to long-term care benefits being paid out;
19 and

20 (3) The amount of long-term care benefits existing or remaining.

21 1. If a claim under a long-term insurance policy is denied, the issuer
22 shall, within 60 days of the date of a written request by the
23 policyholder or certificate holder, or a representative thereof:

24 (1) Provide a written explanation of the reasons for the denial: and

25 (2) Make available all information directly related to the denial.
26

27 7. a. For a policy or certificate that has been in force for less than
28 six months, an insurer may rescind a long-term care insurance policy
29 or certificate or deny an otherwise valid long-term care insurance
30 claim upon a showing of misrepresentation that is material to the
31 acceptance for coverage.

32 b. For a policy or certificate that has been in force for at least six
33 months but less than two years an insurer may rescind a long-term care
34 insurance policy or certificate or deny an otherwise valid long-term
35 care insurance claim upon a showing of misrepresentation that is both
36 material to the acceptance for coverage and which pertains to the
37 condition for which benefits are sought.

38 c. After a policy or certificate has been in force for two years it is
39 not contestable upon the grounds of misrepresentation alone; such
40 policy or certificate may be contested only upon a showing that the
41 insured knowingly and intentionally misrepresented relevant facts
42 relating to the insured's health.

43 d. No long-term care insurance policy or certificate shall be field
44 issued based on medical or health status. For purposes of this
45 subsection, "field issued" means a policy or certificate issued by an
46 insurance producer or a third-party administrator pursuant to the

1 underwriting authority granted to the insurance producer or third party
2 administrator by an insurer.

3 e. If an insurer has paid benefits under the long-term care insurance
4 policy or certificate, the benefit payments shall not be recovered by the
5 insurer in the event that the policy or certificate is rescinded.

6 f. In the event of the death of the insured, this section shall not
7 apply to the remaining death benefit of a life insurance policy that
8 accelerates benefits for long-term care. In this situation, the remaining
9 death benefits under these policies shall be governed by N.J.S.
10 17B:25-4 or N.J.S.17B:27-12. In all other situations, this section shall
11 apply to life insurance policies that accelerate benefits for long-term
12 care.

13

14 8. a. Except as provided in subsection b. of this section, a
15 long-term care insurance policy shall not be delivered or issued for
16 delivery in this State unless the policyholder or certificate holder has
17 been offered the option of purchasing a policy or certificate including
18 a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in
19 the form of a rider that is attached to the policy. If the policyholder
20 or certificate holder declines the nonforfeiture benefit, the insurer shall
21 provide a contingent benefit upon lapse that shall be available for a
22 specified period of time following a substantial increase in premium
23 rates.

24 b. When a group long-term care insurance policy is issued, the
25 offer required in subsection a. of this section, shall be made to the
26 group policyholder. However, if the policy is issued as group long-
27 term care insurance as defined in paragraph (4) under the definition of
28 "group long-term care insurance" in section 4 of this act, other than to
29 a continuing care retirement community or other similar entity, the
30 offering shall be made to each proposed certificate holder.

31 c. The commissioner shall promulgate regulations specifying the
32 type or types of nonforfeiture benefits to be offered as part of long-
33 term care insurance policies and certificates, the standards for
34 nonforfeiture benefits, and the rules regarding contingent benefit upon
35 lapse, including a determination of the specified period of time during
36 which a contingent benefit upon lapse will be available and the
37 substantial premium rate increase that triggers a contingent benefit
38 upon lapse as describe in subsection a. of this section.

39

40 9. The commissioner shall promulgate regulations pursuant to the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
42 necessary to promote premium adequacy and to protect the
43 policyholder in the event of substantial rate increases, and to establish
44 minimum standards for marketing practices, insurance producer
45 compensation, insurance producer testing, penalties and reporting
46 practices for long-term care insurance.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2532 and 2594**

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2003

The Assembly Banking and Insurance Committee reports favorably the Senate Committee Substitute for Senate Bill Nos. 2532 and 2594.

This bill is based on a Model Act adopted by the National Association of Insurance Commissioners (NAIC) to regulate long-term care insurance.

The bill contains a number of provisions intended to promote greater public understanding and comparison of long-term care coverage, protect applicants from unfair or deceptive sales practices, promote greater availability of long-term care coverage and encourage the development of innovative long-term care products.

Among the more important consumer protection measures included in the bill are provisions that:

(1) Authorize the offering of products which combine long term care products and life insurance.

(2) Require a standard outline of coverage be delivered to a prospective insured at the time of initial solicitation. The standard outline highlights a policy's benefits and points out its important features and facilitates comparison shopping by consumers.

(3) Prohibit termination of coverage on grounds of age or deterioration of health (mental or physical).

(4) Prohibit the establishment of a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company or affiliated company.

(5) Require disclosure of conditions imposed on eligibility for benefits, such as prior hospitalization or institutionalization. No long-term care insurance policy shall be delivered or issued for delivery in this State if that policy conditions eligibility for any benefits on a prior hospitalization requirement. Consumers will better understand what triggers coverage (usually the inability to perform a certain number of activities of daily living, or "ADLs"), whether services are covered or excluded, and where covered services are delivered (such as nursing home or home health care).

(6) Require a 30-day free look at the policy with right to return and have the premium refunded. Consumers will be able to study and review the policy with family or professionals.

(7) Restrict preexisting condition limitations and provide that "preexisting condition" means a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person.

(8) Require the offering of a nonforfeiture benefit. A nonforfeiture benefit means that if a person drops coverage, for whatever reason, the person will still receive some value for the money already paid into the policy.

(9) Establish an incontestability period.

The bill adds two new provisions to the NAIC Model Act by including provisions concerning forms and rate filings for long-term care policies issued on an individual basis in New Jersey. Every long-term care insurance policy shall be filed with the commissioner for prior approval. Any form which is filed with the commissioner and approved or deemed approved may be issued in this State until a subsequent withdrawal of the filing by the commissioner after a hearing. Rate filings for long-term care insurance issued on an individual basis must receive prior approval. The rates must not be excessive, inadequate or unfairly discriminatory.

Any insurer or insurance producer found to have violated the provisions of this bill or any other laws regulating the sale or marketing of long-term care insurance is subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or \$10,000, whichever is greater.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2532 and 2594**

STATE OF NEW JERSEY

DATED: JUNE 12, 2003

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill Nos. 2532 and 2594.

The bill, a Senate Committee Substitute for Senate, Nos. 2532 and 2594, is based on a Model Act adopted by the National Association of Insurance Commissioners (NAIC) to regulate long-term care insurance.

The bill contains a number of provisions intended to promote greater public understanding and comparison of long-term care coverage, protect applicants from unfair or deceptive sales practices, promote greater availability of long-term care coverage and encourage the development of innovative long-term care products.

Among the more important consumer protection measures included in the bill are provisions that:

(1) Authorize the offering of products which combine long term care products and life insurance.

(2) Require a standard outline of coverage be delivered to a prospective insured at the time of initial solicitation. The standard outline highlights a policy's benefits and points out its important features and facilitates comparison shopping by consumers.

(3) Prohibit termination of coverage on grounds of age or deterioration of health (mental or physical).

(4) Prohibit the establishment of a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company or affiliated company.

(5) Require disclosure of conditions imposed on eligibility for benefits, such as prior hospitalization or institutionalization. No long-term care insurance policy shall be delivered or issued for delivery in this State if that policy conditions eligibility for any benefits on a prior hospitalization requirement. Consumers will better understand what triggers coverage (usually the inability to perform a certain number of activities of daily living, or "ADLs"), whether services are covered or excluded, and where covered services are delivered (such as nursing home or home health care).

(6) Require a 30-day free look at the policy with right to return and have the premium refunded. Consumers will be able to study and

review the policy with family or professionals.

(7) Restrict preexisting condition limitations and provide that "preexisting condition" means a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person.

(8) Require the offering of a nonforfeiture benefit. A nonforfeiture benefit means that if a person drops coverage, for whatever reason, the person will still receive some value for the money already paid into the policy.

(9) Establish an incontestability period.

The bill adds two new provisions to the NAIC Model Act by including provisions concerning forms and rate filings for long-term care policies issued on an individual basis in New Jersey. Every long-term care insurance policy shall be filed with the commissioner for prior approval. Any form which is filed with the commissioner and approved or deemed approved may be issued in this State until a subsequent withdrawal of the filing by the commissioner after a hearing. Rate filings for long-term care insurance issued on an individual basis must receive prior approval. The rates must not be excessive, inadequate or unfairly discriminatory.

Any insurer or insurance producer found to have violated the provisions of this bill or any other laws regulating the sale or marketing of long-term care insurance is subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or \$10,000, whichever is greater.

ASSEMBLY, No. 3797

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 16, 2003

Sponsored by:

Assemblyman FREDERICK SCALERA

District 36 (Bergen, Essex and Passaic)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Co-Sponsored by:

Assemblywomen Greenstein and Previte

SYNOPSIS

Provides for the regulation of long-term care insurance.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/16/2003)

1 AN ACT concerning the regulation of long-term care insurance.

2

3 **BE IT ENACTED** *by the Senate and General Assembly of the State*
4 *of New Jersey:*

5

6 1. The purpose of this act is to promote the public interest, to
7 promote the availability of long-term care insurance policies, to
8 protect applicants for long-term care insurance from unfair or
9 deceptive sales or enrollment practices, to establish standards for
10 long-term care insurance, to facilitate public understanding and
11 comparison of long-term care insurance policies, and to facilitate
12 flexibility and innovation in the development of long-term care
13 insurance coverage.

14

15 2. The requirements of this act shall apply to policies delivered or
16 issued for delivery in this State on or after the effective date of this act
17 intended for use as long-term care insurance. This act is not intended
18 to supersede the obligations of entities subject to this act to comply
19 with the substance of other applicable insurance laws insofar as they
20 do not conflict with this act, except that laws and regulations designed
21 and intended to apply to Medicare supplement insurance policies shall
22 not be applied to long-term care insurance.

23

24 3. This act shall be known and may be cited as the "New Jersey
25 Long-Term Care Insurance Act."

26

27 4. As used in this act, unless the context requires otherwise:

28 "Applicant" means:

29 (1) In the case of an individual long-term care insurance policy, the
30 person who seeks to contract for benefits; and

31 (2) In the case of a group long-term care insurance policy, the
32 proposed certificate holder.

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

36 "Commissioner" means the Commissioner of Banking and
37 Insurance.

38 "Group long-term care insurance" means a long-term care insurance
39 policy which is delivered or issued for delivery in this State and issued
40 to:

41 (1) a group conforming to one of the descriptions set forth at
42 N.J.S. 17B:27-2 through 17B:27-8 inclusive, or N.J.S. 17B:27-27; or

43 (2) any group not set forth in paragraph (1) of this definition,
44 which in the opinion of the commissioner may be insured for group
45 long-term care insurance in accordance with sound underwriting
46 principles.

1 "Long-term care insurance" means any insurance policy, certificate
2 or rider advertised, marketed, offered or designed to provide coverage
3 for not less than 12 consecutive months for each covered person on an
4 expense incurred, indemnity, prepaid or other basis, for one or more
5 necessary or medically necessary diagnostic, preventive, therapeutic,
6 rehabilitative, maintenance or personal care services, provided in a
7 setting other than an acute care unit of a hospital. The term includes
8 group and individual annuities and life insurance policies or riders
9 which provide directly or which supplement long-term care insurance.
10 The term also includes a policy or rider which provides for payment of
11 benefits based upon cognitive impairment or the loss of functional
12 capacity. Long-term care insurance may be issued by insurers;
13 fraternal benefit societies; health, hospital, and medical service
14 corporations; prepaid health plans; or health maintenance
15 organizations. Long-term care insurance shall not include any
16 insurance policy which is offered primarily to provide basic Medicare
17 supplement coverage, basic hospital expense coverage, basic
18 medical-surgical expense coverage, hospital confinement indemnity
19 coverage, major medical expense coverage, disability income or
20 related asset-protection coverage, accident only coverage, or limited
21 benefit health coverage. With regard to life insurance, this term does
22 not include life insurance policies which accelerate the death benefit
23 specifically for one or more qualifying events, and which provide the
24 option of a lump-sum payment for those benefits and in which neither
25 the benefits nor the eligibility for the benefits is conditioned upon the
26 receipt of long-term care. Notwithstanding any other provision
27 contained herein, any product advertised, marketed or offered as
28 long-term care insurance shall be subject to the provisions of this act.

29 "Policy" means any policy, contract, subscriber agreement, rider or
30 endorsement providing long-term care insurance coverage delivered
31 or issued for delivery in this State by an insurer; fraternal benefit
32 society; health, hospital, or medical service corporation; prepaid health
33 plan; health maintenance organization or any similar organization.

34 "Qualified long-term care insurance contract" or "federally
35 tax-qualified long-term care insurance contract" means an individual
36 or group insurance contract that meets the requirements of 26 U.S.C.
37 s. 7702B(b), as follows:

38 (1) The only insurance protection provided under the contract is
39 coverage of qualified long-term services. A contract shall not fail to
40 satisfy the requirements of this paragraph by reason of payments being
41 made on a per diem or other periodic basis without regard to the
42 expenses incurred during the period to which the payments relate;

43 (2) The contract does not pay or reimburse expenses incurred for
44 services or items to the extent that the expenses are reimbursable
45 under Title XVIII of the Social Security Act (42 U.S.C. s. 1395 et
46 seq.) or would be so reimbursable but for the application of a

1 deductible or coinsurance amount. The requirements of this paragraph
2 do not apply to expenses that are reimbursable under Title XVIII of
3 the Social Security Act (42 U.S.C. s. 1395 et seq.) only as a secondary
4 payor. A contract shall not fail to satisfy the requirements of this
5 paragraph by reason of payments being made on a per diem or other
6 periodic basis without regard to the expenses incurred during the
7 period to which the payments relate;

8 (3) The contract is guaranteed renewable, within the meaning of 26
9 U.S.C. s. 7702B(b)(1)(C);

10 (4) The contract does not provide for a cash surrender value or
11 other money that can be paid, assigned, pledged as collateral for a
12 loan, or borrowed except as provided in paragraph (5) of this
13 definition;

14 (5) All refunds of premiums, and all policyholder dividends or
15 similar amounts, under the contract are to be applied as a reduction in
16 future premiums or to increase future benefits, except that a refund on
17 the event of death of the insured or a complete surrender or
18 cancellation of the contract shall not exceed the aggregate premiums
19 paid under the contract; and

20 (6) The contract meets the consumer protection provisions set
21 forth in 26 U.S.C. s. 7702B(g).

22 "Qualified long-term care insurance contract" or "federally
23 tax-qualified long-term care insurance contract" also means the portion
24 of a life insurance contract that provides long-term care insurance
25 coverage by a rider or as part of the contract and that satisfies the
26 requirements of 26 U.S.C. s. 7702B(b) and (e).

27
28 5. a. Any policy, certificate or rider advertised, marketed or
29 offered as long-term care insurance shall comply with the provisions
30 of this act.

31 b. No group long-term care insurance coverage shall be offered to
32 a resident of this State under a group policy issued in another state to
33 a group described in paragraph (2) of the definition of "group long-
34 term care insurance" in section 4 of this act, unless this State, or
35 another state having statutory and regulatory long-term care insurance
36 requirements substantially similar to those adopted in this State, has
37 made a determination that those requirements have been met.

38
39 6. a. No long-term care insurance policy or certificate shall:

40 (1) Be cancelled, nonrenewed or otherwise terminated on the
41 grounds of the age or the deterioration of the mental or physical health
42 of the insured individual or certificate holder; or

43 (2) Contain a provision establishing a new waiting period in the
44 event existing coverage is converted to or replaced by a new or other
45 form within the same company or affiliated company, except with
46 respect to an increase in benefits voluntarily selected by the insured

1 individual or group policyholder; or

2 (3) Provide coverage for skilled nursing care only or provide
3 significantly more coverage for skilled nursing care in a facility than
4 coverage for lower levels of care.

5 b. (1) No long-term care insurance policy or certificate shall use
6 a definition of "preexisting condition" which is more restrictive than
7 the following: preexisting condition means a condition for which
8 medical advice or treatment was recommended by, or received from
9 a provider of health care services, within six months preceding the
10 effective date of coverage of an insured person.

11 (2) No long-term care insurance policy or certificate shall exclude
12 coverage for a loss or confinement which is the result of a preexisting
13 condition unless that loss or confinement begins within six months
14 following the effective date of coverage of an insured person.

15 (3) The definition of "preexisting condition" shall not prohibit an
16 insurer from using an application form designed to elicit the complete
17 health history of an applicant, and, on the basis of the answers on that
18 application, from underwriting in accordance with that insurer's
19 established underwriting standards. Unless otherwise provided in the
20 policy or certificate, a preexisting condition, regardless of whether it
21 is disclosed on the application, need not be covered until the waiting
22 period described in paragraph (2) of this subsection b. expires. No
23 long-term care insurance policy or certificate shall exclude or use
24 waivers or riders of any kind to exclude, limit or reduce coverage or
25 benefits for specifically named or described preexisting diseases or
26 physical conditions beyond the waiting period described in paragraph
27 (2) of this subsection b..

28 (4) A preexisting condition limitation shall only apply to the
29 long-term care insurance coverage and shall not apply to any death
30 benefit or other life insurance benefit provided by a long-term care
31 insurance policy or certificate.

32 c. (1) No long-term care insurance policy or certificate shall be
33 delivered or issued for delivery in this State if that policy or certificate:

34 (a) Conditions eligibility for any benefits on a prior hospitalization
35 requirement;

36 (b) Conditions eligibility for benefits provided in an institutional
37 care setting on the receipt of a higher level of institutional care; or

38 (c) Conditions eligibility for any benefits, other than waiver of
39 premium, post-confinement, post-acute care or recuperative benefits,
40 on a prior institutionalization requirement.

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

46 (b) A long-term care insurance policy or certificate which

1 conditions eligibility for non-institutional benefits on the prior receipt
2 of institutional care shall not require a prior institutional stay of more
3 than 30 days.

4 d. Long-term care insurance applicants shall have the right to
5 return the policy or certificate within 30 days of its delivery and to
6 have the premium refunded if, after examination of the policy or
7 certificate, the applicant is not satisfied for any reason. Long-term
8 care insurance policies and certificates shall have a notice prominently
9 printed on the first page or attached thereto stating in substance that
10 the applicant shall have the right to return the policy or certificate
11 within 30 days of its delivery and to have the premium refunded if,
12 after examination of the policy or certificate, the applicant is not
13 satisfied for any reason.

14 e. (1) An outline of coverage shall be delivered to a prospective
15 applicant for long-term care insurance at the time of initial solicitation
16 through means which prominently direct the attention of the recipient
17 to the document and its purpose.

18 (a) The commissioner shall prescribe a standard format, including
19 style, arrangement and overall appearance, and the content of an
20 outline of coverage.

21 (b) In the case of insurance producer solicitations, an insurance
22 producer shall deliver the outline of coverage prior to the presentation
23 of an application or enrollment form.

24 (c) In the case of direct response solicitations, the outline of
25 coverage shall be presented in conjunction with any application or
26 enrollment form.

27 (2) The outline of coverage shall include:

28 (a) A description of the principal benefits and coverage provided
29 in the policy;

30 (b) A statement of the principal exclusions, reductions, and
31 limitations contained in the policy;

32 (c) A statement of the terms under which the policy or certificate,
33 or both, may be continued in force or discontinued, including any
34 reservation in the policy of a right to change premium. Continuation
35 or conversion provisions of group coverage shall be specifically
36 described;

37 (d) A statement that the outline of coverage is a summary only, not
38 a contract of insurance, and that the policy or group master policy
39 contains governing contractual provisions;

40 (e) A description of the terms under which the policy or certificate
41 may be returned and the premium refunded;

42 (f) A brief description of the relationship of cost of care and
43 benefits; and

44 (g) A statement that discloses to the policyholder or certificate
45 holder whether the policy is intended to be a federally tax-qualified
46 long-term care insurance contract under 26 U.S.C. s. 7702B(b).

1 f. A certificate issued pursuant to a group long-term care insurance
2 policy, which policy is delivered or issued for delivery in this State,
3 shall include:

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

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

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

10 g. At the time of policy delivery, a policy summary as prescribed
11 by the commissioner pursuant to subsection e. of this section shall be
12 delivered for an individual life insurance policy which provides
13 long-term care benefits within the policy or by rider. In the case of
14 direct response solicitations, the insurer shall deliver the policy
15 summary upon the applicant's request, but regardless of request shall
16 make that delivery no later than at the time of policy delivery. In
17 addition to complying with all applicable requirements, the summary
18 shall also include:

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

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

24 (3) Any exclusions, reductions and limitations on benefits of
25 long-term care;

26 (4) A statement as to whether any long-term care inflation
27 protection option is available under this policy;

28 (5) If applicable to the policy type, the summary shall also include:

29 (a) A disclosure of the effects of exercising other rights under the
30 policy;

31 (b) A disclosure of guarantees related to long-term care costs of
32 insurance charges;

33 (c) Current and projected maximum lifetime benefits; and

34 (6) The provisions of the policy summary listed above may be
35 incorporated into a basic illustration required to be delivered in
36 accordance with regulations promulgated by the commissioner or into
37 the life insurance policy summary which is required to be delivered in
38 accordance with regulations promulgated by the commissioner.

39 h. Whenever a long-term care benefit, funded through a life
40 insurance policy by the acceleration of the death benefit, is in benefit
41 payment status, a monthly report as specified by the commissioner
42 shall be provided to the policyholder or certificate holder. The report
43 shall include:

44 (1) Any long-term care benefits paid out during the month;

45 (2) An explanation of any changes in the policy, such as death
46 benefits or cash values, due to long-term care benefits being paid out;

1 and

2 (3) The amount of long-term care benefits existing or remaining.

3

4 7. a. For a policy or certificate that has been in force for less than
5 six months, an insurer may rescind a long-term care insurance policy
6 or certificate or deny an otherwise valid long-term care insurance
7 claim upon a showing of misrepresentation that is material to the
8 acceptance for coverage.

9 b. For a policy or certificate that has been in force for at least six
10 months but less than two years, an insurer may rescind a long-term
11 care insurance policy or certificate or deny an otherwise valid
12 long-term care insurance claim upon a showing of misrepresentation
13 that is both material to the acceptance for coverage and which pertains
14 to the condition for which benefits are sought.

15 c. After a policy or certificate has been in force for two years, it is
16 not contestable upon the grounds of misrepresentation alone; such a
17 policy or certificate may be contested only upon a showing that the
18 insured knowingly and intentionally misrepresented relevant facts
19 relating to the insured's health.

20 d. If an insurer has paid benefits under the long-term care insurance
21 policy or certificate, the benefit payments shall not be recovered by the
22 insurer if the policy or certificate is rescinded.

23 e. In the event of the death of the insured, this section shall not
24 apply to the remaining death benefit of a life insurance policy that
25 accelerates benefits for long-term care. In this situation, the remaining
26 death benefits under these policies shall be governed by N.J.S.
27 17B:25-4 or 17B:27-12, as appropriate. In all other situations, this
28 section shall apply to life insurance policies that accelerate benefits for
29 long-term care.

30

31 8. a. Except as provided in subsection b. of this section, a
32 long-term care insurance policy shall not be delivered or issued for
33 delivery in this State unless the policyholder or certificate holder has
34 been offered the option of purchasing a policy or certificate including
35 a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in
36 the form of a rider that is attached to the policy. If the policyholder
37 or certificate holder declines the nonforfeiture benefit, the insurer shall
38 provide a contingent benefit upon lapse that shall be available for a
39 specified period of time following a substantial increase in premium
40 rates.

41 b. When a group long-term care insurance policy is issued, the
42 offer required in subsection a. of this section shall be made to the
43 group policyholder

44

45 9. The commissioner shall promulgate regulations, pursuant to the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.), necessary to effectuate the purposes of this act including, but
2 not limited to, regulations dealing with disclosure requirements,
3 eligibility, renewability, non-duplication of coverage, dependent
4 coverage, preexisting conditions, termination of coverage,
5 continuation or conversion, loss ratio, and other information that the
6 commissioner feels necessary.

7
8 10. a. Every long-term care insurance policy or contract, including
9 any application, certificate, rider or endorsement to be issued or
10 delivered in this State shall be filed with the commissioner for prior
11 approval as provided in this section.

12 b. A policy, contract or related form filed with the commissioner
13 for approval pursuant to this section shall be deemed approved upon
14 the expiration of 60 days after the submission of the form unless
15 disapproved in writing by the commissioner within that time. Any
16 such disapproval shall be based only on the specific provisions of
17 applicable statutes or regulations. A disapproved policy, contract or
18 related form may be resubmitted.

19 c. A long-term care insurance policy, contract or related form
20 submitted for approval pursuant to this section and disapproved by the
21 commissioner before the expiration of 60 days after its submission
22 shall be deemed withdrawn at the expiration of 60 days after the
23 transmittal of the commissioner's specific objections unless the filer
24 submits a complete written response to all of the commissioner's
25 objections regarding the submission within the 60-day period.

26 d. A long-term care insurance policy, contract or related form
27 resubmitted in response to the commissioner's objections pursuant to
28 subsection b. of this section shall be deemed approved upon the
29 expiration of 30 days after its resubmission unless disapproved in
30 writing by the commissioner within that time. No disapproval by the
31 commissioner of a resubmission shall be based on any objection not
32 specified by the commissioner in his initial disapproval of the filing,
33 except that the commissioner may disapprove that form based on any
34 new provisions introduced in the resubmission or, if in addressing the
35 specific objections cited in the commissioner's disapproval, the insurer
36 changes or modifies any substantive provisions of the form. Any
37 policy, contract or related form resubmitted for approval pursuant to
38 this section and disapproved by the commissioner before the expiration
39 of 30 days after its submission shall be deemed withdrawn at the
40 expiration of 30 days after the transmittal of the commissioner's
41 specific objections, unless the filer submits a complete written
42 response to all of the commissioner's objections regarding the
43 submission within the 30-day period.

44 e. Any form which is filed with the commissioner and approved or
45 deemed approved may be so delivered or issued for delivery until such
46 time as any subsequent withdrawal of the filing by the commissioner,

1 following an opportunity for a hearing held in accordance with the
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
3 and any rules adopted thereunder, becomes final in accordance
4 therewith.

5 f. For the purposes of this section, "days" means calendar days,
6 except that when the last day of any specified time period is a
7 Saturday, Sunday, or State holiday, then the time period shall end on
8 the next following business day. With respect to any specified time
9 period pertaining to correspondence between an insurer and the
10 commissioner, the time period shall commence on the date that
11 correspondence is postmarked or submitted to a private delivery
12 service.

13
14 11. An insurer providing long-term care insurance issued on an
15 individual basis in this State shall file, for the commissioner's approval,
16 its rates, rating schedule and supporting documentation demonstrating
17 that it is in compliance with the applicable loss ratio standards of this
18 State. All filings of rates and rating schedules shall demonstrate that
19 the benefits are reasonable in relation to the premium charged and that
20 the rates are not excessive, inadequate or unfairly discriminatory.

21
22 12. In addition to any other penalties provided by the laws of this
23 State, any insurer and any insurance producer found to have violated
24 any requirement of this State relating to the regulation of long-term
25 care insurance or the marketing of that insurance shall be subject to a
26 fine of up to three times the amount of any commissions paid for each
27 policy or certificate involved in the violation, or \$10,000, whichever
28 is greater.

29
30 13. This act shall take effect on the 180th day following enactment.

31
32
33 STATEMENT

34
35 The bill is based on a Model Act adopted by the National
36 Association of Insurance Commissioners (NAIC) to regulate long-term
37 care insurance. The bill is based on the most current version of the
38 NAIC Model Act - April 2000. At present, New Jersey has no specific
39 statute governing long-term care insurance, but has relied on
40 regulations (N.J.A.C. 11:4-34.1 et seq.) that are based upon a NAIC
41 Model Regulation that was drafted in the 1980s. Those regulations
42 have not been updated to reflect later changes in the NAIC Model Act
43 and Regulation.

44 Statutory authority is now needed, not only to update the
45 requirements imposed on such coverage, but also to authorize the
46 offering of products which combine long term care products and life

1 insurance. New Jersey law does not currently permit approval of
2 combination life and health policies.

3 The bill contains a number of provisions intended to promote
4 greater public understanding and comparison of long-term care
5 coverage, protect applicants from unfair or deceptive sales practices,
6 promote greater availability of long-term care coverage and encourage
7 the development of innovative long-term care products.

8 Among the more important consumer protection measures included
9 in the bill are provisions that:

10 (1) Require a standard outline of coverage be delivered to a
11 prospective insured at the time of initial solicitation. The standard
12 outline highlights a policy's benefits and points out its important
13 features and facilitates comparison shopping by consumers.

14 (2) Prohibit termination of coverage on grounds of age or
15 deterioration of health (mental or physical).

16 (3) Require disclosure of conditions imposed on eligibility for
17 benefits, such as prior hospitalization or institutionalization.
18 Consumers will better understand what triggers coverage (usually the
19 inability to perform a certain number of activities of daily living, or
20 "ADLs"), what services are covered or excluded, and what services
21 are covered (such as nursing home or home health care).

22 (4) Require a 30-day free look at the policy with right to return
23 and have the premium refunded. Consumers will be able to study and
24 review the policy with family or professionals.

25 (5) Restrict preexisting condition limitations.

26 (6) Require the offering of a nonforfeiture benefit. A nonforfeiture
27 benefit means that if a person drops coverage, for whatever reason, the
28 person will still receive some value for the money already paid into the
29 policy.

30 (7) Establish an incontestability period.

31 The bill enhances the NAIC Model Act by including provisions
32 which establish form filing procedures and impose rate filing
33 requirements for long-term care policies issued on an individual basis
34 in New Jersey.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3797

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2003

The Assembly Banking and Insurance Committee reports favorably Assembly Bill No. 3797.

This bill is based on a Model Act adopted by the National Association of Insurance Commissioners (NAIC) to regulate long-term care insurance.

The bill contains a number of provisions intended to promote greater public understanding and comparison of long-term care coverage, protect applicants from unfair or deceptive sales practices, promote greater availability of long-term care coverage and encourage the development of innovative long-term care products.

Among the more important consumer protection measures included in the bill are provisions that:

(1) Authorize the offering of products which combine long term care products and life insurance.

(2) Require a standard outline of coverage be delivered to a prospective insured at the time of initial solicitation. The standard outline highlights a policy's benefits and points out its important features and facilitates comparison shopping by consumers.

(3) Prohibit termination of coverage on grounds of age or deterioration of health (mental or physical).

(4) Prohibit the establishment of a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company or affiliated company.

(5) Require disclosure of conditions imposed on eligibility for benefits, such as prior hospitalization or institutionalization. No long-term care insurance policy shall be delivered or issued for delivery in this State if that policy conditions eligibility for any benefits on a prior hospitalization requirement. Consumers will better understand what triggers coverage (usually the inability to perform a certain number of activities of daily living, or "ADLs"), whether services are covered or excluded, and where covered services are delivered (such as nursing home or home health care).

(6) Require a 30-day free look at the policy with right to return and have the premium refunded. Consumers will be able to study and review the policy with family or professionals.

(7) Restrict preexisting condition limitations and provide that "preexisting condition" means a condition for which medical advice or

treatment was recommended by, or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person.

(8) Require the offering of a nonforfeiture benefit. A nonforfeiture benefit means that if a person drops coverage, for whatever reason, the person will still receive some value for the money already paid into the policy.

(9) Establish an incontestability period.

The bill adds two new provisions to the NAIC Model Act by including provisions concerning forms and rate filings for long-term care policies issued on an individual basis in New Jersey. Every long-term care insurance policy shall be filed with the commissioner for prior approval. Any form which is filed with the commissioner and approved or deemed approved may be issued in this State until a subsequent withdrawal of the filing by the commissioner after a hearing. Rate filings for long-term care insurance issued on an individual basis must receive prior approval. The rates must not be excessive, inadequate or unfairly discriminatory.

Any insurer or insurance producer found to have violated the provisions of this bill or any other laws regulating the sale or marketing of long-term care insurance is subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or \$10,000, whichever is greater.