

SENATE BILL NO. 329

INTRODUCED BY Water

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF LONG-TERM HEALTH CARE INSURANCE; PROHIBITING THE ISSUANCE OF A REFUND TO A PERSON WHO IS NOT THE OWNER OF THE POLICY; INCREASING FROM 10 TO 30 DAYS THE PERIOD DURING WHICH A DISSATISFIED CONSUMER MAY RETURN A LONG-TERM CARE INSURANCE POLICY AND RECEIVE A REFUND OF THE PREMIUM; REQUIRING THAT POLICIES WITH NONFORFEITURE BENEFITS BE OFFERED; REQUIRING APPROPRIATE SALE CRITERIA TO ACCOMPANY EACH APPLICATION FOR A LONG-TERM CARE POLICY; ALLOWING THE INSURANCE COMMISSIONER TO ADOPT RULES PERTAINING TO NONFORFEITURE BENEFITS AND APPROPRIATE SALE CRITERIA; AND AMENDING SECTIONS 33-22-1107, 33-22-1114, 33-22-1119, AND 33-22-1121, MCA."

## STATEMENT OF INTENT

A statement of intent is required for this bill because it expands the rulemaking authority of the insurance commissioner to include the promulgation of rules concerning nonforfeiture benefits and appropriate sale criteria in relation to long-term care insurance policies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 33-22-1107, MCA, is amended to read:

**"33-22-1107. Definitions.** As used in this part, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for the insurance; and

(b) in the case of a group long-term care insurance policy, the proposed certificate holder.

(2) "Appropriate sale criteria" means the set of conditions that an insurance company is required to address with an applicant that help to determine whether or not a particular insurance policy or contract offered for sale is appropriate to the applicant. These conditions must include but are not limited to any

1 insurance premium involved in the policy, the income of the applicant, and the savings and investments  
 2 of the applicant.

3 ~~(2)~~ (3) "Certificate" means a document issued to a member of the group covered under a group  
 4 insurance policy that has been delivered or issued for delivery in this state as evidence that the individual  
 5 named in the certificate is covered under the policy.

6 ~~(3)~~ (4) "Group long-term care insurance" means a long-term care insurance policy that is delivered  
 7 or issued for delivery in this state and issued to:

8 (a) (i) an employer;

9 (ii) a labor organization;

10 (iii) a trust established by an employer or labor organization; or

11 (iv) a trustee of a fund established by an employer or labor organization or a combination ~~thereof~~  
 12 of employers and labor organizations for:

13 (A) employees or former employees or a combination ~~thereof~~ of employees and former employees;

14 or

15 (B) members or former members of the labor organization or a combination ~~thereof~~ of members and  
 16 former members;

17 (b) a professional, trade, or occupational association for its current, former, or retired members or  
 18 a combination thereof of current, former, and retired members, if the association:

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

21 (ii) has been maintained in good faith for purposes other than obtaining insurance; or

22 (c) an association, a trust, or the trustee of a fund established, created, or maintained for the  
 23 benefit of members of one or more associations.

24 (i) Prior to advertising, marketing, or offering the policy within this state, the association or the  
 25 insurer of the association shall file evidence with the commissioner that the association has:

26 (A) a minimum of 100 persons at the outset;

27 (B) been organized and maintained in good faith for purposes other than obtaining insurance;

28 (C) been in active existence for at least 1 year; and

29 (D) a constitution and bylaws requiring that the association hold regular meetings at least annually  
 30 to further purposes of the membership; except for credit unions, the association ~~collect~~ collects dues or

1 ~~solicit~~ solicits contributions from members; and the members have voting privileges and representation on  
2 the governing board and committees.

3 (ii) Thirty days after filing, the association is considered as having satisfied the organizational  
4 requirements unless the commissioner finds after hearing that the association does not satisfy the  
5 organizational requirements.

6 (d) a group other than as described in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(c) if the  
7 commissioner determines that the:

8 (i) issuance of the group policy is not contrary to the best interests of the public;

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

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

11 ~~(4)~~ (5) (a) "Long-term care insurance":

12 (i) means a policy as defined in subsection ~~(5)~~ (6) that is advertised, marketed, offered, or designed  
13 to provide coverage for not less than 12 consecutive months for a covered person, on an expense-incurred,  
14 indemnity, prepaid, or other basis, for a necessary or medically necessary diagnostic, preventive,  
15 therapeutic, rehabilitative, maintenance, or personal care service provided in a setting other than an acute  
16 care unit of a hospital;

17 (ii) includes group and individual insurance policies or riders, whether issued by an insurer, fraternal  
18 benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar  
19 organization;

20 (iii) includes group and individual annuities and life insurance policies or riders that provide directly  
21 or that supplement long-term care insurance; and

22 (iv) includes any product advertised, marketed, or offered as long-term care insurance regardless  
23 of any exceptions to the definition included in this section.

24 (b) Long-term care insurance does not include an insurance policy that is offered primarily to  
25 provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical  
26 expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability  
27 income protection coverage, accident only coverage, specified disease or specified accident coverage, or  
28 limited benefit health coverage.

29 (c) Long-term care insurance does not include life insurance policies that accelerate the death  
30 benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring

1 extraordinary medical intervention, or permanent institutional confinement and that provide the option of  
 2 a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits  
 3 is conditioned upon the receipt of long-term care.

4 (d) An insurance policy that is offered primarily to provide basic medicare supplement coverage,  
 5 basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity  
 6 coverage, major medical expense coverage, disability income protection coverage, accident only coverage,  
 7 specified disease or specified accident coverage, or limited benefit health coverage and that also contains  
 8 long-term care insurance benefits of a duration of at least 6 months is not required to meet the  
 9 requirements of this part unless the premium allocable to the long-term care insurance benefits contained  
 10 in the policy is greater than 25% of the total policy premium.

11 ~~(6)~~ (6) "Policy" means a policy as defined in 33-15-102, a membership contract as defined in  
 12 33-30-101, a health care services agreement as defined in 33-31-102 delivered or issued for delivery in this  
 13 state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health  
 14 maintenance organization, or similar organization.

15 ~~(7)~~ (7) "Preexisting condition" means a condition for which medical advice or treatment was  
 16 recommended by or received from a provider of health care services within 6 months preceding the  
 17 effective date of coverage of an insured person."

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 19 **Section 2.** Section 33-22-1114, MCA, is amended to read:

20 **"33-22-1114. Prohibited practices and policy provisions. (1) An insurance company may not issue**  
 21 **a refund to a person other than the owner of the policy or certificate.**

22 (2) A long-term care insurance policy may not:

23 ~~(a)~~ (a) be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the  
 24 deterioration of the mental or physical health of an insured or a certificate holder;

25 ~~(b)~~ (b) contain a provision establishing a new waiting period if existing coverage is converted to  
 26 or replaced by a new or other form within the same company, except with respect to an increase in benefits  
 27 voluntarily selected by the insured individual or group policyholder; or

28 ~~(c)~~ (c) provide coverage for only skilled nursing care or provide substantially more coverage for  
 29 skilled nursing care in a facility than coverage for lower levels of care."

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1           **Section 3.** Section 33-22-1119, MCA, is amended to read:

2           "**33-22-1119. Right to return policy -- free look.** (1) A person insured under an individual long-term  
3 care insurance policy has the right to return the policy within ~~40~~ 30 days of its delivery and to have the  
4 premium refunded if, after examining the policy, the insured is not satisfied for any reason. An individual  
5 long-term care insurance policy must have a notice prominently printed on the first page of the policy or  
6 attached to it stating that the insured has the right to return the policy within ~~40~~ 30 days of its delivery and  
7 to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason.

8           (2) A person insured under a long-term care insurance policy issued pursuant to a direct response  
9 solicitation has the right to return the policy or certificate within 30 days of its delivery and to have the  
10 premium refunded if, after examining the policy, the insured is not satisfied for any reason. A long-term care  
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16           NEW SECTION. **Section 4. Nonforfeiture benefits -- availability.** An insurance company offering  
17 a long-term care insurance policy or certificate shall offer to each prospective purchaser the choice between  
18 a policy that includes nonforfeiture benefits to the defaulting or surrendering policyholder or certificate  
19 holder and one that does not include nonforfeiture benefits.

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21           NEW SECTION. **Section 5. Appropriate sale criteria.** (1) Appropriate sale criteria must be  
22 established and communicated to the consumer prior to the insurance company's acceptance of a person's  
23 application for long-term care insurance.

24           (2) This section may not preclude the purchase of a long-term care insurance policy by a consumer.

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26           **Section 6.** Section 33-22-1121, MCA, is amended to read:

27           "**33-22-1121. Rules —~~loss ratio standards.~~** (~~1~~) The commissioner may adopt rules necessary to  
28 implement this part-, including but not limited to rules that:

29           (~~2~~) ~~The commissioner may by rule~~ (1) establish loss ratio standards for long-term care insurance  
30 policies; and

1           (2) specify the requirements for offering the sale of a policy with nonforfeiture benefits and the  
2 types of appropriate sale criteria to be communicated at the time of application."

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4           **NEW SECTION. Section 7. Codification instruction.** [Sections 4 and 5] are intended to be codified  
5 as an integral part of Title 33, chapter 22, part 11, and the provisions of Title 33, chapter 22, part 11,  
6 apply to [sections 4 and 5].

7

-END-

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(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for the insurance; and

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(2) "Appropriate sale criteria" means the set of conditions that an insurance company is required to address with an applicant that help to determine whether or not a particular insurance policy or contract offered for sale is appropriate to the applicant. These conditions must include but are not limited to any

1 insurance premium involved in the policy, the income of the applicant, and the savings and investments  
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11 (iv) a trustee of a fund established by an employer or labor organization or a combination ~~thereof~~  
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15 (B) members or former members of the labor organization or a combination ~~thereof~~ of members and  
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17 (b) a professional, trade, or occupational association for its current, former, or retired members or  
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24 (i) Prior to advertising, marketing, or offering the policy within this state, the association or the  
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17 effective date of coverage of an insured person."

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19 **Section 2.** Section 33-22-1114, MCA, is amended to read:

20 **"33-22-1114. Prohibited practices and policy provisions. (1) An insurance company may not issue**  
21 **a refund to a person other than the owner of the policy or certificate.**

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23 ~~(1)~~ (a) be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the  
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1           **Section 3.** Section 33-22-1119, MCA, is amended to read:

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16           **NEW SECTION.** **Section 4. Nonforfeiture benefits -- availability.** An insurance company offering  
17 a long-term care insurance policy or certificate shall offer to each prospective purchaser the choice between  
18 a policy that includes nonforfeiture benefits to the defaulting or surrendering policyholder or certificate  
19 holder and one that does not include nonforfeiture benefits.

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21           **NEW SECTION.** **Section 5. Appropriate sale criteria.** (1) Appropriate sale criteria must be  
22 established and communicated to the consumer prior to the insurance company's acceptance of a person's  
23 application for long-term care insurance.

24           (2) This section may not preclude the purchase of a long-term care insurance policy by a consumer.

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26           **Section 6.** Section 33-22-1121, MCA, is amended to read:

27           "**33-22-1121. Rules ~~—loss ratio standards.~~** ~~(1)~~ The commissioner may adopt rules necessary to  
28 implement this part, including but not limited to rules that:

29           ~~(2) The commissioner may by rule (1) establish loss ratio standards for long-term care insurance~~  
30 ~~policies; and~~

1           (2) specify the requirements for offering the sale of a policy with nonforfeiture benefits and the  
2 types of appropriate sale criteria to be communicated at the time of application."

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4           NEW SECTION. Section 7. Codification instruction. [Sections 4 and 5] are intended to be codified  
5 as an integral part of Title 33, chapter 22, part 11, and the provisions of Title 33, chapter 22, part 11,  
6 apply to [sections 4 and 5].

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-END-

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INTRODUCED BY

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THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

1 SENATE BILL NO. 329  
2 INTRODUCED BY WATERMAN  
3 BY REQUEST OF THE STATE AUDITOR  
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19 organization;

20 (iii) includes group and individual annuities and life insurance policies or riders that provide directly  
21 or that supplement long-term care insurance; and

22 (iv) includes any product advertised, marketed, or offered as long-term care insurance regardless  
23 of any exceptions to the definition included in this section.

24 (b) Long-term care insurance does not include an insurance policy that is offered primarily to  
25 provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical  
26 expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability  
27 income protection coverage, accident only coverage, specified disease or specified accident coverage, or  
28 limited benefit health coverage.

29 (c) Long-term care insurance does not include life insurance policies that accelerate the death  
30 benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring



1 extraordinary medical intervention, or permanent institutional confinement and that provide the option of  
 2 a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits  
 3 is conditioned upon the receipt of long-term care.

4 (d) An insurance policy that is offered primarily to provide basic medicare supplement coverage,  
 5 basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity  
 6 coverage, major medical expense coverage, disability income protection coverage, accident only coverage,  
 7 specified disease or specified accident coverage, or limited benefit health coverage and that also contains  
 8 long-term care insurance benefits of a duration of at least 6 months is not required to meet the  
 9 requirements of this part unless the premium allocable to the long-term care insurance benefits contained  
 10 in the policy is greater than 25% of the total policy premium.

11 ~~(6)~~ (6) "Policy" means a policy as defined in 33-15-102, a membership contract as defined in  
 12 33-30-101, a health care services agreement as defined in 33-31-102 delivered or issued for delivery in this  
 13 state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health  
 14 maintenance organization, or similar organization.

15 ~~(7)~~ (7) "Preexisting condition" means a condition for which medical advice or treatment was  
 16 recommended by or received from a provider of health care services within 6 months preceding the  
 17 effective date of coverage of an insured person."

18  
 19 **Section 2.** Section 33-22-1114, MCA, is amended to read:

20 **"33-22-1114. Prohibited practices and policy provisions. (1) An insurance company may not issue**  
 21 **a refund to a person other than the owner of the policy or certificate.**

22 (2) A long-term care insurance policy may not:

23 ~~(a)~~ (a) be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the  
 24 deterioration of the mental or physical health of an insured or a certificate holder;

25 ~~(b)~~ (b) contain a provision establishing a new waiting period if existing coverage is converted to  
 26 or replaced by a new or other form within the same company, except with respect to an increase in benefits  
 27 voluntarily selected by the insured individual or group policyholder; or

28 ~~(c)~~ (c) provide coverage for only skilled nursing care or provide substantially more coverage for  
 29 skilled nursing care in a facility than coverage for lower levels of care."

30

1           **Section 3.** Section 33-22-1119, MCA, is amended to read:

2           "**33-22-1119. Right to return policy -- free look.** (1) A person insured under an individual long-term  
3 care insurance policy has the right to return the policy within ~~40~~ 30 days of its delivery and to have the  
4 premium refunded if, after examining the policy, the insured is not satisfied for any reason. An individual  
5 long-term care insurance policy must have a notice prominently printed on the first page of the policy or  
6 attached to it stating that the insured has the right to return the policy within ~~40~~ 30 days of its delivery and  
7 to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason.

8           (2) A person insured under a long-term care insurance policy issued pursuant to a direct response  
9 solicitation has the right to return the policy or certificate within 30 days of its delivery and to have the  
10 premium refunded if, after examining the policy, the insured is not satisfied for any reason. A long-term care  
11 insurance policy or certificate issued pursuant to a direct response solicitation must have a notice  
12 prominently printed on the first page or attached to it stating that the insured has the right to return the  
13 policy within 30 days of its delivery and to have the premium refunded if, after examining the policy, the  
14 insured is not satisfied for any reason."

15

16           NEW SECTION. **Section 4. Nonforfeiture benefits -- availability.** An insurance company offering  
17 a long-term care insurance policy or certificate shall offer to each prospective purchaser the choice between  
18 a policy that includes nonforfeiture benefits to the defaulting or surrendering policyholder or certificate  
19 holder and one that does not include nonforfeiture benefits.

20

21           NEW SECTION. **Section 5. Appropriate sale criteria.** (1) Appropriate sale criteria must be  
22 established and communicated to the consumer prior to the insurance company's acceptance of a person's  
23 application for long-term care insurance.

24           (2) This section may not preclude the purchase of a long-term care insurance policy by a consumer.

25

26           **Section 6.** Section 33-22-1121, MCA, is amended to read:

27           "**33-22-1121. Rules — ~~loss ratio standards.~~** ~~(1)~~ The commissioner may adopt rules necessary to  
28 implement this part, including but not limited to rules that:

29           ~~(2) The commissioner may by rule (1) establish loss ratio standards for long-term care insurance~~  
30 ~~policies; and~~

1           (2) specify the requirements for offering the sale of a policy with nonforfeiture benefits and the  
2 types of appropriate sale criteria to be communicated at the time of application."

3

4           **NEW SECTION. Section 7. Codification instruction.** [Sections 4 and 5] are intended to be codified  
5 as an integral part of Title 33, chapter 22, part 11, and the provisions of Title 33, chapter 22, part 11,  
6 apply to [sections 4 and 5].

7

-END-