

No. 2007-40

AN ACT

SB 548

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," providing for scope of article, for the definition of "long-term care insurance," for the Long-Term Care Partnership Program, for authority to promulgate regulations, for marketing and advertising prohibited and for penalties; and further providing for coverage and limitations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 1102 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, added December 15, 1992 (P.L.1129, No.148), is amended to read:

Section 1102. Scope of Article.—This article is not intended to supersede the obligations of entities subject to this article to comply with the substance of other applicable insurance laws insofar as they do not conflict with this article, except that laws and regulations designed and intended to apply to Medicare supplement insurance policies shall not be applied to long-term care insurance. A policy which is not advertised, marketed or offered as long-term care insurance [or nursing home insurance] need not meet the requirements of this article.

Section 2. The definition of "long-term care insurance" in section 1103 of the act, amended November 30, 2004 (P.L.1690, No.216), is amended to read:

Section 1103. Definitions.—As used in this article, the following words and phrases shall have the meanings given to them in this section:

* * *

"Long-term care insurance." Any insurance policy or rider advertised, marketed, offered or designed to provide *comprehensive* coverage for each covered person on an expense-incurred, indemnity, prepaid or other basis for functionally necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services provided in a setting other than an acute care unit of a hospital. The term includes a policy, rider or prepaid home health or personal care service policy which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term includes group and individual policies or riders issued by insurers, fraternal benefit societies, nonprofit health, hospital

and medical service corporations, health maintenance organizations or similar organizations. The term does not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident-only coverage, specified disease or specified accident coverage or limited benefit health coverage.

* * *

Section 3. The act is amended by adding a section to read:

Section 1110.1. Long-Term Care Partnership Program.—(a) There is hereby established the Long-Term Care Partnership Program, to be administered by the Department of Public Welfare in accordance with the requirements for qualified State long-term care insurance partnerships. The purpose of this program is to reduce future Medicaid costs for long-term care by delaying or eliminating dependence on Medicaid by providing incentives for individuals to ensure against the potentially substantial costs that arise upon the need for long-term care.

(b) In order to implement the program, the Department of Public Welfare shall file a State plan amendment with Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services pursuant to Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.) within 30 days of the effective date of this section. The program, including the treatment of assets for Medicaid eligibility and estate recovery, shall be structured and administered by the Department of Public Welfare in accordance with Federal law and applicable Federal guidelines for qualified State long-term care partnerships.

(c) The department shall require all insurers offering a qualified Long-Term Care Partnership Program policy to offer to exchange any policy or certificate issued between February 8, 2006, and the date the State plan amendment takes effect with a qualified Long-Term Care Partnership Program policy. The following shall apply:

(1) All offers of exchange shall be subject to the outline of coverage provisions set forth under section 1111 and all applicable regulations.

(2) Policies exchanged under this provision, if there is no change in coverage material to the risk, shall not be subject to any medical underwriting or approval process.

(3) Any portion of the policy that was issued prior to the exchange date shall be priced based on the policyholder's age when the policy was originally issued.

(4) Any portion of the policy that is added as a result of the exchange may be priced based on the policyholder's age at the time of the exchange.

(5) Any addition to a policy as a result of any exchange shall be subject to the right to return set forth under section 1110 and all applicable regulations.

Section 4. Sections 1112, 1113 and 1114 of the act, added December 15, 1992 (P.L.1129, No.148), are amended to read:

Section 1112. Authority to Promulgate Regulations.—The department shall promulgate reasonable regulations to establish minimum standards for marketing practices, **[agent] producer** compensation arrangements, **[agent] producer** testing, penalties and reporting practices for long-term care insurance.

Section 1113. Marketing and Advertising Prohibited.—No policy may be advertised, marketed or offered as long-term care **[or nursing home]** insurance unless it complies with the provisions of this article.

Section 1114. Penalties.—In addition to any other penalties provided by the laws of this Commonwealth, an insurer or **[agent] producer** found to have violated requirements relating to the regulations of long-term care insurance or the marketing of such insurance shall be subject to a civil penalty of up to three times the amount of any commissions paid for each policy involved in the violation or ten thousand dollars (\$10,000), whichever is greater.

Section 5. Section 1703 of the act, added December 18, 1992 (P.L.1519, No.178), is amended to read:

Section 1703. Coverage and Limitations.—(a) This article shall provide coverage to the following persons for the policies and contracts specified in subsection (b):

(1) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees or payees of the persons covered under paragraph (2).

(2) To persons who are owners of or certificate holders under these policies or contracts or, in the case of unallocated annuity contracts, to the persons who are the contract holders and who:

(i) are residents; or

(ii) are not residents, but only under all of the following conditions:

(A) the insurers which issued such policies or contracts are domiciled in this Commonwealth;

(B) such insurers never held a license or certificate of authority in the states in which such persons reside;

(C) these states have associations similar to the association created by this article; and

(D) these persons are not eligible for coverage by those associations.

(b) (1) This article shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, health, annuity and supplemental policies or contracts, for certificates under direct group policies and contracts and for unallocated annuity contracts issued by member insurers, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated

funding agreements, structured settlement agreements, lottery contracts and any immediate or deferred annuity contracts.

(2) This article shall not provide coverage for any of the following:

(i) Any portion of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract holder.

(ii) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(iii) Any portion of a policy or contract to the extent that the rate of interest on which it is based:

(A) averaged over the period of four (4) years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for the same four-year period or for such lesser period if the policy or contract was issued less than four (4) years before the association became obligated; and

(B) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available.

(iv) Any plan or program of an employer, association or similar entity to provide life, health or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association or similar entity under:

(A) a Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services only contract.

(v) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits or provides that any fees or allowances to be paid to any person, including the policyholder or contract holder, in connection with the service to or administration of such policy or contract.

(vi) Any policy or contract issued in this Commonwealth by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this Commonwealth.

(vii) Any unallocated annuity contract issued to an employee benefit plan protected under the Federal Pension Benefit Guaranty Corporation.

(viii) Any portion of any unallocated annuity contract which is not issued to or in connection with a specific employee, union or association of natural persons benefit plan or a government lottery.

(c) (1) The benefits for which the association may become liable shall in no event exceed the lesser of:

(i) the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(ii) (A) With respect to any one life, regardless of the number of policies or contracts, the following shall apply:

(I) Three hundred thousand (\$300,000) dollars in life insurance death benefits, but not more than one hundred thousand (\$100,000) dollars in net cash surrender and net cash withdrawal values for life insurance.

(II) **[One hundred thousand (\$100,000) dollars]** *Three hundred thousand (\$300,000) dollars* in health insurance benefits, including any net cash surrender and net cash withdrawal values.

(III) Three hundred thousand (\$300,000) dollars in annuity benefits, including one hundred thousand (\$100,000) dollars in net cash surrender and net cash withdrawal values.

(IV) *Three hundred thousand (\$300,000) dollars in long-term care insurance benefits, as defined under section 1103, including any cash surrender and net cash withdrawal values.*

(B) With respect to each individual participating in a governmental retirement plan established under section 401, 403(b) or 457 of the Internal Revenue Code of 1986 covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, three hundred thousand (\$300,000) dollars in annuity benefits, including one hundred thousand (\$100,000) dollars in net cash surrender and net cash withdrawal values.

(C) With respect to any one contract holder covered by any unallocated annuity contract not included in clause (B), five million (\$5,000,000) dollars in benefits, irrespective of the number of such contracts held by that contract holder.

(2) The association shall not, however, be liable to expend more than three hundred thousand (\$300,000) dollars in the aggregate with respect to any one individual under subparagraph (ii)(A) and (B) of paragraph (1).

Section 6. The amendment of section 1703(c)(1)(ii)(A)(II) and (IV) shall apply to an insolvency occurring on or after the effective date of this section.

Section 7. The amendment of section 1103 of the act shall apply to all policies issued on or after the effective date of this act.

Section 8. This act shall take effect as follows:

(1) Sections 5 and 6 of this act and this section shall take effect immediately.

(2) The remainder of this act shall take effect in 60 days.

APPROVED—The 17th day of July, A.D. 2007.

EDWARD G. RENDELL