

Introduced by

Representative Weisz

1 A BILL for an Act to create and enact a new section to chapter 26.1-45 of the North Dakota
2 Century Code, relating to requirements of stand-alone long-term care insurance policies; and to
3 amend and reenact section 26.1-45-01 of the North Dakota Century Code, relating to definitions
4 relating to long-term care insurance.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 26.1-45-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **26.1-45-01. Definitions.**

9 In this chapter, unless the context requires otherwise:

- 10 1. "Applicant" means:
- 11 a. In the case of an individual long-term care insurance policy, the person who
12 seeks to contract for benefits.
- 13 b. In the case of a group long-term care insurance policy, the proposed certificate
14 holder.
- 15 2. "Certificate" means any certificate issued under a group long-term care insurance
16 policy that has been delivered or issued for delivery in this state.
- 17 3. "Group long-term care insurance" means a long-term care insurance policy that is
18 delivered or issued for delivery in this state to:
- 19 a. One or more employers or labor organizations, or to a trust or to the trustees of a
20 fund established by one or more employers or labor organizations, or a
21 combination thereof, for employees or former employees or a combination
22 thereof, or for members or former members or a combination thereof, of the labor
23 organizations.

- 1 b. Any professional, trade, or occupational association for its members or former or
2 retired members, or combination thereof, if the association:
- 3 (1) Is composed of individuals all of whom are or were actively engaged in the
4 same profession, trade, or occupation; and
- 5 (2) Has been maintained in good faith for purposes other than obtaining
6 insurance.
- 7 c. An association, a trust, or the trustee of a fund established, created, or
8 maintained for the benefit of members of one or more associations meeting the
9 requirements of section 26.1-45-02.
- 10 d. A group other than a group described in subdivision a, b, or c if the commissioner
11 finds that:
- 12 (1) The issuance of the group policy is not contrary to the best interest of the
13 public;
- 14 (2) The issuance of the group policy would result in economies of acquisition or
15 administration; and
- 16 (3) The benefits are reasonable in relation to the premiums charged.
- 17 4. "Hybrid long-term care insurance" means a life insurance, annuity, or any insurance
18 policy, which provides long-term care benefits with amounts tied to the death benefit,
19 cash surrender value, or both, as a rider, endorsement, or policy provision.
- 20 5. "Long-term care insurance" means any insurance policy or rider primarily advertised,
21 marketed, offered, or designed to provide coverage for not less than twelve
22 consecutive months for each covered person on an expense incurred, indemnity,
23 prepaid, or other basis, for one or more necessary or medically necessary diagnostic,
24 preventive, therapeutic, rehabilitative, maintenance, or personal care services
25 provided in a setting other than an acute care unit of a hospital. The term includes
26 group and individual annuities and life insurance policies or riders, whether issued by
27 insurers, fraternal benefit societies, nonprofit health service corporations, prepaid
28 health plans, health maintenance organizations, or any similar entity, which provide
29 directly or which supplement long-term care insurance. The term also includes home
30 health care type insurance policies or riders which provide directly or which
31 supplement long-term care insurance; and includes a policy or rider which provides for

1 payment of benefits based upon cognitive impairment or the loss of functional
2 capacity. The term includes qualified long-term care insurance contracts. The term
3 includes long-term care insurance products issued by insurers; fraternal benefit
4 societies; nonprofit health, hospital, and medical service corporations; prepaid health
5 plans; health maintenance organizations; or a similar organization to the extent that
6 the organization is otherwise authorized to issue life or health insurance. The term
7 does not include any insurance policy that is offered primarily to provide basic
8 Medicare supplement coverage, basic hospital expense coverage, basic
9 medical-surgical expenses coverage, hospital confinement indemnity coverage, major
10 medical expense coverage, disability income or related asset-protection coverage,
11 accident only coverage, specified disease or specified accident coverage, or limited
12 benefit health coverage. With regard to life insurance, this term does not include life
13 insurance policies which accelerate the death benefit specifically for one or more of
14 the qualifying events of terminal illness, medical conditions requiring extraordinary
15 medical intervention, or permanent institutional confinement, and which provide the
16 option of a lump sum payment for those benefits and in which neither the benefits nor
17 the eligibility for the benefits is conditioned upon the receipt of long-term care.
18 Notwithstanding any other provision contained herein, any product advertised,
19 marketed, or offered as a long-term care insurance is subject to the provisions of this
20 chapter.

21 ~~5.6.~~ "Policy" means any policy, contract, subscriber agreement, rider, or endorsement
22 delivered or issued for delivery in this state by an insurer, fraternal benefit society,
23 nonprofit health, hospital, or medical service corporation, prepaid health plan, health
24 maintenance organization, or any similar entity.

25 ~~6.7.~~ a. "Qualified long-term care insurance contract" or "federally tax-qualified long-term
26 care insurance contract" means an individual or group insurance contract that
27 meets the requirements of section 7702B(b) of the Internal Revenue Code of
28 1986, as amended, as follows:

- 29 (1) The only insurance protection provided under the contract is coverage of
30 qualified long-term care services. A contract satisfies the requirements of

- 1 this paragraph even if payments are made on a per diem or other periodic
2 basis without regard to the period in which the expenses are incurred;
- 3 (2) The contract does not pay or reimburse expenses incurred for services or
4 items to the extent that the expenses are reimbursable under title XVIII of
5 the Social Security Act, as amended, or would be so reimbursable but for
6 the application of a deductible or coinsurance amount. The requirements of
7 this paragraph do not apply to expenses that are reimbursable under title
8 XVIII of the Social Security Act only as a secondary payer. A contract
9 satisfies the requirements of this paragraph even if payments are made on a
10 per diem or other periodic basis without regard to the period in which the
11 expenses are incurred;
- 12 (3) The contract is guaranteed renewable, within the meaning of section
13 7702B(b)(1)(c) of the Internal Revenue Code of 1986, as amended;
- 14 (4) The contract does not provide for a cash surrender value or other money
15 that can be paid, assigned, pledged as collateral for a loan, or borrowed
16 except as provided in paragraph 5;
- 17 (5) All refunds of premiums and all policyholder dividends or similar amounts
18 under the contract are to be applied as a reduction in future premiums or to
19 increase future benefits, except that a refund on the event of death of the
20 insured or a complete surrender or cancellation of the contract cannot
21 exceed the aggregate premiums paid under the contract; and
- 22 (6) The contract meets the consumer protection provisions set forth in section
23 7702B(g) of the Internal Revenue Code of 1986, as amended.
- 24 b. "Qualified long-term care insurance contract" or "federally tax-qualified long-term
25 care insurance contract" also means the portion of a life insurance contract that
26 provides long-term care insurance coverage by rider or as part of the contract
27 and that satisfies the requirements of sections 7702B(b) and (e) of the Internal
28 Revenue Code of 1986, as amended.
- 29 8. "Ultimate lapse rates" means the duration for which the lapse rates remain level for the
30 remainder of the policy after factoring in:

1 a. Potential shock lapses, which means an increase in lapse rates due to rate
2 increases and other factors; and

3 b. Mortality, which means a termination of the policy due to death.

4 **SECTION 2.** A new section to chapter 26.1-45 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Lapse rates.**

7 Long-term care insurance, except hybrid long-term care insurance, which is approved by
8 the commissioner after July 31, 2023, must include ultimate lapse rates at zero percent and an
9 initial premium rate schedule that includes a margin for moderately adverse experience of at
10 least thirty percent of lifetime claims.