

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS15349-SHz-25A* (04/01)

Short Title: Implement LTC Partnership Program.

(Public)

Sponsors: Senators Swindell, Dorsett, Bingham, Forrester, and Queen.

Referred to:

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) As used in this section, the terms:

- (1) "Asset" means resources and income.
- (2) "Department" means the Department of Health and Human Services, Division of Medical Assistance.
- (3) "Estate recovery" means the placing of a statutory claim pursuant to G.S. 108A-70.5 on the estate of the deceased Medicaid recipient.
- (4) "Long-term care partnership policy" means a long-term care insurance policy approved by the North Carolina Department of Insurance as meeting all of the regulations and requirements of the model act promulgated by the National Association of Insurance Commissioners.
- (5) "Medicaid" means the federal medical assistance program established under Title XIX of the Social Security Act.
- (6) "Resource" means cash or its equivalent and/or real or personal property that is available to the applicant or recipient.
- (7) "Resource disregard" means the amount of resources owned by the long-term care Medicaid applicant that is equal to the amount of benefits paid by a long-term care partnership policy for the applicant which will not be counted when determining long-term care Medicaid eligibility.
- (8) "Resource protection" means an amount equal to the resource disregard given to the recipient at long-term care Medicaid eligibility that will be deducted from the total estate value at estate recovery.



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1 **(b)** Since the Deficit Reduction Act of 2005 repealed the restrictions to resource
2 protection contained in the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, 107 Stat.
3 312, there is established the North Carolina Long-Term Care Partnership Program to be
4 administered by the Department with assistance from the North Carolina Department of
5 Insurance. The North Carolina Long-Term Care Partnership Program shall:

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

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

11 **(3)** Alleviate the financial burden on the State's medical assistance program by
12 encouraging the pursuit of private insurance.

13 **(c)** In the case of an individual who has received benefits under a long-term care
14 partnership policy, an equal amount of resources shall not be considered by the Department
15 during the determination of the following:

16 **(1)** Eligibility for long-term care Medicaid.

17 **(2)** Any subsequent recovery by the State from a deceased recipient's estate for
18 payment of Medicaid paid services.

19 **(d)** The Department shall promulgate necessary rules and amendments to the State Plan
20 to allow for resource disregard at long-term care Medicaid eligibility determination and
21 resource protection at estate recovery. To provide resource disregards for purchases of a
22 long-term care partnership policy, the Department shall count insurance benefits paid under the
23 policy prior to the date of the first application for long-term care Medicaid made after the
24 implementation of the program toward resource disregard and resource protection to the extent
25 the payments are for covered services under the long-term care partnership policy.

26 **(e)** After 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 contain a
28 disclosure detailing in plain language the current law pertaining to resource disregard and
29 resource protection. A duplicate disclosure shall be given to the insured individual with the
30 delivery of the policy document.

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

35 **(g)** The Department and the Department of Insurance are authorized to adopt rules to
36 implement the provisions of this program for its administration.

37 **(h)** In the case of an individual who has received benefits under a long-term care
38 partnership policy, the provisions of G.S. 108A-70.5 remain in effect for purposes of estate
39 recovery, with the exception of the definition of "estate" under G.S. 108A-70.5(b)(2). In
40 accordance with Title XIX of the Social Security Act, 42 U.S.C. § 1396p(b)(4)(B), the
41 definition of "estate" for an individual who has received benefits under a long-term care
42 partnership policy includes any other real or personal property and other assets in which the
43 individual had any legal title or interest at the time of death (to the extent of such interest),
44 including such assets conveyed to a survivor, heir, or assign of the deceased individual through
45 joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement."

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

47 **"§ 108A-70.5. Medicaid Estate Recovery Plan.**

48 **(a)** There is established in the Department of Health and Human Services, the Medicaid
49 Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of 1993, to
50 recover from the estates of recipients of medical assistance an equitable amount of the State
51 and federal shares of the cost paid for the recipient. The Department shall administer the

1 program in accordance with applicable federal law and regulations, including those under Title
2 XIX of the Social Security Act, 42 U.S.C. § 1396(p).

3 (b) As used in this section:

4 (1) "Medical assistance" means medical care services paid for by the North
5 Carolina Medicaid Program on behalf of the recipient:

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

10 b. If the recipient is 55 years of age or older and is receiving one or
11 more of the following medical care services:

12 1. Nursing facility services.

13 2. Home and community-based services.

14 3. Hospital care.

15 3a. Prescription drugs.

16 4. Personal care services.

17 5 through 9. Repealed by Session Laws 2007-442, s. 1,
18 effective August 23, 2007.

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

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

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

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

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

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

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

47 "Part 2. Long-Term Care Partnership.

48 **"§ 58-55-55. Long-term care partnership.**

49 (a) A long-term care partnership policy is a long-term care insurance policy including a
50 certificate issued under a group insurance contract.

51 (b) A long-term care partnership policy must satisfy all of the following requirements:

- 1 (1) The policy must be a qualified long-term care insurance contract, as defined
2 in section 7702B of the Internal Revenue Code of 1986 (26 U.S.C.
3 §7702B(b)) and must provide insurance benefits on a reimbursement, case
4 benefit basis, indemnity insurance basis, or on a per diem or other periodic
5 basis.
- 6 (2) The effective date of the coverage is on or after January 1, 2011, or 60 days
7 after approval of the Medicaid State Plan amendment, whichever is later.
- 8 (3) The policy covers an insured who was a resident of North Carolina or
9 another state that has entered into a reciprocal agreement with North
10 Carolina when coverage first became effective under the policy.
- 11 (4) The policy meets the federal consumer protection requirements of section
12 1917(b)(5)(A) of the Social Security Act (42 U.S.C. §1396p(b)(5)(A). In
13 addition, the policy must:
- 14 a. Provide that the insurer will issue a 90-day notice prior to exhaustion
15 of a long-term care partnership policy. The notice shall instruct the
16 insured to go to his local department of social services to apply for
17 Medicaid.
- 18 b. Designate a third party who shall receive premium due notices in
19 addition to the insured, including the notice required in
20 sub-subdivision a. of this subdivision to prevent loss of benefits due
21 to nonpayment.
- 22 (5) The policy is issued with and retains inflation coverage which meets the
23 following inflation coverage limitations:
- 24 a. Policies or certificates issued to an individual who is under 61 years
25 old must provide compound annual inflation protection.
- 26 b. Policies or certificates issued to an individual who is 61 to 76 years
27 old must provide some level of inflation protection. This may include
28 simple interest or compound inflation protection.
- 29 c. For purchasers 76 years old or older, inflation protection may be
30 offered but is not required.
- 31 (6) The policy states that it is intended to be a qualified long-term care insurance
32 policy as defined in section 7702B(b) of the Internal Revenue Code of 1986.
- 33 (7) The policy is issued in North Carolina or issued for delivery in North
34 Carolina and shall include a "Partnership Status Disclosure Notice." The
35 notice shall state the following in at least 12-point font:
36 "At the time of issuance, this long-term care insurance policy qualifies as a
37 North Carolina Long-Term Care Partnership Program policy. For Medicaid
38 applicants applying for help with the cost of long-term care, this means that
39 an amount of your resources equal to the dollar amount of long-term care
40 insurance benefits paid to you or on your behalf under this policy may be
41 disregarded for purposes of determining your eligibility for long-term care
42 Medicaid. The amount that will be disregarded at eligibility will be equal to
43 the amount of the long-term care partnership benefits paid out prior to the
44 time you apply for long-term care Medicaid. As a result, you may qualify for
45 coverage of the cost of your long-term care needs under Medicaid without
46 first being required to substantially exhaust your personal resources. If you
47 are already a recipient of long-term care Medicaid, this policy will not allow
48 a resource disregard or estate recovery resource protection.
- 49
- 50 Please note that this policy may lose long-term care partnership program
51 status if you move to a different state that does not recognize North

1 Carolina's Long Term Care Partnership Program or you modify this policy
2 after issuance. This policy may also lose long-term care partnership program
3 status due to changes in federal or state laws.

4
5 If you have questions regarding long-term care insurance and the North
6 Carolina Long-Term Care Partnership Program, you may contact the
7 Seniors' Health Insurance Information Program of the Department of
8 Insurance at 1-800-443-9354."

9
10 In the case of a group insurance contract, such Notice shall be provided to
11 the insured upon the issuance of the certificate. The insurer shall include in
12 that notice that the amount of the insured resources that will be disregarded
13 at eligibility will be equal to the amount of long-term care partnership policy
14 benefits paid prior to the time the insured applied for long-term care
15 Medicaid. The insurer shall also include in the notice a warning to the
16 insured that the policy may lose long-term care partnership program status if
17 the insured moves to another state that does not recognize North Carolina's
18 Long-Term Care Partnership Program, or if the policy is modified after
19 issuance.

20 **"§ 58-55-56. Compliance with federal regulations.**

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

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

27 (c) The long-term care partnership provisions required of the Deficit Reduction Act of
28 2005, including subsequent amendments and editions, are hereby incorporated into Article 55
29 of Chapter 58 of the General Statutes.

30 **"§ 58-55-57. Disclosure notices.**

31 (a) Prior to an insured making a change to the policy that will result in the loss of
32 long-term care partnership status, the insurer shall provide to the policyholder a written
33 explanation of how such action impacts the insured and shall obtain the insured's signature
34 indicating consent to the change.

35 (b) If a long-term care partnership plan subsequently loses long-term care partnership
36 status, the insurer shall explain in writing to the policyholders the reason for the loss of status.

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

39 **"§ 58-55-58. Exchange of long-term care policies for long-term care partnership policies.**

40 A long-term care insurance policy that does not qualify as a long-term care partnership
41 policy and that was issued prior to January 1, 2011, or 60 days following approval of the
42 Medicaid State Plan amendment, whichever is later, shall be eligible for long-term care
43 partnership status if those policies meet the federal requirements of a long-term care
44 partnership policy. If an exchange occurs, the insurer shall notify the insured in writing that the
45 new long-term care partnership policy may be subject to underwriting criteria and premium
46 adjustment. The effective date of the long-term care partnership policy shall be the date the
47 policy was exchanged."

48 **SECTION 5.** Article 55 of Chapter 58 of the General Statutes is amended by
49 adding a new section to read:

50 **"§ 58-55-36. Information sharing.**

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

4 (1) Share information, including identifying information, related to the
5 long-term care partnership program with other state and federal agencies, the
6 National Association of Insurance Commissioners, and any entity
7 contracting with the federal government under the Program, provided that
8 the recipient agrees to maintain the confidentiality and privileged status of
9 the information.

10 (2) Receive information, including identifying information, related to the
11 long-term care partnership program from other state and federal agencies,
12 the National Association of Insurance Commissioners, and any entity
13 contracting with the federal government under the Program, and shall
14 maintain as confidential or privileged any identifying information received
15 with notice or the understanding that it is confidential or privileged under the
16 laws of the jurisdiction that is the source of the document, material, or
17 information.

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

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

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

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

28 **SECTION 6.** The Department of Health and Human Services and the Department
29 of Insurance may adopt rules to implement the Long-Term Care Partnership Program in North
30 Carolina.

31 **SECTION 7.** The Department of Health and Human Services shall pursue a
32 Medicaid State Plan amendment to allow the Long-Term Care Partnership Program to operate
33 in North Carolina.

34 **SECTION 8.** Sections 7 and 8 of this act are effective when they become law. The
35 remainder of this act becomes effective January 1, 2011, or 60 days after approval of the
36 Medicaid State Plan amendment, whichever is later.