

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

# A Bill

ACT 517 OF 1997  
HOUSE BILL 1731

4  
5 By: Representative Miller  
6  
7

## For An Act To Be Entitled

8  
9 "AN ACT TO AMEND THE LONG-TERM CARE INSURANCE ACT OF THE  
10 STATE OF ARKANSAS, CODIFIED AS ARKANSAS CODE 23-97-201,  
11 AND FOLLOWING, FOR COMPLIANCE WITH THE RECENT ENACTMENT OF  
12 THE FEDERAL HEALTH INSURANCE PORTABILITY AND  
13 ACCOUNTABILITY ACT OF 1996, CODIFIED AS PUBLIC LAW 104-  
14 191; AND FOR OTHER PURPOSES."

## Subtitle

15  
16  
17 "TO AMEND THE LONG-TERM CARE INSURANCE  
18 ACT."

19  
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Subsection (5) of Arkansas Code 23-97-203 is hereby amended  
23 to read as follows:

24 "(5)(A) Long-term care insurance means any insurance policy, contract  
25 certificate, rider, or other evidence of coverage issued, issued for delivery,  
26 advertised, marketed, or offered in this state to provide coverage for not  
27 less than twelve (12) consecutive months for each covered person, on an  
28 expense incurred, indemnity, prepaid, or other basis, for one (1) or more  
29 necessary or medically necessary diagnostic, preventive, therapeutic,  
30 rehabilitative, maintenance, or personal care services provided in a setting  
31 other than an acute care unit of a hospital. Such term includes group and  
32 individual annuities and life insurance policies, contracts, certificates, or  
33 riders which provide directly or which supplement long-term care insurance.  
34 Such term also includes a policy or rider which provides for payment of  
35 benefits based upon cognitive impairment or the loss of functional capacity.  
36 Such term shall also include qualified long-term care insurance contracts.

1 Long-term care insurance may be issued by insurers, fraternal benefits  
 2 societies, nonprofit hospital, and medical service corporations, pre-paid  
 3 health plans, health maintenance organizations or any similar organization to  
 4 the extent they are otherwise authorized to issue life or disability  
 5 insurance.

6 (B) Long-term care insurance shall not include any insurance policy which  
 7 is offered primarily to provide basic medicare supplement coverage, basic  
 8 hospital expense coverage, basic medical-surgical expense coverage, hospital  
 9 confinement indemnity coverage, major medical expense coverage, disability  
 10 income or related asset-protection coverage, accident only coverage, specified  
 11 disease or specified accident coverage, or limited benefit health coverage+.  
 12 With regard to life insurance, this term does not include life insurance  
 13 policies which accelerate the death benefit specifically for one or more of  
 14 the qualifying events of terminal illness, medical conditions requiring  
 15 extraordinary medical intervention, or permanent institutional confinement,  
 16 and which provide the option of a lump-sum payment for those benefits and in  
 17 which neither the benefits nor the eligibility for the benefits is conditioned  
 18 upon the receipt of long-term care. Notwithstanding any other provision  
 19 contained herein, any product advertised, marketed or offered as long-term  
 20 care insurance shall be subject to the provisions of this act;"

21

22 SECTION 2. Arkansas Code 23-97-203 is hereby amended by adding new  
 23 subsections (7) and (8) and (9) immediately following current subsection (6)  
 24 at the end of the existing section to read as follows:

25 "(7) Qualified Long-Term Care Insurance Contract means any individual  
 26 or group insurance contract if it meets the requirements of Section 7702B of  
 27 the Internal Revenue Code, as amended, and if:

28 (A) the only insurance protection provided under the contract is  
 29 coverage of qualified long-term care services;

30 (B) the contract does not pay or reimburse expenses incurred for  
 31 services or items to the extent that such expenses are reimbursable under  
 32 Title XVIII of Social Security Act, as amended, or would be so reimbursable  
 33 but for the application of a deductible or coinsurance amount. This  
 34 subsection does not apply to a contract that makes per diem or other periodic  
 35 payment without regard to expenses;

36 (C) the contract is guaranteed renewable;

1           (D) the contract does not provide for a cash surrender value or  
 2 other money that can be paid, assigned, pledged as collateral for a loan, or  
 3 borrowed. All refunds of premiums, and all policyholder dividends or similar  
 4 amounts, under such contract are to be applied as a reduction in future  
 5 premiums or to increase future benefits, except that a refund of the aggregate  
 6 premium paid under the contract may be allowed in the event of the death of  
 7 the insured or a complete surrender or cancellation of the contract; and

8           (E) the contract contains the consumer protection provisions set  
 9 forth in Section 7702B(g) of the Internal Revenue Code;

10          (8) Qualified Long-Term Care Insurance Contract also means any life  
 11 insurance contract which provides long-term care coverage by rider or as part  
 12 of the contract as long as the contract complies with the applicable  
 13 provisions of Section 7702B of the Internal Revenue Code, as amended;

14          (9) Qualified Long-Term Care Services means necessary diagnostic,  
 15 preventive, therapeutic, curing, treating, mitigating, and rehabilitative  
 16 services, and maintenance for personal care services to which an insured is  
 17 eligible for under a qualified long-term care insurance contract, and which  
 18 are provided pursuant to a plan of care prescribed by a licensed health care  
 19 practitioner."

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21          SECTION 3. Arkansas Code 23-97-204 is hereby amended as follows:

22          "23-97-204. Scope.

23          The requirements of this subchapter shall apply to policies delivered or  
 24 issued for delivery in this state on ~~or after March 17, 1989~~ the effective  
 25 date of this act. This subchapter is not intended to supersede the obligations  
 26 of entities subject to this subchapter to comply with the substance of other  
 27 applicable insurance laws insofar as they do not conflict with this  
 28 subchapter, except that laws and regulations designed and intended to apply to  
 29 medicare supplement insurance policies shall not be applied to long-term care  
 30 insurance. ~~A policy which is not advertised, marketed, or offered as long-~~  
 31 ~~term care insurance or nursing home insurance need not meet the requirements~~  
 32 ~~of this subchapter."~~

33

34          SECTION 4. Arkansas Code 23-97-208 is hereby amended by adding new  
 35 subsections (d),(e),(f),(g),(h) and (i) in consecutive order immediately  
 36 following current subsection (c) at the end of the existing section to read as

1 follows:

2 "(d) MONTHLY REPORTS. Any time a long-term care benefit, funded  
 3 through a life insurance vehicle by the acceleration of the death benefit, is  
 4 in benefit payment status, a monthly report shall be provided to the  
 5 policyholder. Such report shall include:

6 (1) Any long-term care benefits paid out during the month;

7 (2) An explanation of any changes in the policy, e.g. death  
 8 benefits or cash values, due to long-term care benefits being paid out; and

9 (3) The amount of long-term care benefits existing or remaining.

10 (e) CLAIM DENIALS. If a claim under a qualified long-term care  
 11 insurance contract is denied, the issuer shall, within sixty (60) days of the  
 12 date of a written request by the policyholder or certificate holder, or a  
 13 representative thereof:

14 (1) provide a written explanation of the reasons for the denial;  
 15 and

16 (2) make available all information directly related to such  
 17 denial.

18 (f) INCONTESTABILITY PERIODS.

19 (1) For a policy or certificate that has been in force for less  
 20 than six (6) months an insurer may rescind a long-term care insurance policy  
 21 or certificate or deny an otherwise valid long-term care insurance claim upon  
 22 a showing of misrepresentation that is material to the acceptance of the  
 23 coverage.

24 (2) For a policy or certificate that has been in force for at  
 25 least six (6) months but less than two (2) years an insurer may rescind a  
 26 long-term care insurance policy or certificate or deny an otherwise valid  
 27 long-term care insurance claim upon a showing of misrepresentation that is  
 28 both material to the acceptance for coverage and which pertains to the  
 29 condition for which benefits are sought.

30 (3) After a policy or certificate has been in force for two (2)  
 31 years it is not contestable upon the grounds of misrepresentation alone;  
 32 such policy or certificate may be only upon a showing that the insured  
 33 knowingly and intentionally misrepresented relevant facts relating to the  
 34 insureds health.

35 (g) (1) FIELD ISSUED POLICIES. No long-term care insurance policy or  
 36 certificate may be field issued based upon medical or health status.

1           (2) For purposes of this section, field issued means a policy or  
 2 certificate issued by an agent or a third-party administrator pursuant to the  
 3 underwriting authority granted to the agent or third party administrator by an  
 4 insurer.

5           (h) POLICY RESCISSIONS. If an insurer has paid benefits under the  
 6 long-term care insurance policy or certificate, the benefit payments may not  
 7 be recovered by the event that the policy or certificate is rescinded.

8           (i) NONFORFEITURE BENEFITS.

9           (1) No long-term care insurance policy or certificate may be  
 10 delivered or issued for delivery in this state unless the policyholder at the  
 11 time of the application is offered the option of purchasing a policy or  
 12 certificate that provides for nonforfeiture benefits to the defaulting or  
 13 surrendering policyholder or certificate holder. The commissioner shall  
 14 promulgate a regulation specifying the type or types of nonforfeiture benefits  
 15 to be included in such policies and certificates and the standards for the  
 16 benefits.

17           (2) Nonforfeiture benefits for qualified long-term care insurance  
 18 contracts shall offer at least a reduced paid-up insurance benefit, an  
 19 extended term insurance benefit, the offer of a shortened benefit period, or  
 20 other similar offerings approved by the United States Secretary of Treasury,  
 21 and shall be provided as specified in regulations. The issuer of such  
 22 contract may refund premiums upon death of the insured or upon complete  
 23 surrender or cancellation of the contract or policy, as long as the refund  
 24 does not exceed the aggregate premiums paid for the contract or policy."

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 26           SECTION 5. Arkansas Code 23-97-211 is hereby amended by adding new  
 27 subsection (c) immediately following current subsection (b) at the end of the  
 28 existing section to read as follows:

29           "(c) If the policy or certificate is intended to be a qualified long-  
 30 term care insurance contract, the outline of coverage shall also include a  
 31 statement that discloses to the policyholder or certificate holder that the  
 32 policy is intended to be a qualified long-term care insurance contract."

33  
 34           SECTION 6. Arkansas Code 23-97-212 is hereby amended to read as  
 35 follows:

36           "(a) A certificate issued pursuant to a group long-term care insurance

1 policy shall include:

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

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

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

8 (b) The issuer of a qualified long-term care insurance contract shall  
9 deliver to the applicant, policyholder, or certificate holder the contract or  
10 certificate no later than thirty (30) days after the date of approval."

11

12 SECTION 7. Arkansas Code 23-97-213 is hereby amended to read as  
13 follows:

14 "23-97-213. Right to return - Free look.

15 (a)(1) ~~Individual long~~ Long-term care insurance applicants,  
16 policyholders or certificate holders shall have the right to return the policy  
17 or certificate within thirty (30) days of its delivery and to have the entire  
18 premium refunded if, after examination of the policy or certificate, the  
19 policy holder or certificate holder is not satisfied for any reason.

20 (2) ~~Individual long~~ Long-term care insurance policies and certificates  
21 shall be accompanied by a notice, prominently printed, on the first page or  
22 attached thereto stating in substance that the policyholder or certificate  
23 holders shall have the right to return the policy or certificate within thirty  
24 (30) days of its delivery and to have the entire premium refunded if, after  
25 examination of the policy or certificate, other than a certificate issued  
26 pursuant to a policy issued to a group defined in subdivision (4)(A) of § 23-  
27 97-203 in this chapter, the applicant or the policyholder is not satisfied for  
28 any reason. If an application for a qualified long-term care contract is  
29 denied, the issuer shall refund to the applicant any premium and any other fee  
30 submitted by the applicant within thirty (30) days of the denial.

31 (b)(1) A person insured under a long-term care insurance policy issued  
32 pursuant to a direct response solicitation shall have the right to return the  
33 policy within thirty (30) days of its delivery and to have the entire premium  
34 refunded if, after examination, the insured person is not satisfied for any  
35 reason.

36 (2) Long-term care insurance policies issued pursuant to a direct

1 response solicitation shall be accompanied by a notice prominently printed  
 2 stating in substance that the insured person shall have the right to return  
 3 the policy within thirty (30) days of its delivery and to have the premium  
 4 refunded if, after examination, the insured person is not satisfied for any  
 5 reason."

6

7 SECTION 8. All provisions of this act of a general and permanent nature  
 8 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
 9 Revision Commission shall incorporate the same in the Code.

10

11 SECTION 9. If any provision of this act or the application thereof to  
 12 any person or circumstance is held invalid, such invalidity shall not affect  
 13 other provisions or applications of the act which can be given effect without  
 14 the invalid provision or application, and to this end the provisions of this  
 15 act are declared to be severable.

16

17 SECTION 10. All laws and parts of laws in conflict with this act are  
 18 hereby repealed.

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20 SECTION 11. EMERGENCY. It is hereby determined by the General Assembly  
 21 of the State of Arkansas that the current provisions under Arkansas law for  
 22 the regulation of long-term care insurance are not in accord with provisions  
 23 of Federal law; and this act is immediately necessary to remedy that problem.  
 24 Therefore an emergency is hereby declared to exist and this act being  
 25 necessary for the public peace, health and safety shall be in full force and  
 26 effect from and after July 1, 1997.

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28 APPROVED:3-13-97

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