COMMITTEE REPORT

April 3, 2014

**H. 4916**

Introduced by Reps. Long, Sandifer, Felder, Erickson, Southard, Allison, Spires, McCoy, Whipper, R.L. Brown, Limehouse, Bedingfield, Burns, Chumley, Gagnon, George, Hamilton, Hayes, Horne, Loftis, V.S. Moss, Munnerlyn, Murphy, Norrell, Pitts, Pope, Ryhal, Simrill, G.R. Smith, Sottile, Stringer, Willis and Wood

S. Printed 4/3/14--H. [SEC 4/7/14 1:30 PM]

Read the first time March 12, 2014.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4916) to amend the Code of Laws of South Carolina, 1976, by adding Section 38‑72‑66 so as to provide specific notice requirements of an insurer before it may, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Chapter 72, Title 38 of the 1976 Code is amended to read:

“Section 38‑72‑66. Each insurer offering long term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a)(i) No individual long term care policy or certificate may be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation must not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation must include each person’s full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver must state: ‘Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice.’ The insurer shall notify the insured of the right to change this written designation no less often than once every two years.

(ii) For existing long term care policies, the insurer must provide written notice to the insured that they may make a written designation of a least one person, in addition to the insured, who is to receive notice of lapse or termination of the policy or certificate. The notice called for in this subsection must be provided to the insured within ninety days of the effective date of this section. As provided in this subitem, the insurer shall notify the insured of the right to change this written designation no less often than once every two years.

(b) When the policyholder or certificate holder pays premium for a long term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in sub‑subitem (i) of item (a) need not be met until sixty days after the policyholder or certificate holder is no longer on such a payment plan. The application or enrollment form for such policies or certificates must clearly indicate the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium. No individual long term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to sub‑subitem (i) of item (a), at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice must be given by first class United States mail, postage prepaid, and notice may not be given until thirty days after a premium is due and unpaid. Notice must be considered to have been given as of five days after the date of mailing.

(2) In addition to the requirement in item (1), a long term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage in the event of lapse or termination if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option must be available to the insured if requested within five months after termination and must allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity must not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.”

SECTION 2. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑72‑66 SO AS TO PROVIDE SPECIFIC NOTICE REQUIREMENTS OF AN INSURER BEFORE IT MAY CONSIDER A LONG‑TERM CARE INSURANCE POLICY THAT IT HAS WRITTEN TO BE TERMINATED AT THE REQUEST OF THE POLICYHOLDER OR CERTIFICATE HOLDER OR LAPSED OR TERMINATED FOR NONPAYMENT OF PREMIUM.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 72, Title 38 of the 1976 Code is amended by adding:

“Section 38‑72‑66. (A)(1) As a protection against unintentional lapse, the lapse or termination of a long‑term insurance policy may not occur until five days after the insurer who offered the policy notifies:

(a) the policyholder or certificate holder in all instances of a pending lapse or cancellation; and

(b) a person designated by the policyholder or certificate holder to receive notice of a pending lapse or cancellation, but only if the policyholder or certificate holder has made such a designation.

(B)(1)(a) Using a form based on the requirements of this section, an insurer must request from each applicant for long‑term care insurance either:

(i) a written designation of at least one person, in addition to the applicant, who is to receive notice of termination by the policyholder or certificate holder and notice of lapse or termination of the policy or certificate for nonpayment of premium; or

(ii) a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice.

(b) The failure of an applicant to provide this information must not prevent a long‑term care insurance policy from being issued, nor may receipt of this information be considered a requirement to issue the policy.

(c) Making this designation in and of itself does not cause acceptance of liability by the third party for services provided to the insured.

(d) A policyholder or certificate holder may make or change this designation at any time in the future. The insurer shall make a form to add or change a designee available at no charge on its website or upon request.

(2) The form used for the written designation must provide space clearly designated for listing at least one person. The designation must include the full name and home address of each person designated to receive this notice. When an applicant elects not to designate an additional person, the waiver must state: ‘Protection against unintended lapse. I understand that both now and at any time in the future I have the right to designate at least one person other than myself to receive notice of termination of this long‑term care insurance policy by the policyholder or certificate holder, and notice of lapse or termination of this long‑term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I understand that notice is considered to be received on the fifth day after the date on which the notice is mailed. I elect NOT to designate a person to receive these notices.’

(C) Notice required in this section must be given by first class United States mail, postage prepaid. Notice must be considered to have been given as of five days after the date of mailing, and this must be stated in the notice provided. The application or enrollment form for these policies or certificates clearly must indicate the payment plan selected by the applicant.

(D)(1) An individual long‑term care policy or certificate must not be terminated by the policyholder or certificate holder and must not lapse or be terminated for nonpayment of premium unless the insurer, at least thirty days before the effective date of the lapse or termination, has given notice to the policyholder or certificate holder. If the policyholder or certificate holder designated a person to receive notice required in this section, then such notice also must be given to this person at the same time that notice is given to the policyholder or certificate holder. When an insurer receives a request to add or change a designee from a policyholder or certificate holder during this thirty‑day period, it shall provide notice of pending termination and lapse to the designee within five days and the thirty‑day period is extended by five days. The provisions of this subsection do not apply when premiums are paid through a payroll deduction plan or a pension deduction plan.

(2) When the policyholder or certificate holder pays his premium for a long‑term care insurance policy or certificate through a payroll deduction plan or a pension deduction plan, the insurer is not required provide notice of pending lapse or termination until sixty days after the policyholder or certificate holder is no longer on the premium payment plan. After this sixty day period passes, notice must be given to the policyholder or certificate holder before lapse or cancellation may occur.

(E)(1) In addition to the requirements of this section, a long‑term care insurance policy or certificate shall include a provision that permits reinstatement of coverage in the event of lapse if the insurer is provided a written and signed statement from a licensed physician that he believes to a reasonable degree of medical certainty that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired if lapse or termination is due to nonpayment of premiums or at the date on which he requested termination if termination results from a request for termination from the policyholder or certificate holder. The standard of proof of cognitive impairment or loss of functional capacity must not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

(2) Reinstatement permitted under this subsection must be requested within five months after termination and must be contingent on payment of past due premiums, if any premiums are past due, within thirty days after reinstatement is requested. Failure to request reinstatement within five months after termination, failure to pay past due premiums in full within thirty days after reinstatement is requested, or both, prevents reinstatement.”

SECTION 2. This act takes effect upon approval by the Governor.

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