

SENATE BILL NO. 111

INTRODUCED BY WATERMAN

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO LONG-TERM CARE INSURANCE; PROVIDING FOR MONTHLY REPORTS TO POLICYHOLDERS; PROVIDING DEFINITIONS; REGULATING POLICY TERMS CONCERNING PREEXISTING CONDITIONS OR PROBATIONARY PERIODS; REQUIRING AN OUTLINE OF COVERAGE IN A SPECIFIED FORMAT AND REQUIRING APPROVAL OF THE OUTLINE BY THE COMMISSIONER OF INSURANCE; REQUIRING CERTAIN DISCLOSURES; PROVIDING FOR EXCEPTIONS TO CANCELLATION OF POLICIES; REGULATING CONDITIONS OF PRIOR HOSPITALIZATION OR INSTITUTIONALIZATION; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES; REGULATING POLICY WAITING PERIODS; REQUIRING DELIVERY OF A POLICY; REGULATING DENIAL OF CLAIMS; PROVIDING FOR BENEFIT TRIGGERS; AMENDING SECTIONS 33-20-128, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1113, 33-22-1114, 33-22-1115, AND 33-22-1121, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 33-20-128, MCA, is amended to read:

"33-20-128. Life insurance policy paying long-term benefits -- ~~quarterly~~ monthly report. 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 ~~quarterly~~ monthly report must be provided to the policyholder. The report must include the following information for the month for which the report is issued:

- (1) the amount of long-term care benefits paid out during ~~each~~ the month ~~of the quarter;~~
- (2) an explanation of any changes in the policy, including without limitation death benefits or cash values, resulting from long-term care benefits having been paid out; and
- (3) the amount of long-term care benefits existing or remaining."

Section 2. Section 33-22-1107, MCA, is amended to read:

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

1 (1) "Activities of daily living" means:

2 (a) eating;

3 (b) toileting;

4 (c) transferring;

5 (d) bathing;

6 (e) dressing; and

7 (f) continence.

8 ~~(1)~~(2) "Applicant" means:

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

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

12 ~~(2)~~(3) "Appropriate sale criteria" means the set of conditions that an insurance company is required
13 to address with an applicant that help to determine whether or not a particular insurance policy or contract
14 offered for sale is appropriate to the applicant. These conditions must include but are not limited to any
15 insurance premium involved in the policy, the income of the applicant, and the savings and investments
16 of the applicant.

17 ~~(3)~~(4) "Certificate" means a document issued to a member of the group covered under a group
18 insurance policy that has been delivered or issued for delivery in this state as evidence that the individual
19 named in the certificate is covered under the policy.

20 (5) "Chronically ill individual" means an individual who has been certified by a licensed health care
21 practitioner as:

22 (a) being unable to perform, without substantial assistance from another individual, at least two
23 activities of daily living for a past, present, or future period of at least 90 days due to a loss of functional
24 capacity; or

25 (b) requiring substantial supervision to protect the individual from threats to the individual's health
26 and safety due to a severe cognitive impairment.

27 ~~(4)~~(6) "Group long-term care insurance" means a long-term care insurance policy that is delivered
28 or issued for delivery in this state and issued to:

29 (a) (i) an employer;

30 (ii) a labor organization;

- 1 (iii) a trust established by an employer or labor organization; or
- 2 (iv) a trustee of a fund established by an employer or labor organization or a combination of
- 3 employers and labor organizations for:
- 4 (A) employees or former employees or a combination of employees and former employees; or
- 5 (B) members or former members of the labor organization or a combination of members and former
- 6 members;
- 7 (b) a professional, trade, or occupational association for its current, former, or retired members or
- 8 a combination of current, former, and retired members, if the association:
- 9 (i) is composed of individuals all of whom are or were actively engaged in the same profession,
- 10 trade, or occupation; and
- 11 (ii) has been maintained in good faith for purposes other than obtaining insurance; or
- 12 (c) an association, a trust, or the trustee of a fund established, created, or maintained for the
- 13 benefit of members of one or more associations.
- 14 (i) Prior to advertising, marketing, or offering the policy within this state, the association or the
- 15 insurer of the association shall file evidence with the commissioner that the association has:
- 16 (A) a minimum of 100 persons at the outset;
- 17 (B) been organized and maintained in good faith for purposes other than obtaining insurance;
- 18 (C) been in active existence for at least 1 year; and
- 19 (D) a constitution and bylaws requiring that the association hold regular meetings at least annually
- 20 to further purposes of the membership; except for credit unions, the association collects dues or solicits
- 21 contributions from members; and the members have voting privileges and representation on the governing
- 22 board and committees.
- 23 (ii) Thirty days after filing, the association is considered as having satisfied the organizational
- 24 requirements unless the commissioner finds after hearing that the association does not satisfy the
- 25 organizational requirements.
- 26 (d) a group other than as described in subsections ~~(4)(a)~~ (6)(a) through ~~(4)(e)~~ (6)(c) if the
- 27 commissioner determines that the:
- 28 (i) issuance of the group policy is not contrary to the best interests of the public;
- 29 (ii) issuance of the group policy would result in economies of acquisition or administration; and
- 30 (iii) benefits are reasonable in relation to the premiums charged.

1 (7) "Licensed health care practitioner" means any of the following individuals when licensed in this
 2 state:

3 (a) a physician, as defined in 42 U.S.C. 1395x(r)(1);

4 (b) a registered professional nurse;

5 (c) a licensed social worker; or

6 (d) another individual as determined by the rules of the commissioner adopted for purposes of
 7 compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

8 ~~(5)~~(8) (a) "Long-term care insurance":

9 (i) means a policy as defined in subsection ~~(6)~~ (10) that is advertised, marketed, offered, or
 10 designed to provide coverage for not less than 12 consecutive months for a covered person, on an
 11 expense-incurred, indemnity, prepaid, or other basis, for a necessary or medically necessary diagnostic,
 12 preventive, therapeutic, rehabilitative, or maintenance, or personal care service provided in a setting other
 13 than an acute care unit of a hospital that:

14 (A) is required by a chronically ill individual; and

15 (B) is provided pursuant to a plan of care prescribed by a licensed health care practitioner;

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

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

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

23 (v) means individual or group policies or certificates that do not pay or reimburse expenses incurred
 24 for service or items to the extent that the expenses are reimbursable under 42 U.S.C. 1395 or would be
 25 reimbursable except for the application of a deductible or coinsurance amount;

26 (vi) means individual or group policies or certificates that do not provide for a cash surrender value
 27 or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed; and

28 (vii) means individual or group policies or certificates for which all refunds of premiums and all
 29 policyholder dividends or similar amounts under those policies or certificates are to be applied as a reduction
 30 in future premiums or to increase future benefits.

1 (b) Long-term care insurance does not include:

2 (i) an insurance policy that is offered primarily to provide basic medicare supplement coverage,
3 basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity
4 coverage, major medical expense coverage, disability income protection coverage, accident-only coverage,
5 specified disease or specified accident coverage, or limited benefit health coverage; or

6 ~~(i)(ii)~~ Long-term care insurance does not include life insurance policies that accelerate the death
7 benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring
8 extraordinary medical intervention, or permanent institutional confinement and that provide the option of
9 a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits
10 is conditioned upon the receipt of long-term care.

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

18 (9) "Maintenance or personal care services" means care, including protection from threats to health
19 and safety due to a severe cognitive impairment, the primary purpose of which is to provide needed
20 assistance to an individual with a disability that renders the individual a chronically ill individual.

21 ~~(6)(10)~~ "Policy" means a policy as defined in 33-15-102, a membership contract as defined in
22 33-30-101, a health care services agreement as defined in 33-31-102 delivered or issued for delivery in this
23 state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health
24 maintenance organization, or similar organization.

25 ~~(7)(11)~~ "Preexisting condition" means a condition for which medical advice or treatment was
26 recommended by or received from a provider of health care services within 6 months preceding the
27 effective date of coverage of an insured person.

28 (12) "Transferring" means moving into or out of a bed, chair, or wheelchair."

29
30 **Section 3.** Section 33-22-1108, MCA, is amended to read:

1 **"33-22-1108. Preexisting condition -- definition.** (1) A long-term care insurance policy or certificate
 2 other than a policy or certificate issued to a group as ~~defined~~ specified in ~~33-22-1107(3)(a)~~
 3 33-22-1107(6)(a)(ii), (6)(a)(iii), or (6)(a)(iv) may not use a definition of preexisting condition ~~which~~ that is
 4 more restrictive than the definition in 33-22-1107.

5 (2) A long-term care insurance policy or certificate may not exclude coverage for a loss or
 6 confinement that is the result of a preexisting condition unless the loss or confinement begins within 6
 7 months following the effective date of coverage of an insured person.

8 (3) If a long-term care insurance policy or certificate replaces with similar benefits another
 9 long-term care insurance policy or certificate, the insurer issuing the replacing policy or certificate shall
 10 waive any time periods applicable to preexisting conditions or probationary periods in the replacing
 11 long-term care policy or certificate to the extent that similar time periods have been satisfied under the
 12 original policy.

13 ~~(3)~~(4) The commissioner may extend the limitation periods in subsections (1) and (2) as to specific
 14 age group categories in specific policy forms if extending the limitation periods is in the best interests of
 15 the public.

16 ~~(4)~~(5) An insurer may use an application form designed to elicit the complete health history of an
 17 applicant and on the basis of the answers on that application perform underwriting in accordance with the
 18 insurer's established underwriting standards. Unless otherwise provided in the long-term care insurance
 19 policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need
 20 not be covered until the waiting period described in subsection (2) expires. A long-term care insurance
 21 policy or certificate may not exclude or use a waiver or rider of any kind to exclude, limit, or reduce
 22 coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond
 23 the waiting period described in subsection (2)."

24
 25 **Section 4.** Section 33-22-1111, MCA, is amended to read:

26 **"33-22-1111. Outline of coverage.** (1)(a) An insurer shall deliver an outline of coverage as
 27 approved by the commissioner to a prospective applicant for long-term care insurance at the time of initial
 28 solicitation through means that prominently direct the attention of the recipient to the document and its
 29 purpose.

30 ~~(a)~~(b) The commissioner shall prescribe a standard format, including style, arrangement, and overall

1 appearance, and the content of the outline of coverage.

2 ~~(b)~~(c) In the case of insurance producer solicitations, an insurance producer shall deliver the outline
3 of coverage prior to the presentation of an application or enrollment form.

4 ~~(c)~~(d) In the case of direct response solicitations, the insurer shall deliver the outline of coverage
5 upon the earlier of the applicant's request or the delivery of the policy.

6 (2) The outline of coverage must include:

7 (a) a description of the principal benefits and coverage provided in the policy;

8 (b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

9 (c) a statement of the terms under which the policy or certificate, or both, may be continued in
10 force or discontinued, including any reservation in the policy of a right to change premiums. Continuation
11 or conversion provisions of a group policy must be specifically described.

12 (d) a statement that the outline of coverage is only a summary ~~only~~ of the policy issued or applied
13 for, not a contract of insurance, and that the policy or group master policy contains governing contractual
14 provisions;

15 (e) a description of the terms under which the policy or certificate may be returned and the
16 premium refunded; and

17 (f) a brief description of the relationship of cost of care and benefits.

18 (3) The outline of coverage:

19 (a) must prominently display the name of the insurer;

20 (b) must be a freestanding document not dependant for purposes of reader comprehension upon
21 any other document;

22 (c) must use no smaller than 12-point type; and

23 (d) may not contain material of an advertising nature."

24

25 **Section 5.** Section 33-22-1113, MCA, is amended to read:

26 **"33-22-1113. Disclosure and performance standards for long-term care insurance.** (1) The
27 commissioner may by rule adopt standards for full and fair disclosure, setting forth the manner, content,
28 and disclosures required to be made in a long-term care insurance policy, including but not limited to:

29 (a) terms of renewability;

30 (b) initial and subsequent conditions of eligibility;

- 1 (c) nonduplication of coverage provisions;
- 2 (d) coverage of dependents;
- 3 (e) preexisting conditions;
- 4 (f) termination of insurance;
- 5 (g) continuation or conversion;
- 6 (h) probationary periods;
- 7 (i) limitations;
- 8 (j) exceptions;
- 9 (k) reductions;
- 10 (l) elimination periods;
- 11 (m) requirements for replacement;
- 12 (n) recurrent conditions; ~~and~~
- 13 (o) definition of terms;
- 14 (p) prohibitions on limitations and exclusions;
- 15 (q) extension of benefits;
- 16 (r) discontinuance and replacement of policies;
- 17 (s) unintentional lapse;
- 18 (t) prohibitions against postclaim underwriting;
- 19 (u) minimum standards for home health and community care benefits;
- 20 (v) inflation protection; and
- 21 (w) incontestability period.

22 (2) A group long-term care insurance policy must include a provision relating to conversion on
 23 termination of eligibility as described in 33-22-508 or include a provision for continuation of coverage that
 24 maintains coverage under the existing group policy if the coverage would otherwise terminate."
 25

26 **Section 6.** Section 33-22-1114, MCA, is amended to read:

27 **"33-22-1114. Prohibited practices and policy provisions.** (1) An insurance company may not issue
 28 a refund to a person other than the owner of the policy or certificate.

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

- 30 (a) be canceled, nonrenewed, or otherwise terminated on ~~the any~~ grounds ~~of the age or the~~

1 ~~deterioration of the mental or physical health of an insured or a certificate holder~~ other than the insured's
 2 or certificate holder's failure to pay the premium;

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

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

8
 9 **Section 7.** Section 33-22-1115, MCA, is amended to read:

10 **"33-22-1115. Prior hospitalization or institutionalization.** (1) A long-term care insurance policy may
 11 not be delivered or issued for delivery in Montana if the policy conditions eligibility for a benefit:

12 (a) on a prior hospitalization requirement; ~~or~~

13 (b) provided in an institutional care setting on the receipt of a higher level of institutional care; or

14 (c) other than waiver of premium, postconfinement benefits, postacute care benefits, or
 15 recuperative benefits, on a prior institutionalization requirement.

16 (2) A long-term care insurance policy containing a limitation or condition for eligibility other than
 17 those prohibited in subsection (1) must clearly label, in a separate paragraph of the policy or certificate
 18 entitled "Limitations or Conditions on Eligibility for Benefits", the limitations or conditions, including the
 19 required number of days of confinement.

20 (3) A long-term care insurance policy that contains a benefit advertised, marketed, or offered as
 21 a home health care benefit may not condition receipt of a benefit on a prior institutionalization requirement.

22 (4) A long-term care insurance policy that conditions eligibility of noninstitutional benefits on the
 23 prior receipt of institutional care may not require a prior institutional stay of more than 30 days for which
 24 benefits are paid.

25 (5) A long-term care insurance policy that provides a benefit only following institutionalization may
 26 not condition the benefit upon admission to a facility for the same or a related condition within a period of
 27 less than 30 days after discharge from the institution."

28
 29 **Section 8.** Section 33-22-1121, MCA, is amended to read:

30 **"33-22-1121. Rules.** The commissioner may adopt rules necessary to implement this part,

1 including but not limited to rules that:

2 (1) establish loss ratio standards for long-term care insurance policies; ~~and~~

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

5 (3) establish a requirement for the mandatory triggering of policy benefits based upon the number
6 of activities of daily living an individual is capable or incapable of performing; and

7 (4) are necessary to implement a determination made by the secretary of health and human services
8 pursuant to Public Law 104-191 as to who is a licensed health care practitioner."

9
10 **NEW SECTION. Section 9. Policy waiting periods not cumulative.** A waiting or elimination period
11 contained in a long-term care insurance policy under which an insured is required to wait a specified period
12 of time before receiving policy benefits must be concurrent with any 90-day period used to determine
13 whether an individual is a chronically ill individual.

14
15 **NEW SECTION. Section 10. Delivery of policy or certificate.** If an application for a long-term care
16 insurance policy or a certificate meeting the requirements of Public Law 104-191 is approved, the issuer
17 of the policy or certificate shall deliver the policy or certificate to the applicant, policyholder, or certificate
18 holder not later than 30 days after the date of issue.

19
20 **NEW SECTION. Section 11. Denial of claims.** If a claim under a long-term care insurance policy
21 or certificate meeting the requirements of Public Law 104-191 is denied, the issuer shall, not later than 60
22 days after the receipt of a written request by the policy holder, certificate holder, or the representative of
23 either of them:

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

25 (2) provide all information possessed by the issuer relating to the denial.

26
27 **NEW SECTION. Section 12. Benefit triggers.** A long-term care insurance policy or certificate may
28 not be delivered or issued for delivery in this state unless it complies with the requirements, as established
29 by rules of the commissioner, for the triggering of mandatory provision of benefits.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0111, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

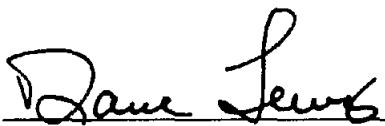
A bill relating to long-term care insurance, and providing for monthly reports to policyholders.

ASSUMPTIONS:

1. Long-term care insurers will be required to file additional long-term care insurance policies and certificates with the State Auditor's Office (SAO). This will add to the review process currently being performed by the SAO, and will slow the current review process, but it will be absorbed by existing staff.
2. Adoption of rules will require approximately 40 pages of Administrative Rules at \$35 per page.

FISCAL IMPACT:

Minimal fiscal impact that will be absorbed within existing budget.

 1-11-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-13-97

MIGNON WATERMAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0111, as introduced

SB 111