HOUSE OF REPRESENTATIVES
COMMITTEE ON
Elder Affairs & Long Term Care
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 4283

RELATING TO: Long Term Care

SPONSOR(S): Committee on Elder Affairs & Long Term Care & Representative Peaden

COMPANION BILL(S): SB 2342

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) Elder Affairs & Long Term Care YEAS 6 NAYS 0
(2) Government Operations (W/D)
(3) Health & Human Services Appropriations (W/D)
(4)
(5)

I. FINAL ACTION STATUS:

Passed the Legislature. Chapter 98-400, L.O.F.

II. SUMMARY:

CS/HB 4283 creates the Florida Employee Long Term Care Plan and directs the Division of State Group Insurance and the Department of Elder Affairs (DOEA) to implement a self-funded or fully insured, voluntary, long-term-care plan for public employees and their families.

The bill provides for the appointment of a Board of Directors. The Division is authorized to contract with a third party administrator (TPA) to administer the Plan and is required to contract with the State Board of Administration to invest the funds.

No fiscal impact is projected at this time. The bill would take effect upon becoming a law.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Long term care in the context of long term care insurance generally includes three different levels of care:

> "Skilled nursing care" means nursing and rehabilitation services given by skilled health personnel on a daily basis, under the orders of a physician.
>
> "Intermediate care" means the same as skilled nursing, except that the procedures may be done on an occasional basis.
>
> "Custodial care" usually means assistance in the activities of daily living that can be provided by persons without medical skills.

The National Conference of State Legislatures said: "Long term care insurance is an emerging private financing mechanism for long term care services. Individuals not qualifying for Medicaid generally use their own assets until they are exhausted." Analysis of nursing home patients in Florida suggests that persons who enter a nursing facility as a private-pay patient typically deplete their personal resources in 60 to 90 days and must rely on Medicaid to pay for the remainder of their nursing home stay. Medicaid is also the payer source associated with the longest lengths of stay (AHCA Nursing Home Report, 1994).

Long term care insurance is still a reasonably young product in the market. Over the last ten years, the Government Accounting Office has reported problems with consumer fraud associated with the marketing and sale of this insurance. The Consumer Law Center provides extensive advice to persons considering the purchase of long term care insurance including a recommendation to seek legal advice before selecting a policy.

The value of any insurance policy to a policy holder is determined to some extent by how easily and how thoroughly the insurance policy pays for care that the consumer believes is needed. To this end, a thorough understanding of what level of impairment is needed to trigger coverage and who determines that level of impairment is essential, whether it is the consumer's private physician or a health care provider associated with the insurer.

In their 1995 report to the Legislature, the Commission on Long Term Care in Florida made the following recommendations regarding the development of a long term care system in the state.

- ♦ Encourage self-determination, ensuring that people make informed decisions about their care, and provide a variety of choices of quality care.
- ♦ Ensure people are allowed to make choices that reflect their personal needs and wishes.
- ♦ Encourage the support of family and informal caregivers and enable them to continue providing care.
- ♦ Encourage the use of public-private partnerships.

- Encourage personal and familial responsibility.

A consumer advocate writing on long term care insurance provided this analogy:

> Almost every home owner has fire protection insurance on his or her home, however, very few homeowners ever experience a fire. This is a classic case of insurance at its best: everyone pays a small premium and in return receives the assurance they will not bear the full burden of a rare catastrophe.

B. EFFECT OF PROPOSED CHANGES:

The bill would create a long term care expense benefit program for public sector employees, officers, both active and retired, of all branches and agencies of state and local government, or federal employees residing in the state, and their spouses, children, step-children, parents, and parent-in-law.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No grant of rule making authority is provided.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill would allow the Division of State Group Insurance to contract with the State Board of Administration for the investment of funds in the Plan's reserve fund.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. The Plan would be self-funded.

4. <u>Individual Freedom:</u>

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. <u>Family Empowerment:</u>

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapter 430.801, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. It is the intent of the Legislature that Division of State Group Insurance (Division) and DOEA implement a self-funded or fully insured, voluntary long-term care plan for public employees and their families. The bill specifies state, federal, and local government employees and officers who would be eligible to participate. The Division and DOEA are to enter into an interagency agreement defining the roles and responsibilities of each entity. Within prescribed limits, joint planning expenses are to be shared.

The Plan is exempted from chapter 624, the Insurance Code; chapter 626 related to Insurance Field Representatives and Operations; chapter 627 related to Insurance Rates and Contracts; and the rules of the Department of Insurance (DOI).

The Division and DOEA, in consultation with DOI and the Department of Management Services, is to contract for actuarial, professional administrator, and other services for the Plan. The Division and DOEA shall in consultation with public employees and unions and associations representing the state, university, local government, and other public employees establish and supervise the implementation and administration of a self-funded or fully insured long-term care plan entitled “Florida Employee Long-Term-Care Plan”.

The Division is required to consider a list of characteristics when contracting for a professional administrator including experience and expertise in administering group long term care insurance plans and:

- the entity’s demonstrated ability to adequately provide the covered services;
- the sufficiency of qualified staff in marketing, claims processing, record keeping, and underwriting;
- the entity’s accessibility to public employees and other qualified participants;
- the entity’s financial soundness and solvency.

This section requires that the contract between the Division and the professional administrator must hold the state harmless and indemnified for any financial loss caused by the failure of the professional administrator to comply with the contract.

The Division is to explore innovations in long term care financing and service delivery and consider their future inclusion in the Plan. Managed long term care and Medicaid eligibility asset protection based on the use of privately purchased long term care insurance are to be considered.

The Division and DOEA are directed to coordinate the marketing of the plan directly or through contract. Marketing expenses must be paid by the plan.

The Division is directed to contract with the State Board of Administration (SBA) to invest the funds in the Plan’s reserve fund.

A Board of Directors is created. It is composed of seven members who serve two year terms. The bill specifies how and who shall make the appointments.

The board of directors must prepare and submit annual reports, approve the appointment of an executive director, approve the terms of the department’s contract for a third party administrator and implement other policies and procedures as necessary. The annual report must be prepared with the assistance of an actuarial consultant and submitted to the Governor, the Senate President, the House Speaker, the Minority Leaders, and the DOEA Secretary.

Board members are prohibited from receiving a salary, but may be reimbursed for travel, per diem, and administrative expenses related to their duties. These expenses and costs must be borne by the plan. State funds cannot be used for board of directors related costs.

Section 2. This act takes effect upon becoming law.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The costs for this program are not determined at this time.

2. Direct Private Sector Benefits:

   The Plan will market itself to eligible persons as a way to manage the costs of long term care.

3. Effects on Competition, Private Enterprise and Employment Markets:

   N/A

D. FISCAL COMMENTS:

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

   N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

   N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

   N/A

VI. COMMENTS:

The state of California through their public employee's retirement system has developed a self-funded, long term care program. All public employees and retirees are eligible and more than one million persons are currently being served.

Issues to be considered when the Plan (or plans as in CalPERS) is developed include:

- What level of impairment triggers eligibility for the program?
- Who decides the enrollee is sufficiently impaired, his or her private physician or a Plan approved provider?
- Is inflation protection provided?
- Are all applicants automatically accepted? What would be a reason to exclude an applicant?
- Is coverage guaranteed renewable or can it be canceled?

The CalPERS comprehensive plan includes nursing home, assisted living, and home and community-based care. The premium varies with the person's age at the time of enrollment. A 30-year-old could expect to pay $30 per month and a 50-year-old $74. Waiting until age 70 to sign up increases the premium to $248 per month.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VIII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

Prepared by:	Legislative Research Director:
Melanie Meyer	Tom Batchelor, Ph.D.

FINAL RESEARCH PREPARED BY COMMITTEE ON Elder Affairs & Long Term Care:

Prepared by:	Legislative Research Director:
Melanie Meyer	Tom Batchelor, Ph.D.