

1 AN ACT relating to long-term care insurance.

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

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

5 *As used in Sections 1 to 4 of this Act:*

6 *(1) "Long-term care insurance" has the same meaning as in KRS 304.14-600;*

7 *(2) "Policy" has the same meaning as in KRS 304.14-600; and*

8 *(3) "Rate increase filing" means a filing requesting an increase in a premium rate*
9 *for long-term care insurance.*

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

12 *(1) No insurer may increase a premium rate for long-term care insurance policy in*
13 *this state unless the rate has been filed and approved by the commissioner.*

14 *(2) An insurer that submits a rate increase filing shall:*

15 *(a) Submit the filing to, and in a time and manner prescribed by, the*
16 *commissioner;*

17 *(b) Not submit a subsequent rate filing for the insurance:*

18 *1. While the original filing is pending approval; or*

19 *2. Within two (2) years following the end of the period over which a*
20 *previous premium rate increase was spread;*

21 *(c) Not propose an increase in premium rates that:*

22 *1. Exceeds fifteen percent (15%) annually;*

23 *2. Is spread over a period exceeding three (3) years, unless the insurer*
24 *certifies to the commissioner that a longer period is necessary due to*
25 *extenuating circumstances; or*

26 *3. Is for the purpose of increasing profit margins or recouping past*
27 *losses.*

1 (3) (a) The commissioner shall not approve a rate increase filing:

2 1. Unless:

3 a. The filing complies with subsection (2) of this section; and

4 b. The commissioner finds that the insurer has mitigated the
5 severity of the premium rate increase by a program of cross-
6 subsidization that diverts surplus profits from products that
7 overperform to the long-term care product that is
8 underperforming; and

9 2. That is spread over a period of time exceeding three (3) years unless
10 the commissioner determines that a longer period is necessary due to
11 extenuating circumstances.

12 (b) When reviewing a rate increase filing, the commissioner may require the
13 insurer to submit any financial records or information the commissioner
14 deems necessary, including but not limited to records or information that
15 would allow the commissioner to examine:

16 1. The total assets of the insurer in relation to the actuarial claims
17 projections; and

18 2. The relationship between:

19 a. The percentage of premium rate increase;

20 b. Dividend distributions to shareholders; and

21 c. Funds earmarked for reserves.

22 (c) With respect to an insurer who has submitted a rate increase filing, the
23 commissioner shall require, in addition to the actions required under
24 paragraph (a)1.b. of this subsection, the insurer to take actions to mitigate
25 the severity of the increase, including but not limited to:

26 1. Phasing in the rate increase; and

27 2. Providing consumers options, including but not limited to:

- 1 a. A full schedule of options that address downscaling coverage;
 2 b. Alternatives for reduced coverage with premium rate stability,
 3 including:
 4 i. A contingent benefit-upon-lapse mechanism; and
 5 ii. Coinsurance; and
 6 c. A cash buyout based on a formula of policy premiums paid and
 7 time in force.

8 (4) (a) The department shall maintain records of any filing, communication, and
 9 other documents or materials related to any rate increase filing submitted
 10 under this section.

11 (b) The records maintained under paragraph (a) of this subsection shall be
 12 subject to public inspection without redaction upon request.

13 (5) The requirements of this section shall be in addition to any other applicable
 14 insurance laws that are not in conflict with this section.

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

17 (1) The Governor shall designate a long-term care insurance ombudsman to work
 18 within the department.

19 (2) The commissioner shall establish a consumer-driven process for escalating
 20 complaints relating to long-term care insurance that, at a minimum:

21 (a) Directs consumers dissatisfied with the department's response to the long-
 22 term care insurance ombudsman; and

23 (b) If the consumer remains unsatisfied after communicating with the long-
 24 term care insurance ombudsman, allows the consumer, upon request, to
 25 directly communicate with the commissioner regarding the complaint.

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

1 (1) As used in this section, "the advisory council" means the council established
2 under subsection (2) of this section.

3 (2) There is hereby created and established a Long-term Care Insurance Consumer
4 Advisory Council, whose duties shall be to review, discuss, and make
5 recommendations to the Governor on any issues that impact the provision of
6 long-term care insurance in this state.

7 (3) (a) Members of the advisory council shall:

8 1. Serve two (2) year terms, which may be successive terms; and

9 2. Be appointed by the Governor with the advice of the secretary of the
10 Public Protection Cabinet.

11 (b) After the initial appointments, appointments to the advisory council shall be
12 made in consultation with the advisory council.

13 (4) The members of the advisory council shall:

14 (a) Consist of:

15 1. Three (3) consumers of long-term care insurance;

16 2. A representative of the department, as a nonvoting ex officio member;

17 3. A representative of the Department for Aging and Independent Living;

18 4. A representative of the Kentucky Long-Term Care Ombudsman
19 Program;

20 5. A representative of AARP;

21 6. A representative of the Alzheimer's Association; and

22 7. Any other person who the Governor determines represents the
23 interests of long-term care insurance consumers, except that an
24 appointment to the advisory council shall not be made under this
25 subparagraph if the appointment would result in an even number of
26 voting members; and

27 (b) Not include any representative of the insurance industry.

1 (5) The advisory council shall be a budgetary unit of the department, which shall:

2 (a) Pay all of the advisory council's necessary operating expenses; and

3 (b) Furnish all office space, personnel, equipment, supplies, and technical or
 4 administrative services required by the advisory council in the performance
 5 of the functions established in this section.

6 (6) (a) The first meeting of the advisory council shall be:

7 1. Organized by the member appointed under subsection (4)(a)2. of this
 8 section; and

9 2. Held within thirty (30) days of the effective date of this Act.

10 (b) The voting members shall elect a chair from the membership of the advisory
 11 council.

12 (c) A majority of the members of the advisory council shall constitute a
 13 quorum.

14 (d) Recommendations of the advisory council shall require a majority of the
 15 members present, which shall include participation through distance
 16 communication technology, and eligible to vote.

17 (7) The commissioner shall provide a timely response to any request for information
 18 or other communications from the advisory council.

19 (8) Members of the advisory council, except the representatives appointed under
 20 subsection (4)(a)2., 3., and 4. of this section, shall not receive compensation for
 21 service, but shall receive actual and necessary travel expenses associated with
 22 attending meetings, which shall be in accordance with state administrative
 23 regulations relating to travel reimbursement.

24 ➔ Section 5. KRS 304.14-642 is amended to read as follows:

25 (1) The Kentucky Long-Term Care Partnership Insurance Program is established as a
 26 partnership between the Department for Medicaid Services and the department ~~of~~
 27 ~~Insurance~~ to:

- 1 (a) Provide incentives for an individual to insure against the cost of providing for
- 2 his or her long-term care needs;
- 3 (b) Increase utilization of long-term care insurance policies;
- 4 (c) Assist in alleviating the financial burden of Kentucky's Medicaid program by
- 5 encouraging the use of private insurance; and
- 6 (d) Provide a mechanism for individuals to qualify for Medicaid services for costs
- 7 of long-term care without exhausting all of their assets and resources.

8 (2) (a) A long-term care partnership insurance policy shall:

9 ~~1.(a)~~ Provide coverage for expenses for at least twelve (12) months for
10 each covered person on an expense-incurred, indemnity, or prepaid basis
11 for one (1) or more long-term care services provided in a setting other
12 than an acute care unit of a hospital;

13 ~~2.(b)~~ Be qualified under Section 7702B(b) of the Internal Revenue Code
14 of 1986, 26 U.S.C. sec. 7702B(b);

15 ~~3.(c)~~ Provide coverage for long-term care services for a policyholder
16 who is a resident of a state with a qualified long-term care partnership
17 program when coverage first became effective; and

18 ~~4.(d)~~ ~~[not]~~Be issued on or after~~[prior to]~~ the effective date of an
19 approved amendment to the State Medicaid Plan.

20 *(b) Any policy of long-term care insurance as defined in KRS 304.14-600 may*
21 *be exchanged for a policy of long-term care partnership insurance,*
22 *regardless of the date the long-term care insurance was issued, if the*
23 *exchange:*

24 *1. Is permitted under federal law; and*

25 *2. Would not result in the loss of federal funds to the state under federal*
26 *law.*

27 (3) (a) The department~~[of Insurance]~~ shall have responsibility to approve, pursuant

1 to KRS 304.14-120, any long-term care partnership insurance~~[policy]~~
2 available in Kentucky that meets and continues to meet all applicable federal
3 and state laws and regulations.

4 **(b)** The state shall not impose any requirement affecting the terms or benefits of
5 ~~[such a]~~**long-term care partnership insurance**~~[policy]~~ unless the state
6 imposes **the**~~[such]~~ requirement on long-term care insurance policies without
7 regard to whether the policy is covered under the partnership or is offered in
8 connection with the partnership.

9 (4) **(a)** The department~~[of Insurance]~~ shall ensure that any agent who sells~~[a]~~ long-
10 term care partnership insurance~~[policy]~~ can demonstrate an understanding of
11 long-term care partnership insurance and how it relates to other public and
12 private coverage of long-term care expenses.

13 **(b)** The Department for Medicaid Services shall provide consultation, materials,
14 and other information to the department~~[of Insurance]~~ to enable the
15 department~~[of Insurance]~~ to facilitate the development and issuance of
16 uniform training materials for agents who sell long-term care insurance
17 policies.

18 **(c) 1.** The department~~[of Insurance]~~ may contract with another entity to
19 conduct agent training and testing.

20 **2.** Training and certification may be conducted at the expense of the
21 insurance agent.

22 (5) ~~[Within sixty (60) days of notice of approval of the amendment to the State~~
23 ~~Medicaid Plan required under KRS 205.619,]~~The department~~[of Insurance]~~ shall
24 promulgate an administrative regulation pursuant to KRS Chapter 13A to
25 implement the Kentucky Long-Term Care Partnership Insurance Program.

26 (6) **(a)** The department~~[of Insurance]~~ and the Department for Medicaid Services
27 shall report no later than September 30 each year to the Interim Joint

1 Committee on Banking and Insurance and the Interim Joint Committee on
2 Health, ~~and~~ Welfare, and Family Services on:

- 3 1. The number of partnership insurance policies sold in Kentucky; ~~and~~
- 4 2. Utilization of the partnership insurance policies; ~~and~~
- 5 3. Expenditures and cost savings associated with implementation,
6 utilization, and maintenance of the partnership program.

7 (b) If national data reporting standards become available, the report submitted to
8 the federal agency shall meet the requirements of this subsection.

9 ➔Section 6. (1) For the initial appointments of the three consumer members
10 referenced under subsection (4)(a)1. of Section 4 of this Act, one appointment shall be for
11 a two-year term, one appointment shall be for a three-year term, and one appointment
12 shall be for a four-year term.

13 (2) For the initial appointments of the members referenced in subsection (4)(a)2.
14 to 6. of Section 4 of this Act, two appointments shall be for two-year terms and three
15 appointments shall be for three-year terms.

16 (3) For the initial appointment of a member or members referenced in subsection
17 (4)(a)7. of Section 4 of this Act, if applicable, the appointment or appointments shall be
18 for two-year terms.

19 ➔Section 7. If the Cabinet for Health and Family Services or the Department of
20 Insurance determines that a waiver or other authorization from a federal agency is
21 necessary to implement Section 5 of this Act for any reason, including loss of federal
22 funds, the cabinet shall, within 90 days after the effective date of this Act, request the
23 waiver or authorization, and the cabinet and the Department of Insurance may only delay
24 implementation of those provisions for which a waiver or authorization was deemed
25 necessary until the waiver or authorization is granted.

26 ➔Section 8. The mitigation requirement established in subsection (3)(a)1.b. of
27 Section 2 of this Act shall supersede any Department of Insurance policy, practice, or

- 1 understanding utilized to approve or disapprove a rate increase filing prior to the effective
- 2 date of this Act.