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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

HOUSE BILL No. 2526

(By Mr. *Speaker Mr. Chambers and Del. R. Burk*)
[By Request of the Executive]

— ● —

Passed *April 4,* 1989

In Effect *Ninety Days From* Passage

ENROLLED
H. B. 2526

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)
[By Request of the Executive]

[Passed April 4, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article twenty-four of said chapter; to further amend said chapter by adding thereto a new article, designated article fifteen-a; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to the West Virginia long-term care insurance act; short title; declaration of policy and purpose; applicability; definitions; extraterritorial jurisdiction; group long-term care insurance; disclosure and performance standards for long-term care insurance; and severability.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article twenty-four of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article fifteen-a; and that section twenty-four, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 15A. WEST VIRGINIA LONG-TERM CARE INSURANCE ACT.

§33-15A-1. Short title.

1 This article may be known and cited as the West
2 Virginia Long-Term Care Insurance Act.

§33-15A-2. Declaration of policy and purpose.

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

§33-15A-3. Applicability.

1 The requirements of this act shall apply to policies
2 delivered or issued for delivery in this state on or after
3 the effective date of this act. This act is not intended to
4 supersede the obligations of entities subject to this act
5 to comply with the substance of other applicable
6 insurance laws insofar as they do not conflict with this
7 act, except that laws and regulations designed and
8 intended to apply to medicare supplement insurance
9 policies shall not be applied to long-term care insurance.

§33-15A-4. Definitions.

1 (a) "Long-term care insurance" means any insurance
2 policy or rider advertised, marketed, offered or designed
3 to provide benefits for not less than twenty-four
4 consecutive months for each covered person on an
5 expense incurred, indemnity, prepaid or other basis; for
6 one or more necessary or medically necessary diagnos-
7 tic, preventive, therapeutic, rehabilitative, maintenance
8 or personal care services, provided in a setting other
9 than an acute care unit of a hospital. Such term includes
10 group and individual policies or riders whether issued
11 by insurers; fraternal benefit societies; nonprofit health,
12 hospital, and medical service corporations; prepaid
13 health plans; health maintenance organizations or any
14 similar organization. Any insurance policy which is
15 offered primarily to provide basic medicare supplement

16 coverage, basic hospital expense coverage, basic medi-
17 cal-surgical expense coverage, hospital confinement
18 indemnity coverage, major medical expense coverage,
19 disability income protection coverage, accident only
20 coverage, specified disease or specified accident cover-
21 age, or limited benefit health coverage which also
22 contains long-term care insurance benefits for at least
23 six months shall comply with the provisions of this act.

24 (b) "Applicant" means:

25 (1) In the case of an individual long-term care
26 insurance policy, the person who seeks to contract for
27 benefits, and

28 (2) In the case of a group long-term care insurance
29 policy, the proposed certificate holder.

30 (c) "Certificate" means, for the purposes of this act,
31 any certificate issued under a group long-term care
32 insurance policy, which policy has been delivered or
33 issued for delivery in this state.

34 (d) "Commissioner" means the insurance commis-
35 sioner of this state.

36 (e) "Group long-term care insurance" means a long-
37 term care insurance policy which is delivered or issued
38 for delivery in this state and issued to:

39 (1) One or more employers or labor organizations, or
40 to a trust or to the trustees of a fund established by one
41 or more employers or labor organizations, or a combi-
42 nation thereof, for employees or former employees or a
43 combination thereof or for members or former members
44 or a combination thereof, of the labor organizations; or

45 (2) Any professional, trade or occupational association
46 for its members or former or retired members, or
47 combination thereof, if such association:

48 (a) Is composed of individuals all of whom are or were
49 actively engaged in the same profession, trade or
50 occupation; and

51 (b) Has been maintained in good faith for purposes
52 other than obtaining insurance; or

53 (3) An association or a trust or the trustee(s) of a fund
54 established, created or maintained for the benefit of
55 members of one or more associations. Prior to advertis-
56 ing, marketing or offering such policy within this state,
57 the association or associations, or the insurer of the
58 association or associations, shall file evidence with the
59 commissioner that the association or associations have at
60 the outset a minimum of 100 persons and have been
61 organized and maintained in good faith for the purposes
62 other than that of obtaining insurance; have been in
63 active existence for at least one year; and have a
64 constitution and by-laws which provide that:

65 (a) The association or associations hold regular
66 meetings not less than annually to further purposes of
67 the members;

68 (b) Except for credit unions, the association or
69 associations collect dues or solicit contributions from
70 members; and

71 (c) The members have voting privileges and repre-
72 sentation on the governing board and committees.

73 Thirty days after such filing the association or
74 associations will be deemed to satisfy such organiza-
75 tional requirements, unless the commissioner makes a
76 finding that the association or associations do not satisfy
77 those organizational requirements.

78 (4) A group other than as described in subsections
79 (e)(1), (e)(2) and (e)(3), subject to a finding by the
80 commissioner that:

81 (a) The issuance of the group policy is not contrary
82 to the best interest of the public;

83 (b) The issuance of the group policy would result in
84 economies of acquisition or administration;

85 (c) The benefits are reasonable in relation to the
86 premiums charged.

87 (f) "Policy" means, for the purposes of this act, any
88 policy, contract, subscriber agreement, rider or endorse-
89 ment delivered or issued for delivery in this state by an
90 insurer; fraternal benefit society; nonprofit health,

91 hospital, or medical service corporation; prepaid health
92 plan; health maintenance organization or any similar
93 organization.

§33-15A-5. Extraterritorial jurisdiction—group long-term care insurance.

1 (a) No group long-term care insurance coverage may
2 be offered to a resident of this state under a group policy
3 issued in another state to a group described in section
4 4(e)(4) unless this state or another state having statutory
5 and regulatory long-term care insurance requirements
6 substantially similar to those adopted in this state has
7 made a determination that such requirements have been
8 met.

9 (b) Any such group policy form and any group
10 certification form issued under the group, shall be filed
11 with the commissioner for informational purposes with
12 evidence of the determination required by subsection (a)
13 of this section.

§33-15A-6. Disclosure and performance standards for long-term care insurance.

1 (a) The commissioner may adopt rules and regula-
2 tions that include standards for full and fair disclosure
3 setting forth the manner, content and required disclo-
4 sures for the sale of long-term care insurance policies,
5 terms of renewability, initial and subsequent conditions
6 of eligibility, nonduplication of coverage provisions,
7 coverage of dependents, preexisting conditions, termina-
8 tion of insurance, continuation or conversion, probation-
9 ary periods, limitations, exceptions, reductions, elimina-
10 tion periods, requirements for replacement, recurrent
11 conditions and definitions of terms.

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

13 (1) Be canceled, nonrenewed or otherwise terminated
14 on the grounds of the age or the deterioration of the
15 mental or physical health of the insured individual or
16 certificate holder; or

17 (2) Contain a provision establishing a new waiting
18 period in the event existing coverage is converted to or

19 replaced by a new or other form within the same
20 company, except with respect to an increase in benefits
21 voluntarily selected by the insured individual or group
22 policyholder; or

23 (3) Provide coverage for skilled nursing care only or
24 provide significantly more coverage for skilled care in
25 a facility than coverage for lower levels of care.

26 (c) Preexisting condition:

27 (1) No long-term care insurance policy or certificate
28 other than a policy or certificate thereunder issued to
29 a group as defined in section 4(e)(1) shall use a definition
30 of "preexisting condition" which is more restrictive than
31 the following: Preexisting condition means a condition
32 for which medical advice or treatment was recom-
33 mended by, or received from a provider of health care
34 services, within six months preceding the effective date
35 of coverage of an insured person.

36 (2) No long-term care insurance policy or certificate
37 other than a policy or certificate thereunder issued to
38 a group as defined in section 4(e)(1) may exclude
39 coverage for a loss or confinement which is the result
40 of a preexisting condition unless such loss or confine-
41 ment begins within six months following the effective
42 date of coverage of an insured person.

43 (3) The commissioner may extend the limitation
44 periods set forth in sections 6(c)(1) and (2) above as to
45 specific age group categories in specific policy forms
46 upon findings that the extension is in the best interest
47 of the public.

48 (4) The definition of "preexisting condition" does not
49 prohibit an insurer from using an application form
50 designed to elicit a complete health history of an
51 applicant, and, on the basis of the answers on that
52 application, from underwriting in accordance with that
53 insurer's established underwriting standards. Unless
54 otherwise provided in the policy or certificate, a
55 preexisting condition, regardless of whether it is
56 disclosed on the application, need not be covered until
57 the waiting period described in section 6(c)(2) expires.

58 No long-term care insurance policy or certificate may
59 exclude or use waivers or riders of any kind to exclude,
60 limit or reduce coverage or benefits for specifically
61 named or described preexisting diseases or physical
62 conditions beyond the waiting period described in
63 section 6(c)(2).

64 (d) Prior hospitalization/institutionalization:

65 (1) Effective July 1, 1990, no long-term care insur-
66 ance policy may be delivered or issued for delivery in
67 this state if such policy:

68 (a) Conditions eligibility for any benefits on a prior
69 hospitalization requirement; or

70 (b) Conditions eligibility for benefits provided in an
71 institutional care setting on the receipt of a higher level
72 of institutional care.

73 (2) Effective July 1, 1990, a long-term care insurance
74 policy containing any limitations or conditions for
75 eligibility other than those prohibited above in para-
76 graph (1) shall clearly label in a separate paragraph of
77 the policy or certificate entitled "Limitations or Condi-
78 tions on Eligibility for Benefits" such limitations or
79 conditions, including any required number of days of
80 confinement.

81 (a) A long-term care insurance policy containing a
82 benefit advertised, marketed or offered as a home health
83 care or home care benefit may not condition receipt of
84 benefits on a prior institutionalization requirement.

85 (b) A long-term care insurance policy which condi-
86 tions eligibility of noninstitutional benefits on the prior
87 receipt of institutional care shall not require a prior
88 institutional stay of more than thirty (30) days for which
89 benefits are paid.

90 (3) No long-term care insurance policy which pro-
91 vides benefits only following institutionalization shall
92 condition such benefits upon admission to a facility for
93 the same or related conditions within a period of less
94 than thirty days after discharge from the institution.

95 (e) The commissioner may adopt regulations estab-

96 lishing loss ratio standards for long-term care insurance
97 policies provided that a specific reference to long-term
98 care insurance policies is contained in the regulation.

99 (f) Right to return-free look:

100 (1) Individual long-term care insurance policyholders
101 shall have the right to return the policy within ten days
102 of its delivery and to have the premium refunded if,
103 after examination of the policy, the policyholder is not
104 satisfied for any reason. Individual long-term care
105 insurance policies shall have a notice prominently
106 printed on the first page of the policy or attached thereto
107 stating in substance that the policyholder shall have the
108 right to return the policy within ten days of its delivery
109 and to have the premium refunded if, after examination
110 of the policy, the policyholder is not satisfied for any
111 reason.

112 (2) A person insured under a long-term care insu-
113 rance policy issued pursuant to a direct response
114 solicitation shall have the right to return the policy
115 within thirty days of its delivery and to have the
116 premium refunded if, after examination, the insured
117 person is not satisfied for any reason. Long-term care
118 insurance policies issued pursuant to a direct response
119 solicitation shall have a notice prominently printed on
120 the first page or attached thereto stating in substance
121 that the insured person shall have the right to return
122 the policy within thirty days of its delivery and to have
123 the premium refunded if after examination the insured
124 person is not satisfied for any reason.

125 (g) Outline of coverage:

126 (1) An outline of coverage shall be delivered to a
127 prospective applicant for long-term care insurance at
128 the time of initial solicitation through means which
129 prominently direct the attention of the recipient to the
130 document and its purpose.

131 (a) The commissioner shall prescribe a standard
132 format, including style, arrangement and overall
133 appearance, and the content of an outline of coverage.

134 (b) In the case of agent solicitations, an agent must

135 deliver the outline of coverage prior to the presentation
136 of an application or enrollment form.

137 (c) In the case of direct response solicitations, the
138 outline of coverage must be presented in conjunction
139 with any application or enrollment form.

140 (2) The outline of coverage shall include:

141 (a) A description of the principal benefits and
142 coverage provided in the policy;

143 (b) A statement of the principal exclusions, reduc-
144 tions, and limitations contained in the policy;

145 (c) A statement of the terms under which the policy
146 or certificate, or both, may be continued in force or
147 discontinued, including any reservation in the policy of
148 a right to change premium. Continuation or conversion
149 provisions of group coverage shall be specifically
150 described;

151 (d) A statement that the outline of coverage is a
152 summary only, not a contract of insurance, and that the
153 policy or group master policy contain governing
154 contractual provisions.

155 (e) A description of the terms under which the policy
156 or certificate may be returned and premium refunded;
157 and

158 (f) A brief description of the relationship of cost of
159 care and benefits.

160 (h) A certificate issued pursuant to a group long-term
161 care insurance policy which policy is delivered or issued
162 for delivery in this state shall include:

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

165 (2) A statement of the principal exclusions, reduc-
166 tions and limitations contained in the policy; and

167 (3) A statement that the group master policy deter-
168 mines governing contractual provisions.

169 (i) Any policy advertising, marketing or offering
170 long-term care or nursing home insurance benefits shall

171 comply with the provisions of this act.

§33-15A-7. Severability.

1 If any provision of this act or the application thereof
2 to any person or circumstance is for any reason held to
3 be invalid, the remainder of the act and application of
4 such provision to other persons or circumstances shall
5 not be affected thereby.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2. Other provisions of chapter applicable.

1 Every fraternal benefit society shall be governed and
2 be subject, to the same extent as other insurers
3 transacting like kinds of insurance, to the following
4 articles of this chapter:

5 Article one [33-1-1 et seq.] (definitions), article two
6 [33-2-1 et seq.] (insurance commissioner), article four
7 [33-4-1 et seq.] (general provisions), article ten [33-10-1
8 et seq.] (rehabilitation and liquidation), article eleven
9 [33-11-1 et seq.] (unfair trade practices) article thirteen
10 [33-13-1 et seq.] (life insurance) and article fifteen-a [33-
11 15A-1 et seq.] (long-term care insurance).

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

§33-24-4. Exemptions; applicability of other laws.

1 Every such corporation is hereby declared to be a
2 scientific, nonprofit institution and as such exempt from
3 the payment of all property and other taxes. Every such
4 corporation, to the same extent such provisions are
5 applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the
8 provisions, as hereinbelow indicated, of the following
9 articles of this chapter: Article two [33-2-1 et seq.]
10 (insurance commissioner) except that under section nine
11 [33-2-9] of article two examinations shall be conducted
12 at least once every four years, article four [33-4-1 et seq.]
13 (general provisions) except that section sixteen [33-4-16]

14 of article four shall not be applicable thereto, article ten
15 [33-10-1 et seq.] (rehabilitation and liquidation), article
16 eleven [33-11-1 et seq.] (unfair practices and frauds),
17 article twelve [33-12-1 et seq.] (agents, brokers and
18 solicitors) except that the agent's license fee shall be five
19 dollars, article fifteen-a [33-15A-1 et seq.] (long-term
20 care insurance), section three-c [33-16-3c], article sixteen
21 (group accident and sickness insurance), section three-
22 d [33-16-3d], article sixteen (medicare supplement) and
23 article twenty-eight [33-28-1 et seq.] (individual accident
24 and sickness insurance minimum standards); and no
25 other provision of this chapter shall apply to such
26 corporations unless specifically made applicable by the
27 provisions of this article. If, however, any such corpo-
28 ration shall be converted into a corporation organized
29 for a pecuniary profit, or if it shall transact business
30 without having obtained a license as required by section
31 five [33-24-5] of this article, it shall thereupon forfeit its
32 right to these exemptions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24. Statutory construction and relationship to other laws.

1 (1) Except as otherwise provided in this article,
2 provisions of the insurance law and provisions of
3 hospital or medical service corporation laws shall not be
4 applicable to any health maintenance organization
5 granted a certificate of authority under this article. This
6 provision shall not apply to an insurer or hospital or
7 medical service corporation licensed and regulated
8 pursuant to the insurance laws or the hospital or
9 medical service corporation laws of this state except
10 with respect to its health maintenance corporation
11 activities authorized and regulated pursuant to this
12 article.

13 (2) Factually accurate advertising or solicitation
14 regarding the range of services provided, the premiums
15 and copayments charged, the sites of services and hours
16 of operation, and any other quantifiable, nonprofessional
17 aspects of its operation by a health maintenance
18 organization granted a certificate of authority, or its

19 representative shall not be construed to violate any
20 provision of law relating to solicitation or advertising by
21 health professions: *Provided*, That nothing contained
22 herein shall be construed as authorizing any solicitation
23 or advertising which identifies or refers to any individ-
24 ual provider, or makes any qualitative judgment
25 concerning any provider.

26 (3) Any health maintenance organization authorized
27 under this article shall not be deemed to be practicing
28 medicine and shall be exempt from the provision of
29 chapter thirty of this code, relating to the practice of
30 medicine.

31 (4) Any long-term care insurance policy delivered or
32 issued for delivery in this state by a health maintenance
33 organization shall comply with the provisions of article
34 fifteen-a of this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

David C. Welch
Clerk of the Senate

Donald J. Gopp
Clerk of the House of Delegates

Lara T. Tucker
President of the Senate

Robert Chal
Speaker of the House of Delegates

The within *is approved* this the *25th*
day of *April*, 1989.

Gaston Caperton
Governor

PRESENTED TO

GOVERNOR

Date 4/11/89

Time 11:44