SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 14, 1998 Revised: ________ ________ ________ ________

Subject: Long-Term Care

	Analyst	Staff Director	Reference	Action
1.	Wilson	Wilson	GO	Favorable/CS
2.			WM	
3.				
4.				
5.				

I. Summary:

The bill directs the Division of State Group Insurance,, in concert with the Department of Elderly Affairs to design a long-term care plan for designated Florida and other public employees and their families. An unsalaried Long-Term Care Board of Trustees is created to govern the plan.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Long-term care insurance is defined by s. 627.9404, F.S., as an insurance policy or rider

> *. . . advertised, marketed, offered, or designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventible, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than in an acute care unit of a hospital.*

While state insurance regulatory provisions are relatively new, having been enacted 10 years earlier, the impetus for program development is even more recent. The interim report of the state's first study group on the subject[1] commissioned by the 1994 Legislature[2] suggested a

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[1]*Report of the Commission on Long-Term Care in Florida*, Tallahassee, FL: December 1, 1994.

[2]Chapter 94-357, *Laws of Florida*.

sustained and unmet need for such services in 10 years. In contrast to the above statutory definition of long-term care, the Commission proposed the following:

> *Long-term care is the provision of services, including health care, personal care, social services, and economic assistance, delivered over a sustained period of time in a variety of settings, ranging from a person's own home to institutional settings, to ensure quality of life for all persons, regardless of age.*[3]

The Report pointed to a more than 70 percent growth in the Florida population of persons older than age 85 and an almost ninefold gap between the levels of appropriated institutional care [$1.4 billion in FY 93] and community-based initiatives [$152 million]. The 1994 Report included a list of eleven guiding principles around which resources should be marshaled. It additionally contained five strategic actions for the implementation of operational activities. These areas included service delivery and system improvements; financing and personal asset protection; public education and citizen awareness; prevention; and technological improvements.

On March 1, 1995, the Commission issued an updated letter to the Governor and to legislative leaders and by December 15, 1995, it had prepared a third, larger report.[4] This report presented a statistical profile of the areas and constituencies which would be affected by long-term care services. The report identified some $1.7 billion in expenditures for services in then-appropriated state funds, nearly eighty percent of which was directed toward Medicaid nursing home patients. But it was also noted in the report that services that were then being provided were seriously compressed; there was a wider eligible population in need of long-term care. It advocated extension of long-term care to persons, regardless of age in a variety of institutional and residential situations, to those persons who were developmentally disabled and mentally ill, to persons who are presently being served in state facilities and nursing homes, and to acute, hospital-bound patients.

The 1995 Report attempted to produce some definitive projections of the cost of its recommendations through the year 2010. While noting some limitations affecting the generalization of its projections, the Commission offered nine different financial scenarios which arrayed assumptions on the supply of nursing home beds, the use of managed care, a moratorium on certificated beds, and an implicit inflation rate. Spread over four separate 5-periods, the projections produced a low range in 1995 dollars of $1.7 billion [$3.2 billion in year 2000] for services assisting 1+ activities of daily living to a high of $12.7 billion in the year 2010.

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[3] *Report*, p. 6.

[4] Commission on Long-Term Care in Florida, *Managing Florida's Future*, Tallahassee, FL:December 15, 1995.

In early 1996, supplemental data was released documenting additional financial costs and projections of need for long-term care in Florida.[5] Volume 3 of that report series noted the success achieved in the State of California through the marketing of long-term care insurance by the state's public employee pension plan. Over a 4-year period, the retirement plan had developed a package of benefits, issued a request for proposal, and created a market for long-term care insurance outside of traditional insurance regulatory systems with an apparent savings approaching thirty percent.

III. Effect of Proposed Changes:

Section 1. The committee substitute creates a *Florida Employee Long-Term Care Act.* The plan is to be developed by the Division of State Group Insurance in cooperation with Department of Elderly Affairs for all public employees of all units of government in the state, their families, and dependents whether related by blood or marriage. It is to be designed on an actuarially sound basis, with advice on its implementation having been solicited from public employers and employee representatives. The Division of State Group Insurance and the Department of Insurance shall provide advice on contractual provisions on plan administration and actuarial review. The plan may include self-insured or fully insured components. No existing powers of the Division under s. 110.123, F.S., shall be adversely affected by the act. The Division and the department shall enter into an interagency agreement refining their respective roles in the plan development.

The plan's contracted service providers shall be reviewed for their experience and qualifications and their capacity to undertake the business. Any professional administrator shall hold the plan harmless for any financial loss sustained by the plan for contract noncompliance.

The department and the division shall explore innovative financing and service delivery mechanisms which may involve coordination with other federal benefit programs to prevent plan members from having their personal resources depleted.

An unsalaried, seven-member Board of Trustees is also created with gubernatorial and legislative appointments to act as plan manager and to submit an annual report on plan activities.

The division shall contract with the State Board of Administration which will act as fund custodian and investment authority for the assets of the plan.

Section 2. The committee substitute is effective July 1, 1998, but stands repealed July 1, 1999. No contract may be awarded prior to July 1, 1999.

[5] Dunlop, B. and Lazarus W. *et. al*., *Long-Term Care in Florida*: *Needs, Costs, Forecasts and Program Infrastructure*, Vol. 1. Tallahassee, FL: February 24, 1996. Tucker R And Smither J, *Assessment of the Availability and Use of Assistive Technologies for the Disabled*, Vol. 2. Tallahassee, FL: February 24, 1996. Hardy M. And Meiners M, *Recreating Long Term Care: Balancing Cost and Quality*, Vol. 3. Tallahassee, FL: February 24, 1996.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Premium payment for the inclusion of public employees and their families in the plan would be individually determined by the public employer, either unilaterally or through labor agreements. These matters would be decided at the point of employment.

B. Public Records/Open Meetings Issues:

Confidentiality is already afforded personal health and medical records under present Florida and federal law.

C. Trust Funds Restrictions:

Senate Bill 2344 establishes a trust account for deposit of funds associated with this committee substitute.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Participating plan members would be charged a premium for the specific type of coverage selected. The premiums would be set on an actuarial basis on the basis of assumptions incorporated into the plan design.

B. Private Sector Impact:

There are private sector companies which have developed and marketed such products. Long-term care is a relatively new product with an active market in the State of California. One of the largest marketers of this type of coverage in the California Public Employees Retirement System [CalPERS]. That plan has developed a series of products for its more than one million active and retired public employee members which competes with similar policies sold by private companies in the insurance market. CalPERS aggressively markets its services and is the Nation’s largest state public pension plan with assets exceeding $128 billion as of January 1, 1998.

To the extent that the plan does not have to subscribe to all provisions of the insurance code it would enjoy a substantial competitive advantage over its private sector counterparts.

C. Government Sector Impact:

The Department of Elderly Affairs reports a fiscal impact of $315,013 and 3 FTEs. The agency proposes a loan from the General Revenue Fund for that above amount to be repaid at 5 percent simple interest.

Section 215.18, F.S., permits an interest-free loan from the treasury when a deficiency exists in a fund. The loan proceeds must be repaid by the end of the same fiscal year in which the loan was obtained.

When used in concert with a federally sanctioned "Miller Trust" which insulates personal assets from Medicaid depletion requirements, long-term care insurance can relieve public treasuries of costs now being fully experienced by taxpayers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The *Recreating Long-Term Care* Report, cited previously discussed the substantial savings which did accrue to the CalPERS products, in the order of 30 percent of premiums charged, when they were marketed outside of that state's insurance regulatory apparatus.

Section 624.02, F.S., defines "insurance" as ". . . a contract whereby one undertakes to indemnify another or pay or allow a specified amount or determinable benefit upon determinable contingencies." While the present text of the committee substitute does not use this term, the context and the nature of the benefit created under the committee substitute describe the long-term care program as insurance.

The definition of long-term care in Florida law is not the same as that defined by the Commission. The principal difference is that current statute exempts acute hospital care from the definition while the Commission's reports includes this level of care.

VIII. Amendments:

None.