

111TH CONGRESS
1ST SESSION

S. 1636

To develop a model disclosure form to assist consumers in purchasing long-term care insurance.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Ms. KLOBUCHAR (for herself and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To develop a model disclosure form to assist consumers in purchasing long-term care insurance.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Long-Term Care In-
5 surance Consumer Right-to-Know Act of 2009”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) LONG-TERM CARE INSURANCE POLICY.—

9 The term “long-term care insurance policy”
10 means—

1 (A) a qualified long-term care insurance
2 contract (as defined in section 7702B(b) of the
3 Internal Revenue Code of 1986); and

4 (B) a qualified long-term care insurance
5 contract that covers an insured who is a resi-
6 dent of a State with a qualified State long-term
7 care insurance partnership under clause (iii) of
8 section 1917(b)(1)(C) of the Social Security Act
9 (42 U.S.C. 1396p(b)(1)(C)) or a long-term care
10 insurance policy offered in connection with a
11 State plan amendment described in clause (iv)
12 of such section.

13 (2) MODEL ACT AND REGULATION.—The term
14 “model Act and regulation” means the long-term
15 care insurance model regulation, and the long-term
16 care insurance model Act, respectively, promulgated
17 by the National Association of Insurance Commis-
18 sioners (as adopted as of October 2000 and as of
19 December 2006).

20 (3) NAIC.—The term “NAIC” means the Na-
21 tional Association of Insurance Commissioners.

22 (4) SECRETARY.—The term “Secretary” means
23 the Secretary of Health and Human Services.

24 (5) STATE.—The term “State” means each of
25 the 50 States, the District of Columbia, the Com-

1 monwealth of Puerto Rico, the United States Virgin
2 Islands, Guam, the Commonwealth of the Northern
3 Mariana Islands, and American Samoa.

4 **SEC. 3. NAIC STUDY AND REPORT ON STATE DISCLOSURE**
5 **REQUIREMENTS FOR LONG-TERM CARE IN-**
6 **SURANCE.**

7 (a) IN GENERAL.—The Secretary shall request the
8 NAIC to carry out the activities described in subsection
9 (b) and issue the report described in subsection (c).

10 (b) REVIEW AND DEVELOPMENT OF PROPOSED
11 MODEL DISCLOSURE REQUIREMENTS.—The activities de-
12 scribed in this subsection are the following:

13 (1) MODEL ACT AND REGULATION DISCLOSURE
14 REQUIREMENTS.—Review and describe disclosure re-
15 quirements for long-term care insurance policies
16 under the Model Act and regulation.

17 (2) STATE LAW DISCLOSURE REQUIREMENTS.—
18 Review and describe disclosure requirements for
19 long-term care insurance policies under State laws.

20 (3) LONG-TERM CARE SERVICES.—Review and
21 describe differences in long-term care services, in-
22 cluding with respect to providers of such services
23 and the settings in which such services are provided
24 among States and develop a standardized definition
25 for long-term care services.

1 (4) IDENTIFICATION OF KEY ISSUES FOR DE-
2 VELOPMENT OF MODEL DISCLOSURE MARKETING
3 FORM.—Identify and describe key issues to consider
4 in the development of a proposed model form for
5 marketing long-term care insurance policies.

6 (c) REPORT.—The report described in this subsection
7 is a NAIC White Paper that is issued not later than 12
8 months after the date of enactment of this Act and con-
9 tains the results of the reviews conducted under subsection
10 (a) and the descriptions required under that subsection.

11 **SEC. 4. NAIC WORKING GROUP TO DEVELOP MODEL DIS-**
12 **CLOSURE FORM FOR LONG-TERM CARE IN-**
13 **SURANCE.**

14 (a) IN GENERAL.—The Secretary shall request the
15 NAIC to establish, not later than 60 days after the date
16 on which the NAIC White Paper described in section 3(c)
17 is issued and in consultation with the Secretary and the
18 Secretary of the Treasury, a Working Group to develop
19 a model disclosure form for marketing long-term care in-
20 surance policies.

21 (b) WORKING GROUP MEMBERS.—The Working
22 Group established under subsection (a) shall be composed
23 of the following:

24 (1) Representatives from State Departments of
25 Health (or the most appropriate State agencies with

1 responsibility for oversight of the provision of long-
2 term care).

3 (2) Representatives of long-term care providers
4 and facilities.

5 (3) Consumer advocates.

6 (4) Representatives of issuers of long-term care
7 insurance policies.

8 (5) Representatives of the NAIC or State insur-
9 ance commissioners.

10 (6) Other experts in long-term care and long-
11 term care insurance policies selected by the Sec-
12 retary and Secretary of the Treasury or the NAIC.

13 (c) REQUIREMENTS FOR DEVELOPMENT OF FORM.—

14 (1) CONSIDERATIONS.—In developing the model
15 form, the Working Group shall consider the fol-
16 lowing:

17 (A) Variations among providers, services,
18 and facilities in the long-term care and long-
19 term care insurance markets.

20 (B) The results of the reviews and the de-
21 scriptions included in the NAIC White Paper
22 issued under section 3(c).

23 (C) Such other information and factors as
24 the Working Group determines appropriate.

1 (2) STANDARDIZATIONS.—The Working Group
2 shall ensure that the model has—

3 (A) minimum standard definitions for cov-
4 erage of the various types of services and bene-
5 fits provided under long-term care insurance
6 policies;

7 (B) minimum standard language for use
8 by issuers of such policies, and for agents sell-
9 ing such policies, in explaining the services and
10 benefits covered under the policies and restric-
11 tions on the services and benefits;

12 (C) minimum standard format, color and
13 type size for disclosure documents; and

14 (D) such other minimum standards as the
15 Working Group determines appropriate.

16 (d) DEADLINE FOR DEVELOPMENT.—The Working
17 Group shall issue a proposed model disclosure form for
18 marketing long-term care insurance policies not later than
19 1 year after the date on which the Working Group is es-
20 tablished.

21 (e) ADOPTION AND INCORPORATION INTO MODEL
22 ACT AND REGULATION.—The Secretary shall request the
23 NAIC to amend the Model Act and regulation to require
24 the use of the proposed model disclosure form issued by

1 the Working Group, not later than 1 year after the date
2 on which the Working Group issues the form.

3 **SEC. 5. REQUIRED USE OF MODEL DISCLOSURE FORM IN**
4 **MARKETING LONG-TERM CARE INSURANCE**
5 **POLICIES.**

6 (a) APPLICATION TO TAX-QUALIFIED AND MEDICAID
7 PARTNERSHIP POLICIES.—Not later than 1 year after the
8 date on which the Working Group issues the proposed
9 model disclosure form for marketing long-term care insur-
10 ance policies under section 4:

11 (1) TAX-QUALIFIED POLICIES.—The Secretary
12 of the Treasury shall promulgate a regulation re-
13 quiring, not later than 1 year after the date on
14 which the regulation is final, any issuer of a quali-
15 fied long-term care insurance contract (as defined in
16 section 7702B(b) of the Internal Revenue Code of
17 1986) to use the proposed model disclosure form for
18 marketing such contracts.

19 (2) MEDICAID PARTNERSHIP POLICIES.—The
20 Secretary shall promulgate a regulation requiring,
21 not later than 1 year after the date on which the
22 regulation is final, any issuer of a qualified long-
23 term care insurance contract that covers an insured
24 who is a resident of a State with a qualified State
25 long-term care insurance partnership under clause

1 (iii) of section 1917(b)(1)(C) of the Social Security
2 Act (42 U.S.C. 1396p(b)(1)(C)) or a long-term care
3 insurance policy offered in connection with a State
4 plan amendment described in clause (iv) of such sec-
5 tion to use the proposed model disclosure form for
6 marketing such contracts.

7 (b) APPLICATION TO ALL OTHER LONG-TERM CARE
8 INSURANCE POLICIES.—Not later than 18 months, or the
9 earliest date on which an amendment could be enacted for
10 those States with legislatures which meet only every other
11 year, after the date on which the NAIC adopts an amend-
12 ed Model Act and regulation to require the use of the pro-
13 posed model disclosure form issued by the Working Group
14 under section 4, each State shall require by statute or reg-
15 ulation any issuer of a long-term care insurance policy to
16 use the proposed model disclosure form when marketing
17 such a policy in the State.

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