§ 1117. Health insurance plans for long term care. (a) An authorized insurer subject to the provisions of this chapter and organized to write the kind of insurance specified in paragraph three of subsection (a) of section one thousand one hundred thirteen of this article, a corporation or health maintenance organization authorized pursuant to article forty-three of this chapter or article forty-four of the public health law, and a fraternal benefit society organized under article forty-five of this chapter, may be authorized by the superintendent to issue contracts in connection with plans providing benefits for long term care, provided such plans satisfy the criteria set forth in subsection (b) of this section and the superintendent has made the determinations set forth in subsection (f) of this section.

(b) The superintendent may authorize such contracts in connection with a plan for long term care pursuant to the following criteria:

(1) the plan's provisions are not misleading or confusing;

(2) the plan's provisions are not inconsistent with the needs of the public;

(3) the plan's benefit structure provides options for use of long term care services;

(4) the plan, the contract and other materials describing the plan fully and clearly state the benefits and limitations of such plan;

(5) the authorized insurer, health maintenance organization, or fraternal benefit society agrees to provide such reports of the experience of the plan as may be requested by the superintendent. The superintendent may prepare abstracts and summaries of such reports at the request of other government agencies for purposes of research and studies related to long term care financing, provided however that the insurer, health maintenance organization, or fraternal benefit society may request that specified information included in the report be considered confidential; and

(6) prior to the earlier of the execution of a policy or certificate in connection with a plan providing a home care benefit and/or a nursing home benefit, or the payment of any premium or fee related to such a policy or certificate, the authorized insurer, corporation, health maintenance organization or fraternal benefit society shall provide the prospective insured or his or her representative with a disclosure statement, which contains the following:

(A) The maximum daily and lifetime benefit levels, if applicable, provided by the policy or certificate for home care services and nursing home services;

(B) The percentage of coverage provided for home care services and nursing home services, if applicable, and an explanation of the methodology on which the reasonable charge used in conjunction with such percentage amount is based;

(C) A description of any inflation protection feature included in or available for purchase under the policy or certificate and the additional premium required to purchase such option or options;

(D) (i) If available and accessible by the insurer or other entity from the department of health, the most recently-published average, statewide rate for care in a nursing home, as well as the average rates for care in nursing homes for both the New York city-metropolitan and upstate regions of the state; or

(ii) If available and accessible by the insurer or other entity from the department of health, the most recently-published map of the estimated average regional rates in New York state for nursing home care;

(E) A graphic demonstration of the maximum daily nursing home benefit level provided by the policy or certificate, and the impact that the selection of any inflation protection options would have on such maximum daily nursing home benefit level;

(F) The right of the prospective insured, upon attaining the age of sixty-five years, to designate a third party who will receive a copy of any notices of nonpayment of premiums due or notice of cancellation for nonpayment of premiums that is sent to the prospective insured;

(G) (i) A written statement indicating that such policy or certificate may be subject to future premium rate increases and that such rate increases shall be subject to the approval or modification of the superintendent; and

(ii) A list of past premium rate increases for such policy or certificate over the previous ten years, or if such policy or certificate was not offered over the previous ten years, past premium rate increased for policies or certificates that offer similar benefits over the previous ten years;

(H) Directions on how to obtain information about the department's

review of any rate filing or application, contact information for the department, and information on how to contact the authorized insurer, corporation, health maintenance organization or fraternal benefit society for more information;

(I) Whether or not there is a period in which rates will not change, and if so, when that time period expires;

(J) A description of whether or not the premium may change, and if so, the circumstances under which any such premium changes could occur, including whether the department must approve such changes;

(K) Whether the policy contains provisions providing for a refund or partial refund of premium upon the cancellation of the policy, and if such provisions exist, provide a description of their terms;

(L) A description of the options policyholders will have to mitigate any premium increases;

(M) A description of the options policyholders will have should the premiums increase, and the policyholder deems it in their best interest to cancel the policy;

(N) A statement that the policyholder will be given at least ninety days notice before any premium change takes effect;

(O) A statement that if the authorized insurer, corporation, health maintenance organization or fraternal benefit society seeks to increase the premium rate, the department will post notice of the rate filing on its website prior to any determination by the department; and

(P) The right of the prospective insured to submit public comments on any rate filing or application regarding premium rates on the department's website.

For the purpose of this paragraph, "home care services" shall have the same meaning as defined in subdivision one of section thirty-six hundred two of the public health law. The prospective insured, or his or her representative, shall acknowledge that the required disclosure has been made by signing the disclosure statement prior to or contemporaneously with the effective date of the policy or certificate.

Failure to provide information required by subparagraph (D) of this paragraph shall not be construed as a violation of this section if such information has not been made available by the department of health.

(c) The duration of such contracts and the extent of exposure thereunder by insurers, health maintenance organizations or fraternal

benefit societies shall be in the discretion of the superintendent.

(d) Contracts issued pursuant to the provisions of this section shall be subject to all other provisions of this chapter and the regulations promulgated thereunder applicable to the insurer, health maintenance organization, or fraternal benefit society which issues the contract, provided however that in order to permit the development of long term care plans, the superintendent may modify or suspend any such provision or regulation upon making the determinations set forth in subsection (f) of this section.

(e) The superintendent may permit an authorized insurer, health maintenance organization, or fraternal benefit society subject to the provisions of this chapter to reinsure the risk of any long term care services plan, provided such plan satisfies the requirements of this section. Such reinsurance agreements shall provide for the payment of a reasonable premium.

(f) The superintendent may take the actions set forth in subsections (a), (d) and (e) of this section only if the superintendent determines that:

(1) the plan is a legitimate approach to expand the availability of insurance coverage for long term care services;

(2) any proposed modification or suspension of a provision of this chapter or a regulation promulgated thereunder is essential to the development of long term care plans pursuant to this section, and is directly related to the essential features of such plans;

(3) the premium rates for the long term care plan are reasonably related to the benefits provided, and are self-supporting; and

(4) the plan proposed by the insurer, health maintenance organization, or fraternal benefit society, and any proposed modification or suspension pursuant to subsection (d) of this section, will not cause or constitute an impairment of the insurer's, health maintenance organization's, or fraternal benefit society's ability to satisfy its existing and anticipated contracts and other obligations, including such standards as the superintendent shall prescribe concerning adequate capital and financial requirements.

(g) (1) Except for certain group contracts described in paragraph four of this subsection, in order for premium payments for long-term care insurance to qualify for purposes of section one hundred ninety,

subdivision twenty-five-a of section two hundred ten, subsection (aa) of section six hundred six, subsection (k) of section one thousand four hundred fifty-six and subsection (m) of section one thousand five hundred eleven of the tax law, the long-term care insurance must be approved by the superintendent pursuant to this subsection. Prior to approving any such insurance, the superintendent shall conclude that it meets minimum standards, including minimum loss ratio standards under this section or section three thousand two hundred twenty-nine of this chapter and is a qualified long-term care insurance contract as defined in section 7702B of the internal revenue code.

(2) (A) No insurer, agent, broker, person, business or corporation doing business in or into this state shall in any manner state, advertise or claim that a long-term care insurance policy qualifies for purposes of the above-referenced provisions of the tax law unless either: (i) the superintendent has issued a letter or other written instrument to the insurer stating that the policy has been determined to qualify under this subsection, or (ii) the policy qualifies under paragraph four of this subsection without the need for approval by the superintendent.

(B) Any policy which is held out or purported to be a long-term care insurance policy by any insurer, agent, broker, person, business or corporation doing business in or into this state which has not been determined by the superintendent to qualify and which does not qualify under paragraph four of this subsection for purposes of the above referenced provisions of the tax law shall so state clearly, legibly and in close physical proximity to any description of the policy as a long-term care insurance policy that it does not so qualify. This subsection shall also be deemed to cover any statement, advertisement or claim concerning such policy by any insurer, agent, broker, person, business or corporation doing business in or into this state.

(C) Violation of this paragraph shall be considered a misrepresentation under section twenty-one hundred twenty-three of this chapter.

(3) The superintendent shall maintain an ongoing list of those policies requiring approval of the superintendent that are found eligible for purposes of the above-referenced provisions of the tax law.

(4) Group contracts delivered or issued for delivery outside of the

state, but which are qualified long-term care insurance contracts as defined in section 7702B of the internal revenue code shall be deemed to qualify for purposes of the provisions of the tax law specified in paragraph one of this subsection without the need to seek the approval of the superintendent pursuant to this subsection. Provided that they otherwise meet the requirements of this paragraph, such group contracts include, but are not limited to, those offered: (a) by professional associations and societies, membership organizations and not-for-profit groups, or by a subsidiary or affiliated entity of any of the foregoing, to the members of the association, society, organization or group, and (b) by employers to their employees.

(h) The department shall post on its website information describing the process that it uses in reviewing and approving premium rates for policies or contracts of long term care insurance.

(i) Whenever an authorized insurer, corporation, health maintenance organization or fraternal benefit society submits a rate filing or application to the superintendent to increase or decrease premium rates for any policy or certificate subject to this section, the superintendent shall post a public notice of the rate filing or application on the department's website within fourteen days. The superintendent shall provide for a process for the public to provide comments on such rate filing or application electronically or in writing for a period of thirty days after such public notice is posted on the department's website.

(j) The superintendent, upon rendering a decision regarding approval, disapproval or modification of a rate filing or application, shall issue a public notice of such decision. Such written decision and notice shall be made publicly available on the department's website no later than the date on which the rate filing or application is approved, disapproved, or modified. Such notification shall include:

(1) a summary of the determinations made and considerations used by the department regarding the approval, disapproval or modification of such rate filing or application, and

(2) a statement with relevant detail as to why the approval, disapproval or modification of the proposal is consistent with paragraph three of subsection (f) of this section.

(k) Upon receipt by an authorized insurer, corporation, health

maintenance organization or fraternal benefit society covered by the provisions of this section of an approval or modification decision by the superintendent with respect to a rate filing application with the department, such authorized insurer, corporation, health maintenance organization or fraternal benefit society shall notify policyholders and certificate holders of such decision no later than ninety days prior to the effective date of the premium rate increase. Such notification shall include:

(1) a description of such decision; and

(2) a written statement conforming to the requirements set forth in subparagraph (G) of paragraph six of subsection (b) of this section.

(l) The provisions set forth in subparagraphs (G), (H), (I), (J), (K), (L), (M), (N), (O), and (P) of paragraph six of subsection (b) of this section shall not apply to policies or certificates that are exempt from premium rate increases.