

CHAPTER 68

NURSING HOME CARE AND LONG-TERM CARE INSURANCE POLICIES

§5051. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [PL 1985, c. 648, §12 (NEW).]

1. Long-term care policy. "Long-term care policy" means a group or individual policy of health insurance, a subscriber contract of a nonprofit hospital or medical service organization or nonprofit health care plan or a life insurance rider which is advertised, marketed or designed primarily to provide coverage for not less than 12 consecutive months for each covered person on an expense-incurred basis, indemnity basis, 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 does not include:

A. A policy or contract defined as Medicare supplement insurance pursuant to chapter 67; [PL 1985, c. 648, §12 (NEW).]

B. A policy or contract issued prior to October 1, 1990, to one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or combination of both, or for members or former members, or combination of both, of the labor organizations; [PL 1989, c. 556, Pt. B, §1 (AMD).]

C. A policy or contract issued prior to October 1, 1990, to any professional, trade or occupational association for its members, former members or retired members or combination of all members, if the association:

- (1) Is composed of individuals all of whom are actively engaged in the same profession, trade or occupation;
- (2) Has been maintained in good faith for purposes other than obtaining insurance; and
- (3) Has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members; and [PL 1989, c. 556, Pt. B, §1 (AMD).]

D. Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when that group or individual policy or contract:

- (1) Was issued prior to October 1, 1990; and
- (2) Includes provisions which are inconsistent with the requirements of this chapter; and [PL 1989, c. 556, Pt. B, §1 (RPR).]

E. A policy or contract offered primarily to provide basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection, accident-only coverage, specified disease or specified accident coverage, home health care coverage or limited benefit health coverage. [PL 1997, c. 604, Pt. D, §1 (AMD).]

[PL 1997, c. 604, Pt. D, §1 (AMD).]

2. Nursing home. "Nursing home" means any facility located in this State which is licensed by the Department of Health and Human Services as a skilled nursing facility or intermediate care facility and any equivalent facility located in another state or country and licensed according to the laws of that jurisdiction.

[PL 1985, c. 648, §12 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

3. Nursing home care policy. "Nursing home care policy" means a group or individual policy of health insurance or a subscriber contract of a nonprofit hospital or medical service organization or nonprofit health care plan which is advertised, marketed or designed primarily to provide benefits on either an expense-incurred or indemnity basis for confinements or costs associated with confinements of a covered person in a nursing home. For purposes of this definition, a policy is deemed to primarily provide nursing home benefits if 50% or more of benefits payable or anticipated to be payable under the policy are related to nursing home confinements. The term does not include:

A. A policy or contract defined as Medicare supplement insurance pursuant to chapter 67; [PL 1985, c. 648, §12 (NEW).]

B. A policy or contract issued to one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or combination of both, or for members or former members, or combination of both, of the labor organizations; [PL 1985, c. 648, §12 (NEW).]

C. A policy or contract issued to any professional, trade or occupational association for its members, former members or retired members, or combination of members if, the association:

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

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

(3) Has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members; or [PL 1985, c. 648, §12 (NEW).]

D. Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance, when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this chapter. [PL 1985, c. 648, §12 (NEW).]

[PL 1985, c. 648, §12 (NEW).]

3-A. Home health care policy. "Home health care policy" means a group or individual policy of health insurance or a subscriber contract of a nonprofit hospital or medical service organization or nonprofit health care plan that is advertised, marketed or designed primarily to provide benefits on either an expense-incurred or indemnity basis for confinements or costs associated with home health care services. For purposes of this definition, a policy is deemed to provide primarily home health care benefits if 50% or more of benefits payable or anticipated to be payable under the policy are related to home health care services. The term does not include:

A. A policy or contract defined as Medicare supplement insurance pursuant to chapter 67; [PL 1997, c. 604, Pt. D, §2 (NEW).]

B. A policy or contract issued to one or more employers or labor organizations or to the trustees of a fund established by one or more employers or labor organizations, or combination of both, or for members or former members, or combination of both, of the labor organizations; [PL 1997, c. 604, Pt. D, §2 (NEW).]

C. A policy or contract issued to any professional, trade or occupational association for its members, former members or retired members, or combination of members, if the association:

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

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

(3) Has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members; or [PL 1997, c. 604, Pt. D, §2 (NEW).]

D. Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance, when that group or individual policy or contract includes provisions that are inconsistent with the requirements of this chapter. [PL 1997, c. 604, Pt. D, §2 (NEW).]

[PL 1997, c. 604, Pt. D, §2 (NEW).]

4. Home health care provider. "Home health care provider" has the same meaning as set forth in section 2745.

[PL 1989, c. 556, Pt. B, §2 (NEW).]

5. Home health care services. "Home health care services" has the same meaning as set forth in section 2745, subsections 1 and 2, except that the requirements of section 2745, subsection 1, paragraph A shall not apply.

[PL 1989, c. 556, Pt. B, §2 (NEW).]

SECTION HISTORY

PL 1985, c. 648, §12 (NEW). PL 1989, c. 556, §§B1,B2 (AMD). PL 1997, c. 604, §§D1,2 (AMD). PL 2003, c. 689, §B6 (REV).

§5051-A. Required and prohibited provisions

1. Prohibited provisions. A long-term care policy may not:

A. Contain coverage for skilled nursing facilities only; [PL 1989, c. 556, Pt. B, §3 (NEW).]

B. Exclude coverage for skilled, intermediate or custodial care received by a resident of a skilled nursing or intermediate care facility; [PL 1989, c. 556, Pt. B, §3 (NEW).]

C. Require a prior hospital stay as a condition for any policy benefits; [PL 1989, c. 556, Pt. B, §3 (NEW).]

D. Require a prior skilled nursing facility stay as a condition for intermediate care facility benefits; or [PL 1989, c. 556, Pt. B, §3 (NEW).]

E. Require prior institutionalization as a condition of receipt of home health care benefits. [PL 1989, c. 556, Pt. B, §3 (NEW).]

[PL 1989, c. 556, Pt. B, §3 (NEW).]

2. Required provisions. A long-term care policy must provide:

A. Custodial care benefits that are at least 50% of those provided for skilled nursing care in a nursing facility provided that the benefits need not exceed usual, customary and reasonable charges; [PL 1989, c. 556, Pt. B, §3 (NEW).]

B. Benefits for home health care services rendered by a home health care provider; [PL 1989, c. 556, Pt. B, §3 (NEW).]

C. Home health care coverage for at least 90 visits in any continuous 12-month period during which coverage is in force; and [PL 1989, c. 556, Pt. B, §3 (NEW).]

D. Per visit benefits for home health care services which are at least 50% of the daily benefit for skilled nursing facility confinement provided that the benefit need not exceed usual, customary and reasonable charges. [PL 1989, c. 556, Pt. B, §3 (NEW).]

[PL 1989, c. 556, Pt. B, §3 (NEW).]

SECTION HISTORY

PL 1989, c. 556, §B3 (NEW).

§5051-B. Alternative policies

1. Innovative long-term care products permitted. Notwithstanding section 5051-A, an insurer, organization or plan may offer a long-term care policy, within the meaning of section 5051, subsection 1, which does not meet one or more of the requirements of section 5051-A if the Superintendent of Insurance finds that:

A. For each requirement of section 5051-A which is not satisfied, there is a valid reason why that requirement is inappropriate for the policy design in question; [PL 1989, c. 556, Pt. B, §3 (NEW).]

B. The total package of benefits provided is at least as comprehensive as that required by section 5051-A; and [PL 1989, c. 556, Pt. B, §3 (NEW).]

C. Availability of the policy would be in the best interest of the public taking into consideration the following factors:

(1) Whether the policy accomplishes the goal of providing dependable benefits for long-term care; and

(2) Whether the plans for marketing the policy contain adequate safeguards to minimize any confusion that may be caused to consumers by the failure of the policy to fall within the established guidelines of this section. [PL 1989, c. 556, Pt. B, §3 (NEW).]

[PL 1989, c. 556, Pt. B, §3 (NEW).]

2. Qualifications for tax incentives. If the superintendent finds that a policy meets the criteria of subsection 1, the superintendent, in determining whether to certify the policy for tax incentives under section 5054, shall consider the policy to comply with each of the requirements of section 5051-A. [PL 1989, c. 556, Pt. B, §3 (NEW).]

SECTION HISTORY

PL 1989, c. 556, §B3 (NEW).

§5052. Specific standards

1. Standards for long-term care, home health care and nursing home care policies. The superintendent may adopt rules to establish specific standards for policy provisions of long-term care, home health care and nursing home care policies. The standards must be in addition to and in accordance with applicable laws of this State, including chapters 33 and 35, and may include, but are not limited to:

A. Terms of renewability; [PL 1985, c. 648, §12 (NEW).]

B. Initial and subsequent conditions of eligibility; [PL 1985, c. 648, §12 (NEW).]

C. Nonduplication of coverage; [PL 1985, c. 648, §12 (NEW).]

D. Probationary periods; [PL 1985, c. 648, §12 (NEW).]

E. Benefit limitations, exceptions and reductions; [PL 1985, c. 648, §12 (NEW).]

F. Elimination periods; [PL 1985, c. 648, §12 (NEW).]

G. Requirements for replacement; [PL 1985, c. 648, §12 (NEW).]

H. Recurrent confinements; and [PL 1985, c. 648, §12 (NEW).]

I. Definition of terms. [PL 1985, c. 648, §12 (NEW).]

[PL 1997, c. 604, Pt. D, §3 (AMD).]

2. Prohibited policy provision. The superintendent may adopt rules that specify prohibited provisions not otherwise specifically authorized by law that, in the opinion of the superintendent, are unjust, unfair, inequitable or unfairly discriminatory to any person insured or proposed for coverage under a long-term care, home health care or nursing home care policy.

[PL 1997, c. 604, Pt. D, §3 (AMD).]

SECTION HISTORY

PL 1985, c. 648, §12 (NEW). PL 1997, c. 604, §D3 (AMD).

§5052-A. Trial examination period

Nursing home care, home health care and long-term care policies must have a notice prominently printed on the first page of the policy or certificate or attached to the first page stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if for any reason, after examination of the policy or certificate, the applicant is not satisfied. [PL 1997, c. 604, Pt. D, §4 (AMD).]

SECTION HISTORY

PL 1991, c. 200, §C1 (NEW). PL 1997, c. 604, §D4 (AMD).

§5053. Rulemaking, disclosure standards, compensation

The superintendent may adopt reasonable rules to provide for the full and fair disclosure of information in connection with the sale of long-term care, home health care and nursing home care policies, including, but not limited to, an outline of coverage requirements and requirements relating to the replacement sale of the policies and compensation or commission to an agent or representative for the sale of a nursing home care, home health care or long-term care policy or certificate. [PL 1997, c. 604, Pt. D, §5 (AMD).]

The superintendent may adopt reasonable rules setting or limiting the rate of compensation or commission to an agent or other representative for the sale of a nursing home care, home health care or long-term care policy or certificate and regarding replacement sale of a nursing home care, home health care or long-term care policy or certificate. [PL 1997, c. 604, Pt. D, §5 (AMD).]

SECTION HISTORY

PL 1985, c. 648, §12 (NEW). PL 1991, c. 200, §C2 (AMD). PL 1997, c. 604, §D5 (AMD).

§5054. Certification by superintendent

1. Filing of form. Any insurer, nonprofit hospital or medical service organization, or nonprofit health care plan may, at the time it files a policy or contract for approval for issuance or delivery in the State, or at any time thereafter, request that the superintendent certify the policy or contract as a long-term care policy within the meaning of section 5051.

Within 60 days of receipt of a request for certification, the superintendent shall:

- A. Certify in writing that the policy or contract complies with this section; [PL 1989, c. 556, Pt. B, §4 (NEW).]
- B. Deny the request in writing, stating the reasons for denial; or [PL 1989, c. 556, Pt. B, §4 (NEW).]
- C. Notify the insurer or nonprofit hospital or medical service organization or nonprofit health care plan, in writing, that an insufficient basis exists for determining whether a certification should be made, indicating in what respects the request was insufficient. [PL 1997, c. 604, Pt. D, §6 (AMD).]

[PL 1997, c. 604, Pt. D, §6 (AMD).]

2. Standards for compliance. The superintendent shall certify a policy or contract submitted for review under this section as a long-term care policy if the superintendent finds that the policy or contract:

A. Is a long-term care policy within the meaning of section 5051; and [PL 1989, c. 556, Pt. B, §4 (NEW).]

B. Complies with all standards applicable to long-term care policies as set forth in this chapter and in chapters 27, 33 and 35 and in rules adopted pursuant to any of those chapters by the superintendent. Waivers granted under the rules shall be taken into consideration. [PL 1989, c. 556, Pt. B, §4 (NEW).]

[PL 1989, c. 556, Pt. B, §4 (NEW).]

SECTION HISTORY

PL 1989, c. 556, §B4 (NEW). PL 1997, c. 604, §D6 (AMD).

§5055. Tax incentives available

1. Reduced premium tax. Any insurance company choosing to offer an insurance policy which is certified by the superintendent as a long-term care policy shall qualify for the reduced tax on premiums collected under Title 36, section 2513.

[PL 1989, c. 556, Pt. B, §4 (NEW).]

2. Income tax reduction. Any person paying premiums for a policy or contract which is certified by the superintendent as a long-term care policy shall qualify for the income tax deduction provided for in Title 36, section 5122.

[PL 1989, c. 556, Pt. B, §4 (NEW).]

3. Credit for employers. An employer providing long-term care benefits to its employees may qualify for the tax credit provided by Title 36, section 2525-A or 5217-C.

[PL 2017, c. 170, Pt. G, §1 (AMD).]

4. Life insurance riders. With respect to life insurance riders that qualify as long-term care policies, the tax incentives provided by this section shall apply only to that portion of the premium attributable to the rider.

[PL 1989, c. 556, Pt. B, §4 (NEW).]

5. Provision of records. Any person who holds a group long-term care policy pursuant to or under which premiums are paid in whole or in part by certificate holders or other 3rd parties shall provide to those certificate holders or 3rd parties adequate and timely records to enable those persons to have knowledge of the tax reduction to which they may be entitled under subsection 2 and under Title 36, section 5122.

[PL 1989, c. 556, Pt. B, §4 (NEW).]

SECTION HISTORY

PL 1989, c. 556, §B4 (NEW). PL 2017, c. 170, Pt. G, §1 (AMD).

§5056. Standards for marketing

Every insurer, health care service plan or other entity marketing nursing home care, home health care or long-term care insurance coverage in this State, directly or through its producers, shall: [PL 1997, c. 604, Pt. D, §7 (AMD).]

1. Policy comparison. Establish marketing procedures to ensure that any comparison of policies by its agents or other producers is fair and accurate;

[PL 1991, c. 200, Pt. C, §3 (NEW).]

2. Excessive insurance. Establish marketing procedures to ensure that excessive insurance is not sold or issued. The procedures must include a specific standard for persons covered by Medicaid;

[PL 1991, c. 200, Pt. C, §3 (NEW).]

3. Replacement policy. Establish marketing procedures that set forth a mechanism or formula for determining whether a replacement policy or certificate contains benefits clearly and substantially greater than the benefits under the replaced policy; and
[PL 1991, c. 200, Pt. C, §3 (NEW).]

4. Compliance procedures. Establish auditable procedures for verifying compliance with the standards set out in this section.
[PL 1991, c. 200, Pt. C, §3 (NEW).]

SECTION HISTORY

PL 1991, c. 200, §C3 (NEW). PL 1997, c. 604, §D7 (AMD).

§5057. Applicability

This chapter applies only to policies and certificates issued before January 1, 2000. [PL 1999, c. 292, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 292, §1 (NEW).

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