SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Health and Human Services Appropriations Committee

BILL: CS/SB 1208

SPONSOR: Health Care Committee and Senator Peaden

SUBJECT: Florida Long-Term Care Partnership Program

DATE: April 22, 2005 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner	Wilson	HE	**Fav/CS**
2.	Johnson	Deffenbaugh	BI	**Favorable**
3.	Dull	Peters	HA	**Favorable**
4.				
5.				
6.				

I. Summary:

The committee substitute for SB 1208 directs the Agency for Health Care Administration (AHCA) to establish the Florida Long-term Care Partnership Program to provide incentives for individuals to purchase long-term care insurance. A person who participates in the partnership is able to qualify for coverage for the costs of long-term care under Medicaid without first being required to substantially exhaust or "spend-down" his or her assets. The amount of countable assets for purposes of determining eligibility for Medicaid would be reduced by $1 for each $1 of benefits paid by an individual's long-term care partnership program policy.

Prior to the next legislative session, AHCA is required to develop a plan for implementation of the Florida Long-Term Care Partnership Program in the form of recommended legislation. The bill would take effect upon becoming law, except that the amendments relating to Medicaid eligibility are effective contingent upon action by Congress to amend section 1917(b)(1)(c) of the federal Social Security Act.

This bill amends s. 409.905, Florida Statutes, and creates s. 409.9102, Florida Statutes, and one undesignated section of the Florida Statutes.

II. Present Situation:

Long-term Care

Long-term care (LTC) refers to a broad range of supportive medical, personal and social services needed by people who are unable to meet their basic living needs for an extended period of time. This may be caused by accident, illness or frailty. Such conditions include the inability to move about, dress, bathe, eat, use a toilet, medicate and avoid incontinence. Also, care may be needed

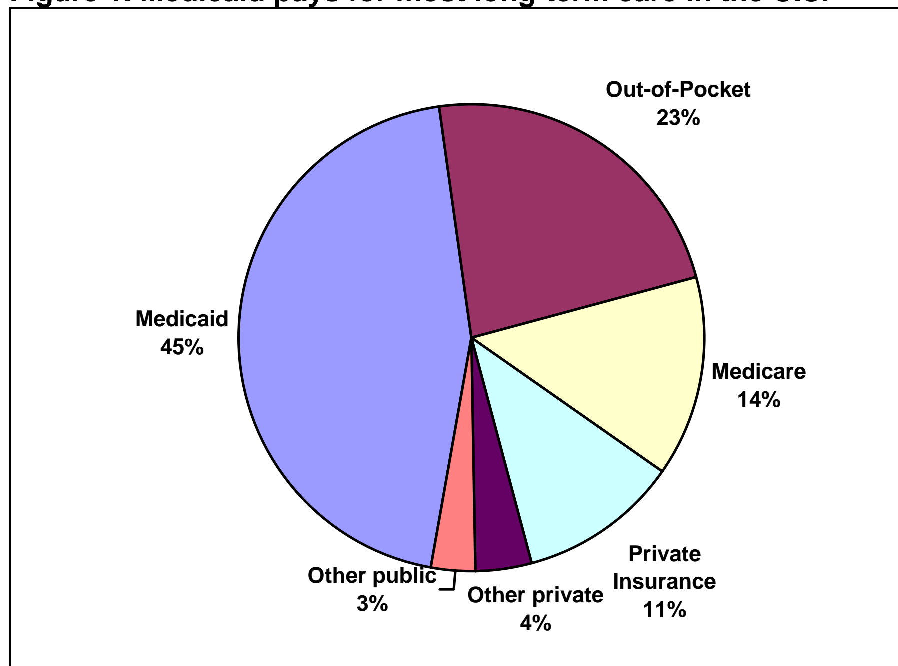
to help the disabled with household cleaning, preparing meals, shopping, paying bills, visiting the doctor, answering the phone and taking medications. Additional long-term care disabilities are due to cognitive impairment from stroke, depression, dementia, Alzheimer's disease, Parkinson's disease and other medical conditions that affect the brain.

It is estimated that, in 2005, approximately nine million men and women in the United States over the age of 65 will need LTC. By 2020, 12 million older Americans will need LTC. Most will be cared for at home (family and friends are the sole caregivers for 70 percent of the elderly). A study by the U.S. Department of Health and Human Services says that people who reach age 65 will likely have a 40 percent chance of entering a nursing home. About 10 percent of the people who enter a nursing home will stay there five years or more.[1]

Long-term Care Financing

Medicaid is now the primary payer of LTC services in the United States (see figure 1) and as a result, state and federal governments bear a tremendous financial burden for these services. Florida is particularly affected as it has the highest proportion of persons aged 65 to 84 of any state in the nation, and this population is expected to grow 130 percent by 2025. In FY 2002-03, Florida Medicaid spent $3.2 billion (or 28 percent of the Medicaid budget) on four core LTC services: nursing homes; Intermediate Care Facilities for Persons with Development Disabilities; Home and Community Based Services waivers; and assistive care services.[2] Florida Medicaid currently pays for 66 percent of all nursing home days for the frail elderly in Florida.

Figure 1. Medicaid pays for most long-term care in the U.S.



Source: United State General Accounting Office. GAO-02-544T. March, 2002.

[1] United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. March 2005.
[2] Agency for Health Care Administration. *Medicaid Long Term Care: Overview and Update*. Presentation to the Senate Health and Human Services Appropriations Committee. December 15, 2004.

Elderly individuals often believe, mistakenly, that Medicare pays for LTC costs. As a result, many individuals often find out too late that they must spend down the majority of their assets before gaining eligibility for Medicaid services. One way to prevent this from occurring is for individuals to purchase LTC insurance. In Florida, the Office of Insurance Regulation within the Financial Services Commission is responsible for the regulation of long-term care insurance policies.[3]

Although the LTC insurance market has grown rapidly over the past decade, LTC insurance pays for a very small share of nursing home care. According to the Health Insurance Association of America, the number of LTC insurance policies grew 21 percent between 1987 and 1997. Yet, the United States General Accounting Office reported that private LTC insurance accounted for just 11 percent of national LTC expenditures for the elderly in 2000.

The main reason for the low number of purchasers is the cost of LTC insurance policies. The average annual premium for a LTC policy for a 65-year old was $2,273 in 2001. Almost half of the U.S. population of persons 65 years of age and older have incomes below $21,570 (250 percent of the Federal Poverty Limit in 2002). As a result, most of these individuals would have to pay at least 10 percent of their annual income for LTC insurance.[4]

States have adopted three strategies to encourage younger persons to purchase private LTC insurance. First, states offer tax incentives to individuals or employers to purchase private LTC insurance. Tax deductions tend to be small and most likely won't constitute a significant savings for individuals or to the system. Second, many states offer or are in the process of offering LTC insurance to their employees, retirees, and on occasion parents and parents-in-law of employees. In these cases, employees pay all of the cost but states may offer fringe benefits. Finally, states are developing public/private partnerships to encourage people to purchase LTC insurance. Under these partnerships, people who purchase LTC insurance can keep more assets and still become eligible for Medicaid.

Long-Term Care Partnership Programs

The interests of the states in exploring ways to make private LTC insurance more appealing and affordable to the public encouraged the Robert Wood Johnson Foundation (RWJF) to launch an initiative that provided planning grants to selected states that demonstrated an interest in this issue.[5] California, Connecticut, Indiana, Massachusetts, New Jersey, New York, Oregon, and Wisconsin received support to define and develop a public-private insurance partnership to pay for LTC, although only four states ultimately implemented their public-private partnerships (California-1994, Connecticut-1992, Indiana-1993, and New York-1993).

With the help of the National Program Office, based at the University of Maryland Center on Aging, the states participating in the planning phase developed strategies to encourage the purchase of private insurance. The states recognized that to broaden the market for LTC insurance it was important both to decrease the cost of the policies and to increase their quality.

[3] Section 627.9407, F.S.
[4] Kassner, Enid. "Private Long-Term Care Insurance: The Medicaid Interaction." AARP Issue Brief. May 2004
[5] Meiners, Mark, Hunter McKay, and Kevin Mahoney. "Partnership Insurance: An Innovation to Meet Long-term Care Financing Needs in an Era of Federal Minimalism." *Journal of Aging & Social Policy*. 2002. Vol. 14, No. 3/4, pp. 75-93.

This is a special challenge, since increasing the quality of insurance policies generally increases the premium, which cuts down on the market. In the end, the key incentive to making the system work was a unique approach that allows people who purchase a state-certified LTC insurance “partnership” policy to get help from Medicaid without having to exhaust their assets.

Normally, when a LTC insurance policy runs out, policyholders risk having to spend virtually all their savings before qualifying for Medicaid. In contrast, when a partnership policy is exhausted, the policyholder is eligible for coverage under Medicaid without having to deplete previous savings. The details of the models differed from state to state. The most significant difference was between New York and the three other states.

In New York, partnership policies are required to pay three years of nursing home care, six years of home care, or some combination, after which all remaining assets are protected, known as the “total assets” model. A high priority of the New York approach is to offer middle- and upper-class seniors a viable alternative to giving away their assets and impoverishing themselves in order to qualify for Medicaid.

The underlying logic of this total-assets model is that the period of insurance is equal to or exceeds the time during which a person would be penalized by having to pay for long-term care if he or she had transferred assets in order to become eligible for Medicaid. When the program in New York began, this period was 30 months. Securing a three-year commitment to pay nursing home costs with private insurance would save the state money as compared to when someone is divested of his or her assets to receive Medicaid’s assistance.

California, Connecticut, and Indiana adopted a “dollar-for-dollar” model. In addition to serving as an alternative to transferring, it allows people to buy a policy that protects a specified amount of their assets. An individual with $50,000 in assets might buy $50,000 in insurance protection while another individual with $150,000 in assets might buy $150,000 in insurance protection. Payments for LTC by the insurance company are considered the equivalent of spending assets for the purpose of establishing Medicaid eligibility. Thus, a person who purchased a $75,000 policy would be able to keep $75,000 when he or she became eligible for Medicaid.

In later years, Indiana revised its program to include a hybrid approach intended to get the best of both asset-protection strategies. Up to a set amount of coverage (the dollar equivalent of four years in the average Indiana nursing home) the purchaser is eligible for dollar-for-dollar asset protection while getting Medicaid benefits. But those who buy a policy covering more than this amount will receive total-asset protection along with help from Medicaid once they use up their insurance.

As of December 31, 2003, a total of 180,531 partnership policies had been purchased and 148,405 of them were still in force. To put this into context, the partnership policies in force represent 1.5 to 5.7 percent of the elderly populations in these states. This is less than the nationwide rate of purchasing LTC insurance; according to a Health Insurance Association of

America report, about 5.8 million LTC insurance policies were in force in 2000, representing 16.6 percent of the nation's elderly population.[6]

Of the partnership policyholders, 2,057 have received benefits from their LTC policies and 89 policyholders have exhausted their benefits and accessed Medicaid (or have Medicaid applications pending). The partnership literature does not contain information on whether the 89 people using Medicaid would have likely spent down to Medicaid absent participation in the program. However, the data indicate that those participants who have needed Medicaid have made substantial contributions to their own care prior to accessing Medicaid. They have bought policies worth over $2.8 million, and spent down the rest of their assets before they were eligible for Medicaid services. Additional participants have purchased policies worth over $7 million (thus protecting at least the same amount of assets), and never accessed Medicaid (e.g., because they died before qualifying).

Barriers to Implementing Long-Term Care Partnership Programs

While every RWJF Partnership was enacted as a result of unanimous votes in the state legislatures, the opposition at the federal level resulted in legislation that grandfathered the four RWJF State Partnerships, but put restrictions on further replication. The Omnibus Budget Reconciliation Act of 1993 (OBRA) requires that any states implementing Partnership Programs after May 14, 1993, must recover assets from the estates of all persons receiving services under Medicaid. The result of this language is that, for replication states, the asset-protection component of the partnership is still in effect but only while the insured is alive. After the policyholder dies, those states must recover what Medicaid spent from the estate, including protected assets.

This provision in OBRA has had the effect of stifling interest in replicating the LTC partnership programs. Prior to passage of this legislation, interest in the partnership program had grown well beyond the four states funded by the Robert Wood Johnson Foundation. Sixteen states have passed legislation to implement a partnership when the OBRA restrictions are withdrawn or waived for the partnership. In 2005, the idea of expanding the LTC Partnership Program re-emerged at the national level. President Bush's proposed 2006 Budget includes a proposal to eliminate this disincentive on new programs.[7] If Congress acts to lift the disincentives on new partnerships, these states could move forward immediately. In addition, partnership and non-partnership states are in the process of designing a national partnership program, with reciprocity agreements among all participating states. This is intended to increase the portability of the partnership program. The National Governors Association has also made expanding the partnership program a priority.

III. Effect of Proposed Changes:

Section 1. Amends s. 409.905(8), F.S., to provide additional eligibility standards for nursing and rehabilitative services for an individual who is a beneficiary of an approved long-term care

[6] Ahlstrom, Alexis, Emily Clements, and Anne Tumlinson. "The Long-Term Care Partnership Program: Issues and Options." George Washington University School of Public Health and Health Services. 2004.
[7] *Major Savings and Reforms in the President's 2006 Budget*, February 11, 2005, pg. 191; available at http://www.whitehouse.gov/omb/budget/fy2006/pdf/savings.pdf

partnership program policy. If the individual has exhausted the benefits of the policy, the total countable assets of the individual must be reduced by $1 for each $1 of benefits paid out under the policy. This provision would allow a person to exempt assets in an amount equal to the benefits paid by a long-term care insurance policy.

Section 2. Creates s. 409.9102, F.S., to require AHCA to establish the Florida Long-Term Care Partnership Program; to establish standards for long-term care insurance policies for designation as approved long-term care partnership program policies in consultation with the Office of Insurance Regulation; to provide a mechanism for a person to qualify for Medicaid without first being required to substantially exhaust his or her resources; and to require AHCA to provide and approve long-term care partnership plan information distributed to individuals through insurance companies offering approved partnership policies. The Office of Insurance Regulation would retain regulatory authority over long-term care policy forms and rates.

Section 3. Requires AHCA to develop an implementation plan for the program in the form of legislative recommendations prior to the next legislative session in 2006.

Section 4. Provides that the Act will become effective upon becoming a law, except that the amendments relating to Medicaid eligibility are effective contingent upon action by Congress to amend section 1917(b)(1)(c) of the federal Social Security Act to delete the current "May 14, 1993," deadline for approval by states of long-term care partnership plans.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have the effect of stimulating the private long-term care insurance market, although the amount of economic growth cannot be determined at this time.

C. Government Sector Impact:

Agency for Health Care Administration (AHCA)

The fiscal impact to AHCA is indeterminate at this time, since the bill only requires an implementation plan to be submitted to the Legislature prior to the 2006 Regular Session. Implementation of the program would be contingent upon changes to the federal Social Security Act. If the Social Security Act is amended, there could be a fiscal effect on AHCA, since staff would be needed to design and implement the program and additional staff or contract funds would be required to provide counseling to individuals in planning for long term care needs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.