

By the Committees on Health and Human Services Appropriations;  
Health Care; and Senators Peaden and Fasano

603-2417-06

1                                   A bill to be entitled  
2           An act relating to long-term care coverage;  
3           reenacting and amending s. 409.9102, F.S.;  
4           directing the Agency for Health Care  
5           Administration, in consultation with the Office  
6           of Insurance Regulation and the Department of  
7           Children and Family Services, to amend the  
8           Medicaid state plan that established the  
9           Florida Long-Term Care Partnership Program for  
10          purposes of compliance with provisions of the  
11          Social Security Act; establishing a qualified  
12          state Long-Term Care Insurance Partnership  
13          Program in Florida; providing duties of the  
14          program; requiring consultation with the Office  
15          of Insurance Regulation and the Department of  
16          Children and Family Services for the creation  
17          of standards for certain information; providing  
18          rulemaking authority to the agency for  
19          implementation of s. 409.9102, F.S.; providing  
20          rulemaking authority to the department  
21          regarding determination of eligibility for  
22          certain services; creating s. 627.94075, F.S.;  
23          providing rulemaking authority to the Financial  
24          Services Commission for the implementation of a  
25          qualified state Long-Term Care Insurance  
26          Partnership Program in Florida; repealing ss. 1  
27          and 2 of ch. 2005-252, Laws of Florida, to  
28          delete conflicting provisions relating to the  
29          determination of eligibility for nursing and  
30          rehabilitative services and the establishment  
31          of the Florida Long-Term Care Partnership

1 Program that were contingent upon amendment to  
2 the Social Security Act; amending s. 4 of ch.  
3 2005-252, Laws of Florida, to delete a  
4 contingency in an effective date; requiring the  
5 Office of Program Policy Analysis and  
6 Government Accountability to submit a report on  
7 the implementation of a qualified state  
8 Long-Term Care Insurance Partnership Program in  
9 Florida to the Governor and Legislature;  
10 creating s. 627.94076, F.S.; requiring  
11 long-term care insurance policies to provide  
12 incontestability after a certain time period;  
13 providing an exception; amending s. 627.9403,  
14 F.S.; specifying that certain limited benefit  
15 policies are a type of long-term care insurance  
16 policy; deleting an exemption from a minimum  
17 time period coverage requirement for certain  
18 limited benefit policies; amending s. 627.9404,  
19 F.S.; revising definitions; amending s.  
20 627.9407, F.S.; revising certain restrictions  
21 on long-term care insurance policies; providing  
22 additional rate structure requirements for  
23 long-term care insurance policies; amending s.  
24 641.2018, F.S.; correcting a cross-reference;  
25 providing application; providing an  
26 appropriation; providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:  
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1 Section 1. Section 409.9102, Florida Statutes, as  
2 created by section 2 of chapter 2005-252, Laws of Florida, is  
3 reenacted and amended to read:

4 (Substantial rewording of section. See  
5 s. 409.9102, F.S., for present text.)

6 409.9102 A qualified state Long-Term Care Insurance  
7 Partnership Program in Florida.--The Agency for Health Care  
8 Administration, in consultation with the Office of Insurance  
9 Regulation and the Department of Children and Family Services,  
10 is directed to establish a qualified state Long-Term Care  
11 Insurance Partnership Program in Florida, in compliance with  
12 the requirements of s. 1917(b) of the Social Security Act, as  
13 amended.

14 (1) The program shall:

15 (a) Provide incentives for an individual to obtain or  
16 maintain insurance to cover the cost of long-term care.

17 (b) Provide a mechanism to qualify for coverage of the  
18 costs of long-term care needs under Medicaid without first  
19 being required to substantially exhaust his or her assets,  
20 including a provision for the disregard of any assets in an  
21 amount equal to the insurance benefit payments that are made  
22 to or on behalf of an individual who is a beneficiary under  
23 the program.

24 (c) Alleviate the financial burden on the state's  
25 medical assistance program by encouraging the pursuit of  
26 private initiatives.

27 (2) The Agency for Health Care Administration, in  
28 consultation with the Office of Insurance Regulation and the  
29 Department of Children and Family Services, and in accordance  
30 with federal guidelines, shall create standards for long-term  
31 care partnership program information distributed to

1 individuals through insurance companies offering approved  
2 long-term care partnership program policies.

3 (3) The Agency for Health Care Administration is  
4 authorized to amend the Medicaid state plan and adopt rules  
5 pursuant to ss. 120.536(1) and 120.54 to implement this  
6 section.

7 (4) The Department of Children and Family Services,  
8 when determining eligibility for Medicaid long-term care  
9 services for an individual who is the beneficiary of an  
10 approved long-term care partnership program policy, shall  
11 reduce the total countable assets of the individual by an  
12 amount equal to the insurance benefit payments that are made  
13 to or on behalf of the individual. The department is  
14 authorized to adopt rules pursuant to ss. 120.536(1) and  
15 120.54 to implement this subsection.

16 Section 2. Section 627.94075, Florida Statutes, is  
17 created to read:

18 627.94075 A qualified state Long-Term Care Insurance  
19 Partnership Program in Florida.--The commission may adopt  
20 rules pursuant to ss. 120.536(1) and 120.54 to implement  
21 applicable provisions of a qualified state Long-Term Care  
22 Insurance Partnership Program in Florida in accordance with  
23 the requirements of s. 1917(b) of the Social Security Act, as  
24 amended, any applicable federal guidelines, and any rules  
25 necessary to ensure program compliance by insurers as provided  
26 in s. 409.9102.

27 Section 3. Sections 1 and 2 of chapter 2005-252, Laws  
28 of Florida, are repealed.

29 Section 4. Section 4 of chapter 2005-252, Laws of  
30 Florida, is amended to read:

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1           Section 4. This act shall take effect upon becoming a  
2 law, ~~except that the amendments to section 409.905, Florida~~  
3 ~~Statutes, and the newly created section 409.9102, Florida~~  
4 ~~Statutes, provided in this act shall take effect contingent~~  
5 ~~upon amendment to section 1917(b)(1)(c) of the Social Security~~  
6 ~~Act by the United States Congress to delete the "May 14,~~  
7 ~~1993," deadline for approval by states of long term care~~  
8 ~~partnership plans.~~

9           Section 5. The Office of Program Policy Analysis and  
10 Government Accountability is directed to prepare a report on  
11 the implementation of a qualified state Long-Term Care  
12 Insurance Partnership Program in Florida. The report shall  
13 include data on the number and value of policies sold and the  
14 geographic areas in which the policies were purchased, a  
15 demographic description of the policyholders, and other  
16 information necessary to evaluate the program. The report  
17 shall be provided to the Governor, the President of the  
18 Senate, and the Speaker of the House of Representatives by  
19 January 31, 2009.

20           Section 6. Section 627.94076, Florida Statutes, is  
21 created to read:

22           627.94076 Time limit on certain  
23 defenses.--Notwithstanding the provisions of s. 627.607, each  
24 long-term care insurance policy shall provide that the policy  
25 shall be incontestable after it has been in force during the  
26 lifetime of the insured for a period of 2 years after its date  
27 of issue except for nonpayment of premiums.

28           Section 7. Section 627.9403, Florida Statutes, is  
29 amended to read:

30           627.9403 Scope.--The provisions of this part shall  
31 apply to long-term care insurance policies delivered or issued

1 | for delivery in this state, and to policies delivered or  
2 | issued for delivery outside this state to the extent provided  
3 | in s. 627.9406, by an insurer, a fraternal benefit society as  
4 | defined in s. 632.601, a health maintenance organization as  
5 | defined in s. 641.19, a prepaid health clinic as defined in s.  
6 | 641.402, or a multiple-employer welfare arrangement as defined  
7 | in s. 624.437. A policy which is advertised, marketed, or  
8 | offered as a long-term care policy and as a Medicare  
9 | supplement policy shall meet the requirements of this part and  
10 | the requirements of ss. 627.671-627.675 and, to the extent of  
11 | a conflict, be subject to the requirement that is more  
12 | favorable to the policyholder or certificateholder. The  
13 | provisions of this part shall not apply to a continuing care  
14 | contract issued pursuant to chapter 651 and shall not apply to  
15 | guaranteed renewable policies issued prior to October 1, 1988.  
16 | Any limited benefit policy that limits coverage to care in a  
17 | nursing home or to one or more lower levels of care required  
18 | or authorized to be provided by this part or by commission  
19 | rule is a type of long-term care insurance policy that must  
20 | meet all requirements of this part that apply to long-term  
21 | care insurance policies, except ss. 627.9407(3)(c), (9),  
22 | (10)(f), and (12) and 627.94073(2). ~~If the limited benefit~~  
23 | ~~policy does not provide coverage for care in a nursing home,~~  
24 | ~~but does provide coverage for one or more lower levels of~~  
25 | ~~care, the policy shall also be exempt from the requirements of~~  
26 | ~~s. 627.9407(3)(d).~~

27 |         Section 8. Subsections (1) and (7) of section  
28 | 627.9404, Florida Statutes, are amended to read:

29 |         627.9404 Definitions.--For the purposes of this part:

30 |             (1) "Long-term care insurance policy" means any  
31 | insurance policy or rider advertised, marketed, offered, or

1 | designed to provide coverage on an expense-incurred,  
2 | indemnity, prepaid, or other basis for one or more necessary  
3 | or medically necessary diagnostic, preventive, therapeutic,  
4 | curing, treating, mitigating, rehabilitative, maintenance, or  
5 | personal care services provided in a setting other than an  
6 | acute care unit of a hospital. Long-term care insurance shall  
7 | not include any insurance policy which is offered primarily to  
8 | provide basic Medicare supplement coverage, basic hospital  
9 | expense coverage, basic medical-surgical expense coverage,  
10 | hospital confinement indemnity coverage, major medical expense  
11 | coverage, disability income protection coverage, accident only  
12 | coverage, specified disease or specified accident coverage, or  
13 | limited ~~benefit~~ health insurance coverage not otherwise  
14 | defined as long-term care insurance.

15 |         (7) "Limited benefit policy" means any long-term care  
16 | insurance policy that limits coverage to care in a nursing  
17 | home or to one or more lower levels of care required or  
18 | authorized to be provided by this part or by commission rule.

19 |         Section 9. Subsections (3) and (7) of section  
20 | 627.9407, Florida Statutes, are amended to read:

21 |         627.9407 Disclosure, advertising, and performance  
22 | standards for long-term care insurance.--

23 |         (3) RESTRICTIONS.--A long-term care insurance policy  
24 | may not:

25 |         (a) Be canceled, nonrenewed, or otherwise terminated  
26 | on the grounds of the age or the deterioration of the mental  
27 | or physical health of the insured individual or  
28 | certificateholder; however, the office may authorize  
29 | nonrenewal for an insurer on a statewide basis on terms and  
30 | conditions determined to be necessary by the office to protect  
31 | the interests of the insureds, if the insurer demonstrates

1 that renewal will jeopardize the insurer's solvency or that  
2 substantial and unexpected loss experience cannot reasonably  
3 be mitigated or remedied.

4 (b) Contain a provision establishing a new waiting  
5 period in the event existing coverage is converted to or  
6 replaced by a new or other form within the same insurer or any  
7 affiliated insurer, except with respect to an increase in  
8 benefits voluntarily selected by the insured individual or  
9 group policyholder.

10 (c) Restrict its coverage to care only in a nursing  
11 home licensed pursuant to part II of chapter 400 or provide  
12 significantly more coverage for such care than coverage for  
13 lower levels of care. The commission shall adopt rules  
14 defining what constitutes significantly more coverage in  
15 nursing homes licensed pursuant to part II of chapter 400 than  
16 for lower levels of care.

17 ~~(d) Provide coverage for less than 24 consecutive~~  
18 ~~months for nursing home care for each covered person.~~

19 ~~(d)(e)~~ (d) Contain an elimination period in excess of 180  
20 days. As used in this paragraph, the term "elimination period"  
21 means the number of days at the beginning of a period of  
22 confinement for which no benefits are payable.

23 (7) RATE STRUCTURE.--

24 (a) A long-term care insurance policy may not be  
25 issued if the premiums to be charged are calculated to  
26 increase based solely on the age of the insured.

27 (b) Any long-term care insurance policy or certificate  
28 issued or renewed, at the option of the policyholder or  
29 certificateholder, shall make available to the insured the  
30 contingent benefit upon lapse as provided in the Long-Term  
31 Care Insurance Model Regulation adopted by the National



1 Association of Insurance Commissioners in the second quarter  
2 of the year 2000.

3 (c) Any premium increase for existing insureds shall  
4 not result in a premium charged to the insureds that would  
5 exceed the premium charged on a newly issued insurance policy,  
6 except to reflect benefit differences. If the insurer is not  
7 currently issuing new coverage, the new business rate shall be  
8 as published by the office at the rate representing the new  
9 business rate of insurers representing 80 percent of the  
10 carriers currently issuing policies with similar coverage as  
11 determined by the prior calendar year earned premium.

12 (d) Compliance with the pooling provisions of s.  
13 627.410(6)(e)3. shall be determined by pooling the experience  
14 of all affiliated insurers.

15 Section 10. Subsection (3) of section 641.2018,  
16 Florida Statutes, is amended to read:

17 641.2018 Limited coverage for home health care  
18 authorized.--

19 (3) Any contract that limits coverage to home health  
20 care benefits as provided in this section must also meet all  
21 of the requirements of ss. 627.9403-627.9408 of the Long-Term  
22 Care Insurance Act, except s. 627.9407(3)(c), ~~(d)~~, and (9).

23 Section 11. This act shall apply to long-term care  
24 insurance policies issued or renewed on or after July 1, 2006.  
25 For any long-term care insurance policy issued prior to July  
26 1, 2006, the provisions of section 5 shall apply to such  
27 policy only upon renewal of such policy on or after July 1,  
28 2008, and the policy shall so provide by endorsement to the  
29 policy.

30 Section 12. For the 2006-2007 fiscal year, the sum of  
31 \$72,500 is appropriated from the Insurance Regulatory Trust

1 Fund to the Office of Insurance Regulation for the purpose of  
2 paying the salary and other administrative expenses for one  
3 full-time equivalent position to implement the provisions of  
4 this act.

5 Section 13. This act shall take effect upon becoming a  
6 law.

7  
8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
9 COMMITTEE SUBSTITUTE FOR  
10 CS for SB 1924

11 Provides that a long-term care policy is incontestable after  
12 begin in force for two years, except in instances of  
13 non-payment of premium.

14 Prohibits an insurer from imposing a new waiting period when a  
15 policy is replaced through an affiliated insurer.

16 Eliminates the current minimum nursing home benefit of 24  
17 months of coverage.

18 Requires all existing policyholders to be given an option to  
19 receive contingent benefit options upon lapse in the event of  
20 a significant rate increase. These options include a reduced  
21 benefit plan for the existing premium amount, a paid-up policy  
22 equal to the sum of premiums paid to date, or continuation of  
23 current policy if the increased premiums are paid.

24 Prohibits existing policyholders from being charged premiums  
25 that exceed the premiums the insurer is charging to new  
26 policyholders.

27 Requires insurers to pool the claims experience of all  
28 affiliated carriers when calculating rates, rather than only  
29 the policy forms providing similar benefits of the insured.

30 Provides an appropriation of \$72,000 for one full time  
31 equivalent position in the Office of Insurance Regulation  
(OIR) to implement the provisions of the bill.