

## LEGISLATIVE BILL 416

Approved by the Governor May 29, 1987

Introduced by Withem, 14

AN ACT relating to insurance; to amend section 44-222, Revised Statutes Supplement, 1986; to adopt the Long-term Care Insurance Act; to exempt certain insurance companies from maximum risk provisions; to provide severability; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 17 of this this act shall be known and may be cited as the Long-term Care Insurance Act.

Sec. 2. The purposes of the Long-term Care Insurance Act are to promote the public interest, to promote the availability of long-term care insurance policies, to protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage.

Sec. 3. The Long-term Care Insurance Act shall apply to policies delivered or issued for delivery in this state on or after the effective date of this act and shall not supersede the obligation of entities subject to the act to comply with the provisions of Chapter 44 insofar as such provisions do not conflict with the Long-term Care Insurance Act, except that the Medicare Supplement and Sickness and Accident Insurance Minimum Standards Act shall not apply to long-term care insurance. A policy which is not advertised, marketed, or offered as long-term care insurance shall not be required to meet the requirements of the Long-term Care Insurance Act.

Sec. 4. As used in the Long-term Care Insurance Act, unless the context otherwise requires, the definitions found in sections 5 to 10 of this act shall be used.

Sec. 5. Applicant shall mean (1) in the case of an individual policy, the person who seeks to contract for such benefits and (2) in the case of a

group policy, the proposed certificate holder.

Sec. 6. Certificate shall mean any certificate issued under a group policy, which policy has been delivered or issued for delivery in this state.

Sec. 7. Director shall mean the Director of Insurance.

Sec. 8. Group policy shall mean a long-term care insurance policy which is delivered or issued for delivery in this state and issued to:

(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;

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

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

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

(3) An association or a trust or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering such policy within this state, the association or associations or the insurer of the association shall file evidence with the director that the association or associations have at the outset a minimum of one hundred members, have been organized and maintained in good faith for purposes other than that of obtaining insurance, have been in active existence for at least one year, and have a constitution and bylaws which provide that (a) the association or associations hold regular meetings not less than annually to further purposes of the members, (b) except for credit unions, the association or associations collect dues or solicit contributions from members, and (c) the members have voting privileges and representation on the governing board and committees. Thirty days after such filing, the association or associations shall be deemed to satisfy such organizational requirements unless the director makes a finding that the association or associations do not satisfy those organizational requirements; or

(4) A group other than as described in subdivision (1), (2), or (3) of this section, subject to

a finding by the director that:

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

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

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

Sec. 9. Long-term care insurance shall mean 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. Long-term care insurance shall include group and individual policies or riders whether 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 or surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

Sec. 10. Policy shall mean any individual or group policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization, or any similar organization.

Sec. 11. No group long-term care insurance coverage may be offered to a resident of this state under a group policy issued in another state to a group described in subdivision (4) of section 8 of this act 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 such requirements have been met.

Sec. 12. The director may adopt and promulgate reasonable rules and regulations in

accordance with Chapter 84, article 9, that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

Sec. 13. No long-term care insurance policy may:

(1) Be canceled, refused renewal, or otherwise terminated solely on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;

(2) Contain a provision establishing any new waiting period in the event existing coverage is converted to or replaced by a new or other form of policy with the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder;

(3) Use a definition of preexisting condition which is more restrictive than the following: Preexisting condition shall mean the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care, or treatment or a condition for which medical advice or treatment was recommended by or received from a provider of health care services within (a) twelve 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 (b) twenty-four months preceding the effective date of coverage of an insured person who is under age sixty-five on the effective date of coverage;

(4) Exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within (a) twelve 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 (b) twenty-four months following the effective date of coverage of an insured person who is under age sixty-five on the effective date of coverage; and

(5) If such policy provides benefits only following institutionalization, condition such benefits upon admission to a facility for the same or related condition within a period of less than thirty days after

discharge from the institution.

The director may extend the limitation periods set forth in subdivisions (3) and (4) of this section as to specific age group categories or specific policy forms upon finding that the extension is not contrary to the best interest of the public. The definition of preexisting condition shall 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 such insurer's established underwriting standards.

Sec. 14. The director may adopt and promulgate rules and regulations establishing loss-ratio standards for long-term care insurance policies if a specific reference to long-term care insurance policies is contained in such rules or regulations.

Sec. 15. (1) Individual policyholders shall have the right to return the policy within ten days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual policies shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder has the right to return the policy within ten days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

(2) A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation 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 person has the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the person is not satisfied for any reason.

Sec. 16. (1) An outline of coverage shall be delivered to an applicant for an individual policy at the time of application for such 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 such delivery no later than at the time of policy delivery. Such outline of coverage shall include:

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

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

(c) A statement of the renewal provisions, including any reservation in the policy of a right to change premiums; and

(d) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(2) A certificate issued pursuant to a group policy that is delivered or issued for delivery in this state shall include:

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

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

(c) A statement that the group master policy should be consulted to determine governing contractual provisions.

Sec. 17. No policy may be advertised, marketed, or offered as long-term care insurance unless it complies with the Long-term Care Insurance Act.

Sec. 18. That section 44-222, Revised Statutes Supplement, 1986, be amended to read as follows:

44-222. (1) Except as otherwise provided by law, no insurance company shall expose itself to any loss on any one risk in an amount exceeding ten per cent of its surplus to policyholders as reflected by the last annual statement of the company, except that domestic assessment associations organized for the primary purpose of writing insurance coverage on farm properties and which write such insurance in less than thirty-one counties in Nebraska shall not write any policy for an amount in excess of one-eighth of one per cent of its insurance in force. The term any one risk shall mean, in the case of property insurance, all properties insured by the same insurance company which are customarily considered by underwriters to be subject to loss or destruction from the same hazard or occurrence except hazards or occurrences of a catastrophic nature. The term surplus to policyholders shall mean the amount obtained by subtracting, from the admitted assets, actual liabilities, including any reserves which by law must be maintained. In the case of a stock company, surplus to policyholders shall also include the paid-up and outstanding capital stock. Any reinsurance, taking

effect simultaneously with the policy or bond, shall be deducted in determining whether any one risk or policy exceeds the limitation of risk or policy prescribed in this section. This section shall not be applicable to marine insurance, as distinguished from inland marine insurance, title insurance, or workers' compensation or employer's liability insurance, nor to any policy or type of coverage as to which the maximum possible loss to the insurance company is not ascertainable on issuance of the policy.

(2) Upon the written consent of the Director of Insurance, any insurance company chartered and licensed in Nebraska and writing coverage pursuant to the federal Liability Risk Retention Act of 1986 and Legislative Bill 514, Ninetieth Legislature, First Session, 1987, may be exempted from the provisions of this section. Prior to any approval of such exemption, such insurance company shall submit to the director an application setting forth its proposed plan of operation, as defined in section 3, Legislative Bill 514, Ninetieth Legislature, First Session, 1987, and detailing the reasons why such exemption should be granted. After review of the application and any other material the director may require, the director, upon a determination that the capital and surplus of such insurance company will be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, may grant such exemption.

Sec. 19. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 20. That original section 44-222, Revised Statutes Supplement, 1986, is repealed.

Sec. 21. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.