

P.L. 2021, CHAPTER 72, *approved April 30, 2021*
Assembly, No. 3199 (*Third Reprint*)

1 **AN ACT** concerning living organ donors and amending
2 P.L.2003, 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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted October 19, 2020.

²Senate SHH committee amendments adopted December 7, 2020.

³Senate floor amendments adopted January 11, 2021.

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

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

27 "Qualified long-term care insurance contract" or "federally tax-
28 qualified long-term care insurance contract" means an individual or
29 group insurance contract that meets the requirements of 26 U.S.C. s.
30 7702B(b), as follows:

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

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

1 (3) The contract is guaranteed renewable, within the meaning of
2 26 U.S.C. s. 7702B(b)(1)(C);

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

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

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

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

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

21

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

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

25 (1) Be cancelled, nonrenewed or otherwise terminated on the
26 grounds of the age or the deterioration of the mental or physical health
27 of the insured individual or certificate holder; **[or]**

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

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

36 (4) Decline or limit coverage based ¹solely¹ on the ¹status of the¹
37 insured individual ¹**[being]** as¹ a living organ donor; preclude an
38 insured person from donating all or part of an organ ¹**['];** consider the
39 status of a person as a living organ donor in determining the premium
40 rate for coverage of the person¹ **]** as a condition of continuing to receive
41 coverage¹ ²; consider the status of a person as a living organ donor in
42 determining the premium rate for coverage of the person under a
43 policy of life or health insurance² ³, provided that this shall not
44 preclude consideration of other actuarial risks in determining premium
45 rates for coverage³ ; or otherwise discriminate in the offering,
46 issuance, cancellation, amount of coverage, price, or other condition of

1 coverage for an individual based solely, and without any additional
2 actuarial risks, on the status of the person as a living organ donor.

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

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

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

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

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

32 (a) Conditions eligibility for any benefits on a prior hospitalization
33 requirement;

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

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

39 (2) (a) A long-term care insurance policy or certificate containing
40 post-confinement, post-acute care or recuperative benefits shall clearly
41 label in a separate paragraph of the policy or certificate entitled
42 "Limitations or Conditions on Eligibility for Benefits" those
43 limitations or conditions, including any required number of days of
44 confinement.

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

1 d. Long-term care insurance applicants shall have the right to
2 return the policy or certificate within 30 days of its delivery and to
3 have the premium refunded if, after examination of the policy or
4 certificate, the applicant is not satisfied for any reason. Long-term
5 care insurance policies and certificates shall have a notice prominently
6 printed on the first page or attached thereto stating in substance that
7 the applicant shall have the right to return the policy or certificate
8 within 30 days of its delivery and to have the premium refunded if,
9 after examination of the policy or certificate, the applicant is not
10 satisfied for any reason.

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

15 (a) The commissioner shall prescribe a standard format, including
16 style, arrangement and overall appearance, and the content of an
17 outline of coverage.

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

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

24 (2) The outline of coverage shall include:

25 (a) A description of the principal benefits and coverage provided
26 in the policy;

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

29 (c) A statement of the terms under which the policy or certificate,
30 or both, may be continued in force or discontinued, including any
31 reservation in the policy of a right to change premium. Continuation
32 or conversion provisions of group coverage shall be specifically
33 described;

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

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

39 (f) A brief description of the relationship of cost of care and
40 benefits; and

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

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

47 (1) A description of the principal benefits and coverage provided
48 in the policy;

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

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

5 g. At the time of policy delivery, a policy summary as prescribed
6 by the commissioner pursuant to subsection e. of this section shall be
7 delivered for an individual life insurance policy which provides long-
8 term care benefits within the policy or by rider. In the case of direct
9 response solicitations, the insurer shall deliver the policy summary
10 upon the applicant's request, but regardless of request shall make that
11 delivery no later than at the time of policy delivery. In addition to
12 complying with all applicable requirements, the summary shall also
13 include:

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

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

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

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

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

24 (a) A disclosure of the effects of exercising other rights under the
25 policy;

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

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

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

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

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

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

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

45

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

47 17B:30-12. a. No person shall discriminate against any person or
48 group of persons because of race, creed, color, national origin or

1 ancestry of such person or group of persons in the issuance,
2 withholding, extension or renewal of any policy of life or health
3 insurance or annuity or in the fixing of the rates, terms or conditions
4 therefor, or in the issuance or acceptance of any application therefor.

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

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

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

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

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

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

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

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

44 f. No person shall make or permit any unfair discrimination
45 against an individual in the application of the results of a genetic test
46 or genetic information in the issuance, withholding, extension or
47 renewal of a policy of life insurance, including credit life insurance, an
48 annuity, disability income insurance contract or credit accident

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

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

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

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

41 i. No person shall decline or limit coverage under a policy of life
42 or health insurance to any individual based ¹solely¹ on the ²status of
43 the covered² individual ²[being] as² a living organ donor; preclude an
44 individual covered under a policy of life or health insurance from
45 donating all or part of an organ ¹]; consider the status of a person as a
46 living organ donor in determining the premium rate for coverage of the
47 person under a policy of life or health insurance] as a condition of

1 continuing to receive coverage^{1 2}; consider the status of a person as a
2 living organ donor in determining the premium rate for coverage of the
3 person under a policy of life or health insurance³, provided that this
4 shall not preclude consideration of other actuarial risks in determining
5 premium rates for coverage³ ;² or otherwise discriminate in the
6 offering, issuance, cancellation, amount of coverage, price, or other
7 condition of coverage for an individual under a policy of life or health
8 insurance based solely, and without any additional actuarial risks, on
9 the status of the individual as a living organ donor.

10 As used in this subsection, “living organ donor” means a person
11 who has donated all or part of an organ and is not deceased.

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

13
14 4. Section 5 of P.L.2008, c.48 (C.45:9-7.5) is amended to read
15 as follows:

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

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

26 b. Completion of organ and tissue donation and recovery
27 instruction as provided in subsection a. of this section shall be
28 required as a condition of receiving a diploma from a college of
29 medicine in this State.

30 c. A college of medicine which includes instruction in organ
31 and tissue donation and recovery as provided in subsection a. of this
32 section in its curricula shall offer such training for continuing
33 education credit.

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

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

44
45 5. Section 6 of P.L.2008, c.48 (C.45:11-26.1) is amended to
46 read as follows:

47 6. The New Jersey Board of Nursing, in collaboration with the
48 organ procurement organizations designated pursuant to

1 42 U.S.C.s.1320b-8 to serve in the State of New Jersey, shall
2 prescribe by regulation the following requirements for professional
3 nurse training:

4 a. The curriculum in each educational program of professional
5 nursing in this State shall include instruction in organ and tissue
6 donation and recovery designed to address clinical aspects of the
7 donation and recovery process and the rights of living organ donors
8 as set forth in paragraph (4) of subsection a. of section 6 of
9 P.L.2003, c.207 (C.17B:27E-6) and subsection i. of N.J.S.17B:30-
10 12.

11 b. Completion of organ and tissue donation and recovery
12 instruction as provided in subsection a. of this section shall be
13 required as a condition of receiving a degree or diploma, as
14 applicable, in professional nursing from a nursing program in this
15 State.

16 c. A nursing program which includes instruction in organ and
17 tissue donation and recovery as provided in subsection a. of this
18 section in its curricula shall offer such training for continuing
19 education credit.

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

30 (2) The board may waive the requirement in this subsection if an
31 applicant for relicensure demonstrates to the satisfaction of the
32 board that the applicant has attained the substantial equivalent of
33 this requirement through completion of a similar course in his post-
34 secondary education which meets criteria established by regulation
35 of the board.

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

37
38 6. This act shall take effect immediately.
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42

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