

HOUSE RESEARCH

Bill Summary

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Overview

This bill makes changes in state law necessary to comply with provisions in the federal Deficit Reduction Act of 2005 (DEFRA) that allow states to operate long-term care partnership programs. The provisions in Article 1 modify state regulation of long-term care insurance policies to be consistent with the long-term care insurance model regulation and model act, developed by the National Association of Insurance Commissioners. The provisions in Article 2 modify state law authorizing a long-term care partnership program, to be consistent with DEFRA requirements.

Article 1: Qualified Long-Term Care Insurance Regulatory Changes

- 1 **Extension of limitation periods.** Amends § 62S.05, by adding subd. 4. Allows the commissioner to extend the preexisting condition limitation periods to specific age group categories in specific forms, upon finding that this is in the best interest of the public.
- 2 **Mandatory format.** Amends § 62S.08, subd. 3. Makes changes in the standard format outline of coverage that must be provided to applicants for long-term care insurance. These changes relate to the provision of information on the terms under which a policy may be continued or discontinued, terms for changing premiums, eligibility for payment of benefits, and provision of contact information.
- 3 **Forms.** Amends § 62S.081, subd. 4. Adds more specific references to the forms an insurer must use to comply with rating practice disclosure requirements.
- 4 **Contents.** Amends § 62S.10, subd. 2. Requires policy summaries for individual life insurance policies that provide long-term care benefits to include a statement that any long-term care inflation protection option required by section 62S.23 is not available under the

Section

policy.

5 **Death of insured.** Amends § 62S.13, by adding subd. 6. Provides that in the event of the death of the insured, provisions related to rescission of a long-term care insurance policy do not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care, and that provisions related to the incontestability of life insurance policies apply.

6 **Terms.** Amends § 62S.14, subd. 2. Limits use of the term "level premium."

7 **Authorized limitations and exclusions.** Amends § 62S.15. Allows long-term care policy limits and exclusions for services or items available or paid under another long-term care insurance or health policy.

8 **Renewability.** Amends § 62S.20, subd. 1. Revises the language of the renewability provision of individual long-term care insurance policies to refer to coverage being guaranteed renewable or noncancelable. Also requires, when applicable, a statement that premium rates may change.

9 **Required questions.** Amends § 62S.24, subd. 1. Revises the language that must be included on an application form related to determining the existence of other coverage.

10 **Other health insurance policies sold by agent.** Amends § 62S.24, by adding subd. 1a. Requires agents to list all other health insurance policies they have sold to the applicant that are still in force or were sold in the past five years.

11 **Solicitations other than direct response.** Amends § 62S.24, subd. 3. Revises language of the required notice related to replacement coverage that must be provided when using non-direct response solicitation methods.

12 **Direct response solicitations.** Amends § 62S.24, subd. 3. Revises language of the required notice related to replacement coverage that must be provided when using direct response solicitation methods.

13 **Life insurance policies.** Amends § 62S.24, by adding subd. 7. Requires life insurance policies that accelerate benefits for long-term care to comply with the replacement coverage requirements that apply to long-term care insurance policies, if the policy being replaced is such a policy. Requires compliance with the replacement coverage requirements for life insurance policies, if the policy being replaced is such a policy. Requires compliance with both replacement requirements, if the policy being replaced is also a life insurance policy that accelerates benefits for long-term care.

14 **Claims denied.** Amends § 62S.25, subd. 6. Requires insurers to annually report claims denied "for any reason" and provides a definition of "claim."

15 **Reports.** Amends § 62S.25, by adding subd. 7. Specifies that required reports must be done on a statewide basis and filed with the commissioner, and makes references to specific forms.

16 **Loss ratio.** Amends § 62S.26. Specifies that the minimum loss ratio shall not apply to life insurance policies that accelerate benefits for long-term care. Specifies criteria that must be met if such a policy is to be considered to provide reasonable benefits in relation to premiums paid.

17 **Requirement.** Amends § 62S.266, subd. 2. Specifies methods for offering nonforfeiture benefits for different types of group long-term care insurance.

18 **Requirements.** Amends § 62S.29, subd. 1. Modifies requirements that apply to insurers or entities marketing long-term care insurance in the state. Requires agent training requirements, the provision of copies of disclosure forms, and the provision of an explanation of contingent benefit upon lapse, and limits use of the terms "noncancelable"

Section

and "level premium."
19 Suitability. Amends § 62S.30.

Subd. 1. Standards. Requires insurers and entities marketing long-term care insurance to develop and use suitability standards, trains agents in the use of these standards, and maintain a copy of the standards and make them available for inspection by the commissioner upon request.

Subd. 2. Procedures. (a) Requires the agent and insurers to take into account ability to pay and other financial information, the applicant's goals or needs, and the values, benefits, and costs of existing insurance compared that that of the recommended purchase or replacement, when determining whether an applicant meets the standards for long-term care insurance.

(b) Requires the insurer to make reasonable efforts to obtain the information required under paragraph (a), including presentation of the Long-Term Care Insurance Personal Worksheet.

(c) Requires a completed worksheet to be returned to the insurer prior to consideration of the applicant for coverage.

(d) Requires insurers and agents to use the suitability standards.

(e) Requires a disclosure form to be provided to applicants.

(f) Specifies procedures to be followed if an applicant does not meet financial suitability standards, or has declined to provide information.

Subd. 3. Reports. Requires the insurer to report specified statistics on applications and applicants, annually to the commissioner.

Subd. 4. Application. States that this section does not apply to life insurance policies that accelerate benefits for long-term care.

20 Provider training. Adds § 62S.315. Requires the commissioner of commerce to approve producer training requirements in accordance with NAIC Long-Term Care Insurance Model Act provisions. Requires the commissioner of human services to provide technical assistance and information.

21 Effective date. States that sections 1 to 20 are effective July 1, 2006.

Article 2: Long-Term Care Partnership Program

1 1 Long-term care partnership program. Amends § 256B.0571.

Subd. 2. Home care service. E liminates the definition of "home care service."

Subd. 5. Nursing home. E liminates the definition of "nursing home."

Subd. 6. Partnership policy. M odifies the definition of "partnership policy" by eliminating a reference to total asset protection policies and eliminating an exemption related to when a policy was issued.

Subd. 7a. Protected assets. D efines "protected assets" as assets or proceeds of assets

Section

that are protected from recovery under subdivisions 13 and 15.

Subd. 8. Program established. Adds language linking eligibility criteria for the partnership program to the effective date of the state plan amendment and makes other revisions in language.

Subd. 9. Medical assistance eligibility. The amendment to paragraph (a) rephrases existing language and adjusts internal references.

The amendment to paragraph (b) rephrases existing language and adds new language governing designation of assets that are to be protected from recovery.

The amendment to paragraph (c) requires individuals to identify the designated assets and their full fair market value, and designate them as assets to be protected at the time of initial MA application. Also specifies methodology for determining the full fair market value and ownership.

Paragraph (d) specifies that the right to designate assets to be protected is personal to the individual and ends when the individual dies, except as otherwise provided. Also provides that the right to designate assets does not include the increase in the value of the asset.

Paragraph (e) allows individuals to designate additional assets if the dollar amount of benefits utilized under a partnership policy is greater than the full fair market value of assets protected at the time of MA application.

Paragraph (f) states that the section applies only to estate recovery under federal law, and does not apply to other types of recovery authorized by federal law, including but not limited to trusts and annuities.

Paragraph (g) provides that protected assets owned by an individual's spouse who applies for MA payment of long-term care services shall not be protected assets or disregarded for purposes of eligibility of the spouse, solely because they were protected assets for the individual.

Paragraph (h) exempts assets designated as protected from asset transfer penalties.

Paragraph (i) directs the commissioner to otherwise determine an individual's eligibility for payment for long-term care services according to MA eligibility requirements.

Subd. 10. Inflation protection. Specifies inflation protection requirements and eliminates provisions related to offering of an elimination period, meeting implementation requirements, and minimum daily benefits.

Section

Subd. 11. Total asset protection policies. Language in this subdivision is stricken.

Subd. 12. Compliance with federal law. Requires issuers to comply with DEFRA 2005.

Subd. 13. Limitations on estate recovery. (a) States that protected assets shall not be subject to recovery, and that protected assets of the individual in the estate of the individual's surviving spouse are not liable to pay a claim for recovery of MA paid for the predeceased spouse. Also states that protected assets of the individual in the surviving spouse's estate are subject to recovery for MA paid on behalf of the surviving spouse.

(b) Specifies procedures for asset protection by a personal representative.

(c) Provides that asset protection terminates when the estate distributes the assets or if the estate has not been probated within one year of the date of the individual's death.

(d) Allows the state or county agency to file and collect claims in an estate, if the estate is opened for probate more than one year after the individual's death, and no statute of limitations applies.

(e) States that except as otherwise provided, nothing in this section shall limit or prevent recovery of MA.

Subd. 14. Implementation. Replaces existing implementation language with a requirement that the commissioner submit a state plan amendment to the federal government to implement the long-term care partnership program.

Subd. 15. Limitation on liens. (a) Provides that if an interest in real property that is protected is subject to a lien, the gross proceeds from sale allocable to the individual's protected interest are not subject to recovery of MA under the lien.

(b) Specifies that paragraph (a) applies to protected real property to the extent an heir or devisee of the estate owns the protected property or an interest in the property when it is sold, and does not apply to heir, successors, assigns, or transferees of those persons.

Subd. 16. Burden of proof. States that the individual who asserts that an asset is disregarded or protected shall have the initial burden of documenting and proving this by clear and convincing evidence.

Provides a July 1, 2006, effective date.