

1 A bill to be entitled

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

28 the Social Security Act; amending s. 4 of ch. 2005-252,  
29 Laws of Florida, to delete a contingency in an effective  
30 date; requiring the Office of Program Policy Analysis and  
31 Government Accountability to submit a report on the  
32 implementation of a qualified state Long-Term Care  
33 Insurance Partnership Program in Florida to the Governor  
34 and Legislature; creating s. 627.94076, F.S.; requiring  
35 long-term care insurance policies to provide  
36 incontestability after a certain time period; providing an  
37 exception; amending s. 627.9403, F.S.; specifying that  
38 certain limited benefit policies are a type of long-term  
39 care insurance policy; deleting an exemption from a  
40 minimum time period coverage requirement for certain  
41 limited benefit policies; amending s. 627.9404, F.S.;  
42 revising definitions; amending s. 627.9407, F.S.; revising  
43 certain restrictions on long-term care insurance policies;  
44 providing additional rate structure requirements for long-  
45 term care insurance policies; amending s. 641.2018, F.S.;  
46 correcting a cross-reference; providing application;  
47 providing an effective date.

48  
49 Be It Enacted by the Legislature of the State of Florida:

50  
51 Section 1. Section 409.9102, Florida Statutes, as created  
52 by section 2 of chapter 2005-252, Laws of Florida, is reenacted  
53 and amended to read:

54 (Substantial rewording of section. See

55 s. 409.9102, F.S., for present text.)

56 409.9102 A qualified state Long-Term Care Insurance  
57 Partnership Program in Florida.--The Agency for Health Care  
58 Administration, in consultation with the Office of Insurance  
59 Regulation and the Department of Children and Family Services,  
60 is directed to establish a qualified state Long-Term Care  
61 Insurance Partnership Program in Florida, in compliance with the  
62 requirements of s. 1917(b) of the Social Security Act, as  
63 amended.

64 (1) The program shall:

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

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

73 (c) Alleviate the financial burden on the state's medical  
74 assistance program by encouraging the pursuit of private  
75 initiatives.

76 (2) The Agency for Health Care Administration, in  
77 consultation with the Office of Insurance Regulation and the  
78 Department of Children and Family Services, and in accordance  
79 with federal guidelines, shall create standards for long-term  
80 care partnership program information distributed to individuals

81 through insurance companies offering approved long-term care  
 82 partnership program policies.

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

86 (4) The Department of Children and Family Services, when  
 87 determining eligibility for Medicaid long-term care services for  
 88 an individual who is the beneficiary of an approved long-term  
 89 care partnership program policy, shall reduce the total  
 90 countable assets of the individual by an amount equal to the  
 91 insurance benefit payments that are made to or on behalf of the  
 92 individual. The department is authorized to adopt rules pursuant  
 93 to ss. 120.536(1) and 120.54 to implement this subsection.

94 Section 2. Section 627.94075, Florida Statutes, is created  
 95 to read:

96 627.94075 A qualified state Long-Term Care Insurance  
 97 Partnership Program in Florida.--The commission may adopt rules  
 98 pursuant to ss. 120.536(1) and 120.54 to implement applicable  
 99 provisions of a qualified state Long-Term Care Insurance  
 100 Partnership Program in Florida in accordance with the  
 101 requirements of s. 1917(b) of the Social Security Act, as  
 102 amended, any applicable federal guidelines, and any rules  
 103 necessary to ensure program compliance by insurers as provided  
 104 in s. 409.9102.

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

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

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

116 Section 5. The Office of Program Policy Analysis and  
 117 Government Accountability is directed to prepare a report on the  
 118 implementation of a qualified state Long-Term Care Insurance  
 119 Partnership Program in Florida. The report shall include data on  
 120 the number and value of policies sold and the geographic areas  
 121 in which the policies were purchased, a demographic description  
 122 of the policyholders, and other information necessary to  
 123 evaluate the program. The report shall be provided to the  
 124 Governor, the President of the Senate, and the Speaker of the  
 125 House of Representatives by January 31, 2009.

126 Section 6. Section 627.94076, Florida Statutes, is created  
 127 to read:

128 627.94076 Time limit on certain defenses.--Notwithstanding  
 129 the provisions of s. 627.607, each long-term care insurance  
 130 policy shall provide that the policy shall be incontestable  
 131 after it has been in force during the lifetime of the insured  
 132 for a period of 2 years after its date of issue except for  
 133 nonpayment of premiums.

134 Section 7. Section 627.9403, Florida Statutes, is amended  
135 to read:

136 627.9403 Scope.--The provisions of this part shall apply  
137 to long-term care insurance policies delivered or issued for  
138 delivery in this state, and to policies delivered or issued for  
139 delivery outside this state to the extent provided in s.  
140 627.9406, by an insurer, a fraternal benefit society as defined  
141 in s. 632.601, a health maintenance organization as defined in  
142 s. 641.19, a prepaid health clinic as defined in s. 641.402, or  
143 a multiple-employer welfare arrangement as defined in s.  
144 624.437. A policy which is advertised, marketed, or offered as a  
145 long-term care policy and as a Medicare supplement policy shall  
146 meet the requirements of this part and the requirements of ss.  
147 627.671-627.675 and, to the extent of a conflict, be subject to  
148 the requirement that is more favorable to the policyholder or  
149 certificateholder. The provisions of this part shall not apply  
150 to a continuing care contract issued pursuant to chapter 651 and  
151 shall not apply to guaranteed renewable policies issued prior to  
152 October 1, 1988. Any limited benefit policy that limits coverage  
153 to care in a nursing home or to one or more lower levels of care  
154 required or authorized to be provided by this part or by  
155 commission rule is a type of long-term care insurance policy  
156 that must meet all requirements of this part that apply to long-  
157 term care insurance policies, except ss. 627.9407(3)(c), (9),  
158 (10)(f), and (12) and 627.94073(2). ~~If the limited benefit~~  
159 ~~policy does not provide coverage for care in a nursing home, but~~  
160 ~~does provide coverage for one or more lower levels of care, the~~

161 ~~policy shall also be exempt from the requirements of s.~~  
 162 ~~627.9407(3)(d).~~

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

165 627.9404 Definitions.--For the purposes of this part:

166 (1) "Long-term care insurance policy" means any insurance  
 167 policy or rider advertised, marketed, offered, or designed to  
 168 provide coverage on an expense-incurred, indemnity, prepaid, or  
 169 other basis for one or more necessary or medically necessary  
 170 diagnostic, preventive, therapeutic, curing, treating,  
 171 mitigating, rehabilitative, maintenance, or personal care  
 172 services provided in a setting other than an acute care unit of  
 173 a hospital. Long-term care insurance shall not include any  
 174 insurance policy which is offered primarily to provide basic  
 175 Medicare supplement coverage, basic hospital expense coverage,  
 176 basic medical-surgical expense coverage, hospital confinement  
 177 indemnity coverage, major medical expense coverage, disability  
 178 income protection coverage, accident only coverage, specified  
 179 disease or specified accident coverage, or limited benefit  
 180 health insurance coverage not otherwise defined as long-term  
 181 care insurance.

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

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

188           627.9407 Disclosure, advertising, and performance  
 189 standards for long-term care insurance.--

190           (3) RESTRICTIONS.--A long-term care insurance policy may  
 191 not:

192           (a) Be canceled, nonrenewed, or otherwise terminated on  
 193 the grounds of the age or the deterioration of the mental or  
 194 physical health of the insured individual or certificateholder;  
 195 however, the office may authorize nonrenewal for an insurer on a  
 196 statewide basis on terms and conditions determined to be  
 197 necessary by the office to protect the interests of the  
 198 insureds, if the insurer demonstrates that renewal will  
 199 jeopardize the insurer's solvency or that substantial and  
 200 unexpected loss experience cannot reasonably be mitigated or  
 201 remedied.

202           (b) Contain a provision establishing a new waiting period  
 203 in the event existing coverage is converted to or replaced by a  
 204 new or other form within the same insurer or any affiliated  
 205 insurer, except with respect to an increase in benefits  
 206 voluntarily selected by the insured individual or group  
 207 policyholder.

208           (c) Restrict its coverage to care only in a nursing home  
 209 licensed pursuant to part II of chapter 400 or provide  
 210 significantly more coverage for such care than coverage for  
 211 lower levels of care. The commission shall adopt rules defining  
 212 what constitutes significantly more coverage in nursing homes  
 213 licensed pursuant to part II of chapter 400 than for lower  
 214 levels of care.



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

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

221 (7) RATE STRUCTURE.--

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

225 (b) Any long-term care insurance policy or certificate  
226 issued or renewed, at the option of the policyholder or  
227 certificateholder, shall make available to the insured the  
228 contingent benefit upon lapse as provided in the Long-Term Care  
229 Insurance Model Regulation adopted by the National Association  
230 of Insurance Commissioners in the second quarter of the year  
231 2000.

232 (c) Any premium increase for existing insureds shall not  
233 result in a premium charged to the insureds that would exceed  
234 the premium charged on a newly issued insurance policy, except  
235 to reflect benefit differences. If the insurer is not currently  
236 issuing new coverage, the new business rate shall be as  
237 published by the office at the rate representing the new  
238 business rate of insurers representing 80 percent of the  
239 carriers currently issuing policies with similar coverage as  
240 determined by the prior calendar year earned premium.

241           (d) Compliance with the pooling provisions of s.  
242 627.410(6)(e)3. shall be determined by pooling the experience of  
243 all affiliated insurers.

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

246           641.2018 Limited coverage for home health care  
247 authorized.--

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

252           Section 11. This act shall apply to long-term care  
253 insurance policies issued or renewed on or after July 1, 2006.  
254 For any long-term care insurance policy issued prior to July 1,  
255 2006, the provisions of section 6 shall apply to such policy  
256 only upon renewal of such policy on or after July 1, 2008, and  
257 the policy shall so provide by endorsement to the policy.

258           Section 12. This act shall take effect upon becoming a  
259 law.