

111TH CONGRESS  
1ST SESSION

# S. 1636

To develop a model disclosure form to assist consumers in purchasing long-term care insurance.

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IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Ms. KLOBUCHAR (for herself and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To develop a model disclosure form to assist consumers in purchasing long-term care insurance.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Long-Term Care In-  
5 surance Consumer Right-to-Know Act of 2009”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) LONG-TERM CARE INSURANCE POLICY.—

9 The term “long-term care insurance policy”  
10 means—

1 (A) a qualified long-term care insurance  
2 contract (as defined in section 7702B(b) of the  
3 Internal Revenue Code of 1986); and

4 (B) a qualified long-term care insurance  
5 contract that covers an insured who is a resi-  
6 dent of a State with a qualified State long-term  
7 care insurance partnership under clause (iii) of  
8 section 1917(b)(1)(C) of the Social Security Act  
9 (42 U.S.C. 1396p(b)(1)(C)) or a long-term care  
10 insurance policy offered in connection with a  
11 State plan amendment described in clause (iv)  
12 of such section.

13 (2) MODEL ACT AND REGULATION.—The term  
14 “model Act and regulation” means the long-term  
15 care insurance model regulation, and the long-term  
16 care insurance model Act, respectively, promulgated  
17 by the National Association of Insurance Commis-  
18 sioners (as adopted as of October 2000 and as of  
19 December 2006).

20 (3) NAIC.—The term “NAIC” means the Na-  
21 tional Association of Insurance Commissioners.

22 (4) SECRETARY.—The term “Secretary” means  
23 the Secretary of Health and Human Services.

24 (5) STATE.—The term “State” means each of  
25 the 50 States, the District of Columbia, the Com-

1       monwealth of Puerto Rico, the United States Virgin  
2       Islands, Guam, the Commonwealth of the Northern  
3       Mariana Islands, and American Samoa.

4   **SEC. 3. NAIC STUDY AND REPORT ON STATE DISCLOSURE**  
5               **REQUIREMENTS FOR LONG-TERM CARE IN-**  
6               **SURANCE.**

7       (a) IN GENERAL.—The Secretary shall request the  
8       NAIC to carry out the activities described in subsection  
9       (b) and issue the report described in subsection (c).

10       (b) REVIEW AND DEVELOPMENT OF PROPOSED  
11       MODEL DISCLOSURE REQUIREMENTS.—The activities de-  
12       scribed in this subsection are the following:

13               (1) MODEL ACT AND REGULATION DISCLOSURE  
14       REQUIREMENTS.—Review and describe disclosure re-  
15       quirements for long-term care insurance policies  
16       under the Model Act and regulation.

17               (2) STATE LAW DISCLOSURE REQUIREMENTS.—  
18       Review and describe disclosure requirements for  
19       long-term care insurance policies under State laws.

20               (3) LONG-TERM CARE SERVICES.—Review and  
21       describe differences in long-term care services, in-  
22       cluding with respect to providers of such services  
23       and the settings in which such services are provided  
24       among States and develop a standardized definition  
25       for long-term care services.

1           (4) IDENTIFICATION OF KEY ISSUES FOR DE-  
 2           VELOPMENT OF MODEL DISCLOSURE MARKETING  
 3           FORM.—Identify and describe key issues to consider  
 4           in the development of a proposed model form for  
 5           marketing long-term care insurance policies.

6           (c) REPORT.—The report described in this subsection  
 7           is a NAIC White Paper that is issued not later than 12  
 8           months after the date of enactment of this Act and con-  
 9           tains the results of the reviews conducted under subsection  
 10          (a) and the descriptions required under that subsection.

11       **SEC. 4. NAIC WORKING GROUP TO DEVELOP MODEL DIS-**  
 12                               **CLOSURE FORM FOR LONG-TERM CARE IN-**  
 13                               **SURANCE.**

14          (a) IN GENERAL.—The Secretary shall request the  
 15          NAIC to establish, not later than 60 days after the date  
 16          on which the NAIC White Paper described in section 3(c)  
 17          is issued and in consultation with the Secretary and the  
 18          Secretary of the Treasury, a Working Group to develop  
 19          a model disclosure form for marketing long-term care in-  
 20          surance policies.

21          (b) WORKING GROUP MEMBERS.—The Working  
 22          Group established under subsection (a) shall be composed  
 23          of the following:

24                (1) Representatives from State Departments of  
 25                Health (or the most appropriate State agencies with

1 responsibility for oversight of the provision of long-  
2 term care).

3 (2) Representatives of long-term care providers  
4 and facilities.

5 (3) Consumer advocates.

6 (4) Representatives of issuers of long-term care  
7 insurance policies.

8 (5) Representatives of the NAIC or State insur-  
9 ance commissioners.

10 (6) Other experts in long-term care and long-  
11 term care insurance policies selected by the Sec-  
12 retary and Secretary of the Treasury or the NAIC.

13 (c) REQUIREMENTS FOR DEVELOPMENT OF FORM.—

14 (1) CONSIDERATIONS.—In developing the model  
15 form, the Working Group shall consider the fol-  
16 lowing:

17 (A) Variations among providers, services,  
18 and facilities in the long-term care and long-  
19 term care insurance markets.

20 (B) The results of the reviews and the de-  
21 scriptions included in the NAIC White Paper  
22 issued under section 3(c).

23 (C) Such other information and factors as  
24 the Working Group determines appropriate.

1           (2) STANDARDIZATIONS.—The Working Group  
2 shall ensure that the model has—

3           (A) minimum standard definitions for cov-  
4 erage of the various types of services and bene-  
5 fits provided under long-term care insurance  
6 policies;

7           (B) minimum standard language for use  
8 by issuers of such policies, and for agents sell-  
9 ing such policies, in explaining the services and  
10 benefits covered under the policies and restric-  
11 tions on the services and benefits;

12           (C) minimum standard format, color and  
13 type size for disclosure documents; and

14           (D) such other minimum standards as the  
15 Working Group determines appropriate.

16       (d) DEADLINE FOR DEVELOPMENT.—The Working  
17 Group shall issue a proposed model disclosure form for  
18 marketing long-term care insurance policies not later than  
19 1 year after the date on which the Working Group is es-  
20 tablished.

21       (e) ADOPTION AND INCORPORATION INTO MODEL  
22 ACT AND REGULATION.—The Secretary shall request the  
23 NAIC to amend the Model Act and regulation to require  
24 the use of the proposed model disclosure form issued by

1 the Working Group, not later than 1 year after the date  
2 on which the Working Group issues the form.

3 **SEC. 5. REQUIRED USE OF MODEL DISCLOSURE FORM IN**  
4 **MARKETING LONG-TERM CARE INSURANCE**  
5 **POLICIES.**

6 (a) APPLICATION TO TAX-QUALIFIED AND MEDICAID  
7 PARTNERSHIP POLICIES.—Not later than 1 year after the  
8 date on which the Working Group issues the proposed  
9 model disclosure form for marketing long-term care insur-  
10 ance policies under section 4:

11 (1) TAX-QUALIFIED POLICIES.—The Secretary  
12 of the Treasury shall promulgate a regulation re-  
13 quiring, not later than 1 year after the date on  
14 which the regulation is final, any issuer of a quali-  
15 fied long-term care insurance contract (as defined in  
16 section 7702B(b) of the Internal Revenue Code of  
17 1986) to use the proposed model disclosure form for  
18 marketing such contracts.

19 (2) MEDICAID PARTNERSHIP POLICIES.—The  
20 Secretary shall promulgate a regulation requiring,  
21 not later than 1 year after the date on which the  
22 regulation is final, any issuer of a qualified long-  
23 term care insurance contract that covers an insured  
24 who is a resident of a State with a qualified State  
25 long-term care insurance partnership under clause

1 (iii) of section 1917(b)(1)(C) of the Social Security  
2 Act (42 U.S.C. 1396p(b)(1)(C)) or a long-term care  
3 insurance policy offered in connection with a State  
4 plan amendment described in clause (iv) of such sec-  
5 tion to use the proposed model disclosure form for  
6 marketing such contracts.

7 (b) APPLICATION TO ALL OTHER LONG-TERM CARE  
8 INSURANCE POLICIES.—Not later than 18 months, or the  
9 earliest date on which an amendment could be enacted for  
10 those States with legislatures which meet only every other  
11 year, after the date on which the NAIC adopts an amend-  
12 ed Model Act and regulation to require the use of the pro-  
13 posed model disclosure form issued by the Working Group  
14 under section 4, each State shall require by statute or reg-  
15 ulation any issuer of a long-term care insurance policy to  
16 use the proposed model disclosure form when marketing  
17 such a policy in the State.

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