

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

John P. Fresolo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act establishing standards for long term care insurance.

PETITION OF:

NAME:

John P. Fresolo

DISTRICT/ADDRESS:

16th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3927 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT ESTABLISHING STANDARDS FOR LONG TERM CARE INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The purpose of this act is to promote the public interest and the availability of long term
2 care insurance policies, to protect applicants for long term care insurance from unfair or deceptive sales or
3 enrollment practices, to establish standards for long term care insurance, to facilitate public understanding and
4 comparison of long term care insurance policies, and to promote flexibility and innovation in the development of
5 long term care insurance coverage.
6

7 SECTION 2. Ch. 32A OF THE General Laws is hereby amended by inserting after section 10E, the following
8 section:-
9

10 Section 10F. The commission shall establish a plan of long term care insurance on the terms and conditions it
11 considers to be in the best interest of the commonwealth and its employees. With respect to any long term care
12 insurance which is in effect for an employee there shall be withheld from the salary or wages of the employee the
13 premium for the insurance and the
14 commonwealth shall make no contribution to the premium. The commission shall use its best efforts to ensure that
15 all premium payments by employees are eligible for favorable tax treatment available under federal or state law.
16

17 SECTION 3. Paragraph (b) of Part B of section 3 of chapter 62 of the General Laws, as so appearing, is hereby
18 amended by adding the following subparagraph:-

19 (6) In the case of an individual who purchases a qualified long-term care insurance policy, as defined by chapter
20 176Q, including both nursing facility and home health benefits, an amount equal to 100 per cent of the annual
21 premium of the insurance policy not to exceed \$5,000, if the policy has been approved for sale in the commonwealth
22 by the division of insurance. Married individuals filing jointly or separately are each entitled to an exemption from
23 taxable income equal to 100 per cent of the annual premium but not more than \$5,000.
24

25 SECTION 4. The General Laws are hereby amended by inserting after chapter
26 176P the following chapter:-
27

28 CHAPTER 176Q

29 LONG TERM CARE INSURANCE

30 Section 1. The purpose of this chapter is to promote the public interest
31 and the availability of long-term care insurance policies, to protect
32 applicants for long-term care insurance from unfair or deceptive sales or
33 enrollment practices, to establish standards for long-term care insurance, to
34 facilitate public understanding and comparison of long-term care insurance
35 policies, and to promote flexibility and innovation in the development of long-
36 term care insurance coverage.

37 Section 2. This chapter shall apply to policies delivered, or issued for
38 delivery, in the commonwealth on or after January 1, 2005. This chapter is not
39 intended to supersede the obligations of entities subject to this chapter to
40 comply with applicable insurance laws insofar as they do not conflict with this
41 chapter, except that laws and regulations designed and intended to apply to
42 Medicare supplement insurance policies shall apply to long-term care insurance.

43 Section 3. This chapter may be known and cited as the "Long-Term Care
44 Insurance Act."

45 Section 4. Unless the context requires otherwise, the following words and
46 phrases as used in this chapter shall have the following meanings.

47 "Applicant", in the case of an individual long-term care insurance
48 policy, the person who seeks to contract for benefits; or, in the case of a
49 group long-term care insurance policy, the proposed certificate holder.

50 "Certificate", a certificate issued under a group long-term care
51 insurance policy, which policy has been delivered or issued for delivery within
52 the commonwealth.

53 "Commissioner", the commissioner of insurance.

54 "Group long-term care insurance", a long-term care insurance policy
55 that is delivered or issued for delivery within the commonwealth and issued to:

56 (1) one or more employers or labor organizations, or to a trust or
57 to the trustees of a fund established by 1 or more employers or labor
58 organizations, or a combination thereof, for employees or former employees, or
59 a combination thereof, or for members or former members, or a combination
60 thereof, of the labor organizations; or

61 (2) any professional, trade or occupational association for its
62 members or former or retired members, or combination thereof, if the
63 association:

64 (i) is composed of individuals all of whom are, or were,
65 actively engaged in the same profession, trade or occupation; and

66 (ii) has been maintained in good faith for purposes other than
67 obtaining insurance; or

68 (3) an association, or a trust, or the trustees of a fund
69 established, created or maintained for the benefit of members of one or more
70 associations; but, before advertising, marketing or offering the policy within
71 the commonwealth, the association, or the insurer of the association, shall
72 file evidence with the commissioner that the association has at the outset a
73 minimum of 100 persons and has been organized and maintained in good faith for
74 purposes other than that of obtaining insurance; has been in active existence
75 for at least 1 year; and have a constitution and bylaws that provide that:

76 (i) the association holds regular meetings not less than
77 annually to further purposes of the members;

78 (ii) except for credit unions, the association collects dues or
79 solicits contributions from members; and

80 (iii) the members have voting privileges and representation on
81 the governing board and committees.

82 Thirty days after the filing, the association shall be considered to have
83 satisfied the organizational requirements, unless the commissioner makes a
84 finding that the association does not satisfy those organizational

85 requirements.

86 (4)A group other than those described in paragraphs (1), (2) and
87 (3), subject to a finding by the commissioner that:

88 (i) the issuance of the group policy is not contrary to the best
89 interest of the public;

90 (ii) the issuance of the group policy would result in economies
91 of acquisition or administration; and

92 (iii) the benefits are reasonable in relation to the premiums
93 charged.

94 "Long-term care insurance", any insurance policy or rider: (1)
95 advertised, marketed, offered or designed to provide coverage for not less than
96 12 consecutive months for each covered person on an expense incurred,
97 indemnity, prepaid or other basis; (2) for one or more necessary or medically
98 necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or
99 personal care services; and (3) provided in a setting other than an acute care
100 unit of a hospital. The term includes group and individual annuities and life
101 insurance policies or riders that provide directly, or supplement, long-term
102 care insurance. The term also includes a policy or rider that provides for
103 payment of benefits based upon cognitive impairment or the loss of functional
104 capacity. The term shall also include qualified long-term care insurance
105 contracts. Long-term care insurance shall not include any insurance policy that
106 is offered primarily to provide basic Medicare supplement coverage, basic
107 hospital expense coverage, basic medical-surgical expense coverage, hospital
108 confinement indemnity coverage, major medical expense coverage, disability
109 income or related asset-protection coverage, accident only coverage, specified
110 disease or specified accident coverage, or limited benefit health coverage.
111 With regard to life insurance, this term shall not include life insurance
112 policies that accelerate the death benefit specifically for 1 or more of the
113 qualifying events of terminal illness, medical conditions requiring
114 extraordinary medical intervention or permanent institutional confinement, and
115 that provide the option of a lump-sum payment for those benefits and where
116 neither the benefits nor the eligibility for the benefits is conditioned upon
117 the receipt of long-term care. Notwithstanding any other provision of this
118 chapter, any product advertised, marketed or offered as long-term care
119 insurance shall be subject to this chapter.

120 "Policy", any policy, contract, subscriber agreement, rider or
121 endorsement delivered or issued for delivery within the commonwealth by an
122 insurer authorized to issue policies upon the lives of persons in the
123 commonwealth or to provide accident and health insurance under chapter 175; a
124 fraternal benefit society authorized under chapter 176; a nonprofit hospital
125 service corporation authorized under chapter 176A, a nonprofit medical service
126 corporation authorized under chapter 176B or a health maintenance organization
127 authorized under chapter 176G.

128 (1) "Qualified long-term care insurance contract" or "federally tax-
129 qualified long-term care insurance contract" an individual or group insurance
130 contract that meets the requirements of Section 7702B(b) of the Internal
131 Revenue Code of 1986, as amended, as follows:

132 (a) The only insurance protection provided under the contract is
133 coverage of qualified long-term care services. A contract shall not fail to
134 satisfy the requirements of this subparagraph by reason of payments being made
135 on a per diem or other periodic basis without regard to the expenses incurred
136 during the period to which the payments relate;

137 (b) The contract does not pay or reimburse expenses incurred for
138 services or items to the extent that the expenses are reimbursable under Title
139 XVIII of the Social Security Act, as amended, or would be so reimbursable but
140 for the application of a deductible or coinsurance amount. The requirements of

141 this subparagraph do not apply to expenses that are reimbursable under Title
142 XVIII of the Social Security Act only as a secondary payor. A contract shall
143 not fail to satisfy the requirements of this subparagraph by reason of payments
144 being made on a per diem or other periodic basis without regard to the expenses
145 incurred during the period to which the payments relate;

146 (c) The contract is guaranteed renewable, within the meaning of
147 section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

148 (d) The contract does not provide for a cash surrender value or other
149 money that can be paid, assigned, pledged as collateral for a loan, or borrowed
150 except as provided in paragraph (e);

151 (e) All refunds of premiums, and all policyholder dividends or similar
152 amounts, under the contract are to be applied as a reduction in future premiums
153 or to increase future benefits, except that a refund on the event of death of
154 the insured or a complete surrender or cancellation of the contract cannot
155 exceed the aggregate premiums paid under the contract; and

156 (f) The contract meets the consumer protection provisions set forth in
157 Section 7702B(g) of the Internal Revenue Code of 1986, as amended.

158 (2) "Qualified long-term care insurance contract" or "federally tax-
159 qualified long term care insurance contract" also means the portion of a life
160 insurance contract that provides long-term care insurance coverage by rider or
161 as part of the contract and that satisfies the requirements of Sections
162 7702B(b) and (e) of the Internal Revenue Code of 1986, as amended.

163 Section 5. No group long-term care insurance policy may be offered to a
164 resident of the commonwealth under a group policy issued in another state to a
165 group described in clause (4) of the definition of "Group long-term care
166 insurance" of section 4, unless the commonwealth or another state having
167 statutory and regulatory long-term care insurance requirements substantially
168 similar to those adopted in the commonwealth has made a determination that the
169 requirements set forth in said clause (4) have been met.

170 Section 6. (a) The commissioner shall promulgate regulations that include
171 standards for full and fair disclosure setting forth the manner, content and
172 required disclosures for the sale of long-term care insurance policies and
173 certificates, terms of renewability, initial and subsequent conditions of
174 eligibility, non-duplication of coverage provisions, coverage of dependents,
175 preexisting conditions, termination of insurance, continuation or conversion,
176 probationary periods, limitations, exceptions, reductions, elimination periods,
177 requirements for replacement, offer of inflation protection, recurrent
178 conditions and definitions of terms.

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

180 (1) be cancelled, non-renewed or otherwise terminated on the
181 grounds of the age or the deterioration of the mental or physical health of the
182 insured individual or certificate holder;

183 (2) contain a provision establishing a new waiting period in the
184 event existing coverage is converted to, or replaced by, a new or other form
185 within the same company, except with respect to an increase in benefits
186 voluntarily selected by the insured individual or group policyholder; or

187 (3) provide coverage for skilled nursing care only or provide
188 significantly more coverage for skilled care in a facility than coverage for
189 lower levels of care.

190 (c) (1) A long-term care insurance policy, or certificate other than a
191 policy or certificate thereunder, issued to a group as defined in clause (1) of
192 the definition of "Group long-term care" of section (4) shall not use a
193 definition of "preexisting condition" that is more restrictive than the
194 following: Preexisting condition means a condition for which medical advice or
195 treatment was recommended by, or received from a provider of health care
196 services, within 24 months preceding the effective date of coverage of an

197 insured person.

198 (2) A long-term care insurance policy or certificate other than a
199 policy or certificate thereunder issued to a group as defined in clause (1) of
200 the definition of "Group long-term care" of section (4) shall not exclude coverage
201 for a loss or confinement that is the result of a preexisting condition unless
202 the loss or confinement begins within 6 months following the effective date of
203 coverage of an insured person.

204 (3) Notwithstanding this subsection (c), an insurer may use an
205 application form designed to elicit the complete health history of an
206 applicant, and, on the basis of the answers on that application, underwrite in
207 accordance with that insurer's established underwriting standards. Unless
208 otherwise provided in the policy or certificate, a preexisting condition,
209 regardless of whether it is disclosed on the application need not be covered
210 until the waiting period described in subsection (2) expires. No long-term
211 care insurance policy or certificate may exclude or use waivers or riders of
212 any kind to exclude, limit or reduce coverage or benefits for specifically
213 named or described preexisting diseases or physical conditions beyond the
214 waiting period described in subsection (2).

215 (d) A long-term care insurance policy shall not be delivered or issued
216 for delivery in this state if the policy:

217 (1) conditions eligibility for any benefits on a prior
218 hospitalization requirement;

219 (2) conditions eligibility for benefits provided in an
220 institutional care setting on the receipt of a higher level of institutional
221 care; or

222 (3) conditions eligibility for any benefits other than waiver of
223 premium, post-confinement, post-acute care or recuperative benefits on a prior
224 institutionalization requirement.

225 (e) The commissioner may adopt regulations establishing loss ratio
226 standards for long-term care insurance policies provided that a specific
227 reference to long-term care insurance policies is contained in the regulation.

228 (f) Long-term care insurance applicants shall have the right to return
229 the policy or certificate within 30 days of its delivery and to have the
230 premium refunded if, after examination of the policy or certificate, the
231 applicant is not satisfied for any reason. Long-term care insurance policies
232 and certificates shall have a notice prominently printed on the first page or
233 attached thereto stating in substance that the applicant shall have the right
234 to return the policy or certificate within 30 days of its delivery and to have
235 the premium refunded if, after examination of the policy or certificate, other
236 than a certificate issued pursuant to a policy issued to a group defined in
237 clause (1) of the definition of "Group long-term care" of section (4), the
238 applicant is not satisfied for any reason. This subsection shall also apply to
239 denials of applications and any refund must be made within 30 days of the
240 return or denial.

241 (g) (1) An outline of coverage shall be delivered to a prospective
242 applicant for long-term care insurance at the time of initial solicitation
243 through means that prominently direct the attention of the recipient to the
244 document and its purpose. In the case of producer solicitations, an insurance
245 producer shall deliver the outline of coverage prior to the presentation of an
246 application or enrollment form. In the case of direct response solicitations,
247 the outline of coverage shall be presented in conjunction with any application
248 or enrollment form. In the case of a policy issued to a group defined in
249 clause (1) of the definition of "Group long-term care" of section 4, an
250 outline of coverage shall not be required to be delivered, provided that the
251 information described in subsections (i) to (vi) of this section, inclusive, is
252 contained in other materials relating to enrollment. Upon request, these other

253 materials shall be made available to the commissioner.
254 (2) The commissioner shall prescribe a standard format, including
255 style, arrangement and overall appearance, and the content of an outline of
256 coverage. The outline of coverage shall include:
257 (i) a description of the principal benefits and coverage
258 provided in the policy or certificate;
259 (ii) a statement of the principal exclusions, reductions and
260 limitations contained in the policy or certificate;
261 (iii) a statement of the terms under which the policy or
262 certificate, or both, may be continued in force or discontinued, including any
263 reservation in the policy of a right to change premium; continuation or
264 conversion provisions of group coverage shall be specifically described;
265 (iv) a statement that the outline of coverage is a summary only,
266 not a contract of insurance, and that the policy or group master policy
267 contains governing contractual provisions;
268 (v) a description of the terms under which the policy or
269 certificate may be returned and premium refunded;
270 (vi) a brief description of the relationship of cost of care and
271 benefits; and
272 (vii) a statement that discloses to the policyholder or
273 certificate holder whether the policy is intended to be a federally tax-
274 qualified long-term care insurance contract under 7702B(b) of the Internal
275 Revenue Code of 1986, as amended.
276 (h) A certificate issued pursuant to a group long-term care insurance
277 policy that is delivered or issued for delivery in this state shall include:
278 (1) a description of the principal benefits and coverage provided
279 in the policy;
280 (2) a statement of the principal exclusions, reductions and
281 limitations contained in the policy; and
282 (3) a statement that the group master policy determines governing
283 contractual provisions and that the policy is available for viewing in the
284 offices of the policyholder and will be copied for the certificate holder upon
285 request at no cost.
286 (i) If an application for a long-term care insurance contract or
287 certificate is approved, the issuer shall deliver the contract or certificate
288 of insurance to the applicant no later than 30 days after the date of approval.
289 (j) At the time of policy delivery, a policy summary shall be
290 delivered for an individual life insurance policy that provides long-term care
291 benefits within the policy or by rider. In the case of direct response
292 solicitations, the insurer shall deliver the policy summary upon the
293 applicant's request, but regardless of request shall make delivery no later
294 than at the time of policy delivery. In addition to complying with all
295 applicable requirements, the summary shall also include:
296 (1) an explanation of how the long-term care benefit interacts with
297 other components of the policy, including deductions from death benefits;
298 (2) an illustration of the amount of benefits, the length of
299 benefit, and the guaranteed lifetime benefits if any, for each covered person;
300 (3) any exclusions, reductions and limitations on benefits of long-
301 term care;
302 (4) a statement indicating whether any long term care inflation
303 protection option required by law is available under this policy;
304 (5) if applicable to the policy type, the summary shall also
305 include:
306 (i) a disclosure of the effects of exercising other rights under
307 the policy;
308 (ii) a disclosure of guarantees related to long-term care costs

309 of insurance charges; and
310 (iii) current and projected maximum lifetime benefits; and
311 (6) the policy summary listed above may be incorporated into a
312 basic illustration or into the life insurance policy summary which is required
313 to be delivered in accordance with applicable regulation.

314 (k) Any time a long-term care benefit, funded through a life insurance
315 vehicle by the acceleration of the death benefit, is in benefit payment status,
316 a monthly report shall be provided to the policyholder. The report shall
317 include:

318 (1) any long-term care benefits paid out during the month;
319 (2) an explanation of any changes in the policy, e.g. death
320 benefits or cash values, due to long-term care benefits being paid out; and
321 (3) the amount of long-term care benefits existing or remaining.

322 (l) If a claim under a long-term care insurance contract is denied,
323 the issuer shall, within 60 days of the date of a written request by the
324 policyholder or certificate holder, or a representative thereof:

325 (1) provide a written explanation of the reasons for the denial;

326 and

327 (2) make available all information directly related to the denial.

328 (m) Any policy or rider advertised, marketed or offered as long-term
329 care or nursing home insurance shall comply with the provisions of this chapter.

330 Section 7. (a) For a policy or certificate that has been in force for
331 less than 6 months an insurer may rescind a long-term care insurance policy or
332 certificate or deny an otherwise valid long-term care insurance claim upon a
333 showing of misrepresentation that is material to the acceptance for coverage.

334 (b) For a policy or certificate that has been in force for at least 6
335 months but less than 2 years an insurer may rescind a long-term care insurance
336 policy or certificate or deny an otherwise valid long-term care insurance claim
337 upon a showing of misrepresentation that is both material to the acceptance for
338 coverage and which pertains to the condition for which benefits are sought.

339 (c) After a policy or certificate has been in force for 2 years it is
340 not contestable upon the grounds of misrepresentation alone; the policy or
341 certificate may be contested only upon a showing that the insured knowingly and
342 intentionally misrepresented relevant facts relating to the insured's health.

343 (d) A long-term care insurance policy or certificate shall not be
344 field issued based on medical or health status. For purposes of this
345 subsection the term "field issued" means a policy or certificate issued by an
346 agent or a third-party administrator pursuant to the underwriting authority
347 granted to the agent or third party administrator by an insurer.

348 (e) If an insurer has paid benefits under the long-term care insurance
349 policy or certificate, the insurer may not recover the benefit payments if the
350 policy or certificate is rescinded.

351 (f) In the event of the death of the insured, this section shall not
352 apply to the remaining death benefit of a life insurance policy that
353 accelerates benefits for long-term care. In this situation, the remaining death
354 benefits under these policies shall be governed by section 132 of chapter 175
355 of the General Laws. In all other situations, this section shall apply to life
356 insurance policies that accelerate benefits for long-term care.

357 Section 8. (a) Except as provided in subsection (b), a long-term care
358 insurance policy shall not be delivered or issued for delivery in this state
359 unless the policyholder or certificate holder has been offered the option of
360 purchasing a policy or certificate that includes a non-forfeiture benefit. The
361 offer of a non-forfeiture benefit may be in the form of a rider that is
362 attached to the policy. In the event the policyholder or certificate holder
363 declines the non-forfeiture benefit, the insurer shall provide a contingent
364 benefit upon lapse that shall be available for a specified period of time

365 following a substantial increase in premium rates.

366 (b) When a group long-term care insurance policy is issued, the offer
367 required in subsection (a) shall be made to the group policyholder. However, if
368 the policy is issued as group long-term care insurance to a group defined in
369 clause (4) the definition of "Group long-term care" of section 4, other than to
370 a continuing care retirement community or other similar entity, the offering
371 shall be made to each proposed certificate holder.

372 (c) The commissioner shall promulgate regulations specifying the type
373 or types of non-forfeiture benefits to be offered as part of long-term care
374 insurance policies and certificates, the standards for non-forfeiture benefits,
375 and the rules regarding contingent benefit upon lapse, including a
376 determination of the specified period of time during which a contingent benefit
377 upon lapse will be available and the substantial premium rate increase that
378 triggers a contingent benefit upon lapse as described in subsection a.

379 Section 9. The commissioner shall promulgate reasonable regulations in
380 accordance with chapter 30A to promote premium adequacy and to protect the
381 policyholder in the event of substantial rate increases, and to establish
382 minimum standards for marketing practices, agent compensation, agent testing,
383 penalties and reporting practices for long term care insurance.

384 Section 10. In addition to the penalties provided in chapters 175 and
385 176D, any insurer and any insurance producer found to have violated any
386 requirement of this chapter or any regulations promulgated hereunder, relating
387 to the regulation of long-term care insurance or the marketing of such
388 insurance, shall be subject to a fine of up to 3 times the amount of any
389 commissions paid for each policy involved in the violation or up to \$10,000,
390 whichever is greater.