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STATE OF NEW
JERSEY
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PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington and Camden)

SYNOPSIS

"Long-Term Care Partnership Program Act"; establishes Long-Term Care Partnership Program in DHSS.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

AN ACT establishing the Long-Term Care Partnership Program and supplementing Title 26 of the Revised Statutes and Title 17B of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Long-Term Care Partnership Program Act."

2. The Legislature finds and declares that:

a. About half of all women and about a third of all men over 65 years of age will need nursing home care at some point in their lives, with even more needing home and community-based care; and currently, some 40% of those using long-term care services are between 18 and 64 years of age;

b. Purchasing private long-term care insurance enables the insured person to remain in control of that individual's assets at the time that the person needs long-term care and increases the person's chances of receiving the type of long-term care that the person wants, whether in a nursing home or in the person's own residence, while helping that person to retain the dignity and independence that comes from having the ability to choose the kind of care that the person receives;

c. In 1988, The Robert Wood Johnson Foundation began funding the Partnership for Long-Term Care, a public-private alliance between state governments and insurance companies, to create long-term care insurance programs in the various states; and the states of California, Connecticut, Indiana and New York have since established their own partnership programs;

d. The partnership programs established in these four states combine private long-term care insurance with special Medicaid eligibility standards and provide an incentive for insurers to offer high quality products and for consumers to protect themselves from the high cost of long-term care;

e. Policy sales in these four states indicate a steadily growing interest in the purchase of public-private long-term care insurance and suggest that, when given the opportunity, consumers are willing to protect themselves against long-term care costs;

f. The partnership programs in California, Connecticut, New York and Indiana were established prior to the federal "Omnibus

Budget Reconciliation Act of 1993," Pub.L.103-66, known as OBRA '93, which requires that all states pursue liens and recoveries from the estates of Medicaid recipients who received long-term care services;

g. The effect of OBRA '93 was to nullify the asset protection feature of the partnership programs for other states such as New Jersey that might wish to replicate these programs, since the programs established prior to OBRA '93 were permitted to continue as developed but additional states could not offer the asset protection incentive;

h. The establishment by New Jersey of a long-term care partnership program with asset protection features similar to those in the above four states, subject to the enactment of federal legislation to repeal the restrictions to asset protection contained in OBRA '93, could stimulate the development of an expanded private long-term care insurance market in this State, which would relieve financial pressure on the Medicaid program associated with funding long-term care, while also protecting many elderly and disabled persons who would otherwise deplete their life savings paying for long-term care in order to qualify for Medicaid coverage of their long-term care costs; and

i. It is, therefore, in the public interest to provide statutory authorization for a long-term care partnership program in New Jersey in anticipation of federal legislative action that would accommodate the establishment of such a program in this State.

3. As used in sections 1 through 5 of this act:

"Approved long-term care insurance policy" means a policy as defined in section 4 of the "New Jersey Long-Term Care Insurance Act," P.L.2003, c.207 (C.17B:27E-4), which includes at least the following, in accordance with such requirements as the commissioner may establish, in consultation with the Commissioner of Banking and Insurance: coverage in the amount of at least \$150,000 for long-term care expenses for a period of at least three years, with this amount to be periodically adjusted for inflation by the commissioner, or coverage that provides an automatic annual benefit inflation of at least 5% as long as the policy is in force; coverage for home and community-based care; a minimum daily long-term care benefit; the provision by the insurer of records and reports of benefits paid that count towards asset disregard; and the maintenance by the insurer of a management information system

that documents the extent of asset disregard and evaluates the results of the program.

"Asset disregard" means the disregard of a portion of certain assets owned by an individual that the individual may retain and still qualify for benefits under Medicaid if the individual, at the time of application for Medicaid, is: the beneficiary of an approved long-term care insurance policy; has exhausted the benefits of that policy; and meets any other requirements established by the commissioner with respect to asset disregard in order to effectuate the purposes of this act.

"Commissioner" means the Commissioner of Health and Senior Services.

"Medicaid" means the program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

"Program" means the Long-Term Care Partnership Program established pursuant to this act.

4. a. The commissioner shall establish the Long-Term Care Partnership Program in the Department of Health and Senior Services in consultation with the Commissioner of Banking and Insurance.

b. The objectives of the program shall be to:

(1) provide incentives for individuals to insure against the costs of providing for their long-term care needs;

(2) provide a mechanism for individuals to qualify for coverage of the cost of meeting their long-term care needs under Medicaid without first being required to substantially exhaust their resources;

(3) provide counseling services to individuals planning for their long-term care needs; and

(4) alleviate the financial burden on Medicaid by encouraging individuals to purchase private long-term care insurance.

5. a. In accordance with the provisions of subsection b. of this section, certain resources of an individual who has exhausted an approved long-term care insurance policy shall be excluded as a resource in determining any of the following:

(1) eligibility for Medicaid;

(2) the amount of any payment by Medicaid; or

(3) any subsequent recovery by the State of a payment by Medicaid or any other State program.

b. (1) The provisions of subsection a. of this section are subject to: the enactment of federal legislation to repeal the restrictions to asset protection contained in the "Omnibus Budget Reconciliation Act of 1993," Pub.L.103-66, 107 Stat. 312; and the receipt of federal approval for such asset disregard as the program seeks to provide.

(2) The program shall provide asset disregard pursuant to subsection a. of this section for an individual who has purchased an approved long-term care insurance policy that is delivered, issued for delivery or renewed after December 31, 2005. The commissioner shall count insurance benefits provided under an approved long-term care insurance policy toward asset disregard to the extent that the payment of those benefits is for the following:

(a) the lower of the actual charge or the amount paid by the insurer;

(b) nursing home care or formal long-term care services provided to an insured in the community; and

(c) services provided after the individual meets coverage requirements for long-term care insurance benefits established by the commissioner.

(3) (a) A beneficiary of an approved long-term care insurance policy shall be eligible for Medicaid in accordance with the asset disregard provisions of this subsection.

(b) If the program is discontinued, a person who purchased an approved long-term care insurance policy prior to the date that the program is discontinued shall be eligible for Medicaid in accordance with the asset disregard provisions of this subsection.

(4) The commissioner may enter into a reciprocal agreement with any other state to extend the asset disregard provisions of this act to residents of this State who purchased an approved long-term care insurance policy in another state which has an asset disregard program that is substantially similar to that established under this act.

6. a. Subsequent to implementation of the program in accordance with the enactment of federal legislation and the receipt of federal approval as described in section 5 of this act, the commissioner, in consultation with the Commissioner of Banking and Insurance, shall

annually report to the Governor and the Legislature on the effectiveness of the program in meeting its objectives as set forth in section 4 of this act.

b. The commissioner shall include in the report at least the following information:

(1) an assessment of the success or difficulty in implementing or operating the program, as applicable;

(2) the number of approved long-term care insurance policies delivered or issued for delivery in the State;

(3) the number of persons seeking information about the program;

(4) the extent and type of benefits paid under approved long-term care insurance policies which could count toward asset disregard;

(5) an estimate of the present and future impact on asset disregard under the program;

(6) an assessment of the cost-effectiveness of the program; and

(7) a determination regarding the appropriateness of continuing the program.

7. The Commissioner of Banking and Insurance shall require that a policy as defined in section 4 of P.L.2003, c.207 (C.17B:27E-4), which is delivered or issued for delivery in this State on or after the effective date of this act, contain a notice to the insured, on a form and in a manner prescribed by the commissioner, of the asset disregard and asset test provisions set forth in statute or regulations with respect to eligibility for medical assistance pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

8. The Commissioner of Health and Senior Services shall adopt regulations, in consultation with the Commissioner of Banking and Insurance and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and shall seek an amendment to the State Medicaid plan, to effectuate the purposes of this act only after the enactment of federal legislation as described in subsection b. of section 5 of this act.

9. This act shall take effect on the 90th day after enactment.

STATEMENT

This bill establishes the Long-Term Care Partnership Program in the Department of Health and Senior Services.

The objectives of the program are to:

(1) provide incentives for individuals to insure against the costs of providing for their long-term care needs;

(2) provide a mechanism for individuals to qualify for coverage of the cost of meeting their long-term care needs under Medicaid without first being required to substantially exhaust their resources;

(3) provide counseling services to individuals planning for their long-term care needs; and

(4) alleviate the financial burden on Medicaid by encouraging individuals to purchase private long-term care insurance.

The bill provides specifically as follows:

C Certain resources of an individual who has exhausted an approved long-term care insurance policy are to be excluded as a resource in determining any of the following:

-- eligibility for Medicaid;

-- the amount of any payment by Medicaid; or

-- any subsequent recovery by the State of a payment by Medicaid or any other State program.

C The asset disregard provisions of the bill are subject to: the enactment of federal legislation to repeal the restrictions to asset protection contained in the "Omnibus Budget Reconciliation Act of 1993" (Pub. L.103-66); and the receipt of federal approval for such asset disregard as the program seeks to provide.

C The program is to provide asset disregard for an individual who has purchased an approved long-term care insurance policy that is delivered, issued for delivery or renewed after December 31, 2005. The Commissioner of Health and Senior Services is to count insurance benefits provided under an approved long-term care insurance policy toward asset disregard to the extent that the payment of those benefits is for the following:

-- the lower of the actual charge or the amount paid by the insurer;

-- nursing home care or formal long-term care services provided to an insured in the community; and

-- services provided after the individual meets coverage requirements for long-term care insurance benefits established by the commissioner.

- C A beneficiary of an approved long-term care insurance policy is to be eligible for Medicaid in accordance with the asset disregard provisions of the bill; and, if the program is discontinued, a person who purchased an approved long-term care insurance policy prior to the date that the program is discontinued will be eligible for Medicaid in accordance with those asset disregard provisions.
- C Subsequent to implementation of the program in accordance with the enactment of federal legislation and the receipt of federal approval as described in the bill, the Commissioner of Health and Senior Services, in consultation with the Commissioner of Banking and Insurance, is to annually report to the Governor and the Legislature on the effectiveness of the program in meeting its objectives as set forth in the bill.
- C The Commissioner of Banking and Insurance is to require that a policy as defined in the "New Jersey Long-Term Care Insurance Act," which is delivered or issued for delivery in this State on or after the effective date of the bill, contain a notice to the insured, on a form and in a manner prescribed by the commissioner, of the asset disregard and asset test provisions set forth in statute or regulations with respect to Medicaid eligibility.
- C The Commissioner of Health and Senior Services is to adopt regulations, in consultation with the Commissioner of Banking and Insurance and pursuant to the "Administrative Procedure Act" (N.J.S.A.52:14B-1 et seq.), and to seek an amendment to the State Medicaid plan, to effectuate the purposes of the bill only after the enactment of federal legislation as described in the bill.
- C The bill takes effect on the 90th day after enactment.