

SENATE, No. 2315

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

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: 10/19/2020)

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; or

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

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

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

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

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

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

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

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

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

47 (4) The contract does not provide for a cash surrender value or
48 other money that can be paid, assigned, pledged as collateral for a

1 loan, or borrowed except as provided in paragraph (5) of this
2 definition;

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

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

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

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

17

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

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

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

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

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

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

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

46 (2) No long-term care insurance policy or certificate shall
47 exclude coverage for a loss or confinement which is the result of a
48 preexisting condition unless that loss or confinement begins within

1 six months following the effective date of coverage of an insured
2 person.

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

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

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

23 (a) Conditions eligibility for any benefits on a prior
24 hospitalization requirement;

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

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

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

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

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

1 refunded if, after examination of the policy or certificate, the
2 applicant is not satisfied for any reason.

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

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

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

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

16 (2) The outline of coverage shall include:

17 (a) A description of the principal benefits and coverage
18 provided in the policy;

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

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

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

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

31 (f) A brief description of the relationship of cost of care and
32 benefits; and

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

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

39 (1) A description of the principal benefits and coverage
40 provided in the policy;

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

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

45 g. At the time of policy delivery, a policy summary as
46 prescribed by the commissioner pursuant to subsection e. of this
47 section shall be delivered for an individual life insurance policy
48 which provides long-term care benefits within the policy or by

1 rider. In the case of direct response solicitations, the insurer shall
2 deliver the policy summary upon the applicant's request, but
3 regardless of request shall make that delivery no later than at the
4 time of policy delivery. In addition to complying with all
5 applicable requirements, the summary shall also include:

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

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

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

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

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

18 (a) A disclosure of the effects of exercising other rights under
19 the policy;

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

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

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

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

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

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

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

40

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

42 17B:30-12. a. No person shall discriminate against any person
43 or group of persons because of race, creed, color, national origin or
44 ancestry of such person or group of persons in the issuance,
45 withholding, extension or renewal of any policy of life or health
46 insurance or annuity or in the fixing of the rates, terms or conditions
47 therefor, or in the issuance or acceptance of any application
48 therefor.

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

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

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

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

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

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

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

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

40 f. No person shall make or permit any unfair discrimination
41 against an individual in the application of the results of a genetic
42 test or genetic information in the issuance, withholding, extension
43 or renewal of a policy of life insurance, including credit life
44 insurance, an annuity, disability income insurance contract or credit
45 accident insurance coverage. If the commissioner has reason to
46 believe that such unfair discrimination has occurred, including that
47 application of the results of a genetic test is not reasonably related
48 to anticipated claim experience, and that a proceeding by the

1 commissioner would be in the interest of the public, the
2 commissioner shall, in accordance with the provisions of
3 N.J.S.17B:30-1 et seq., issue and serve upon the insurer a statement
4 of the charges. Upon a determination that the practice or act of the
5 insurer is in conflict with the provisions of this subsection, the
6 commissioner shall issue an order requiring the insurer to cease and
7 desist from engaging in the practice or act and may order payment
8 of a penalty consistent with the provisions of N.J.S.17B:30-1 et seq.

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

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

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

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

1 health insurance based solely, and without any additional actuarial
2 risks, on the status of the individual as a living organ donor.

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

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

6
7 4. Section 5 of P.L.2008, c.48 (C.45:9-7.5) is amended to read
8 as follows:

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

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

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

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

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

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

37
38 5. Section 6 of P.L.2008, c.48 (C.45:11-26.1) is amended to
39 read as follows:

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

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

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

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

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

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

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

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

30

31 6. This act shall take effect immediately.

32

33

34

STATEMENT

35

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

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

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

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

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