

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: CS/SB 1924

INTRODUCER: Health Care Committee and Senator Peaden

SUBJECT: Long-term Care Partnership Program

DATE: March 15, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner	Wilson	HE	Fav/CS
2.	_____	_____	HA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires the Agency for Health Care Administration (AHCA) to establish the Florida Long-term Care Partnership Program, in compliance with the requirements of the Social Security Act as amended by the federal Deficit Reduction Act of 2005, and in consultation with the Office of Insurance Regulation (OIR) and the Department of Children and Family Services (DCF).

The bill provides certain regulatory and administrative requirements for AHCA and OIR, and requires that, for purposes of determining Medicaid eligibility, assets in an amount equal to the insurance benefit payments made to, or on behalf of, an individual who is a beneficiary under an approved Florida Long-term Care Partnership Program policy shall be disregarded. As such, a person who participates in a partnership plan is able to qualify for coverage of the costs of his or her long-term care needs under Medicaid without first being required to substantially exhaust his or her assets.

The bill repeals two provisions of chapter law that specify the design and function of the Florida Long-term Care Partnership Program so that the language in this bill will regulate the partnership's activities.

This bill reenacts and amends s. 409.9102, F.S.; creates s. 627.94075, F.S.; repeals sections 1 and 2 of ch. 2005-252, L.O.F.; and amends s. 4 of ch. 2005-252, L.O.F.

II. Present Situation:

Long-term Care

Long-term care (LTC) refers to a broad range of supportive medical, personal and social services needed by people who are unable to meet their basic living needs for an extended period of time. This may be caused by accident, illness or frailty. Such conditions include the inability to move about, dress, bathe, eat, use a toilet, medicate and avoid incontinence. Also, care may be needed to help the disabled with household cleaning, preparing meals, shopping, paying bills, visiting the doctor, answering the phone and taking medications. Additional long-term care disabilities are due to cognitive impairment from stroke, depression, dementia, Alzheimer's disease, Parkinson's disease and other medical conditions that affect the brain.

It is estimated that approximately nine million men and women in the United States over the age of 65 needed LTC in 2005. By 2020, 12 million older Americans will need LTC. Most will be cared for at home (family and friends are the sole caregivers for 70 percent of the elderly). A study by the U.S. Department of Health and Human Services says that people who reach age 65 will likely have a 40 percent chance of entering a nursing home. About 10 percent of the people who enter a nursing home will stay there five years or more.¹

Long-term Care Financing

The costs associated with long-term care services are substantial. The average cost of a nursing home stay is more than \$55,000 per year, and as much as \$100,000 in some urban areas. Hourly home care agency rates average \$37 for a licensed practical nurse, and \$18 for a home health aide.²

In 2003, the most recent year for which national data are available, national spending on long-term care totaled \$183 billion, and nearly half of that was paid for by the Medicaid program, the joint federal-state health care financing program that covers basic health and long-term care services for certain low-income individuals. Private insurance paid a small portion of long-term care expenditures - about \$16 billion or 9 percent in 2003.³

Florida is particularly affected by Medicaid LTC costs as it has the highest proportion of persons aged 65 to 84 of any state in the nation, and this population is expected to grow 130 percent by 2025. In FY 2002-03, Florida Medicaid spent \$3.2 billion (or 28 percent of the Medicaid budget) on four core LTC services: nursing homes; Intermediate Care Facilities for Persons with Development Disabilities; Home and Community Based Services waivers; and assistive care

¹ United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. March 2005. Found at <http://www.medicare.gov/LongTermCare/Static/Home.asp>. (last visited on March 10, 2006)

² *Long-Term Care Insurance*, September 2004, AARP Public Policy Institute. Found at: http://assets.aarp.org/rgcenter/health/fs7r_ltc.pdf. (last visited on March 10, 2006)

³ *Overview of the Long-Term Care Partnership Program* (GAO-05-1021R), U.S. Government Accountability Office, September 2005. Found at: <http://www.gao.gov/new.items/d051021r.pdf>. (last visited on March 10, 2006)

services.⁴ Florida Medicaid currently pays for 66 percent of all nursing home days for the frail elderly in Florida.

Elderly individuals often believe, mistakenly, that Medicare pays for LTC costs. As a result, many individuals often find out too late that they must spend down the majority of their assets before gaining eligibility for Medicaid services. One way to prevent this from occurring is for individuals to purchase LTC insurance.

The LTC insurance market has grown rapidly over the past decade, yet LTC insurance pays for a very small share of nursing home care. The main reason for the low number of purchasers is the cost of LTC insurance policies. The average annual premium for a LTC policy for a 65-year old was \$2,273 in 2001. Almost half of the U.S. population of persons 65 years of age and older has incomes below \$21,570 (250 percent of the Federal Poverty Limit in 2002). As a result, most of these individuals would have to pay at least 10 percent of their annual income for LTC insurance.⁵

States have adopted three strategies to encourage younger persons to purchase private LTC insurance. First, states offer tax incentives to individuals or employers to purchase private LTC insurance. Tax deductions tend to be small and most likely will not constitute a significant savings for individuals or to the system. Second, many states offer, or are in the process of offering, LTC insurance to their employees, retirees, and on occasion parents and parents-in-law of employees. In these cases, employees pay all of the cost but states may offer fringe benefits. Finally, states are developing public/private partnerships to encourage people to purchase LTC insurance. Under these partnerships, people who purchase LTC insurance can keep more assets and still become eligible for Medicaid.

Long-term Care Partnership Programs

The interests of the states in exploring ways to make private LTC insurance more appealing and affordable to the public encouraged the Robert Wood Johnson Foundation (RWJF) to launch an initiative that provided planning grants to selected states that demonstrated an interest in this issue.⁶ California, Connecticut, Indiana, Massachusetts, New Jersey, New York, Oregon, and Wisconsin received support to define and develop a public-private insurance partnership to pay for LTC, although only four states ultimately implemented their public-private partnerships (California-1994, Connecticut-1992, Indiana-1993, and New York-1993).

With the help of the National Program Office, based at the University of Maryland Center on Aging, the states participating in the planning phase developed strategies to encourage the purchase of private insurance. The states recognized that to broaden the market for LTC insurance it was important both to decrease the cost of the policies and to increase their quality. This is a special challenge, since increasing the quality of insurance policies generally increases the premium, which cuts down on the market. In the end, the key incentive to making the system

⁴ Agency for Health Care Administration. *Medicaid Long Term Care: Overview and Update*. Presentation to the Senate Health and Human Services Appropriations Committee. December 15, 2004.

⁵ Kassner, Enid. *Private Long-Term Care Insurance: The Medicaid Interaction*. May 2004 (AARP Issue Brief).

⁶ Meiners, Mark, Hunter McKay, and Kevin Mahoney (2002). "Partnership Insurance: An Innovation to Meet Long-term Care Financing Needs in an Era of Federal Minimalism." *Journal of Aging & Social Policy*. Vol. 14, No. 3/4, pp. 75-93.

work was a unique approach that allows people who purchase a state-certified LTC insurance “partnership” policy to get help from Medicaid without having to exhaust their assets.

Normally, when a LTC insurance policy runs out, policyholders risk having to spend virtually all their savings before qualifying for Medicaid. In contrast, when a partnership policy is exhausted, the policyholder is eligible for coverage under Medicaid without having to deplete previous savings. The details of the models differed from state to state. The most significant difference was between New York and the three other states.

In New York, partnership policies are required to pay three years of nursing home care, six years of home care, or some combination, after which all remaining assets are protected, known as the “total assets” model. A high priority of the New York approach is to offer middle- and upper-income seniors a viable alternative to giving away their assets and impoverishing themselves in order to qualify for Medicaid.

The underlying logic of this total-assets model is that the period of insurance is equal to or exceeds the time during which a person would be penalized by having to pay for long-term care if he or she had transferred assets in order to become eligible for Medicaid. When the program in New York began, this period was 30 months. Securing a three-year commitment to pay nursing home costs with private insurance would save the state money as compared to when someone is divested of his or her assets to receive Medicaid’s assistance.

California, Connecticut, and Indiana adopted a “dollar-for-dollar” model. In addition to serving as an alternative to transferring assets, it allows people to buy a policy that protects a specified amount of their assets. An individual with \$50,000 in assets might buy \$50,000 in insurance protection while another individual with \$150,000 in assets might buy \$150,000 in insurance protection. Payments for LTC by the insurance company are considered the equivalent of spending assets for the purpose of establishing Medicaid eligibility. Thus, a person who purchased a \$75,000 policy would be able to keep \$75,000 when he or she became eligible for Medicaid.

In later years, Indiana revised its program to include a hybrid approach intended to get the best of both asset-protection strategies. Up to a set amount of coverage (the dollar equivalent of four years in the average Indiana nursing home), the purchaser is eligible for dollar-for-dollar asset protection while getting Medicaid benefits. But those who buy a policy covering more than this amount will receive total-asset protection along with help from Medicaid once they use up their insurance.

In 2004, the number of partnership policies purchased ranged from about 4,000 in Indiana to nearly 10,000 in California. The number of partnership policies purchased each year has increased significantly since the programs began in the early 1990s; though there has been a decline or leveling off in the number of policies purchased in recent years. Based on the most recently available data, there are 172,477 active partnership policies insured by a total of 17 participating insurance companies throughout the states of California, Connecticut, Indiana, and New York. The percentage of partnership policyholders who were first-time policyholders of

long-term care coverage was 94 percent in California, 92 percent in Connecticut, 94 percent in Indiana and 95 percent in New York.⁷

Less than 1 percent of active partnership policyholders are currently accessing their long-term care insurance benefits. Since the programs began, 251 policyholders in all four states have exhausted their long-term care insurance benefits. Of those 251 policyholders, 119 (47 percent) have accessed Medicaid. The remaining 53 percent have not accessed Medicaid. According to interviews with state officials, this may be because they are spending down income or unprotected assets, their health has improved, or their families provide informal care. More policyholders have died while receiving long-term care insurance benefits (899 policyholders) than have exhausted their long-term care insurance benefits (251 policyholders), which could suggest that the Long-term Care Partnership Program may be succeeding in eliminating some participants' need to access Medicaid. However, it is difficult to determine whether and to what extent the Long-Term Care Partnership Program has resulted in cost savings to the Medicaid program because there are insufficient data to determine if those individuals who have purchased partnership policies would have accessed Medicaid had they not purchased long-term care insurance benefits.

Barriers to Implementing Long-Term Care Partnership Programs

While every RWJF Partnership was enacted as a result of unanimous votes in the state legislatures, the opposition at the federal level resulted in legislation that grandfathered the four RWJF State Partnerships, but put restrictions on further replication. The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) required that any states implementing Partnership Programs after May 14, 1993, must recover assets from the estates of all persons receiving services under Medicaid. The result of this language is that, for replication states, the asset-protection component of the partnership is still in effect but only while the insured is alive. After the policyholder dies, those states must recover what Medicaid spent from the estate, including protected assets.

This provision in OBRA '93 has had the effect of stifling interest in replicating the LTC partnership programs. Prior to passage of this legislation, interest in the partnership program had grown well beyond the four states funded by RJWF. At least seventeen states (including Florida) passed legislation over the years to implement a partnership if the OBRA '93 restrictions were withdrawn or waived.

Florida's Long-term Care Partnership Program

In the 2005 Regular Session, the Florida Legislature passed CS/SB 1208, which was signed into law in June 2005 (ch. 2005-252, L.O.F.). The law amends s. 409.905, F.S., by providing that, for purposes of eligibility determinations for nursing facility services funded by Medicaid, individuals who are beneficiaries of approved long-term care partnership program insurance policies with exhausted policy benefits shall have their total countable assets reduced by \$1 for each \$1 of benefits paid out under such policy.

⁷ *Overview of the Long-Term Care Partnership Program* (GAO-05-1021R), U.S. Government Accountability Office, September 2005.

The legislation further created s. 409.9102, F.S., directing AHCA to establish the Florida Long-term Care Partnership Program, which shall:

- Provide incentives for an individual to obtain insurance to cover the costs of long-term care;
- Establish standards for long-term care insurance policies for designation as approved long-term care partnership program policies in consultation with OIR;
- Provide a mechanism to qualify for coverage of the costs of long-term care needs under Medicaid without first being required to substantially exhaust his or her resources, including a reduction of the individual's asset valuation by \$1 for each \$1 of benefits paid out under the individual's approved long-term care partnership program policy as a determination of Medicaid eligibility;
- Provide and approve long-term care partnership plan information distributed to individuals through insurance companies offering approved partnership policies; and,
- Alleviate the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives.

Additionally, AHCA was directed to develop a plan for the program's implementation, and to present the plan in the form of recommended legislation to the President of the Senate and the Speaker of the House of Representatives prior to the commencement of the 2006 Legislative Session.

The amendments to s. 409.905, F.S., and the creation of s. 409.9102, F.S., in the bill were to take effect contingent upon amendment of s. 1917(b)(1)(c) of the Social Security Act by the United States Congress to delete the "May 14, 1993" deadline for approval by states of long-term care partnership plans.

The Federal Deficit Reduction Act of 2005

In 2005, the idea of expanding the LTC Partnership Program re-emerged at the national level. President Bush's proposed 2006 Budget included a proposal to eliminate the disincentive on new programs.⁸ In addition, partnership and non-partnership states began working to design a national partnership program, with reciprocity agreements among all participating states. This was intended to increase the portability of the partnership program in the future. The National Governors Association made expanding the partnership program a priority.

As a result of these activities, the changes necessary to expand partnership programs were included in the federal Deficit Reduction Act of 2005, which was signed into law on February 8, 2006. Specifically, the Deficit Reduction Act (among other changes to the Medicare and Medicaid programs) amends s. 1917(b)(1)(c)(ii) of the Social Security Act to allow groups of individuals in states with plan amendments approved after May 14, 1993, to be exempt from estate recovery requirements if the amendment provides for a qualified state long-term care insurance partnership program.

⁸ *Major Savings and Reforms in the President's 2006 Budget*, February 11, 2005, pg. 191; available at <http://www.whitehouse.gov/omb/budget/fy2006/pdf/savings.pdf> (last visited on March 10, 2006)

For purposes of the Social Security Act, the term “qualified state long-term care insurance partnership” means a Medicaid state plan amendment providing for the disregard of any assets or resources in the amount equal to the amount of insurance benefit made to or on behalf of an individual who is a beneficiary under an approved long-term care policy (including a certificate issued under a group insurance contract), if the following requirements are met:

- The policy covers an insured who was a resident of such state when coverage first became effective under the policy. In the case of a long-term care insurance policy exchanged for another such policy, this requirement would apply based on the coverage of the first such policy that was exchanged;
- The policy is a qualified long-term care insurance policy (as defined in s. 7702B(b) of the Internal Revenue Code of 1986) issued not earlier than the effective date of the state plan amendment;
- The policy meets the requirements of the long-term care insurance model regulation and the long-term care insurance model act, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000);
- If the policy is sold to an individual who:
 - has not attained age 61 as of the date of purchase, the policy provides compound annual inflation protection;
 - has attained age 61 but has not attained age 76 as of the date of purchase, the policy provides some level of inflation protection; and
 - has attained age 76 as of the date of purchase, the policy may (but is not required to) provide some level of inflation protection;
- The state Medicaid agency under s. 1902(a)(5) of the Social Security Act provides information and technical assistance to the state insurance department on the insurance department’s role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care;
- The issuer of the policy provides regular reports including notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information appropriate to the administration of such partnerships; and
- The state does not impose any requirement affecting the terms or benefits of such a policy unless the state imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with such a partnership.

The Deficit Reduction Act also requires the Secretary of Health and Human Services to develop, no later than January 1, 2007, standards for the uniform reciprocal recognition of long-term care insurance policies among states with qualified state long-term care insurance partnerships, so that benefits paid under such policies will be treated the same by all such states.

The Deficit Reduction Act also establishes a National Clearinghouse for Long-term Care Information. The clearinghouse is responsible for:

- Educating consumers with respect to the availability and limitations of coverage for long-term care under the Medicaid program, and providing contact information for obtaining state-specific information on long-term care coverage, including eligibility and estate recovery requirements under State Medicaid programs;
- Providing objective information to assist consumers with the decision-making process for determining whether to purchase long-term care insurance or to pursue other private market alternatives for purchasing long-term care, and providing contact information for additional objective resources on planning for long-term care needs; and
- Maintaining a list of states with state long-term care insurance partnerships under the Medicaid program that provide reciprocal recognition of long-term care insurance policies issued under such partnerships.

III. Effect of Proposed Changes:

Section 1. Reenacts and amends s. 409.9102, F.S., to direct AHCA to establish the Florida Long-term Care Partnership Program, in compliance with the requirements of the Social Security Act as amended by the federal Deficit Reduction Act of 2005, and in consultation with OIR and DCF. The bill specifies that the program shall:

- Provide incentives for an individual to obtain or maintain long-term care insurance;
- Provide a mechanism for an individual to qualify for coverage of the costs of long-term care needs under Medicaid without being required to substantially exhaust his or her assets, and that Medicaid eligibility will disregard any assets equal to the insurance benefit paid to or on behalf of an individual with a partnership plan; and
- Encourage the pursuit of private initiatives to provide financing for long-term care needs.

The bill requires AHCA, in consultation with OIR and DCF, to create standards for long-term care partnership plan information distributed to individuals through insurance companies and requires AHCA to amend the Medicaid state plan and adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement this section.

The bill requires DCF, when determining eligibility for Medicaid long-term care services for an individual who is the beneficiary of an approved long-term care partnership policy, to reduce the total countable assets of the individual by an amount equal to the insurance benefit payments that are made to or on behalf of the individual. The department is authorized to adopt rules to implement this subsection.

Section 2. Creates s. 627.94075, F.S., to require OIR, in consultation with AHCA and DCF, to develop standards for the designation of eligible long-term care policies to be issued in accordance with the partnership program requirements in s. 409.9102, F.S., and to develop forms to be used by insurers and the program to determine policy eligibility. The bill requires insurers, upon request by OIR, to provide information necessary to determine the number of eligible policies, the amount of benefits paid, and the types of products offered in order to monitor the

implementation of the program and authorizes the Financial Services Commission to adopt rules to implement applicable provisions of the long-term care partnership program.

Section 3. Repeals ss. 1 and 2 of ch. 2005-252, L.O.F. Section 1 specified that, when determining eligibility for nursing and rehabilitative services under the Medicaid program, if an individual is a beneficiary of a long-term care partnership policy and has exhausted the benefits of the policy, the total countable assets of an individual shall be reduced by \$1 for each \$1 of benefits paid out under the policy. Section 2 created s. 409.9102, F.S., to establish the Long-term Care Partnership Program.

Section 4. Amends s. 4 of ch. 2005-252, L.O.F., to remove the language making implementation of the program contingent on an amendment to federal law, thus providing that the act is effective upon becoming a law.

Section 5. Provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have the effect of stimulating the private long-term care insurance market, although the amount of economic growth cannot be determined at this time.

C. Government Sector Impact:**Agency for Health Care Administration**

The full fiscal impact to the agency is unknown at this time. While most of these programs are Medicaid budget neutral in other states, the fiscal impact on Florida is unknown.

Department of Financial Services, Office of Insurance Regulation (OIR)

[OIR did not provide a fiscal analysis by the time of publication.]

OIR would incur minimal costs to approve and regulate products under the partnership program.

County Governments

Because counties participate in the cost of nursing facility care for the Medicaid program, shifting a portion of the cost away from the Medicaid program would result in savings or cost-avoidance to individual counties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
