

HOUSE BILL No. 6651

November 13, 2008, Introduced by Rep. Meisner and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 3910a, 3910b, 3925, 3926, and 3926a (MCL
500.3910a, 500.3910b, 500.3925, 500.3926, and 500.3926a), as
added by 2006 PA 442; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3910a. (1) This section does not apply to life
2 insurance policies or riders containing accelerated benefits for
3 long-term care.

4 (2) A policy or certificate offered with nonforfeiture
5 benefits shall have coverage elements, eligibility, benefit
6 triggers, and benefit length that are the same as coverage to be
7 issued without nonforfeiture benefits. The nonforfeiture benefit

1 included in the offer shall be the benefits described in
2 subsection (8).

3 (3) If the offer required to be made under section 3910 is
4 rejected, the insurer shall provide a contingent benefit upon
5 lapse as described in this section for individual and group
6 policies without nonforfeiture benefits. ~~issued on and after June~~
7 ~~1, 2007.~~

8 (4) If a group policyholder elects to make the nonforfeiture
9 benefit an option to the certificateholder, a certificate shall
10 provide either the nonforfeiture benefit or the contingent
11 benefit upon lapse.

12 (5) Except as otherwise required, policyholders shall be
13 notified not less than 45 days before the due date of a premium
14 increase and of the amount of the increase.

15 (6) The contingent benefit on lapse is triggered every time
16 an insurer increases the premium rates to a level that results in
17 a cumulative increase of the annual premium equal to or exceeding
18 the percentage of the insured's initial annual premium as follows
19 based on the insured's issue age, and the policy or certificate
20 lapses within 120 days of the due date of the premium so
21 increased:

22 TRIGGERS FOR A SUBSTANTIAL PREMIUM INCREASE

23	Percent Increase Over
24	<u>Initial Premium</u>
25	<u>Issue Age</u>
29 and under	200%

1	30-34	190%
2	35-39	170%
3	40-44	150%
4	45-49	130%
5	50-54	110%
6	55-59	90%
7	60	70%
8	61	66%
9	62	62%
10	63	58%
11	64	54%
12	65	50%
13	66	48%
14	67	46%
15	68	44%
16	69	42%
17	70	40%
18	71	38%
19	72	36%
20	73	34%
21	74	32%
22	75	30%
23	76	28%
24	77	26%
25	78	24%
26	79	22%
27	80	20%
28	81	19%
29	82	18%
30	83	17%
31	84	16%

1	85	15%
2	86	14%
3	87	13%
4	88	12%
5	89	11%
6	90 and over	10%

7 (7) On or before the effective date of a substantial premium
8 increase as defined in subsection (6), the insurer shall do all
9 of the following:

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

13 (b) Offer to convert the coverage to a paid-up status with a
14 shortened benefit period as provided in subsection (8). This
15 option may be elected at any time during the 120-day period under
16 subsection (6).

17 (c) Notify the policyholder or certificateholder that a
18 default or lapse at any time during the 120-day period under
19 subsection (6) is considered to be the election of the offer to
20 convert under subdivision (b).

21 (8) Benefits continued as nonforfeiture benefits, including
22 contingent benefits upon lapse, are as follows:

23 (a) For purposes of this subsection, attained age rating is
24 defined as a schedule of premiums starting from the issue date
25 that increases age at least 1% per year prior to age 50 and at
26 least 3% per year beyond age 50.

27 (b) For purposes of this subsection, the nonforfeiture

1 benefit shall be of a shortened benefit period providing paid-up
2 long-term care insurance coverage after lapse. The same benefits
3 shall be payable for a qualifying claim, but the lifetime maximum
4 dollars or days of benefits shall be determined as provided in
5 subdivision (c). As used in this subdivision, "same benefits"
6 means amounts and frequency in effect at the time of lapse but
7 not increased thereafter.

8 (c) The standard nonforfeiture credit will be equal to 100%
9 of the sum of all premiums paid, including the premiums paid
10 prior to any changes in benefits. The insurer may offer
11 additional shortened benefit period options, as long as the
12 benefits for each duration equal or exceed the standard
13 nonforfeiture credit for that duration. However, the minimum
14 nonforfeiture credit shall not be less than 30 times the daily
15 nursing home benefit at the time of lapse. In either event, the
16 calculation of the nonforfeiture credit is subject to the
17 limitation of subsection (9).

18 (d) The nonforfeiture benefit shall begin not later than the
19 end of the third year following the policy or certificate issue
20 date. The contingent benefit upon lapse shall be effective during
21 the first 3 years as well as thereafter. However, for a policy or
22 certificate with attained age rating, the nonforfeiture benefit
23 shall begin on the earlier of the end of the tenth year following
24 the policy or certificate issue date or the end of the second
25 year following the date the policy or certificate is no longer
26 subject to attained age rating.

27 (e) Nonforfeiture credits may be used for all care and

1 services qualifying for benefits under the terms of the policy or
2 certificate, up to the limits specified in the policy or
3 certificate.

4 (9) All benefits paid by the insurer while the policy or
5 certificate is in premium paying status and in the paid-up status
6 shall not exceed the maximum benefits that would be payable if
7 the policy or certificate had remained in premium paying status.

8 (10) There shall be no difference in the minimum
9 nonforfeiture benefits as required under this section for group
10 and individual policies.

11 (11) This section is ~~effective June 1, 2007 and shall apply~~
12 ~~as follows:~~ **APPLIES TO LONG-TERM CARE INSURANCE POLICIES SOLD**
13 **BEFORE, ON, OR AFTER JUNE 1, 2007.**

14 ~~—— (a) Except as otherwise provided in subdivision (b), this~~
15 ~~section applies to any long term care policy issued in this state~~
16 ~~on or after June 1, 2007.~~

17 ~~—— (b) This section does not apply to certificates issued on or~~
18 ~~after June 1, 2007, under a group long term care insurance policy~~
19 ~~as defined in section 3901(c) (i), which policy was in force at the~~
20 ~~time this section became effective.~~

21 (12) Premiums charged for a policy or certificate containing
22 nonforfeiture benefits or a contingent benefit on lapse are
23 subject to the loss ratio requirements of section 3926a treating
24 the policy as a whole.

25 (13) To determine whether contingent nonforfeiture upon
26 lapse provisions are triggered under subsection (6), a replacing
27 insurer that purchased or otherwise assumed a block or blocks of

1 long-term care insurance policies from another insurer shall
2 calculate the percentage increase based on the initial annual
3 premium paid by the insured when the policy was first purchased
4 from the original insurer.

5 (14) For qualified long-term care insurance contracts that
6 are level premium contracts, an insurer shall offer a
7 nonforfeiture benefit that meets all of the following:

8 (a) Is appropriately captioned.

9 (b) Provides a benefit available in the event of a default
10 in the payment of any premiums and states that the amount of the
11 benefit may be adjusted subsequent to being initially granted
12 only as necessary to reflect changes in claims, persistency, and
13 interest as reflected in changes in rates for premium paying
14 contracts approved by the commissioner for the same contract
15 form.

16 (c) Provides at least 1 of the following:

17 (i) Reduced paid-up insurance.

18 (ii) Extended term insurance.

19 (iii) Shortened benefit period.

20 (iv) Other offerings approved by the commissioner that are
21 similar to subparagraphs (i) to (iii).

22 Sec. 3910b. (1) A long-term care insurance policy or
23 certificate shall provide that a policyholder or
24 certificateholder who wishes to reduce coverage and lower the
25 policy or certificate premium may choose at least 1 of the
26 following options:

27 (a) Reducing the lifetime maximum benefit.

1 (b) Reducing the daily, weekly, or monthly benefit amount.

2 (2) In addition to the reduction options listed in
3 subsection (1), a long-term care insurer may offer additional
4 reduction options that are consistent with the policy or
5 certificate design or the insurer's administrative processes.

6 (3) A long-term care insurer shall include in the long-term
7 care insurance policy or certificate a description of the ways in
8 which coverage may be reduced and the process for requesting and
9 implementing a reduction in coverage.

10 (4) The age to determine the premium for reduced coverage
11 shall be based on the age used to determine the premiums for the
12 coverage currently in force.

13 (5) A long-term care insurer may limit any reduction in
14 coverage to plans available for that policy form and to those for
15 which benefits will be available after consideration of claims
16 paid or payable.

17 (6) If a long-term care insurance policy or certificate is
18 about to lapse, the insurer shall provide written notice to the
19 insured of the options in subsection (1) to lower the premium by
20 reducing coverage and of the premiums applicable to the reduced
21 coverage options. The insurer may include in the notice
22 additional options to those required in subsection (1). The
23 notice shall provide the insured at least 30 days in which to
24 elect to reduce coverage, and the policy or certificate shall be
25 reinstated without underwriting if the insured elects the reduced
26 coverage.

27 (7) This section applies to long-term care policies and

1 certificates issued **BEFORE**, on, or after June 1, 2007.

2 Sec. 3925. (1) ~~Except as provided in subsection (2), this~~
3 **THIS** section applies to any long-term care policy or certificate
4 issued in this state **BEFORE**, on, or after June 1, 2007.

5 ~~—— (2) For a long-term care certificate issued on or after June~~
6 ~~1, 2007 under a group long-term care insurance policy described~~
7 ~~in section 3901(c)(i), which policy was in force on June 1, 2007,~~
8 ~~this section applies on the policy anniversary date following~~
9 ~~June 1, 2007.~~

10 (2) ~~(3)~~ Other than long-term care policies or certificates
11 for which no applicable premium rate or rate schedule increases
12 can be made, an insurer shall provide on forms approved by the
13 commissioner all of the following information to the applicant at
14 the time of application or enrollment or, if the method of
15 application does not allow for delivery at that time, an insurer
16 shall provide on forms approved by the commissioner all of the
17 following information to the applicant no later than at the time
18 of delivery of the policy or certificate:

19 (a) A statement that the policy may be subject to rate
20 increases in the future.

21 (b) An explanation of potential future premium rate
22 revisions, and the policyholder's or certificateholder's option
23 in the event of a premium rate revision.

24 (c) The premium rate or rate schedules applicable to the
25 applicant that will be in effect until a request is made for an
26 increase.

27 (d) A general explanation for applying premium rate or rate

1 schedule adjustments that shall include a description of when
2 premium rate or rate schedule adjustments will be effective and
3 the right to a revised premium rate or rate schedule if the
4 premium rate or rate schedule is changed.

5 (e) Information concerning each premium rate increase on the
6 policy or certificate or similar policies or certificates over
7 the past 10 years for this state or any other state that, at a
8 minimum, identifies all of the following:

9 (i) The policies or certificates for which premium rates have
10 been increased.

11 (ii) The calendar years when the policy or certificate was
12 available for purchase.

13 (iii) The amount or percent of each increase. The percentage
14 may be expressed as a percentage of the premium rate prior to the
15 increase and may also be expressed as minimum and maximum
16 percentages if the rate increase is variable by rating
17 characteristics. An insurer may exclude from this disclosure
18 premium rate increases that only apply to blocks of business
19 acquired from another nonaffiliated insurer or the long-term care
20 policies or certificates acquired from another nonaffiliated
21 insurer when those increases occurred prior to the acquisition.
22 If an acquiring insurer files for a rate increase on a long-term
23 care policy or certificate acquired from a nonaffiliated insurer
24 or a block of policies or certificates acquired from a
25 nonaffiliated insurer before ~~the later of June 1, 2007 or the end~~
26 of a 24-month period following the acquisition of the block of
27 policies or certificates, the acquiring insurer may exclude that

1 rate increase from this disclosure. However, the nonaffiliated
2 selling company shall include the disclosure of that rate
3 increase as provided in subparagraph (i). If the acquiring insurer
4 files for a subsequent rate increase, even within the 24-month
5 period, on the same policy or certificate acquired from a
6 nonaffiliated insurer or block of policies or certificates
7 acquired from a nonaffiliated insurer, the acquiring insurer
8 shall make all disclosures required by this subdivision,
9 including disclosure of the earlier rate increase.

10 (3) ~~(4)~~—The insurer may, in a fair manner, provide
11 explanatory information related to the rate increases in addition
12 to that required under subsection ~~(3)~~—(2).

13 (4) ~~(5)~~—Except as otherwise provided in this subsection, an
14 applicant shall sign an acknowledgment at the time of application
15 that the insurer made the disclosure required under subsection
16 ~~(3)~~—(2). If due to the method of application the applicant cannot
17 sign an acknowledgment at the time of application, the applicant
18 shall sign an acknowledgment that the insurer made the disclosure
19 required under subsection ~~(3)~~—(2) no later than at the time of
20 delivery of the policy or certificate.

21 (5) ~~(6)~~—An insurer shall provide notice of an upcoming
22 premium rate schedule increase to all policyholders or
23 certificateholders, if applicable, at least 45 days prior to the
24 implementation of the premium rate schedule increase by the
25 insurer. The notice shall include the information required by
26 subsection ~~(3)~~—(2) when the rate increase is implemented.

27 (6) ~~(7)~~—A long-term care insurer shall provide to an

1 applicant a long-term care insurance personal worksheet approved
2 by the commissioner that the applicant can use for help in
3 determining whether long-term care insurance should be purchased.

4 (7) ~~(8)~~—A long-term care insurer shall provide to an
5 applicant who is 60 years of age or older or who is disabled a
6 current brochure, or the web address where the brochure can be
7 obtained and the telephone number for the agency that can provide
8 the brochure, from the state's medicare medicaid assistance
9 program that contains information on the availability of free and
10 independent insurance purchasing and public benefits counseling.

11 Sec. 3926. (1) This section applies to any long-term care
12 policy or certificate issued in this state **BEFORE**, on, or after
13 June 1, 2007.

14 (2) An insurer shall provide all of the following
15 information to the commissioner 30 days prior to making a long-
16 term care insurance policy or certificate available for sale:

17 (a) A copy of the disclosure documents required in section
18 3925.

19 (b) An actuarial certification consisting of at least all of
20 the following:

21 (i) A statement that the initial premium rate schedule is
22 sufficient to cover anticipated costs under moderately adverse
23 experience and that the premium rate schedule is reasonably
24 expected to be sustainable over the life of the policy or
25 certificate with no future premium increases anticipated.

26 (ii) A statement that the policy or certificate design and
27 coverage provided have been reviewed and taken into

1 consideration.

2 (iii) A statement that the underwriting and claims
3 adjudication processes have been reviewed and taken into
4 consideration.

5 (iv) A complete description of the basis for contract
6 reserves that are anticipated to be held under the policy or
7 certificate, with sufficient detail or sample calculations
8 provided so as to have a complete depiction of the reserve
9 amounts to be held, a statement that the assumptions used for
10 reserves contain reasonable margins for adverse experience, a
11 statement that the net valuation premium for renewal years does
12 not increase except for attained-age rating where permitted, and
13 a statement that the difference between the gross premium and the
14 net valuation premium for renewal years is sufficient to cover
15 expected renewal expenses or if such a statement cannot be made,
16 a complete description of the situations where this does not
17 occur. An aggregate distribution of anticipated issues may be
18 used as long as the underlying gross premiums maintain a
19 reasonably consistent relationship. If the gross premiums for
20 certain age groups appear to be inconsistent with this
21 requirement, the commissioner may request a demonstration under
22 subsection (3) based on a standard age distribution.

23 (v) A statement that the premium rate schedule is not less
24 than the premium rate schedule for existing similar policies or
25 certificates also available from the insurer except for
26 reasonable differences attributable to benefits or a comparison
27 of the premium schedules for similar policies or certificates

1 that are currently available from the insurer with an explanation
2 of the differences.

3 (3) Prior to the expiration of the 30 days under subsection
4 (2), the commissioner may request an actuarial demonstration that
5 benefits are reasonable in relation to premiums. The actuarial
6 demonstration shall include either premium and claim experience
7 on similar policies or certificates, adjusted for any premium or
8 benefit differences, or relevant and credible data from other
9 studies, or both. If the commissioner asks for this additional
10 information, the 30-day time period under subsection (2) is
11 tolled until the commissioner receives the requested information.

12 Sec. 3926a. (1) ~~Except as provided in subsection (2), this~~
13 **THIS** section applies to any long-term care policy or certificate
14 issued in this state **BEFORE**, on, or after June 1, 2007.

15 ~~— (2) For certificates issued on or after June 1, 2007 under a~~
16 ~~group long term care insurance policy described in section~~
17 ~~3901(c)(i), which policy was in force on June 1, 2007, this~~
18 ~~section applies on the policy anniversary date following June 1,~~
19 ~~2007.~~

20 (2) ~~(3)~~—An insurer shall provide notice of a pending premium
21 rate schedule increase, including an exceptional increase, to the
22 commissioner at least 30 days prior to the notice to the
23 policyholders. This notice to the commissioner shall include all
24 of the following:

25 (a) Information required by section 3925.

26 (b) Certification by a qualified actuary that if the
27 requested premium rate schedule increase is implemented and the

1 underlying assumptions, which reflect moderately adverse
2 conditions, are realized, no further premium rate schedule
3 increases are anticipated and that the premium rate filing is in
4 compliance with the provisions of this section.

5 (c) An actuarial memorandum justifying the rate schedule
6 change request that includes all of the following:

7 (i) Lifetime projections of earned premiums and incurred
8 claims based on the filed premium rate schedule increase and the
9 method and assumptions used in determining the projected values,
10 including reflection of any assumptions that deviate from those
11 used for pricing other policies or certificates currently
12 available for sale. Annual values for the 5 years preceding and
13 the 3 years following the valuation date shall be provided
14 separately. The projections shall include the development of the
15 lifetime loss ratio, unless the rate increase is an exceptional
16 increase. The projections shall demonstrate compliance with
17 subsection ~~(4)~~(3). For exceptional increases, the projected
18 experience shall be limited to the increases in claims expenses
19 attributable to the approved reasons for the exceptional increase
20 and if the commissioner determines that offsets may exist, the
21 insurer shall use appropriate net projected experience.

22 (ii) If the rate increase will trigger contingent benefit
23 upon lapse, disclosure of how reserves have been incorporated in
24 this rate increase.

25 (iii) Disclosure of the analysis performed to determine why a
26 rate adjustment is necessary, which pricing assumptions were not
27 realized and why, and what other actions taken by the insurer

1 have been relied on by the actuary.

2 (iv) A statement that policy design, underwriting, and claims
3 adjudication practices have been taken into consideration.

4 (v) If it is necessary to maintain consistent premium rates
5 for new certificates and certificates receiving a rate increase,
6 the insurer will need to file composite rates reflecting
7 projections of new certificates.

8 (d) A statement that renewal premium rate schedules are not
9 greater than new business premium rate schedules except for
10 differences attributable to benefits, unless sufficient
11 justification is provided to the commissioner.

12 (e) Sufficient information for review and approval of the
13 premium rate schedule increase by the commissioner.

14 (3) ~~(4)~~—All premium rate schedule increases shall be
15 determined in accordance with the following requirements:

16 (a) Exceptional increases shall provide that 70% of the
17 present value of projected additional premiums from the
18 exceptional increase will be returned to policyholders in
19 benefits.

20 (b) Premium rate schedule increases shall be calculated such
21 that the sum of the accumulated value of incurred claims, without
22 the inclusion of active life reserves, and the present value of
23 future projected incurred claims, without the inclusion of active
24 life reserves, will not be less than the sum of the following:

25 (i) The accumulated value of the initial earned premium times
26 58%.

27 (ii) Eighty-five percent of the accumulated value of prior

1 premium rate schedule increases on an earned basis.

2 (iii) The present value of future projected initial earned
3 premiums times 58%.

4 (iv) Eighty-five percent of the present value of future
5 projected premiums not in subparagraph (iii) on an earned basis.

6 (c) If a policy or certificate has both exceptional and
7 other increases, the values in subdivision (b) (ii) and (iv) shall
8 also include 70% for exceptional rate increase amounts.

9 (d) All present and accumulated values used to determine
10 rate increases shall use the maximum valuation interest rate for
11 contract reserves as specified in section 733(1). The actuary
12 shall disclose as part of the actuarial memorandum the use of any
13 appropriate averages.

14 (4) ~~(5)~~—For each rate increase that is implemented, the
15 insurer shall file for review and approval by the commissioner
16 updated projections, as described in subsection ~~(3)(e)(i)~~
17 (2)(C)(i), annually for the next 3 years and include a comparison
18 of actual results to projected values. The commissioner may
19 extend the period to greater than 3 years if actual results are
20 not consistent with projected values from prior projections. For
21 group insurance certificates that meet the conditions in
22 subsection ~~(13)~~—(12), the projection required by this subsection
23 shall be provided to the policyholder in lieu of filing with the
24 commissioner.

25 (5) ~~(6)~~—If any premium rate in the revised premium rate
26 schedule is greater than 200% of the comparable rate in the
27 initial premium schedule, lifetime projections, as described in

1 subsection ~~(3)(e)(i)~~ **(2)(C)(i)**, shall be filed for review and
2 approval by the commissioner every 5 years following the end of
3 the required period in subsection ~~(5)~~ **(4)**. For group insurance
4 certificates that meet the conditions in subsection ~~(13)~~ **(12)**,
5 the projections required by this subsection shall be provided to
6 the policyholder in lieu of filing with the commissioner.

7 **(6)** ~~(7)~~—If the commissioner has determined that the actual
8 experience following a rate increase does not adequately match
9 the projected experience and that the current projections under
10 moderately adverse conditions demonstrate that incurred claims
11 will not exceed proportions of premiums specified in subsection
12 ~~(4)~~ **(3)**, the commissioner may require the insurer to implement
13 premium rate schedule adjustments or other measures to reduce the
14 difference between the projected and actual experience. In
15 determining whether the actual experience adequately matches the
16 projected experience, consideration should be given to subsection
17 ~~(3)(e)(iii)~~ **(2)(C)(iii)**, if applicable.

18 **(7)** ~~(8)~~—If the majority of the policies or certificates to
19 which an increase is applicable are eligible for the contingent
20 benefit upon lapse, the insurer shall file both of the following
21 with the commissioner:

22 (a) A plan, subject to commissioner approval, for improved
23 administration or claims processing designed to eliminate the
24 potential for further deterioration of the policy or certificate
25 requiring further premium rate schedule increases, or both, or to
26 demonstrate that appropriate administration and claims processing
27 have been implemented or are in effect.

1 (b) The original anticipated lifetime loss ratio, and the
2 premium rate schedule increase that would have been calculated
3 according to subsection ~~(4)~~—(3) had the greater of the original
4 anticipated lifetime loss ratio or 58% been used in the
5 calculations described in subsection ~~(4) (b) (i)~~—(3) (B) (i) and (iii).

6 (8) ~~(9)~~—The commissioner shall review, for all policies and
7 certificates included in a filing, the projected lapse rates and
8 past lapse rates during the 12 months following each increase to
9 determine if significant adverse lapsation has occurred or is
10 anticipated for any rate increase filing meeting the following
11 criteria:

12 (a) The rate increase is not the first rate increase
13 requested for the specific policy or certificate.

14 (b) The rate increase is not an exceptional increase.

15 (c) The majority of the policies or certificates to which
16 the increase is applicable are eligible for the contingent
17 benefit upon lapse.

18 (9) ~~(10)~~—If significant adverse lapsation has occurred, is
19 anticipated in the filing, or is evidenced in the actual results
20 as presented in the updated projections provided by the insurer
21 following the requested rate increase, the commissioner may
22 determine that a rate spiral exists. Following the determination
23 that a rate spiral exists, the commissioner may require the
24 insurer to offer, without underwriting, to all in force insureds
25 subject to the rate increase the option to replace existing
26 coverage with 1 or more reasonably comparable products being
27 offered by the insurer or its affiliates. An offer under this

1 subsection is subject to the commissioner's approval, shall be
2 based on actuarially sound principles, but shall not be based on
3 attained age, and shall provide that maximum benefits under any
4 new policy or certificate accepted by an insured shall be reduced
5 by comparable benefits already paid under the existing policy or
6 certificate. The insurer shall maintain the experience of all the
7 replacement insureds separate from the experience of insureds
8 originally issued the policy or certificate. If a rate increase
9 is requested on the policy or certificate, the rate increase
10 shall be limited to the lesser of the maximum rate increase
11 determined based on the combined experience and the maximum rate
12 increase determined based only on the experience of the insureds
13 originally issued the policy or certificate plus 10%.

14 (10) ~~(11)~~—If the commissioner determines that an insurer has
15 exhibited a persistent practice of filing inadequate initial
16 premium rates for long-term care insurance, the commissioner, in
17 addition to the provisions of subsections ~~(9) and (10)~~ **(8) AND**
18 **(9)**, may prohibit the insurer from either of the following:

19 (a) Filing and marketing comparable coverage for a period of
20 up to 5 years.

21 (b) Offering all other similar coverages and limiting
22 marketing of new applications to the products subject to recent
23 premium rate schedule increases.

24 (11) ~~(12)~~—Subsections (1) to ~~(11)~~ **(10)** do not apply to
25 policies or certificates for which the long-term care benefits
26 provided by the policy or certificate are incidental, if the
27 policy or certificate complies with all of the following:

1 (a) For any plan that may have a cash value, the interest
2 credited internally to determine cash value accumulations,
3 including long-term care, if any, are guaranteed not to be less
4 than the minimum guaranteed interest rate for cash value
5 accumulations without long-term care set forth in the policy or
6 certificate.

7 (b) The portion of the policy or certificate that provides
8 insurance benefits other than long-term care coverage meets the
9 nonforfeiture requirements as applicable in section 4060 or 4072.

10 (c) The policy or certificate meets sections 3928, 3933,
11 3951, and 3953.

12 (d) The portion of the policy or certificate that provides
13 insurance benefits other than long-term care coverage meets, as
14 applicable, the policy illustrations and disclosure requirements
15 under section 4038.

16 (e) An actuarial memorandum is filed with the office of
17 financial and insurance ~~services~~**REGULATION** that includes all of
18 the following:

19 (i) A description of the basis on which the long-term care
20 rates were determined.

21 (ii) A description of the basis for the reserves.

22 (iii) A summary of the type of policy, benefits, renewability,
23 general marketing method, and limits on ages of issuance.

24 (iv) A description and a table of each actuarial assumption
25 used. For expenses, an insurer shall include percent of premium
26 dollars per policy or certificate and dollars per unit of
27 benefits, if any.

1 (v) A description and a table of the anticipated policy or
2 certificate reserves and additional reserves to be held in each
3 future year for active lives.

4 (vi) The estimated average annual premium per policy or
5 certificate and the average issue age.

6 (vii) A statement as to whether underwriting is performed at
7 the time of application. The statement shall indicate whether
8 underwriting is used and, if used, shall include a description of
9 the type or types of underwriting used, such as medical
10 underwriting or functional assessment underwriting. For a group
11 certificate, the statement shall indicate whether the enrollee or
12 any dependent will be underwritten and when underwriting occurs.

13 (viii) A description of the effect of the long-term care
14 policy or certificate provision on the required premiums,
15 nonforfeiture values, and reserves on the underlying insurance
16 policy or certificate, both for active lives and those in long-
17 term care claim status.

18 (12) ~~(13)~~ Subsections (6), (7), **AND** (8) ~~, and (9)~~ do not
19 apply to a group insurance policy described in section 3901(c) (i)
20 if the policy insures 250 or more persons and the policyholder
21 has 5,000 or more eligible employees of a single employer or the
22 policyholder, and not the certificate holders, pays a material
23 portion of the premium, which shall not be less than 20% of the
24 total premium for the group in the calendar year prior to the
25 year a rate increase is filed.

26 (13) ~~(14)~~ Except as otherwise provided in this section,
27 exceptional increases are subject to the same requirements as

1 other premium rate schedule increases. The commissioner may
2 request a review by an independent qualified actuary or a
3 professional qualified actuarial body of the basis for a request
4 that an increase be considered an exceptional increase. The
5 commissioner, in determining that the necessary basis for an
6 exceptional increase exists, shall also determine any potential
7 offsets to higher claims costs.

8 (14) ~~(15)~~—As used in this section:

9 (a) "Exceptional increase" means only those increases filed
10 by an insurer as exceptional for which the commissioner
11 determines the need for the premium rate increase is justified
12 due to changes in laws or regulations applicable to long-term
13 care coverage in this state or due to increased and unexpected
14 utilization that affects the majority of insurers of similar
15 products.

16 (b) "Incidental" means that the value of the long-term care
17 benefits provided is less than 10% of the total value of the
18 benefits provided over the life of the policy or certificate as
19 measured on the date of issue.

20 (c) "Qualified actuary" means a member in good standing of
21 the American academy of actuaries.

22 (d) "Similar policies" means all of the long-term care
23 insurance policies and certificates issued by an insurer in the
24 same long-term care benefit classification as the policy or
25 certificate being considered. Certificates of groups described in
26 section 3901(c) (i) are not considered similar to policies or
27 certificates otherwise issued as long-term care insurance, but

1 are similar to other comparable certificates with the same long-
2 term care benefit classifications. For purposes of determining
3 similar policies, long-term care benefit classifications are
4 defined as follows: institutional long-term care benefits only,
5 noninstitutional long-term care benefits only, or comprehensive
6 long-term care benefits.

7 Enacting section 1. Section 3927 of the insurance code of
8 1956, 1956 PA 218, MCL 500.3927, is repealed.