

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

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 establish standards for long term care insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Harriette L. Chandler	First Worcester
James R. Miceli	19th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02367 OF 2007-2008.]

The Commonwealth of Massachusetts

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

AN ACT TO ESTABLISH 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.** Chapter 32A of the General Laws is hereby amended by inserting
2 after section 10E, as appearing in the 2002 Official Edition, the following section:-
3 Section 10F. The commission shall establish a plan of long term care insurance on the
4 terms and conditions it considers to be in the best interest of the commonwealth and its
5 employees. With respect to any long term care insurance which is in effect for an
6 employee there shall be withheld from the salary or wages of the employee the
7 premium for the insurance and the commonwealth shall make no contribution to the
8 premium. The commission shall use its best efforts to ensure that all premium
9 payments by employees are eligible for favorable tax treatment available under federal
10 or state law.

11 **SECTION 2.** Paragraph (b) of Part B of section 3 of chapter 62 of the General Laws, as
12 so appearing, is hereby amended by adding the following subparagraph:-

13 (6) In the case of an individual who purchases coverage under a qualified long-term
14 care insurance contract, as defined by chapter 176R, including both nursing facility and
15 home health benefits, an amount equal to 100 per cent of the annual premium of the
16 insurance policy not to exceed \$2,500. Married individuals filing jointly or separately
17 are each entitled to an exemption from taxable income equal to 100 per cent of the
18 annual premium but not more than \$2,500.

19

20 **SECTION 3.** Chapter 118E of the General Laws is hereby amended by striking out
21 Section 33, as so appearing, and inserting in place thereof the following section:-

22 Section 33. No claim for costs of a nursing facility and other long-term care services may
23 be made by the division under section 31 or 32 if the individual receiving medical
24 assistance was permanently institutionalized, had notified the division that he had no
25 intention to return home and, on the date of admission to the nursing facility or other
26 medical institution, had long-term care insurance that, when purchased, met the
27 requirements of 211 C.M.R. 65.00.

28 **SECTION 4.** The General Laws are hereby amended by inserting after chapter 176P the
29 following chapter:-

30 CHAPTER 176R
31 LONG TERM CARE INSURANCE

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

38 Section 2. This chapter shall apply to policies delivered, or issued for delivery, in the
39 commonwealth on or after January 1, 2010 . This chapter is not intended to supersede
40 the obligations of entities subject to this chapter to comply with applicable insurance
41 laws insofar as they do not conflict with this chapter, except that laws and regulations
42 designed and intended to apply to Medicare supplement insurance policies governed
43 by Ch. 176K shall not apply to long-term care insurance.

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

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

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

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

53 "Commissioner", the commissioner of insurance.

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

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

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

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

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

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

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

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

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

76 (iii) the members have voting privileges and representation on the governing board and
77 committees.

78 Thirty days after the filing, the association shall be considered to have satisfied the
79 organizational requirements, unless the commissioner makes a finding that the
80 association does not satisfy those organizational requirements.

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

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

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

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

87 "Long-term care insurance", any insurance policy or rider: (1) advertised, marketed,
88 offered or designed to provide coverage for not less than 24 consecutive months for
89 each covered person on an expense incurred, indemnity, prepaid or other basis; (2) for
90 one or more necessary or medically necessary diagnostic, preventive, therapeutic,
91 rehabilitative, maintenance or personal care services including home and community
92 care services; and (3) provided in a setting other than an acute care unit of a hospital.
93 The term includes group and individual annuities and life insurance policies or riders
94 that provide directly, or supplement, long-term care insurance. The term also includes a
95 policy or rider that provides for payment of benefits based upon cognitive impairment
96 or the loss of functional capacity. The term shall also include qualified long-term care

97 insurance contracts. Long-term care insurance shall not include any insurance policy
98 that is offered primarily to provide basic Medicare supplement coverage, basic hospital
99 expense coverage, basic medical-surgical expense coverage, hospital confinement
100 indemnity coverage, major medical expense coverage, disability income or related
101 asset-protection coverage, accident only coverage, specified disease or specified
102 accident coverage, or limited benefit health coverage. With regard to life insurance, this
103 term shall not include life insurance policies that accelerate the death benefit specifically
104 for 1 or more of the qualifying events of terminal illness, medical conditions requiring
105 extraordinary medical intervention or permanent institutional confinement, and that
106 provide the option of a lump-sum payment for those benefits and where neither the
107 benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term
108 care. Notwithstanding any other provision of this chapter, any product advertised,
109 marketed or offered as long-term care insurance shall be subject to this chapter.

110 "Policy", any policy, contract, subscriber agreement, rider or endorsement delivered or
111 issued for delivery within the commonwealth by an insurer authorized to issue policies
112 upon the lives of persons in the commonwealth or to provide accident and health
113 insurance under chapter 175; a fraternal benefit society authorized under chapter 176; a
114 nonprofit hospital service corporation authorized under chapter 176A, a nonprofit
115 medical service corporation authorized under chapter 176B or a health maintenance
116 organization authorized under chapter 176G.

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

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

126 (b) The contract does not pay or reimburse expenses incurred for services or items to the
127 extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as
128 amended, or would be so reimbursable but for the application of a deductible or
129 coinsurance amount. The requirements of this subparagraph do not apply to expenses
130 that are reimbursable under Title XVIII of the Social Security Act only as a secondary
131 payor. A contract shall not fail to satisfy the requirements of this subparagraph by
132 reason of payments being made on a per diem or other periodic basis without regard to
133 the expenses incurred during the period to which the payments relate;

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

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

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

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

146 (2) "Qualified long-term care insurance contract" or "federally tax-qualified long term
147 care insurance contract" also means the portion of a life insurance contract that
148 provides long-term care insurance coverage by rider or as part of the contract and that
149 satisfies the requirements of Sections 7702B(b) and (e) of the Internal Revenue Code of
150 1986, as amended and as set forth in (1) (a)-(f)..

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

158 Section 6. (a) A long-term care insurance policy shall not:

159 (1) be cancelled, non-renewed 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;

162 (2) contain a provision establishing a new waiting period in the event existing coverage
163 is converted to, or replaced by, a new or other form within the same company, except
164 with respect to an increase in benefits voluntarily selected by the insured individual or
165 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 (b) (1) A long-term care insurance policy, or certificate other than a policy or certificate
169 thereunder, issued to a group as defined in clause (1) of the definition of "Group long-
170 term care" of section (4) shall not use a definition of "preexisting condition" that is more
171 restrictive than the following: Preexisting condition means a condition for which
172 medical advice or treatment was recommended by, or received from a provider of
173 health care services, within 6 months preceding the effective date of coverage of an
174 insured person.

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

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

190 (c) A long-term care insurance policy shall not be delivered or issued for delivery in this
191 state if the policy:

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

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

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

198 (d) The commissioner may adopt regulations establishing loss ratio standards for long-
199 term care insurance policies provided that a specific reference to long-term care
200 insurance policies is contained in the regulation.

201 (e) Long-term care insurance applicants shall have the right to return the policy or
202 certificate within 30 days of its delivery and to have the premium refunded if, after
203 examination of the policy or certificate, the applicant is not satisfied for any reason.
204 Long-term care insurance policies and certificates shall have a notice prominently
205 printed on the first page or attached thereto stating in substance that the applicant shall
206 have the right to return the policy or certificate within 30 days of its delivery and to
207 have the premium refunded if, after examination of the policy or certificate, other than a
208 certificate issued pursuant to a policy issued to a group defined in clause (1) of the
209 definition of "Group long-term care" of section (4), the applicant is not satisfied for any
210 reason. This subsection shall also apply to denials of applications and any refund must
211 be made within 30 days of the return or denial.

212 (f) (1) An outline of coverage shall be delivered to a prospective applicant for long-term
213 care insurance through means that prominently direct the attention of the recipient to
214 the document and its purpose. In the case of producer solicitations, an insurance

215 producer shall deliver the outline of coverage prior to the presentation of an application
216 or enrollment form. In the case of direct response solicitations, the outline of coverage
217 shall be presented in conjunction with any application or enrollment form. In the case of
218 a policy issued to a group defined in clause (1) of the definition of "Group long-term
219 care" of section 4, an outline of coverage shall not be required to be delivered, provided
220 that the information described in clauses (i) to (vi), inclusive, of paragraph (2) is
221 contained in other materials relating to enrollment. Upon request, these other materials
222 shall be made available to the commissioner.

223 (2) The commissioner shall prescribe a standard format, including style, arrangement
224 and overall appearance, and the content of an outline of coverage. The outline of
225 coverage shall include:

226 (i) a description of the principal benefits and coverage provided in the policy or
227 certificate;

228 (ii) a statement of the principal exclusions, reductions and limitations contained in the
229 policy or certificate;

230 (iii) a statement of the terms under which the policy or certificate, or both, may be
231 continued in force or discontinued, including any reservation in the policy of a right to
232 change premium; continuation or conversion provisions of group coverage shall be
233 specifically described;

234 (iv) a statement that the outline of coverage is a summary only, not a contract of
235 insurance, and that the policy or group master policy contains governing contractual
236 provisions;

237 (v) a description of the terms under which the policy or certificate may be returned and
238 premium refunded;

239 (vi) a brief description of the relationship of cost of care and benefits; and

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

243 (g) A certificate issued pursuant to a group long-term care insurance policy that is
244 delivered or issued for delivery in this state shall include:

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

246 (2) a statement of the principal exclusions, reductions and limitations contained in the
247 policy; and

248 (3) a statement that the group master policy determines governing contractual
249 provisions and that the policy is available for viewing in the offices of the policyholder
250 and will be copied for the certificate holder upon request at no cost.

251 (h) If an application for a long-term care insurance contract or certificate is approved,
252 the issuer shall deliver the contract or certificate of insurance to the applicant no later
253 than 30 days after the date of approval.

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

260 (1) an explanation of how the long-term care benefit interacts with other components of
261 the policy, including deductions from death benefits;

262 (2) an illustration of the amount of benefits, the length of benefit, and the guaranteed
263 lifetime benefits if any, for each covered person;

264 (3) any exclusions, reductions and limitations on benefits of long-term care including
265 elimination or probationary periods and any preexisting condition limitations;

266 (4) a statement indicating whether any long term care inflation protection option
267 required by law is available under this policy;

268 (5) if applicable to the policy type, the summary shall also include:

269 (i) a disclosure of the effects of exercising other rights under the policy;

270 (ii) a disclosure of guarantees related to long-term care costs of insurance charges; and

271 (iii) current and projected maximum lifetime benefits; and

272 (6) the policy summary listed above may be incorporated into a basic illustration or into
273 the life insurance policy summary which is required to be delivered in accordance with
274 applicable regulation.

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

278 (1) any long-term care benefits paid out during the month;

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

281 (3) the amount of long-term care benefits existing or remaining.

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

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

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

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

289 Section 7. (a) For a policy or certificate that has been in force for less than 6 months an
290 insurer may rescind a long-term care insurance policy or certificate or deny an

291 otherwise valid long-term care insurance claim upon a showing of misrepresentation
292 that is material to the acceptance for coverage.

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

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

302 (d). A long term care insurance policy or certificate may be field issued if the
303 compensation to the field issuer is not based on the number of policies or certificates
304 issued. For purposes of this subsection the term "field issued" means a policy or
305 certificate issued by a producer or a third-party administrator pursuant to the
306 underwriting authority granted to the producer or third party administrator by an
307 insurer and using the insurer's underwriting guidelines.

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

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

316 Section 8. (a) Except as provided in subsection (b), a long-term care insurance policy
317 shall not be delivered or issued for delivery in this state unless the policyholder or
318 certificate holder has been offered the option of purchasing a policy or certificate that
319 includes a non-forfeiture benefit. The offer of a non-forfeiture benefit may be in the
320 form of a rider that is attached to the policy. In the event the policyholder or certificate
321 holder declines the non-forfeiture benefit, the insurer shall provide a contingent benefit
322 upon lapse that shall be available for a specified period of time following a substantial
323 increase in premium rates.

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

330 Section 9. (a) An individual may not sell, solicit or negotiate long-term care insurance
331 unless the individual is licensed as an insurance producer for accident and health or
332 sickness or life and has completed a one-time training course, which shall be 8 or more
333 hours in duration, and ongoing training, which shall be 4 or more hours in duration,
334 every 24 months thereafter. An individual required to complete training under this
335 section shall have until one year after the effective date of this act to fulfill the
336 requirement. The commissioner shall promulgate regulations to implement this section,
337 including regulations for training standards, educational content, and out-of-state
338 waivers.

339 (b) Insurers subject to this section shall obtain verification that a producer receives the
340 required training before a producer is permitted to sell, solicit or negotiate the insurer's
341 long-term care insurance products, maintain records subject to the state's record
342 retention requirements, and make that verification available to the commissioner upon
343 request.

344 Section 10. (a) The commissioner shall, in accordance with chapter 30A, promulgate
345 regulations which are at a minimum consistent with those set forth in the 2006 National
346 Association of Insurance Commissioners Long-Term Care Model Regulation including
347 standards for:

348 (1) full and fair disclosure setting forth the manner, content and required disclosures for the sale
349 of long-term care insurance policies and certificates;

350 (2) policy definitions and provisions, terms of renewability; initial and subsequent conditions of
351 eligibility; benefit triggers; home health and community care benefits; non-duplication of
352 coverage provisions; coverage of dependents; preexisting conditions; termination of insurance;
353 continuation or conversion; limitations; exceptions; reductions; elimination and probationary
354 periods; requirements for replacement; and unintentional lapse protection;

355 (3) the promotion of premium adequacy, protections for the policyholder or certificate holder in
356 the event of a substantial rate increase and disclosure;

357 (4) the offer of inflation and nonforfeiture coverage including rules for a contingent benefit
358 upon lapse;

359 (5) marketing practices, suitability and producer professional education;

360 (6) filing requirements, reporting practices and requirements, reserve standards, loss ratios and
361 penalties.

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363

364 (b) The Division of Insurance shall update, on a biennial basis, the consumer guide for long
365 term insurance. The Division of Insurance shall maintain a list of insurance companies
366 selling long term care insurance in the Commonwealth and their Massachusetts rate
367 increase history for the last ten years on their website.

368 Section 11. In addition to the penalties provided in chapters 175 and 176D, any insurer
369 and any insurance producer found to have violated any requirement of this chapter or
370 any regulations promulgated hereunder, relating to the regulation of long-term care
371 insurance or the marketing of such insurance, shall be subject to a fine of up to 3 times
372 the amount of any commissions paid for each policy involved in the violation or up to
373 \$10,000, whichever is greater.

374

375 SECTION 5.

376 The Commissioner shall make recommendations as to the best methods to
377 stabilize rates and prevent exceptional rate increases with input from the Life Insurance
378 Association of Massachusetts, the Massachusetts Association of Health Underwriters,
379 the National Academy of Elder Law Attorneys, Massachusetts Chapter and the AARP.
380 The Commissioner shall report her recommendations to the President of the Senate and
381 the Speaker of the House of Representatives within six months of the passage of this act.

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383 The Commissioner shall also seek information on the experience of other states relative
384 to rate stabilization.

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