

By the Committee on General Government Appropriations; and
Senators Fasano, Atwater and Pruitt

601-2382-06

1 A bill to be entitled
2 An act relating to long-term care insurance;
3 creating s. 627.94075, F.S.; requiring
4 long-term care insurance policies to provide
5 for policy incontestability after a certain
6 time; providing an exception; amending s.
7 627.9403, F.S.; specifying that certain limited
8 benefit policies are a type of long-term care
9 insurance policy; deleting an exemption from a
10 minimum time period coverage requirement for
11 certain limited benefit policies; amending s.
12 627.9404, F.S.; revising certain definitions;
13 amending s. 627.9407, F.S.; revising certain
14 restrictions on long-term care insurance
15 policies; providing additional rate structure
16 requirements for long-term care insurance
17 policies; amending s. 641.2018, F.S.;
18 correcting a cross-reference; reenacting and
19 amending s. 409.9102, F.S.; directing the
20 Agency for Health Care Administration, in
21 consultation with the Office of Insurance
22 Regulation and the Department of Children and
23 Family Services, to amend the Medicaid state
24 plan that established the Florida Long-Term
25 Care Partnership Program for purposes of
26 compliance with provisions of the Social
27 Security Act; establishing a qualified state
28 Long-Term Care Insurance Partnership Program in
29 Florida; providing duties of the program;
30 requiring consultation with the Office of
31 Insurance Regulation and the Department of

1 Children and Family Services for the creation
2 of standards for certain information; providing
3 rulemaking authority to the agency for
4 implementation of s. 409.9102, F.S.; providing
5 rulemaking authority to the department
6 regarding determination of eligibility for
7 certain services; creating s. 627.94076, F.S.;
8 providing rulemaking authority to the Financial
9 Services Commission for the implementation of a
10 qualified state Long-Term Care Insurance
11 Partnership Program in Florida; repealing ss. 1
12 and 2 of ch. 2005-252, Laws of Florida, to
13 delete conflicting provisions relating to the
14 determination of eligibility for nursing and
15 rehabilitative services and the establishment
16 of the Florida Long-Term Care Partnership
17 Program that were contingent upon amendment to
18 the Social Security Act; amending s. 4 of ch.
19 2005-252, Laws of Florida, to delete a
20 contingency in an effective date; requiring the
21 Office of Program Policy Analysis and
22 Government Accountability to submit a report on
23 the implementation of a qualified state
24 Long-Term Care Insurance Partnership Program in
25 Florida to the Governor and Legislature;
26 providing an appropriation; providing
27 application; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 627.94075, Florida Statutes, is
2 created to read:

3 627.94075 Time limit on certain
4 defenses.--Notwithstanding the provisions of s. 627.607, each
5 long-term care insurance policy shall provide that the policy
6 shall be incontestable after the policy has been in force
7 during the lifetime of the insured for a period of 2 years
8 from the date of issuance of the policy, except for nonpayment
9 of premiums.

10 Section 2. Section 627.9403, Florida Statutes, is
11 amended to read:

12 627.9403 Scope.--The provisions of this part shall
13 apply to long-term care insurance policies delivered or issued
14 for delivery in this state, and to policies delivered or
15 issued for delivery outside this state to the extent provided
16 in s. 627.9406, by an insurer, a fraternal benefit society as
17 defined in s. 632.601, a health maintenance organization as
18 defined in s. 641.19, a prepaid health clinic as defined in s.
19 641.402, or a multiple-employer welfare arrangement as defined
20 in s. 624.437. A policy which is advertised, marketed, or
21 offered as a long-term care policy and as a Medicare
22 supplement policy shall meet the requirements of this part and
23 the requirements of ss. 627.671-627.675 and, to the extent of
24 a conflict, be subject to the requirement that is more
25 favorable to the policyholder or certificateholder. The
26 provisions of this part shall not apply to a continuing care
27 contract issued pursuant to chapter 651 and shall not apply to
28 guaranteed renewable policies issued prior to October 1, 1988.
29 Any limited benefit policy that limits coverage to care in a
30 nursing home or to one or more lower levels of care required
31 or authorized to be provided by this part or by commission

1 rule is a type of long-term care insurance policy that must
2 meet all requirements of this part that apply to long-term
3 care insurance policies, except ss. 627.9407(3)(c), (9),
4 (10)(f), and (12) and 627.94073(2). ~~If the limited benefit~~
5 ~~policy does not provide coverage for care in a nursing home,~~
6 ~~but does provide coverage for one or more lower levels of~~
7 ~~care, the policy shall also be exempt from the requirements of~~
8 ~~s. 627.9407(3)(d).~~

9 Section 3. Subsections (1) and (7) of section
10 627.9404, Florida Statutes, are amended to read:

11 627.9404 Definitions.--For the purposes of this part:

12 (1) "Long-term care insurance policy" means any
13 insurance policy or rider advertised, marketed, offered, or
14 designed to provide coverage on an expense-incurred,
15 indemnity, prepaid, or other basis for one or more necessary
16 or medically necessary diagnostic, preventive, therapeutic,
17 curing, treating, mitigating, rehabilitative, maintenance, or
18 personal care services provided in a setting other than an
19 acute care unit of a hospital. Long-term care insurance shall
20 not include any insurance policy which is offered primarily to
21 provide basic Medicare supplement coverage, basic hospital
22 expense coverage, basic medical-surgical expense coverage,
23 hospital confinement indemnity coverage, major medical expense
24 coverage, disability income protection coverage, accident only
25 coverage, specified disease or specified accident coverage, or
26 limited ~~benefit~~ health insurance coverage not otherwise
27 defined as long-term care insurance.

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

1 Section 4. Subsections (3) and (7) of section
2 627.9407, Florida Statutes, are amended to read:

3 627.9407 Disclosure, advertising, and performance
4 standards for long-term care insurance.--

5 (3) RESTRICTIONS.--A long-term care insurance policy
6 may not:

7 (a) Be canceled, nonrenewed, or otherwise terminated
8 on the grounds of the age or the deterioration of the mental
9 or physical health of the insured individual or
10 certificateholder; however, the office may authorize
11 nonrenewal for an insurer on a statewide basis on terms and
12 conditions determined to be necessary by the office to protect
13 the interests of the insureds, if the insurer demonstrates
14 that renewal will jeopardize the insurer's solvency or that
15 substantial and unexpected loss experience cannot reasonably
16 be mitigated or remedied.

17 (b) Contain a provision establishing a new waiting
18 period in the event existing coverage is converted to or
19 replaced by a new or other form within the same insurer or any
20 affiliated insurer, except with respect to an increase in
21 benefits voluntarily selected by the insured individual or
22 group policyholder.

23 (c) Restrict its coverage to care only in a nursing
24 home licensed pursuant to part II of chapter 400 or provide
25 significantly more coverage for such care than coverage for
26 lower levels of care. The commission shall adopt rules
27 defining what constitutes significantly more coverage in
28 nursing homes licensed pursuant to part II of chapter 400 than
29 for lower levels of care.

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

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

5 (7) RATE STRUCTURE.--

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

9 (b) Any long-term care insurance policy or certificate
10 issued or renewed, at the option of the policyholder or
11 certificateholder, shall make available to the insured the
12 contingent benefit upon lapse as provided in the Long-Term
13 Care Insurance Model Regulation adopted by the National
14 Association of Insurance Commissioners in the second quarter
15 of the year 2000.

16 (c) Any premium increase for existing insureds shall
17 not result in a premium charged the insureds which would
18 exceed the premium charged to a newly issued insurance policy,
19 except to reflect benefit differences. If the insurer is not
20 currently issuing new coverage, the new business rate shall be
21 as published by the office at the rate representing the new
22 business rate of insurers representing 80 percent of the
23 carriers currently issuing policies with similar coverage as
24 determined by the prior calendar year earned premium.

25 (d) Compliance with the pooling provisions of s.
26 627.410(6)(e)3. shall be determined by pooling the experience
27 of all affiliated insurers.

28 Section 5. Subsection (3) of section 641.2018, Florida
29 Statutes, is amended to read:

30 641.2018 Limited coverage for home health care
31 authorized.--

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

5 Section 6. Section 409.9102, Florida Statutes, as
6 created by section 2 of chapter 2005-252, Laws of Florida, is
7 reenacted and amended to read:

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

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

18 (1) The program shall:

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

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

28 (c) Alleviate the financial burden on the state's
29 medical assistance program by encouraging the pursuit of
30 private initiatives.

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1 (2) The Agency for Health Care Administration, in
2 consultation with the Office of Insurance Regulation and the
3 Department of Children and Family Services, and in accordance
4 with federal guidelines, shall create standards for long-term
5 care partnership program information distributed to
6 individuals through insurance companies offering approved
7 long-term care partnership program policies.

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

12 (4) The Department of Children and Family Services,
13 when determining eligibility for Medicaid long-term care
14 services for an individual who is the beneficiary of an
15 approved long-term care partnership program policy, shall
16 reduce the total countable assets of the individual by an
17 amount equal to the insurance benefit payments that are made
18 to or on behalf of the individual. The department is
19 authorized to adopt rules pursuant to ss. 120.536(1) and
20 120.54 to implement this subsection.

21 Section 7. Section 627.94076, Florida Statutes, is
22 created to read:

23 627.94076 A qualified state Long-Term Care Insurance
24 Partnership Program in Florida.--The commission may adopt
25 rules pursuant to ss. 120.536(1) and 120.54 to implement
26 applicable provisions of a qualified state Long-Term Care
27 Insurance Partnership Program in Florida in accordance with
28 the requirements of s. 1917(b) of the Social Security Act, as
29 amended, any applicable federal guidelines, and any rules
30 necessary to ensure program compliance by insurers as provided
31 in s. 409.9102.

1 Section 8. Sections 1 and 2 of chapter 2005-252, Laws
2 of Florida, are repealed.

3 Section 9. Section 4 of chapter 2005-252, Laws of
4 Florida, is amended to read:

5 Section 4. This act shall take effect upon becoming a
6 law, ~~except that the amendments to section 409.905, Florida~~
7 ~~Statutes, and the newly created section 409.9102, Florida~~
8 ~~Statutes, provided in this act shall take effect contingent~~
9 ~~upon amendment to section 1917(b)(1)(c) of the Social Security~~
10 ~~Act by the United States Congress to delete the "May 14,~~
11 ~~1993," deadline for approval by states of long term care~~
12 ~~partnership plans.~~

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

24 Section 11. For fiscal year 2006-2007, the sum of
25 \$72,500 is appropriated from the Insurance Regulatory Trust
26 Fund to the Office of Insurance Regulation for the purpose of
27 paying the salary and other administrative expenses for one
28 full-time equivalent position to implement the provisions of
29 this act.

30 Section 12. This act shall apply to long-term care
31 insurance policies issued or renewed on or after July 1, 2006.

1 For any long-term care insurance policy issued prior to July
2 1, 2006, the provisions of section 1 of this act shall apply
3 to such policy only upon renewal of such policy on or after
4 July 1, 2008, and the policies shall so provide by endorsement
5 to the policy.

6 Section 13. This act shall take effect July 1, 2006.

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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 SB 2290

11 Requires the Agency for Health Care Administration (AHCA) to
12 re-establish a qualified state Long-term Care Partnership
13 Program in Florida, in consultation with the Office of
Insurance Regulation (OIR) and the Department of Children and
Family Services.

14 Provides certain regulatory and administrative requirements
15 for AHCA and OIR.

16 Requires assets in an amount equal to insurance benefit
17 payments made on behalf of the beneficiary be disregarded for
purposes of determining Medicaid eligibility for certain
individuals.

18 Repeals two provisions of chapter law that specify the design
19 and function of a qualified state's Long-term Care Partnership
Program in Florida.