

2007 SENATE BILL 114

March 27, 2007 – Introduced by Senators ROESSLER, DARLING, LEIBHAM, SCHULTZ and HARSDORF, cosponsored by Representatives STRACHOTA, PETERSEN, TOWNSEND, VUKMIR, NYGREN, ALBERS, MURSAU, F. LASEE, J. OTT, KRAMER, HINES, LOTHIAN, VAN ROY, PETROWSKI, TAUCHEN and BALLWEG. Referred to Committee on Public Health, Senior Issues, Long Term Care and Privacy.

1 **AN ACT to repeal** 49.47 (9m), 146.91 (2) (c) and 146.91 (5); **to amend** 49.47 (4)
 2 (b) (intro.), 49.47 (4) (c) 1. and 49.496 (3) (a) (intro.); **to repeal and recreate**
 3 49.45 (31); and **to create** 601.415 (8) of the statutes; **relating to:** a Long-Term
 4 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 may have to pay 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 provided under MA. For the long-term care insurance to qualify: 1) the individual must have been a state resident when

SENATE BILL 114

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.

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, and shall
7 implement the program if the amendment to the state plan is approved. Under the
8 program, the department shall exclude an amount equal to the amount of benefits

SENATE BILL 114

1 that an individual receives under a qualifying long-term care insurance policy, as
2 described in par. (b), when determining any of the following:

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

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

7 (b) To be eligible for the program, an individual must have been a resident of
8 this state when the long-term care insurance policy was issued, and the policy must
9 satisfy all of the following criteria:

10 1. The policy was not issued before the date specified in the amendment to the
11 state plan, which may not be before the first day of the calendar quarter in which the
12 amendment is submitted to the federal department of health and human services.

13 2. The policy meets the definition of a qualified long-term care insurance policy
14 under 26 USC 7702B (b).

15 3. The policy meets the long-term care insurance model regulations and the
16 requirements of the long-term care insurance model act promulgated by the
17 National Association of Insurance Commissioners that are specified in 42 USC
18 1396p (b) (5).

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

21 5. The commissioner of insurance certifies to the department that the policy
22 meets the criteria under subds. 2. to 4.

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

SENATE BILL 114**SECTION 1**

1 relation of long-term care insurance to the Medical Assistance program and are able
2 to explain to consumers the protections offered by long-term care insurance and how
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.
5 (b) shall be required to submit reports to the secretary of the federal department of
6 health and human services, in accordance with regulations developed by the
7 secretary, that include notice of when benefits are paid under the policy, the amount
8 of the benefits, notice of the termination of the policy, and any other information
9 required by the secretary.

10 **SECTION 2.** 49.47 (4) (b) (intro.) of the statutes is amended to read:

11 49.47 (4) (b) (intro.) Eligibility exists if the applicant's property, subject to the
12 exclusion of any amounts under the Long-Term Care Partnership Program
13 established under s. 49.45 (31), does not exceed the following:

14 **SECTION 3.** 49.47 (4) (c) 1. of the statutes is amended to read:

15 49.47 (4) (c) 1. Except as provided in par. (am) and as limited by subd. 3.,
16 eligibility exists if income, subject to the exclusion of any amounts under the
17 Long-Term Care Partnership Program established under s. 49.45 (31), does not
18 exceed 133 1/3% of the maximum aid to families with dependent children payment
19 under s. 49.19 (11) for the applicant's family size or the combined benefit amount
20 available under supplemental security income under 42 USC 1381 to 1383c and state
21 supplemental aid under s. 49.77 whichever is higher. In this subdivision "income"
22 includes earned or unearned income that would be included in determining
23 eligibility for the individual or family under s. 49.19 or 49.77, or for the aged, blind
24 or disabled under 42 USC 1381 to 1385. "Income" does not include earned or
25 unearned income which would be excluded in determining eligibility for the

SENATE BILL 114

1 individual or family under s. 49.19 or 49.77, or for the aged, blind or disabled
2 individual under 42 USC 1381 to 1385.

3 **SECTION 4.** 49.47 (9m) of the statutes is repealed.

4 **SECTION 5.** 49.496 (3) (a) (intro.) of the statutes is amended to read:

5 49.496 **(3)** (a) (intro.) Except as provided in par. (b), the department shall file
6 a claim against the estate of a recipient for all of the following. subject to the exclusion
7 of any amounts under the Long-Term Care Partnership Program established under
8 s. 49.45 (31), unless already recovered by the department under this section:

9 **SECTION 6.** 146.91 (2) (c) of the statutes is repealed.

10 **SECTION 7.** 146.91 (5) of the statutes is repealed.

11 **SECTION 8.** 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) 5. 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.

16 (END)