

TITLE 41
INSURANCE

CHAPTER 46
LONG-TERM CARE INSURANCE ACT

41-4601. PURPOSE. The purpose of this chapter is to promote the public interest, to promote the availability of long-term care insurance policies, to protect applicants for long-term care insurance, as defined, 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.

[41-4601, added 1999, ch. 98, sec. 2, p. 304.]

41-4602. SCOPE. The requirements of this chapter shall apply to policies delivered or issued for delivery in this state on or after the effective date of this chapter. This chapter is not intended to supersede the obligations of entities subject to this chapter to comply with the substance of other applicable insurance laws insofar as they do not conflict with this chapter, except that laws and regulations designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance.

[41-4602, added 1999, ch. 98, sec. 2, p. 304.]

41-4603. DEFINITIONS. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means:

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

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

(2) "Certificate" means, for the purposes of this chapter, any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

(3) "Director" means the director of the department of insurance of this state.

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

(a) One (1) or more employers or labor organizations, or to a trust or to the trustees of a fund established by one (1) 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; or

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

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

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

(c) An association or a trust or the trustee(s) of a fund established, created or maintained for the benefit of members of one (1) or more associations. Prior to advertising, marketing or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the director that the association or associations have at the outset a minimum of one hundred (100) persons and 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 (1) year; and have a constitution and bylaws which provide that:

- (i) The association or associations hold regular meetings not less than annually to further purposes of the members;
- (ii) Except for credit unions, the association or associations collect dues or solicit contributions from members; and
- (iii) The members have voting privileges and representation on the governing board and committees.

Sixty (60) days after such filing the association or associations will be deemed to satisfy such organizational requirements, unless the director makes a finding that the association or associations do not satisfy those organizational requirements.

(d) A group other than as described in paragraphs (a), (b) and (c) of this subsection, subject to a finding by the director that:

- (i) The issuance of the group policy is not contrary to the best interest of the public;
- (ii) The issuance of the group policy would result in economies of acquisition or administration; and
- (iii) The benefits are reasonable in relation to the premiums charged.

(5) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than twelve (12) consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis; for one (1) 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. Such term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance. Such term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term shall also include qualified long-term care insurance contracts. Long-term care insurance may be issued by insurers, fraternal benefit societies, managed care organizations, or any similar organization to the extent they are otherwise authorized to issue life or health insurance. 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-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one (1) or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a

lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this chapter.

(6) "Policy" means, for the purposes of this chapter, any policy, contract, enrolled member agreement, rider or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, managed care organization, or any similar organization.

[41-4603, added 1999, ch. 98, sec. 2, p. 304.]

41-4604. EXTRATERRITORIAL JURISDICTION -- GROUP LONG-TERM CARE INSURANCE. 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 section [41-4603](#)(4) (d), Idaho Code, 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.

[41-4604, added 1999, ch. 98, sec. 2, p. 306.]

41-4605. DISCLOSURE AND PERFORMANCE STANDARDS FOR LONG-TERM CARE INSURANCE. (1) The director may adopt rules 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, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions and definitions of terms.

(2) No long-term care insurance policy may:

(a) Be cancelled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or

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

(c) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.

(3) Preexisting condition:

(a) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in section [41-4603](#)(4) (a), Idaho Code, shall use a definition of "preexisting condition" which is more restrictive than the following: preexisting condition means a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six (6) months preceding the effective date of coverage of an insured person.

(b) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in section

41-4603 (4) (a), Idaho Code, may exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within six (6) months following the effective date of coverage of an insured person.

(c) The director may extend the limitation periods set forth in paragraphs (a) and (b) of this subsection as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(d) The definition of "preexisting condition" does 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 that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection (3) (b) of this section expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (3) (b) of this section.

(4) Prior hospitalization/institutionalization:

(a) No long-term care insurance policy may be delivered or issued for delivery in this state if such policy:

(i) Conditions eligibility for any benefits on a prior hospitalization requirement;

(ii) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(iii) Conditions eligibility for any benefits other than waiver of premium, postconfinement, postacute care or recuperative benefits on a prior institutionalization requirement.

(b) (i) A long-term care insurance policy containing postconfinement, postacute care or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "limitations or conditions on eligibility for benefits" such limitations or conditions, including any required number of days of confinement.

(ii) A long-term care insurance policy or rider which conditions eligibility for noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.

(iii) A long-term care insurance policy or rider containing a benefit advertised, marketed, or offered as a home health care or home care benefit may not condition receipt of benefits on a prior institutionalization requirement.

(5) The director may adopt rules establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the rule.

(6) Right to return -- Free look: Long-term care insurance applicants shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any rea-

son. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in section [41-4603](#) (4) (a), Idaho Code, the applicant is not satisfied for any reason.

(7) (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

(i) The director shall prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage.

(ii) In the case of agent solicitations, an agent must deliver the outline of coverage prior to the presentation of an application or enrollment form.

(iii) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.

(iv) In the case of a policy issued to a group defined in section [41-4603](#) (4) (a), Idaho Code, an outline of coverage shall not be required to be delivered, provided that the information described in paragraphs (b) (i) through (b) (vi) of this subsection is contained in other materials relating to enrollment. Upon request, these other materials shall be made available to the director.

(b) The outline of coverage shall include:

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

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

(iii) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;

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

(v) A description of the terms under which the policy or certificate may be returned and premium refunded; and

(vi) A brief description of the relationship of cost of care and benefits.

(8) A certificate issued pursuant to a group long-term care insurance policy which policy 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 determines governing contractual provisions.

(9) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:

- (a) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;
- (b) An illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits if any, for each covered person;
- (c) Any exclusions, reductions and limitations on benefits for long-term care;
- (d) A statement that any long-term care inflation protection option as defined by the long-term care insurance rule is not available under this policy.
- (e) If applicable to the policy type, the summary shall also include:
 - (i) A disclosure of the effects of exercising other rights under the policy;
 - (ii) A disclosure of guarantees related to long-term care costs of insurance charges;
 - (iii) Current and projected maximum lifetime benefits.

(10) Any time a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. Such report shall include:

- (a) Any long-term care benefits paid out during the month;
- (b) An explanation of any changes in the policy, e.g. death benefits or cash values, due to long-term care benefits being paid out; and
- (c) The amount of long-term care benefits existing or remaining.

(11) Any policy or rider advertised, marketed or offered as long-term care or nursing home insurance shall comply with the provisions of this chapter.

[41-4605, added 1999, ch. 98, sec. 2, p. 306.]

41-4606. INCONTESTABILITY PERIOD. (1) For a policy or certificate that has been in force for less than six (6) months an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance for coverage.

(2) For a policy or certificate that has been in force for at least six (6) months but less than two (2) years an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought.

(3) After a policy or certificate has been in force for two (2) years it is not contestable upon the grounds of misrepresentation alone; such policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(4) (a) No long-term care insurance policy or certificate may be field issued based on medical or health status.

(b) For purposes of this section, "field issued" means a policy or certificate issued by an agent or a third party administrator pursuant to the underwriting authority granted to the agent or third party administrator by an insurer.

(5) If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer in the event that the policy or certificate is rescinded.

(6) In the event of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In this situation, the remaining death benefits under these policies shall be governed by section [41-1905](#), Idaho Code, as it pertains to incontestability. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.

[41-4606, added 1999, ch. 98, sec. 2, p. 309.]

41-4607. NONFORFEITURE BENEFITS. (1) Except as provided in subsection (2) of this section, a long-term care insurance policy may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. In the event the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period of time following a substantial increase in premium rates.

(2) When a group long-term care insurance policy is issued, the offer required in subsection (1) of this section shall be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in section [41-4603](#)(4)(d), Idaho Code, other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

(3) The director shall promulgate rules specifying the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits, and the rules regarding a contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse as described in subsection (1) of this section.

[41-4607, added 1999, ch. 98, sec. 2, p. 310.]

41-4608. AUTHORITY TO PROMULGATE RULES. The director shall issue reasonable rules to promote premium adequacy and to protect the policyholder in the event of substantial rate increases, and to establish minimum standards for marketing practices, agent compensation, agent testing, penalties and reporting practices for long-term care insurance.

[41-4608, added 1999, ch. 98, sec. 2, p. 311.]

41-4609. ADMINISTRATIVE PROCEDURES. Rules adopted for the implementation and administration of this chapter shall be in accordance with the provisions of [chapter 52, title 67](#), Idaho Code.

[41-4609, added 1999, ch. 98, sec. 2, p. 311.]

41-4610. SEVERABILITY. If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

[41-4610, added 1999, ch. 98, sec. 2, p. 311.]

41-4611. PENALTIES. In addition to any other penalties provided by the laws of this state, any insurer and any agent found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to ten thousand dollars (\$10,000), whichever is greater.

[41-4611, added 1999, ch. 98, sec. 2, p. 311.]