

ASSEMBLY, No. 3199

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

Assemblymen Moen, Kennedy and Verrelli

SYNOPSIS

Prohibits discrimination against living organ donors in relation to life, health, and long-term care insurance.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/13/2020)

1 AN ACT concerning living organ donors and amending P.L.2003,
2 c.207, N.J.S.17B:30-12, and P.L.2008, c.48.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 4 of P.L.2003, c.207 (C.17B:27E-4) is amended to
8 read as follows:

9 4. As used in this act, unless the context requires otherwise:

10 "Applicant" means:

11 (1) In the case of an individual long-term care insurance policy,
12 the person who seeks to contract for benefits; and

13 (2) In the case of a group long-term care insurance policy, the
14 proposed certificate holder.

15 "Certificate" means any certificate or evidence of coverage
16 issued under a group long-term care insurance policy, which has
17 been delivered or issued for delivery in this State.

18 "Commissioner" means the Commissioner of Banking and
19 Insurance.

20 "Group long-term care insurance" means a long-term care
21 insurance policy which is delivered or issued for delivery in this
22 State and issued to:

23 (1) a group conforming to one of the descriptions set forth at
24 N.J.S. 17B:27-2 through 17B:27-8 inclusive, or N.J.S. 17B:27-27;
25 or

26 (2) any group not set forth in paragraph (1) of this definition,
27 which in the opinion of the commissioner may be insured for group
28 long-term care insurance in accordance with sound underwriting
29 principles.

30 "Living organ donor" means a person who has donated all or part
31 of an organ and is not deceased.

32 "Long-term care insurance" means any insurance policy,
33 certificate or rider advertised, marketed, offered or designed to
34 provide coverage for not less than 12 consecutive months for each
35 covered person on an expense incurred, indemnity, prepaid or other
36 basis, for one or more necessary or medically necessary diagnostic,
37 preventive, therapeutic, rehabilitative, maintenance or personal care
38 services, provided in a setting other than an acute care unit of a
39 hospital. The term includes group and individual annuities and life
40 insurance policies or riders which provide directly or which
41 supplement long-term care insurance. The term also includes a
42 policy or rider which provides for payment of benefits based upon
43 cognitive impairment or the loss of functional capacity. The term
44 shall also apply to qualified long-term care insurance contracts.
45 Long-term care insurance may be issued by insurers; fraternal

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 benefit societies; health, hospital, or medical service corporations;
2 prepaid health plans; or health maintenance organizations. Long-
3 term care insurance shall not include any insurance policy which is
4 offered primarily to provide basic Medicare supplement coverage,
5 basic hospital expense coverage, basic medical-surgical expense
6 coverage, hospital confinement indemnity coverage, major medical
7 expense coverage, disability income or related asset-protection
8 coverage, accident only coverage, or limited benefit health
9 coverage. With regard to life insurance, this term does not include
10 life insurance policies which accelerate the death benefit
11 specifically for one or more qualifying events, and which provide
12 the option of a lump-sum payment for those benefits and in which
13 neither the benefits nor the eligibility for the benefits is conditioned
14 upon the receipt of long-term care. Notwithstanding any other
15 provision contained herein, any product advertised, marketed or
16 offered as long-term care insurance shall be subject to the
17 provisions of this act.

18 "Policy" means any policy, contract, subscriber agreement, rider
19 or endorsement providing long-term care insurance coverage
20 delivered or issued for delivery in this State by an insurer; fraternal
21 benefit society; health, hospital, or medical service corporation;
22 prepaid health plan; health maintenance organization or any similar
23 organization.

24 "Qualified long-term care insurance contract" or "federally tax-
25 qualified long-term care insurance contract" means an individual or
26 group insurance contract that meets the requirements of 26 U.S.C. s.
27 7702B(b), as follows:

28 (1) The only insurance protection provided under the contract is
29 coverage of qualified long-term services. A contract shall not fail
30 to satisfy the requirements of this paragraph by reason of payments
31 being made on a per diem or other periodic basis without regard to
32 the expenses incurred during the period to which the payments
33 relate;

34 (2) The contract does not pay or reimburse expenses incurred
35 for services or items to the extent that the expenses are
36 reimbursable under Title XVIII of the Social Security Act (42
37 U.S.C. s. 1395 et seq.) or would be so reimbursable but for the
38 application of a deductible or coinsurance amount. The
39 requirements of this paragraph do not apply to expenses that are
40 reimbursable under Title XVIII of the Social Security Act (42
41 U.S.C. s. 1395 et seq.) only as a secondary payor. A contract shall
42 not fail to satisfy the requirements of this paragraph by reason of
43 payments being made on a per diem or other periodic basis without
44 regard to the expenses incurred during the period to which the
45 payments relate;

46 (3) The contract is guaranteed renewable, within the meaning of
47 26 U.S.C. s. 7702B(b)(1)(C);

1 (4) The contract does not provide for a cash surrender value or
2 other money that can be paid, assigned, pledged as collateral for a
3 loan, or borrowed except as provided in paragraph (5) of this
4 definition;

5 (5) All refunds of premiums, and all policyholder dividends or
6 similar amounts, under the contract are to be applied as a reduction
7 in future premiums or to increase future benefits, except that a
8 refund on the event of death of the insured or a complete surrender
9 or cancellation of the contract shall not exceed the aggregate
10 premiums paid under the contract; and

11 (6) The contract meets the consumer protection provisions set
12 forth in 26 U.S.C. s. 7702B(g).

13 "Qualified long-term care insurance contract" or "federally tax-
14 qualified long-term care insurance contract" also means the portion
15 of a life insurance contract that provides long-term care insurance
16 coverage by a rider or as part of the contract and that satisfies the
17 requirements of 26 U.S.C. s. 7702B(b) and (e).

18 (cf: P.L.2003, c.207, s.4)

19
20 2. Section 6 of P.L.2003, c.207 (C.17B:27E-6) is amended to
21 read as follows:

22 6. a. No long-term care insurance policy or certificate shall:

23 (1) Be cancelled, nonrenewed or otherwise terminated on the
24 grounds of the age or the deterioration of the mental or physical
25 health of the insured individual or certificate holder; **【or】**

26 (2) Contain a provision establishing a new waiting period in the
27 event existing coverage is converted to or replaced by a new or
28 other form within the same company or affiliated company, except
29 with respect to an increase in benefits voluntarily selected by the
30 insured individual or group policyholder; **【or】**

31 (3) Provide coverage for skilled nursing care only or provide
32 significantly more coverage for skilled nursing care in a facility
33 than coverage for lower levels of care; or

34 (4) Decline or limit coverage based on the insured individual
35 being a living organ donor; preclude an insured person from
36 donating all or part of an organ; consider the status of a person as a
37 living organ donor in determining the premium rate for coverage of
38 the person; or otherwise discriminate in the offering, issuance,
39 cancellation, amount of coverage, price, or other condition of
40 coverage for an individual based solely, and without any additional
41 actuarial risks, on the status of the person as a living organ donor.

42 b. (1) No long-term care insurance policy or certificate shall
43 use a definition of "preexisting condition" which is more restrictive
44 than the following: preexisting condition means a condition for
45 which medical advice or treatment was recommended by, or
46 received from a provider of health care services, within six months
47 preceding the effective date of coverage of an insured person.

1 (2) No long-term care insurance policy or certificate shall
2 exclude coverage for a loss or confinement which is the result of a
3 preexisting condition unless that loss or confinement begins within
4 six months following the effective date of coverage of an insured
5 person.

6 (3) The definition of "preexisting condition" shall not prohibit
7 an insurer from using an application form designed to elicit the
8 complete health history of an applicant, and, on the basis of the
9 answers on that application, from underwriting in accordance with
10 that insurer's established underwriting standards. Unless otherwise
11 provided in the policy or certificate, a preexisting condition,
12 regardless of whether it is disclosed on the application, need not be
13 covered until the waiting period described in paragraph (2) of this
14 subsection b. expires. No long-term care insurance policy or
15 certificate shall exclude or use waivers or riders of any kind to
16 exclude, limit or reduce coverage or benefits for specifically named
17 or described preexisting diseases or physical conditions beyond the
18 waiting period described in paragraph (2) of this subsection b.

19 (4) A preexisting condition limitation shall only apply to the
20 long-term care insurance coverage and shall not apply to any death
21 benefit or other life insurance benefit provided by a long-term care
22 insurance policy or certificate.

23 c. (1) No long-term care insurance policy or certificate shall
24 be delivered or issued for delivery in this State if that policy or
25 certificate:

26 (a) Conditions eligibility for any benefits on a prior
27 hospitalization requirement;

28 (b) Conditions eligibility for benefits provided in an institutional
29 care setting on the receipt of a higher level of institutional care; or

30 (c) Conditions eligibility for any benefits, other than waiver of
31 premium, post-confinement, post-acute care or recuperative
32 benefits, on a prior institutionalization requirement.

33 (2) (a) A long-term care insurance policy or certificate
34 containing post-confinement, post-acute care or recuperative
35 benefits shall clearly label in a separate paragraph of the policy or
36 certificate entitled "Limitations or Conditions on Eligibility for
37 Benefits" those limitations or conditions, including any required
38 number of days of confinement.

39 (b) A long-term care insurance policy or certificate which
40 conditions eligibility for non-institutional benefits on the prior
41 receipt of institutional care shall not require a prior institutional
42 stay of more than 30 days.

43 d. Long-term care insurance applicants shall have the right to
44 return the policy or certificate within 30 days of its delivery and to
45 have the premium refunded if, after examination of the policy or
46 certificate, the applicant is not satisfied for any reason. Long-term
47 care insurance policies and certificates shall have a notice
48 prominently printed on the first page or attached thereto stating in

1 substance that the applicant shall have the right to return the policy
2 or certificate within 30 days of its delivery and to have the premium
3 refunded if, after examination of the policy or certificate, the
4 applicant is not satisfied for any reason.

5 e. (1) An outline of coverage shall be delivered to a
6 prospective applicant for long-term care insurance at the time of
7 initial solicitation through means which prominently direct the
8 attention of the recipient to the document and its purpose.

9 (a) The commissioner shall prescribe a standard format,
10 including style, arrangement and overall appearance, and the
11 content of an outline of coverage.

12 (b) In the case of insurance producer solicitations, an insurance
13 producer shall deliver the outline of coverage prior to the
14 presentation of an application or enrollment form.

15 (c) In the case of direct response solicitations, the outline of
16 coverage shall be presented in conjunction with any application or
17 enrollment form.

18 (2) The outline of coverage shall include:

19 (a) A description of the principal benefits and coverage
20 provided in the policy;

21 (b) A statement of the principal exclusions, reductions, and
22 limitations contained in the policy;

23 (c) A statement of the terms under which the policy or
24 certificate, or both, may be continued in force or discontinued,
25 including any reservation in the policy of a right to change
26 premium. Continuation or conversion provisions of group coverage
27 shall be specifically described;

28 (d) A statement that the outline of coverage is a summary only,
29 not a contract of insurance, and that the policy or group master
30 policy contains governing contractual provisions;

31 (e) A description of the terms under which the policy or
32 certificate may be returned and the premium refunded;

33 (f) A brief description of the relationship of cost of care and
34 benefits; and

35 (g) A statement that discloses to the policyholder or certificate
36 holder whether the policy is intended to be a federally tax-qualified
37 long-term care insurance contract under 26 U.S.C. s. 7702B(b).

38 f. A certificate issued pursuant to a group long-term care
39 insurance policy, which policy is delivered or issued for delivery in
40 this State, shall include:

41 (1) A description of the principal benefits and coverage
42 provided in the policy;

43 (2) A statement of the principal exclusions, reductions and
44 limitations contained in the policy; and

45 (3) A statement that the group master policy determines
46 governing contractual provisions.

47 g. At the time of policy delivery, a policy summary as
48 prescribed by the commissioner pursuant to subsection e. of this

1 section shall be delivered for an individual life insurance policy
2 which provides long-term care benefits within the policy or by
3 rider. In the case of direct response solicitations, the insurer shall
4 deliver the policy summary upon the applicant's request, but
5 regardless of request shall make that delivery no later than at the
6 time of policy delivery. In addition to complying with all
7 applicable requirements, the summary shall also include:

8 (1) An explanation of how the long-term care benefit interacts
9 with other components of the policy, including deductions from
10 death benefits;

11 (2) An illustration of the amount of benefits, the length of
12 benefit, and the guaranteed lifetime benefits if any, for each covered
13 person;

14 (3) Any exclusions, reductions and limitations on benefits of
15 long-term care;

16 (4) A statement as to whether any long-term care inflation
17 protection option is available under this policy;

18 (5) If applicable to the policy type, the summary shall also
19 include:

20 (a) A disclosure of the effects of exercising other rights under
21 the policy;

22 (b) A disclosure of guarantees related to long-term care costs of
23 insurance charges;

24 (c) Current and projected maximum lifetime benefits; and

25 (6) The provisions of the policy summary listed above may be
26 incorporated into a basic illustration required to be delivered in
27 accordance with regulations promulgated by the commissioner or
28 into the life insurance policy summary which is required to be
29 delivered in accordance with regulations promulgated by the
30 commissioner.

31 h. Whenever a long-term care benefit, funded through a life
32 insurance policy by the acceleration of the death benefit, is in
33 benefit payment status, a monthly report as specified by the
34 commissioner shall be provided to the policyholder or certificate
35 holder. The report shall include:

36 (1) Any long-term care benefits paid out during the month;

37 (2) An explanation of any changes in the policy, such as death
38 benefits or cash values, due to long-term care benefits being paid
39 out; and

40 (3) The amount of long-term care benefits existing or remaining.
41 (cf: P.L.2003, c.207, s.6)

42

43 3. N.J.S.17B:30-12 is amended to read as follows:

44 17B:30-12. a. No person shall discriminate against any person
45 or group of persons because of race, creed, color, national origin or
46 ancestry of such person or group of persons in the issuance,
47 withholding, extension or renewal of any policy of life or health
48 insurance or annuity or in the fixing of the rates, terms or conditions

1 therefor, or in the issuance or acceptance of any application
2 therefor.

3 b. No person shall use any form of policy of life or health
4 insurance or contract of annuity which expresses, directly or
5 indirectly, any limitation, or discrimination as to race, creed, color,
6 national origin or ancestry or any intent to make any such limitation
7 or discrimination.

8 c. No person shall make or permit any unfair discrimination
9 between individuals of the same class and equal expectation of life
10 in the rates charged for any policy of life insurance or contract of
11 annuity or in the dividends or other benefits payable thereon, or in
12 any other of the terms and conditions of such policy of life
13 insurance or contract of annuity.

14 d. No person shall make or permit any unfair discrimination
15 between individuals of the same class and of essentially the same
16 hazard in the amount of premium, policy fees, or rates charged for
17 any policy or contract of health insurance or in the benefits payable
18 thereunder, or in any of the terms or conditions of such policy or
19 contract, or in any other manner whatever.

20 e. (1) No person shall discriminate against any individual on
21 the basis of genetic information or the refusal to submit to a genetic
22 test or make available the results of a genetic test to the person in
23 the issuance, withholding, extension or renewal of any hospital
24 confinement or other supplemental limited benefit insurance, as
25 defined by regulation of the commissioner, or in the fixing of the
26 rates, terms or conditions therefor, or in the issuance or acceptance
27 of any application therefor.

28 (2) As used in this subsection and subsection f. of this section:

29 "Genetic characteristic" means any inherited gene or
30 chromosome, or alteration thereof, that is scientifically or medically
31 believed to predispose an individual to a disease, disorder or
32 syndrome, or to be associated with a statistically significant
33 increased risk of development of a disease, disorder or syndrome.

34 "Genetic information" means the information about genes, gene
35 products or inherited characteristics that may derive from an
36 individual or family member.

37 "Genetic test" means a test for determining the presence or
38 absence of an inherited genetic characteristic in an individual,
39 including tests of nucleic acids such as DNA, RNA and
40 mitochondrial DNA, chromosomes or proteins in order to identify a
41 predisposing genetic characteristic.

42 f. No person shall make or permit any unfair discrimination
43 against an individual in the application of the results of a genetic
44 test or genetic information in the issuance, withholding, extension
45 or renewal of a policy of life insurance, including credit life
46 insurance, an annuity, disability income insurance contract or credit
47 accident insurance coverage. If the commissioner has reason to
48 believe that such unfair discrimination has occurred, including that

1 application of the results of a genetic test is not reasonably related
2 to anticipated claim experience, and that a proceeding by the
3 commissioner would be in the interest of the public, the
4 commissioner shall, in accordance with the provisions of
5 N.J.S.17B:30-1 et seq., issue and serve upon the insurer a statement
6 of the charges. Upon a determination that the practice or act of the
7 insurer is in conflict with the provisions of this subsection, the
8 commissioner shall issue an order requiring the insurer to cease and
9 desist from engaging in the practice or act and may order payment
10 of a penalty consistent with the provisions of N.J.S.17B:30-1 et seq.

11 If, in the issuance, withholding, extension or renewal of any
12 policy of life insurance, including credit life insurance, an annuity,
13 disability income insurance contract or credit accident insurance
14 coverage, an insurer will use the results of a genetic test in
15 compliance with this subsection, the insurer shall notify the
16 individual who is the subject of the genetic test that such a test shall
17 be required and shall obtain the individual's written informed
18 consent for the test prior to the administration of the test, in
19 accordance with the requirements of P.L.1985, c.179 (C.17:23A-
20 1 et seq.). The insurer shall also provide that the physician or other
21 health care professional designated by the individual shall promptly
22 receive a copy of the results of the test and, if required, an
23 interpretation of the test results by a qualified professional, and that
24 the individual shall state in writing whether the individual elects to
25 be informed of the results of the test.

26 g. No person shall make or permit any unfair discrimination
27 against any individual on the basis of the individual's intent to
28 engage in future lawful foreign travel in the issuance, extension or
29 renewal of any policy of life insurance or in the fixing of the rates,
30 terms or conditions therefor. For purposes of this subsection,
31 "unfair discrimination" means any decision to issue, extend, or
32 renew a policy of life insurance or the fixing of rates, terms, or
33 conditions of a life insurance policy, on the basis of the individual's
34 intent to engage in future lawful foreign travel, which is not based
35 on sound actuarial principles or actual or reasonably anticipated
36 experience.

37 h. Nothing contained in this section shall be construed to
38 require any agent or company to take or receive the application for
39 insurance or annuity of any person or to issue a policy of insurance
40 or contract of annuity to any person.

41 i. No person shall decline or limit coverage under a policy of
42 life or health insurance to any individual based on the individual
43 being a living organ donor; preclude an individual covered under a
44 policy of life or health insurance from donating all or part of an
45 organ; consider the status of a person as a living organ donor in
46 determining the premium rate for coverage of the person under a
47 policy of life or health insurance; or otherwise discriminate in the
48 offering, issuance, cancellation, amount of coverage, price, or other

1 condition of coverage for an individual under a policy of life or
 2 health insurance based solely, and without any additional actuarial
 3 risks, on the status of the individual as a living organ donor.

4 As used in this subsection, "living organ donor" means a person
 5 who has donated all or part of an organ and is not deceased.

6 (cf: P.L.2008, c.4, s.1)

8 4. Section 5 of P.L.2008, c.48 (C.45:9-7.5) is amended to read
 9 as follows:

10 5. The State Board of Medical Examiners, in collaboration with
 11 the organ procurement organizations designated pursuant to 42
 12 U.S.C.s.1320b-8 to serve in the State of New Jersey, shall prescribe
 13 by regulation the following requirements for physician training:

14 a. The curriculum in each college of medicine in this State
 15 shall include instruction in organ and tissue donation and recovery
 16 designed to address clinical aspects of the donation and recovery
 17 process and the rights of living organ donors as set forth in
 18 paragraph (4) of subsection a. of section 6 of P.L.2003, c.207
 19 (C.17B:27E-6) and subsection i. of N.J.S.17B:30-12.

20 b. Completion of organ and tissue donation and recovery
 21 instruction as provided in subsection a. of this section shall be
 22 required as a condition of receiving a diploma from a college of
 23 medicine in this State.

24 c. A college of medicine which includes instruction in organ
 25 and tissue donation and recovery as provided in subsection a. of this
 26 section in its curricula shall offer such training for continuing
 27 education credit.

28 d. A physician licensed to practice medicine in this State prior
 29 to the effective date of this act, who was not required to receive and
 30 did not receive instruction in organ and tissue donation and
 31 recovery as part of a medical school curriculum, is encouraged to
 32 complete such training no later than three years after the effective
 33 date of this act. The training may be completed through an on-line,
 34 credit-based course developed by or for the organ procurement
 35 organizations, in collaboration with professional medical
 36 organizations in the State.

37 (cf: P.L.2008, c.48, s.5)

39 5. Section 6 of P.L.2008, c.48 (C.45:11-26.1) is amended to
 40 read as follows:

41 6. The New Jersey Board of Nursing, in collaboration with the
 42 organ procurement organizations designated pursuant to
 43 42 U.S.C.s.1320b-8 to serve in the State of New Jersey, shall
 44 prescribe by regulation the following requirements for professional
 45 nurse training:

46 a. The curriculum in each educational program of professional
 47 nursing in this State shall include instruction in organ and tissue
 48 donation and recovery designed to address clinical aspects of the

1 donation and recovery process and the rights of living organ donors
2 as set forth in paragraph (4) of subsection a. of section 6 of
3 P.L.2003, c.207 (C.17B:27E-6) and subsection i. of N.J.S.17B:30-
4 12.

5 b. Completion of organ and tissue donation and recovery
6 instruction as provided in subsection a. of this section shall be
7 required as a condition of receiving a degree or diploma, as
8 applicable, in professional nursing from a nursing program in this
9 State.

10 c. A nursing program which includes instruction in organ and
11 tissue donation and recovery as provided in subsection a. of this
12 section in its curricula shall offer such training for continuing
13 education credit.

14 d. (1) A licensed professional nurse licensed to practice
15 nursing in this State prior to the effective date of this act, who was
16 not required to receive and did not receive instruction in organ and
17 tissue donation and recovery as part of his nursing program
18 curriculum, shall be required, as a condition of relicensure, to
19 document completion of such training to the satisfaction of the
20 board no later than three years after the effective date of this act.
21 The training may be completed through an on-line, one credit hour
22 course developed by or for the organ procurement organizations and
23 approved by the board.

24 (2) The board may waive the requirement in this subsection if an
25 applicant for relicensure demonstrates to the satisfaction of the
26 board that the applicant has attained the substantial equivalent of
27 this requirement through completion of a similar course in his post-
28 secondary education which meets criteria established by regulation
29 of the board.

30 (cf: P.L.2008, c.48, s.6)

31
32 6. This act shall take effect immediately.

33 34 35 STATEMENT

36
37 This bill prohibits discrimination against living organ donors in
38 connection with life, health, and long-term care insurance. Living
39 organ donation is the process by which a living person elects to
40 donate all or part of a bodily organ, such as a kidney, lung, or
41 portion of the liver, for transplantation into the body of another
42 person.

43 Specifically, the bill prohibits life, health, and long-term care
44 insurers from declining or limiting coverage based on an
45 individual's status as a living organ donor; precluding a person
46 from donating all or part of an organ; considering the status of a
47 person as a living organ donor in determining the premium rate for
48 coverage of the person under a policy; or otherwise discriminating

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1 in the offering, issuance, cancellation, amount of coverage, price, or
2 other condition of coverage for an individual under a policy based
3 solely, and without any additional actuarial risks, on the status of
4 the individual as a living organ donor.

5 The bill additionally revises the continuing education credits
6 required for physicians and nurses to require training concerning
7 the protections established under the bill.

8 This bill is based in part on the provisions of the federal “Living
9 Donor Protection Act of 2019.” Similar legislation adopting parts
10 of the federal bill have been enacted in a number of other states,
11 including Arizona, Arkansas, California, Illinois, Kansas,
12 Maryland, Oklahoma, and Oregon.