

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1193*
PROPOSED COMMITTEE SUBSTITUTE S1193-PCS55615-SH-69

Short Title: Implement LTC Partnership Program.

(Public)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE LONG-TERM CARE PARTNERSHIP PROGRAM, TO ENSURE THAT NORTH CAROLINA'S LONG-TERM CARE INSURANCE LAWS COMPORT WITH THE LONG-TERM CARE PARTNERSHIP PROVISIONS IN THE FEDERAL DEFICIT REDUCTION ACT OF 2005, AND TO AUTHORIZE THE SHARING OF CONFIDENTIAL INFORMATION BETWEEN THE NORTH CAROLINA DEPARTMENT OF INSURANCE, ENTITIES THAT CONTRACT WITH THE FEDERAL GOVERNMENT, AND OTHER GOVERNMENTAL AGENCIES, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. Part 6, Article 2 of Chapter 108A of the General Statutes is amended by adding a new section to read:

"§ 108A-70.4. Long-Term Care Partnership Program.

(a) The following definitions apply in this section:

- (1) Asset. – Resources and income.
- (2) Department. – The Department of Health and Human Services.
- (3) Division. – The Division of Medical Assistance.
- (4) Estate recovery. – The placing of a statutory claim on the estate of a deceased Medicaid recipient, as provided by G.S. 108A-70.5.
- (5) Medicaid. – The federal medical assistance program established under Title XIX of the Social Security Act.
- (6) Qualified long-term care partnership policy. – A long-term care insurance policy approved for use in North Carolina and meeting all the requirements of the Federal Deficit Reduction Act of 2005, P.L. 109-171.
- (7) Resource. – Cash or its equivalent and/or real or personal property that is available to an applicant or recipient.
- (8) Resource disregard. – The amount of resources owned by a long-term care Medicaid applicant that is equal to the amount of benefits paid to the applicant by a long-term care partnership policy. This amount shall not be taken into consideration when determining the applicant's long-term care Medicaid eligibility.
- (9) Resource protection. – An amount equal to the resource disregard given to a Medicaid recipient during the long-term care Medicaid eligibility



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1 determination process. This amount shall be deducted from the total value of
2 the estate for estate recovery purposes.

3 (b) There is established the North Carolina Long-Term Care Partnership Program
4 (Partnership Program) to be administered by the Division with assistance from the Department
5 of Insurance. The Partnership Program shall:

6 (1) Provide a mechanism for individuals to qualify for coverage of the cost of
7 their long-term care needs under Medicaid without first being required to
8 substantially exhaust their resources.

9 (2) Provide counseling services to individuals planning for their long-term care
10 needs.

11 (3) Reduce the financial burden on the State medical assistance program by
12 encouraging the pursuit of private insurance.

13 (c) In the case of an individual who has received benefits under a long-term care
14 partnership policy, an equal amount of resources shall not be considered by the Department
15 during the determination of the following:

16 (1) Eligibility for long-term care Medicaid.

17 (2) Any subsequent recovery by the State from a deceased recipient's estate for
18 payment of Medicaid paid services.

19 (d) The Department shall promulgate necessary rules and amendments to the State Plan
20 to allow for resource disregard at long-term care Medicaid eligibility determination and
21 resource protection at estate recovery. To provide resource disregards for purchases of a
22 long-term care partnership policy, the Department shall count insurance benefits paid under the
23 policy prior to the date of the first application for long-term care Medicaid made after the
24 implementation of the program toward resource disregard and resource protection to the extent
25 the payments are for covered services under the long-term care partnership policy.

26 (e) Effective January 1, 2011, or 60 days after approval of the Medicaid State Plan
27 amendment, whichever is later, a qualified long-term care partnership policy shall be
28 accompanied by a disclosure detailing in plain language the current law pertaining to the
29 Partnership Program, resource disregard, and resource protection.

30 (f) The Department may enter into a reciprocal agreement with other states that enter
31 into a national reciprocity agreement to extend the resource disregard and resource protection
32 to residents of the State who purchased, or purchased and used, a qualified long-term care
33 policy in another state.

34 (g) The Department and the Department of Insurance are authorized to adopt rules to
35 implement the provisions of the Partnership Program and to provide for its administration.

36 (h) In the case of an individual who has received benefits under a long-term care
37 partnership policy, the provisions of G.S. 108A-70.5 remain in effect for purposes of estate
38 recovery, with the exception of the definition of "estate" under G.S. 108A-70.5(b)(2). In
39 accordance with Title XIX of the Social Security Act, 42 U.S.C. § 1396p(b)(4)(B), the
40 definition of "estate" for an individual who has received benefits under a long-term care
41 partnership policy includes any other real or personal property and other assets in which the
42 individual had any legal title or interest at the time of death (to the extent of such interest),
43 including assets conveyed to a survivor, heir, or assign of the deceased individual through joint
44 tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement."

45 **SECTION 2.** G.S. 108A-70.5 reads as rewritten:

46 **"§ 108A-70.5. Medicaid Estate Recovery Plan.**

47 (a) There is established in the Department of Health and Human Services, the Medicaid
48 Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of 1993, to
49 recover from the estates of recipients of medical assistance an equitable amount of the State
50 and federal shares of the cost paid for the recipient. The Department shall administer the

1 program in accordance with applicable federal law and regulations, including those under Title
2 XIX of the Social Security Act, 42 U.S.C. § 1396(p).

3 (b) ~~As used in this section:~~ The following definitions apply in this section:

4 (1) ~~"Medical assistance" means medical~~ Medical assistance. – Medical care
5 services paid for by the North Carolina Medicaid Program on behalf of the
6 recipient:

7 a. If the recipient of any age is receiving medical care services as an
8 inpatient in a nursing facility, intermediate care facility for the
9 mentally retarded, or other medical institution, and cannot reasonably
10 be expected to be discharged to return home; or

11 b. If the recipient is 55 years of age or older and is receiving one or
12 more of the following medical care services:

13 1. Nursing facility services.

14 2. Home and community-based services.

15 3. Hospital care.

16 3a. Prescription drugs.

17 4. Personal care services.

18 5 through 9. Repealed by Session Laws 2007-442, s. 1,
19 effective August 23, 2007.

20 (2) ~~"Estate" means all~~ Estate. – All the real and personal property considered
21 assets of the estate available for the discharge of debt pursuant to
22 G.S. 28A-15-1. For individuals who have received long-term care benefits as
23 described in G.S. 108A-70.4, "estate" also includes any other real and
24 personal property and other assets in which the individual had any legal title
25 or interest at the time of death (to the extent of such interest), including
26 assets conveyed to a survivor, heir, or assign of the deceased individual
27 through joint tenancy, tenancy in common, survivorship, life estate, living
28 trust, or other arrangement.

29 (3) Repealed by Session Laws 2007-442, s. 1, effective August 23, 2007.

30 (c) The amount the Department recovers from the estate of any recipient shall not
31 exceed the amount of medical assistance made on behalf of the recipient and shall be
32 recoverable only for medical care services prescribed in subsection (b) of this section. The
33 Department is a fifth-class creditor, as prescribed in G.S. 28A-19-6, for purposes of
34 determining the order of claims against an estate; provided, however, that judgments in favor of
35 other fifth-class creditors docketed and in force before the Department seeks recovery for
36 medical assistance shall be paid prior to recovery by the Department.

37 (d) The Department of Health and Human Services shall adopt rules pursuant to
38 Chapter 150B of the General Statutes to implement the Plan, including rules to waive whole or
39 partial recovery when this recovery would be inequitable because it would work an undue
40 hardship or because it would not be administratively cost-effective and rules to ensure that all
41 recipients are notified that their estates are subject to recovery at the time they become eligible
42 to receive medical assistance.

43 (e) Repealed by Session Laws 2007-442, s. 1, effective August 23, 2007."

44 **SECTION 3.** Article 55 of Chapter 58 of the General Statutes is amended by
45 designating G.S. 58-55-1 through G.S. 58-55-50 as "Part 1. General Provisions."

46 **SECTION 4.** Article 55 of Chapter 58 of the General Statutes is amended by
47 adding a new Part to read:

48 "Part 2. Long-Term Care Partnership.

49 **"§ 58-55-55. Definitions.**

50 The following definitions apply in this section:

51 (1) Asset. – Resources and income.

- 1 (2) Estate recovery. – The placing of a statutory claim on the estate of a
2 deceased Medicaid recipient, as provided by G.S. 108A-70.5.
3 (3) Medicaid. – The federal medical assistance program established under Title
4 XIX of the Social Security Act.
5 (4) Qualified long-term care partnership policy. – A long-term care insurance
6 policy approved for use in North Carolina and meeting all the requirements
7 of the Federal Deficit Reduction Act of 2005, P.L. 109-171, that when issued
8 is determined by the issuing insurance company to meet the qualifications
9 for a partnership policy and includes the required disclosure of this
10 qualification.
11 (5) Resource. – Cash or its equivalent and/or real or personal property that is
12 available to an applicant or recipient.
13 (6) Resource disregard. – The amount of resources owned by a long-term care
14 Medicaid applicant that is equal to the amount of benefits paid to the
15 applicant by a long-term care partnership policy. This amount shall not be
16 taken into consideration when determining the applicant's long-term care
17 Medicaid eligibility.
18 (7) Resource protection. – An amount equal to the resource disregard given to a
19 Medicaid recipient during the long-term care Medicaid eligibility
20 determination process. This amount shall be deducted from the total value of
21 the estate for estate recovery purposes.

22 **"§ 58-55-60. Long-term care partnership policy.**

23 A qualified long-term care partnership policy is a long-term care insurance policy or a
24 certificate issued under a group long-term care insurance policy that satisfies all of the
25 following requirements:

- 26 (1) The policy meets the requirements for a qualified long-term care insurance
27 contract, as defined in section 7702B of the Internal Revenue Code of 1986
28 (26 U.S.C. § 7702B(b)).
29 (2) The effective date of the coverage is on or after January 1, 2011, or 60 days
30 after approval of the Medicaid State Plan amendment, whichever is later.
31 (3) The policy covers an insured who was a resident of North Carolina or
32 another reciprocal partnership state when coverage first became effective
33 under the policy.
34 (4) The policy meets the federal consumer protection requirements of section
35 1917(b) of the Social Security Act as amended by section 6021(a) of the
36 Deficit Reduction Act of 2005, P.L. 109-171 of the Social Security Act (42
37 U.S.C. § 1396p(b)(5)(A)).
38 (5) The policy is issued with and retains inflation protection coverage which
39 meets the inflation standards based on the insured's then attained age as
40 defined in sub-subdivisions a., b., and c. below:
41 a. Policies or certificates issued to an individual who is under 61 years
42 old must provide compound annual inflation protection.
43 b. Policies or certificates issued to an individual who is 61 to 76 years
44 old must provide some level of inflation protection. This may include
45 simple interest or compound inflation protection.
46 c. For purchasers 76 years old or older, inflation protection may be
47 offered but is not required.

48 Notwithstanding the above, purchasers of long-term care insurance policies
49 which meet partnership criteria may adjust their inflation protection as they
50 age. However, their policies shall maintain partnership status as long as the

1 inflation protection continues to meet the minimum requirements for the
2 insured's attained age.

3 (6) The policy states that it is intended to be a qualified long-term care insurance
4 policy as defined in section 7702B(b) of the Internal Revenue Code of 1986.

5 (7) A partnership policy issued, executed, and delivered in North Carolina shall
6 be accompanied by a Partnership Disclosure Notice explaining the benefits
7 associated with a partnership policy and indicating that at the time issued,
8 the policy is a qualified long-term care insurance partnership policy in North
9 Carolina. The Partnership Disclosure Notice shall also include a statement
10 indicating that by purchasing this partnership policy, the insured does not
11 automatically qualify for Medicaid. Notices providing additional information
12 may be used in conjunction with the Partnership Disclosure Notice described
13 in this section if filed and approved by the Commissioner. The notice shall
14 state the following in at least 12-point font:

15
16 "Partnership Policy Status: Your long-term care insurance policy is intended
17 to qualify as a Partnership Policy under the North Carolina Long-Term Care
18 Partnership Program as of your policy's effective date. For Medicaid
19 applicants applying for help with the cost of long-term care, this means that
20 an amount of your resources equal to the dollar amount of long-term care
21 insurance benefits paid to you or on your behalf under this policy may be
22 disregarded for purposes of determining your eligibility for long-term care
23 Medicaid. The amount that may be disregarded at eligibility will be equal to
24 the amount of the long-term care partnership benefits paid out prior to the
25 time you apply for long-term care Medicaid. As a result, you may qualify for
26 coverage of the cost of your long-term care needs under Medicaid without
27 first being required to substantially exhaust your personal resources. If you
28 are already a recipient of long-term care Medicaid, this policy will not allow
29 a resource disregard or estate recovery resource protection. The purchase of
30 a Partnership Policy does not automatically qualify you for Medicaid.

31
32 Please note that this policy may lose long-term care partnership program
33 status if you move to a different state that does not recognize North
34 Carolina's Long Term Care Partnership Program or you modify this policy
35 after issuance. This policy may also lose long-term care partnership program
36 status due to changes in federal or state laws.

37
38 If you have questions regarding long-term care insurance and the North
39 Carolina Long-Term Care Partnership Program, you may contact the
40 Seniors' Health Insurance Information Program of the Department of
41 Insurance at 1-800-443-9354."

42
43 In the case of a group insurance contract, this Notice shall be provided to the
44 insured upon the issuance of the certificate. The insurer shall include in that
45 notice that the amount of the insured resources that may be disregarded at
46 eligibility will be equal to the amount of long-term care partnership policy
47 benefits paid prior to the time the insured applied for long-term care
48 Medicaid. The insurer shall also include in the notice a warning to the
49 insured that the policy may lose long-term care partnership program status if
50 the insured moves to another state that does not recognize North Carolina's

1 Long-Term Care Partnership Program, or if the policy is modified after
2 issuance.

- 3 (8) When the insured's remaining lifetime maximum benefit is equal to 90 times
4 the current daily benefit, or three times the current monthly benefit, the
5 insurer shall notify the insured in writing advising the insured to go to the
6 local department of social services to apply for Medicaid if the insured had
7 not already done so.

8 **"§ 58-55-65. Compliance with federal regulations.**

9 (a) The Commissioner may adopt rules to conform long-term care policies and
10 certificates to the requirements of federal law and regulations, including any changes required
11 by Congress or the U.S. Department of Health and Human Services, or any successor agencies.

12 (b) The tax-qualified long-term care provisions required of the Health Insurance
13 Portability and Accountability Act of 1996, including subsequent amendments and editions, are
14 hereby incorporated into Article 55 of Chapter 58 of the General Statutes.

15 (c) The long-term care partnership provisions required of the Deficit Reduction Act of
16 2005, including subsequent amendments and editions, are hereby incorporated into Article 55
17 of Chapter 58 of the General Statutes.

18 **"§ 58-55-70. Disclosure notices.**

19 (a) Prior to making a change requested by the policyholder to a policy that would result
20 in the loss of long-term care partnership status, the insurer shall provide to the policyholder a
21 written explanation within 30 calendar days of how this action would affect the insured and
22 shall obtain the insured's signature indicating consent to the change.

23 (b) If a long-term care partnership policy form subsequently loses long-term care
24 partnership status, the insurer shall explain in writing within 30 calendar days to the
25 policyholders the reason for the loss of status.

26 (c) The disclosures required in this section shall be provided to any insured who
27 exchanges a policy for a long-term care partnership policy.

28 **"§ 58-55-75. Exchange of long-term care policies for long-term care partnership policies.**

29 An insurer shall offer, on a one-time basis, in writing, to all existing policyholders that were
30 issued a long-term care policy on or after February 8, 2006, the option to exchange their
31 existing long-term care coverage for coverage that is intended to qualify under North Carolina's
32 Long-Term Care Partnership Program. The insurer shall provide notification of this onetime
33 offer within 180 days from the date on which the company begins to offer partnership coverage
34 in the State. The mandatory offer of an exchange shall only apply to products issued by the
35 insurer that are comparable to the type of policy form, such as group policies and individual
36 policies, and on the policy series that the company has certified as partnership qualified. This
37 exchange may be subject to underwriting and premium adjustment. A policy received in an
38 exchange after the effective date of North Carolina's Long-Term Care Partnership Program is
39 treated as newly issued and is eligible for partnership policy status. For purposes of applying
40 the Medicaid rules relating to Qualified Long-Term Care Partnership Policies, the addition of a
41 rider, endorsement, or change in schedule page for a policy may be treated as giving rise to an
42 exchange. The effective date of the long-term care partnership policy shall be the date the
43 policy was exchanged."

44 **SECTION 5.** Article 55 of Chapter 58 of the General Statutes is amended by
45 adding a new section under Part 2 to read:

46 **"§ 58-55-80. Information sharing.**

47 (a) In order to assist in the performance of the Commissioner's duties under the
48 long-term care partnership program specified in the federal Deficit Reduction Act of 2005, the
49 Commissioner may:

- 50 (1) Share information, including identifying information, related to the
51 long-term care partnership program with other state and federal agencies, the

1 National Association of Insurance Commissioners, and any entity
2 contracting with the federal government under the Program.

3 (2) Receive information, including identifying information, related to the
4 long-term care partnership program from other state and federal agencies,
5 the National Association of Insurance Commissioners, and any entity
6 contracting with the federal government under the Program, and shall
7 maintain as confidential or privileged any identifying information received
8 with notice or the understanding that it is confidential or privileged under the
9 laws of the jurisdiction that is the source of the document, material, or
10 information.

11 (3) Enter into agreements governing sharing and use of information consistent
12 with this section.

13 (b) No waiver of an existing privilege or claim of confidentiality in the identifying
14 information shall occur as a result of disclosure to the Commissioner under this section or as a
15 result of sharing as authorized in subsection (a) of this section.

16 (c) A privilege established under the law of any state or jurisdiction that is substantially
17 similar to the privilege established under this section shall be available and enforced in any
18 proceeding in, and in any court of, this State.

19 (d) As used in this section, "identifying information" has the same meaning as in
20 G.S. 14-113.20(b)."

21 **SECTION 6.** The Department of Health and Human Services and the Department
22 of Insurance may adopt rules to implement the Long-Term Care Partnership Program in North
23 Carolina.

24 **SECTION 7.** The Department of Health and Human Services shall pursue a
25 Medicaid State Plan amendment to allow the Long-Term Care Partnership Program to operate
26 in North Carolina.

27 **SECTION 8.** Sections 7 and 8 of this act are effective when they become law. The
28 remainder of this act becomes effective January 1, 2011, or 60 days after approval of the
29 Medicaid State Plan amendment, whichever is later.