

SENATE No. 462

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
Scott P. Brown	Norfolk, Bristol and Middlesex
John W. Scibak	2nd Hampshire
Susan C. Tucker	Second Essex and Middlesex
Steven J. D'Amico	4th Bristol
Bruce E. Tarr	First Essex and Middlesex
Susan C. Fargo	Third Middlesex
Brian A. Joyce	Norfolk, Bristol and Plymouth

[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 after
2 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 terms and
4 conditions it considers to be in the best interest of the commonwealth and its employees. With
5 respect to any long term care insurance which is in effect for an employee there shall be withheld
6 from the salary or wages of the employee the premium for the insurance and the commonwealth
7 shall make no contribution to the premium. The commission shall use its best efforts to ensure
8 that all premium payments by employees are eligible for favorable tax treatment available under
9 federal or state law.

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

12 (6) In the case of an individual who purchases coverage under a qualified long-term care
13 insurance contract, as defined by chapter 176R, including both nursing facility and home health

14 benefits, an amount equal to 100 per cent of the annual premium of the insurance policy not to
15 exceed \$2,500. Married individuals filing jointly or separately are each entitled to an exemption
16 from taxable income equal to 100 per cent of the annual premium but not more than \$2,500.

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

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

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

26 CHAPTER 176R

27 LONG TERM CARE INSURANCE

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

33 Section 2. This chapter shall apply to policies delivered, or issued for delivery, in the
34 commonwealth on or after January 1, 2010 . This chapter is not intended to supersede the
35 obligations of entities subject to this chapter to comply with applicable insurance laws insofar as

36 they do not conflict with this chapter, except that laws and regulations designed and intended to
37 apply to Medicare supplement insurance policies governed by Ch. 176K shall not apply to long-
38 term care insurance.

39 Section 3. This chapter may be known and cited as the “Long-Term Care Insurance Act.”

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

42 “Applicant”, in the case of an individual long-term care insurance policy, the person who seeks
43 to contract for benefits; or, in the case of a group long-term care insurance policy, the proposed
44 certificate holder.

45 “Certificate”, a certificate issued under a group long-term care insurance policy, which policy
46 has been delivered or issued for delivery within the commonwealth.

47 “Commissioner”, the commissioner of insurance.

48 “Group long-term care insurance”, a long-term care insurance policy that is delivered or issued
49 for delivery within the commonwealth and issued to:

50 (1) one or more employers or labor organizations, or to a trust or to the trustees of a fund
51 established by 1 or more employers or labor organizations, or a combination thereof, for
52 employees or former employees, or a combination thereof, or for members or former members,
53 or a combination thereof, of the labor organizations; or

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

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

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

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

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

70 (iii) the members have voting privileges and representation on the governing board and
71 committees.

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

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

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

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

79 and

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

81 “Long-term care insurance”, any insurance policy or rider: (1) advertised, marketed, offered or
82 designed to provide coverage for not less than 24 consecutive months for each covered person on
83 an expense incurred, indemnity, prepaid or other basis; (2) for one or more necessary or
84 medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal
85 care services including home and community care services; and (3) provided in a setting other
86 than an acute care unit of a hospital. The term includes group and individual annuities and life
87 insurance policies or riders that provide directly, or supplement, long-term care insurance. The
88 term also includes a policy or rider that provides for payment of benefits based upon cognitive
89 impairment or the loss of functional capacity. The term shall also include qualified long-term
90 care insurance contracts. Long-term care insurance shall not include any insurance policy that is
91 offered primarily to provide basic Medicare supplement coverage, basic hospital expense
92 coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage,
93 major medical expense coverage, disability income or related asset-protection coverage, accident
94 only coverage, specified disease or specified accident coverage, or limited benefit health
95 coverage. With regard to life insurance, this term shall not include life insurance policies that
96 accelerate the death benefit specifically for 1 or more of the qualifying events of terminal illness,
97 medical conditions requiring extraordinary medical intervention or permanent institutional
98 confinement, and that provide the option of a lump-sum payment for those benefits and where
99 neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-
100 term care. Notwithstanding any other provision of this chapter, any product advertised, marketed
101 or offered as long-term care insurance shall be subject to this chapter.

102 “Policy”, any policy, contract, subscriber agreement, rider or endorsement delivered or issued for
103 delivery within the commonwealth by an insurer authorized to issue policies upon the lives of
104 persons in the commonwealth or to provide accident and health insurance under chapter 175; a
105 fraternal benefit society authorized under chapter 176; a nonprofit hospital service corporation
106 authorized under chapter 176A, a nonprofit medical service corporation authorized under chapter
107 176B or a health maintenance organization authorized under chapter 176G.

108 (1) “Qualified long-term care insurance contract” or “federally tax-qualified long-term care
109 insurance contract” an individual or group insurance contract that meets the requirements of
110 Section 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows:

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

115 (b) The contract does not pay or reimburse expenses incurred for services or items to the extent
116 that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, or
117 would be so reimbursable but for the application of a deductible or coinsurance amount. The
118 requirements of this subparagraph do not apply to expenses that are reimbursable under Title
119 XVIII of the Social Security Act only as a secondary payor. A contract shall not fail to satisfy the
120 requirements 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 the payments
122 relate;

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

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

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

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

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

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

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

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

147 (2) contain a provision establishing a new waiting period in the event existing coverage is
148 converted to, or replaced by, a new or other form within the same company, except with respect
149 to an increase in benefits voluntarily selected by the insured individual or group policyholder; or
150 (3) provide coverage for skilled nursing care only or provide significantly more coverage for
151 skilled care in a facility than coverage for lower levels of care.

152 (b) (1) A long-term care insurance policy, or certificate other than a policy or certificate
153 thereunder, issued to a group as defined in clause (1) of the definition of "Group long-term care"
154 of section (4) shall not use a definition of "preexisting condition" that is more restrictive than the
155 following: Preexisting condition means a condition for which medical advice or treatment was
156 recommended by, or received from a provider of health care services, within 6 months preceding
157 the effective date of coverage of an insured person.

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

163 (3) Notwithstanding this subsection (c), an insurer may use an application form designed to elicit
164 the complete health history of an applicant, and, on the basis of the answers on that application,
165 underwrite in accordance with that insurer's established underwriting standards. Unless
166 otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is
167 disclosed on the application need not be covered until the waiting period described in subsection
168 (2) expires. No long-term care insurance policy or certificate may exclude or use waivers or
169 riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or

170 described preexisting diseases or physical conditions beyond the waiting period described in
171 subsection (2).

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

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

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

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

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

182 (e) Long-term care insurance applicants shall have the right to return the policy or certificate
183 within 30 days of its delivery and to have the premium refunded if, after examination of the
184 policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance
185 policies and certificates shall have a notice prominently printed on the first page or attached
186 thereto stating in substance that the applicant shall have the right to return the policy or
187 certificate within 30 days of its delivery and to have the premium refunded if, after examination
188 of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group
189 defined in clause (1) of the definition of "Group long-term care" of section (4), the applicant is
190 not satisfied for any reason. This subsection shall also apply to denials of applications and any
191 refund must be made within 30 days of the return or denial.

192 (f) (1) An outline of coverage shall be delivered to a prospective applicant for long-term care
193 insurance through means that prominently direct the attention of the recipient to the document
194 and its purpose. In the case of producer solicitations, an insurance producer shall deliver the
195 outline of coverage prior to the presentation of an application or enrollment form. In the case of
196 direct response solicitations, the outline of coverage shall be presented in conjunction with any
197 application or enrollment form. In the case of a policy issued to a group defined in clause (1) of
198 the definition of "Group long-term care" of section 4, an outline of coverage shall not be required
199 to be delivered, provided that the information described in clauses (i) to (vi), inclusive, of
200 paragraph (2) is contained in other materials relating to enrollment. Upon request, these other
201 materials shall be made available to the commissioner.

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

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

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

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

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

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

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

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

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

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

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

222 and

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

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

229 (i) At the time of policy delivery, a policy summary shall be delivered for an individual life
230 insurance policy that provides long-term care benefits within the policy or by rider. In the case of
231 direct response solicitations, the insurer shall deliver the policy summary upon the applicant's
232 request, but regardless of request shall make delivery no later than at the time of policy delivery.

233 In addition to complying with all applicable requirements, the summary shall also include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

275 (d). A long term care insurance policy or certificate may be field issued if the compensation to
276 the field issuer is not based on the number of policies or certificates issued. For purposes of this
277 subsection the term "field issued" means a policy or certificate issued by a producer or a third-

278 party administrator pursuant to the underwriting authority granted to the producer or third party
279 administrator by an insurer and using the insurer's underwriting guidelines.

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

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

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

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

299 Section 9. (a) An individual may not sell, solicit or negotiate long-term care insurance unless the
300 individual is licensed as an insurance producer for accident and health or sickness or life and has

301 completed a one-time training course, which shall be 8 or more hours in duration, and ongoing
302 training, which shall be 4 or more hours in duration, every 24 months thereafter. An individual
303 required to complete training under this section shall have until one year after the effective date
304 of this act to fulfill the requirement. The commissioner shall promulgate regulations to
305 implement this section, including regulations for training standards, educational content, and out-
306 of-state waivers.

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

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

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

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

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

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

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

326 (6) filing requirements, reporting practices and requirements, reserve standards, loss ratios and
327 penalties.

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

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

337 **SECTION 5.** The Commissioner shall make recommendations as to the best methods to
338 stabilize rates and prevent exceptional rate increases with input from the Life Insurance
339 Association of Massachusetts, the Massachusetts Association of Health Underwriters, the
340 National Academy of Elder Law Attorneys, Massachusetts Chapter and the AARP. The
341 Commissioner shall report her recommendations to the President of the Senate and the Speaker
342 of the House of Representatives within six months of the passage of this act.

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