

SENATE BILL NO. 296

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY SENATOR MCGUIRE

Introduced: 2/24/10

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to long-term care insurance, including provisions relating to**
2 **incontestability, nonforfeiture, and producer training and authorizing the long-term**
3 **care insurance premium assistance program."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 21.53.020 is amended to read:

6 **Sec. 21.53.020. Disclosure and performance standards.** An insurer, hospital
7 or medical service corporation, or a fraternal benefit society that delivers or issues for
8 delivery a long-term care insurance policy may not

9 (1) cancel, fail to renew, or otherwise terminate the policy on the
10 grounds of age or deterioration of the mental or physical health of the insured [OR
11 CERTIFICATE HOLDER];

12 (2) include a provision requiring a new waiting period in the event
13 existing coverage is converted to or replaced by a new or another form of health
14 insurance within the same company, unless there is an increase in benefits voluntarily

1 selected by the insured or group policy holder; or

2 (3) provide coverage only for skilled nursing care, or provide
3 significantly more coverage for skilled care in a facility than is provided for coverage
4 for lower levels of care [; EVALUATION OF THE COVERAGE PROVIDED
5 UNDER THIS PARAGRAPH MUST BE BASED ON THE NUMBER OF DAYS OF
6 COVERAGE PROVIDED FOR LOWER LEVELS OF CARE, WHEN COMPARED
7 TO THE NUMBER OF DAYS OF COVERAGE PROVIDED FOR SKILLED
8 CARE].

9 * **Sec. 2.** AS 21.53.030(a) is amended to read:

10 (a) An insurer, hospital or medical service corporation, or a fraternal benefit
11 society may not include, in a long-term care insurance policy or certificate, a
12 definition of "preexisting condition" that is more restrictive than the following:
13 preexisting condition means [THE EXISTENCE OF SYMPTOMS THAT WOULD
14 CAUSE AN ORDINARILY PRUDENT PERSON TO SEEK DIAGNOSIS, CARE,
15 OR TREATMENT, OR] a condition for which medical advice or treatment was
16 recommended by, or received from a provider of health care services, within six
17 months preceding the effective date of coverage of an insured person.

18 * **Sec. 3.** AS 21.53.030(b) is amended to read:

19 (b) In a long-term care insurance policy, [OR CERTIFICATE] an insurer,
20 hospital or medical service corporation, or a fraternal benefit society may not exclude
21 coverage for a loss or confinement that is the result of a preexisting condition, unless
22 the loss or confinement begins within six months following the effective date of
23 coverage of an insured person.

24 * **Sec. 4.** AS 21.53.030(d) is amended to read:

25 (d) This section does not prohibit an insurer, hospital or medical service
26 corporation, or a fraternal benefit society from using an application form designed to
27 elicit the complete health history of an applicant, and, on the basis of the answers on
28 the application, from applying that insurer's, hospital or medical service corporation's,
29 or fraternal benefit society's established underwriting standards. Unless otherwise
30 provided in the policy [OR CERTIFICATE], a preexisting condition, regardless of
31 whether it is disclosed on the application, need not be covered until the waiting period

1 described in (b) of this section expires. A long-term care insurance policy [OR
 2 CERTIFICATE] may not exclude, limit, or reduce, or use waivers or riders of any
 3 kind to exclude, limit, or reduce coverage or benefits for specifically named or
 4 described preexisting diseases or physical conditions after the waiting period
 5 described in (b) of this section, unless the waiver or rider has been specifically
 6 approved by the director.

7 * **Sec. 5.** AS 21.53.040 is amended to read:

8 **Sec. 21.53.040. Prior hospital or institutional care conditions prohibited.**

9 (a) A long-term care insurance policy may not be delivered or issued for delivery in
 10 this state if the policy conditions eligibility

11 (1) on a prior hospitalization requirement;

12 (2) on the receipt of a higher level of institutional care, when care is
 13 provided in an institutional setting;

14 (3) for noninstitutional benefits on a prior institutional stay of more
 15 than 30 days for which benefits are paid; [OR]

16 (4) on admission to an institutional care facility for the same or a
 17 related condition within a period of less than 30 days after discharge from the
 18 institution, if the policy provides benefits only following institutionalization; **or**

19 **(5) for any benefits other than waiver of premium,**
 20 **postconfinement, postacute, or recuperative benefits on a prior**
 21 **institutionalization.**

22 (b) A long-term care insurance policy **containing postconfinement,**
 23 **postacute, or recuperative benefits shall clearly label the limitations or**
 24 **conditions, including any required number of days of confinement,** [MAY
 25 CONTAIN A LIMITATION OR CONDITION ON ELIGIBILITY FOR BENEFITS,
 26 NOT PROHIBITED IN (a) OF THIS SECTION, IF THE LIMITATION OR
 27 CONDITION IS CLEARLY SET OUT] in a separate paragraph of the policy [OR
 28 CERTIFICATE].

29 * **Sec. 6.** AS 21.53.050(a) is amended to read:

30 (a) A long-term care insurance applicant may return a policy within 30 days
 31 after delivery and have the premium refunded if, after examination of the policy, the

1 applicant is not satisfied with the policy **for any reason. The applicant may also**
 2 **have the premium refunded if the application is denied.** A long-term care
 3 insurance policy must have a notice prominently printed on the first page of the policy
 4 or separately attached stating that the applicant has the right to return the policy within
 5 30 days of its delivery and to have the premium refunded if, after examination of the
 6 policy, the applicant is not satisfied with the policy **for any reason and to a refund of**
 7 **a premium paid with the application if the application is denied. The insurer**
 8 **shall pay a refund under this section within 30 days after the applicant returns**
 9 **the policy or the application is denied.**

10 * **Sec. 7.** AS 21.53.050(b) is amended to read:

11 (b) An insurer, hospital or medical service corporation, or [A] fraternal benefit
 12 society shall deliver an outline of coverage to a prospective applicant for long-term
 13 care insurance at the time of initial solicitation by a means that prominently directs the
 14 attention of the recipient to the document and its purpose. In the case of agent
 15 solicitations, an agent shall deliver the outline of coverage before the presentation of
 16 an application or enrollment form. In the case of direct response solicitations, the
 17 outline of coverage must be presented in conjunction with an application or enrollment
 18 form. The outline of coverage must include

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

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

23 (3) a statement of the terms under which the policy [OR
 24 CERTIFICATE, OR BOTH,] may be continued in force or discontinued, including a
 25 reservation in the policy of a right to change the premium; continuation or conversion
 26 provisions of group coverage must be specifically described;

27 (4) a statement that the outline of coverage is a summary only, not a
 28 contract of insurance, and that the policy or group master policy contains governing
 29 contractual provisions;

30 (5) a description of the terms under which the policy [OR
 31 CERTIFICATE] may be returned and premium refunded; [AND]

1 (6) a brief description of the relationship between the cost of care and
2 benefits; **and**

3 **(7) a statement that discloses to the policy holder whether the**
4 **policy is intended to be a federally tax-qualified long-term care insurance**
5 **contract under 26 U.S.C. 7702B(b) (Internal Revenue Code), as amended.**

6 * **Sec. 8.** AS 21.53.050 is amended by adding new subsections to read:

7 (d) If a group long-term care insurance policy is issued to a group described in
8 the definition of "group long-term care insurance" in AS 21.53.200(3)(A), an insurer,
9 hospital or medical service corporation, or fraternal benefit society is not required to
10 provide an outline of coverage if the information required on the outline of coverage
11 under (b) of this section is contained in other enrollment materials. An insurer,
12 hospital or medical service corporation, or fraternal benefit society shall provide the
13 enrollment materials to the director on request.

14 (e) If an application for a long-term care insurance policy is approved, the
15 insurer shall deliver the policy to the applicant not later than 30 days after the date of
16 approval.

17 * **Sec. 9.** AS 21.53.060(a) is amended to read:

18 (a) In addition to the requirements of AS 21.45, at the time of policy delivery,
19 a policy summary shall be included with an individual life insurance policy if the
20 policy or policy rider provides long-term care benefits. In the case of direct response
21 solicitations, the insurer shall deliver the policy summary upon the applicant's request,
22 but regardless of request shall deliver a policy summary not later than the time of
23 policy delivery. The summary must include

24 (1) an explanation of how the long-term care benefits interact with
25 other components of the policy, including deductions from death benefits;

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

28 (3) an explanation of each exclusion, reduction, and limitation on long-
29 term care benefits; and

30 (4) if applicable to the policy type,

31 (A) disclosure of the effects of exercising other rights under the

1 policy;

2 (B) disclosure of guarantees related to the long-term care costs
3 of insurance charges; and

4 (C) current and projected maximum lifetime benefits; **and**

5 **(5) if applicable, a statement that a long-term care inflation**
6 **protection option is not available under the policy.**

7 * **Sec. 10.** AS 21.53.060 is amended by adding a new subsection to read:

8 (c) If an insurer denies a claim under a long-term care policy, the insurer shall,
9 within 60 days after the date of a written request by a policy holder or a representative
10 of a policy holder,

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

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

13 * **Sec. 11.** AS 21.53 is amended by adding new sections to read:

14 **Sec. 21.53.062. Incontestability period.** (a) If a long-term care policy has
15 been in force for less than six months, an insurer may rescind the policy or deny an
16 otherwise valid long-term care claim under the policy on a showing of
17 misrepresentation that is material to the acceptance for coverage.

18 (b) If a long-term care policy has been in force for at least six months but less
19 than two years, an insurer may rescind the policy or deny an otherwise valid long-term
20 care claim under the policy on a showing of misrepresentation that is both material to
21 the acceptance for coverage and pertains to the condition for which benefits are
22 sought.

23 (c) If a long term-care policy has been in force for two years or longer, the
24 policy is not contestable upon the grounds of misrepresentation alone and may be
25 contested only on a showing that the insured knowingly and intentionally
26 misrepresented relevant facts relating to the insured's health.

27 (d) If an insurer has paid benefits under a long-term care policy, the insurer
28 may not recover the benefit payments in the event the policy is rescinded.

29 (e) This section applies to a life insurance policy that accelerates benefits for
30 long-term care, except that, if the insured dies, this section does not apply to the
31 remaining death benefit of a life insurance policy that accelerates benefits for long-

1 term care, and the remaining death benefit under the policy is subject to AS 21.45.040.

2 **Sec. 21.53.064. Nonforfeiture benefits.** (a) Except as provided in (b) of this
3 section, a long-term care policy may not be delivered or issued for delivery in this
4 state unless the policy holder has been offered the option of purchasing a policy that
5 includes a nonforfeiture benefit. The insurer may offer a nonforfeiture benefit in the
6 form of a rider to the policy. If a policy holder declines the nonforfeiture benefit, the
7 insurer shall, on lapse, provide a contingent benefit that is available for a specified
8 period of time following a substantial increase in premium rates.

9 (b) When issuing group long-term care insurance, an insurer shall make the
10 offer required in (a) of this section to the group policy holder. For a policy issued as
11 group long-term care insurance, other than a continuing care retirement community or
12 other similar entity, the insurer shall make the offer required in (a) of this section to
13 each proposed certificate holder.

14 **Sec. 21.53.066. Producer training requirements.** (a) A person may not sell,
15 solicit, or negotiate long-term care insurance unless the person is licensed as an
16 insurance producer for health or life insurance lines of authority and has completed a
17 one-time training course that meets the requirements in (d) of this section.

18 (b) A person who sells, solicits, or negotiates long term-care insurance shall
19 complete ongoing training that meets the requirements in (d) of this section.

20 (c) The one-time training course required under this (a) of this section must

21 (1) be at least eight credit hours;

22 (2) not include training that is insurer or company product-specific or
23 that includes any sales or marketing information, materials, or training, other than that
24 required by state or federal law;

25 (3) consist of topics related to long-term care insurance, long-term care
26 services, and, if applicable, qualified long term-care insurance partnership programs,
27 including

28 (A) state and federal requirements and the relationship between
29 qualified state long-term care insurance partnership programs and other public
30 and private coverage of long-term care services;

31 (B) available long-term services and providers;

1 (C) changes or improvements in long-term care services or
2 providers;

3 (D) alternatives to the purchase of private long-term care
4 insurance;

5 (E) the effect of inflation on benefits and the importance of
6 inflation protections; and

7 (F) consumer suitability standards and guidelines.

8 (d) The ongoing training course required in (b) of this section must provide at
9 least four credit hours of training every 24 months and must comply with the
10 requirements in (c)(2) and (3) of this section.

11 (e) The director may approve the training requirements in (c) and (d) of this
12 section as continuing education courses under AS 21.27.020(f).

13 (f) An insurer shall obtain, and make available to the director on request,
14 verification that a producer has received the training required by this section before a
15 producer is permitted to sell, solicit, or negotiate the insurer's long-term care insurance
16 products and maintain records subject to the state's record retention requirements.

17 (g) An insurer shall maintain records regarding the training of its producers in
18 the distribution of the insurer's partnership policies so that the director may provide
19 assurance to the office responsible for management of the Medicaid program in the
20 Department of Health and Social Services that producers have (1) received the training
21 described in (c)(3) of this section; and (2) demonstrated an understanding of the
22 partnership policies and their relationship to public and private long-term care
23 coverage in this state. An insurer shall maintain the records required by this subsection
24 in accordance with the records retention requirements in AS 21.09.320 and shall make
25 the records available to the director on request.

26 **Sec. 21.53.068. Limitations related to producers and third-party**
27 **administrators.** An insurer that authorizes issuance of a long-term care policy by a
28 producer or a third-party administrator under the underwriting authority of the insurer
29 granted to the producer or third-party administrator using the insurer's underwriting
30 guidelines may issue a long-term care policy through the producer or third-party
31 administrator only if the insurer compensates the issuer based on the number of

1 policies issued.

2 * **Sec. 12.** AS 21.53.090 is amended to read:

3 **Sec. 21.53.090. Required regulations.** The director shall adopt regulations
4 regarding

5 (1) the sale of long-term care insurance that provide minimum
6 standards for

7 (A) terms of renewability;

8 (B) initial and subsequent conditions of eligibility;

9 (C) nonduplication of coverage provisions;

10 (D) coverage of dependents;

11 (E) benefit triggers;

12 (F) preexisting conditions and recurrent conditions;

13 (G) termination of insurance, including incontestability

14 periods;

15 (H) continuation or conversion;

16 (I) probationary periods, limitations, exceptions, reductions,
17 and elimination periods; [AND]

18 (J) requirements for replacement;

19 (K) producer training, education, compensation, and

20 testing;

21 (L) marketing practices;

22 (M) independent review of benefit determinations;

23 (N) penalties and reporting practices; and

24 (O) premium rates, including rate filing requirements;

25 (2) standard definitions of long-term care insurance terms;

26 (3) nonforfeiture or minimum value requirements; [AND]

27 (4) consumer protection standards, including standards for full and fair
28 disclosure setting out the manner and content of required disclosures; and

29 (5) standard format and content of the outline of coverage
30 required under AS 21.53.050(b).

31 * **Sec. 13.** AS 21.53.200(3) is amended to read:

1 (3) "group long-term care insurance" means a long-term care insurance
 2 policy, subscriber's contract, or fraternal benefit society certificate that is delivered or
 3 issued for delivery in this state and issued to

4 (A) one or more employers or labor organizations, or to a trust
 5 or to the trustees of a fund established by one or more employers or labor
 6 organizations, or a combination of them, for employees or former employees
 7 or a combination of them, or for members or former members or a combination
 8 of them, of the labor organization;

9 (B) a professional, trade, or occupational association for its
 10 members or former or retired members, or combination of them, if the
 11 association is composed of individuals all of whom are or were actively
 12 engaged in the same profession, trade, or occupation, and has been maintained
 13 in good faith for purposes other than obtaining insurance;

14 (C) an association or a trust or the trustee of a fund established,
 15 created, or maintained for the benefit of members of one or more associations
 16 **that meets the requirements for an association under AS 21.53.080;**

17 (D) a group other than described in this paragraph if the
 18 director determines that the issuance of the group policy is not contrary to the
 19 best interest of the public, would result in economies of acquisition or
 20 administration, and the benefits are reasonable in relation to the premiums
 21 charged;

22 * **Sec. 14.** AS 21.53.200(4) is amended to read:

23 (4) "long-term care insurance" means an individual or group insurance
 24 policy, including group and individual life insurance or annuities, a subscriber's
 25 contract, fraternal benefit society certificate, or rider advertised, marketed, offered, or
 26 designed to provide coverage for not less than 12 consecutive months for each covered
 27 person on an expense incurred, indemnity, prepaid, or other basis, for one or more
 28 necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative,
 29 maintenance, or personal care services that are provided in a setting other than an
 30 acute care unit of a hospital, and includes a policy or rider that provides for payment
 31 of benefits based on cognitive impairment or loss of functional capacity; "long-term

1 care insurance" does not include an insurance policy, subscriber's contract, or fraternal
 2 benefit society certificate that is offered primarily to provide basic Medicare
 3 supplement coverage, basic hospital expense coverage, basic medical-surgical expense
 4 coverage, hospital confinement indemnity coverage, major medical expense coverage,
 5 disability insurance and related asset protection coverage, catastrophic coverage,
 6 comprehensive coverage, accident only coverage, specified disease or specified
 7 accident coverage, [OR] limited benefit health coverage, or life insurance coverage
 8 that accelerates the death benefit for a qualifying event of terminal illness or a
 9 medical condition requiring extraordinary medical intervention or permanent
 10 institutional confinement and that provides the option of a lump-sum payment of
 11 those benefits if neither the benefits nor the eligibility for the benefits is
 12 conditioned on the receipt of long-term care;

13 * **Sec. 15.** AS 21.89 is amended by adding a new section to read:

14 **Sec. 21.89.076. Insurance tax credit for contributions to long-term care**
 15 **premiums.** A taxpayer is allowed a credit against the tax due under AS 21.09.210 for
 16 cash payments made to the Department of Health and Social Services for long-term
 17 care insurance premiums paid under AS 47.25.640.

18 * **Sec. 16.** AS 43.23.062(a) is amended to read:

19 (a) Notwithstanding AS 43.23.069, the Department of Revenue shall prepare
 20 the electronic Alaska permanent fund dividend application to allow an applicant who
 21 files electronically to direct that money be subtracted from the dividend payment and
 22 contributed to one or more of the educational organizations, community foundations,
 23 or charitable organizations, or a long-term care insurance program under
 24 AS 47.25.640 that appear on the contribution list contained in the application. A
 25 contribution [TO AN ORGANIZATION] may be \$25, \$50, \$75, \$100, or more, in
 26 increments of \$50, up to the total amount of the permanent fund dividend that the
 27 applicant is entitled to receive, except as provided in AS 47.25.640(d). If the total
 28 amount of contributions elected by an applicant exceeds the amount of the permanent
 29 fund dividend that the applicant is entitled to receive, contributions shall be deducted
 30 from the dividend in the order of priority elected by the applicant on the application
 31 until the entire amount of the dividend that the applicant is entitled to receive is

1 allocated for contribution. The electronic dividend application form must include
2 notice that

3 (1) contribution changes may not be made after the applicant files the
4 electronic permanent fund dividend application; and

5 (2) no money contributed will be used for administrative costs incurred
6 in implementing this section, and money from the dividend fund will not be used for
7 that purpose.

8 * **Sec. 17.** AS 43.23.062(b) is amended to read:

9 (b) The department shall list each campus of the University of Alaska and
10 shall list each other educational organization, community foundation, or charitable
11 organization eligible under (c) and (d) of this section on the contribution list by
12 geographic region in random order, and the order shall be changed each year. **The**
13 **department shall also list and briefly describe the contribution available for**
14 **individuals to contribute to the cost of premiums for long-term care insurance**
15 **under AS 47.24.640.** On the contribution list, organizations shall also be grouped by
16 type within each geographic region. The department shall provide a statement of the
17 contributions made by an individual that is suitable for federal income tax purposes to
18 each individual who elects to contribute under (a) of this section.

19 * **Sec. 18.** AS 47.25 is amended by adding a new section to read:

20 **Article 4A. Long-term Care Insurance Premium Assistance Program.**

21 **Sec. 47.25.640. Long-term care insurance premium assistance program.**

22 (a) The department shall implement and administer the long-term care insurance
23 premium assistance program to provide assistance to an individual who obtains long-
24 term care insurance from an insurer in the private market.

25 (b) The department may

26 (1) adopt regulations under AS 44.62 (Administrative Procedure Act)
27 to carry out the provisions of this section. If an individual disagrees with an action of
28 the department under this section and requests an administrative hearing, the hearing
29 shall be conducted by the office of administrative hearings (AS 44.64.010);

30 (2) contract for the administration of the long-term care insurance
31 premium assistance program;

1 (3) receive, hold, and disburse money for premiums in trust for the
2 applicant or insurer.

3 (c) The long-term care assistance program allows an individual to choose to
4 participate by electing to use a portion of the person's permanent fund dividend
5 payment to pay the premium on a long-term care insurance policy.

6 (d) If an individual elects to participate in the long-term care insurance
7 assistance program, under AS 43.23.062, the Department of Revenue shall transfer the
8 identified sum to the department to hold on behalf of the individual to pay a long-term
9 care insurance premium for the individual if the individual qualifies for the insurance.
10 The maximum amount that an individual may elect to use to pay the long-term care
11 insurance premium is \$500 a year.

12 (e) The insurer selected by the individual shall pay the department the amount
13 selected by the individual to pay premiums on a long-term care policy under (c) of this
14 section.

15 (f) The department shall pay to the long-term care insurer an amount equal to
16 the amount chosen by the applicant as a contribution from the applicant's permanent
17 fund dividend payment, subject to appropriation.

18 (g) The department shall identify long-term care insurance policies available
19 for selection by an individual based on the amount of permanent fund dividend
20 payment that the individual elects to contribute.

21 (h) An individual electing to participate in the program is considered an
22 applicant for long-term care insurance subject to qualification and acceptance by the
23 insurer.

24 (i) If an individual is qualified by the insurer to purchase the long-term care
25 insurance offered by the insurer, the department shall pay the premium on behalf of
26 the applicant.

27 (j) An insurer who contributes to the premium cost under the program shall
28 receive a premium tax credit under AS 21.89.076.

29 (k) The program is available to anyone receiving a permanent fund dividend
30 payment and is not based on financial need.

31 * **Sec. 19.** AS 21.53.200(5) is repealed.

1 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 TRANSITIONAL PROVISIONS: A person licensed and selling, soliciting, or
4 negotiating long-term care insurance on the effective date of this Act may continue to sell,
5 solicit, or negotiate long-term care insurance after one year from the effective date of this Act
6 only if the person has successfully completed a one-time training course, as required by
7 AS 21.53.066, added by sec. 11 of this Act.