

ACT 48

S.B. NO. 1204

A Bill for an Act Relating to Long Term Care Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding to part V of article 10A a new section to be appropriately designated and to read as follows:

“§431:10A- Life insurance policies offering long-term care benefits.

(a) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary at the time of the applicant’s request, but regardless of request shall deliver the policy summary no later than at the time of policy delivery. The policy summary shall comply with the requirements of section 431:10A-527 and shall also include:

- (1) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;
- (2) An illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits if any, for each covered person;
- (3) Any exclusions, reductions, and limitations on benefits of long-term care; and
- (4) If applicable to the policy type, a disclosure of the effects of exercising other rights under the policy, a disclosure of guarantees related to long-term care costs of insurance charges, and current and projected maximum lifetime benefits.

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

- (1) A description of and the amount of any long-term care benefits paid out during the month;
- (2) An explanation of any changes in the policy due to long-term care benefits being paid out; and
- (3) The amount of long-term care benefits existing or remaining.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding to part V of article 10A a new section to be appropriately designated and to read as follows:

“§431:10A- Prior hospitalization; prior institutionalization. (a) No long-term care insurance policy may be delivered or issued for delivery in this State if the policy:

- (1) Conditions eligibility for any benefits on a prior hospitalization requirement;
- (2) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or
- (3) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

(b) A long-term care insurance policy containing post- confinement, post-acute care, or recuperative benefits shall contain a clear label, in a separate paragraph of the policy or certificate, entitled “limitations or conditions on eligibility for benefits,” setting forth the limitations or conditions as set forth in subsection (a), including any required number of days of confinement.

(c) A long term care insurance policy or rider that conditions eligibility of non-institutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty days.”

SECTION 3. Section 431:10A-521, Hawaii Revised Statutes, is amended by deleting the definition of “commissioner”.

[““Commissioner” means the insurance commissioner of this State.”]

SECTION 4. Section 431:10A-521, Hawaii Revised Statutes, is amended by amending the definition of “group long-term care insurance” to read:

““Group long-term care insurance” means a long-term care insurance policy:

- (1) Delivered] delivered or issued for delivery in this State and issued to:
 - [(A)] (1) One or more employers or labor organizations, or a trust or the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations; or
 - [(B)] (2) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:
 - [(i)] (A) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and
 - [(ii)] (B) Has been maintained in good faith for purposes other than obtaining insurance; or
- (3) An association or a trust or the trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering the policy within this State, the association or the insurer of the association shall file evidence with the commissioner that the association has at the outset a minimum of one hundred persons; has been organized and maintained in good faith for purposes other than that of obtaining insurance; has been in active existence for at least one year; and has a constitution and bylaws which provide that:
 - (A) The association holds regular meetings at least annually to further purposes of the members;
 - (B) Except for credit unions, the association collects dues or solicits contributions from members; and
 - (C) The members have voting privileges and representation on the governing board and committees.

Thirty days after the filing the association will be deemed to satisfy the organizational requirements unless the commissioner makes a finding that the association does not satisfy those organizational requirements.
- [(C)] (4) A group other than as described in [subparagraphs (A) and (B),] paragraphs (1), (2), and (3), subject to a finding by the commissioner that:
 - [(i)] (A) The issuance of the group policy is not contrary to the best interest of the public;
 - [(ii)] (B) The issuance of the group policy would result in economies of acquisition or administration; and
 - [(iii)] (C) The benefits are reasonable in relation to the premiums charged.
- (2) Affording coverage to a resident of this State under a group policy issued in another state to a group described in paragraph (1)(C), if this State or another state having statutory and regulatory

requirements substantially similar to those adopted in this State has made a determination that the requirements have been met.]”

SECTION 5. Section 431:10A-521, Hawaii Revised Statutes, is amended by amending the definition of “long-term care insurance” to read:

““Long-term care insurance” means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis, for one or more 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 group and individual [policies or riders whether] annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance. The term also includes a policy or rider that provides for payment of benefits based upon cognitive impairment or loss of functional capacity. Long-term care insurance may be issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, or any similar organization. Long-term care insurance shall 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] or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.”

SECTION 6. Section 431:10A-522, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-522 Prohibition. (a) No insurance policy may be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this part. [A policy which is expressly or implicitly advertised, marketed, or offered as long-term care insurance shall meet the requirements of this part. A policy which is not expressly or implicitly advertised, marketed, or offered as long-term care insurance need not meet the requirements of this part.]

(b) No group long-term care insurance may be offered to a resident of this State under a group policy issued in another state to a group described in paragraph (4) of the definition of “group long-term care insurance” unless this State, or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this State, has made a determination that the requirements have been met.”

SECTION 7. Section 431:10A-524, Hawaii Revised Statutes, is amended to read as follows:

“[[§431:10A-524] Preexisting condition.] Policy standards. (a) No long-term care insurance policy may:

- (1) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; [or]
- (2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in

benefits voluntarily selected by the insured individual or group policyholder[.]; or

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

(b) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group meeting the requirements of paragraph (1) of the definition of "group long-term care insurance" shall use a definition of pre-existing condition which is more restrictive than the following: "preexisting condition" means [the existence of symptoms which were treated by a provider of health care services within the periods specified below:

- (1) Six months preceding the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage; or
- (2) Twenty-four months preceding the effective date of coverage of an insured person who is under sixty-five years of age on the effective date of coverage.] a condition for which medical advice or treatment was recommended by or received from a provider of health care services within six months preceding the effective date of coverage of an insured person.

(c) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group meeting the requirements of paragraph (1) of the definition of "group long-term care insurance" may exclude coverage for a loss or confinement which is the result of a preexisting condition unless the loss or confinement begins within [the periods specified below:

- (1) Six months following the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage; or
- (2) Twenty-four months following the effective date of coverage of an insured person who is under sixty-five years of age on the effective date of coverage.] six months following the effective date of coverage of an insured person.

(d) The commissioner may extend the limitation periods in subsections (b) and (c) as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(e) The definition of "preexisting condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application or not, need not be covered until the waiting period described in subsection (c) expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (c)."

SECTION 8. Section 431:10A-527, Hawaii Revised Statutes, is amended to read as follows:

"[§431:10A-527] Outline of coverage required. [An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct

response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request, but regardless of request shall make the delivery not later than at the time of policy delivery.] (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose. In the case of agent solicitations, an agent shall deliver the outline of coverage before the presentation of an application or enrollment form. In the case of direct response solicitation, the outline of coverage shall be presented with any application or enrollment form.

(b) The outline of coverage shall include:

- (1) A description of the principal benefits and coverage provided in the policy;
- (2) A statement of the principal exclusions, reductions, and limitations contained in the policy;
- (3) A statement of the [renewal provisions,] terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums[; and]. Continuation or conversion provisions of group coverage shall be specifically described;
- (4) A statement that the outline of coverage is a summary [of the policy issued or applied for,] only, not a contract of insurance, and that the policy [should be consulted to determine] or group master policy contains governing contractual provisions[.];
- (5) A description of the terms under which the policy or certificate may be returned and premium refunded; and
- (6) A brief description of the relationship of costs of care and benefits.

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

SECTION 9. Section 431:10A-528, Hawaii Revised Statutes, is amended to read as follows:

"[§431:10A-528] Right to return; free look provision. [(a) Individual long-term care insurance policies] Long-term care applicants shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy[,] or certificate, the [policyholder] applicant is not satisfied for any reason. [Individual long-term] Long-term care insurance policies and certificates shall have a notice prominently printed on the first page [of the policy] or attached thereto stating in substance that the [policyholder] applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy[,] or certificate, other than a certificate issued pursuant to a policy issued to a group defined in paragraph (1) of the definition of "group long-term care insurance", the [policyholder] applicant is not satisfied for any reason.

[(b) A person insured under a long-term care insurance policy issued pursuant to a direct response shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured person shall have the right to return the policy within thirty days of its delivery

and to have the premium refunded if after examination the insured person is not satisfied for any reason.]”

SECTION 10. Section 431:10A-531, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:10A-531]]~~ **Rules.** The commissioner shall adopt necessary rules under chapter 91 to implement this part[.] and to establish minimum standards for marketing practices, compensation arrangements, and reporting practices for long-term care insurance.”

SECTION 11. Section 431:10A-525, Hawaii Revised Statutes, is repealed.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 13. This Act shall take effect on December 1, 1991.

(Approved April 26, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.