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BILL



ANALYSIS

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House Bill 4836 (as passed by the House)  
Sponsor: Representative Lisa Posthumus Lyons  
House Committee: Insurance  
Senate Committee: Insurance

Date Completed: 10-28-15

### **CONTENT**

**The bill would add Chapter 39A (Long-Term Care Partnership Program Insurance) to the Insurance Code to do the following:**

- **Prescribe the criteria for a Long-Term Care Partnership program policy, including inflation protection features.**
- **Require an insurer or agent selling a Partnership policy to give the prospective applicant a notice of the provisions of such a policy as they related to Medicaid eligibility.**
- **Prohibit the delivery or issue for delivery of a Partnership policy in Michigan unless it was filed with the Department of Insurance and Financial Services (DIFS) and approved by the DIFS Director.**
- **Require an insurer that issued a Partnership policy to give the Department of Health and Human Services (DHHS) copies of certain reports required under Federal regulations pertaining to qualified state Long-Term Care Insurance Partnerships.**

**The bill would also would amend the Code to do the following:**

- **Allow long-term care insurance that was delivered or issued for delivery in Michigan after December 31, 2007, and before Long-Term Care Partnership policies were approved for sale in Michigan to be converted or replaced with a Partnership policy.**
- **Revise the training requirements for an insurance producer who sells long-term care insurance, and specify that satisfaction of the requirements in any state would satisfy them in Michigan.**

The bill would take effect 90 days after it was enacted.

#### **Chapter 39A: Long-Term Care Partnership Program Insurance**

Proposed Chapter 39A would apply to a Long-Term Care Partnership Program policy pursuant to Section 6021 of the Deficit Reduction Act of 2005 and Section 112c of the Social Welfare Act (both described below, under **BACKGROUND**). The applicable sections of Chapter 39 (Long-Term Care Insurance) of the Insurance Code also would apply to a Partnership policy. "Long-term care partnership program policy" would mean a policy that meets all of the following requirements for the Long-Term Care Partnership Program under Section 112c of the Social Welfare Act, as well as all of the following requirements:

- The policy covers an insured who was a Michigan resident when coverage first became effective under the policy.
- The policy is either a qualified long-term care insurance contract under the Internal Revenue Code issued before the bill's effective date, or a policy that has been converted or replaced as described in the bill.
- The policy meets all of the applicable requirements of Chapter 39 of the Insurance Code.
- The policy meets the requirements of the National Association of Insurance Commissioners' model act and model regulation listed in the Social Security Act.

Additionally, the policy would have to provide the following inflation protection features:

- If the policy were sold to an individual younger than 61 as of the date of purchase, it would have to provide compound annual inflation protection.
- If the policy were sold to an individual who was at least 61 but younger than 76 as of the date of purchase, it would have to provide some level of inflation protection.
- If the policy were sold to an individual who was at least 76 as of the date of purchase, it could, but would not have to, provide some level of inflation protection.

(Section 112c of the Social Welfare Act requires the DHHS, in conjunction with the DIFS, to establish a Long-Term Care Partnership program in Michigan to provide for the financing of long-term care through a combination of private insurance and Medicaid.)

If an insurer or its agent solicited or offered to sell a policy that was intended to qualify as a Partnership policy, the insurer or agent would have to give a prospective applicant the notice described in Section 112c of the Social Welfare Act or, if filed with and approved by DIFS, a similar notice. An insurer or its agent would have to provide the notice along with the summary of coverage required under Section 3933 of the Insurance Code.

(Section 112c of the Social Welfare Act required the DHHS and DIFS to develop a notice to consumers detailing in plain language the pertinent provisions of qualified State Long-Term Care Insurance Partnership policies as they relate to Medicaid eligibility. Section 3933 of the Insurance Code requires an insurer that offers long-term care insurance to give a prospective applicant a summary of coverage and obtain an acknowledgment of receipt of the summary on the application form by obtaining the applicant's signature.)

A Partnership policy could not be delivered or issued for delivery in Michigan unless it was filed with DIFS and approved by the DIFS Director as prescribed in the Code. A policy submitted to DIFS for approval as a Partnership policy would have to be submitted with a completed Partnership certification form or similar form. The completed form also would have to be approved by the DIFS Director. "Partnership certification form" would mean a form developed by DIFS in consultation with the DHHS.

An insurer that issued a Partnership policy would have to give copies of the regular reports described in 45 CFR 144.200 to 144.214 to the DHHS. (Those Federal regulations prescribe reporting requirements for insurers pertaining to qualified state Long-Term Care Insurance Partnerships.)

#### Policy Conversion or Replacement

The bill would allow long-term care insurance that was delivered or issued for delivery in Michigan after December 31, 2007, and before Long-Term Care Partnership policies were approved for sale in Michigan to be converted or replaced with a Partnership policy.

Before converting the long-term care insurance to, or replacing it with, a Partnership policy, the insured and the insurer both would have to agree to the conversion or replacement.

## Long-Term Care Insurance Training

The Code requires each insurer that sells, solicits, or negotiates long-term care insurance to ensure that each producer whose duties include selling, soliciting, or negotiating such insurance first completes a program of instruction. The bill would delete this requirement, and instead would prohibit an individual from selling, soliciting, or negotiating long-term care insurance unless he or she was licensed as an insurance producer for accident and health or life, had completed a one-time long-term care training course described in the bill, and completed ongoing training as described in the bill for every two-year continuing education compliance period after completing the one-time training course.

An insurer that delivered or issued for delivery long-term care insurance in Michigan would have to obtain verification that an insurance producer had received the required training before permitting the producer to sell, solicit, or negotiate the insurers long-term care insurance products, and make the verification available to the DIFS Director upon request.

An insurance producer selling, soliciting, or negotiating long-term care insurance on the bill's effective date could not continue to do so unless he or she had completed the one-time training course within one year after that date.

The one-time long-term care training course would have to be at least eight hours and the ongoing training would have to be at least four hours for every two-year continuing education compliance period after completion of the one-time course.

The current program of instruction must consist of topics related to long-term care insurance and long-term care services, including all of the following:

- State regulations and requirements, including laws relating to adult financial exploitation.
- Available long-term care services and providers.
- Changes or improvements in long-term care services or providers.
- Alternatives to the purchase of private long-term care insurance.
- Differences in eligibility for benefits and tax treatment between policies intended to be federally qualified and those not intended to be federally qualified.
- The effect of inflation in eroding the value of benefits and the importance of inflation protection.
- Consumer suitability standards and guidelines.

The bill would retain these requirements with regard to the required one-time training course and ongoing education with several revisions. If applicable, the training topics would have to include qualified State Long-Term Care Insurance Partnership programs. The bill would eliminate the reference to laws relating to adult financial exploitation. The bill would refer to State and Federal regulations and requirements and the relationship between qualified State Long-Term Care Insurance Partnership programs and other public and private coverage of long-term care services, including Medicaid. Additionally, the bill would eliminate the reference to differences in eligibility for benefits and tax treatments between policies intended to be federally qualified and those that are not.

The Code prohibits the required program of long-term care insurance instruction from including any training that is solely oriented to the sales or marketing of an insurer-specific long-term care product. Under the bill, this prohibition would apply to the required one-time training course and ongoing training.

The bill provides that satisfying the prescribed training requirements in any state would satisfy the training requirements in Michigan.

The long-term care instructional program currently required for an insurance producer may be provided in conjunction with other producer training or separately. Under the bill, this provision would apply to the required one-time long-term care training course and the ongoing training.

Currently, an insurance producer may document to an insurer that he or she has obtained the required training from any insurer that sells, solicits, or negotiates long-term care insurance, or from a program of instruction qualified under Section 1204a or 1204c of the Code. (Section 1204a prescribes requirements for a registered insurance agent's program of study. Section 1204c prescribes requirements for an insurance producer's hours of study, including continuing education requirements that the DIFS Director must review for license continuance every two years.) The bill would delete this provision, and instead would allow a producer to document to an insurer that he or she had obtained the required training from a program of study approved under Section 1204c.

MCL 500.1204f et al.

## **BACKGROUND**

The Long-Term Care Partnership program is a joint program between the Federal government and the states, and was created to encourage individuals to purchase long-term care insurance. Private long-term care policies purchased under the Partnership program offer asset protection for subscribers on a dollar-for-dollar basis: for every dollar of long-term care coverage provided by an individual's policy, he or she may keep one dollar in assets that otherwise would have to be spent down in order to qualify for Medicaid. Originally, Partnership program demonstrations were authorized in only four states; the Federal Deficit Reduction Act of 2005 expanded the authority to implement Partnership programs to all states.

In Michigan, in response to the Deficit Reduction Act, Public Act 674 of 2006 amended Section 112c of the Social Welfare Act to require the establishment of a Long-Term Care Partnership program in Michigan. Section 112c states that the intent of the program is to do all of the following:

- Provide incentives for individuals to insure against the costs of providing for their long-term care needs.
- Provide a mechanism for individuals to qualify for coverage of the cost of their long-term care needs under Medicaid without first being required to substantially exhaust their resources.
- Alleviate the financial burden on the State Medicaid program by encouraging the pursuit of private initiatives.

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

The bill would likely have a negligible to minor positive fiscal impact on the Department of Health and Human Services and no fiscal impact on local government. Although other states began implementing Long-Term Care Partnership programs in the early 1990s, there are insufficient data to draw a conclusion, as many of the insureds enrolled in the pilot programs have not yet reached an age at which they would be Medicaid-eligible.

The impact of implementing the program would depend on two hypothetical scenarios: The purchasers of the Partnership insurance would not have bought traditional long-term care insurance in the absence of the bill, or the purchasers of the Partnership insurance would have bought traditional long-term care insurance in the absence of the bill.

In the first scenario, there would be a minor positive fiscal impact on the Department of Health and Human Services resulting from the individual's delaying Medicaid eligibility by purchasing a Long-Term Care Partnership policy. Under current law, this purchaser would have to spend down his or her assets in order to qualify for Medicaid, resulting in a cost to the State.

In the second scenario, there would be no fiscal impact on the Department of Health and Human Services resulting from the individual's switching to a Long-Term Care Partnership policy from an equivalent traditional long-term care insurance policy. The insured would need to exhaust the benefits of both policies before being eligible for Medicaid.

The bill would not have a significant fiscal impact on the Department of Insurance and Financial Services.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.