Legislative Fiscal Bureau

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State Long-Term Care Partnerships (DHFS – MA -- Long-Term Care)

Bill Agency

[LFB 2007-09 Budget Summary: Page 293, #14]

CURRENT LAW

The long-term care partnership program, established in federal law, is intended to encourage individuals to purchase long-term care insurance to reduce state and federal costs that would otherwise be incurred under the medical assistance (MA) program. However, prior to the enactment of the federal Deficit Reduction Act of 2006, (DRA, or P.L. 109-171), states had little incentive to participate in the program because MA estate recovery provisions still applied to participating individuals -- their assets would only be protected until they died.

The DRA made several changes to the program. Most importantly, for state partnership programs approved after May 14, 1993, program participants may be exempt from estate recovery procedures if the state program provides for the disregard of any assets in an amount equal to the private long-term care insurance benefits paid on behalf of the individual.

Current Wisconsin law requires DHFS to seek participation in the program. To date, the Department of Health and Family Services (DHFS) has not sought federal approval to participate in the program.

GOVERNOR

Repeal current law provisions requiring DHFS to seek approval of, and federal financial participation in, a pilot project under which a person who is the beneficiary of a long-term care insurance policy that satisfies criteria established by DHFS may become eligible for medical assistance (MA) while exceeding the usual MA resource limits. Further, repeal provisions that

apply, if Wisconsin receives such a waiver, that provide MA eligibility for individuals who purchase long-term care insurance policies. Finally, repeal references to the program with respect to agency responsibilities to design the program and for DHFS to consult with the U.S. Department of Health and Human Services to determine the feasibility of procuring a waiver to implement the program.

DISCUSSION POINTS

1. Due to changes implemented under the DRA, Wisconsin would no longer need to request a waiver to participate in a partnership program pilot. Rather, the state could pursue participation through the modification of the state's MA plan. Therefore, the Governor's modification to current law would not prohibit DHFS from pursuing participation in the program. However, the Department has indicated that it currently has no plans to pursue participation, and that no incentive or requirement to do so would exist in state law if the Governor's provision to repeal the current provision is approved. The Assembly Committee on Aging and Long-Term Care is currently considering a bill (AB 213) that would direct DHFS to modify its state plan in order to pursue participation in the federal partnership initiative. Although the Committee held a public hearing on the bill, it has not yet taken executive action on it.

2. The goal of the partnership program is to encourage individuals with moderate incomes who might otherwise be likely to rely on MA should a need for long-term care services arise, to purchase private long-term care insurance. Individuals who purchase qualifying policies and need long-term care services first utilize the coverage provided from their private insurance policy. If they exhaust these private insurance benefits and subsequently seek MA coverage for their long-term care needs, the partnership program allows these individuals to protect some or all of their assets from MA "spend down" requirements during the eligibility determination process. Individuals are still subject to MA income requirements. By providing an incentive for individuals who may not otherwise have purchased long-term care insurance to do so, the partnership program may reduce MA costs by delaying or eliminating the need for participants to access MA for long-term care services.

3. 1987 Wisconsin Act 27 and 1989 Wisconsin Act 31 both contained statutory language directing DHFS to seek participation in the program. However, DHFS did not act on this direction at that time. Subsequently, the passage of the federal Omnibus Budget Reconciliation Act of 1993 prohibited states from disregarding estate assets from MA recovery procedures unless the practice had been approved of prior to May 14, 1993, removing some of the incentive to participate. With this change in federal law, individuals could only protect their assets until their death, after which the state would claim whatever portion was necessary to defray the cost of their care under MA. Losing the ability to retain control over assets for the purpose of leaving a bequest or inheritance decreased the appeal of the partnership program, leaving little incentive for states to participate.

4. The DRA subsequently made several changes to the program, including allowing

program participants to be exempt from estate recovery procedures if the state program provides for the disregard of any assets in an amount equal to the private long-term care insurance benefits paid on behalf of the individual, and allowing states to participate through a modification of their state MA plans (rather than pursuing a waiver of MA rules). Despite this change, DHFS has not pursued the approval of a pilot program with the U.S. Department of Health and Human Services.

5. DHFS had previously considered pursuing federal approval to participate in the program after the passage of the DRA, but preliminary fiscal estimates covering the first twelve years after implementation indicated that participating was unlikely to have significant fiscal benefits for the state. This may be principally due to the fact that any significant savings to state long-term expenditures are unlikely to occur for at least fifteen to twenty years after the program is implemented. While estimated costs savings are unlikely to accrue for the first two decades, administrative costs would accrue immediately.

6. Establishing a partnership program would require DHFS to work collaboratively with the Office of the Commissioner of Insurance (OCI) to establish requirements for qualifying policies and to educate consumers about the new option and its implications. OCI would be responsible for the regulation of the new long-term insurance providers, including ensuring compliance among providers with federal regulations, responding to consumer complaints, and providing both provider and consumer education on the program. DHFS would be required to modify state MA eligibility requirements to comply with the program, including modifying eligibility processing systems and the estate recovery program's collection process. Counties may experience increased costs over time as well, both to respond to consumer inquiries and to track growing numbers of individuals who have purchased partnership policies through eligibility systems.

7. Estimates based on the experiences of the four pilot states that have been operating partnership programs for approximately 13 to 15 years indicated that, while administrative costs to DHFS and OCI to administer the program would begin immediately and would continue for the duration of the program, cost savings to MA were unlikely to accrue for at least the first fifteen to twenty years of the program's operation, if not longer. When DHFS compared estimated administrative costs for its agency to implement the partnership program to estimated cost savings to MA over the first 12 years of the program, assuming the partnership benefit were offered in 2008 and the participating population were similar to those in pilot states, minimal savings were realized. When potential costs to the Office of the Commissioner of Insurance are considered, it would seem probable that the program would cost more money to administer than it would be expected to save in MA benefits costs for at least the first decade. The lack of comparative data from the four pilot states over a longer time period makes it difficult to estimate what may most likely occur beyond 2018, when participants would be expected to begin requiring long- term care services.

8. Four states originally participated in the partnership program -- California, Connecticut, Indiana, and New York. Table 1, compiled from quarterly program reports by the Alliance for Health Reform, shows the number of policies purchased since the states offered the benefit, the number of policies that are still in force, the number of policyholders who used some or

all of their private insurance long-term care benefit, and the number of policyholders who accessed MA after exhausting their private insurance long-term care benefit.

TABLE 1

Partnership Program -- Selected Information

	Implementation Date	Total Policies Purchased	Policies Currently In Force	No. Who Accessed Benefits	Participants Who Exhausted Benefits & Accessed MA
California	August, 1994	97,223	81,259	1,270	36
Connecticut	March, 1992	42,730	33,952	512	36
Indiana	May, 1993	39,063	32,115	391	22
New York	April, 1993	69,690	53,344	1,649	81
Total		248,706	200,670	3,822	175

9. Staff from states currently offering the benefit have indicated that no clear evidence of savings to their states' MA programs had materialized as a result of the benefit, for several reasons. First and most significantly, the program has only been in place for 13 to 15 years. As the average age of the individuals who had initially purchased insurance was between 58 and 63 (depending on the state), few participants have begun using long-term care services, making it difficult to assess the impact of their private coverage on MA benefit costs. Second, the financial profile of the individuals who elected to purchase partnership policies was substantially different than originally anticipated by states when potential cost savings to MA were projected.

10. In a September, 2005 report, the U.S. Government Accountability Office (GAO) concluded that "it is difficult to determine whether and to what extent the long-term care partnership program has resulted in cost savings to the Medicaid program because there are insufficient data to determine if those individuals who have purchased partnership policies would have accessed Medicaid had they not purchased long-term care insurance benefits."

As suggested by the GAO, in order for the program to reduce future MA benefits costs, participants (individuals who purchase long-term care insurance policies) must be individuals who would, in the absence of these policies, receive MA-funded long-term care services. One of the goals of the program is to attract participants at low to modest income levels, who may be most at risk of quickly depleting personal resources and qualifying for MA, should they require long-term care services. However, the three pilot states that surveyed policy holders found that the majority reported their assets to be in excess of $350,000. Approximately half of these reported an average monthly household income of greater than $5,000. As many of the participating individuals are in higher income brackets to begin with, there is some question about whether they would have ever qualified for MA, regardless of whether they had long-term care insurance policies.

11. While the savings to the MA program that could be generated by encouraging

individuals to purchase private long-term care insurance is difficult to estimate, and the actual impact on MA benefit costs is unlikely to become apparent for at least another decade as individuals from the pilot states begin using long-term care services, the costs of administering the program would begin immediately. Staff time would be required to secure participation under the federal partnership program, and DHFS would need to track participating individuals over time. Standards for applicable policies would need to be developed and implemented in Wisconsin; however, given that the program is in force in four pilot states, model standards exist to provide a starting point.

Based on the uncertainty of the cost savings (if any) the state would realize by participating in the program and the need immediate costs that would be incurred to implement the program, the Committee may wish to support the Governor's recommendation to delete the current law requirement that DHFS pursue a waiver to participate in the program for the time being, until more reliable long term fiscal estimates may be derived from the performance of the program in the pilot states. This process, however, could take several biennia. Should DHFS choose to pursue participation in the program at a later time, it could be done through a state plan amendment.

12. The Department has indicated that it does not plan to participate in the partnership program at this time. However, there are currently 22 other states that have indicated an interest in investigating, and potentially implementing, partnership programs in the near future. It may be argued that allowing additional time for further study and program evaluation may lead to more compelling evidence of long-term cost savings, and make participation in the program more fiscally appealing. From this perspective, the Committee may wish to postpone directing DHFS to participate in the pilot program until additional information became available.

13. While it is difficult to assess the partnership program's impact on MA costs over time, the program may produce other benefits. Nationwide surveys have indicated that increasing numbers of individuals do not anticipate planning for the financial impact of long-term medical care, and most assume that their health insurance or Medicare will cover the cost should such care be required. Consequently, many are unprepared to bear the cost of institutional or long-term care, should it become necessary. Conversely, surveys of individuals in the four pilot states offering partnership programs indicated that over 92% of the participants were first-time purchasers of a long-term care insurance product. To the extent that the partnership program may serve to better educate the public about the potential costs of long-term care services, and provide an option to encourage and assist individuals in planning for these costs, it may be argued that the benefit of cultivating an interest in self-insurance against potential long-term care costs, regardless of the likelihood that the individual would otherwise receive services through MA, may outweigh the administrative costs accrued to support the initiative. From this perspective, the Committee could direct DHFS to pursue participation in the program by incorporating the provision of AB 213 into the bill. The attachment to this paper provides a summary of the bill.

14. In addition, the Committee could provide additional staff and funding for DHFS and OCI to participate in the initiative. In its fiscal note to AB 213, DHFS estimated that it would require 1.0 human services program coordinator position to implement the policy, and one-time funding of up to $500,000 to modify existing MA eligibility databases and systems used by the

Department and by counties. Further, county income-maintenance program costs may be expected to increase by approximately $12,000 in the first year (and by an additional $12,000 annually thereafter to an annual total of $144,000 in 2020).

OCI estimates that additional staff would be needed to perform market analysis on insurers and agents to monitor compliance with program regulations and prevent high pressure tactics, or the sale of unsuitable products to senior citizens. Specifically, OCI anticipates requiring $172,700 annually and $19,500 in one-time supplies costs to support an insurance examiner position to implement and coordinate the Department's efforts relating to the partnership program, a market analyst to monitor activity and compliance, and respond to complaints, and an investigator to respond to complaints and aid providers and consumers in ensuring compliance with federal regulations. In recognition of the time needed for DHFS to secure federal approval to implement the program, the Committee could provide this funding beginning in the second year of the biennium. The following table summarizes the Departments' estimates of increased costs.

TABLE 2

Agency Estimates of Costs of Implementing Partnership Program 2008-09

	GPR	FED	PR	Total
Health and Family Services				
One-Time MA Eligibility Database	$250,000	$250,000	$0	$500,000
1.0 Human Services Coordinator Position	31,900	31,900		63,800
Income Maintenance Staff	6,000	6,000		12,000
Total	$287,900	$287,900	$0	$575,800
Insurance				
3.0 Positions	$0	$0	$172,700	$172,700
One-Time Costs for Positions	0	0	19,500	19,500
Total	$0	$0	$192,200	$192,200
Grand Total	$287,900	$287,900	$192,200	$768,000

15. Alternatively, as the timeline for federal approval of a request to modify the state's plan to allow for participation in the program is uncertain, the Committee could chose to refrain from providing additional resources until federal approval of a modification to the state plan is secured. DHFS and OCI would have the option of requesting additional resources in subsequent biennia.

16. Finally, the Committee could delete the Governor's provision from the budget bill, reasoning that the issue of the state's participation in the long-term care partnership program could be addressed through separate legislation.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendations to repeal current statutory provisions that direct DHFS to participate in the program.

2. Approve the Governor's recommendations. In addition, incorporate the provisions of AB 213 into the bill, which would direct DHFS to pursue an amendment to the state MA plan in order to participate in the partnership program.

3. Approve the Governor's recommendations. In addition, incorporate the provisions of AB 213 into the bill, which would direct DHFS to pursue an amendment to the state MA plan in order to participate in the partnership program. Finally, as shown in Table 2, provide $768,000 ($287,900 GPR, $287,900 FED and $192,200 PR in 2008-09 and provide 4.0 positions (0.5 GPR position, 0.5 FED position and 3.0 PR positions, beginning in 2008-09, for DHFS and OCI to implement the program.

ALT 3	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	$287,900	0.50	$287,900	0.50
FED	287,900	0.50	287,900	0.50
PR	192,200	3.00	192,200	3.00
Total	$768,000	4.00	$768,400	4.00

4. Delete provision.

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Attachment

ATTACHMENT

Summary of AB 213

As provided under SB 40, AB 213 would delete current law provisions directing DHFS to seek approval of, and federal financial participation in, a pilot project under which a person who is the beneficiary of a long-term care insurance policy that satisfies criteria established by DHFS may become eligible for medical assistance (MA) while exceeding the usual MA resource limits. Further, AB 213 would repeal provisions that apply, if Wisconsin receives such a waiver, that provide MA eligibility for individuals who purchase long-term care insurance policies. Finally, AB 213 would repeal references to the program with respect to agency responsibilities to design the program and for DHFS to consult with the U.S. Department of Health and Human Services (DHHS) to determine the feasibility of procuring a waiver to implement the program. Instead, the bill would direct DHFS to submit an amendment to the state MA plan to DHHS within three months of the effective date of the bill establishing a long-term care partnership program, and to implement the program if the amendment to the state plan is approved.

The bill directs DHFS to exclude an amount equal to the amounts of benefits that an individual receives under a qualifying long-term care insurance policy when determining the individual's income and resources for purposes of determining the individual's eligibility for MA; and when determining the amount to be recovered from the individual's estate if the individual receives MA.

The bill would further specify that to be eligible for participation in the partnership program, the individual must have been a resident of the state when the policy was issued, and the policy must satisfy all of the following criteria: (a) the policy may not have been issued before the date specified in the amendment, and may not be before the first day of the calendar quarter in which the amendment is submitted to DHHS; (b) the policy must meet the definitions specified under federal law; (c) the policy must meet the model regulations and requirements promulgated by the National Association of Insurance Commissioners (NAIC) that are specified in federal law, the policy must include applicable inflation protection, and the Commissioner of Insurance certifies to DHFS that the policy meets these criteria.

The bill directs DHFS and OCI to work together to develop a training program for individuals who sell long-term care policies to ensure that they understand the relationship between long-term care insurance and MA, and are able to explain to consumers how this type of insurance relates to private and public financing of long-term care. Participating insurers would be required to submit required reports to the DHHS Secretary that include notice of when benefits are paid on the policy, the amount of the benefits, notice of termination of the policy, and any other information required by the secretary.