ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE, REPEALING, AMENDING, AND CREATING A RULE

The Office of the Wisconsin Commissioner of Insurance proposes an order to repeal s. Ins 3.46 (11m), Wis. Adm. Code; to amend s. Ins 3.455 (title), 3.455 (intro), 3.46 (5) (b) 5. , 3.46 (5) (b) 9. and 3.46 Appendix 1, Wis. Adm. Code; to repeal and recreate s. Ins 3.46 Appendix 2, Wis. Adm. Code; and to create s. Ins 3.455 (3) (c) to (g), 3.455 (5) (b) 10. to 13., 3.455 (5) (d), 3.455 (9m), 3.455 (10), 3.46 (3) (j), 3.46 (9) (b) to (j), 3.46 (19) and 3.46 Appendix 5, Wis. Adm. Code, relating to long term-care insurance.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41 (3), 601.42, 628.34 (12), 628.38, 631.20, ~~632.72, 632.76~~ and 632.81 , Stats.

Statutes interpreted: see statutory authority

Analysis: These proposed amendments and additions to ss. Ins 3.455 and 3.46 rely heavily upon a recent redraft of the National Association of Insurance Commissioner's long-term care model regulation. That regulation and these proposed amendments and additions attempt to enhance consumer protection in long-term care insurance policies. The development and marketing of long-term care insurance policies will broaden as the population ages. These changes will provide the proper regulatory incentives to require insurers to properly price these insurance products so that premiums can be kept stable. The rule requires enhanced consumer disclosure and notification designed to ensure that prospective applicants have sufficient information to make informed decisions about the coverage and the insurance company.

This rule also seeks to help promote uniformity in the national marketplace by essentially following the language and intent of a model act designed for promulgation in all the states. With these standards in place insurers can more easily design new products and modify existing products with some assurance that the products will be accepted in all the states. The model act was also designed to help address some of the tax issues that flow from long-term care insurance products.

Among other things this rule eliminates the current loss ratio requirement on initial rate filings to enable companies to set initial premiums intended to remain in place for the life of the policy. If a company does file for a rate increase, the rule imposes significant consequences on the insurance company including disclosure requirements for future marketing of the product and future loss ratio requirements.

This proposed rule includes modifications to Ins 3.46 Appendices 1 and 2 and the creation of Appendix 5.

SECTION 1. Section Ins 3.455 (title) is amended to read:

Ins 3.455 (title) Long–term care, nursing home and home health care policies; loss ratios; rating practices; continuation and conversion~~,~~; reserves.

SECTION 2. Section Ins 3.455 (3) (c) to (g) are created to read:

~~(c) "Guaranteed renewable" has the meaning given in Ins 3.46 (3) (b).~~

(~~d~~c) "Exceptional increase" means an increase in premium by an insurer that the commissioner determines is justified under any of the following circumstances:

1. Changes in laws or ~~regulations~~rules applicable to long-term care coverage in this state.

2. Increased and unexpected utilization that affects the majority of insurers of similar products.

(d) “Guaranteed renewable” has the meaning given in s. Ins 3.46 (3) (b).

(e) “Incidental” means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy measured as of the date of issue.

(f) “Qualified actuary” means a member in good standing of the a~~A~~merican a~~A~~cademy of a~~A~~ctuaries.

(g) “Similar policy forms” ~~in this chapter~~ means all of the long-term care, nursing home and home health care insurance policies and certificates offered by an insurer that fall within one of the following categories:

Institutional long-term care, nursing home benefits only.

Non-institutional long-term care, home health care benefits only.

3. Comprehensive long-term care, nursing home and home health care benefits.

SECTION 3. Section Ins 3.455 (5) (~~intro~~title) is amended to read:

~~MINIMUM~~ LOSS RATIO REQUIREMENTS ~~FOR LONG-TERM CARE, NURSING HOME AND HOME HEALTH CARE POLICIES.~~

SECTION 4. Section Ins 3.455 (5) (b) 10. to 13. is created to read:

10. All appropriate expense factors.

11. Experimental nature of the coverage.

12. Policy reserves.

13. Mix of business by risk classification.

SECTION 5. Section Ins 3.455 (5) (d) is created to read:

(d) The provisions of this subsection apply only to policies issued prior to ~~(revisor inserts date).~~January 1, 2002.

SECTION 6. Section Ins 3.455 (9) (e) is amended to read:

(e) Except as provided in par. (f) the provisions of this subsection apply only to long-term care insurance policies and certificates issued from August 1, 1996 to December 31, 2001.

SECTION 7. Section Ins 3.455 (9) (f) 1. & 2. is repealed and recreated to read:

(f) The provisions of this subsection do not apply to any group long-term care insurance policy or certificate issued to any labor organization or to any trust or trustee of a fund established by any employer or labor organization for members or former members if the group policy was in force prior to August 1, 1996.

SECTION 8. Section Ins 3.455 (9m) is created to read:

(9m) PREMIUM RATE SCHEDULE INCREASES, REQUESTING AND DETERMINING EXCEPTIONAL RATE INCREASES.

(a) An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least 60 days prior to the notice to the policyholders and shall include all of the following:

1. The r~~R~~equired d~~D~~isclosure of r~~R~~ating p~~P~~ractices to c~~C~~onsumers n~~N~~otice as described under s. Ins 3.46 (9) (b).

2. A certification by a qualified actuary that the premium rate filing is in compliance with the provisions of this subsection and 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.

3. An actuarial memorandum justifying the rate schedule change request that includes all of the following:

a. 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, including all of the following:

(i) Annual values for the 5 years preceding and the 3 years following the valuation date shall be provided separately.

(ii) Projections including the development of the lifetime loss ratio, unless the rate increase is an exceptional increase.

(iii) Projections demonstrating compliance with par (b).

~~(iv) For exceptional increases, the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and in the event the commissioner determines that offsets may exist, the insurer shall use appropriate net projected experience.~~

b. Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse.

c. 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 insurer have been relied on by the actuary.

d. A statement that policy design, underwriting and claims adjudication practice have been taken into consideration.

e. ~~In the event that~~If it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer ~~will need to~~shall file composite rates reflecting projections of new certificates.

4. 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 commissioner.

5. Sufficient information for review of the premium rate schedule increase by the commissioner.

6. For exceptional increases, the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase. ~~and in the event~~If the commissioner determines that offsets may exist, the insurer shall use appropriate net projected experience.

7. The commissioner 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.

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

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

2. Exceptional increases shall provide that 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits.

3. 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:

a. The accumulated value of the initial earned premium times 58%.

b. Eighty-five percent of the accumulated value of prior premium rate schedule increases on an earned basis.

c. The present value of future projected initial earned premiums times 58%.

d. Eighty-five percent of the present value of future projected premiums not in this subd. 3. c. on an earned basis.

4. ~~In the event that~~If a policy form has both exceptional and other increases, the values in subd. 3. b. and d. ~~will~~shall also include 70% for exceptional rate increase amount.

5. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in s. Ins 3.17. The actuary shall disclose, as part of the actuarial memorandum, the use of any appropriate averages.

(c) For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections as defined in par. (a) 3. a. annually for the next 3 years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than 3 years if actual results are not consistent with projected values from prior projections.

(d) If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, lifetime projections, as defined in par. (a) 3. a., shall be filed for review by the commissioner every 5 years following the end of the required period in par. (c).

(e) If the commissioner 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 par. (b), the commissioner may require the insurer to make premium rate schedule adjustments or take other measures to reduce the difference between the projected and actual experience. In determining whether the actual experience adequately matches the projected experience, consideration should be given to par. (a) 3. e., if applicable.

(f) 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 all of the following:

1. A plan, subject to commissioner 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 commissioner may impose the condition in par. (g).

2. The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to par. (b) had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in par. (b) ~~1~~3. a. and c.

(g) 1. For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated when all of the following conditions occur:

a. The rate increase ~~filing where it~~ is not the first rate increase requested for the specific policy form or forms.

b. The rate increase is not an exceptional increase.

c. The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse. ~~The commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated~~

2. ~~In the event~~If 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 commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner 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.

3. The offer described in subd. 2. shall be subject to the approval of the commissioner, be based on actuarially sound principles, but not be based on attained age, and shall provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

4. 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~~ If a rate increase on the policy form, the rate increase shall be limited to the maximum rate increase determined based on the combined experience or the maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10% , whichever is less.

(h) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care, nursing home, and home health care insurance, the commissioner may, in addition to the provisions of par. (g), either prohibit the insurer from filing and marketing comparable coverage for a period of up to 5 years, or prohibit the insurer from offering all other similar coverages and require the insurer to limit marketing of new applications to the products subject to recent premium rate schedule increases.

(i) Par~~s.~~agraphs (a) t~~o~~hrough (h) shall not apply to policies for which the benefits provided by the policy are incidental.

(j) Except as provided in par. (k) and (l) the provisions of this subsection apply to any long-term care, nursing home or home health care policy or certificate issued in this state on or after January 1, 2002.

(k) For group long-term care insurance certificates issued to employer-sponsored groups or labor organizations in this state and in force on or after January 1, 2002 the provisions of this subsection shall apply on the first policy anniversary occurring at least 12 months after ~~(revisor inserts date)~~ January 1, 2002.

(l) In lieu of filing the projections required by pars. (c) ~~to~~and (d) with the commissioner, an insurer may file projections with the employer if that employer has at least 5,000 eligible employees of whom at least 250 are covered under the policy or the employer pays at least 20% of the annual group premium in the year preceding the increase.

SECTION 9. Ins 3.455 (10) is created to read:

(10) INITIAL FILING REQUIREMENTS. (a) This subsection applies to any long-term care, nursing home and home health care policy issued in this state on or after January 1, 2002.

(~~a~~b) An insurer shall file all of the following with the commissioner at least 30 days before making a long-term care insurance policy available for sale:

1. A copy of the disclosure documents as required by s. Ins 3.46 (9).

2. An actuarial certification consisting of all the following:

a. 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.

b. A statement that the policy design and coverage provided have been reviewed and taken into consideration.

c. A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration.

d. A complete description of the basis for contract reserves that are anticipated to be held under the form.

e. Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held.

f. A statement that the assumptions used for reserves contain reasonable margins for adverse experience.

g. A statement that the net valuation premium for renewal years does not increase except for attained-age rating where permitted.

h. 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. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship. If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under subd. 3. based on a standard age distribution.

i. 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 benefit or a comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

3. The commissioner 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.

4. ~~In the event~~If the commissioner asks for additional information under this provision, the period in sub. 10 (~~intro~~a) does not include the period during which the insurer is preparing the requested information.

SECTION 10. Section Ins 3.46 (3) (j) is created to read:

(j) "N~~n~~oncancellable" means a policy in which the insured has the right to continue the 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.

SECTION 11. Ins 3.46 (4) (u) is created to read:

(u) Require a signed acceptance by the individual insured for all riders or endorsements added to an individual long-term care insurance policy after the date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy, 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. After the date of issue, any rider or endorsement that 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.

SECTION 12. Section Ins 3.46 (5) (b) 5. is amended to read:

5. If it is a policy or certificate which covers care in a community setting only, contain a caption as follows: THE WISCONSIN INSURANCE COMMISSIONER HAS ESTABLISHED MINIMUM STANDARDS FOR HOME HEALTH CARE INSURANCE. THIS POLICY MEETS THOSE STANDARDS.

__________ –THIS POLICY COVERS CERTAIN TYPES OF HOME HEALTH CARE. THIS POLICY DOES NOT COVER NURSING HOME CARE. THERE MAY BE LIMITATIONS ON THE SERVICES COVERED. ~~THIS OUTLINE OF COVERAGE PROVIDES A BRIEF DESCRIPTION OF BENEFITS.~~ READ YOUR POLICY CAREFULLY.

__________ –FOR MORE INFORMATION ON LONG–TERM CARE SEE THE “GUIDE TO LONG–TERM CARE” GIVEN TO YOU WHEN YOU APPLIED FOR THIS POLICY. THIS POLICY~~”~~’S BENEFITS ARE NOT RELATED TO MEDICARE.

SECTION 13. Section Ins 3.46 (5) (b) 9. is amended to read:

9. If it is an individual policy, include a provision on the first page of the policy that provides that the policy is guaranteed renewable for life or noncancellable.

SECTION 14. Section Ins 3.46 (9) (b) to (j) is created to read:

(b) Other than a policy for which no applicable premium rate or rate schedule increases can be made, an insurer shall provide all of the following information to the applicant at the time of application or enrollment:

1. A statement that the policy may be subject to rate increases in the future.

2. An explanation of potential future premium rate revisions~~,~~ and the policyholder's or certificateholder's option in the event of a premium rate revision.

3. The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase.

4. A general explanation for applying premium rate or rate schedule adjustments that shall include a description of when premium rate or rate schedule adjustments will be effective, such as next anniversary date~~,~~ or next billing date, and the right to a revised premium rate or rate schedule as provided in subd. 2. if the premium rate or rate schedule is changed.

5. Information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this state or any other state that, at a minimum, identifies the policy forms for which premium rates have been increased; the calendar years when the form was available for purchase; and the amount or percentage 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.

(c) The insurer may as part of the disclosure under par. (b) in a fair manner, provide additional explanatory information related to the rate increases.

(d) For purposes of the disclosure requirement under par. (b), 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.

(e) For purposes of the disclosure requirement under par. (b), 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 subsection or the end of a 24 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 insurer shall include the disclosure of that rate increase.

(f) For purposes of the disclosure requirement under par. (b), if the acquiring insurer files for a subsequent rate increase, even within the 24 month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers, the acquiring insurer must make all disclosures required, including disclosure of the earlier rate increase.

(g) An applicant shall sign an acknowledgement at the time of application that the insurer made the disclosure required under par. (b) 1. and 5.

(h) An insurer shall use the forms in Appendices 1, 2 and 5 to comply with the requirements of pars. (b), (g) and (~~j~~i).

(i) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 60 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by par. (b) when the rate increase is implemented.

(j) This subsection shall apply as follows:

1. Except as provided in subd. 2., this subsection applies to any long-term care, nursing home or home health care policy or certificate issued in this state on or after January 1, 2002.

2. For group long-term care insurance certificates issued to employer-sponsored groups or labor organizations in this state and in force on or after January 1, 2002 the provisions of this subsection shall apply on the first policy anniversary occurring at least 12 months after ~~[revisor inserts date]~~ January 1, 2002.

SECTION 15. Section Ins 3.46 (11m) is repealed.

SECTION 16. Section Ins 3.46 (19) is created to read:

(19) NONFORFEITURE BENEFIT REQUIREMENTS FOR LONG-TERM CARE. (a) No insurer may advertise, market or offer a long–term care, nursing home only or home health care only

policy or certificate unless the insurer offers, at the time of sale, a shortened benefit period nonforfeiture benefit.

(b) If the offer required to be made under par. (a) is rejected, the insurer shall provide the contingent benefit upon lapse described in this section.

(c) 1. After rejection of the offer required under par. (a) for individual and group policies without nonforfeiture benefits issued after the effective date of this subsection, the insurer shall provide a contingent benefit upon lapse.

2. ~~In the event~~If a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

3. The contingent benefit on 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~~in the table in the subdivision based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 60 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase	
Issue Age	% Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

4. On or before the effective date of a substantial premium increase as defined in sub.d. 3. the insurer shall do all of the following:

a. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased.

b. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subdivision paragraph c. This option may be elected at any time during the 120-day period referenced in subd. 3.

c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subd. 3. shall be deemed to be the election of the offer to convert in this subd~~ivision~~. 4. ~~paragraph~~ b.

(d) The required benefits continued as nonforfeiture benefits under par. (a), including contingent benefits upon lapse under par. (b), are computed as follows:

1. "Attained age rating" as applied in this paragraph is defined as a schedule of premiums starting from the issue date which increases with age at least 1% per year prior to age 50, and at least 3% per year ~~beyond~~for age 50 and beyond.

2. The nonforfeiture benefit shall provide paid–up long-term care, nursing home only or home care only insurance coverage after lapse. The amounts and frequency of benefits in effect at the time of lapse, but not increased thereafter, ~~will~~shall be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subd. 3.

3. The standard nonforfeiture credit shall be at least 100% 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 may not be less than 30 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 par. (e).

4. The nonforfeiture benefit shall begin not 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 3 years as well as thereafter. For a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of end of the tenth year following the policy or certificate issue date or the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

5. 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.

(e) All benefits paid by the insurer while the policy or certificate is in premium–paying status and in the paid-up status may not exceed the maximum benefits which would have been payable if the policy or certificate had remained in premium-paying status.

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

(g) Premiums charged for a policy or certificate containing nonforfeiture benefits shall be subject to the loss ratio requirements contained in s. Ins 3.455 (5) treating the policy as a whole.

(h) This subsection shall apply as follows:

1. Except as provided in subd 2., the provisions of this subsection apply to any long-term care, nursing home, and home health care policy issued in this state on or after January 1, 2002.

2. For group long-term care, nursing home, and home health care insurance certificates issued to employer-sponsored groups or labor organizations in this state and in force on or after January 1, 2002, which policy was in force on January 1, 2001, the provisions of this subsection shall not apply.

(i) To determine whether contingent nonforfeiture upon lapse provisions are triggered under par. (c) 3. 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.

SECTION 17. Section Ins 3.46 Appendix 1 is amended to read:

Ins 3.46 Appendix 1
(COMPANY NAME)
OUTLINE OF COVERAGE
(Insert the appropriate caption stated below.)

LONG–TERM CARE INSURANCE POLICY

THE WISCONSIN INSURANCE COMMISSIONER HAS ESTABLISHED MINIMUM STANDARDS FOR LONG–TERM CARE INSURANCE. THIS POLICY MEETS THOSE STANDARDS. THIS POLICY COVERS CERTAIN TYPES OF NURSING HOME AND HOME HEALTH CARE SERVICES. THERE MAY BE LIMITATIONS ON THE SERVICES COVERED. THIS OUTLINE OF COVERAGE PROVIDES A BRIEF DESCRIPTION OF BENEFITS. READ YOUR POLICY CAREFULLY.

or

NURSING HOME INSURANCE POLICY

THE WISCONSIN INSURANCE COMMISSIONER HAS ESTABLISHED MINIMUM STANDARDS FOR NURSING HOME INSURANCE. THIS POLICY MEETS THOSE STANDARDS. THIS POLICY COVERS CERTAIN TYPES OF NURSING HOME CARE. THIS POLICY DOES NOT COVER HOME HEALTH CARE. THERE MAY BE LIMITATIONS ON THE SERVICES COVERED. THIS OUTLINE OF COVERAGE PROVIDES A BRIEF DESCRIPTION OF BENEFITS. READ YOUR POLICY CAREFULLY.

or

HOME HEALTH CARE INSURANCE POLICY

THE WISCONSIN INSURANCE COMMISSIONER HAS ESTABLISHED MINIMUM STANDARDS FOR HOME HEALTH CARE INSURANCE. THIS POLICY MEETS THOSE STANDARDS. THIS POLICY COVERS CERTAIN TYPES OF HOME HEALTH CARE. THIS POLICY DOES NOT COVER NURSING HOME CARE. THERE MAY BE LIMITATIONS ON THE SERVICES COVERED. THIS OUTLINE OF COVERAGE PROVIDES A BRIEF DESCRIPTION OF BENEFITS. READ YOUR POLICY CAREFULLY.

plus

FOR MORE INFORMATION ON LONG TERM CARE SEE THE "GUIDE TO LONG TERM CARE" GIVEN TO YOU WHEN YOU APPLIED FOR THIS POLICY. THIS POLICY'S BENEFITS ARE NOT RELATED TO MEDICARE.

(1) The outline of coverage shall contain a description of the following items, if applicable:
(a) Pre–existing condition limitation
(b) Elimination periods
(c) Exclusions and limitations in the policy
(d) Prior authorization procedures
(e) Benefit periods and lifetime maximums in the policy
(f) Renewability provision of the policy <u>as described in (5)</u>
(g) "Free look" provisions of the policy
(h) Inflation protection provisions
(i) Definitions for skilled, intermediate and custodial care, activities of daily living, home health care, and respite care
(j) Benefit appeals internal procedures

(2) The outline shall contain a statement that the policy will provide benefits for persons with irreversible dementia if the person requires the type of care covered by the policy and is otherwise eligible for benefits.

(3) A summary of the costs of the policy and any optional rider purchased. The summary may be completed at the time the outline is provided to an applicant.

(4) For life insurance products, a statement that the cash value and death benefits will be reduced if claims are paid under life insurance long-term care coverage.

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

(a) Policies and certificates that are guaranteed renewable shall contain the following statement: RENEWABILITY: THIS 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.

(b) Policies and certificates that are noncancellable shall contain the following statement: RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, 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.

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

(d) Describe waiver of premium provisions or state that there are not such provisions.

(6) 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 insurer has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.

SECTION 18. Section ~~INS~~ns 3.46 Appendix 2 is repealed and recreated to read:

Ins 3.46 Appendix 2
Long–Term Care Insurance
Personal Worksheet

People buy long–term care insurance for a variety of reasons. These reasons include to avoid spending assets for long–term care, to make sure there are choices regarding the type of care received, to protect family members from having to pay for care, or to decrease the chances of going on Medicaid. However, long–term care insurance can be expensive, and is not appropriate for everyone. State law requires the insurance company to ask you to complete this worksheet to help you and the insurance company determine whether you should buy this policy.

PREMIUM

Policy Form Number(s) ____________________

The premium for the coverage you are considering will be [$________ per month, or $__________ per year,] [a one–time single premium of $________.]

Type of Policy (noncancellable/guaranteed renewable): ________________________________

[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.]

Note: The insurer shall use the bracketed sentence or sentence applicable to the product offered. If a company includes a statement regarding not having raised rates, it must disclose the company's rate increases under prior policies providing essentially similar coverage.

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 increase(s).]

QUESTIONS RELATED TO YOUR INCOME

_ Income _ Savings _ Family members

[Have you considered whether you could afford to keep this policy if the premiums were raised, for example, by 20%?]

Note: The insurer shall use the bracketed sentence unless the policy is fully paid up or is a noncancellable 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

Note: The insurer may choose the numbers to put in the brackets to fit its suitability standards.

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, what is the approximate value of all of your assets (savings and investments)? (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:___________________________]

[Note: 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 appear to be suitable for me. However, I still want the company to consider my application.]

Signed:__________________________ ______________]

(Applicant)(Date)

SECTION 19. Section Ins 3.46 Appendix 5 is created to read:

Ins 3.46 Appendix 5
Long-Term Care Insurance
Potential Rate Increase Disclosure Form

Instructions:
This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

Insurers shall provide all of the following information to the applicant:

1. [Premium Rate] [Premium Rate Schedules]: [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [filed][] for an increase [is][are] [on the application][$_____])
2. The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.
3. Rate Schedule Adjustments:
   The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): _________________.
4. Potential Rate Revisions:
   This policy is Guaranteed Renewable. This means that the rates for this policy may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.
   If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:

§ Pay the increased premium and continue your policy in force as is.
§ Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
§ Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
§ Exercise your contingent nonforfeiture rights.* (This option may be available if you do not purchase a separate nonforfeiture option.)

*Contingent Nonforfeiture
If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:
You will keep some long-term care insurance coverage, if:
Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table and
You lapse (not pay more premiums) within 120 days of the increase.
The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you've paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.
Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.
Should you choose this Contingent Nonforfeiture option your policy with this reduced maximum benefit amount will be considered paid up with no further premiums due.
Example:
You bought the policy at age 65 and paid the $1,000 annual premium for 10 years, so you have paid a total of $10,000 in premium.
In the eleventh year, you receive a rate increase of 50%, or $500 for a new annual premium of $1,500, and you decide to lapse the policy (not pay any more premiums).
Your paid-up policy benefits are $10,000 (provided you have at least $10,000 of benefits remaining under your policy.)

Contingent Nonforfeiture Cumulative Premium Increase over Initial Premium That qualifies for Contingent Nonforfeiture (Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)	
Issue Age	**Percent Increase Over Initial Premium**
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

Effective date: this rule shall take effect on January 1, 2002 as provided in s. 227.22 (2) (b), Stats.

Dated at Madison, Wisconsin, this ____________th day of May, 2001.

Connie L. O'Connell
Commissioner of Insurance