



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0156/2

PJK:.....

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: a Long-Term Care Partnership Program. ✓

*Analysis by the Legislative Reference Bureau*

Under current law, the Department of Health and Family Services (DHFS) administers the Medical Assistance (MA) program, which provides federal and state moneys to pay for health care and long-term care services provided to MA recipients. MA recipients are, generally, low-income, elderly, or disabled persons who meet other specific eligibility requirements. To be eligible for long-term care services under MA, an individual must meet certain very low income and resource requirements, and ~~must~~ "spend down" liquid assets by paying for his or her own long-term care until those income and resource requirements are met. In addition, DHFS may recover from a decedent's estate the amount of MA paid on behalf of the decedent for long-term care.

Under the state long-term care partnership program under federal law, a state may seek approval of an amendment to its state MA plan that would allow it to disregard an amount equal to the amount of qualifying long-term care insurance payments received by an individual when the state is calculating the individual's income and resources for purposes of determining MA eligibility, and when the state is determining the amount that may be recovered from the deceased individual's estate for long-term care services under MA. For the long-term care insurance to qualify: 1) the individual must have been a state resident when coverage first became effective; 2) the coverage must not have been effective before the date of the state MA plan amendment; 3) the long-term care insurance policy must meet the definition under federal law, must meet the long-term care insurance model regulations and the requirements of the long-term care insurance model act promulgated by the

may have to

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National Association of Insurance Commissioners, and must provide specified inflation protection depending upon the age of the insured individual when coverage first began; and 4) the Commissioner of Insurance must certify that the policy meets all of those requirements. DHFS and the Office of the Commissioner of Insurance must work together to develop a training program for insurance agents who sell long-term care insurance to ensure that the agents understand long-term care insurance and how it relates to other public and private coverage of long-term care, including MA. In addition, an insurer that issues a qualifying long-term care insurance policy must report to the secretary of the federal Department of Health and Human Services (DHHS) regarding when benefits are paid, the amount of the benefits paid, termination of the policy, and any other information required by the secretary.

\* This bill requires DHFS to submit to the secretary of DHHS an amendment to the state's MA plan that satisfies the requirements of the state long-term care partnership program under federal law. If the amendment is approved, DHFS must disregard, for purposes of MA eligibility and estate recovery, the amount of qualifying long-term care insurance payments made to an individual who receives MA for long-term care.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 SECTION 1. 49.45 (31) of the statutes is repealed and recreated to read:

2 49.45 (31) LONG-TERM CARE PARTNERSHIP PROGRAM. (a) The department shall  
3 submit to the federal department of health and human services, not later than 3  
4 months after the effective date of this paragraph .... [revisor inserts date], an  
5 amendment to the state medical assistance plan that establishes in this state a  
6 Long-Term Care Partnership Program, as described in this subsection. Under the  
7 program, the department shall exclude an amount equal to the amount of benefits  
8 that an individual receives under a qualifying long-term care insurance policy, as  
9 described in par. (b), when determining any of the following:

10 1. The individual's income and resources for purposes of determining the  
11 individual's eligibility for medical assistance.

1           2. The amount to be recovered from the individual's estate if the individual  
2 receives medical assistance.

3           (b) A long-term care insurance policy qualifies under par. (a) if all of the  
4 following criteria are met:

5           1. The insured individual was a resident of this state when coverage first  
6 became effective.

7           2. The policy was not issued before the effective date of the amendment to the  
8 state plan.

9           3. The policy meets the definition of a qualified long-term care insurance policy  
10 under 26 USC 7702B (b).

11           4. The policy meets the long-term care insurance model regulations and the  
12 requirements of the long-term care insurance model act promulgated by the  
13 National Association of Insurance Commissioners that are specified in 42 USC  
14 1396p (b) (5).

15           5. The policy includes the applicable inflation protection specified in 42 USC  
16 1396p (b) (1) (c) (iii) (IV).

17           6. The commissioner of insurance certifies to the department that the policy  
18 meets the criteria under subs. 3. to 5.

19           (c) The department and the office of the commissioner of insurance shall work  
20 together to develop a training program for individuals who sell long-term care  
21 insurance policies in the state to ensure that those individuals understand the  
22 relation of long-term care insurance to the Medical Assistance program and are able  
23 to explain to consumers the protections offered by long-term care insurance and how  
24 this type of insurance relates to private and public financing of long-term care.

1 (d) An insurer that issues a long-term care insurance policy described in par.  
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3 health and human services, in accordance with regulations developed by the  
4 secretary, that include notice of when benefits are paid under the policy, the amount  
5 of the benefits, notice of the termination of the policy, and any other information  
6 required by the secretary.

7 (e) The department shall implement the program if the amendment to the state  
8 plan is approved. If the department determines that legislation is necessary to bring  
9 existing statutes into conformity with the program, the department shall submit the  
10 proposed legislation to the legislative reference bureau for preparation in proper  
11 form.

12 **SECTION 2.** 49.47 (9m) of the statutes is repealed.

\*\*\*\*NOTE: Should this not be repealed until the amendment to the MA plan is  
approved?

13 **SECTION 3.** 601.415 (8) of the statutes is created to read:

14 601.415 (8) LONG-TERM CARE PARTNERSHIP PROGRAM. The commissioner shall  
15 provide the certifications required under s. 49.45 (31) (b) 6. and shall cooperate with  
16 the department of health and family services in developing the training program  
17 under s. 49.45 (31) (c) for agents who sell long-term care insurance policies.

18 (END)

**Kahler, Pam**

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**From:** Sweet, Richard  
**Sent:** Wednesday, November 01, 2006 9:44 AM  
**To:** Kahler, Pam  
**Cc:** Buschman, Sara  
**Subject:** LRB-0156/P1

Pam,

I looked over the draft you did for Rep. Strachota on the Partnership Program. It looks great. I just had a couple of comments and Sara asked me to send them directly to you.

On page 3, line 18, should the lower case (c) be an upper case (C)?

On page 4, line 10, I don't think that the second sentence of par. (e) is needed. I think the intent of this draft is that it be all the legislation that is needed to implement the Partnership Program. Hopefully, if the department feels that it isn't, they will tell the Legislature about it before this draft is passed.

On page 4, line 14, I would be inclined not to delay repeal of s. 49.47(9m). The new s. 49.45(31) replaces it. Plus s. 49.47(9m) has some out-of-date language.

Thanks.

***Dick Sweet***

Richard Sweet  
Senior Staff Attorney  
Wisconsin Legislative Council  
(608)266-2982  
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State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0156/P1

PJK:jld:nwn

*revision*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*D-note*

*Regen*

1 AN ACT *to repeal* 49.47 (9m); *to repeal and recreate* 49.45 (31); and *to create*  
2 601.415 (8) of the statutes; **relating to:** a Long-Term Care Partnership  
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Under current law, the Department of Health and Family Services (DHFS) administers the Medical Assistance (MA) program, which provides federal and state moneys to pay for health care and long-term care services provided to MA recipients. MA recipients are, generally, low-income, elderly, or disabled persons who meet other specific eligibility requirements. To be eligible for long-term care services under MA, an individual must meet certain very low income and resource requirements, and may have to "spend down" liquid assets by paying for his or her own long-term care until those income and resource requirements are met. In addition, DHFS may recover from a decedent's estate the amount of MA paid on behalf of the decedent for long-term care.

Under the State Long-Term Care Partnership Program under federal law, a state may seek approval of an amendment to its state MA plan that would allow it to disregard an amount equal to the amount of qualifying long-term care insurance payments received by an individual when the state is calculating the individual's income and resources for purposes of determining MA eligibility, and when the state is determining the amount that may be recovered from the deceased individual's estate for long-term care services under MA. For the long-term care insurance to qualify: 1) the individual must have been a state resident when coverage first became effective; 2) the coverage must not have been effective before the date of the state MA

plan amendment; 3) the long-term care insurance policy must meet the definition under federal law, must meet the long-term care insurance model regulations and the requirements of the long-term care insurance model act promulgated by the National Association of Insurance Commissioners, and must provide specified inflation protection depending upon the age of the insured individual when coverage first began; and 4) the Commissioner of Insurance must certify that the policy meets all of those requirements. DHFS and the Office of the Commissioner of Insurance must work together to develop a training program for insurance agents who sell long-term care insurance to ensure that the agents understand long-term care insurance and how it relates to other public and private coverage of long-term care, including MA. In addition, an insurer that issues a qualifying long-term care insurance policy must report to the secretary of the federal Department of Health and Human Services (DHHS) regarding when benefits are paid, the amount of the benefits paid, termination of the policy, and any other information required by the secretary.

This bill requires DHFS to submit to the secretary of DHHS an amendment to the state's MA plan that satisfies the requirements of the State Long-Term Care Partnership Program under federal law. If the amendment is approved, DHFS must disregard, for purposes of MA eligibility and estate recovery, the amount of qualifying long-term care insurance payments made to an individual who receives MA for long-term care.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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19 under s. 49.45 (31) (c) for agents who sell long-term care insurance policies.

20 (END)

*D-note*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0156/1dn  
PJK:jld:nwn

date

This version of the draft makes the changes that Dick Sweet suggested and with which I agree.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
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LRB-0156/1dn  
PJK:jld:nwn

November 1, 2006

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State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0156/2  
PJK:jld:wn

*minimum*

2007 BILL

*Divote today*

*regenerate* ↓

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↓  
*provided* ✓

**BILL**

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**BILL**

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*Insert 3-8*

7 (b) ~~A long-term care insurance policy qualifies under par. (a) if all of the~~  
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12 ~~state plan.~~

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19 ~~4~~ 5. The policy includes the applicable inflation protection specified in 42 USC  
20 1396p (b) (1) (C) (iii) (IV).

21 ~~5~~ 6. The commissioner of insurance certifies to the department that the policy  
22 meets the criteria under subds. ~~3~~ <sup>1-2</sup> to ~~5~~ <sup>4</sup>.

23 (c) The department and the office of the commissioner of insurance shall work  
24 together to develop a training program for individuals who sell long-term care  
25 insurance policies in the state to ensure that those individuals understand the

*Insert 3-12*

**BILL**

1 relation of long-term care insurance to the Medical Assistance program and are able  
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3 this type of insurance relates to private and public financing of long-term care.

4 (d) An insurer that issues a long-term care insurance policy described in par.  
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9 required by the secretary.

Insert 4-9 ✓

10 **SECTION 2.** 49.47 (9m) of the statutes is repealed.

11 **SECTION 3.** 601.415 (8) of the statutes is created to read:

12 601.415 (8) LONG-TERM CARE PARTNERSHIP PROGRAM. The commissioner shall  
13 provide the certifications required under s. 49.45 (31) (b) <sup>5</sup> and shall cooperate with  
14 the department of health and family services in developing the training program  
15 under s. 49.45 (31) (c) for agents who sell long-term care insurance policies.

13

16 (END)

Insert 4-10 ✓

D-note

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0156/2ins  
PJK:jld:nwn

INSERT 3-8

1 To be eligible for the program, an individual must have been a resident of this  
2 state when the long-term care insurance policy<sup>✓</sup> was issued, and the policy must  
3 satisfy all of the following criteria ~~4~~

(END OF INSERT 3-8)

INSERT 3-12

4 1. The policy<sup>✓</sup> was not issued before the date specified in the amendment to the  
5 state plan, which may not be before the first day<sup>✓</sup> of the calendar quarter in which the  
6 amendment is submitted to the federal department of health and human<sup>✓</sup> services.

(END OF INSERT 3-12)

INSERT 4-9

7 **SECTION 1.** 49.47 (4) (b) (intro.)<sup>✓</sup> of the statutes is amended to read:

8 49.47 (4) (b) (intro.) Eligibility exists if the applicant's property, subject to the  
9 exclusion of any amounts under the<sup>✓</sup> Long-Term Care Partnership Program  
10 established under s. 49.45<sup>✓</sup> (31), does not exceed the following:

History: 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314 s. 144; 1983 a. 27, 245; 1985 a. 29; 1987 a. 27, 307, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1462k to 1466d, 2909c to 2909i; 1989 a. 173, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 269, 277, 437; 1995 a. 27 ss. 3026 to 3028, 9126 (19); 1995 a. 225, 289, 295; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25, 253.

11 **SECTION 2.** 49.47 (4) (c) 1. of the statutes is amended to read:

12 49.47 (4) (c) 1. Except as provided in par. (am) and as limited by subd. 3.,  
13 eligibility exists if income, subject to the exclusion of any amounts under the  
14 Long-Term Care Partnership Program established under s. 49.45 (31)<sup>✓</sup>, does not  
15 exceed 133 1/3% of the maximum aid to families with dependent children payment  
16 under s. 49.19 (11) for the applicant's family size or the combined benefit amount  
17 available under supplemental security income under 42 USC 1381 to 1383c and state





*Ins 4-9 cont'd*

1 supplemental aid under s. 49.77 whichever is higher. In this subdivision "income"  
 2 includes earned or unearned income that would be included in determining  
 3 eligibility for the individual or family under s. 49.19 or 49.77, or for the aged, blind  
 4 or disabled under 42 USC 1381 to 1385. "Income" does not include earned or  
 5 unearned income which would be excluded in determining eligibility for the  
 6 individual or family under s. 49.19 or 49.77, or for the aged, blind or disabled  
 7 individual under 42 USC 1381 to 1385.

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(END OF INSERT 4-9)

**INSERT 4-10**

8 **SECTION 3.** 49.496<sup>x</sup> (3) (a) (intro.) of the statutes is amended to read:  
 9 49.496 (3) (a) (intro.) Except as provided in par. (b), the department shall file  
 10 a claim against the estate of a recipient for all of the following, subject to the exclusion  
 11 of any amounts under the Long-Term Care Partnership Program<sup>✓</sup> established under  
 12 s. 49.45 (31)<sup>✓</sup>, unless already recovered by the department under this section:

**History:** 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997<sup>x</sup> a. 27; 1999 a. 9; 2003 a. 33.

13 **SECTION 4.** 146.91 (2) (c) of the statutes is repealed.

14 **SECTION 5.** 146.91<sup>x</sup> (5) of the statutes is repealed.

(END OF INSERT 4-10)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0156/2dn  
PJK:jld:nwn

date

These are the changes I've made to this version:

1. I reorganized the language somewhat in proposed s. 49.45 (31) (b) (intro.), bringing former (b) 1. into that (intro.), which required changing the numbers that follow.
2. I changed the language of proposed s. 49.45 (31) (b) 1. to more closely reflect the language in the DRA.
3. I added the amendments to ss. 49.47 (4) (b) (intro.) and (c) 1. and 49.496 (3) (a) (intro.) and repealed s. 146.91 (2) (c) and (5).

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Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

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**Duerst, Christina**

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**From:** Buschman, Sara  
**Sent:** Friday, March 09, 2007 2:36 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-0156/2 Topic: Long-term Care Partnerships

Please Jacket LRB 07-0156/2 for the ASSEMBLY.