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# HOUSE . . . . . . . . . . . . . . . No.

## The Commonwealth of Massachusetts

PRESENTED BY:

**Ronald Mariano**

*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 to Protect Consumers in the Purchase of Long-Term Care Insurance.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
| --- | --- |
| Ronald Mariano | 3rd Norfolk |

# The Commonwealth of Massachusetts

**In the Year Two Thousand and Nine**

AN ACT TO PROTECT CONSUMERS IN THE PURCHASE OF 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 The General Laws, as appearing in the 2006 Official Edition, are hereby amended by inserting
2 after chapter 176R the following chapter: –
3
4 CHAPTER 176S
5 LONG-TERM CARE INSURANCE
6
7 Section 1. Short Title
8 This act may be cited as the Long-Term Care Insurance Act or the Act.
9
10 Section 2. Purpose

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

16

17 Section 3. Scope

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

24

25 Section 4. Definitions

26 As used in this chapter, the following words shall, unless the context clearly requires otherwise,
27 have the following meanings: -

28 "Long-term care insurance" means any insurance policy or rider advertised, marketed,
29 offered or designed to provide coverage for not less than twelve (12) consecutive months for
30 each covered person on an expense incurred, indemnity, prepaid or other basis; for one or more
31 necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance

32 or personal care services, provided in a setting other than an acute care unit of a hospital. The
33 term includes group and individual annuities and life insurance policies or riders that provide
34 directly or supplement long-term care insurance. The term also includes a policy or rider that
35 provides for payment of benefits based upon cognitive impairment or the loss of functional
36 capacity. The term shall also include qualified long-term care insurance contracts. Long-term
37 care insurance may be issued by insurers; fraternal benefit societies; nonprofit health, hospital,
38 and medical service corporations. Long-term care insurance shall not include any insurance
39 policy that is offered primarily to provide basic Medicare supplement coverage, basic hospital
40 expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity
41 coverage, major medical expense coverage, disability income or related asset-protection
42 coverage, accident only coverage, specified disease or specified accident coverage, or limited
43 benefit health coverage. With regard to life insurance, this term does not include life insurance
44 policies that accelerate the death benefit specifically for one or more of the qualifying events of
45 terminal illness, medical conditions requiring extraordinary medical intervention or permanent
46 institutional confinement, and that provide the option of a lump-sum payment for those benefits
47 and where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt
48 of long-term care. Notwithstanding any other provision of this Act, any product advertised,
49 marketed or offered as long-term care insurance shall be subject to the provisions of this Act.

50 "Applicant" means: (a) In the case of an individual long-term care insurance policy, the
51 person who seeks to contract for benefits; and (b) In the case of a group long-term care insurance
52 policy, the proposed certificate holder.

53 “Certificate” means, for the purposes of this Act, any certificate issued under a group
54 long-term care insurance policy, which policy has been delivered or issued for delivery in the
55 commonwealth.

56 “Commissioner” means the insurance commissioner, appointed pursuant to section six of
57 chapter 26, or his/her designee.

58 “Division of Medical Assistance” means the state agency responsible for administering
59 programs of medical assistance in the commonwealth pursuant to chapter 118E.

60 “Effective date of coverage” means the date on which an insurance policy goes into
61 force.

62 “Group long-term care insurance” means a long-term care insurance policy that is
63 delivered or issued for delivery in the commonwealth and issued to:

64 (a) One or more employers or labor organizations, or to a trust or to the trustees of a fund

65 established by one or more employers or labor organizations, or a combination
66 thereof,

67 for employees or former employees or a combination thereof or for members or
68 former

69 members or a combination thereof, of the labor organizations; or

70

71 (b) Any professional, trade or occupational association for its members or former or

72 retired members, or combination thereof, if the association:

73

74 (1) Is composed of individuals all of whom are or were actively engaged in the

75 same profession, trade or occupation; and

76 (2) Has been maintained in good faith for purposes other than obtaining

77 insurance; or

78 (c) An association or a trust or the trustees of a fund established, created or maintained

79 for the benefit of members of one or more associations. Prior to advertising, marketing or

80 offering the policy within the commonwealth, the association or associations, or the

81 insurer of the association or associations, shall file evidence with the commissioner that

82 the association or associations have at the outset a minimum of 100 persons and have

83 been organized and maintained in good faith for purposes other than that of obtaining

84 insurance; have been in active existence for at least one year; and have a constitution

85 and bylaws that provide that:

86 (1) The association or associations hold regular meetings not less than annually to

87 further purposes of the members;

88 (2) Except for credit unions, the association or associations collect dues or solicit

89 contributions from members; and

90 (3) The members have voting privileges and representation on the governing

91 board and committees. Thirty (30) days after the filing the association or

92 associations will be deemed to satisfy the organizational requirements, unless the

93 commissioner makes a finding that the association or associations do not satisfy

94 those organizational requirements.

95 (d) A group other than as described in subsections (a), (b) and (c), subject to a finding by

96 the commissioner that:

97 (1) The issuance of the group policy is not contrary to the best interest of the

98 public;

99 (2) The issuance of the group policy would result in economies of acquisition or

100 administration; and

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

102 "Policy" means, for the purposes of this Act, any policy, contract, subscriber agreement,

103 rider or endorsement delivered or issued for delivery in the commonwealth by an insurer;

104 fraternal benefit society; nonprofit health, hospital, or medical service corporation.

105 "Qualified long-term care insurance contract" or "federally tax-qualified long-term care

106 insurance contract" means

107 (a) an individual or group insurance contract that meets the requirements of Section

108 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows:

109 (1) The only insurance protection provided under the contract is coverage of

110 qualified long-term care services. A contract shall not fail to satisfy the

111 requirements of this subparagraph by reason of payments being made on a per

112 diem or other periodic basis without regard to the expenses incurred during the
113 period to which the payments relate;

114 (2) The contract does not pay or reimburse expenses incurred for services or items
115 to the extent that the expenses are reimbursable under Title XVIII of the Social
116 Security Act, as amended, or would be so reimbursable but for the application of a
117 deductible or coinsurance amount. The requirements of this subparagraph do not
118 apply to expenses that are reimbursable under Title XVIII of the Social Security
119 Act only as a secondary payor. A contract shall not fail to satisfy the requirements
120 of this subparagraph by reason of payments being made on a per diem or other
121 periodic basis without regard to the expenses incurred during the period to which
122 the payments relate;

123 (3) The contract is guaranteed renewable, within the meaning of section
124 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

125 (4) The contract does not provide for a cash surrender value or other money that
126 can be paid, assigned, pledged as collateral for a loan, or borrowed except as
127 provided in this chapter;

128 (5) All refunds of premiums, and all policyholder dividends or similar amounts,
129 under the contract are to be applied as a reduction in future premiums or to
130 increase future benefits, except that a refund on the event of death of the insured
131 or a complete surrender or cancellation of the contract cannot exceed the
132 aggregate premiums paid under the contract; and

133 (6) The contract meets the consumer protection provisions set forth in Section

134 7702B(g) of the Internal Revenue Code of 1986, as amended.

135 (b) "Qualified long-term care insurance contract" or "federally tax-qualified long term

136 care insurance contract" also means the portion of a life insurance contract that

137 provides long-term care insurance coverage by rider or as part of the contract and that

138 satisfies the requirements of Sections 7702B(b) and (e) of the Internal Revenue Code

139 of 1986, as amended.

140

141 Section 5. Extraterritorial Jurisdiction – Group Long-Term Care Insurance

142 No group long-term care insurance coverage may be offered to a resident of the commonwealth

143 under a group policy issued in another state to a group defined in section 4 of this chapter, unless

144 the Division of Insurance has determined that it meets all relevant statutory and regulatory

145 requirements, or another state having statutory and regulatory long-term care insurance

146 requirements substantially similar to those adopted in the commonwealth has made a

147 determination that such requirements have been met.

148

149 Section 6. Disclosure and Performance Standards for Long-Term Care Insurance

150 (a) The commissioner may adopt regulations that include, but are not limited to, standards for

151 full and fair disclosure setting forth the manner, content and required disclosures for the sale of

152 long-term care insurance policies, terms of renewability, initial and subsequent conditions of

153 eligibility, benefit requirements, non-duplication of coverage provisions, coverage of

154 dependents, preexisting conditions, recurrent conditions, termination of insurance, continuation
155 or conversion, probationary periods, limitations, exclusions, exceptions, reductions, elimination
156 periods, requirements for replacement, mandatory benefit offers, form and rate filing procedures,
157 requirements for agent training and marketing and definitions of terms.

158 (b) No long-term care insurance policy may:

159 (1) Be cancelled, nonrenewed or otherwise terminated on the grounds of the age or the
160 deterioration of the mental or physical health of the insured individual or certificate
161 holder; or
162 (2) Contain a provision establishing a new preexisting condition limitation period in the
163 event an existing coverage is converted to or replaced by a new or other form within the
164 same company, except with respect to an increase in benefits voluntarily selected by the
165 insured individual or group policyholder; or
166 (3) Provide coverage for skilled nursing care only or provide significantly more
167 coverage for skilled care in a facility than coverage for lower levels of care.
168 (c) Preexisting Condition

169 (1) No long-term care insurance policy or certificate, other than a policy or certificate
170 issued to a group as defined in section 4 of this chapter, shall use a definition of
171 “preexisting condition” that is more restrictive than the following: Preexisting condition
172 means a condition for which medical advice or treatment was recommended by, or
173 received from a provider of health care services, within six (6) months preceding the
174 effective date of coverage of an insured person.

175 (2) No long-term care insurance policy or certificate, other than a policy or certificate
176 issued to a group as defined in section 4 of this chapter, may exclude coverage for any
177 covered benefit for which an insured person seeks coverage that is the result of a
178 preexisting condition unless the covered care occurs within six (6) months following the
179 effective date of coverage of an insured person.
180 (3) The commissioner may extend the limitation periods set forth in sections 6(c)(1) and
181 (2) of this chapter as to specific age group categories in specific policy forms upon
182 findings that the extension is in the best interest of the public.
183 (4) The definition of "preexisting condition" does not prohibit an insurer from using an
184 application form designed to elicit the complete health history of an applicant, and, on the
185 basis of the answers on that application, from underwriting in accordance with that
186 insurer's established underwriting standards. Unless otherwise provided in the policy or
187 certificate, a preexisting condition, regardless of whether it is disclosed on the
188 application, need not be covered until the preexisting condition limitation period
189 described in section 6(c)(2) of this chapter expires. No long-term care insurance policy
190 or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce
191 coverage or benefits for specifically named or described preexisting diseases or physical
192 conditions beyond the preexisting condition limitation period described in section 6(c)(2)
193 of this chapter.
194 (d) Prior hospitalization/institutionalization.
195 No long-term care insurance policy may be delivered or issued for delivery in the
196 commonwealth if the policy:

197 (1) Conditions eligibility for benefits or services on:

198 (A) a requirement that the insured is making a “steady improvement,” has

199 “recuperative potential” or has “returned to a pre-morbid condition;”

200 (B) a prior hospitalization requirement or prior receipt of services from

201 any

202 long-term care provider;

203 (C) any standard of medical necessity, except for medical services

204 provided by a licensed professional; or

205 (D) a care management system that disallows plan benefits if specific care

206 management standards and procedures are not met, unless specifically

207 approved by the commissioner and properly disclosed to the insured;

208 (2) Conditions eligibility for benefits provided in an institutional care setting on the

209 receipt of a higher level of institutionalized care;

210 (3) Conditions eligibility for any benefits, other than waiver of premium, post-

211 confinement, post-acute care or recuperative benefits, on a prior institutionalization

212 requirement; or

213 (4) Restricts or denies benefits because the insured is not eligible for Medicare.

214 (e) The commissioner may adopt regulations establishing loss ratio standards for long-term care

215 insurance policies provided that a specific reference to long-term care insurance policies is

216 contained in the regulation.

217 (f) Right to return—free look. Long-term care insurance insureds shall have the right to return
218 the policy or certificate within thirty (30) days of its delivery and to have the premium refunded
219 if, after examination of the policy or certificate, the insured is not satisfied for any reason. Long-
220 term care insurance policies and certificates shall have a notice prominently printed on the first
221 page or attached thereto stating in substance that the insured shall have the right to return the
222 policy or certificate within thirty (30) days of its delivery and to have the premium refunded if,
223 after examination of the policy or certificate, other than a certificate issued pursuant to a policy
224 issued to a group defined in section four of this chapter, the insured is not satisfied for any
225 reason. This subsection shall also apply to denials of applications and any refund must be made
226 within thirty (30) days of the return or denial.

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

230 (A) The commissioner may prescribe a standard format, including style,
231 arrangement and overall appearance, and the content of an outline of coverage.

232 (B) In the case of agent solicitations, an agent shall deliver the outline of coverage
233 prior to the presentation of an application or enrollment form.

234 (C) In the case of direct response solicitations, the outline of coverage shall be
235 presented in conjunction with any application or enrollment form.

236 (D) In the case of a policy issued to a group defined in section 4 of this chapter,
237 an outline of coverage shall not be required to be delivered, provided that the
238 information described in sections 6(g)(2)(A) through (F) of this chapter is

239 contained in other materials relating to enrollment. Upon request, these other
240 materials shall be made available to the commissioner.

241 (2) The outline of coverage shall include:

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

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

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

249 (D) A statement that the outline of coverage is a summary only, not a contract of
250 insurance, and that the policy or group master policy contains governing
251 contractual provisions;

252 (E) A description of the terms under which the policy or certificate may be
253 returned and premium refunded;

254 (F) A brief description of the relationship of cost of care and benefits; and

255 (G) A statement that discloses to the policyholder or certificate holder whether the
256 policy is intended to be a federally tax-qualified long-term care insurance contract
257 under 7702B(b) of the Internal Revenue Code of 1986, as amended.

258 (h) A certificate issued pursuant to a group long-term care insurance policy that is delivered or
259 issued for delivery in the commonwealth shall include:

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

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

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

264 (i) If an application for a long-term care insurance contract or certificate is approved, the issuer
265 shall deliver the contract or certificate of insurance to the applicant no later than thirty (30) days
266 after the date of approval.

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

272 (1) An explanation of how the long-term care benefit interacts with other components of

273 the policy, including deductions from death benefits;

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

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

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

278 (A) A disclosure of the effects of exercising other rights under the policy;

279 (B) A disclosure of guarantees related to long-term care costs of insurance

280 charges; and

281 (C) Current and projected maximum lifetime benefits.

282 (k) Any time a long-term care benefit, funded through a life insurance vehicle by the
283 acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided
284 to the policyholder. The commissioner may adopt regulations that identify the content and format
285 of this monthly report, which shall include, but not be limited to:

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

287 (2) An explanation of any changes in the policy, e.g., death benefits or cash values, due to
288 long-term care benefits being paid out; and

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

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

293 (1) Provide a written explanation of the reasons for the denial; and

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

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

297

298 Section 7. Incontestability Period

299 (a) For a policy or certificate that has been in force for less than six (6) months an insurer may
300 rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care
301 insurance claim upon a showing of misrepresentation that is material to the acceptance for
302 coverage.

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

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

312 (d) (1) A long-term care insurance policy or certificate may be field issued if the compensation to
313 the field issuer is not based on the number of policies or certificates issued.

314 (2) For purposes of this section, "field issued" means a policy or certificate issued by a
315 producer or a third-party administrator pursuant to the underwriting authority granted to the
316 producer or third party administrator by an insurer and using the insurer's underwriting
317 guidelines.

318 (e) If an insurer has paid benefits under the long-term care insurance policy or certificate, the
319 benefit payments may not be recovered by the insurer in the event that the policy or certificate is
320 rescinded.

321 (f) In the event of the death of the insured, this section shall not apply to the remaining death
322 benefit of a life insurance policy that accelerates benefits for long-term care. In this situation, the
323 remaining death benefits under these policies shall be governed by sections 132 and 134 of
324 chapter 175. In all other situations, this section shall apply to life insurance policies that
325 accelerate benefits for long-term care.
326

327 Section 8. Nonforfeiture Benefits

328 (a) Except as provided in section 8(b) of this chapter, a long-term care insurance policy may not
329 be delivered or issued for delivery in the commonwealth unless the policyholder or certificate
330 holder has been offered the option of purchasing a policy or certificate including a nonforfeiture
331 benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the
332 policy. In the event the policyholder or certificate holder declines the nonforfeiture benefit, the
333 insurer shall provide a contingent benefit upon lapse that shall be available for a specified period
334 of time following a substantial increase in premium rates.

335 (b) When a group long-term care insurance policy is issued, the offer required in section 8(a) of
336 this chapter shall be made to the group policyholder. However, if the policy is issued as group
337 long-term care insurance as defined in section 4 of this chapter, other than to a continuing care
338 retirement community or other similar entity, the offering shall be made to each proposed
339 certificate holder.

340 (c) The commissioner may promulgate regulations specifying the type or types of nonforfeiture
341 benefits to be offered as part of long-term care insurance policies and certificates, the standards
342 for nonforfeiture benefits, and the rules regarding contingent benefit upon lapse, including a
343 determination of the specified period of time during which a contingent benefit upon lapse will
344 be available and the substantial premium rate increase that triggers a contingent benefit upon
345 lapse as described in section 8(a) of this chapter.

346

347 Section 9. Producer Training Requirements

348 (a) (1) An individual may not sell, solicit or negotiate long-term care insurance unless the
349 individual is licensed as an insurance producer for accident and sickness or life and has
350 completed a one-time training course. The training shall meet the requirements set forth
351 in section 9(b) of this chapter.

352 (2) An individual already licensed and selling, soliciting or negotiating long-term care
353 insurance on the effective date of this Act may not continue to sell, solicit or negotiate
354 long term care insurance unless the individual has completed a one-time training course
355 as set forth in section 9(b) of this chapter, within one year from the effective date of this
356 Act.

357 (3) In addition to the one-time training course required in Paragraphs (1) and (2) above,
358 an individual who sells, solicits or negotiates long-term care insurance shall complete
359 ongoing training as set forth in section 9(b) of this chapter.

360 (4) The training requirements of section 9(b) of this chapter may be approved as
361 continuing education courses under section 177E of chapter 175.

362 (b) (1) The one-time training required by this Section shall be no less than eight (8) hours and

363 the ongoing training required by this Section shall be no less than four (4) hours every 24

364 months.

365 (2) The training required under section 9(b)(1) of this chapter shall consist of topics

366 related to long-term care insurance, long-term care services and, if applicable, qualified

367 state long-term care insurance Partnership programs, including, but not limited to:

368 (A) State and federal regulations and requirements and the relationship between

369 qualified state long-term care insurance Partnership programs and other public

370 and private coverage of long-term care services, including Medicaid;

371 (B) Available long-term services and providers;

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

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

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

375 and

376 (F) Consumer suitability standards and guidelines.

377 (3) The training required by this Section shall not include training that is insurer or

378 company product specific or that includes any sales or marketing information, materials,

379 or training, other than those required by state or federal law.

380 (c) (1) Insurers subject to this chapter shall obtain verification that a producer receives training

381 required by section 9(a) of this chapter before a producer is permitted to sell, solicit or

382 negotiate the insurer's long-term care insurance products, maintain records subject to the
383 state's record retention requirements, and make that verification available to the
384 commissioner upon request.

385 (2) Insurers subject to this chapter shall maintain records with respect to the training of its
386 producers concerning the distribution of its Partnership policies that will allow the state
387 insurance department to provide assurance to the state Medicaid agency that producers
388 have received the training contained in section 9(b)(2)(A) as required by section 9(a) of
389 this chapter and that producers have demonstrated an understanding of the Partnership
390 policies and their relationship to public and private coverage of long-term care, including
391 Medicaid, in the commonwealth. These records shall be maintained in accordance with
392 the state's record retention requirements and shall be made available to the commissioner
393 upon request.

394

395 Section 10. Authority to Promulgate Regulations

396 The commissioner may issue regulations to monitor and promote premium adequacy and to
397 protect the policyholder in the event of substantial rate increases, and to establish minimum
398 standards for producer education, marketing practices, producer compensation, producer testing,
399 penalties and reporting practices for long-term care insurance.

400

401 Section 11. Administrative Procedures

Regulations adopted pursuant to this chapter shall be in accordance with the provisions of chapters 30A, 118E, 176D, and section 108 of chapter 175.

Section 12. Severability

If any provision of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected.

Section 13. Penalties

In addition to any other penalties provided by the laws of the commonwealth, any insurer and any producer found to have violated any requirement of the commonwealth relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to $10,000, whichever is greater.