

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1193*
Health Care Committee Substitute Adopted 6/3/10
House Committee Substitute Favorable 6/16/10
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1193-PCS55625-RC-71

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 or qualified policy. – A long-term care insurance policy approved for use in North Carolina and that meets all the requirements of the federal Deficit Reduction Act of 2005, P.L. 109-171.
- (7) Resource. – Cash or its equivalent and real or personal property that is available to an applicant or recipient.
- (8) Resource disregard. – The amount of resources of an applicant for long-term care Medicaid that is equal to the amount of benefits paid to the applicant under a qualified long-term care partnership policy.



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1 (9) Resource protection. – An amount equal to the resource disregard given to a
2 Medicaid recipient during the long-term care Medicaid eligibility
3 determination process.

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

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

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

12 (3) Reduce the financial burden on the State medical assistance program by
13 encouraging individuals to obtain private long-term care insurance.

14 (c) Under the Partnership Program, the Department shall:

15 (1) Provide resource disregard to an applicant for long-term care Medicaid who
16 has received benefits under a qualified long-term care partnership policy.
17 The amount of the resource disregard shall be equal to the total insurance
18 benefits paid to the individual under a qualified policy after the
19 implementation of the Partnership Program and prior to the individual's first
20 application for long-term care Medicaid.

21 (2) Provide resource protection by reducing any subsequent recovery by the
22 State under G.S. 108A-70.5 from a deceased recipient's estate for payment of
23 Medicaid paid services by the amount of resource disregard given under
24 subdivision (1) of this subsection.

25 (d) The Department shall adopt rules and amendments to the State Plan to allow for
26 resource disregard at long-term care Medicaid eligibility determination and resource protection
27 at estate recovery. The Department and the Department of Insurance shall adopt rules to
28 implement the provisions of the Partnership Program and to provide for its administration.

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

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

37 (g) G.S. 108A-70.5 applies to the estate of an individual who received benefits under a
38 qualified long-term care partnership policy."

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

40 **"§ 108A-70.5. Medicaid Estate Recovery Plan.**

41 (a) There is established in the Department of Health and Human Services, the Medicaid
42 Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of 1993, to
43 recover from the estates of recipients of medical assistance an equitable amount of the State
44 and federal shares of the cost paid for the recipient. The Department shall administer the
45 program in accordance with applicable federal law and regulations, including those under Title
46 XIX of the Social Security Act, 42 U.S.C. § 1396(p).

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

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

- 1 a. If the recipient of any age is receiving medical care services as an
 2 inpatient in a nursing facility, intermediate care facility for the
 3 mentally retarded, or other medical institution, and cannot reasonably
 4 be expected to be discharged to return home; or
 5 b. If the recipient is 55 years of age or older and is receiving one or
 6 more of the following medical care services:
 7 1. Nursing facility services.
 8 2. Home and community-based services.
 9 3. Hospital care.
 10 3a. Prescription drugs.
 11 4. Personal care services.
 12 5 through 9. Repealed by Session Laws 2007-442, s. 1,
 13 effective August 23, 2007.

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

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

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

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

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

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

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

42 "Part 2. Long-Term Care Partnership.

43 **"§ 58-55-55. Definitions.**

44 The following definitions apply in this section:

- 45 (1) Asset. – Resources and income.
 46 (2) Department. – The Department of Health and Human Services.
 47 (3) Division. – The Division of Medical Assistance.
 48 (4) Estate recovery. – The placing of a statutory claim on the estate of a
 49 deceased Medicaid recipient, as provided by G.S. 108A-70.5.
 50 (5) Medicaid. – The federal medical assistance program established under Title
 51 XIX of the Social Security Act.

- 1 (6) Qualified long-term care partnership policy or qualified policy. – A
2 long-term care insurance policy approved for use in North Carolina and that
3 meets all the requirements of the federal Deficit Reduction Act of 2005, P.L.
4 109-171.
- 5 (7) Resource. – Cash or its equivalent and real or personal property that is
6 available to an applicant or recipient.
- 7 (8) Resource disregard. – The amount of resources of an applicant for long-term
8 care Medicaid that is equal to the amount of benefits paid to the applicant
9 under a qualified long-term care partnership policy.
- 10 (9) Resource protection. – An amount equal to the resource disregard given to a
11 Medicaid recipient during the long-term care Medicaid eligibility
12 determination process.

13 **"§ 58-55-60. Qualified long-term care partnership policy.**

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

- 17 (1) The policy meets the requirements for a qualified long-term care insurance
18 contract, as defined in section 7702B of the Internal Revenue Code of 1986
19 (26 U.S.C. § 7702B(b)).
- 20 (2) The effective date of the coverage is on or after January 1, 2011, or 60 days
21 after approval of the Medicaid State Plan amendment, whichever is later.
- 22 (3) The policy covers an insured who was a resident of North Carolina or
23 another reciprocal partnership state when coverage first became effective
24 under the policy.
- 25 (4) The policy meets the federal consumer protection requirements of section
26 1917(b) of the Social Security Act as amended by section 6021(a) of the
27 Deficit Reduction Act of 2005, P.L. 109-171 of the Social Security Act (42
28 U.S.C. § 1396p(b)(5)(A)).
- 29 (5) The policy is issued with and retains inflation protection coverage which
30 meets the inflation standards based on the insured's then attained age as
31 defined in sub-subdivisions a., b., and c. below:
- 32 a. Policies or certificates issued to an individual who is under 61 years
33 old must provide compound annual inflation protection.
- 34 b. Policies or certificates issued to an individual who is 61 to 76 years
35 old must provide some level of inflation protection. This may include
36 simple interest or compound inflation protection.
- 37 c. For purchasers 76 years old or older, inflation protection may be
38 offered but is not required.

39 Notwithstanding the above, purchasers of qualified long-term care insurance
40 policies may adjust their inflation protection as they age. However, their
41 policies shall continue to be qualified long-term care insurance policies as
42 long as the inflation protection in the qualified policies continues to meet the
43 minimum requirements for the insured's attained age.

- 44 (6) The policy states that it is intended to be a qualified long-term care insurance
45 policy as defined in section 7702B(b) of the Internal Revenue Code of 1986.
- 46 (7) A qualified policy issued, executed, and delivered in North Carolina shall be
47 accompanied by a Partnership Disclosure Notice explaining the benefits
48 associated with a qualified policy and indicating that at the time issued, the
49 policy is a qualified long-term care insurance partnership policy in North
50 Carolina. The Partnership Disclosure Notice shall also include a statement
51 indicating that by purchasing this partnership policy, the insured does not

1 automatically qualify for Medicaid. Notices providing additional information
2 may be used in conjunction with the Partnership Disclosure Notice described
3 in this section if filed and approved by the Commissioner. The Notice shall
4 state the following in at least 12-point font:

5
6 "Partnership Policy Status: Your long-term care insurance policy is intended
7 to qualify as a Partnership Policy under the North Carolina Long-Term Care
8 Partnership Program as of your policy's effective date. For Medicaid
9 applicants applying for help with the cost of long-term care, this means that
10 an amount of your resources equal to the dollar amount of long-term care
11 insurance benefits paid to you or on your behalf under this policy may be
12 disregarded for purposes of determining your eligibility for long-term care
13 Medicaid and from any subsequent recovery by the State from your estate
14 for payment of Medicaid paid services. The amount that may be disregarded
15 at eligibility will be equal to the amount of the long-term care partnership
16 benefits paid out prior to the time you apply for long-term care Medicaid. As
17 a result, you may qualify for coverage of the cost of your long-term care
18 needs under Medicaid without first being required to substantially exhaust
19 your personal resources. The amount that may be protected from recovery by
20 the State from your estate will be equal to the amount disregarded for
21 purposes of eligibility for long-term care Medicaid. If you are already a
22 recipient of long-term care Medicaid, this policy will not allow a resource
23 disregard or estate recovery resource protection. The purchase of a
24 Partnership Policy does not automatically qualify you for Medicaid.

25
26 Please note that this policy may lose long-term care partnership program
27 status if you move to a different state that does not recognize North
28 Carolina's Long-Term Care Partnership Program or you modify this policy
29 after issuance. This policy may also lose long-term care partnership program
30 status due to changes in federal or state laws.

31
32 If you have questions regarding long-term care insurance and the North
33 Carolina Long-Term Care Partnership Program, you may contact the
34 Seniors' Health Insurance Information Program of the Department of
35 Insurance at 1-800-443-9354."

36
37 In the case of a group insurance contract, this Partnership Disclosure Notice
38 shall be provided to the insured upon the issuance of the certificate. The
39 insurer shall include in that Notice that the amount of the insured's resources
40 that may be disregarded at eligibility will be equal to the amount of qualified
41 long-term care partnership policy benefits paid prior to the time the insured
42 applied for long-term care Medicaid. The insurer shall also include in the
43 notice a warning to the insured that the policy may lose long-term care
44 partnership program status if the insured moves to another state that does not
45 recognize North Carolina's Long-Term Care Partnership Program, or if the
46 policy is modified after issuance.

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

1 **"§ 58-55-65. Compliance with federal regulations.**

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

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

8 (c) The long-term care partnership provisions required of the Deficit Reduction Act of
9 2005, including subsequent amendments and editions, are hereby incorporated into Article 55
10 of Chapter 58 of the General Statutes.

11 **"§ 58-55-70. Disclosure notices.**

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

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

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

22 **"§ 58-55-75. Exchange of long-term care policies for long-term care partnership policies.**

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

38 **"§ 58-55-80. Information sharing.**

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

42 (1) Share information, including identifying information, related to the
43 long-term care partnership program with other state and federal agencies, the
44 National Association of Insurance Commissioners, and any entity
45 contracting with the federal government under the program.

46 (2) Receive information, including identifying information, related to the
47 long-term care partnership program from other state and federal agencies,
48 the National Association of Insurance Commissioners, and any entity
49 contracting with the federal government under the program, and shall
50 maintain as confidential or privileged any identifying information received
51 with notice or the understanding that it is confidential or privileged under the

1 laws of the jurisdiction that is the source of the document, material, or
2 information. Information received under this subdivision of this subsection is
3 not a "public record" as defined in G.S. 132-1.

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

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

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

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

14 **SECTION 5.** This act becomes effective January 1, 2011, or 60 days after approval
15 of the Medicaid State Plan amendment, whichever is later.