# SENATE . . . . . No. 2359

The Commonwealth of Massachusetts

**In the Year Two Thousand Twelve**

An Act establishing standards for long-term care insurance.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 118E of the General Laws is hereby amended by striking out section 33, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

Section 33. No claim for costs of a nursing facility or other long-term care services shall be made by the division under section 31 or 32 if the individual receiving medical assistance was permanently institutionalized, had notified the division that the individual had no intention to return home and, on the date of admission to the nursing facility or other medical institution, had long-term care insurance that, when purchased, met the requirements of 211 C.M.R. 65.00.

SECTION 2. The General Laws are hereby further amended by inserting after chapter 176R the following chapter:-

CHAPTER 176S

LONG-TERM CARE INSURANCE

Section 1. As used in this chapter, the following words shall have the following meanings unless the context requires otherwise:

"Applicant", in the case of an individual long-term care insurance policy, the person who seeks to contract for benefits and, in the case of a group long-term care insurance policy, the proposed certificate holder.

"Certificate", a certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery within the commonwealth.

"Commissioner", the commissioner of insurance.

21 “Group long-term care insurance”, a long-term care insurance policy that is delivered or
22 issued for delivery within the commonwealth and issued to:

23 (1) an employer or labor organization or to a trust or to the trustees of a fund established
24 by an employer or labor organization, or a combination thereof, for employees or former
25 employees, or a combination thereof of an employer, or for members or former members, or a
26 combination thereof, of a labor organization;

27 (2) a professional, trade or occupational association for its members or former or retired
28 members, or a combination thereof, if the association: (i) is comprised of individuals all of whom
29 are, or were, actively engaged in the same profession, trade or occupation; and (ii) has been
30 maintained in good faith for purposes other than obtaining insurance;

31 (3) an association, or a trust or the trustees of a fund established, created or maintained
32 for the benefit of members of any such associations; provided, however, that before advertising,
33 marketing or offering the policy, the association, or the insurer of the association, shall file
34 evidence with the commissioner that the association: (i) has, at the outset, at least 100 persons;
35 (ii) has been organized and maintained in good faith for purposes other than that of obtaining
36 insurance; (iii) has been in active existence for at least 1 year; and (iv) has a constitution and by-
37 laws that provide that: (A) the association holds regular meetings not less than annually to
38 further purposes of the members; (B) except for credit unions, the association collects dues or
39 solicits contributions from members; and (C) the members have voting privileges and
40 representation on the governing board and committees; provided further, that 30 days after the
41 filing, the association shall be considered to have satisfied the organizational requirements,
42 unless the commissioner makes a finding that the association does not satisfy those
43 organizational requirements; or

44 (4) a group other than those described in clauses (1) to (3), inclusive, subject to a finding
45 by the commissioner that: (i) the issuance of the group policy is not contrary to the best interests
46 of the public; (ii) the issuance of the group policy would result in economies of acquisition or
47 administration; and (iii) the benefits are reasonable in relation to the premiums charged.

48 “Long-term care insurance”, an insurance policy or rider: (i) advertised, marketed,
49 offered or designed to provide coverage for not less than 12 consecutive months for each covered
50 person on an expense incurred, indemnity, prepaid or other basis; (ii) for necessary or medically-
51 necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care
52 services, including home and community care services; and (iii) provided in a setting other than
53 an acute care unit of a hospital; provided, however, that “long-term care insurance” shall include
54 group and individual annuities and life insurance policies or riders that provide directly, or
55 supplement, long-term care insurance; provided further, that “long-term care insurance” shall
56 also include a policy or rider that provides for payment of benefits based upon cognitive
57 impairment or the loss of functional capacity; provided further, that “long-term care insurance”

58 shall also include qualified long-term care insurance policies; provided further, that "long-term
59 care insurance" shall not include an insurance policy offered primarily to provide basic Medicare
60 supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage,
61 hospital confinement indemnity coverage, major medical expense coverage, disability income or
62 related asset-protection coverage, accident only coverage, specified disease or specified accident
63 coverage or limited benefit health coverage; provided further, that with regard to life insurance,
64 "long-term care insurance"shall not include life insurance policies that accelerate the death
65 benefit specifically for any of the qualifying events of terminal illness, medical conditions
66 requiring extraordinary medical intervention or permanent institutional confinement and that
67 provide the option of a lump-sum payment for those benefits and where neither the benefits nor
68 the eligibility for the benefits is conditioned upon the receipt of long-term care; and provided
69 further, that notwithstanding any other provision of this chapter, any other product advertised,
70 marketed or offered as long-term care insurance shall be subject to this chapter.

71 "Policy", a policy, contract, subscriber agreement, rider or endorsement delivered or
72 issued for delivery in the commonwealth by: (i) an insurer authorized to issue policies upon the
73 lives of persons in the commonwealth or to provide accident and health insurance under chapter
74 175; (ii) a fraternal benefit society authorized under chapter 176; (iii) a nonprofit hospital service
75 corporation authorized under chapter 176A; (iv) a nonprofit medical service corporation
76 authorized under chapter 176B; or (v) a health maintenance organization authorized under
77 chapter 176G.

78 "Qualified long-term care insurance contract" or "federally tax-qualified long-term care
79 insurance contract", an individual or group insurance contract that meets the requirements of
80 section 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows: (i) the only
81 insurance protection provided under the contract is coverage of qualified long-term care services;
82 provided, however, that a contract shall not fail to satisfy the requirements of this clause by
83 reason of payments being made on a per diem or other periodic basis without regard to the
84 expenses incurred during the period to which the payments relate; (ii) the contract does not pay
85 or reimburse expenses incurred for services or items to the extent that the expenses are
86 reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for
87 the application of a deductible or coinsurance amount; provided, however, that the requirements
88 of this clause shall not apply to expenses that are reimbursable under Title XVIII of the Social
89 Security Act only as a secondary payor; and provided further, that a contract shall not fail to
90 satisfy the requirements of this clause by reason of payments being made on a per diem or other
91 periodic basis without regard to the expenses incurred during the period to which the payments
92 relate; (iii) the contract is guaranteed renewable within the meaning of section 7702B(b)(1)(C) of
93 the Internal Revenue Code of 1986, as amended; (iv) the contract does not provide for a cash
94 surrender value or other money that can be paid, assigned, pledged as collateral for a loan or
95 borrowed except as provided in clause (v); (v) all refunds of premiums and all policyholder
96 dividends or similar amounts under the contract are to be applied as a reduction in future

97 premiums or to increase future benefits, except that a refund on the event of death of the insured
98 or a complete surrender or cancellation of the contract cannot exceed the aggregate premiums
99 paid under the contract; and (vi) the contract meets the consumer protection provisions set forth
100 in said section 7702B(g) of the Internal Revenue Code of 1986, as amended; and provided
101 further, that "Qualified long-term care insurance contract" or "federally tax-qualified long-term
102 care insurance contract" shall also include the portion of a life insurance contract that provides
103 long-term care insurance coverage by rider or as part of the contract and that satisfies the
104 requirements of said section 7702B(b) and section 7702B(e) of the Internal Revenue Code of
105 1986, as amended, and as set forth in clauses (i) to (vi), inclusive.

106 Section 2. No group long-term care insurance policy shall be offered to a resident of the
107 commonwealth under a group policy issued in another state to a group described in clause (4) of
108 the definition of group long-term care insurance unless the commonwealth or another state
109 having statutory and regulatory long-term care insurance requirements substantially similar to
110 those adopted in the commonwealth has made a determination that the requirements of said
111 clause (4) have been met.

112 Section 3. (a) A long-term care insurance policy shall not: (i) be cancelled, nonrenewed
113 or otherwise terminated on the grounds of the age or the deterioration of the mental or physical
114 health of the insured individual or certificate holder; (ii) contain a provision establishing a new
115 waiting period in the event existing coverage is converted to, or replaced by, a new or other form
116 within the same company, except with respect to an increase in benefits voluntarily selected by
117 the insured individual or group policyholder; or (iii) provide coverage for skilled nursing care
118 only or provide significantly more coverage for skilled nursing care in a facility than coverage
119 for lower levels of care.

120 (b) (1) For the purposes of this section, "preexisting condition" shall mean a
121 condition for which medical advice treatment was recommended by, or received from a provider
122 of health care services, within 6 months preceding the effective date of coverage of an insured
123 person. No long-term care insurance policy or certificate, other than a policy or certificate
124 thereunder issued to a group under clause (1) of the definition of group long-term care insurance,
125 shall use a definition of preexisting condition that is more restrictive than the definition provided
126 in this subsection.

127 (2) A long-term care insurance policy or certificate other than a policy or
128 certificate thereunder issued to a group as defined in clause (1) of the definition of group long-
129 term care insurance shall not exclude coverage for a loss or confinement that is the result of a
130 preexisting condition unless the loss or confinement begins within 6 months after the effective
131 date of coverage of an insured person.

132 (3) Notwithstanding subsection (c), an insurer may use an application form
133 designed to elicit the complete health history of an applicant and, on the basis of the answers on

134 that application, underwrite in accordance with that insurer's established underwriting standards.
135 Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of
136 whether it is disclosed on the application need not be covered until the waiting period described
137 in paragraph (2) expires. No long-term care insurance policy or certificate shall exclude or use
138 waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically
139 named or described preexisting diseases or physical conditions beyond the waiting period
140 described in said paragraph (2).

141 (c) A long-term care insurance policy shall not be delivered or issued for delivery in the
142 commonwealth if the policy: (i) conditions eligibility for any benefits on a prior hospitalization
143 requirement; (ii) conditions eligibility for benefits provided in an institutional care setting on the
144 receipt of a higher level of institutional care; or (iii) conditions eligibility for any benefits other
145 than waiver of premium, post-confinement, post-acute care or recuperative benefits on a prior
146 institutionalization requirement.

147 (d) The commissioner may adopt regulations establishing loss ratio standards for long-
148 term care insurance policies; provided, however, that a specific reference to long-term care
149 insurance policies shall be contained in the regulation.

150 (e) Long-term care insurance applicants may return the policy or certificate within 30
151 days of its delivery and have the premium refunded if, after examination of the policy or
152 certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and
153 certificates shall have a notice prominently printed on the first page or attached to the first page
154 stating in substance that the applicant shall have the right to return the policy or certificate within
155 30 days of its delivery and to have the premium refunded if, after examination of the policy or
156 certificate, other than a certificate issued pursuant to a policy issued to a group defined in clause
157 (1) of the definition of group long-term care insurance, the applicant is not satisfied for any
158 reason. This subsection shall also apply to denials of applications. A refund under this
159 subsection shall be made within 30 days after the return or denial.

160 (f) (1) An outline of coverage shall be delivered to a prospective applicant for long-
161 term care insurance through means that prominently direct the attention of the recipient to the
162 document and its purpose. In the case of producer solicitations, an insurance producer shall
163 deliver the outline of coverage prior to the presentation of an application or enrollment form. In
164 the case of direct response solicitations, the outline of coverage shall be presented in conjunction
165 with any application or enrollment form. In the case of a policy issued to a group defined in
166 clause (1) of the definition of group long-term care insurance, an outline of coverage shall not be
167 required to be delivered if the information described in clauses (i) to (vi), inclusive, of paragraph
168 (2) is contained in other materials relating to enrollment. Upon request, the other materials shall
169 be made available to the commissioner.

170 (2) The commissioner shall prescribe a standard format, including style,
171 arrangement and overall appearance, and the content of an outline of coverage. The outline of
172 coverage shall include: (i) a description of the principal benefits and coverage provided in the
173 policy or certificate; (ii) a statement of the principal exclusions, reductions and limitations
174 contained in the policy or certificate; (iii) a statement of the terms under which the policy or
175 certificate, or both, may be continued in force or discontinued, including any reservation in the
176 policy of a right to change premium; provided, however, that continuation or conversion
177 provisions of group coverage shall be specifically described; (iv) a statement that the outline of
178 coverage is a summary only, not a contract of insurance, and that the policy or group master
179 policy contains governing contractual provisions; (v) a description of the terms under which the
180 policy or certificate may be returned and premium refunded; (vi) a brief description of the
181 relationship of cost of care and benefits; and (vii) a statement that discloses to the policyholder or
182 certificate holder whether the policy is intended to be a federally tax-qualified long-term care
183 insurance contract under section 7702B(b) of the Internal Revenue Code of 1986, as amended.

184 (g) A certificate issued under a group long-term care insurance policy that is delivered or
185 issued for delivery in the commonwealth shall include: (i) a description of the principal benefits
186 and coverage provided in the policy; (ii) a statement of the principal exclusions, reductions and
187 limitations contained in the policy; and (iii) a statement that the group master policy determines
188 governing contractual provisions; and (iv) a statement that the policy is available for viewing in
189 the offices of the policyholder and will be copied for the certificate holder upon request at no
190 cost.

191 (h) If an application for a long-term care insurance policy or certificate is approved, the
192 issuer shall deliver the policy or certificate of insurance to the applicant not later than 30 days
193 after the date of approval.

194 (i) (1) At the time of policy delivery, a policy summary shall be delivered for an
195 individual life insurance policy that provides long-term care benefits within the policy or by
196 rider. In the case of direct response solicitations, the insurer shall deliver the policy summary
197 upon the applicant's request, but notwithstanding any such request, the insurer shall make
198 delivery of the policy summary not later than at the time of delivery of the policy. In addition to
199 complying with all applicable requirements, the summary shall include:

200 (i) an explanation of how the long-term care benefit interacts with other
201 components of the policy, including deductions from death benefits;

202 (ii) an illustration of the amount of benefits, the length of benefits and the
203 guaranteed lifetime benefits if any, for each covered person;

204 (iii) any exclusions, reductions and limitations on benefits of long-term
205 care insurance, including elimination or probationary periods and any preexisting condition
206 limitations;

207 (iv) a statement indicating whether a long-term care inflation protection
208 option required by law is available under the policy; and

209 (v) if applicable to the policy type, the summary shall also include: (A) a
210 disclosure of the effects of exercising other rights under the policy; (B) a disclosure of
211 guarantees related to long-term care costs of insurance charges; and (C) current and projected
212 maximum lifetime benefit.

213 (2) The policy summary under this subsection may be incorporated into a basic
214 illustration or into the life insurance policy summary which is required to be delivered under
215 applicable regulations.

216 (j) Any time a long-term care benefit, funded through a life insurance vehicle by the
217 acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided
218 to the policyholder. The report shall include: (i) any long-term care benefits paid out during the
219 month; (ii) an explanation of any changes in the policy, including death benefits or cash values,
220 due to long-term care benefits being paid out; and (iii) the amount of long-term care benefits
221 existing or remaining.

222 (k) If a claim under a long-term care insurance policy or certificate is denied, the issuer,
223 within 60 days after the date of a written request by the policyholder or certificate holder, or a
224 representative thereof, shall: (i) provide a written explanation of the reasons for the denial; and
225 (ii) make available all information directly related to the denial.

226 (l) Any policy or rider advertised, marketed or offered as long-term care insurance or
227 nursing home insurance shall comply with this chapter.

228 Section 4. (a) For a policy or certificate that has been in force for less than 6 months, an
229 insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid
230 long-term care insurance claim upon a showing of misrepresentation that is material to the
231 acceptance for coverage.

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

237 (c) After a policy or certificate has been in force for 2 years it shall not be contestable
238 upon the grounds of misrepresentation alone but may be contested only upon a showing that the
239 insured knowingly and intentionally misrepresented relevant facts relating to the insured's
240 health.

241 (d) A long-term care insurance policy or certificate may be field issued if the
242 compensation to the field issuer is not based on the number of policies or certificates issued. For
243 the purposes of this subsection, the term "field issued" shall mean a policy or certificate issued
244 by a producer or a third-party administrator under the underwriting authority granted to the
245 producer or third party administrator by an insurer and using the insurer's underwriting
246 guidelines.

247 (e) If an insurer has paid benefits under a long-term care insurance policy or certificate,
248 the insurer shall not be entitled to recover the benefit payments if the policy or certificate is
249 rescinded.

250 (f) In the event of the death of the insured, this section shall not apply to the remaining
251 death benefit of a life insurance policy that accelerates benefits for long-term care. In that event,
252 the remaining death benefits under any such policy shall be governed by section 132 of chapter
253 175. In any other event, this section shall apply to life insurance policies that accelerate benefits
254 for long-term care.

255 Section 5. (a) Except as provided in subsection (b), a long-term care insurance policy
256 shall not be delivered or issued for delivery in the commonwealth unless the policyholder or
257 certificate holder has been offered the option of purchasing a policy or certificate that includes a
258 nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is
259 attached to the policy. In the event the policyholder or certificate holder declines the
260 nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be
261 available for a specified period of time following a substantial increase in premium rates.

262 (b) When a group long-term care insurance policy is issued, the offer required in
263 subsection (a) shall be made to the group policyholder.Iif the policy is issued as group long-term
264 care insurance to a group defined in clause (4) the definition of group long-term care insurance,
265 other than to a continuing care retirement community or other similar entity, the offer shall be
266 made to each proposed certificate holder.

267 Section 6. (a)(1) An individual shall not sell, solicit or negotiate long-term care
268 insurance in the commonwealth unless the individual is licensed as an insurance producer for
269 accident and sickness or life and has completed a 1-time training course. The training shall meet
270 the requirements set forth in subsection (b).

271 (2) In addition to the 1-time training course required in paragraph (1) an individual who
272 sells, solicits or negotiates long-term care insurance shall complete ongoing training as set forth
273 in subsection (b).

274 (b) (1) The 1-time training required by this section shall be not less than 8 hours and
275 the ongoing training required by this section shall be not less than 4 hours every 24 months;

276 provided, however, that the training hours under this section shall be included as part of the
277 required continuing education hours as set forth in subsection B of section 177E of chapter 175.

278 (2) The training shall consist of topics related to long-term care insurance, long-
279 term care services and the commonwealth's minimum long-term care coverage requirements for
280 certain asset and liability exemptions under the MassHealth program, including: (i) state and
281 federal regulations and requirements and the relationship between asset and liability exemptions
282 under the MassHealth program and other public and private coverage of long-term care services,
283 including MassHealth; (ii) available long-term services and providers; (iii) changes or
284 improvements in long-term care services or providers; (iv) alternatives to the purchase of private
285 long-term care insurance; (v) the effect of inflation on benefits and the importance of inflation
286 protection; and (vi) consumer suitability standards and guidelines.

287 (3) The training required by this section shall not include training that is insurer or
288 company product specific or that includes any sales or marketing information, materials or
289 training other than those required by state or federal law.

290 (c) (1) Insurers subject to this chapter shall obtain verification that a producer
291 receives training required by this section before the producer shall be authorized to sell, solicit or
292 negotiate the insurer's long-term care insurance products and shall maintain records subject to
293 the laws relative to record retention requirements and make that verification available to the
294 commissioner upon request.

295 (2) Insurers subject to this chapter shall maintain records with respect to the
296 training of its producers concerning the distribution of its policies intended to satisfy the
297 commonwealth's minimum long-term care coverage requirements for certain asset and liability
298 exemptions under the MassHealth program that will allow the division of insurance to provide
299 assurance to the department of medical assistance that producers have received the training
300 required by this section and that producers have demonstrated an understanding of the policies
301 and their relationship to public and private coverage of long-term care, including MassHealth, in
302 the commonwealth. The records shall be maintained in accordance with the laws relative to
303 record retention requirements and shall be made available to the commissioner upon request.

304 (d) The satisfaction of comparable training requirements in any state shall be deemed to
305 satisfy the training requirements under this section.

306 Section 7. (a) The commissioner shall promulgate rules and regulations, under chapter
307 30A, which, at a minimum, shall be consistent with the standards set forth in the 2009 National
308 Association of Insurance Commissioners Long-Term Care Model Regulation, including
309 standards for:

310 (i) full and fair disclosure, setting forth the manner, content and required
311 disclosures for the sale of long-term care insurance policies and certificates;

312 (ii) policy definitions and provisions, terms of renewability, initial and subsequent
313 conditions of eligibility, benefit triggers, home health and community care benefits,
314 nonduplication of coverage provisions, coverage of dependents, preexisting conditions,
315 termination of insurance, continuation or conversion, limitations, exceptions, reductions,
316 elimination and probationary periods, requirements for replacement and unintentional lapse
317 protection;

318 (iii) the promotion of premium adequacy and protections for the policyholder or
319 certificate holder in the event of a substantial rate increase and disclosure;

320 (iv) the offer of inflation and nonforfeiture coverage, including rules for a
321 contingent benefit upon lapse;

322 (v) marketing practices and suitability and producer professional education; and

323 (vi) filing requirements, reporting practices and requirements, reserve standards,
324 independent review of benefit determinations and penalties.

325 (b) The division of insurance shall update, on a biennial basis, the consumer guide for
326 long-term insurance. The division shall maintain a list of insurance companies selling long-term
327 care insurance in the commonwealth and their Massachusetts rate increase history for the
328 preceding 10 years on its website.

329 (c) The commissioner shall, in the commissioner's discretion, and may on motion of the
330 attorney general, initiate a hearing on any long-term care insurance rate increase before its
331 effective date after at least 10 days' notice.

332 Section 8. In addition to the penalties provided in chapters 175 and 176D, any insurer or
333 insurance producer found to have violated any requirement of this chapter or any rules or
334 regulations promulgated under this chapter relating to the regulation of long-term care insurance
335 or the marketing of such insurance, shall be subject to a fine of up to 3 times the amount of any
336 commissions paid for each policy involved in the violation or up to $10,000, whichever is
337 greater.

338 Section 9. Nothing in this chapter shall supersede the obligations of entities subject to
339 this chapter to comply with applicable insurance laws insofar as those laws do not conflict with
340 this chapter, except that laws and regulations intended to apply to Medicare supplement
341 insurance policies governed by chapter 176K of the General Laws shall not apply to long-term
342 care insurance.

343 SECTION 3. The commissioner of insurance shall conduct an investigation to identify
344 the best methods to stabilize rates and prevent exceptional rate increases and may undertake such
345 methods including, but not limited to, those identified in the 2009 division of insurance survey of
346 long-term care insurance, with input from a working group consisting of the attorney general, the

347 Life Insurance Association of Massachusetts, the Massachusetts Association of Health
348 Underwriters, the National Association of Insurance and Financial Advisers, the Massachusetts
349 chapter of the National Academy of Elder Law Attorneys, the American Academy of Actuaries
350 and the American Association of Retired Persons. The commissioner shall also seek
351 information on the experience of other states relative to rate stabilization.

352 The commissioner shall report to the general court any rate stabilization methods
353 implemented under this section and recommendations for additional long-term care insurance
354 rate stabilization practices, if any, together with drafts of legislation necessary to carry those
355 recommendations into effect, by filing the report and drafts with the clerks of the senate and the
356 house of representatives who shall forward them to the president of the senate, the speaker of the
357 house of representatives, the minority leader of the senate and the minority leader of the house of
358 representatives not later than January 1, 2013.

359 SECTION 4. An individual who is licensed and selling, soliciting or negotiating long-
360 term care insurance on the effective date of chapter 176S of the General Laws shall not continue
361 to sell, solicit or negotiate long-term care insurance unless the individual has completed a 1-time
362 training course as required in section 6 of said chapter 176S not later than July 1, 2014 and shall
363 thereafter complete ongoing training as set forth in said section 6 of said chapter 176S.

364 SECTION 5. Chapter 176S of the General Laws shall apply to policies delivered or
365 issued for delivery in the commonwealth on or after January 1, 2013.