

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

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. – A long-term care insurance policy approved for use in North Carolina and meeting all the requirements of the federal Deficit Reduction Act of 2005, P.L. 109-171.
- (7) Resource. – Cash or its equivalent and/or real or personal property that is available to an applicant or recipient.
- (8) Resource disregard. – The amount of resources owned by a long-term care Medicaid applicant that is equal to the amount of benefits paid to the applicant by a qualified long-term care partnership policy. This amount shall not be taken into consideration when determining the applicant's long-term care Medicaid eligibility.
- (9) Resource protection. – An amount equal to the resource disregard given to a Medicaid recipient during the long-term care Medicaid eligibility determination process. This amount shall be deducted from the total value of the estate for estate recovery purposes.



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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 the pursuit of private insurance.

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

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

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

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

24 **(e)** Effective January 1, 2011, or 60 days after approval of the Medicaid State Plan
25 amendment, whichever is later, a qualified long-term care partnership policy shall be
26 accompanied by a disclosure detailing in plain language the current law pertaining to the
27 Partnership Program, resource disregard, and resource protection.

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

32 **(g)** The Department and the Department of Insurance are authorized to adopt rules to
33 implement the provisions of the Partnership Program and to provide for its administration.

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

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

44 **"§ 108A-70.5. Medicaid Estate Recovery Plan.**

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

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

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

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

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

10 1. Nursing facility services.

11 2. Home and community-based services.

12 3. Hospital care.

13 3a. Prescription drugs.

14 4. Personal care services.

15 5 through 9. Repealed by Session Laws 2007-442, s. 1,
16 effective August 23, 2007.

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

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

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

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

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

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

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

45 "Part 2. Long-Term Care Partnership.

46 **§ 58-55-55. Definitions.**

47 The following definitions apply in this section:

48 (1) Asset. – Resources and income.

49 (2) Estate recovery. – The placing of a statutory claim on the estate of a
50 deceased Medicaid recipient, as provided by G.S. 108A-70.5.

- 1 (3) Medicaid. – The federal medical assistance program established under Title
2 XIX of the Social Security Act.
- 3 (4) Qualified long-term care partnership policy. – A long-term care insurance
4 policy approved for use in North Carolina and meeting all the requirements
5 of the federal Deficit Reduction Act of 2005, P.L. 109-171, that when issued
6 is determined by the issuing insurance company to meet the qualifications
7 for a partnership policy and includes the required disclosure of this
8 qualification.
- 9 (5) Resource. – Cash or its equivalent and/or real or personal property that is
10 available to an applicant or recipient.
- 11 (6) Resource disregard. – The amount of resources owned by a long-term care
12 Medicaid applicant that is equal to the amount of benefits paid to the
13 applicant by a qualified long-term care partnership policy. This amount shall
14 not be taken into consideration when determining the applicant's long-term
15 care Medicaid eligibility.
- 16 (7) Resource protection. – An amount equal to the resource disregard given to a
17 Medicaid recipient during the long-term care Medicaid eligibility
18 determination process. This amount shall be deducted from the total value of
19 the estate for estate recovery purposes.

20 **"§ 58-55-60. Qualified long-term care partnership policy.**

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

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

46 Notwithstanding the above, purchasers of qualified long-term care insurance
47 policies which meet partnership criteria may adjust their inflation protection
48 as they age. However, their policies shall maintain partnership status as long
49 as the inflation protection continues to meet the minimum requirements for
50 the insured's attained age.

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

13
14 "Partnership Policy Status: Your long-term care insurance policy is intended
15 to qualify as a Partnership Policy under the North Carolina Long-Term Care
16 Partnership Program as of your policy's effective date. For Medicaid
17 applicants applying for help with the cost of long-term care, this means that
18 an amount of your resources equal to the dollar amount of long-term care
19 insurance benefits paid to you or on your behalf under this policy may be
20 disregarded for purposes of determining your eligibility for long-term care
21 Medicaid. The amount that may be disregarded at eligibility will be equal to
22 the amount of the long-term care partnership benefits paid out prior to the
23 time you apply for long-term care Medicaid. As a result, you may qualify for
24 coverage of the cost of your long-term care needs under Medicaid without
25 first being required to substantially exhaust your personal resources. If you
26 are already a recipient of long-term care Medicaid, this policy will not allow
27 a resource disregard or estate recovery resource protection. The purchase of
28 a Partnership Policy does not automatically qualify you for Medicaid.

29
30 Please note that this policy may lose long-term care partnership program
31 status if you move to a different state that does not recognize North
32 Carolina's Long-Term Care Partnership Program or you modify this policy
33 after issuance. This policy may also lose long-term care partnership program
34 status due to changes in federal or state laws.

35
36 If you have questions regarding long-term care insurance and the North
37 Carolina Long-Term Care Partnership Program, you may contact the
38 Seniors' Health Insurance Information Program of the Department of
39 Insurance at 1-800-443-9354."

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

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

6 **"§ 58-55-65. Compliance with federal regulations.**

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

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

13 (c) The long-term care partnership provisions required of the Deficit Reduction Act of
14 2005, including subsequent amendments and editions, are hereby incorporated into Article 55
15 of Chapter 58 of the General Statutes.

16 **"§ 58-55-70. Disclosure notices.**

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

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

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

26 **"§ 58-55-75. Exchange of long-term care policies for long-term care partnership policies.**

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

42 **SECTION 5.** Article 55 of Chapter 58 of the General Statutes is amended by
43 adding a new section under Part 2 to read:

44 **"§ 58-55-80. Information sharing.**

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

48 (1) Share information, including identifying information, related to the
49 long-term care partnership program with other state and federal agencies, the
50 National Association of Insurance Commissioners, and any entity
51 contracting with the federal government under the program.

1 (2) Receive information, including identifying information, related to the
2 long-term care partnership program from other state and federal agencies,
3 the National Association of Insurance Commissioners, and any entity
4 contracting with the federal government under the program, and shall
5 maintain as confidential or privileged any identifying information received
6 with notice or the understanding that it is confidential or privileged under the
7 laws of the jurisdiction that is the source of the document, material, or
8 information.

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

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

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

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

19 **SECTION 6.** The Department of Health and Human Services and the Department
20 of Insurance may adopt rules to implement the North Carolina Long-Term Care Partnership
21 Program.

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

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