

Senate Bill 191

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Department of Consumer and Business Services)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Amends definition of "preexisting condition" for purposes of long term care insurance.
Removes prohibition on prior institutionalization conditions in long term care insurance according to specified criteria.
Requires delivery of policy summary with individual life insurance policies that provide long term care benefits. Specifies information to be included in policy summary.
Specifies requirements for incontestability periods.
Requires offer of nonforfeiture benefits and specifies conditions.
Requires specified training for insurance producers that sell individual long term care insurance.
Adds definition of "qualified long term care insurance."
Excludes long term care insurance benefits from Medicaid eligibility determination and estate recovery.
Requires Department of Human Services to submit Medicaid state plan amendment to federal government.

A BILL FOR AN ACT

1
2 Relating to long term care insurance; creating new provisions; and amending ORS 411.708, 414.025,
3 743.650, 743.652, 743.653 and 743.655.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 743.650 is amended to read:

6 743.650. (1) ORS 743.650 to 743.656[*748.603 and 750.055*] may be known and cited as the "Long
7 Term Care Insurance Act."

8 (2) The purpose of ORS 743.650 to 743.656[*748.603 and 750.055*] is to:

9 (a) Promote the public interest in long term care insurance;

10 (b) Promote the availability of long term care insurance policies;

11 (c) Protect applicants for long term care insurance from unfair or deceptive sales or enrollment
12 practices;

13 (d) Establish standards for long term care insurance;

14 (e) Facilitate public understanding and comparison of long term care insurance policies;

15 (f) Facilitate flexibility and innovation in the development of long term care insurance coverage;

16 and

17 (g) [*Assure*] **Ensure** that Oregon residents who purchase insurance for long term care shall have
18 access to policies providing for a comprehensive range of benefits.

19 (3) The requirements of ORS 743.650 to 743.656, 748.603 and 750.055 apply to policies and cer-
20 tificates delivered or issued for delivery in this state on or after December 31, 1989. ORS 743.650
21 to 743.656, 748.603 and 750.055 are not intended to supersede the obligations of entities subject to
22 ORS 743.650 to 743.656, 748.603 and 750.055 to comply with the substance of other applicable insur-
23 ance laws insofar as such laws do not conflict with ORS 743.650 to 743.656, 748.603 and 750.055,
24 except that laws and rules designed and intended to apply to Medicare supplement insurance poli-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 cies shall not be applied to long term care insurance. A policy that is not advertised, marketed or
 2 offered as long term care insurance or nursing home insurance is not required to meet the require-
 3 ments of ORS 743.650 to 743.656, 748.603 and 750.055.

4 **SECTION 2.** ORS 743.652 is amended to read:

5 743.652. As used in ORS 743.650 to 743.656, [748.603 and 750.055,] unless the context requires
 6 otherwise:

7 (1) "Applicant" means:

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

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

11 (2) "Certificate" means any certificate issued under a group long term care insurance policy, if
 12 the policy has been delivered or issued for delivery in this state.

13 [(3) "Director" means the Director of the Department of Consumer and Business Services.]

14 [(4) "Elimination period" means the period at the beginning of a disability during which no benefits
 15 are payable.]

16 [(5) "Functionally necessary" or "functionally impaired" means a need of a person who is not able
 17 to perform independently activities of daily living because of a physical or cognitive impairment.]

18 [(6)] (3) "Group long term care insurance" means a long term care insurance policy that is de-
 19 livered or issued for delivery in this state and issued to:

20 (a) One or more employers or labor organizations, or to a trust or to the trustees of a fund es-
 21 tablished by one or more employers or labor organizations, or a combination thereof, for employees
 22 or former employees or a combination thereof, or for members or former members, or a combination
 23 thereof, of the labor organizations; [or]

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

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

28 (B) Has been maintained in good faith for purposes other than obtaining insurance; [or]

29 (c)(A) An association or a trust or the trustee of a fund established, created or maintained for
 30 the benefit of members of one or more associations. Prior to advertising, marketing or offering
 31 [such] **the** policy within this state, the association or associations, or the insurer of the association
 32 or associations shall file evidence with the director that the association or associations have been
 33 organized and maintained in good faith for purposes other than that of obtaining insurance; have
 34 been in active existence for at least one year; and have a constitution and bylaws that provide that:

35 (i) The association or associations hold regular meetings not less than annually to further pur-
 36 poses of the members;

37 (ii) Except for credit unions, the association or associations collect dues or solicit contributions
 38 from members; and

39 (iii) The members have voting privileges and representation on the governing board and com-
 40 mittees; and

41 (B) Sixty days after [such] **the** filing, the association or associations shall be considered to sat-
 42 isfy [such] **the** organizational requirements, unless the director makes a finding that the association
 43 or associations do not satisfy those organizational requirements; [and] **or**

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

1 (A) The issuance of the group policy is not contrary to the best interest of the public;

2 (B) The issuance of the group policy would result in economies of acquisition or administration;
3 and

4 (C) The benefits are reasonable in relation to the premiums charged.

5 [(7)] (4) "Long term care insurance" means any insurance **policy or rider** advertised, marketed,
6 offered or designed to provide coverage for not less than 24 **consecutive** months for each covered
7 person on an expense incurred, indemnity, prepaid or other basis; for one or more [*functionally*]
8 necessary or medically necessary services, including but not limited to nursing, diagnostic, preven-
9 tive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other
10 than an acute care unit of a hospital. "Long term care insurance" includes group and individual
11 **annuities and life insurance** policies or riders [*whether*] **that provide directly or supplement**
12 **long term care insurance. "Long term care insurance" also includes a policy or rider that**
13 **provides for payment of benefits based upon cognitive impairment or the loss of functional**
14 **capacity, and qualified long term care insurance contracts. Long term care insurance may**
15 **be** issued by insurers; fraternal benefit societies; nonprofit health, hospital and medical service
16 corporations; prepaid health plans; or health maintenance organizations, health care service con-
17 tractors or any similar organization **to the extent they are otherwise authorized to issue life**
18 **or health insurance.** "Long term care insurance" [*shall*] **does** not include any insurance policy
19 [*which*] **that** is offered primarily to provide basic Medicare supplement coverage, basic hospital ex-
20 pense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage,
21 major medical expense coverage, disability income **or related asset** protection coverage, cat-
22 astrophic coverage, accident only coverage, specified disease or specified accident coverage **or**
23 **limited benefit health coverage. With regard to life insurance, "long term care insurance"**
24 **does not include life insurance policies that accelerate the death benefit specifically for one**
25 **or more of the qualifying events of terminal illness, medical conditions requiring extraor-**
26 **ordinary medical intervention or permanent institutional confinement, and that provide the**
27 **option of a lump-sum payment for those benefits and when neither the benefits nor the el-**
28 **igibility for the benefits is conditioned upon the receipt of long term care. Notwithstanding**
29 **any other provision of ORS 743.650 to 743.656, any product advertised, marketed or offered**
30 **as long term care insurance is subject to ORS 743.650 to 743.656.**

31 [(8)] (5) "Policy" means any policy, contract, subscriber agreement, rider or indorsement deliv-
32 ered or issued for delivery in this state by an insurer; fraternal benefit society; nonprofit health,
33 hospital or medical service corporation; prepaid health plan; or health maintenance organization,
34 health care service contractor or any similar organization.

35 (6) "Qualified long term care insurance" means:

36 (a) **The portion of a life insurance contract that provides long term care insurance cov-**
37 **erage by rider or as part of the contract and that satisfies the requirements of section**
38 **7702B(b) and (e) of the Internal Revenue Code; or**

39 (b) **Individual or group long term care insurance as defined in this section that meets all**
40 **of the following requirements of section 7702B(b) of the Internal Revenue Code:**

41 (A) **The only insurance protection provided under the contract is coverage of qualified**
42 **long term care services. A contract shall not fail to satisfy the requirements of this sub-**
43 **paragraph by reason of payments being made on a per diem or other periodic basis without**
44 **regard to the expenses incurred during the period to which the payments relate.**

45 (B) **The contract does not pay or reimburse expenses incurred for services or items to**

1 the extent that the expenses are reimbursable under Title XVIII of the Social Security Act,
 2 or would be reimbursable but for the application of a deductible or coinsurance amount. The
 3 requirements of this subparagraph do not apply to expenses that are reimbursable under
 4 Title XVIII of the Social Security Act only as a secondary payer. A contract does not fail to
 5 satisfy the requirements of this subparagraph by reason of payments being made on a per
 6 diem or other periodic basis without regard to the expenses incurred during the period to
 7 which the payments relate.

8 (C) The contract is guaranteed renewable within the meaning of section 7702B(b)(1)(C)
 9 of the Internal Revenue Code.

10 (D) The contract does not provide for a cash surrender value or other money that can
 11 be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in sub-
 12 paragraph (E) of this paragraph.

13 (E) All refunds of premiums, and all policyholder dividends or similar amounts, under the
 14 contract are to be applied as a reduction in future premiums or to increase future benefits,
 15 except that a refund on the event of death of the insured or a complete surrender or can-
 16 cellation of the contract cannot exceed the aggregate premiums paid under the contract.

17 (F) The contract meets the consumer protection provisions set forth in section 7702B(g)
 18 of the Internal Revenue Code.

19 **SECTION 3.** ORS 743.653 is amended to read:

20 743.653. [No] Group long term care insurance coverage may **not** be offered to a resident of this
 21 state under a group policy issued in another state to a group described in ORS 743.652 [(6)(d)]
 22 **(3)(d)**, unless [*the other*] **this state or another** state [*has*] **having** statutory and regulatory long
 23 term care insurance requirements substantially similar to those adopted in this state [*and the Di-*
 24 *rector of the Department of Consumer and Business Services*] has made a determination that such
 25 requirements [*are substantially similar*] **have been met**.

26 **SECTION 4.** ORS 743.655 is amended to read:

27 743.655. (1)(a) The Director of the Department of Consumer and Business Services shall adopt
 28 rules that include standards for full and fair disclosure setting forth the manner, content and re-
 29 quired disclosures for the sale of long term care insurance policies, terms of renewability, initial and
 30 subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents,
 31 preexisting conditions, termination of insurance, program for public understanding, continuation or
 32 conversion, probationary periods, limitations, exceptions, reductions, elimination periods, underwrit-
 33 ing at time of application, requirements for replacement, recurrent conditions and definitions of
 34 terms. [*The director shall adopt rules establishing standards for loss ratios and reserves, provided that*
 35 *a specific reference to long term care insurance is contained in the rules.*]

36 (b) In adopting rules setting standards under this section, the director [*shall*] **must** give timely
 37 notice to, and shall consider recommendations from the Director of Human Services.

38 (2) [No] **A** long term care insurance policy [*shall*] **may not**:

39 (a) Be canceled, nonrenewed or otherwise terminated on the grounds of the age or the deteri-
 40 oration of the mental or physical health of the insured individual or certificate holder;

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

44 (c) Provide coverage for skilled nursing care only or provide significantly more coverage for
 45 skilled care in a facility than coverage for lower levels of care[. *This evaluation of the amount of*

1 coverage provided shall be based on aggregate days of care covered for lower levels of care, when
2 compared to days of care covered for skilled care];

3 (d) Exclude coverage for Alzheimer's disease and related dementias;

4 (e) Be nonrenewed or otherwise terminated for nonpayment of premiums until 31 days overdue
5 and then only after notice of nonpayment is given the policyholder prior to expiration of the 31
6 days, **except as otherwise provided by rule**; or

7 (f) Be sold *[after December 31, 1989,]* to provide less than 24 months' coverage.

8 (3)(a) *[No]* **A** long term care insurance policy or certificate other than a policy or certificate
9 issued to a group¹, *as defined* **described** in ORS 743.652 *[(6)(a)]* **(3)(a)**, (b) or (c)², *shall* **may not**
10 use a definition of "preexisting condition" *[which]* **that** is more restrictive than the following:
11 "Preexisting condition" means *[the existence of symptoms which would cause an ordinarily prudent*
12 *person to seek diagnosis, care or treatment, or]* a condition for which medical advice or treatment
13 was recommended by, or received from a provider of health care services, within six months pre-
14 ceding the effective date of coverage of an insured person.

15 (b) *[No]* **A** long term care insurance policy or certificate other than a policy or certificate
16 thereunder issued to a group *[as defined]* **described** in ORS 743.652 *[(6)(a)]* **(3)(a)**, (b) or (c) may **not**
17 exclude coverage for a loss or confinement *[which]* **that** is the result of a preexisting condition un-
18 less *[such]* **the** loss or confinement begins within six months following the effective date of coverage
19 of an insured person.

20 (c) The Director **of the Department of Consumer and Business Services** may extend the
21 limitation periods set forth in paragraphs (a) and (b) of this subsection as to specific age group
22 categories or specific policy forms upon findings that the extension is in the best interest of the
23 public.

24 (d) The definition of preexisting condition does not prohibit an insurer from using an application
25 form designed to elicit the complete health history of an applicant, over the 10 years immediately
26 prior to the date of application, and, on the basis of the answers on the application, from under-
27 writing in accordance with that insurer's established underwriting standards. Unless otherwise pro-
28 vided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on
29 the application, need not be covered until the waiting period described in paragraph (b) of this
30 subsection expires. *[No]* **A** long term care insurance policy or certificate may **not** exclude or use
31 waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named
32 or described preexisting diseases or physical conditions beyond the waiting period described in
33 paragraph (b) of this subsection³, *unless such waiver or rider has been specifically approved by the*
34 *director*.

35 (4) *[No]* **A** long term care insurance policy *[shall]* **may not** be delivered or issued for delivery
36 in this state if the policy:

37 (a) Conditions eligibility for any benefits on a prior hospitalization requirement; *[or]*

38 (b) Conditions eligibility for benefits provided in an institutional care setting on the receipt of
39 a higher level of institutional care⁴; **or**

40 (c) **Conditions eligibility for any benefits other than waiver of premium or post-**
41 **confinement, post-acute care or recuperative benefits on a prior institutionalization re-**
42 **quirement.**

43 (5)(a) **A long term care insurance policy containing post-confinement, post-acute care or**
44 **recuperative benefits must clearly label in a separate paragraph of the policy or certificate**
45 **titled "Limitations or Conditions of Eligibility for Benefits" all such limitations or conditions,**

1 including any required number of days of confinement.

2 (b) A long term care insurance policy or rider that conditions eligibility of noninstitu-
3 tional benefits on the prior receipt of institutional care may not require a prior institutional
4 stay of more than 30 days.

5 [(5)(a)] (6) Individual long term care insurance [policyholders] applicants shall have the right
6 to return the policy or certificate within 30 days of its delivery and to have the premium refunded
7 if, after examination of the policy or certificate, the [policyholder] applicant is not satisfied for any
8 reason. [Individual] Long term care insurance policies [shall] and certificates must have a notice
9 prominently printed on the first page [of the policy] or attached thereto stating in substance that the
10 [policyholder shall have] applicant has the right to return the policy or certificate within 30 days
11 of its delivery and to have the premium refunded if, after examination of the policy[, the
12 policyholder] or certificate, other than a certificate issued pursuant to a policy issued to a
13 group described in ORS 743.652 (3)(a), the applicant is not satisfied for any reason. This sub-
14 section also applies to denials of applications. Any refund must be made within 30 days of the
15 return or denial.

16 [(b) A person insured under a long term care insurance policy or certificate issued in this state or
17 any other state to a group described in ORS 743.652 (6)(b), (c) or (d) shall have the right to return the
18 policy within 30 days of its delivery and to have the premium refunded if, after examination, the in-
19 sured person is not satisfied for any reason. Long term care insurance policies shall have a notice
20 prominently printed in 10 point type on the first page or attached thereto stating in substance that the
21 insured person shall have the right to return the policy within 30 days of its delivery and to have the
22 premium refunded if after examination the insured person is not satisfied for any reason.]

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

26 [(A)] (B) The director [shall] by rule must prescribe a standard format, including style, ar-
27 rangement and overall appearance, and the content of an outline of coverage.

28 [(B)] (C) In the case of solicitations by an insurance producer, the insurance producer must
29 deliver the outline of coverage prior to the presentation of an application or enrollment form.

30 [(C)] (D) In the case of direct response solicitations, the outline of coverage must be presented
31 in conjunction with any application or enrollment form.

32 (E) In the case of a policy issued to a group described in ORS 743.652 (3)(a), an outline
33 of coverage is not required to be delivered as long as the information described in paragraph
34 (b) of this subsection is contained in other materials related to the enrollment. Upon request,
35 these other materials must be made available to the director.

36 (b) The outline of coverage [shall] must include:

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

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

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

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

44 (E) A description of the terms under which the policy or certificate may be returned and pre-
45 mium refunded; [and]

1 (F) A brief description of the relationship of cost of care and benefits; **and**

2 (G) **A statement that discloses to the policyholder or certificate holder whether the policy**
 3 **is intended to be qualified long term care insurance as defined in ORS 743.652.**

4 [(7)] (8) A certificate issued pursuant to a group long term care insurance policy if the policy
 5 is delivered or issued for delivery in this state shall include:

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

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

8 and

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

10 (9) **If an application for a long term care insurance policy or certificate is approved, the**
 11 **insurer must deliver the policy or certificate to the applicant no later than 30 days after the**
 12 **date of approval.**

13 (10) **At the time of policy delivery, a policy summary must be delivered for an individual**
 14 **life insurance policy that provides long term care benefits within the policy or by rider. In**
 15 **the case of direct response solicitations, the insurer must deliver the policy summary upon**
 16 **the applicant's request, but regardless of request must make delivery not later than at the**
 17 **time of policy delivery. In addition to complying with all applicable requirements, the sum-**
 18 **mary must also include the provisions required in this subsection. The required provision**
 19 **may be incorporated into a basic illustration or into the life insurance policy summary if**
 20 **required by rule. The following provisions must be included in the summary:**

21 (a) **An explanation of how the long term care benefit interacts with other components**
 22 **of the policy, including deductions from death benefits;**

23 (b) **An illustration of the amount of benefits, the length of benefits and the guaranteed**
 24 **lifetime benefits, if any, for each covered person;**

25 (c) **Any exclusions, reductions and limitations on benefits of long term care;**

26 (d) **A statement that any long term care inflation protection option required by rule is**
 27 **not available under the policy; and**

28 (e) **If applicable to the policy type, the following:**

29 (A) **A disclosure of the effects of exercising other rights under the policy;**

30 (B) **A disclosure of guarantees related to long term care costs of insurance charges; and**

31 (C) **Current and projected maximum lifetime benefits.**

32 (11) **When a long term care benefit that is funded through a life insurance policy by an**
 33 **acceleration of the death benefit is in benefit payment status, the insurer must provide a**
 34 **monthly report to the policyholder. The report must include:**

35 (a) **Any long term care benefits paid out during the month;**

36 (b) **An explanation of any changes in the policy, such as death benefits or cash values,**
 37 **owing to payment of long term care benefits; and**

38 (c) **The amount of long term care benefits existing or remaining.**

39 (12) **If a claim under a long term care insurance policy is denied, then not later than the**
 40 **60th day after the date of a written request by the policyholder or certificate holder, or a**
 41 **representative of either, the insurer must:**

42 (a) **Provide a written explanation of the reasons for the denial; and**

43 (b) **Make available all information directly related to the denial.**

44 [(8)] (13) [No] A policy may **not** be advertised, marketed or offered as long term care or nursing
 45 home insurance unless it complies with the provisions of ORS 743.650 to 743.656[, 748.603 and

1 750.055].

2 [(9) ORS 743.414 applies to long term care insurance regulated under ORS 743.650 to 743.656,
3 748.603 and 750.055.]

4 [(10)] (14) Rules adopted pursuant to ORS 743.650 to 743.656[, 748.603 and 750.055] shall be in
5 accordance with the provisions of ORS chapter 183.

6 (15) This section is exempt from ORS 743.700.

7 **SECTION 5.** Sections 6 and 7 of this 2007 Act are added to and made a part of ORS 743.650
8 to 743.656.

9 **SECTION 6.** (1) For a policy or certificate that has been in force for less than six months,
10 an insurer may rescind a long term care insurance policy or certificate or deny an otherwise
11 valid long term care insurance claim upon a showing of a misrepresentation that is material
12 to the acceptance for coverage.

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

18 (3) After a policy or certificate has been in force for two years, the policy or certificate
19 is not contestable upon the ground of misrepresentation alone. The policy or certificate may
20 be contested only upon a showing that the insured knowingly and intentionally misrepre-
21 sented relevant facts relating to the insured's health.

22 (4) A long term care insurance policy or certificate may not be field issued based on
23 medical or health status. A policy or certificate is field issued for the purposes of this sub-
24 section if the policy or certificate is issued by an insurance producer or a third party ad-
25 ministrator pursuant to underwriting authority granted to the insurance producer or third
26 party administrator by an insurer.

27 (5) If an insurer has paid benefits under the long term care insurance policy or certif-
28 icate, the insurer may not recover the benefit payments in the event that the policy or cer-
29 tificate is rescinded.

30 (6) This section does not apply to the remaining death benefit of a life insurance policy
31 in the event of the death of the insured if the policy accelerates benefits for long term care,
32 but this section otherwise applies to a life insurance policy that accelerates benefits for long
33 term care. In the event of the death of an insured, the remaining death benefits under the
34 life insurance policy are governed by ORS 743.168.

35 (7) This section is exempt from ORS 743.700.

36 **SECTION 7.** (1) Except as provided in subsection (2) of this section, a long term care in-
37 surance policy may not be delivered or issued for delivery in this state unless the
38 policyholder or certificate holder has been offered the option of purchasing a policy or cer-
39 tificate including a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the
40 form of a rider that is attached to the policy. If the policyholder or certificate holder declines
41 the nonforfeiture benefit, the insurer must provide a contingent benefit upon lapse that is
42 available for a specified period of time following a substantial increase in premium rates.

43 (2) When a group long term care insurance policy is issued, the offer required in sub-
44 section (1) of this section must be made to the group policyholder. However, if the policy is
45 issued as group long term care insurance as described in ORS 743.652 (3)(d), other than to a

1 continuing care retirement community or similar entity, the offering shall be made to each
 2 proposed certificate holder.

3 (3) The Director of the Department of Consumer and Business Services by rule shall
 4 specify:

5 (a) The type or types of nonforfeiture benefits to be offered as part of long term care
 6 insurance policies and certificates;

7 (b) The standards for nonforfeiture benefits; and

8 (c) The standards governing contingent benefits upon lapse, including a determination
 9 of the specified period of time during which a contingent benefit upon lapse will be available
 10 and the substantial premium increase that triggers a contingent benefit upon lapse as de-
 11 scribed in subsection (1) of this section.

12 (4) This section is exempt from ORS 743.700.

13 **SECTION 8.** Section 9 of this 2007 Act is added to and made a part of ORS 744.052 to
 14 744.089.

15 **SECTION 9.** (1) An insurer providing long term care insurance benefits in this state shall
 16 require that each insurance producer authorized to solicit individual consumers for the sale
 17 of long term care insurance complete the training requirements specified in this section. For
 18 resident insurance producers, the requirements may be part of and not in addition to appli-
 19 cable continuing education requirements. The training requirements are as follows:

20 (a) For insurance producers issued a license on or after January 1, 2008, eight hours of
 21 training in the 24-month period prior to the date that the insurance producer first solicits
 22 individual consumers for the sale of long term care insurance and eight hours of training in
 23 every 24-month period following licensure; and

24 (b) For insurance producers issued a license before January 1, 2008, eight hours of
 25 training in every 24-month period.

26 (2) The training required by this section must consist of topics related to long term care
 27 insurance and long term care services, including but not limited to:

28 (a) State and federal laws, regulations and requirements, including but not limited to
 29 applicable standards and requirements for long term care insurance sold in this state pur-
 30 suant to a qualified state long term care insurance partnership as defined in 42 U.S.C.
 31 1396p(b);

32 (b) Available long term care services and providers;

33 (c) Changes or improvements in long term care services or providers;

34 (d) Alternatives to the purchase of private long term care insurance;

35 (e) Differences in eligibility for benefits and tax treatment between policies intended to
 36 be federally qualified and those not intended to be federally qualified;

37 (f) The effect of inflation in eroding the value of benefits and the importance of inflation
 38 protection; and

39 (g) Consumer suitability standards and guidelines.

40 (3) The training required by this section may not include any training that is specific to
 41 an insurer or to an insurer's product, or that includes any sales or marketing information,
 42 materials or training, other than those required by state or federal law.

43 (4) An insurer providing long term care insurance or benefits in this state must obtain
 44 verification of the training required by this section before an insurance producer is permitted
 45 to sell the insurer's long term care insurance products. An insurer providing long term care

1 **insurance or benefits in this state must maintain an accurate record of insurance producers**
 2 **authorized to sell the insurer’s long term care insurance products in order to ensure con-**
 3 **tinued compliance with the requirements of this section. An insurer must make all records**
 4 **of authorized insurance producers, past and present, available to the Director of the De-**
 5 **partment of Consumer and Business Services upon request.**

6 **SECTION 10.** ORS 411.708 is amended to read:

7 411.708. (1) The amount of any assistance paid under ORS 411.706 is a claim against the property
 8 or interest in the property belonging to and a part of the estate of any deceased recipient. If the
 9 deceased recipient has no estate, the estate of the surviving spouse of the deceased recipient, if any,
 10 shall be charged for assistance granted under ORS 411.706 to the deceased recipient or the surviving
 11 spouse. There shall be no adjustment or recovery of assistance correctly paid on behalf of any de-
 12 ceased recipient under ORS 411.706 except after the death of the surviving spouse of the deceased
 13 recipient, if any, and only at a time when the deceased recipient has no surviving child who is under
 14 21 years of age or who is blind or disabled. Transfers of real or personal property by recipients of
 15 assistance without adequate consideration are voidable and may be set aside under ORS 411.620 (2).

16 (2) Except when there is a surviving spouse, or a surviving child who is under 21 years of age
 17 or who is blind or disabled, the amount of any assistance paid under ORS 411.706 is a claim against
 18 the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

19 **(3) A claim under this section shall exclude benefits paid to or on behalf of a beneficiary**
 20 **under a policy of qualified long term care insurance, as defined in ORS 414.025 (2)(t).**

21 [(3)] (4) Nothing in this section authorizes the recovery of the amount of any assistance from
 22 the estate or surviving spouse of a recipient to the extent that the need for assistance resulted from
 23 a crime committed against the recipient.

24 **SECTION 11.** ORS 414.025 is amended to read:

25 414.025. As used in this chapter, unless the context or a specially applicable statutory definition
 26 requires otherwise:

27 (1) “Category of aid” means assistance provided by the Oregon Supplemental Income Program,
 28 temporary assistance for needy families granted under ORS 418.035 to 418.125 or federal Supple-
 29 mental Security Income payments.

30 (2) “Categorically needy” means, insofar as funds are available for the category, a person who
 31 is a resident of this state and who:

32 (a) Is receiving a category of aid.

33 (b) Would be eligible for, but is not receiving a category of aid.

34 (c) Is in a medical facility and, if the person left such facility, would be eligible for a category
 35 of aid.

36 (d) Is under the age of 21 years and would be a dependent child under the program for tempo-
 37 rary assistance for needy families except for age and regular attendance in school or in a course
 38 of professional or technical training.

39 (e)(A) Is a caretaker relative named in ORS 418.035 (2)(a)(C) who cares for a dependent child
 40 who would be a dependent child under the program for temporary assistance for needy families ex-
 41 cept for age and regular attendance in school or in a course of professional or technical training;
 42 or

43 (B) Is the spouse of such caretaker relative and fulfills the requirements of ORS 418.035 (1).

44 (f) Is under the age of 21 years, is in a foster family home or licensed child-caring agency or
 45 institution under a purchase of care agreement and is one for whom a public agency of this state

1 is assuming financial responsibility, in whole or in part.

2 (g) Is a spouse of an individual receiving a category of aid and who is living with the recipient
3 of a category of aid, whose needs and income are taken into account in determining the cash needs
4 of the recipient of a category of aid, and who is determined by the Department of Human Services
5 to be essential to the well-being of the recipient of a category of aid.

6 (h) Is a caretaker relative named in ORS 418.035 (2)(a)(C) who cares for a dependent child re-
7 ceiving temporary assistance for needy families or is the spouse of such caretaker relative and ful-
8 fills the requirements of ORS 418.035 (1).

9 (i) Is under the age of 21 years, is in a youth care center and is one for whom a public agency
10 of this state is assuming financial responsibility, in whole or in part.

11 (j) Is under the age of 21 years and is in an intermediate care facility which includes institutions
12 for the mentally retarded; or is under the age of 22 years and is in a psychiatric hospital.

13 (k) Is under the age of 21 years and is in an independent living situation with all or part of the
14 maintenance cost paid by the Department of Human Services.

15 (L) Is a member of a family that received temporary assistance for needy families in at least
16 three of the six months immediately preceding the month in which such family became ineligible for
17 such assistance because of increased hours of or increased income from employment. As long as the
18 member of the family is employed, such families will continue to be eligible for medical assistance
19 for a period of at least six calendar months beginning with the month in which such family became
20 ineligible for assistance because of increased hours of employment or increased earnings.

21 (m) Is an adopted person under 21 years of age for whom a public agency is assuming financial
22 responsibility in whole or in part.

23 (n) Is an individual or is a member of a group who is required by federal law to be included in
24 the state's medical assistance program in order for that program to qualify for federal funds.

25 (o) Is an individual or member of a group who, subject to the rules of the department and within
26 available funds, may optionally be included in the state's medical assistance program under federal
27 law and regulations concerning the availability of federal funds for the expenses of that individual
28 or group.

29 (p) Is a pregnant woman who would be eligible for temporary assistance for needy families in-
30 cluding such aid based on the unemployment of a parent, whether or not the woman is eligible for
31 cash assistance.

32 (q) Would be eligible for temporary assistance for needy families pursuant to 42 U.S.C. 607 based
33 upon the unemployment of a parent, whether or not the state provides cash assistance.

34 (r) Except as otherwise provided in this section and to the extent of available funds, is a preg-
35 nant woman or child for whom federal financial participation is available under Title XIX of the
36 federal Social Security Act.

37 (s) Is not otherwise categorically needy and is not eligible for care under Title XVIII of the
38 federal Social Security Act or is not a full-time student in a post-secondary education program as
39 defined by the Department of Human Services by rule, but whose family income is less than the
40 federal poverty level and whose family investments and savings equal less than the investments and
41 savings limit established by the department by rule.

42 (t) **Would be eligible for a category of aid but for the receipt of qualified long term care**
43 **insurance benefits under a policy or certificate issued on or after January 1, 2008. As used**
44 **in this paragraph, "qualified long term care insurance" means a policy or certificate of in-**
45 **surance as defined in ORS 743.652 (6).**

1 (3) "Income" has the meaning given that term in ORS 411.704.

2 (4) "Investments and savings" means cash, securities as defined in ORS 59.015, negotiable in-
3 struments as defined in ORS 73.0104 and such similar investments or savings as the Department of
4 Human Services may establish by rule that are available to the applicant or recipient to contribute
5 toward meeting the needs of the applicant or recipient.

6 (5) "Medical assistance" means so much of the following medical and remedial care and services
7 as may be prescribed by the Department of Human Services according to the standards established
8 pursuant to ORS 414.065, including payments made for services provided under an insurance or
9 other contractual arrangement and money paid directly to the recipient for the purchase of medical
10 care:

11 (a) Inpatient hospital services, other than services in an institution for mental diseases;

12 (b) Outpatient hospital services;

13 (c) Other laboratory and X-ray services;

14 (d) Skilled nursing facility services, other than services in an institution for mental diseases;

15 (e) Physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled
16 nursing facility or elsewhere;

17 (f) Medical care, or any other type of remedial care recognized under state law, furnished by
18 licensed practitioners within the scope of their practice as defined by state law;

19 (g) Home health care services;

20 (h) Private duty nursing services;

21 (i) Clinic services;

22 (j) Dental services;

23 (k) Physical therapy and related services;

24 (L) Prescribed drugs, including those dispensed and administered as provided under ORS chapter
25 689;

26 (m) Dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases
27 of the eye or by an optometrist, whichever the individual may select;

28 (n) Other diagnostic, screening, preventive and rehabilitative services;

29 (o) Inpatient hospital services, skilled nursing facility services and intermediate care facility
30 services for individuals 65 years of age or over in an institution for mental diseases;

31 (p) Any other medical care, and any other type of remedial care recognized under state law;

32 (q) Periodic screening and diagnosis of individuals under the age of 21 years to ascertain their
33 physical or mental impairments, and such health care, treatment and other measures to correct or
34 ameliorate impairments and chronic conditions discovered thereby;

35 (r) Inpatient hospital services for individuals under 22 years of age in an institution for mental
36 diseases; and

37 (s) Hospice services.

38 (6) "Medical assistance" includes any care or services for any individual who is a patient in a
39 medical institution or any care or services for any individual who has attained 65 years of age or
40 is under 22 years of age, and who is a patient in a private or public institution for mental diseases.
41 "Medical assistance" includes "health services" as defined in ORS 414.705. "Medical assistance"
42 does not include care or services for an inmate in a nonmedical public institution.

43 (7) "Medically needy" means a person who is a resident of this state and who is considered el-
44 igible under federal law for medically needy assistance.

45 (8) "Resources" has the meaning given that term in ORS 411.704. For eligibility purposes, "re-

1 sources” does not include charitable contributions raised by a community to assist with medical
2 expenses.

3 **SECTION 12.** The Department of Human Services shall submit to the Centers for Medi-
4 care and Medicaid Services a request for approval of a Medicaid state plan amendment that
5 provides for a long term care insurance partnership as defined in 42 U.S.C. 1396p(b)(1)(C)(iii).

6 **SECTION 13.** The amendments to ORS 411.708 and 414.025 by sections 10 and 11 of this
7 2007 Act become operative on the day after the date the Department of Human Services re-
8 ceives approval of the Medicaid state plan amendment described in section 12 of this 2007
9 Act.

10 **SECTION 14.** The Director of Human Services shall notify Legislative Counsel upon ap-
11 proval of the Medicaid state plan amendment described in section 12 of this 2007 Act.

12 **SECTION 15.** The Director of Human Services may take any action before the operative
13 date of the amendments to ORS 411.708 and 414.025 by sections 10 and 11 of this 2007 Act that
14 is necessary to enable the director to exercise, on or after the operative date of the amend-
15 ments to ORS 411.708 and 414.025 by sections 10 and 11 of this 2007 Act, all the duties, func-
16 tions and powers conferred on the director by this 2007 Act.

17 **SECTION 16.** Sections 6 and 7 of this 2007 Act and the amendments to ORS 743.650,
18 743.652, 743.653 and 743.655 by sections 1 to 4 of this 2007 Act apply to policies and certificates
19 delivered or issued for delivery on or after January 1, 2008.

20