OHIO
Long-Term Care Insurance

ORC 5111.18 Qualified LTC insurance program establishment

The Medicaid director shall establish a qualified state long-term care insurance partnership program consistent with the definition of that term in the "Social Security Act," section 1917(b)(1)(C)(iii), 42 U.S.C. 1396p(b)(1)(C)(iii). An individual participating in the program who is subject to the Medicaid estate recovery program instituted under section 5162.21 of the Revised Code shall be eligible for the reduced adjustment or recovery under division (D) of that section.

Renumbered from § 5111.18 by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 06-30-2006

ORC 3923.41–48 Long-term Care Insurance

3923.41 Long-term care insurance definitions.

(A) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than one year for each covered person on an expense incurred, indemnity, 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. "Long-term care insurance" includes group and individual annuities and life insurance policies or riders that provide directly or supplement long-term care benefits, and policies or riders that provide for payment of benefits based on cognitive impairment or the loss of functional capacity. "Long-term care insurance" includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, or health insuring corporations. "Long-term care insurance" includes qualified long-term care insurance contracts. "Long-term care insurance" does not include any insurance policy that 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 protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

With regard to life insurance, "long-term care insurance" does not include life insurance policies that accelerate the death benefits specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement; that 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 in sections 3923.41 to 3923.48 of the Revised Code, any product advertised, marketed, or offered as long-term care insurance shall be subject to sections 3923.41 to 3923.48 of the Revised Code.

(B) "Applicant" means either of the following:

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

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

(C) "Certificate" means any certificate issued under a group long-term care insurance policy that has been delivered, issued for delivery, or used in or outside this state.

(D) "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state to any of the following:

(1) One or more employers or labor organizations, or a trust or the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, established for either of the following:

(a) Employees or former employees or a combination thereof;

(b) Members of the labor organization, or former members of the labor organization, or a combination thereof.

(2) Any professional, trade, or occupational association for its members or former or retired members, or a combination thereof, if the association satisfies both of the following requirements:
(a) It is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation.

(b) It is maintained in good faith for purposes other than obtaining insurance.

(3) An association or trust of the trustees of a fund established, created, or maintained for the benefit of members of one or more associations that meets the requirements of section 3923.43 of the Revised Code;

(4) A group other than as described in divisions (D)(1), (2), and (3) of this section about whom the superintendent of insurance finds that all the following are true:

(a) The issuance of the group policy is not contrary to the best interest of the public.

(b) The issuance of the group policy would result in economies of acquisition or administration.

(c) The benefits of the group policy are reasonable in relation to the premiums charged.

(E) "Policy" means any policy, contract, rider, or endorsement delivered, issued for delivery, or used in or outside this state by an insurer, fraternal benefit society, or health insuring corporation.

(F) "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" means an individual or group insurance contract of which all of the following are true pursuant to division (b) of section 7702B of the "Internal Revenue Code of 1986," 26 U.S.C. 7702B, as amended:

(a) The only insurance protection provided under the contract is coverage of qualified long-term care services including payments made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(b) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the "Social Security Act," 42 U.S.C. 1395 et seq., as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The contract may pay or reimburse expenses that are reimbursable under Title XVIII of the Social Security Act as a secondary payer. A contract may allow payments to be made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(c) The contract is guaranteed renewable, within the meaning of division (b)(1)(C) of section 7702B of the "Internal Revenue Code of 1986," 26 U.S.C. 7702B, as amended.

(d) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in division (F)(1)(e) of this section.

(e) All refunds of premiums, and all policy holder dividends or similar amounts, under the contract shall be applied to a reduction in future premiums or to increase future benefits, except that a refund in the event of death of the insured or in the event of a complete surrender or cancellation of the contract shall not exceed the aggregate premiums paid under the contract.


(2) "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" also means the portion of a life insurance contract that provides long-term care insurance coverage by a rider or as part of the contract and that satisfies the requirements of divisions (b) and (e) of section 7702B of the Internal Revenue Code of 1986, 26 U.S.C 7702B, as amended.

(G) "State long-term care partnership program" or "partnership program" means a program established under division (b) of section 1917 of the "Social Security Act," 42 U.S.C. 1396p, as amended.

(H) "Insurance agent" or "agent" means a person licensed under Chapter 3905. of the Revised Code to sell, solicit, or negotiate insurance.

(I) "Insurer" means any person authorized under Title XXXIX of the Revised Code to engage in the business of insurance in this state or any health insuring corporation authorized under Chapter 1751. of the Revised Code to do business in this state that issues long-term care insurance policies or certificates.
3923.42 Citing provisions - applicability.

(A) Sections 3923.41 to 3923.48 of the Revised Code may be cited as the "long-term care insurance act."

(B) Sections 3923.41 to 3923.48 of the Revised Code do not supersede the obligations of entities subject to these sections to comply with the substance of other applicable insurance laws insofar as they do not conflict with these sections, except that section 3923.33 and sections 3923.331 to 3923.339 of the Revised Code and rules intended to apply to Medicare supplement insurance policies do not apply to long-term care insurance. A policy that is not advertised, marketed, or offered as long-term care insurance need not meet the requirements of sections 3923.41 to 3923.48 of the Revised Code.

Effective Date: 06-04-1997; 2007 HB100 09-10-2007

3923.43 Evidence to be filed by long-term care insurance association.

(A) Prior to advertising, marketing, or offering a policy within this state, the association or the insurer of the association described in division (D)(3) of section 3923.41 of the Revised Code, shall file evidence with the superintendent of insurance that the association has at the outset a minimum of one hundred persons and has been organized and maintained in good faith for purposes other than that of obtaining insurance, has been in active existence for at least one year, and has a constitution and bylaws that provide all of the following:

1. The association holds regular meetings not less than annually to further the purposes of the members;
2. Except for credit unions, the association collects dues or solicits contributions from members;
3. The association's members have voting privileges and representation on the governing board and committees of the association.

(B) Thirty days after the evidence filing, the association is deemed to satisfy the organizational requirements listed in division (A) of this section unless the superintendent makes a specific finding that the association does not satisfy the organizational requirements.

Effective Date: 2007 HB100 09-10-2007

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

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

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.

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.

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.

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.

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.

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.

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.

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.

Effective Date: 07-01-1993; 2007 HB100 09-10-2007

3923.441 Rescission of long-term care policy for misrepresentation.

Except as otherwise provided in division (C) of this section and notwithstanding division (B) of section 3923.04 of the Revised Code, no insurer shall rescind a long-term care insurance policy or certificate or deny an otherwise valid claim based upon a misrepresentation by the applicant without adhering to one of the following:
For a policy or certificate that has been in force for less than six months, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if the insurer can demonstrate that the insured misrepresented facts that were material to the insurer's offer of coverage to the insured.

For a policy or certificate that has been in force for at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if the insurer can demonstrate that the insured misrepresented facts that were both material to the insurer's offer of coverage to the insured and that pertain to the condition for which the insured sought benefits.

After a policy or certificate has been in force for at least two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if the insurer can demonstrate that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health in the insured's application for the policy.

No insurer shall recover from the insured benefits that were paid under a long-term care insurance policy or certificate prior to the rescission of the policy or certificate pursuant to this section.

In the event of the death of the insured, the remaining death benefits under a life insurance policy that accelerates benefits for long-term care are governed by section 3923.04 of the Revised Code.

Effective Date: 2007 HB100 09-10-2007

3923.442 Offer of nonforfeiture benefit option with long-term care policy.

(A)

(1) Except as provided in division (B) of this section, no insurer shall deliver or issue for delivery a long-term care insurance policy or certificate in this state without offering the policyholder or certificate holder the option of purchasing a nonforfeiture benefit.

(2) An insurer's offer of a nonforfeiture benefit pursuant to this section may be in the form of a rider that is attached to the policy.

(3) If the policyholder or certificate holder declines the nonforfeiture benefit offered pursuant to this section, the insurer shall provide a contingent benefit upon lapse that shall be available for a period of time specified in the policy or certificate following a substantial increase in premium rates.

(B)

(1) For a group long-term care insurance policy, the insurer shall make the offer required by division (A) of this section to the group policyholder.

(2) For a group long-term care insurance policy as defined by division (D)(4) of section 3923.41 of the Revised Code, other than to a continuing care retirement community or other similar entity, the insurer shall make the offer required by division (A) of this section to each proposed certificate holder.

(C) The superintendent of insurance may adopt rules specifying the type of nonforfeiture benefits insurers may offer as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits, and the rules regarding 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 division (A) of this section.

Effective Date: 2007 HB100 09-10-2007

3923.443 Training required for agents selling long-term care policies.

(A)

(1) No agent shall sell, solicit, or negotiate long-term care insurance on or after September 1, 2008, without completing an initial eight-hour partnership program training course as described in division (B) of this section.
Any agent that sells, solicits, or negotiates any long-term care insurance shall complete at least four hours of continuing education in every twenty-four-month period commencing on the first day of January of the year immediately following the year of the issuance of the agent's license.

No agent shall fail to complete the continuing education requirements in division (A)(2)(a) of this section in the twenty-four-month period described in that division.

The initial training course and continuing education required under division (A) of this section may be approved by the superintendent of insurance as continuing education courses under sections 3905.481 to 3905.486 of the Revised Code and shall consist of combined topics related to long-term care insurance, long-term care services, and state long-term care insurance partnership programs, including all of the following:

1. State and federal regulations and requirements and the relationship between state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid;
2. Available long-term care services and providers;
3. Changes or improvements in long-term care services or providers;
4. Alternatives to the purchase of private long-term care insurance;
5. The effect of inflation on benefits and the importance of inflation protection;
6. Consumer suitability standards and guidelines;
7. Any other topics required by the superintendent.

The initial training and continuing education required by division (A) of this section shall not include training that is specific to a particular insurer or company product or that includes any sales or marketing information, materials, or training other than those required by state or federal law.

A resident agent shall satisfy the training and continuing education required by division (A) of this section by completing long-term care courses that are approved by the superintendent. A nonresident agent may satisfy the training and continuing education required by division (A) of this section by completing the training requirements in any other state, provided that the course is approved for credit by the insurance department of that state prior to the agent taking the course.

Each insurer shall obtain records of the initial training and continuing education completed by agents of that insurer pursuant to division (A) of this section as well as the training completed by the insurer's agents concerning the distribution of the insurer's partnership program policies and shall make those records available to the superintendent upon request.

Each insurer shall maintain records with respect to the training of its agents concerning the distribution of the insurer's partnership program policies. Each insurer shall provide documentation to the superintendent that will allow the superintendent to provide assurance to the Medicaid director that agents have received the training required by this section and that agents have demonstrated an understanding of the partnership program policies and their relationship to public and private coverage of long-term care in this state, including Medicaid. The superintendent may audit each insurer's records annually to verify that the insurer is maintaining the records required by this division. The superintendent shall make the records provided to the superintendent pursuant to division (E) of this section available to the director.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 2007 HB100 09-10-2007; 2008 HB562 09-22-2008

3923.444 Compensation of agents selling long-term care policies.

No agent or third-party administrator shall field issue a long-term care insurance policy or certificate if the compensation to the agent or third-party administrator is not based on the number of policies or certificates issued.
As used in this section, "field issue" means to issue a policy or certificate pursuant to the underwriting authority granted to an agent or third-party administrator by an insurer using the insurer’s underwriting guidelines.

Effective Date: 2007 HB100 09-10-2007

3923.45 Forms.

The form of all long-term care insurance policies and applications shall be filed and approved in accordance with section 3923.02 of the Revised Code.

Effective Date: 09-14-1988

3923.46 Rates for individual policy.

Premium rates for any individual policy of long-term care insurance shall be filed in accordance with section 3923.021 of the Revised Code.

Effective Date: 09-14-1988

3923.47 Rules.

The superintendent of insurance shall, pursuant to Chapter 119. of the Revised Code, adopt rules to carry out the purposes of sections 3923.41 to 3923.48 of the Revised Code including rules related to the state long-term care partnership program.

Effective Date: 09-14-1988; 2007 HB100 09-10-2007

3923.48 Violation is unfair and deceptive insurance practice.

Any violation of sections 3923.44 to 3923.46 of the Revised Code is an unfair and deceptive insurance practice under sections 3901.19 to 3901.23 of the Revised Code.

Effective Date: 08-14-1992

Ohio Administrative Code Section 3901-4-01 Long-Term Care Insurance

(A) Purpose. The purpose of this rule is to implement sections 3923.41 to 3923.49 of the Revised Code to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

(B) Authority. This regulation is issued pursuant to the authority vested in the superintendent under sections 3901.041, 3923.44 and 3923.47 of the Revised Code.

(C) Applicability. Except as otherwise specifically provided, this rule applies to all long-term care insurance policies, including qualified long-term care contracts and life insurance policies that accelerate benefits for long-term care delivered or issued for delivery in this state on or after the effective date by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

Additionally, this rule is intended to apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance, if:

(1) The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;

(2) The disability income policy is advertised, marketed or offered as insurance for long-term care services; or
(3) Benefits under the policy may commence after the policyholder has reached social security's normal retirement age unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

(D) Definitions. For the purpose of this rule, the terms "long-term care insurance," "group long-term care insurance," "applicant," "policy" and "certificate" shall have the meanings set forth in section 3923.41 of the Revised Code. In addition, the following definitions apply.

(1) "Association" shall mean any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association:

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

(b) Has been maintained in good faith for purposes other than obtaining insurance.

(2) "Exceptional increase" means only those increases filed by an insurer as exceptional for which the superintendent determines the need for the premium rate increase is justified:

(i) Due to changes in laws or regulations applicable to long-term care coverage in this state; or

(ii) Due to increased and unexpected utilization that affects the majority of insurers of similar products.

(b) Except as provided in paragraph (T) of this rule, exceptional increases are subject to the same requirements as other premium rate schedule increases.

(c) The superintendent may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

(d) The superintendent, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

(3) "Incidental," as used in paragraph (T) (10) of this rule, means that the value of the long-term care benefits provided is less than ten per cent of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

(4) "Qualified actuary" means a member in good standing of the American academy of actuaries.

(5) "Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in section 3923.41 of the Revised Code are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, non-institutional long-term care benefits only, or comprehensive long-term care benefits.

(E) Policy definitions. No long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

(2) "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his or her health status.

(3) "Adult day care" means a program for six or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.
(6) "Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup or table) or by a feeding tube or intravenously.

(9) "Hands-on assistance" means physical assistance (minimal, moderate or maximal) without which the individual would not be able to perform the activity of daily living.

(10) "Home health care services" means medical and nonmedical services provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

(11) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

(12) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(13) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(14) "Skilled nursing care," "personal care," "home care," "specialized care," "assisted living care" and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(16) "Transferring" means moving into or out of a bed, chair or wheelchair.

(17) All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "convalescent nursing home," "personal care facility," "specialized care providers," "assisted living facility" and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration or degree status of those providing or supervising the services. When the definition requires that the provider be appropriately licensed, certified or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified or registered, or when the state licenses, certifies or registers the provider of services under another name.

(F) Policy practices and provisions

(1) Renewability. The terms "guaranteed renewable" and "noncancelable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of paragraph (I) of this rule.

(a) A policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancelable."

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancelable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(d) The term "level premium" may only be used when the insurer does not have the right to change the premium.

(e) In addition to the other requirements of this paragraph, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702(b)(1)(C) of the Internal Revenue Code of 1986, as amended.
(2) Limitations and exclusions. A policy may not be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(a) Preexisting conditions or diseases;

(b) Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits based on Alzheimer’s disease;

(c) Alcoholism and drug addiction;

(d) Illness, treatment or medical condition arising out of:

(i) War or act of war (whether declared or undeclared);

(ii) Participation in a felony, riot or insurrection;

(iii) Service in the armed forces or units auxiliary thereto;

(iv) Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

(v) Aviation (this exclusion applies only to non-fare-paying passengers).

e) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers’ compensation, employer’s liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person’s immediate family and services for which no charge is normally made in the absence of insurance;

(f) Expenses for services or items available or paid under another long-term care insurance or health insurance policy;

(g) In the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount.

(h)

(i) This subparagraph is not intended to prohibit exclusions and limitations by type of provider. However, no long-term care issuer may deny a claim because services are provided in a state other than the state of policy issue under the following conditions:

(a) When the state other than the state of policy issue does not have the provider licensing, certification or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification or registration; or

(b) When the state other than the state of policy issue licenses, certifies or registers the provider under another name.

(ii) For purposes of this paragraph, "state of policy issue" means the state in which the individual policy or certificate was originally issued.

(i) This subparagraph is not intended to prohibit territorial limitations.

(3) Extension of benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(4) Continuation or conversion

(a) Group long-term care insurance issued in this state on or after the effective date of this paragraph shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) For the purposes of this paragraph, a "basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or
facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The superintendent shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(c) For the purposes of this paragraph, a "basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(d) For the purposes of this paragraph, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the superintendent to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the superintendent, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(e) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(f) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(g) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(i) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(ii) The termination coverage is replaced not later than thirty-one days after termination, by group coverage effective on the day following the termination of coverage:

(a) Providing benefits identical to or benefits determined by the superintendent to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(b) The premium for which is calculated in a manner consistent with the requirements of paragraph (F)(4)(f) of this rule.

(h) Notwithstanding any other provisions of this paragraph, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than one hundred per cent of incurred expenses. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(i) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(j) Notwithstanding any provision of this paragraph, an insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(k) For the purposes of this paragraph a "managed-care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(5) Discontinuance and replacement
If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(a) Shall not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

(6)

(a) The premium charged to an insured shall not increase due to either:

(i) The increasing age of the insured at ages beyond sixty-five; or

(ii) The duration the insured has been covered under the policy.

(b) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under paragraph (AA) of this rule, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(c) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under paragraph (AA) of this rule, the initial annual premium shall be based on the reduced benefits.

(7) Electronic enrollment for group polices

(a) In the case of a group defined in division (D) of section 3923.41 of the Revised Code, any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

(i) The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(ii) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(iii) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and "privileged information" as defined by division (U) of section 3904.01 of the Revised Code, is maintained.

(b) The insurer shall make available, upon request of the superintendent, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

(G) Unintentional lapse. Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)

(a) Notice before lapse or termination. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for non-payment of premium. I understand that notice will not be given until thirty days after a premium is due and unpaid. I elect not to designate a person to receive this notice."

The insurer shall notify the insured of the right to change this written designation, no less often than once every two years.
(b) When the policyholder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in paragraph (G)(1)(a) of this rule need not be met until sixty days after the policyholder or certificate holder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to paragraph (G)(1)(a) of this rule, at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until thirty days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(2) Reinstatement. In addition to the requirement in paragraph (G)(1) of this rule, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

(H) Required disclosure provisions

(1) Renewability. Individual long-term care insurance policies shall contain a renewability provision.

(a) The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancelable. This provision shall not apply to policies that do not contain a renewability provision, and under which the right to non-renew is reserved solely to the policyholder.

(b) A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(2) Riders and endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider or endorsement.

(3) Payment of benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(5) Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in divisions (E)(2) and (F) of section 3923.44 of the Revised Code shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions On Eligibility for Benefits."

(6) Disclosure of tax consequences. With regard to life insurance policies that provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subparagraph shall not apply to qualified long-term care insurance contracts.

(7) Benefit triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this section. If these triggers differ for different benefits, explanation of the trigger
shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

(8) A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in paragraph (DD)(5) of this rule that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(9) A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in paragraph (DD)(5) of this rule that the policy is not intended to be a qualified long-term care insurance contract.

(I) Required disclosure of rating practices to consumers

(1) This paragraph shall apply as follows:

(a) Except as provided in paragraph (I)(1)(b) of this rule, this paragraph applies to any long-term care policy or certificate issued in this state on or after one hundred eighty days after the effective date of this rule.

(b) For certificates issued on or after the effective date of this amended rule under a group long-term care insurance policy as defined in division (D) of section 3923.41 of the Revised Code, which policy was in force at the time this amended rule became effective, the provisions of this paragraph shall apply on the policy anniversary following three hundred sixty-five days after the effective date of this rule.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subparagraph to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this paragraph to the applicant no later than at the time of delivery of the policy or certificate.

(a) A statement that the policy may be subject to rate increases in the future;

(b) An explanation of potential future premium rate revisions, and the policyholder’s or certificate holder’s option in the event of a premium rate revision;

(c) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(d) A general explanation for applying premium rate or rate schedule adjustments that shall include:

(i) A description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.); and

(ii) The right to a revised premium rate or rate schedule as provided in paragraph (I)(2) of this rule if the premium rate or rate schedule is changed;

(e)

(i) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten years for this state or any other state that, at a minimum identifies:

(a) The policy forms for which premium rates have been increased;

(b) The calendar years when the form was available for purchase; and

(c) The amount or per cent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(ii) The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

(iii) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.
(iv) If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of the effective date of this paragraph or the end of a twenty-four-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with paragraph (I)(2)(e)(i) of this rule.

(v) If the acquiring insurer in paragraph (I)(2)(e)(iv) of this rule files for a subsequent rate increase, even within the twenty-four-month period, on the same policy form acquired from nonaffiliated insurers or block policy forms acquired from nonaffiliated insurers referenced in paragraph (I)(2)(e)(iv) of this rule, the acquiring insurer shall make all disclosures required by paragraph (I)(2) of this rule, including disclosure of the earlier rate increase referenced in paragraph (I)(2)(e)(iv) of this rule.

(3) An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under paragraphs (I)(2)(a) and (I)(2)(e) of this rule. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(4) An insurer shall use the forms in appendices B and F to this rule to comply with the requirements of paragraphs (I)(1) and (I)(2) of this rule.

(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least forty-five days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by paragraph (I)(2) of this rule when the rate increase is implemented.

(J) Initial filing requirements

(1) This paragraph applies to any long-term care policy issued in this state on or after one hundred eighty days after the effective date of this rule.

(2) An insurer shall provide the information listed in this subparagraph to the superintendent thirty days prior to making a long-term care insurance form available for sale.

(a) A copy of the disclosure documents required in paragraph (I) of this rule; and

(b) An actuarial certification consisting of at least the following:

(i) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(ii) A statement that the policy design and coverage provided have been reviewed and taken into consideration;

(iii) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(iv) A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

(a) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(b) A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(c) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and

(d) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;

(i) An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

(ii) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the superintendent may request a demonstration under paragraph (J)(3) of this rule based on a standard age distribution; and
(v)

(a) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

(b) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3)

(a) The superintendent may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

(b) In the event the superintendent asks for additional information under this provision, the period in paragraph (J)(2) of this rule does not include the period during which the insurer is preparing the requested information.

(K) Prohibition against post-claims underwriting

(1) All applications for long-term care insurance policies or certificates except those that are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)

(a) If an application for long-term care insurance contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(3) Except for policies or certificates which are guaranteed issue:

(a) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy.

(b) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

(c) Prior to issuance of a long-term care policy or certificate to an applicant age eighty or older, the insurer shall obtain one of the following:

(i) A report of a physical examination;

(ii) An assessment of functional capacity;

(iii) An attending physician's statement; or

(iv) Copies of medical records.

(4) A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.
(5) Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those that the insured voluntarily effectuated and shall annually furnish this information to the superintendent in the format prescribed by the national association of insurance commissioners in appendix A to this rule.

(L) Minimum standards for home health and community care benefits in long-term care insurance policies

(1) A long-term care insurance policy or certificate shall not, if it provides benefits for home health care or community care services, limit or exclude benefits:

(a) By requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;

(b) By requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or both, in a home, community or institutional setting before home health care services are covered;

(c) By limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) By requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;

(e) By excluding coverage for personal care services provided by a home health aide;

(f) By requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(g) By requiring that the insured or claimant have an acute condition before home health care services are covered;

(h) By limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) By excluding coverage for adult day care services.

(2) A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year’s coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

(3) Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

(M) Requirement to offer inflation protection

(1) No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five per cent;

(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five per cent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy is issued to a group, the required offer in paragraph (M)(1) of this rule shall be made to the group policyholder; except, if the policy is issued to a group defined in division (D) of section 3923.41 of the Revised Code other than an employer, labor organization or trust established by one or more employers or labor organizations or a combination thereof, or an association group, and the group is not a continuing care retirement community, the offering shall be made to each proposed certificate holder.
(3) The offer in paragraph (M)(1) of this rule shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4)

(a) Insurers shall include the following information in or with the outline of coverage:

(i) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty-year period.

(ii) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(5) Inflation protection benefit increases under a policy which contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(6) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7)

(a) Inflation protection as provided in paragraph (M)(1)(a) of this rule shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subparagraph. The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed plans ______, and I reject inflation protection.

(N) Requirements for application forms and replacement coverage

(1) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing the questions may be used. With regard to a replacement policy issued to a group defined by division (D) of section 3923.41 of the Revised Code, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, provided that the certificate holder has been notified of the replacement.

(a) Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?

(b) Did you have another long-term care insurance policy or certificate in force during the last twelve months?

(i) If so, with which company?

(ii) If that policy lapsed, when did it lapse?

(c) Are you covered by Medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy [certificate]?

(2) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold that are still in force.

(b) List policies sold in the past five years that are no longer in force.
(3) Solicitations other than direct response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided as shown in appendix I to this rule.

(4) Direct response solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided as shown in appendix I to this rule.

(5) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. Notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(6) Life insurance policies that accelerate benefits for long-term care shall comply with this paragraph if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of rule 3901-6-05 of the Administrative Code. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

(O) Reporting requirements

(1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a per cent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a per cent of the agent's total annual sales.

(2) Every insurer shall report annually by June thirtieth the ten per cent of its agents with the greatest percentages of lapses and replacements as measured by paragraph (O)(1) of this rule (appendix G to this rule).

(3) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(4) Every insurer shall report annually by June thirtieth the number of lapsed policies as a per cent of its total annual sales and as a per cent of its total number of policies in force as of the end of the preceding calendar year (appendix G to this rule).

(5) Every insurer shall report annually by June thirtieth the number of replacement policies sold as a per cent of its total annual sales and as a per cent of its total number of policies in force as of the preceding calendar year (appendix G to this rule).

(6) Every insurer shall report annually by June thirtieth, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied (appendix E to this rule).

(7) For purposes of this paragraph:

(a) "Policy" means only long-term care insurance;

(b) Subject to paragraph (O)(7)(c) of this rule, "claim" means a request for payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(c) "Denied" means the insurer refused to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

(d) "Report" means on a statewide basis.

(8) Reports required under this paragraph shall be filed with the superintendent.

(P) Licensing: A producer is not authorized to sell, solicit or negotiate with respect to long-term care insurance except as authorized by Chapter 3905. of the Revised Code.
Discretionary powers of superintendent: The superintendent may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(1) The modification or suspension would be in the best interest of the insureds;

(2) The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

(3)

(a) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

(b) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or

(c) The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

Reserve standards

(1) When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for the benefits shall be determined in accordance with division (D)(7) of section 3903.72 of the Revised Code. Claim reserves shall also be established in the case when the policy or rider is in claim status.

Reserves for policies and riders subject to this paragraph should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

In the development and calculation of reserves for policies and riders subject to this paragraph, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

(a) Definition of insured events;

(b) Covered long-term care facilities;

(c) Existence of home convalescence care coverage;

(d) Definition of facilities;

(e) Existence or absence of barriers to eligibility;

(f) Premium waiver provision;

(g) Renewability;

(h) Ability to raise premiums;

(i) Marketing method;

(j) Underwriting procedures;

(k) Claims adjustment procedures;

(l) Waiting period;
(m) Maximum benefit;
(n) Availability of eligible facilities;
(o) Margins in claim costs;
(p) Optional nature of benefit;
(q) Delay in eligibility for benefit;
(r) Inflation protection provisions; and
(s) Guaranteed insurability option.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American academy of actuaries.

(2) When long-term care benefits are provided other than as in paragraph (R)(1) of this rule, reserves shall be determined in accordance with rule 3901-3-13 of the Administrative Code.

(S) Loss ratio

(1) This paragraph shall apply to all long-term care insurance policies or certificates except those covered under paragraphs (J) and (T) of this rule.

(2) Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty per cent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

(a) Statistical credibility of incurred claims experience and earned premiums;
(b) The period for which rates are computed to provide coverage;
(c) Experienced and projected trends;
(d) Concentration of experience within early policy duration;
(e) Expected claim fluctuation;
(f) Experience refunds, adjustments or dividends;
(g) Renewability features;
(h) All appropriate expense factors;
(i) Interest;
(j) Experimental nature of the coverage;
(k) Policy reserves;
(l) Mix of business by risk classification; and
(m) Product features such as long elimination periods, high deductibles and high maximum limits.

(3) Paragraph (S)(2) of this rule shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:
(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of sections 3915.071 and 3915.072 of the Revised Code;

(c) The policy meets the disclosure requirements of divisions (K), (L), and (M) of section 3923.44 of the Revised Code.

(d) Any policy illustration that meets the applicable requirements of the rule 3901-6-04 of the Administrative Code; and

(e) An actuarial memorandum is filed with the insurance department that includes:

(i) A description of the basis on which the long-term care rates were determined;

(ii) A description of the basis for the reserves;

(iii) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) A description and a table of each actuarial assumption used. For expenses, an insurer must include per cent of premium dollars per policy and dollars per unit of benefits, if any;

(v) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) The estimated average annual premium per policy and the average issue age;

(vii) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

(T) Premium rate schedule increases

(1) This paragraph shall apply as follows:

(a) Except as provided in paragraph (T)(1)(b) of this rule, this paragraph applies to any long-term care policy or certificate issued in this state on or after one hundred eighty days after the effective date of this rule.

(b) For certificates issued on or after the effective date of this amended rule under a group long-term care insurance policy as defined in division (D) of section 3923.41 of the Revised Code, which policy was in force at the time this amended rule became effective, the provisions of this paragraph shall apply on the policy anniversary following three hundred sixty-five days after the effective date of this rule.

(2) An insurer shall provide notice of a pending premium rate schedule increase for a group long-term care policy, including an exceptional increase, to the superintendent at least thirty days prior to the notice to the policyholders. An insurer shall request approval of a pending premium rate schedule increase for an individual long-term care policy, including an exceptional increase, from the superintendent at least thirty days prior to the notice to the policyholders. The notice or request for approval shall include:

(a) Information required by paragraph (I) of this rule;

(b) Certification by a qualified actuary that:

(i) If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;

(ii) The premium rate filing is in compliance with the provisions of this paragraph;

(c) An actuarial memorandum justifying the rate schedule change request that includes:
(i) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

(a) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(b) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(c) The projections shall demonstrate compliance with paragraph (T)(3) of this rule; and

(d) For exceptional increases,

(i) The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(ii) In the event the superintendent determines as provided in paragraph (D)(2)(d) of this rule that offsets may exist, the insurer shall use appropriate net projected experience;

(ii) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(iii) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

(iv) A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(v) In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

(d) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the superintendent; and

(e) Sufficient information for review and approval of the premium rate schedule increase by the superintendent.

(3) All premium rate schedule increases shall be determined in accordance with the following requirements:

(a) Exceptional increases shall provide that seventy per cent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(i) The accumulated value of the initial earned premium times fifty-eight per cent;

(ii) Eighty-five per cent of the accumulated value of prior premium rate schedule increases on an earned basis;

(iii) The present value of future projected initial earned premiums times fifty-eight per cent; and

(iv) Eighty-five per cent of the present value of future projected premiums not in paragraph (T)(3)(c) of this rule on an earned basis;

(c) In the event that a policy form has both exceptional and other increases, the values in paragraphs (T)(3)(b)(ii) and (T)(3)(b)(iv) of this rule will also include seventy per cent for exceptional rate increase amounts; and

(d) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in rule 3901-3-13 of the Administrative Code. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(4) For each rate increase that is implemented, the insurer shall file with the superintendent updated projections, as defined in paragraph (T)(2)(c)(i) of this rule, annually for the next three years and include a comparison of actual results to projected values. The
superintendent may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in paragraph (T) (11) of this rule, the projections required by this paragraph shall be provided to the policyholder in lieu of filing with the superintendent.

(5) If any premium rate in the revised premium rate schedule is greater than two hundred per cent of the comparable rate in the initial premium schedule, lifetime projections, as defined in paragraph (T)(2)(c)(i) of this rule, shall be filed with the superintendent every five years following the end of the required period in paragraph (T)(4) of this rule. For group insurance policies that meet the conditions in paragraph (T) (11) of this rule, the projections required by this paragraph shall be provided to the policyholder in lieu of filing with the superintendent.

(6)

(a) If the superintendent has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in paragraph (T)(3) of this rule, the superintendent may require the insurer to implement any of the following:

(i) Premium rate schedule adjustments; or

(ii) Other measures to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration should be given to paragraph (T)(2)(c)(v) of this rule, if applicable.

(7) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) A plan, subject to superintendent approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the superintendent may impose the condition in paragraph (T)(8) of this rule; and

(b) The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to paragraph (T)(3) of this rule had the greater of the original anticipated lifetime loss ratio or fifty-eight per cent been used in the calculations described in paragraphs (T)(3)(a) and (T)(3)(c) of this rule.

(8)

(a) For a rate increase filing that meets the following criteria, the superintendent shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

(i) The rate increase is not the first rate increase requested for the specific policy form or forms;

(ii) The rate increase is not an exceptional increase; and

(iii) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the superintendent may determine that a rate spiral exists. Following the determination that a rate spiral exists, the superintendent may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

(i) The offer shall:

(a) Be subject to the approval of the superintendent;

(b) Be based on actuarially sound principles, but not be based on attained age; and
(c) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

(ii) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(a) The maximum rate increase determined based on the combined experience; and

(b) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten per cent.

(9) If the superintendent determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the superintendent may, in addition to the provisions of paragraph (T)(8) of this rule, prohibit the insurer from either of the following:

(a) Filing and marketing comparable coverage for a period of up to five years; or

(b) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(10) Paragraphs (T)(1) to (T)(9) of this rule shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in paragraph (D)(3) of this rule, if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

(i) Sections 3915.071 and 3915.072 of the Revised Code, and

(ii) Section 3915.073 of the Revised Code;

(c) The policy meets the disclosure requirements of divisions (K), (L) and (M) of section 3923.44 of the Revised Code;

(d) The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

(i) Policy illustrations as required by rule 3901-6-04 of the Administrative Code;

(e) An actuarial memorandum is filed with the insurance department that includes:

(i) A description of the basis on which the long-term care rates were determined;

(ii) A description of the basis for the reserves;

(iii) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) A description and a table of each actuarial assumption used. For expenses, an insurer must include per cent of premium dollars per policy and dollars per unit of benefits, if any;

(v) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) The estimated average annual premium per policy and the average issue age;

(vii) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
(viii) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(11) Paragraphs (T)(6) and (T)(8) of this rule shall not apply to group insurance policies as defined in division (D) of section 3923.41 of the Revised Code, which are issued to an employer, labor organization or trust established by one or more employers or labor organizations or a combination thereof where:

(a) The policies insure two hundred fifty or more persons and the policyholder has five thousand or more eligible employees of a single employer; or

(b) The policyholder, and not the certificate holders, pays a material portion of the premium, which shall not be less than twenty per cent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

(U) Filing requirements for advertising

(1) Every insurer, health care service plan or other entity providing long-term care insurance or benefits in this state shall provide a copy of any long-term care insurance advertisement intended for use in this state whether through written, radio or television medium to the superintendent of insurance of this state for review or approval by the superintendent to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used.

(2) The superintendent may exempt from these requirements any advertising form or material when, in the superintendent's opinion, this requirement may not be reasonably applied.

(V) Standards for marketing

(1) Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

(a) Establish marketing procedures and agent training requirements to assure that:

(i) Any marketing activities, including any comparison of policies, by its agents or other producers will be fair and accurate; and

(ii) Excessive insurance is not sold or issued.

(b) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(c) Provide copies of the disclosure forms required in paragraph (I)(3) of this rule (appendices B and F to this rule) to the applicant.

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required.

(e) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this paragraph (V)(1) of this rule.

(f) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the superintendent, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificate holder that the program is available and the name, address and telephone number of the program.

(g) For long-term care health insurance policies and certificates, use the terms "noncancelable" or "level premium" only when the policy or certificate conforms to paragraph (F)(1)(c) of this rule.

(h) Provide an explanation of contingent benefit upon lapse provided for in paragraph (AA)(4)(c) of this rule and, if applicable, the additional contingent benefit upon lapse provided to policies with fixed or limited premium paying periods in paragraph (AA)(4)(d) of this rule.
(2) In addition to the practices prohibited in sections 3901.20 and 3901.21 of the Revised Code, the following acts and practices are prohibited:

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

(3)

(a) With respect to the obligations set forth in this paragraph, the primary responsibility of an association, as defined in paragraph (D)(1) of this rule, when endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

(b) The insurer shall file with the insurance department the following material:

(i) The policy and certificate,

(ii) A corresponding outline of coverage, and

(iii) All advertisements requested by the insurance department.

(c) The association shall disclose in any long-term care insurance solicitation:

(i) The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

(ii) A brief description of the process under which the policies and the insurer issuing the policies were selected.

(d) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

(e) The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(f) The association shall also:

(i) At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;

(ii) Actively monitor the marketing efforts of the insurer and its agents; and

(iii) Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

(iv) Paragraphs (V)(3)(f)(i) to (V)(3)(f)(iii) of this rule shall not apply to qualified long-term care insurance contracts.

(g) No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the state insurance department the information required in this paragraph.
(h) The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this paragraph.

(i) Failure to comply with the filing and certification requirements of this paragraph constitutes an unfair trade practice.

(W) Suitability

(1) This paragraph shall not apply to life insurance policies that accelerate benefits for long-term care.

(2) Every insurer, health care service plan or other entity marketing long-term care insurance (the "issuer") shall:

(a) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) Train its agents in the use of its suitability standards; and

(c) Maintain a copy of its suitability standards and make them available for inspection upon request by the superintendent.

(3) To determine whether the applicant meets the standards developed by the issuer, the agent and issuer shall develop procedures that take the following into consideration:

(i) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(ii) The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(iii) The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(b) The issuer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in paragraph (W)(3)(a) of this rule. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in appendix B to this rule, in not less than twelve point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the superintendent.

(c) A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(d) The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in appendix B to this rule is prohibited.

(4) The issuer shall use the suitability standards it has developed pursuant to this paragraph in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(5) Agents shall use the suitability standards developed by the issuer in marketing long-term care insurance.

(6) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in appendix C to this rule, in not less than twelve point type.

(7) If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to appendix D to this rule. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.
(8) The issuer shall report annually to the superintendent the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards and the number of those who chose to confirm after receiving a suitability letter.

(X) Prohibition against preexisting conditions and probationary periods in replacement policies or certificates: If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

(Y) Availability of new services or providers

(1) An insurer shall notify policyholders of the availability of a new long-term care policy series that provides coverage of new long-term care services or providers material in nature and not previously available through the insurer to the general public. The notice shall be provided within three hundred sixty-five days of the date the new policy series is made available for sale in this state.

(2) Notwithstanding paragraph (Y)(1) of this rule, notification is not required for any policy issued prior to the effective date of paragraph (Y) of this rule or to any policyholder or certificate holder who is currently eligible for benefits, within an elimination period or on a claim, or who previously has been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(3) The insurer shall make the new coverage available in one of the following ways:

(a) By adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

(b) By exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate;

(c) By exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or

(d) By an alternative program developed by the insurer that meets the intent of paragraph (Y) of this rule if the program is filed with and approved by the superintendent.

(4) An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For purposes of this subparagraph, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders that purchased such a proprietary policy shall be notified when a new long-term care policy series that provides coverage for new long-term care services or providers material in nature is made available to that limited distribution channel.

(5) Policies issued pursuant to this paragraph shall be considered exchanges and not replacements. These exchanges shall not be subject to paragraphs (N) and (W) of this rule, and the reporting requirements of paragraphs (O)(1) to (O)(5) of this rule.

(6) Where the policy is offered through an employer, labor organization, professional, trade or occupational association, the required notification in paragraph (Y)(1) of this rule shall be made to the offering entity. However, if the policy is issued to a group defined in division (D)(4) of section 3923.41 of the Revised Code, the notification shall be made to each certificate holder.

(7) Nothing in this paragraph shall prohibit an insurer from offering any policy, rider, certificate or coverage change to any policyholder or certificate holder. However, upon request any policyholder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(8) Paragraph (Y) of this rule does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(9) Paragraph (Y) of this rule shall become effective on or after three hundred sixty-five days after the effective date of this amended rule.
(Z) Right to reduce coverage and lower premiums

(1)

(a) Every long-term care insurance policy and certificate shall include a provision that allows the policyholder or certificate holder to reduce coverage and lower the policy or certificate premium in at least one of the following ways;

(i) Reducing the maximum benefit; or

(ii) Reducing the daily, weekly or monthly benefit amount.

(b) The insurer may also offer other reduction options that are consistent with the policy or certificate design or the carrier’s administrative processes. An example of a policy design would be a partnership policy which maintains its partnership status by containing certain features as required by state or federal law.

(2) The provision shall include a description of the ways in which coverage may be reduced and the process for requesting and implementing a reduction in coverage.

(3) The age to determine the premium for the reduced coverage shall be based on the age used to determine the premiums for the coverage currently in force.

(4) The insurer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.

(5) If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificate holder of his or her right to reduce coverage and premiums in the notice required by paragraph (G)(1)(c) of this rule.

(6) Paragraph (Z) of this rule does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(7) The requirements of paragraph (Z) of this rule shall apply to any long-term care policy issued in this state on or after three hundred sixty-five days after the effective date of this amended rule.

(AA) Nonforfeiture benefit requirement

(1) This paragraph does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(2) A nonforfeiture benefit shall be offered that complies with the following:

(a) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in paragraph (AA)(5) of this rule; and

(b) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(3) If the offer is rejected, the insurer shall provide the contingent benefit upon lapse described in this paragraph. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit upon lapse in paragraph (AA)(4)(d) of this rule shall still apply.

(4)

(a) After rejection of the offer, for individual and group policies without nonforfeiture benefits issued after the effective date of this paragraph, the insurer shall provide a contingent benefit upon lapse.

(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) A contingent benefit upon lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured’s initial annual premium set forth below stated on the insured’s issue age, and the policy or certificate lapses within one hundred twenty days of the due date of the premium so
increased. Unless otherwise required, policyholders shall be notified at least thirty days prior to the due date of the premium reflecting the rate increase.

Triggers for a substantial premium increase

<table>
<thead>
<tr>
<th>Issue Age</th>
<th>Percent Increase Over Initial Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>29 and under</td>
<td>200%</td>
</tr>
<tr>
<td>30-34</td>
<td>190%</td>
</tr>
<tr>
<td>35-39</td>
<td>170%</td>
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<tr>
<td>40-44</td>
<td>150%</td>
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<td>45-49</td>
<td>130%</td>
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<tr>
<td>50-54</td>
<td>110%</td>
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<td>55-59</td>
<td>90%</td>
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<td>60</td>
<td>70%</td>
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<td>88</td>
<td>12%</td>
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<tr>
<td>89</td>
<td>11%</td>
</tr>
<tr>
<td>90 and over</td>
<td>10%</td>
</tr>
</tbody>
</table>

(d) A contingent benefit upon lapse shall also be triggered for policies with a fixed or limited premium paying period every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured’s initial annual premium set forth below based on the insured’s issue age, the policy or certificate lapses within one hundred twenty days of the due date of the premium so increased, and the ratio in paragraph (AA)(4)(f)(ii) of this rule is forty per cent or more. Unless otherwise required, policyholders shall be notified at least thirty days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

<table>
<thead>
<tr>
<th>Issue Age</th>
<th>Percent Increase Over Initial Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 65:</td>
<td>50%</td>
</tr>
<tr>
<td>65-80:</td>
<td>30%</td>
</tr>
<tr>
<td>Over 80:</td>
<td>10%</td>
</tr>
</tbody>
</table>
This provision shall be in addition to the contingent benefit provided by paragraph (AA)(4)(c) of this rule and where both are triggered, the benefit provided shall be at the option of the insured.

(e) On or before the effective date of a substantial premium increase as defined in paragraph (AA)(4)(c) of this rule, the insurer shall:

(i) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(ii) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of paragraph (AA)(5) of this rule. This option may be elected at any time during the one hundred twenty-day period referenced in paragraph (AA)(4)(c) of this rule; and

(iii) Notify the policyholder or certificate holder that a default or lapse at any time during the one hundred twenty-day period referenced in paragraph (AA)(4)(c) of this rule shall be deemed to be the election of the offer to convert in paragraph (AA)(4)(e)(ii) of this rule unless the automatic option in paragraph (AA)(4)(f)(iii) of this rule applies.

(f) On or before the effective date of a substantial premium increase as defined in paragraph (AA)(4)(d) of this rule, the insurer shall:

(i) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(ii) Offer to convert the coverage to a paid-up status where the amount payable for each benefit is ninety per cent of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. This option may be elected at any time during the one hundred twenty-day period referenced in paragraph (AA)(4)(d) of this rule; and

(iii) Notify the policyholder or certificate holder that a default or lapse at any time during the one hundred twenty-day period referenced in paragraph (AA)(4)(d) of this rule shall be deemed to be the election of the offer to convert in paragraph (AA)(4)(f)(ii) of this rule if the ratio is forty per cent or more.

(5) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with paragraph (AA)(4)(c) of this rule but not paragraph (AA)(4)(d) of this rule, are described in this subparagraph:

(a) For purposes of paragraph (AA)(5)(a) of this rule, attained age rating is defined as a schedule of premiums starting from the issue date which increases with age at least one per cent per year prior to age fifty, and at least three per cent per year beyond age fifty.

(b) For purposes of this subparagraph, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in paragraph (AA)(5)(c) of this rule.

(c) The standard nonforfeiture credit will be equal to one hundred per cent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of paragraph (AA)(6) of this rule.

(d)

(i) The nonforfeiture benefit shall begin no later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

(ii) Notwithstanding paragraph (AA)(5)(d)(i) of this rule, for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(a) The end of the tenth year following the policy or certificate issue date; or

(b) The end of the second year following the date the policy or certificate is no longer subject to attained age rating.
(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(6) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

(7) There shall be no difference in the minimum nonforfeiture benefits as required under this paragraph for group and individual policies.

(8) The requirements set forth in this paragraph shall become effective three hundred sixty-five days after the effective date of this provision and shall apply as follows:

(a) Except as provided in paragraphs (AA)(8)(b) and (AA)(8)(c) of this rule, the provisions of paragraph (AA) of this rule apply to any long-term care policy issued in this state on or after the effective date of this rule.

(b) For certificates issued on or after the effective date of paragraph (AA) of this rule, under a group long-term care insurance policy as defined in division (D) of section 3923.41 of the Revised Code, which policy was in force at the time this amended rule becomes effective, the provisions of paragraph (AA) of this rule shall not apply.

(c) The last sentence in paragraph (AA)(3) and paragraphs (AA)(4)(d) and (AA)(4)(f) of this rule shall apply to any long-term care insurance policy or certificate issued in this state after one hundred eighty days after the effective date of this rule adopting those provisions, except new certificates on a group policy as defined in division (D)(1) of section 3923.41 of the Revised Code, three hundred sixty-five days after the effective date of this rule adopting those provisions.

(9) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit upon lapse shall be subject to the loss ratio requirements of paragraph (S) or paragraph (T) of this rule, whichever is applicable, treating the policy as a whole.

(10) To determine whether contingent nonforfeiture upon lapse provisions are triggered under paragraph (AA)(4)(c) or (AA)(4)(d) of this rule, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(11) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

(a) The nonforfeiture provision shall be appropriately captioned;

(b) The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the superintendent for the same contract form; and

(c) The nonforfeiture provision shall provide at least one of the following:

(i) Reduced paid-up insurance;

(ii) Extended term insurance;

(iii) Shortened benefit period; or

(iv) Other similar offerings approved by the superintendent.

(YY) Standards for benefit triggers

(1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

(2) Activities of daily living shall include at least the following as defined in paragraph (E) of this rule and in the policy:
(i) Bathing;
(ii) Continence;
(iii) Dressing;
(iv) Eating;
(v) Toileting; and
(vi) Transferring;

(b) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in paragraph (BB)(2)(a) of this rule as long as they are defined in the policy.

(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in paragraphs (BB)(1) and (BB)(2) of this rule.

(4) For purposes of this paragraph the determination of a deficiency shall not be more restrictive than:
(a) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or
(b) If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

(6) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(7) The requirements set forth in this paragraph shall be effective three hundred sixty-five days after the effective date of this provision and shall apply as follows:
(a) Except as provided in paragraph (BB)(7)(b) of this rule, the provisions of this paragraph apply to a long-term care policy issued in this state on or after the effective date of this amended rule.
(b) For certificates issued on or after the effective date of paragraph (BB)(7) of this rule, under a group long-term care insurance policy as defined in division (D) of section 3923.41 of the Revised Code that was in force at the time this amended rule became effective, the provisions of this paragraph shall not apply.

(CC) Additional standards for benefit triggers for qualified long-term care insurance contracts.

(1) For purposes of this paragraph the following definitions apply:
(a) "Qualified long-term care services" means services that meet the requirements of Section 7702(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(b) "Chronically ill individual" has the meaning prescribed for this term by Section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:
(a) Being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least ninety days due to a loss of functional capacity; or
(b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.
The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding twelve-month period a licensed health care practitioner has certified that the individual meets these requirements.

"Licensed health care practitioner" means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the secretary of the treasury.

"Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least ninety days due to a loss of functional capacity or to severe cognitive impairment.

Certifications regarding activities of daily living and cognitive impairment required pursuant to paragraph (CC)(3) of this rule shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the secretary of the treasury.

Certifications required pursuant to paragraph (CC)(3) of this rule may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least ninety days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the ninety-day period.

Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

Standard format outline of coverage: This paragraph of the rule implements, interprets and makes specific, the provisions of division (I) of section 3923.44 of the Revised Code in prescribing a standard format and the content of an outline of coverage.

The outline of coverage shall be a free-standing document, using no smaller than twelve-point type.

The outline of coverage shall contain no material of an advertising nature.

Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.

Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

Format for outline of coverage is shown in appendix H to this rule.

Requirement to deliver shopper's guide

A long-term care insurance shopper's guide in the format developed by the national association of insurance commissioners, or a guide developed or approved by the superintendent, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above-reference guide, but shall furnish the policy summary required under division (K) of section 3923.44 of the Revised Code.
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 times the amount of any commissions paid for each policy involved in the violation or up to ten thousand dollars, whichever is greater.

APPENDIX A
RESCISSION REPORTING FORM FOR LONG-TERM CARE POLICIES
FOR THE STATE OF __________________________
FOR THE REPORTING YEAR [ ]
Company Name: ____________________________________________________________
Address: __________________________________________________________________
Phone Number: ________________________________
Due: March 1 annually
Instructions:
The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.
Date of Date/s
Policy and Name of Policy Claim/s Date of
Form # Certificate # Insured Issuance Submitted Rescission
------------------------------------------------------------------
Detailed reason for rescission: ____________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
Signature ________________________________________________________________
Name and Title (please type) _______________________________________________
Date ______________________________________________________________________

APPENDIX B
LONG TERM CARE INSURANCE PERSONAL WORKSHEET
People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long term care insurance may be expensive, and may not be right for everyone.
By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.
Premium Information
Policy Form Numbers _______________________
The premium for the coverage you are considering will be [$___________ per month, or $___________ per year,] [a one-time single premium of $___________.]
Type of Policy (noncancelable/guaranteed renewable): __________________________
The Company's Right to Increase Premiums: ________________________________
[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]
Rate Increase History
The company has sold long-term care insurance since [year] and has sold this policy since [year].
[The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]
Drafting Note: A company may use the first bracketed sentence above only if it has never increased rates under any prior policy forms in this state or any other state. The issuer shall list each premium increase it has instituted on this or similar policy forms in this state or any other state during the last 10 years. The list shall provide the policy form, the calendar years the form was available for sale, and the
calendar year and the amount (percentage) of each increase. The insurer shall provide minimum and maximum percentages if the rate increase is variable by rating characteristics. The insurer may provide, in a fair manner, additional explanatory information as appropriate.

Questions Related to Your Income

How will you pay each year's premium?

- From my Income  
- From my Savings/Investments  
- My Family will Pay

[ ] Have you considered whether you can afford to keep this policy if the premiums went up, for example, by 20%?

Drafting Note: The insurer is not required to use the bracketed sentence if the policy is fully paid up or is a noncancelable policy.

What is your annual income? (check one)  
- Under $10,000  
- $10,000-$20,000  
- $20,000-$30,000  
- $30,000-$50,000  
- Over $50,000

How do you expect your income to change over the next 10 years? (check one)

- No change  
- Increase  
- Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

Will you buy inflation protection? (check one)  
- Yes  
- No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?

- From my Income  
- From my Savings/Investments  
- My Family will Pay

The national average annual cost of care in [insert year] was [insert $ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert $ amount] if costs increase 5% annually.

What elimination period are you considering? Number of days __________ Approximate cost $_________ for that period of care.

How are you planning to pay for your care during the elimination period? (check one)

- From my Income  
- From my Savings/Investments  
- My Family will Pay

Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)

- Under $20,000  
- $20,000-$30,000  
- $30,000-$50,000  
- Over $50,000

How do you expect your assets to change over the next ten years? (check one)

- Stay about the same  
- Increase  
- Decrease

If you are buying this policy to protect your assets and your assets are less than $30,000, you may wish to consider other options for financing your long-term care.

Disclosure Statement

[ ] The answers to the questions above describe my financial situation. Or

[ ] I choose not to complete this information. (Check one.)

[ ] I acknowledge that the carrier and/or its agent (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] I understand the above disclosures. I understand that the rates for this policy may increase in the future. (This box must be checked.)

Signed: ____________________________________________________

(Applicant) (Date)

[ ] I explained to the applicant the importance of completing this information.

Signed: ____________________________________________________

(Agent) (Date)

Agent's Printed Name: ____________________________

In order for us to process your application, please return this signed statement to [name of company], along with your application.

My agent has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.

Signed: ____________________________________________________

(Applicant) (Date)

Drafting Note: Choose the appropriate sentences depending on whether this is a direct mail or agent sale.

The company may contact you to verify your answers.

Drafting Note: When the Long-Term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading "Disclosure Statement" to the end of the page may be removed.

APPENDIX C

THINGS YOU SHOULD KNOW BEFORE YOU BUY LONG-TERM CARE INSURANCE

Long-Term Care Insurance

-- A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.

-- [You should not buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]

Drafting note: For single premium policies, delete this bullet; for noncancelable policies, delete the second sentence only.
The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

**Medicare**

- Medicare does not pay for most long-term care.

**Medicaid**

- Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.
- Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.
- When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.
- Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

**Shopper's Guide**

- Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

**Counseling**

- Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

**Facilities**

- Some long-term care insurance contracts provide for benefit payments in certain facilities only if they are licensed or certified, such as in assisted living centers. However, not all states regulate these facilities in the same way. Also, many people move to a different state from where they purchased their long-term care insurance policy. Read the policy carefully to determine what types of facilities qualify for benefit payments, and to determine that payment for a covered service will be made if you move to a state that has a different licensing scheme for facilities than the one in which you purchased the policy.

### APPENDIX D

**LONG-TERM CARE INSURANCE SUITABILITY LETTER**

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

Drafting Note: Choose the paragraph that applies.

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

[] Yes, [although my worksheet indicates that long-term care insurance may not be a suitable purchase,] I wish to purchase this coverage. Please resume review of my application.

Drafting Note: Delete the phrase in brackets if the applicant did not answer the questions about income.

[] No. I have decided not to buy a policy at this time.

Applicant's Signature Date

Please return to [issuer] at [address] by [date].

### APPENDIX E

**CLAIMS DENIAL REPORTING FORM**

Long-Term Care Insurance

See Form at [http://www.registerofohio.state.oh.us/pdfs/3901/0/4/3901-4-01_PH_FF_A_APP4_20081104_1545.pdf](http://www.registerofohio.state.oh.us/pdfs/3901/0/4/3901-4-01_PH_FF_A_APP4_20081104_1545.pdf)

### APPENDIX F
APPENDIX G
LONG-TERM CARE INSURANCE REPLACEMENT AND LAPSE REPORTING FORM

See Form at http://www.registerofohio.state.oh.us/pdfs/3901/0/4/3901-4-01_PH_FF_A_APP5_20081104_1545.pdf

APPENDIX H
[COMPANY NAME]
[ADDRESS - CITY & STATE]
[TELEPHONE NUMBER]
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE

[POLICY NUMBER OR GROUP MASTER POLICY AND CERTIFICATE NUMBER]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clarify any questions is now, before a claim arises. If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).

2. Purpose of outline of coverage. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you read your policy (or certificate) carefully!

3. Federal tax consequences.

This [policy] [certificate] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

Or Federal Tax Implications of this [policy] [certificate]. This [policy] [certificate] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986 as amended. Benefits received under the [policy] [certificate] may be taxable as income.

4. Terms under which the policy or certificate may be continued in force or discontinued.

(a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:]

(1) Policies and certificates that are guaranteed renewable shall contain the following statement: [policy] [certificate] is guaranteed renewable. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, it may increase the premium you pay.

(2) Policies and certificates that are noncancelable shall contain the following statement: [policy] [certificate] is noncancelable. This means that you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy.]

(c) [Describe waiver of premium provisions or state that there are not such provisions.]

5. Terms under which the company may change premiums.

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

6. Terms under which the policy or certificate may be returned and premium refunded.

(a) [Provide a brief description of the right to return “free look” provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. This is not Medicare supplement coverage. If you are eligible for Medicare, review the Medicare Supplement Buyer’s Guide available from the insurance company.

(a) [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.
8. Long-term care coverage. Policies of this category are designed to provide coverage 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, such as in a nursing home, in the community or in the home. This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy limitations, waiting periods and coinsurance requirements.

9. Benefits provided by this policy.
   (a) Covered services, related deductibles, waiting periods, elimination periods and benefit maximums.
   (b) Institutional benefits, by skill level.
   (c) Non-institutional benefits, by skill level.
   (d) Eligibility for Payment of Benefits
       Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.
       Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.

10. Limitations and exclusions.

11. Relationship of cost of care and benefits. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. As applicable, indicate the following:
   (a) That the benefit level will not increase over time;
   (b) Any automatic benefit adjustment provisions;
   (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
   (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
   (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.


13. Premium. (a) State the total annual premium for the policy; (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.

14. Additional features. (a) Indicate if medical underwriting is used; (b) Describe other important features.

15. Contact the state senior health insurance assistance program if you have general questions regarding long-term care insurance. Contact the insurance company if you have specific questions regarding your long-term care insurance policy or certificate.

APPENDIX I
FOR AGENT SOLICITATION

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE
[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT [BROKER OR OTHER REPRESENTATIVE]:
(Use additional sheets, as necessary.)
I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before your sign it, reread it carefully to be certain that all information has been properly recorded.

(Signature of Agent, Broker or Other Representative)
Typed Name and Address of Agent or Broker
The above "Notice to Applicant" was delivered to me on:

(Applicant's Signature) (Date)

FOR DIRECT SOLICITATION
NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

[Insurance company’s name and address]
SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

[Company Name]
R.C. 119.032 review dates: 01/08/2014 and 08/31/2018
Promulgated Statutory Rule
Under: 119.03
Authority: 3901.041, 3923.44, 3924.47
Amplifies: 3923.41 to 3923.50
Ohio Administrative Code Section 3901-4-02 Long-Term Care Partnership Program

(A) Purpose. The purpose of this rule is to implement a state long-term care partnership program in Ohio in accordance with sections 3923.41 to 3923.49 and 5111.18 of the Revised Code.

(B) Authority. This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041, 3923.44, and 3923.47 of the Revised Code.

(C) Applicability. This rule applies to long-term care insurance that is intended to qualify under the state's long-term care partnership program.

(D) Definitions. For purposes of this rule, the definitions set forth in section 3923.41 of the Revised Code and in rule 3901-4-01 of the Administrative Code shall have the same meaning as if such definitions were fully set forth herein. The term "policy" shall also include a certificate issued as evidence of coverage under a group insurance policy.

(E) Offers of exchange

(1) Within one hundred eighty days of the date that an insurer begins to advertise, market, offer, sell or issue policies that qualify under the state long-term care partnership program, the insurer shall offer, on a one time basis, in writing, to all existing policyholders and certificate holders that were issued long-term care coverage by the insurer on or after August 12, 2002, the option to exchange their existing long-term care coverage for coverage that is intended to qualify under the state's long-term care partnership program (partnership plan). The written offer of exchange shall include a long-term care partnership program exchange notification, appendix A to this rule, or a form that is substantially similar in content.

(2) An exchange occurs when an insurer offers a policyholder or certificate holder (hereinafter "insured") the option to replace an existing long-term care insurance policy with a policy that qualifies as a partnership plan, and the insured accepts the offer to terminate the existing policy and accepts the new policy. In making an offer to exchange, an insurer shall comply with all of the following requirements:

(a) The offer shall be made on a nondiscriminatory basis without regard to the age or health status of the insured;

(b) The offer shall remain open for a minimum of ninety days from the date of mailing by the insurer; and

(c) At the time the offer is made, the insurer shall provide the insured a copy of appendix A to this rule or a form that is substantially similar in content.

(3) Notwithstanding paragraphs (E)(1) and (E)(2) of this rule,

(a) An offer to exchange may be deferred for any insured who is currently eligible for benefits under an existing policy or who is subject to an elimination period on a claim, but such deferral shall continue only as long as such eligibility or elimination period exists; and

(b) An offer to exchange does not have to be made if the insured would be required to purchase additional benefits to qualify for the state long-term care partnership program and the insured is not eligible to purchase the additional benefits under the insurer's new business, long-term care, underwriting guidelines.

(4) If the new policy has an actuarial value of benefits equal to or lesser than the actuarial value of benefits of the existing policy, then all of the following apply:

(a) The new policy shall not be underwritten; and

(b) The rate charged for the new policy shall be determined using the original issue age and risk class of the insured that was used to determine the rate of the existing policy.

(5) If the new policy has an actuarial value of benefits exceeding the actuarial value of the benefits of the existing policy, then all of the following apply:

(a) The insurer shall apply its new business, long-term care, underwriting guidelines to the increased benefits only; and

(b) The rate charged for the new policy shall be determined using the method set forth in paragraph (E)(4)(b) of this rule for the existing benefits, increased by the rate for the increased benefits using the then current attained age and risk class of the insured for the increased benefits only.
The new policy offered in an exchange shall be on a form that is currently offered for sale by the insurer in the general market and the effective date of the partnership plan policy shall be the same as the new policy.

For purposes of implementing the exchange requirement set forth in paragraph (E)(1) of this rule, an insurer may also implement exchanges via any policy form that the superintendent has approved as being partnership-qualified, even if that long-term care insurance policy form is no longer offered or marketed. The superintendent may, at the superintendent's sole discretion, extend the one hundred eighty day time period referenced in paragraph (E)(1) of this rule to allow for implementation of exchanges on a long-term care insurance policy form no longer offered or marketed.

In the event of an exchange, the insured shall not lose any rights, benefits or built-up value that has accrued under the original policy with respect to the benefits provided under the original policy, including, but not limited to, rights established because of the lapse of time related to pre-existing condition exclusions, elimination periods, or incontestability clauses.

Insurers may complete an exchange by issuing a new policy; amending an existing policy with an endorsement or rider; or revising the schedule of benefits.

The requirements of rule 3901-4-01 of the Administrative Code shall apply to exchanges including, but not limited to, the requirements relating to suitability. However, policies issued pursuant to this rule shall not be considered replacements if issued by the same insurer that issued the existing policy and shall therefore not be subject to paragraphs (N) and (O) in rule 3901-4-01 of the Administrative Code replacement standards.

The offer of exchange required by paragraph (E) of this rule only applies to products issued by an insurer that are comparable to the types of policy forms (e.g. group policies or individual policies) offered by the insurer which are qualified as partnership plans. For example, if an insurer offers a comprehensive individual long-term care insurance policy qualified as a partnership plan, it is only required to offer exchanges to comprehensive individual long-term care insurance policyholders who were issued coverage on or after August 12, 2002. In this example, since only an individual policy is qualified as a partnership plan, exchange offers would not be required to be made to group certificate holders under a group policy.

For those insureds with long-term care insurance policies issued before August 12, 2002, any insurer may offer any insured an option to exchange an existing policy for a policy that qualifies as a state long-term care insurance partnership plan. The requirements set forth in paragraphs (E)(2) to (E)(9) of this rule shall apply to any such exchange.

Filing requirements for long-term care insurance partnership program policies.

Any policy that is intended to qualify as a partnership plan must be filed with the superintendent in accordance with section 3923.02 of the Revised Code prior to use, and such filing shall include the partnership program certification form attached as appendix B to this rule, signed by an officer of the company.

Insurers intending to make use of a previously filed qualifying partnership policy shall submit to the superintendent a partnership program certification form (appendix B to this rule) signed by an officer of the company with respect to each such policy form filed. For each policy form, the partnership program certification form (appendix B to this rule) shall identify the policy by the original form number and filing date.

If an insurer intends to amend a previously filed policy with an endorsement or rider in order to bring the policy into compliance with the partnership program, the insurer shall file the endorsement or rider with the superintendent prior to use, and the filing shall include a partnership program certification form (appendix B to this rule) signed by an officer of the company for each policy to be amended by the endorsement or rider, which shall include the original form number and filing date of the previously filed policy.

Insurers using appendix A or appendix C to this rule do not have to file the forms with the superintendent before use. However, if the insurer modifies the content of appendix A or appendix C to this rule or intends to use another form, even though substantially similar in content, the form must be filed with the superintendent before use.

The partnership program disclosure form

For policies intended to qualify under the partnership program,
The agent or insurer shall give the consumer a partnership disclosure notice, either using appendix C to this rule or a notice substantially similar in content, along with the outline of coverage required by division (I) of section 3923.44 of the Revised Code at the time of solicitation;

In the case of a policy issued to a group where an outline of coverage is not delivered, the agent or insurer shall deliver copies of a partnership disclosure notice, either using appendix C to this rule or a notice substantially similar in content, along with the enrollment forms; or

In the case of a life insurance policy that offers long-term care insurance as a term of the policy or in a rider, the agent or insurer shall give the consumer a partnership disclosure notice, either using appendix C to this rule or a notice substantially similar in content, along with the policy summary at the time of solicitation.

In addition to assuring that either a copy of appendix C to this rule or a notice substantially similar in content is provided to the consumer at the time of the initial solicitation, or to the group at the time the enrollment forms are delivered, the insurer shall also assure that a copy of appendix C to this rule or a notice substantially similar in content, is provided no later than partnership policy delivery.

Data reporting

Each insurer offering partnership program policies in this state shall make regular reports to the United States secretary of health and human services that include such information as required by law or as the secretary determines is appropriate for the administration of the partnership program.

Severability

If any paragraph, term, or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term, or provision of this rule, but the remaining paragraphs, terms, and provisions shall be and continue in full force and effect.

R.C. 119.032 review dates 01/08/2014 and 08/31/2018 Promulgated Authority: 3901.041, 3923.41, 3923.44, 3923.47 Rule Amplifies: 3923.41 to 3923.49 Prior Effective Dates: 09/10/2007, 0101/2009 and 04/05/2013