State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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STATE OF WISCONSIN | SS
OFFICE OF THE COMMISSIONER OF INSURANCE |

I, Randy Blumer, Deputy Commissioner of Insurance and custodian of the official records, certify that the annexed rule affecting Section Ins 3.46(18), Wis. Adm. Code, relating to the requirements for qualified tax deductible long term care policies , is duly approved and adopted by this Office on July10, 1997.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 121 East Wilson Street, Madison, Wisconsin, on July10, 1997.

Randy Blumer
Randy Blumer
Deputy Commissioner of Insurance

97-007
9-1-97

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE CREATING A RULE

To create INS 3.46(18): and amend INS 3.46(4)(g), Wis. Adm. Code, relating to the requirements for tax deductible long term care insurance.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 600.01(2), 601.41(3), 601.42, 628.34(12), and 632.82 Stats.

Statutes interpreted: ss. 600.01, 628.34 (12), Stats.

These changes would allow tax deductible long term care policies to be sold in Wisconsin. Under the recently enacted P.L. 104-191, premiums for long term care policies will qualify for federal tax deductions and long term care insurance benefits will not be taxed if certain criteria are met. The criteria under the existing rules for long term care policies do not meet these standards. To be tax deductible a long term care policy must:

- Use as a benefit trigger the term "substantial supervision" and use the term "substantial assistance." The recent IRS guidelines define these substantially similar to the current rule;
- Require that the claimant obtain a certification from a licensed health care practitioner, as defined in the federal law, as a condition for claim payment that the functional incapacity or inability to perform activities of daily living triggering benefits under the policy is expected to last for at least 90 days; and
- Clearly disclose that the policy is a tax qualified long term care policy.

The requirement to also offer a non tax qualified plan in any sale has been removed. Under s. 7702B(f)(2) of the Internal Revenue Code of 1986, any plan sold prior to January 1, 1997 are treated as qualified long-term care policies.

SECTION 1. Amend s. Ins 3.46(4)(g) to read:

INS 3.46(4)(g) Provide coverage regardless of whether care is medically necessary. Coverage shall be triggered in conformance with the provisions contained in ~~sub.~~ subs. (17) and (18).

SECTION 2. Create s. Ins 3.46(18) to read:

INS 3.46(18) **TAX QUALIFIED LONG TERM CARE, NURSING HOME AND HOME HEALTH CARE POLICIES.** This subsection applies to long term care, nursing home or home health care policies which are intended to be tax qualified under and comply with the requirements of s. 7702B of the Internal Revenue Code of 1986, as amended, and any regulations and administrative pronouncements issued under the Code.

(a) In order to qualify for certain tax treatment, long term care, nursing home only and home health care only policy provisions may contain the following conditions as defined in Section 7702B of the Internal Revenue Code of 1986 as amended and any regulations and administrative pronouncements issued thereunder notwithstanding sub. (17):

1. The terms "severe cognitive impairment " and "substantial supervision" may be used in lieu of the term "cognitive impairment" and its accompanying supervision requirement may be used as a benefit trigger in sub. (17) (a) 3. and (e) 2. of this rule;

2. The term "substantial assistance" may be used in lieu of the term "hands-on-assistance" in sub. (17) (c) 1. of this rule; and

3. The requirement that the claimant obtain a certification from a licensed health care practitioner, as defined in s. 7702B of the Internal Revenue Code of 1986, as amended, and any regulations and administrative pronouncements issued under the Code, as a condition for claim payment that the functional incapacity or inability to perform at least 2 activities of daily living triggering benefits under the policy is expected to last at least 90 days, may be imposed by the insurer.

4. Except as noted in subd. 1. 2 and 3., the definitions and provisions in sub. 3.46(17) apply to this subsection.

(b) The policy shall contain a clear disclosure that the policy is intended to be a tax qualified long term care policy.

(c) The outline of coverage shall prominently disclose that, in order to meet the requirements of a tax qualified policy, the functional incapacity or inability to perform activities of daily living triggering benefits under the policy must be expected to last for at least 90 days.

(d) All other applicable provisions in this section or s. Ins. 3.455 shall continue to apply to tax qualified long term care, nursing home and home health care policies.

SECTION 2. This rule first applies to any tax qualified long term policy solicited in Wisconsin after December 31, 1996.

SECTION 3. This rule will take effect on the first day of the first month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this 10 th day of July, 1997.

Randy Blumer

Randy Blumer
Deputy Commissioner of Insurance