

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
House Committee Substitute #2 Favorable 6/21/10

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



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

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

7 **(2)** Provide counseling services to individuals planning for their long-term care
8 needs.

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

11 **(c)** Under the Partnership Program, the Department shall:

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

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

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

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 Partnership Disclosure Notice detailing in plain language the current law
29 pertaining to the 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)** G.S. 108A-70.5 applies to the estate of an individual who received benefits under a
35 qualified long-term care partnership policy."

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

37 **"§ 108A-70.5. Medicaid Estate Recovery Plan.**

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

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

45 **(1)** ~~"Medical assistance" means medical~~ Medical assistance. – Medical care
46 services paid for by the North Carolina Medicaid Program on behalf of the
47 recipient:

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

- 1 b. If the recipient is 55 years of age or older and is receiving one or
2 more of the following medical care services:
3 1. Nursing facility services.
4 2. Home and community-based services.
5 3. Hospital care.
6 3a. Prescription drugs.
7 4. Personal care services.
8 5 through 9. Repealed by Session Laws 2007-442, s. 1,
9 effective August 23, 2007.

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

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

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

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

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

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

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

38 "Part 2. Long-Term Care Partnership.

39 **"§ 58-55-55. Definitions.**

40 The following definitions apply in this section:

- 41 (1) Asset. – Resources and income.
42 (2) Department. – The Department of Health and Human Services.
43 (3) Division. – The Division of Medical Assistance.
44 (4) Estate recovery. – The placing of a statutory claim on the estate of a
45 deceased Medicaid recipient, as provided by G.S. 108A-70.5.
46 (5) Medicaid. – The federal medical assistance program established under Title
47 XIX of the Social Security Act.
48 (6) Qualified long-term care partnership policy or qualified policy. – A
49 long-term care insurance policy approved for use in North Carolina and that
50 meets all the requirements of the federal Deficit Reduction Act of 2005, P.L.
51 109-171.

- 1 (7) Resource. – Cash or its equivalent and real or personal property that is
2 available to an applicant or recipient.
3 (8) Resource disregard. – The amount of resources of an applicant for long-term
4 care Medicaid that is equal to the amount of benefits paid to the applicant
5 under a qualified long-term care partnership policy.
6 (9) Resource protection. – An amount equal to the resource disregard given to a
7 Medicaid recipient during the long-term care Medicaid eligibility
8 determination process.

9 **"§ 58-55-60. Qualified long-term care partnership policy.**

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

- 13 (1) The policy meets the requirements for a qualified long-term care insurance
14 contract, as defined in section 7702B of the Internal Revenue Code of 1986
15 (26 U.S.C. § 7702B(b)).
16 (2) The effective date of the coverage is on or after January 1, 2011, or 60 days
17 after approval of the Medicaid State Plan amendment, whichever is later.
18 (3) The policy covers an insured who was a resident of North Carolina or
19 another reciprocal partnership state when coverage first became effective
20 under the policy.
21 (4) The policy meets the federal consumer protection requirements of section
22 1917(b) of the Social Security Act as amended by section 6021(a) of the
23 Deficit Reduction Act of 2005, P.L. 109-171 of the Social Security Act (42
24 U.S.C. § 1396p(b)(5)(A)).
25 (5) The policy is issued with and retains inflation protection coverage which
26 meets the inflation standards based on the insured's then attained age as
27 defined in sub-subdivisions a., b., and c. below:
28 a. Policies or certificates issued to an individual who is under 61 years
29 old must provide compound annual inflation protection.
30 b. Policies or certificates issued to an individual who is 61 to 76 years
31 old must provide some level of inflation protection. This may include
32 simple interest or compound inflation protection.
33 c. For purchasers 76 years old or older, inflation protection may be
34 offered but is not required.

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

- 40 (6) The policy states that it is intended to be a qualified long-term care insurance
41 policy as defined in section 7702B(b) of the Internal Revenue Code of 1986.
42 (7) A qualified policy issued, executed, and delivered in North Carolina shall be
43 accompanied by a Partnership Disclosure Notice explaining the benefits
44 associated with a qualified policy and indicating that at the time issued, the
45 policy is a qualified long-term care insurance partnership policy in North
46 Carolina. The Partnership Disclosure Notice shall also include a statement
47 indicating that by purchasing this partnership policy, the insured does not
48 automatically qualify for Medicaid. Notices providing additional information
49 may be used in conjunction with the Partnership Disclosure Notice described
50 in this section if filed and approved by the Commissioner. The Notice shall
51 state the following in at least 12-point font:

1
2 "Partnership Policy Status: Your long-term care insurance policy is intended
3 to qualify as a Partnership Policy under the North Carolina Long-Term Care
4 Partnership Program as of your policy's effective date. For Medicaid
5 applicants applying for help with the cost of long-term care, this means that
6 an amount of your resources equal to the dollar amount of long-term care
7 insurance benefits paid to you or on your behalf under this policy may be
8 disregarded for purposes of determining your eligibility for long-term care
9 Medicaid and from any subsequent recovery by the State from your estate
10 for payment of Medicaid paid services. The amount that may be disregarded
11 at eligibility will be equal to the amount of the long-term care partnership
12 benefits paid out prior to the time you apply for long-term care Medicaid. As
13 a result, you may qualify for coverage of the cost of your long-term care
14 needs under Medicaid without first being required to substantially exhaust
15 your personal resources. The amount that may be protected from recovery by
16 the State from your estate will be equal to the amount disregarded for
17 purposes of eligibility for long-term care Medicaid. If you are already a
18 recipient of long-term care Medicaid, this policy will not allow a resource
19 disregard or estate recovery resource protection. The purchase of a
20 Partnership Policy does not automatically qualify you for Medicaid.

21
22 Please note that this policy may lose long-term care partnership program
23 status if you move to a different state that does not recognize North
24 Carolina's Long-Term Care Partnership Program or you modify this policy
25 after issuance. This policy may also lose long-term care partnership program
26 status due to changes in federal or state laws.

27
28 If you have questions regarding long-term care insurance and the North
29 Carolina Long-Term Care Partnership Program, you may contact the
30 Seniors' Health Insurance Information Program of the Department of
31 Insurance at 1-800-443-9354."

32
33 In the case of a group insurance contract, this Partnership Disclosure Notice
34 shall be provided to the insured upon the issuance of the certificate. The
35 insurer shall include in that Notice that the amount of the insured's resources
36 that may be disregarded at eligibility will be equal to the amount of qualified
37 long-term care partnership policy benefits paid prior to the time the insured
38 applied for long-term care Medicaid. The insurer shall also include in the
39 notice a warning to the insured that the policy may lose long-term care
40 partnership program status if the insured moves to another state that does not
41 recognize North Carolina's Long-Term Care Partnership Program, or if the
42 policy is modified after issuance.

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

48 **"§ 58-55-65. Compliance with federal regulations.**

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

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

4 **(c)** The long-term care partnership provisions required of the Deficit Reduction Act of
5 2005, including subsequent amendments and editions, are hereby incorporated into Article 55
6 of Chapter 58 of the General Statutes.

7 **"§ 58-55-70. Disclosure notices.**

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

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

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

18 **"§ 58-55-75. Exchange of long-term care policies for long-term care partnership policies.**

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

34 **"§ 58-55-80. Information sharing.**

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

38 **(1)** Share information, including identifying information, related to the
39 long-term care partnership program with other state and federal agencies, the
40 National Association of Insurance Commissioners, and any entity
41 contracting with the federal government under the program.

42 **(2)** Receive information, including identifying information, related to the
43 long-term care partnership program from other state and federal agencies,
44 the National Association of Insurance Commissioners, and any entity
45 contracting with the federal government under the program, and shall
46 maintain as confidential or privileged any identifying information received
47 with notice or the understanding that it is confidential or privileged under the
48 laws of the jurisdiction that is the source of the document, material, or
49 information. Information received under this subdivision of this subsection is
50 not a "public record" as defined in G.S. 132-1.

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

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

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

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

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