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HB 947, Engrossed 1

2006 Legislature

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

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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

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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

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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.

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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.

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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~~

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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:

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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.

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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.

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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.