

MEMORANDUM

To: Stakeholders interested in a Long Term Care (LTC) Partnership Program

From: Malika Bartlett
Legislative Liaison
Ohio Department of Insurance

Date: March 16, 2007

Re: Proposed Changes to Ohio law to Implement the Federal LTC Partnership Program

Federal law (42 U.S.C. §1396b) gives Ohio the ability to adopt a Long Term Care (LTC) Partnership Program. A Partnership Program encourages people to purchase LTC insurance by allowing them to become Medicaid eligible without spending down all of their personal assets if they purchase a qualified LTC policy (a Partnership policy.)

In order for Ohio to implement a Partnership Program, Federal law requires that Ohio adopt certain laws applicable to LTC policies and ensure compliance with those laws through the oversight of the insurance commissioner. These Federal requirements include the following.

- Partnership policies must comply with certain provisions of the National Association of Insurance Commissioners LTC Insurance Model Act (Model Act) and Model Regulation (Model Regulation).¹
- A policy shall be deemed to meet the requirements of the Model Act and Model Regulation if the state insurance commissioner certifies that the policy meets such requirements.
- Partnership policies must contain inflation protection.
- A state may not impose certain requirements affecting the terms or benefits of a Partnership policy unless the state imposes such requirements on LTC insurance policies without regard to whether the policy is covered under the Partnership or is offered in connection with the Partnership.
- Any individual who sells a Partnership policy must receive training and demonstrate evidence of understanding of Partnership policies and how they relate to other public and private LTC coverage.

Based on these requirements, the Department believes that certain amendments should be made to Ohio's insurance laws to implement a Partnership Program. The amendments the Department recommends are as follows:

¹ Note, the Model Act and Model Regulation are the LTC Insurance Model Act and Model Regulation adopted by the NAIC as of October 2000. See, 42 U.S.C. §1396p(b)(5).

1. Ohio law should be amended to require that LTC policies comply with the sections of the Model Act identified in Federal law.

Federal law requires that Partnership policies comply sections 6C, 6D, 6F, 6G, 6H, 6J, 6K, 7 and 8 of the Model Act. See, 42 U.S.C. 1396p(b)(5)(ii). Although Ohio has already adopted many of the Model provisions, the following amendments will make Ohio law consistent with the Model Act.

a. Amend 3923.41

Purpose

Ohio law should define “long-term care insurance,” “group long-term care insurance” and “qualified long-term care insurance contract” consistent with the Model Act. Ohio law should also have a definition of a “Partnership program.”

Proposed change

R.C. §3923.41 should be amended as follows.

§3923.41. Definitions.

As used in sections 3923.41 to 3923.48 of the Revised Code:

(A) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than one year for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. "Long-term care insurance" includes group and individual annuities and life insurance policies or riders that provide directly or supplement long-term care benefits, and policies or riders that provide for payment of benefits based on cognitive impairment or the loss of functional capacity. The term shall also include “qualified long-term care insurance contracts.” "Long-term care insurance" includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, or health insuring corporations. "Long-term care insurance" does not include any insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

With regard to life insurance, "long-term care insurance" does not include life

insurance policies that accelerate the death benefits specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement; that provide the option of a lump sum payment for those benefits; and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

Notwithstanding any other provision contained in sections 3923.41 to 3923.48 of the Revised Code, any product advertised, marketed, or offered as long-term care insurance shall be subject to sections 3923.41 to 3923.48 of the Revised Code.

* * *

(D) "~~Group long-term care insurance~~" means ~~a form of long term care insurance covering any group of two or more employees, members, or other persons, with or without one or more of their dependents and members of their immediate families. Such insurance may be offered to groups without regard to the purpose or type of group or the occupation of the employees, members, and other persons insured under the policy.~~ a long-term care insurance policy that is delivered or issued for delivery in this state and issued to:

(1) One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations; or

(2) Any professional, trade or occupational association for its members or former or retired members, or combination thereof, if the association:

(a) Is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and

(b) Has been maintained in good faith for purposes other than obtaining insurance; or

(3) An association or a trust or the trustees of a fund established, created or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering the policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the superintendent that the association or associations have at the outset a minimum of one hundred persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance; have been in active

existence for at least one year; and have a constitution and bylaws that provide that:

(a) The association or associations hold regular meetings not less than annually to further purposes of the members;

(b) Except for credit unions, the association or associations collect dues or solicit contributions from members; and

(c) The members have voting privileges and representation on the governing board and committees.

Thirty days after the filing the association or associations will be deemed to satisfy the organizational requirements, unless the superintendent makes a finding that the association or associations do not satisfy those organizational requirements.

(4) A group other than as described in divisions D(1), D(2), and D(3) of this section, subject to a finding by the superintendent that:

(a) The issuance of the group policy is not contrary to the best interest of the public;

(b) The issuance of the group policy would result in economies of acquisition or administration; and

(c) The benefits are reasonable in relation to the premiums charged.

(E) "Policy" means any policy, contract, rider, or endorsement delivered, issued for delivery, or used in or outside this state by an insurer, fraternal benefit society, or health insuring corporation.

(F) (1) "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" means an individual or group insurance contract that meets the requirements of Section 7702B(b) of the Internal Revenue Code of 1986, 26 U.S.C. 7720B(b) as amended, as follows:

(a) The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract shall not fail to satisfy the requirements of this division by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(b) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this division do not apply to expenses that are reimbursable under Title XVIII of the Social Security Act only as a secondary payor. A contract shall not fail to satisfy the requirements of this division by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(c) The contract is guaranteed renewable, within the meaning of section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, 26 U.S.C. 7702B(b)(1)(C) as amended;

(d) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in Section 3923.41(F)(1)(e) of the Revised Code;

(e) All refunds of premiums, and all policyholder dividends or similar amounts, under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund on the event of death of the insured or a complete surrender or cancellation of the contract cannot exceed the aggregate premiums paid under the contract; and

(f) The contract meets the consumer protection provisions set forth in Section 7702B(g) of the Internal Revenue Code of 1986, 26 U.S.C. 7702B(g) as amended.

(2) “Qualified long-term care insurance contract” or “federally tax-qualified long term care insurance contract” also means the portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of Section 7702B(b) and (e) of the Internal Revenue Code of 1986, 26 U.S.C. 7702B(b) and (e), as amended.

(G) “State long-term care partnership program” or “Partnership program” means a program established under Section 1917(b) of the Social Security Act, 42 U.S.C. §1396p(b), as amended.

b. Amend 3923.44

Purpose

The following sections of the Model Act have not yet been, and thus should be, included in Ohio law.

- 6(G)(1)(d) regarding group policy enrollment information;
- 6(G)(2)(g) regarding the outline of coverage;
- 6(J)(4) regarding inflation protection; and
- 6(K) regarding monthly reporting requirements for long-term care benefits via a life insurance policy.

The Department also recommends adding a new paragraph (O) to R.C. 3923.44 to require 5% annual compound interest inflation protection for Partnership policies regardless of the age of the insured. It is generally agreed that the cost of long-term care services will increase at least 5% per year for the foreseeable future. The Department believes that 5% annual compound interest inflation protection is an important consumer protection to ensure that benefits keep pace with rising long-term care costs.

Proposed change

R.C. 3923.44 should be amended as follows:

§ 3923.44. Rules for sale of long-term care insurance; policy requirements; outline of coverage

* * *

(I) An outline of coverage and a notice that consumer information is available from the department of insurance under section 3923.49 of the Revised Code shall be delivered to a prospective applicant for long-term care insurance at the time of the initial solicitation through means that prominently direct the attention of the prospective applicant to the outline of coverage, the purpose of the outline of coverage, and the notice. In the case of agent solicitations, the agent shall deliver the outline of coverage and notice prior to the presentation of an application or enrollment form. In the case of direct response solicitations, the insurer shall deliver the outline of coverage and notice in conjunction with any application or enrollment form. In the case of a policy issued to a group defined in division (D)(1) of section 3923.41 of the Revised Code, an outline of coverage shall not be required to be delivered, provided that the information described in division (I)(1) through (6) of this section is contained in other materials relating to enrollment and, upon request, these other materials shall be made available to the superintendent. The superintendent shall prescribe by rule the content and format of the outline of coverage and notice, including the style, overall appearance, size, color and prominence of type, and the arrangement of text and captions. The outline of coverage shall include all of the following:

- (1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(3) A statement of the terms under which the individual policy or certificate or the group policy or certificate may be renewed and the terms under which cancellation is permitted, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of group long-term care insurance shall be specifically described.

(4) A description of the terms under which the policy or certificate may be returned and the premium refunded;

(5) A brief description of the relationship of the cost of care and benefits;

(6) A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy or group master policy should be consulted to determine governing contractual provisions.

(7) A statement that discloses to the policyholder or certificateholder whether the policy is intended to be a federally tax-qualified long-term care insurance contract.

* * *

(K) If an individual life insurance policy provides long-term care benefits within the policy or by rider, a policy summary shall be delivered to an applicant for the policy at the time of policy delivery. In the case of direct response solicitations, the insurer shall deliver the policy summary to the applicant upon the applicant's request. If no such request is made, the insurer shall deliver the policy summary no later than at the time of policy delivery. In addition to any other information required by this section, the policy summary shall include all of the following:

(1) A statement that explains how the terms of the policy that provide benefits for long-term care insurance affect the other terms of the policy, including how the payment of these benefits would reduce the death benefits payable by the policy;

(2) A description of the amount of benefits for long-term care insurance that is available under the policy, the length of time these benefits could be paid by the policy, and any guaranteed lifetime benefits provided by the policy, for each insured under the policy;

(3) A statement of the exclusions, reductions, and limitations on benefits for long-term care insurance that are contained in the policy;

(4) A statement of the effects of exercising other rights under the policy;

(5) A statement of the guarantees, if any, with respect to the policy costs of providing benefits for long-term care insurance;

(6) A statement of all current and projected maximum lifetime benefits.

(7) A statement of whether long-term care inflation protection is required or available under the policy.

~~(L)(1) Except as provided in division (L)(2) of this section, during the time that benefits are being paid under a life insurance policy or rider for long-term care insurance, the insurer shall provide to the policyholder a semiannual report that includes all of the following:~~

~~(a) A description of all benefits for long-term care insurance that were paid by the policy during that reporting period;~~

~~(b) A description of any reductions in the other available benefits under the policy, including death benefits or cash values;~~

~~(c) A statement of the amount of benefits for long-term care insurance that is still available under the policy.~~

~~(2) During the six-month period immediately preceding the expiration of benefits being paid under a life insurance policy or rider for long-term care insurance, the insurer, every sixty days, shall provide to the policyholder the report described in division (L)(1) of this section.~~

(L) Any time a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. The report shall include:

(1) Any long-term care benefits paid out during the month;

(2) An explanation of any changes in the policy, e.g. death benefits or cash values, due to long-term care benefits being paid out; and

(3) The amount of long-term care benefits existing or remaining.

* * *

(O) Policies that are intended to qualify under the state long-term care partnership program shall meet the following requirements:

(1) The policy shall contain a statement that the policy is intended to qualify under the state long-term care partnership program;

(2) The policy shall provide inflation protection that automatically increases benefit levels at a compound rate of not less than five percent per year. Inflation protection benefit increases shall continue without regard to an insured's age, claim status or claim history, or the length of time the insured has been insured under the policy; and

(3) The policy shall comply with all state and federal requirements applicable to policies issued in connection with a state long-term care partnership program.

c. Add a new section 3923.441

Purpose

Section 7 of the Model Act regarding an incontestability period specific to long-term care insurance policies should be added to Ohio law.

Proposed change

Add a new section 3723.441 to the Revised Code to read as follows.

3923.44.1 Incontestability Period

Notwithstanding Paragraph (B) of Section 3923.04 of the Revised Code, the following applies to long-term care insurance.

(A) For a policy or certificate that has been in force for less than six months an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance for coverage.

(B) For a policy or certificate that has been in force for at least six months but less than two years an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought.

(C) After a policy or certificate has been in force for two years it is not contestable upon the grounds of misrepresentation alone; such policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(D) No long-term care insurance policy or certificate may be field issued based on medical or health status. For purposes of this section, “field issued” means a policy or certificate issued by an agent or a third-party administrator pursuant to the underwriting authority granted to the agent or third party administrator by an insurer.

(E) If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer in the event that the policy or certificate is rescinded.

(F) In the even of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In this situation, the remaining death benefits under these policies shall be governed by Section 3923.04 of the Revised Code. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.

d. Add a new section 3923.442

Purpose

Section 8 of the Model Act regarding nonforfeiture benefits should be added to Ohio law.

Proposed change

Add a new section 3923.442 to the Revised Code to read as follows:

3923.44.2 Nonforfeiture Benefits

(A) Except as provided in division (B) of this section, a long-term care insurance policy may not be delivered or issued for delivery in this state unless the policyholder or certificateholder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. In the event the policyholder or certificateholder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period of time following a substantial increase in premium rates.

(B) When a group long-term care insurance policy is issued, the offer required in division (A) of this section shall be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in division (D)(4) of Section 3923.41 of the Revised Code, other than to a

continuing care retirement community or other similar entity, the offering shall be made to each proposed certificateholder.

(C) The superintendent may promulgate rules specifying the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits, and the rules regarding contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse as described in division (A) of this section.

e. Amend 3923.47

Purpose

Ohio law should be clear that the superintendent may adopt rules to implement a LTC Partnership Program.

Proposed change

Amend 3923.46 as follows:

3923.47 Rules.

The superintendent of insurance shall, pursuant to Chapter 119 of the Revised Code, adopt rules to carry out the purposes of sections 3923.41 to 3923.48 of the Revised Code. The superintendent may adopt rules, pursuant to Chapter 119 of the Revised Code, related to a state long-term care partnership program.

2. Ohio law should be amended to require that agents selling Partnership policies are trained in accordance with Federal law.

a. Add a new section 3923.443

Purpose

Federal law requires that agents selling Partnership policies receive training and demonstrate evidence of understanding of Partnership policies and how they relate to other public and private LTC coverage. The NAIC developed a model provision to implement this requirement, contained in Section 9 of the Model Act as adopted by the NAIC in December of 2006. The following amendment is based on the NAIC model provision modified to be consistent with Ohio's agent training laws.

Proposed change

Add a new section 3923.443 to the Revised Code to read as follows.

3923.44.3 Producer Training Requirements

(A)(1) An individual may not

- (i) sell, solicit or negotiate long term care partnership program insurance, or
- (ii) sell, solicit or negotiate any type of long term care insurance after June 30, 2008,

unless the individual is licensed as an insurance agent for accident and health insurance and has completed a minimum eight hour initial training course.

(2) An agent may not continue to sell, solicit or negotiate any long-term care insurance unless the agent completes a minimum of four hours of ongoing training during every twenty-four month continuing education period as set forth in section 3905.481 of the Revised Code.

(3) The initial and ongoing training shall meet the requirements set forth in division (B) of this section.

(4) The training requirements of division (B) of this division may be approved as continuing education courses under sections 3905.481 to 3905.486 of the Revised Code and any administrative rules adopted thereunder.

(B)(1) The initial training required by this section shall be no less than eight hours and the ongoing training required by this section shall be no less than four hours.

(2) The training required under division (B)(1) of this section shall consist of combined topics related to long-term care insurance, long-term care services and state long-term care insurance partnership programs, including, but not limited to:

(a) State and federal regulations and requirements and the relationship between state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid;

(b) Available long-term care services and providers;

(c) Changes or improvements in long-term care services or providers;

(d) Alternatives to the purchase of private long-term care insurance;

(e) The effect of inflation on benefits and the importance of inflation protection; and

(f) Consumer suitability standards and guidelines.

(3) The training required by this section shall not include training that is insurer or company product specific or that includes any sales or marketing information, materials, or training, other than those required by state or federal law.

(C)(1) Insurers shall obtain verification that an agent receives the training required by this section before the agent is permitted to sell, solicit or negotiate the insurer's long term care partnership insurance products, or any type of long-term care insurance product after June 30, 2008. Insurers shall also obtain verification that an agent has completed ongoing training required by this section. The insurer shall maintain records of such verification, and make that verification available to the superintendent upon request.

(2) Insurers shall maintain records with respect to the training of its agents concerning the distribution of its partnership program policies that will allow the superintendent to provide assurance to the state Medicaid agency that agents have received the training contained in division (B)(2)(a) of this section as required by division (A) of this section and that agents have demonstrated an understanding of the partnership program policies and their relationship to public and private coverage of long term care, including Medicaid, in this state. These records shall be made available to the commissioner upon request.

(D) The satisfaction of these training requirements in any state shall be deemed to satisfy the training requirements in this state.