

ARKANSAS LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAM

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Section 1. Purpose

The purpose of this Rule is to implement Act 99 of 2007 of the Arkansas State Legislature, entitled "An Act To Establish the Arkansas Long-Term Care Partnership Program," by providing requirements to establish Partnership-Qualified Long-Term Care ("PQLTC") insurance policies in this State, in compliance with the Federal Long-Term Care Partnership Program. The Rule provides standards for producers soliciting such policies and for insurers desiring to issue policies qualifying under such program.

**Section 2. Authority**

This Rule is issued under the authority vested in the Arkansas Insurance Commissioner (the "Commissioner") by Ark. Code Ann. §23-97-320, to implement rules for long-term care insurance policies and to assist in the development of long-term care insurance policies under Act 99 of 2007, "An Act To Establish the Arkansas Long-Term Care Partnership Program." In addition, this Rule is also issued under the authority vested in the Commissioner under §23-61-108, and the Arkansas Administrative Procedure Act, codified at Ark. Code Ann. §25-15-201 et seq., and other applicable laws or rules.

**Section 3. Applicability and Scope**

This Rule applies to all Arkansas PQLTC policies including certificates issued under a group insurance contract; and this Rule applies to all producers soliciting such policies in Arkansas and to all insurers issuing such policies in Arkansas. Compliance with this Rule for such policies and parties is in addition to compliance with Arkansas Insurance Department Rule 13, "Long-Term Care Insurance."

**Section 4. Definitions**

In addition to the definitions provided in Ark. Code Ann. §23-97-304, the following definitions shall apply for purposes of this Rule:

- A. "Partnership-Qualified Long-Term Care Insurance policy" means a long-term care insurance policy that meets all of the requirements of Section 5 of this Rule.
- B. "Inflation protection benefit" means a feature that increases benefit levels annually: 1) by compounding annually at a stated rate of not less than 3% for ages less than 61 and by annual simple interest at a stated rate of not less than 3% for ages 61 through 75; or 2) based on changes to the Consumer Price Index. Future guaranteed purchase options do not meet this definition.
- C. "Consumer price index" means the consumer price index for all urban consumers, U.S. city average, and all items, as determined by the Bureau of Labor Statistics of the United States Department of Labor.
- D. "Federal Long-Term Care Partnership Program" means the Long-Term Care Partnership Program as authorized under the Deficit Reduction Act of 2005, (Section 6021), which amended Section 1917(b) of the Federal Social Security Act to provide for Qualified State Long-Term Care Insurance Partnership Programs.
- E. "Secretary" means the Secretary of the United States Department of Health and Human Services.
- F. "Rule 13" means Arkansas Insurance Department Rule, "Long-Term Care Insurance."
- G. "Commissioner" means the Arkansas Insurance Commissioner.
- H. "Insurer" or "Issuer" means an entity authorized to issue long-term care insurance under Ark. Code Ann. §23-97-304(7)(C).

**Section 5. Policy Requirements**

Any Partnership-Qualified Long-Term Care Insurance policy shall meet or exceed all of the following:

- A. the policy meets all the applicable requirements of this Rule and the requirements of Rule 13;
- B. the policy includes an inflation protection benefit as defined in Section 4 of this Rule;
- C. the insured was a resident of Arkansas when coverage first became effective under the policy;
- D. the policy is a qualified long-term care insurance policy as defined in §7702B(b) of the Internal Revenue Code of 1986 and was issued no earlier than January 1, 2008.

**Section 6. Exchange of Existing Policies**

If an insurer intends to establish a procedure or procedures under which existing long-term care insurance policies may be exchanged for PQLTC policies, the insurer shall file with the Commissioner the details of such procedures for approval. The Commissioner shall disapprove such procedures which are unfairly discriminatory or violate PQLTC Partnership Rules established by the State Medicaid Director. No exchanges are permitted without prior approval by the Commissioner of such procedures.

**Section 7. Producer Requirements**

- A. Every producer shall have completed the training required by Rule 13 prior to soliciting PQLTC policies. Proof of such training and demonstration of evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care must be provided to each insurer for which the producer solicits PQLTC policies.
- B. An issuer or its producer, soliciting or offering to sell a policy that is intended to qualify as a PQLTC policy, shall provide to each prospective applicant a "Solicitation Disclosure Form", attached as Appendix A, outlining the requirements and benefits of a PQLTC policy. A similar notice may be used

for this purpose if filed and approved by the Arkansas Insurance Commissioner. The Solicitation Disclosure Form shall be provided with the required Outline of Coverage pursuant to Rule 13 of the Arkansas Insurance Department.

## **Section 8. Insurer Requirements**

- A. Each insurer shall establish and maintain procedures that assure that producers soliciting the insurer's PQLTC policies are in compliance with Section 7 of this Rule and the training required by Rule 13. The procedures and records of the insurer shall be made available to the Commissioner upon request by the Commissioner. In addition, issuers shall complete the Producer Training Certification found in the "Issuer Certification Form" attached as Appendix C to this Rule.
- B. Each insurer shall establish and maintain procedures assuring that each PQLTC policy issued or issued for delivery in Arkansas shall be accompanied by the "Policy Disclosure Form," attached as Appendix B to this Rule, which explains the benefits associated with a PQLTC policy and indicates that, at the time the policy is issued, the policy is intended to be a PQLTC policy. A similar notice may be used if filed and approved by the Commissioner. In determining whether to provide this notice with respect to a policy, the issuer of the policy may rely upon a statement by the policyholder, certificate holder, or insured that the insured is a resident of Arkansas. In the case of a group insurance contract, such notice must be provided to the insured under a certificate upon the issuance of the certificate.
- C. Each insurer shall submit an "Issuer Certification Form," attached as Appendix C to this Rule, identifying each policy form intended for use as a PQLTC policy and certifying such form's compliance with this Rule. An insurer may submit supplemental Issuer Certification Forms to identify and certify additional policy forms that are intended for use as a PQLTC policy. If there is a change made by the Secretary, pursuant to Section 1917(b)(5)(C) of the Social Security Act (42 U.S.C. 1396p(b)(5)(C)), in the provisions of the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act or Regulation which apply to new PQLTC policies, appropriate modifications will be made to the Issuer Certification Form to reflect the new requirements. In the event such modifications are made to the Issuer Certification Form, the Arkansas Insurance Department shall notify long-term care insurers of the changes through a bulletin, directive or other public notice describing such changes.
- D. Pursuant to Section 1917(b)(1)(C)(iii)(VI) and (v) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(VI) and (v), respectively), issuers of PQLTC policies must provide regular reports to the Secretary in accordance with any regulations of the Secretary. Until final regulations or other applicable guidelines are issued and become effective by the Secretary, issuers of policies must provide: (a) a written notification to the Secretary regarding when insurance benefits provided under PQLTC policies have been paid and the amount of such benefits paid; and (b) a written notification to the Secretary regarding when such policies terminate. Such notifications must be provided within sixty (60) days of the end of each calendar year with respect to benefits paid and terminations during such year or, in the case of terminations resulting from death, within the later of sixty (60) days after the end of the calendar year of death or one hundred and twenty (120) days after notification of death has been received by the issuer of the policy. Until final regulations or other applicable guidelines are issued and become effective by the Secretary, including guidelines or regulations specifying a Federal uniform minimum data set pursuant to Section 1917(b)(1)(C)(iii)(VI), (v) and (vi) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(VI), (v) and (vi)), appropriate modifications shall be made to these interim reporting requirements to reflect the availability of information from the Secretary. As described above, PQLTC policies that cover more than one insured are treated as separate PQLTC policies, each of which covers a single insured. Thus, the reporting requirements described herein shall apply with respect to each such separate PQLTC policy.

**Section 9. Effective Date**

This Rule shall be effective on July 1, 2008.

**Section 10. Severability**

Any section or provision of this Rule held by the court to be invalid or unconstitutional will not affect the validity of any other section or provision.

(Signed by Julie Benafield Bowman)

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JULIE BENAFIELD BOWMAN  
INSURANCE COMMISSIONER

(May 27, 2008)

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DATE

## Appendix A

### **Solicitation Disclosure Form Important Consumer Information Regarding the Arkansas Long-Term Care Insurance Partnership Program**

Some long-term care insurance policies [certificates] sold in Arkansas may qualify for the Arkansas Long-Term Care Insurance Partnership Program (the Partnership Program). The Partnership Program is a partnership between state government and private insurance companies to assist individuals in planning their long-term care needs. Insurance companies voluntarily agree to participate in the Partnership Program by offering long-term care insurance coverage that meets certain State and Federal requirements. Long-term care insurance policies [certificates] that qualify as Partnership Policies [Certificates] may protect the policyholder's [certificate holder's] assets through a feature known as "Asset Disregard" under Arkansas Medicaid program.

**Asset Disregard** means that an amount of the policyholder's [certificate holder's] assets equal to the amount of long-term care insurance benefits received under a qualified Partnership Policy [Certificate] will be disregarded for the purpose of determining the insured's eligibility for Medicaid. This generally allows a person to keep assets equal to the insurance benefits received under a qualified Partnership Policy [Certificate] without affecting the person's eligibility for Medicaid. All other Medicaid eligibility criteria will apply. Asset Disregard is not available under a long-term care insurance policy [certificate] that is not a Partnership Policy [Certificate]. Therefore, you should consider whether Asset Disregard is important to you, and whether a Partnership Policy meets your needs. *The purchase of a Partnership Policy does not automatically qualify you for Medicaid.*

**What are the Requirements for a Partnership Policy [Certificate].** In order for a policy [certificate] to qualify as a Partnership Policy [Certificate], it must, among other requirements:

- be issued to an individual after January 1, 2008;
- cover an individual who was an Arkansas resident when coverage first becomes effective under the policy;
- be a tax-qualified policy under Section 7702(B)(b) of the Internal Revenue Code of 1986;
- meet stringent consumer protection standards; and,
- must provide annual inflation protection for ages 75 and younger.

If you apply and are approved for long-term care insurance coverage, [carrier name] will provide you with written documentation as to whether your policy [certificate] qualifies as a Partnership Policy [Certificate].

**What Could Disqualify a Policy [Certificate] as a Partnership Policy.** Certain types of changes to a Partnership Policy [Certificate] could affect whether such policy [certificate] continues to be a Partnership Policy [Certificate]. If you purchase a Partnership Policy [Certificate] and later decide to make *any* changes, you should first consult with [carrier name] to determine the effect of a proposed change. In addition, if you move to a state that does not maintain a Partnership Program or does not recognize your policy [certificate] as a Partnership Policy [Certificate], you would not receive beneficial treatment of your policy [certificate] under the Medicaid program of that state. The information contained in this disclosure is based on current Arkansas and Federal laws. These laws may be subject to change. Any change in law could reduce or eliminate the beneficial treatment of your policy [certificate] under Arkansas's Medicaid program.

**Additional Information.** If you have questions regarding long-term care insurance policies [certificates] please contact [carrier name.] If you have questions regarding current laws governing Medicaid eligibility, you should contact the Arkansas Department of Human Services.

## Appendix B

### Policy Disclosure Form

#### Important Information Regarding Your Policy's [Certificate's] Long-Term Care Insurance Partnership Status

This disclosure notice is issued in conjunction with your long-term care policy:

Some long-term care insurance policies [certificates] sold in Arkansas qualify for the Arkansas Long-Term Care Insurance Partnership Program. Insurance companies voluntarily agree to participate in the Partnership Program by offering long-term care insurance coverage that meets certain State and Federal requirements. Long-term care insurance policies [certificates] that qualify as Partnership Policies [Certificates] may be entitled to special treatment, and in particular an "Asset Disregard," under Arkansas's Medicaid program.

**Asset Disregard** means that an amount of the policyholder's [certificate holder's] assets equal to the amount of long-term care insurance benefits received under a qualified Partnership Policy [Certificates] will be disregarded for the purpose of determining the insured's eligibility for Medicaid. This generally allows a person to keep assets equal to the insurance benefits received under a qualified Partnership Policy [Certificate] without affecting the person's eligibility for Medicaid. All other Medicaid eligibility criteria will apply. Asset Disregard is **not** available under a long-term care insurance policy [certificate] that is not a Partnership Policy [Certificate]. **The purchase of a Partnership Policy does not automatically qualify you for Medicaid.**

**Partnership Policy [Certificate] Status.** Your long-term care insurance policy [certificate] is intended to qualify as a Partnership Policy [Certificate] under the *Arkansas Long-Term Care Partnership Program* as of your Policy's [Certificate's] effective date.

**What Could Disqualify Your Policy [Certificate] as a Partnership Policy.** If you make any changes to your policy [certificate], such changes could affect whether your policy [certificate] continues to be a Partnership Policy. ***Before you make any changes, you should consult with [insert name of carrier] to determine the effect of a proposed change.*** In addition, if you move to a State that does not maintain a Partnership Program or does not recognize your policy [certificate] as a Partnership Policy [Certificate], you would not receive beneficial treatment of your policy [certificate] under the Medicaid program of that State. The information contained in this Notice is based on current State and Federal laws. These laws may be subject to change. Any change in law could reduce or eliminate the beneficial treatment of your policy [certificate] under Arkansas's Medicaid program.

**Additional Information.** If you have questions regarding your insurance policy [certificate] please contact [insert name of carrier.] If you have questions regarding current laws governing Medicaid eligibility, you should contact the Arkansas Department of Human Services.

**This form and all benefit statements received should be kept with your policy.**

**APPENDIX C**  
**ISSUER CERTIFICATION FORM**  
(relating to Qualified State Long-Term Care Insurance Partnership)

In order to provide the Insurance Commissioner with information necessary to provide a certification for policies, this Issuer Certification Form requires information and a certification from issuers of long-term care insurance policies with respect to policy forms that may be covered under the Qualified Partnership of the State.

An insurance company may request certification of policies from time to time and, accordingly, may supplement this issuer certification form, *e.g.*, as it introduces new long-term care insurance policy forms for issuance.

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**I. GENERAL INFORMATION**

**A. Name, address and telephone number of issuer:**

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**B. Name, address, telephone number, and email address (if available) of an employee of issuer who will be the contact person for information relating to this form:**

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**C. Policy form number(s) (or other identifying information, such as certificate series) for policies covered by this Issuer Certification Form (expand the space below as required):**

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Specimen copies of each of the above policy forms, including any riders and endorsements, shall be provided upon request.

**II. CERTIFICATIONS**

- A.** I hereby certify that the policy forms listed above are in compliance with Rule 13 and Rule 94 and all other Arkansas statutes and rules regarding long-term care insurance.
- B.** I hereby certify to the best of my knowledge and belief that all producers who sell, solicit or negotiate long-term care insurance products on {insert issuer name's} behalf have received the training required for Partnership policies and that they demonstrate an understanding of the policies and their relationship to public and private long-term care coverage.
- C.** I hereby certify that the answers, accompanying documents, and other information set forth herein are, to the best of my knowledge and belief, true, correct, and complete.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and title of officer of the Issuer

\_\_\_\_\_  
Signature of officer of the Issuer