HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 377 Social Security Act
SPONSOR(S): Legg
TIED BILLS: **IDEN./SIM. BILLS:** SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	7 Y, 0 N	Walsh	Liem
2) Insurance Committee		Sayler	Cooper
3) Fiscal Council			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The aim of a long-term care partnership program is to foster a public/private alliance between state governments and insurance companies with the goal of reducing state expenditures for long-term care by encouraging individual purchase of long-term care insurance. Four states (New York, California, Connecticut and Indiana) worked with private insurers to develop long-term care products that provided quality coverage at a more affordable price than otherwise available, and that provided the purchaser special Medicaid eligibility standards once their private benefits were exhausted. Their programs were grandfathered-in when the Social Security Act was amended in 1993. Depending upon the particular partnership program, a person who purchased a designated amount of long-term care from a participating insurer in the partnership program would receive an equivalent amount of asset protection from Medicaid attachment.

Currently, Florida, like 44 other states, did not implement a long-term care partnership program prior May 14, 1993, were effectively dissuaded from doing so, because the asset protection benefits such a program provides was forbidden by Congress. A state can implement a modified long-term care partnership program that provides asset protection during the life of the covered individual. However, once they die, Medicaid must attach those protected assets to reimburse itself for the cost of Medicaid long-term care services provided. Since this effectively leaves the survivors in the same condition as having no long-term care coverage, there is no incentive for individuals to purchase private long-term care coverage.

This memorial requests the United States Congress to amend section 1917(b)(1)(C) of the Social Security Act, to delete “May 14, 1993” as the deadline for approval by states of long-term care partnership plans.
Then the citizens of Florida and other states would be able to create long-term care partnership programs that provide asset protection from Medicaid attachment.

Copies of the memorial are to be sent to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the Florida delegation to the U.S. Congress.

There is no fiscal impact from the memorial.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

If Congress were to amend section 1917(b)(1)(C) of the Social Security Act in order that the citizens of Florida and other states may participate in long-term care partnership programs, then:

Provide Limited Government – Floridian participation in a long-term care insurance partnership program could reduce Medicaid spending on long-term nursing facility services that the state currently provides for those without long-term care insurance coverage.

Safeguard Individual Liberty – As more elderly Floridians are able to purchase long-term care insurance through this partnership program, they will be able to preserve more their hard-earned personal assets and access Medicaid once their private LTC care is exhausted. As a result, more Floridians will be able to maintain a higher-standard of living in the final years of their life than Medicaid would normally allow. Once they die, Medicaid would not be able to attach these protected assets.

Promote Personal Responsibility – The asset protection that these partnership programs provide incentives to Floridians to purchase them. As more plans are purchased, this could reduce reliance on Medicaid for long-term care and save the state money.

Empower Families – Individuals (with income levels above that which Medicaid provides long-term care, but below that which make private long-term care insurance affordable) would be enabled to purchase long-term care from participating providers in this partnership program. Participation in this program will benefit the state as less Medicaid funds would need to be expended. It will also benefit families as there would be no need to spend hard-earned personal assets down to the level where Medicaid would provide assistance. As a result, more assets would likely remain for the surviving spouse or family members. Thus, families will be able to purchase private long-term care insurance from a partnership program while receiving some asset protection, if they spend through their long-term care policy limits and have to rely upon Medicaid.

B. EFFECT OF PROPOSED CHANGES:

Background[1]

Long-term Care

In 1988, the Robert Wood Johnson Foundation sponsored the Long-Term Care Partnership Program (Partnership) as a demonstration project.[2] Its aim was to foster a public/private alliance between state governments and insurance companies with the goal of reducing state expenditures for long-term care by encouraging individual purchase of long-term care insurance. Four states (New York, California, Connecticut and Indiana) worked with private insurers to develop long-term care products that provided quality coverage at a more affordable price than otherwise available, and that provided the purchaser special Medicaid eligibility standards once their private benefits were exhausted.

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,

[1] Background is substantially similar to the Senate Bill 1208 CS analysis, April 1, 2005.
[2] *See, generally*, University of Maryland Center on Aging, Partnership for Long Term Care, at www.hhp.umd.edu/AGING/PLTC; Ahlstrom, Alexis *et al.*, *The Long Term Care Partnership Program: Issues and Options*, The Brookings Institution, Washington, D.C., December 2004.

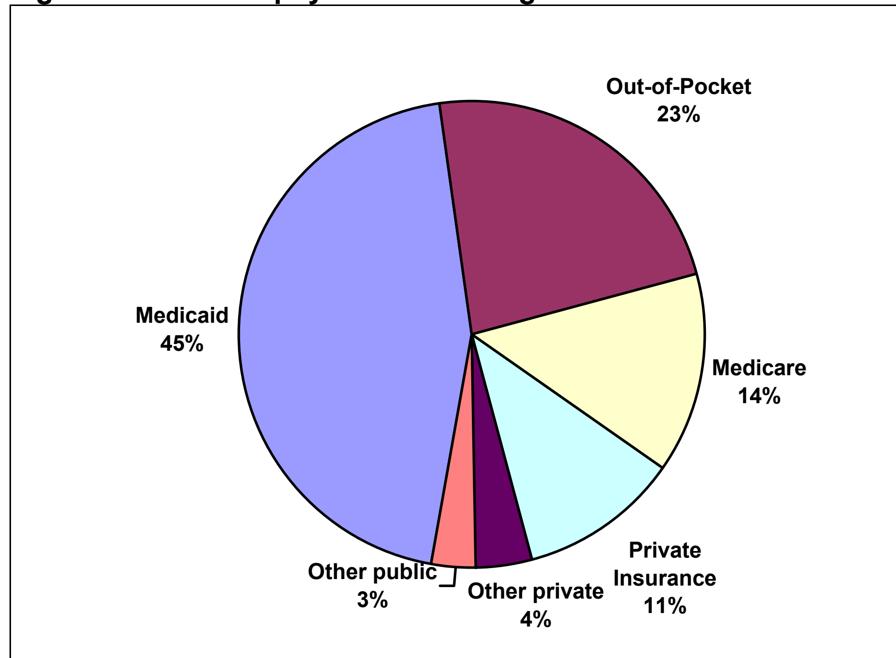
bathe, eat, use a toilet, medicate and avoid incontinence. Also, care may be needed to help the disabled with household cleaning, preparing meals, shopping, paying bills, visiting the doctor, answering the phone and taking medications. Additional long-term care disabilities are due to cognitive impairment 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.[3]

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.[4] 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.

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

[3] United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. March 2005.
[4] 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.

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.[5]

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.[6]

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.[7] 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. 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.

[5] Section 627.9407, F.S.
[6] Kassner, Enid. "Private Long-Term Care Insurance: The Medicaid Interaction." AARP Issue Brief. May 2004
[7] 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.

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.[8]

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

[8] 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.

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.[9] 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.

Effect of Proposed Changes

Currently, states, like Florida, that did not implement a long-term care partnership program prior to May 14, 1993, were effectively dissuaded from doing so, because the anticipated asset protection benefits are forbidden by Congress. A state can implement a modified long-term care partnership program that provides asset protection during the life of the covered individual. However, once they die, Medicaid must attach those protected assets to reimburse itself for the cost of Medicaid long-term care services provided. Since this effectively leaves the survivors in the same condition as having no long-term care coverage, there is no incentive for an individual to purchase private long-term care coverage.

This memorial requests the United States Congress to amend section 1917(b)(1)(C) of the Social Security Act, to delete "May 14, 1993" as the deadline for approval by states of long-term care partnership plans. Then the citizens of Florida and other states would be able to create long-term care partnership programs that provide asset protection from Medicaid attachment.

C. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

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[9] *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

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The memorial does not affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES