CHAPTER 304

(SB 41)

AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 6 of this Act, "short-term nursing home insurance policies" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for less than twelve (12) consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis for one (1) or more necessary or medically necessary diagnostic, preventative, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital unless the hospital or unit is licensed or certified to provide services in a skilled nursing facility, extended care facility, intermediate care facility, convalescent nursing home, personal care facility, home health care agency, adult day care facility, and assisted living facility. This term shall also include a policy or rider that provides for payment of benefits based upon cognitive impairment or loss of functional capacity. Short-term nursing home insurance policies may be issued by insurers, fraternal benefit societies, nonprofit hospitals, medical-surgical, dental, and health services corporations, health maintenance organizations, or any similar organization to the extent they are otherwise authorized to issued life or health insurance. Short-term nursing home insurance policies shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity, major medical expense coverage, disability income or related-asset protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit coverage.

SECTION 2. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Any short-term nursing home product issued on or after the effective date of this Act shall be subject to the provisions of Section 2, Section 3, Section 4, Section 5, and Section 6 of this Act.

SECTION 3. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for sale of short-term nursing home insurance policies, terms of renewability, initial and subsequent conditions or eligibility, nonduplication of coverage provisions, coverage of dependents, pre-existing conditions, termination of insurance, continuation of conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions.

SECTION 4. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner may promulgate administrative regulations establishing loss ratio standards for short-term nursing home insurance policies.

SECTION 5. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Short-term nursing home insurance policy applicants shall have the right to return the policy or certificate within thirty (30) days of its delivery from the insurer to the policyowner and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Short-term nursing home insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. The insurer shall retain proof of receipt of the delivery of the policy from the insurer to the policyowner.

SECTION 6. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Any short-term nursing home insurance policy issued on or after the effective date of this Act which provides coverage for assisted living benefits shall cover services received in any assisted living community which:

(a) Meets the requirements of KRS 194A.700 to 194A.729 and any administrative regulations promulgated under KRS 194A.700 to 194A.729; and

(b) Meets any additional requirements of an assisted living community set forth in the short-term nursing home insurance policy approved by the commissioner.

(2) Any short-term nursing home insurance policy issued on or after the effective date of this Act which provides coverage for adult day care services shall cover services received in any adult day care facility which:

(a) Meets the requirements of KRS 205.950 or 216B.0443 and any administrative regulations promulgated under KRS 205.950 or 216B.0443; and

(b) Meets any additional requirements of an adult day care center set forth in the short-term nursing home insurance policy approved by the commissioner.

SECTION 7. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall issue administrative regulations to establish standards for premium rate practices and rate increases for long-term care benefits.

SECTION 8. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall promulgate administrative regulations to establish standards for incidental long-term care benefits.

Section 9. KRS 304.14-430 is amended to read as follows:

(1) All insurance policies subject to the provisions of KRS 304.14-420 to 304.14-450 shall contain as the first page or first page of text, if it is preceded by a title page or pages, a cover sheet or sheets as provided in this section. The cover sheet or sheets shall be printed in legible type and readable language, and shall contain at least the following:

(a) A brief statement that the policy is a legal contract between the policy owner and the company;

(b) The statement "READ YOUR POLICY CAREFULLY. This cover sheet provides only a brief outline of some of the important features of your policy. This ***cover sheet*** is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company. IT IS THEREFORE IMPORTANT THAT YOU READ YOUR POLICY." and

(c) An index of the major provisions of the policy or contract and the pages on which they are found which may include the following items:

1. The person or persons insured by the policy;
2. The applicable events, occurrences, conditions, losses or damages covered by the policy;
3. The limitations or conditions on the coverage of the policy;
4. Definitional sections of the policy;
5. Provision governing the procedure for filing a claim under the policy;
6. Provisions governing cancellation, renewal, or amendment of the policy by either the insurer or the policyowner;
7. Any options under the policy; and
8. Provisions governing the insurer's duties and powers in the event that suit is filed against the insured.

(2) The cover sheet may include, either as part of the index or as a separate section, a brief summary of the extent and types of coverage in the policy.

(3) No cover sheet shall be used unless it has been filed with and approved by the commissioner. The cover sheet shall be deemed approved sixty (60) days after filing unless disapproved by the commissioner within the sixty (60) day period, subject to a reasonable extension of times as the commissioner may require by notice given within the sixty (60) day period. The commissioner shall disapprove any cover sheet which does not meet the requirements of this section. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

Section 10. KRS 304.14-435 is amended to read as follows:

(1) All policy forms filed with the department, and any other insurance policy or claim-related information, shall be written in the English language.

(2) Applications required to be filed with the department may also be filed in a language other than English. The non-English version of the application shall:

(a) Be filed with the department;

(b) Be accompanied by a certification written in English that the non-English version is a complete and accurate translation of the English form filed;

(c) Be in the same format as the English version; and

(d) Contain all items in English immediately followed in parenthesis with the non-English translation.

(3) This section shall not prohibit an insurer from advertising or providing information ***related to the policy or claims with***~~[or]~~ translations to consumers in a language other than English***.***~~[, if the advertisement or informational materials clearly state the insurance policy being advertised is available only in English. However,]~~

(4) If there is a dispute ***between the English version and the non-English version, the English version shall control and the non-English version shall carry a disclaimer in the non-English language to this effect.***~~[,]~~ The insurance policy is controlling and any advertisements or informational materials used by an insurer shall not be construed to modify or change the insurance policy.

Section 11. KRS 304.14-560 is amended to read as follows:

(1) The commissioner of insurance shall biennially compile a consumer's guide to long-term care insurance in Kentucky. The consumer's guide shall cover all insurers offering health insurance policies in Kentucky, including health maintenance organizations, which provide coverage for services provided in long-term care facilities as defined in KRS 216.510(1). The purpose of the consumer's guide shall be to improve the buyer's ability to select the most appropriate long-term care coverage and to improve the buyer's understanding of long-term care. The consumer's guide shall contain, at a minimum, the following information:

(a) Definitions of long-term care services provided in Kentucky, the cost of services, sources of payment for long-term care, and eligibility for assistance programs;

(b) Factors that affect premium rates, such as age, deductibles, duration of benefits, and daily benefits paid;

(c) An explanation of the types of limitations contained in long-term care policies;

(d) A check list for the use of potential buyers of long-term care insurance which covers items that should be considered when selecting a long-term care insurance policy; and

(e) A comparison of the long-term care policies offered for sale in Kentucky. The comparison shall be updated at least annually, shall not recommend one policy over another, and shall provide the following information for policies: premiums at ages fifty-five (55), sixty-five (65), and seventy-five (75); services covered; length of coverage; limitations on coverage; prior institutionalization requirements; elimination period; and any other information the commissioner deems appropriate.

(2) ***The commissioner shall issue administrative regulations setting forth specific information to be provided by insurers writing long-term health care insurance in Kentucky to the department to complete the biennially compiled consumer's guide to long-term care insurance in Kentucky.***

(3) The commissioner shall distribute, free of charge, a copy of the consumer's guide to long-term care insurance to any person upon request.

(4)~~[(3)]~~ The commissioner shall assess against insurers writing long-term health care insurance in Kentucky on an equitable basis the cost of compiling, printing, and distributing the consumer's guide to long-term care.

Section 12. KRS 304.14-600 is amended to read as follows:

As used in KRS 304.14-600 to 304.14-625, unless the context requires otherwise:

(1) ***"Incidental" indicates that the value of the long-term care benefits provided in a policy is less than ten percent (10%) of the total value of the benefits provided over the life of the policy. Policies may include life insurance, disability insurance, and annuities. These values shall be measured as of the date of issue.***

(2) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve (12) consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital unless the hospital or unit is licensed or certified to provide long-term services. This term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance. This term~~[also]~~ includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. ***This term also includes qualified long-term care insurance contracts as defined in 26 U.S.C. sec. 7702B(b).***Long-term care insurance may be issued by insurers, fraternal benefit societies, nonprofit hospital, medical-surgical, dental, and health service corporations, health maintenance organizations, or any similar organization to the extent they are otherwise authorized to issue life or health insurance. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity ***coverage***, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one (1) or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Any product advertised, marketed, or offered as long-term care insurance ***or nursing home insurance which otherwise meets the definition of long-term care insurance*** shall be subject to the provisions of KRS 304.14-600 to 304.14-625.

(3)~~[(2)]~~ "Applicant" means:

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

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

(4)~~[(3)]~~ "Certificate" means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in Kentucky, except as provided in KRS 304.14-610.

(5)~~[(4)]~~ "Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in Kentucky ***by an insurer, fraternal benefit society, nonprofit health service corporation, or health maintenance organization,*** and ***which is*** issued to:

(a) One (1) or more employers or labor organizations, or to a trust or to the trustees of a fund established by one (1) or more employers or labor organizations, or a

combination thereof, for employees or former employees or a combination thereof, or for members or former members or a combination thereof, of the labor organizations;

(b) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

1. Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

2. Has been maintained in good faith for purposes other than obtaining insurance;

(c) An association or a trust or the trustee of a fund established, created, or maintained for the benefit of members of one (1) or more associations. Prior to advertising, marketing, or offering the policy within Kentucky, the insurer of the association shall file with the commissioner evidence that the association has at the outset a minimum of one hundred (100) persons and has been organized and maintained in good faith for purposes other than that of obtaining insurance, has been in active existence for at least one (1) year, and has a constitution and bylaws which provide:

1. The association holds regular meetings not less than annually to further the purposes of the members;

2. Except for credit unions, the association collects dues or solicits contributions from members; and

3. The members have voting privileges and representation on the governing board and committees.

The association shall be deemed to satisfy the organizational requirements unless the commissioner makes a finding that the association does not satisfy those organizational requirements within the time set forth in KRS 304.14-120; or

(d) A group other than that described in paragraphs (a), (b), and (c) of this subsection, subject to a finding by the commissioner that:

1. The issuance of the group policy is not contrary to the best interest of the public;

2. The issuance of the group policy would result in economies of acquisition or administration; and

3. The benefits are reasonable in relation to the premiums charged.

(6) ~~[(5)]~~ "Policy" means any policy, contract, subscriber, agreement, enrollment agreement, rider, or endorsement delivered or issued for delivery in Kentucky.

Section 13. KRS 304.14-610 is amended to read as follows:

Group long-term care insurance coverage shall not be offered to a resident of Kentucky under a group policy issued in another state to a group described in KRS 304.14-600***(5)*** ~~[(4)]~~(d) unless the commissioner or the insurance supervisory official of another state having statutory and regulatory long-term care insurance requirements substantially similar to KRS 304.14-600 to 304.14-625, has made a determination that these requirements have been met. Certificates of group long-term care insurance shall be filed with the commissioner as required by KRS 304.14-120.

Section 14. KRS 304.14-615 is amended to read as follows:

(1) The commissioner shall promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and require disclosures for the sale of

long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, pre-existing conditions, ***incidental benefits, lapse of insurance,*** termination of insurance, continuation of conversion, probationary periods, limitations, exceptions, reductions, elimination periods, ***premium rating practices and rating increases,*** requirements for replacement, recurrent conditions, and definitions of terms.

(2) A long-term care insurance policy shall not:

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

(b) Contain a provision establishing a new waiting period in the event existing coverage is covered to or replaced by a new or other form within the same insurer, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

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

(3) (a) A long-term care insurance policy or certificate, other than a policy or certificate thereunder issued to a group defined in KRS 304.14-600***(5)***~~[(4)]~~(a), shall not use a definition of "pre-existing condition" which is more restrictive than the following: "Pre-existing condition means a condition for which medical services or treatment was recommended by, or received from, a provider of health care services within six (6) months preceding the effective date of coverage of an insured person."

(b) A long-term care insurance policy or certificate, other than a policy or certificate under a policy issued to a group as defined in KRS 304.14-600***(5)***~~[(4)]~~(a), shall not exclude coverage for a loss or confinement which is the result of a pre-existing condition unless that loss or confinement begins within six (6) months following the effective date of coverage of an insured person.

(c) The commissioner may extend the limitation periods set forth in subsection (3)(a) and (b) of this section as to specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.

(d) The definition of "pre-existing condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a pre-existing condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in paragraph (b) of this subsection expires. A long-term care insurance policy or certificate shall not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described pre-existing diseases or physical conditions beyond the waiting period described in paragraph (b) of this subsection.

(4) (a) A long-term care insurance policy shall not be delivered or issued for delivery in this Commonwealth if the policy:

1. Conditions eligibility for any benefits on a prior hospitalization requirement;

2. Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

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

(b) 1. A long-term care insurance policy containing post-confinement, post-acute care, or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "limitations or conditions on eligibility for benefits" the limitations or conditions, including any required number of days of confinement.

2. A long-term care insurance policy or rider which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.

(5) The commissioner may promulgate administrative regulations establishing loss ratio standards for long-term care insurance policies if a specific reference to long-term care insurance policies is contained in the administrative regulations.

(6) Long-term care insurance applicants shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in KRS 304.14-600***(5)*** ~~[(4)]~~(a), the applicant is not satisfied for any reason.

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

1. The commissioner shall prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage.

2. In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

3. In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

(b) The outline of coverage shall include:

1. A description of the principal benefits and coverage provided in the policy;

2. A statement of the principal exclusions, reductions, and limitations contained in the policy;

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

4. A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

5. A description of the terms under which the policy or certificate may be returned and premium refunded; and

6. A brief description of the relationship of the cost of care and benefits.

(8) A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this Commonwealth or a certificate subject to approval by the commissioner shall include:

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

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

(c) A statement that the group master policy determine governing contract provisions.

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

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

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

(c) Any exclusions, reductions, and limitations on benefits of long-term care insurance; and

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

1. A disclosure of the effects of exercising other rights under the policy;

2. A disclosure of guarantees related to long-term care of insurance charges; and

3. Current and projected maximum lifetime benefits.

(10) When a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefit is in benefit payment status, a monthly report shall be provided to the policyholder by the insurer. The report shall include:

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

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

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

(11) Any policy or rider advertised or marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of KRS 304.14-600 to 304.14-625.

Approved April 9, 2002