Ohio Revised Code

Section 3923.44 Standards for full and fair disclosure for sale of long-term care insurance policies.

Effective: September 10, 2007
Legislation: House Bill 100 - 127th General Assembly

(A) The superintendent of insurance, pursuant to Chapter 119. of the Revised Code, 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 coverage, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms. Such rules may include provisions related to the state long-term care partnership program, including, but not limited to, requirements related to offers to exchange partnership program policies for previously issued policies and for consumer disclosures related to the state long-term care partnership program.

(B) No long-term care insurance policy shall:

(1) Be canceled, 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;

(2) Contain a provision establishing a new waiting period if 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;

(3) 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;

(4) Use a definition of "preexisting condition" that 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 months preceding the effective date of coverage of an insured person.

(5) Exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within six months following the effective date of coverage of an insured person.

(C) The superintendent may extend the limitation periods set forth in divisions (B)(4) and (5) of this section as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(D) "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 division (B)(5) 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 division (B)(5) of this section.

(E)(1) No long-term care insurance policy shall do any of the following:

(a) Condition eligibility for any institutional benefits on a requirement of prior hospitalization;

(b) Condition eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care;

(c) Condition eligibility for any institutional benefits, other than waiver of premium or post-confinement, post-acute care, or recuperative benefits, on a requirement of prior institutionalization.

(2) Every long-term care insurance policy that conditions eligibility for noninstitutional benefits on the prior receipt of institutional care is subject to both of the following:

(a) The policy shall not require a prior institutional stay of more than thirty days.

(b) The policy shall provide that eligibility for noninstitutional benefits shall be established by the alternative of a period of hospitalization of not more than three days.

(3) No long-term care insurance policy, except for the policy described in division (E)(2) of this section, shall condition eligibility for noninstitutional benefits on the requirement of prior hospitalization.

(4) No long-term care insurance policy that provides benefits only following institutionalization shall condition the benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

(F) A long-term care insurance policy that provides post-confinement, post-acute care, or recuperative benefits shall state any limitations or conditions on eligibility for benefits, including any required period of prior institutionalization as permitted in division (E)(1)(c) of this section, in a separate paragraph of the policy or certificate and shall label that paragraph "Limitations or Conditions on Eligibility for Benefits."

(G) The superintendent, pursuant to Chapter 119. of the Revised Code, 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.

(H)(1) A person insured under a long-term care insurance policy may return the policy or certificate in accordance with the procedures and requirements provided for individual policyholders under section 3923.31 of the Revised Code, except that the person has thirty days from the date of delivery to return the policy or certificate and have the premium refunded.

(2) A notice of the policyholder's or certificate holder's rights under division (H)(1) of this section and section 3923.31 of the Revised Code shall be printed prominently on the first page of the policy or certificate or attached to the policy or certificate.

(I) Except as provided in division (M) of this section, an outline of coverage and a notice that consumer information is available from the department of insurance under section 3923.49 of the

Revised Code shall be delivered to a prospective applicant for long-term care insurance at the time of the initial solicitation through means that prominently direct the attention of the prospective applicant to the outline of coverage, the purpose of the outline of coverage, and the notice. In the case of agent solicitations, the agent shall deliver the outline of coverage and notice prior to the presentation of an application or enrollment form. In the case of direct response solicitations, the insurer shall deliver the outline of coverage and notice in conjunction with any application or enrollment form. The superintendent shall prescribe by rule the content and format of the outline of coverage and notice, including the style, overall appearance, size, color and prominence of type, and the arrangement of text and captions. The outline of coverage shall include all of the following:

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

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

(3) A statement of the terms under which the individual policy or certificate or the group policy or certificate may be renewed and the terms under which cancellation is permitted, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of group long-term care insurance shall be specifically described.

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

(5) A brief description of the relationship of the cost of care and benefits;

(6) A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy or group master policy should be consulted to determine governing contractual provisions;

(7) A statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract.

(J) A certificate issued pursuant to a group long-term care insurance policy that is delivered, issued for delivery, or used in or outside this state shall include all of the following:

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

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

(3) A statement that the group master policy determines governing contractual provisions.

(K) If an individual life insurance policy provides long-term care benefits within the policy or by rider, a policy summary shall be delivered to an applicant for the policy at the time of policy delivery. In the case of direct response solicitations, the insurer shall deliver the policy summary to the applicant upon the applicant's request. If no such request is made, the insurer shall deliver the policy summary no later than at the time of policy delivery. In addition to any other information required by this section, the policy summary shall include all of the following:

(1) A statement that explains how the terms of the policy that provide benefits for long-term care insurance affect the other terms of the policy, including how the payment of these benefits would reduce the death benefits payable by the policy;

(2) A description of the amount of benefits for long-term care insurance that is available under the policy, the length of time these benefits could be paid by the policy, and any guaranteed lifetime benefits provided by the policy, for each insured under the policy;

(3) A statement of the exclusions, reductions, and limitations on benefits for long-term care insurance that are contained in the policy;

(4) A statement of the effects of exercising other rights under the policy;

(5) A statement of the guarantees, if any, with respect to the policy costs of providing benefits for long-term care insurance;

(6) A statement of all current and projected maximum lifetime benefits;

(7) A statement of whether long-term care inflation protection is available under the policy.

(L) During the time when a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, the insurer shall provide a monthly report to the policyholder. The report shall include all of the following:

(1) A description of all benefits for long-term care insurance that were paid by the policy during that month;

(2) An explanation of any changes in the policy, including death benefits or cash values due to the payout of long-term care benefits;

(3) A statement of the amount of benefits for long-term care insurance that is still available under the policy.

(M) In case of a policy issued to a group defined in division (D)(1) of section 3923.41 of the Revised Code, an outline of coverage shall not be required to be delivered, provided that the information described in division (I) of this section is contained in other materials relating to enrollment and, upon request, these other materials are made available to the superintendent.

(N)(1) Policies that are intended to qualify under the state long-term care partnership program shall comply with all state and federal requirements applicable to policies issued in connection with the state long-term care partnership program.

(2)(a) For policies intended to qualify under the state long-term care partnership program, the agent or insurer shall deliver to the applicant a long-term care partnership policy disclosure form along with the outline of coverage specified in division (I) of this section.

(b) In the case of a policy issued to a group where an outline of coverage is not delivered, the long-term care partnership policy disclosure form is delivered with enrollment forms.

(c) In the case of a life insurance policy that offers long-term care insurance within the policy or as a rider, the disclosure form is provided with the policy summary.

(O) No insurer shall issue a policy intended to qualify as a state partnership program policy that fails to satisfy the following inflation protection requirements:

(1) For a person who is less than sixty-one years of age as of the date of purchase of the policy, the policy provides annual inflation protection of at least three per cent compounded annually per year or a rate, compounded annually, that is equal to the annual consumer price index.

(2) For a person who is at least sixty-one years of age but less than seventy-six years of age as of the date of purchase of the policy, the policy provides annual inflation protection of at least three per cent simple or a rate equal to the annual consumer price index.

(3) For a person who is at least seventy-six years of age as of the date of purchase of the policy, the policy may provide inflation protection.

(P) As used in this section, "consumer price index" means consumer price index for all urban consumers, U.S. city average, all items, as determined by the bureau of labor statistics of the United States department of labor.

(Q) For purposes of division (O) of this section, the superintendent may approve an alternative index to be used in place of the consumer price index.

(R) The superintendent shall prescribe by rule pursuant to Chapter 119. of the Revised Code the content and format of the state long-term care partnership program policy disclosure form required by division (N)(2) of this section.

(S) No policy may be advertised, marketed, or offered as long-term care insurance unless it complies with sections 3923.41 to 3923.48 of the Revised Code.

(T) The superintendent may adopt rules in accordance with Chapter 119. of the Revised Code to establish minimum standards for marketing practices, agent compensation, agent testing, and reporting practices for long-term care insurance.