

House Bill No. 947

An act relating to long-term care coverage; reenacting and amending s. 409.9102, F.S.; directing the Agency for Health Care Administration, in consultation with the Office of Insurance Regulation and the Department of Children and Family Services, to amend the Medicaid state plan that established the Florida Long-Term Care Partnership Program for purposes of compliance with provisions of the Social Security Act; establishing a qualified state Long-Term Care Insurance Partnership Program in Florida; providing duties of the program; requiring consultation with the Office of Insurance Regulation and the Department of Children and Family Services for the creation of standards for certain information; providing rulemaking authority to the agency for implementation of s. 409.9102, F.S.; providing rulemaking authority to the department regarding determination of eligibility for certain services; creating s. 627.94075, F.S.; providing rulemaking authority to the Financial Services Commission for the implementation of a qualified state Long-Term Care Insurance Partnership Program in Florida; repealing ss. 1 and 2 of ch. 2005-252, Laws of Florida, to delete conflicting provisions relating to the determination of eligibility for nursing and rehabilitative services and the establishment of the Florida Long-Term Care Partnership Program that were contingent upon amendment to the Social Security Act; amending s. 4 of ch. 2005-252, Laws of Florida, to delete a contingency in an effective date; requiring the Office of Program Policy Analysis and Government Accountability to submit a report on the implementation of a qualified state Long-Term Care Insurance Partnership Program in Florida to the Governor and Legislature; creating s. 627.94076, F.S.; requiring long-term care insurance policies to provide incontestability after a certain time period; providing an exception; amending s. 627.9403, F.S.; specifying that certain limited benefit policies are a type of long-term care insurance policy; deleting an exemption from a minimum time period coverage requirement for certain limited benefit policies; amending s. 627.9404, F.S.; revising definitions; amending s. 627.9407, F.S.; revising certain restrictions on long-term care insurance policies; providing additional rate structure requirements for long-term care insurance policies; amending s. 641.2018, F.S.; correcting a cross-reference; providing application; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 409.9102, Florida Statutes, as created by section 2 of chapter 2005-252, Laws of Florida, is reenacted and amended to read:

(Substantial rewording of section. See s. 409.9102, F.S., for present text.)

409.9102 A qualified state Long-Term Care Insurance Partnership Program in Florida.—The Agency for Health Care Administration, in consulta-

tion with the Office of Insurance Regulation and the Department of Children and Family Services, is directed to establish a qualified state Long-Term Care Insurance Partnership Program in Florida, in compliance with the requirements of s. 1917(b) of the Social Security Act, as amended.

(1) The program shall:

(a) Provide incentives for an individual to obtain or maintain insurance to cover the cost of long-term care.

(b) Provide a mechanism to qualify for coverage of the costs of long-term care needs under Medicaid without first being required to substantially exhaust his or her assets, including a provision for the disregard of any assets in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under the program.

(c) Alleviate the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives.

(2) The Agency for Health Care Administration, in consultation with the Office of Insurance Regulation and the Department of Children and Family Services, and in accordance with federal guidelines, shall create standards for long-term care partnership program information distributed to individuals through insurance companies offering approved long-term care partnership program policies.

(3) The Agency for Health Care Administration is authorized to amend the Medicaid state plan and adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

(4) The Department of Children and Family Services, when determining eligibility for Medicaid long-term care services for an individual who is the beneficiary of an approved long-term care partnership program policy, shall reduce the total countable assets of the individual by an amount equal to the insurance benefit payments that are made to or on behalf of the individual. The department is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

Section 2. Section 627.94075, Florida Statutes, is created to read:

627.94075 A qualified state Long-Term Care Insurance Partnership Program in Florida.—The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement applicable provisions of a qualified state Long-Term Care Insurance Partnership Program in Florida in accordance with the requirements of s. 1917(b) of the Social Security Act, as amended, any applicable federal guidelines, and any rules necessary to ensure program compliance by insurers as provided in s. 409.9102.

Section 3. Sections 1 and 2 of chapter 2005-252, Laws of Florida, are repealed.

Section 4. Section 4 of chapter 2005-252, Laws of Florida, is amended to read:

Section 4. ~~This act shall take effect upon becoming a law, except that the amendments to section 409.905, Florida Statutes, and the newly created section 409.9102, Florida Statutes, provided in this act shall take effect contingent upon amendment to section 1917(b)(1)(c) of the Social Security Act by the United States Congress to delete the “May 14, 1993,” deadline for approval by states of long-term care partnership plans.~~

Section 5. The Office of Program Policy Analysis and Government Accountability is directed to prepare a report on the implementation of a qualified state Long-Term Care Insurance Partnership Program in Florida. The report shall include data on the number and value of policies sold and the geographic areas in which the policies were purchased, a demographic description of the policyholders, and other information necessary to evaluate the program. The report shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31, 2009.

Section 6. Section 627.94076, Florida Statutes, is created to read:

627.94076 Time limit on certain defenses.—Notwithstanding the provisions of s. 627.607, each long-term care insurance policy shall provide that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of 2 years after its date of issue except for nonpayment of premiums.

Section 7. Section 627.9403, Florida Statutes, is amended to read:

627.9403 Scope.—The provisions of this part shall apply to long-term care insurance policies delivered or issued for delivery in this state, and to policies delivered or issued for delivery outside this state to the extent provided in s. 627.9406, by an insurer, a fraternal benefit society as defined in s. 632.601, a health maintenance organization as defined in s. 641.19, a prepaid health clinic as defined in s. 641.402, or a multiple-employer welfare arrangement as defined in s. 624.437. A policy which is advertised, marketed, or offered as a long-term care policy and as a Medicare supplement policy shall meet the requirements of this part and the requirements of ss. 627.671-627.675 and, to the extent of a conflict, be subject to the requirement that is more favorable to the policyholder or certificateholder. The provisions of this part shall not apply to a continuing care contract issued pursuant to chapter 651 and shall not apply to guaranteed renewable policies issued prior to October 1, 1988. Any limited benefit policy that limits coverage to care in a nursing home or to one or more lower levels of care required or authorized to be provided by this part or by commission rule is a type of long-term care insurance policy that must meet all requirements of this part that apply to long-term care insurance policies, except ss. 627.9407(3)(c), (9), (10)(f), and (12) and 627.94073(2). ~~If the limited benefit policy does not provide coverage for care in a nursing home, but does provide coverage for one or more lower levels of care, the policy shall also be exempt from the requirements of s. 627.9407(3)(d).~~

Section 8. Subsections (1) and (7) of section 627.9404, Florida Statutes, are amended to read:

627.9404 Definitions.—For the purposes of this part:

(1) “Long-term care insurance policy” means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health insurance coverage not otherwise defined as long-term care insurance.

(7) “Limited benefit policy” means any long-term care insurance policy that limits coverage to care in a nursing home or to one or more lower levels of care required or authorized to be provided by this part or by commission rule.

Section 9. Subsections (3) and (7) of section 627.9407, Florida Statutes, are amended to read:

627.9407 Disclosure, advertising, and performance standards for long-term care insurance.—

(3) RESTRICTIONS.—A long-term care insurance policy may not:

(a) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificateholder; however, the office may authorize non-renewal for an insurer on a statewide basis on terms and conditions determined to be necessary by the office to protect the interests of the insureds, if the insurer demonstrates that renewal will jeopardize the insurer’s solvency or that substantial and unexpected loss experience cannot reasonably be mitigated or remedied.

(b) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same insurer or any affiliated insurer, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

(c) Restrict its coverage to care only in a nursing home licensed pursuant to part II of chapter 400 or provide significantly more coverage for such care than coverage for lower levels of care. The commission shall adopt rules defining what constitutes significantly more coverage in nursing homes licensed pursuant to part II of chapter 400 than for lower levels of care.

~~(d) Provide coverage for less than 24 consecutive months for nursing home care for each covered person.~~

(d)(e) Contain an elimination period in excess of 180 days. As used in this paragraph, the term “elimination period” means the number of days at the beginning of a period of confinement for which no benefits are payable.

(7) RATE STRUCTURE.—

(a) A long-term care insurance policy may not be issued if the premiums to be charged are calculated to increase based solely on the age of the insured.

(b) Any long-term care insurance policy or certificate issued or renewed, at the option of the policyholder or certificateholder, shall make available to the insured the contingent benefit upon lapse as provided in the Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners in the second quarter of the year 2000.

(c) Any premium increase for existing insureds shall not result in a premium charged to the insureds that would exceed the premium charged on a newly issued insurance policy, except to reflect benefit differences. If the insurer is not currently issuing new coverage, the new business rate shall be as published by the office at the rate representing the new business rate of insurers representing 80 percent of the carriers currently issuing policies with similar coverage as determined by the prior calendar year earned premium.

(d) Compliance with the pooling provisions of s. 627.410(6)(e)3. shall be determined by pooling the experience of all affiliated insurers.

Section 10. Subsection (3) of section 641.2018, Florida Statutes, is amended to read:

641.2018 Limited coverage for home health care authorized.—

(3) Any contract that limits coverage to home health care benefits as provided in this section must also meet all of the requirements of ss. 627.9403-627.9408 of the Long-Term Care Insurance Act, except s. 627.9407(3)(c), ~~(d)~~, and (9).

Section 11. This act shall apply to long-term care insurance policies issued or renewed on or after July 1, 2006. For any long-term care insurance policy issued prior to July 1, 2006, the provisions of section 6 shall apply to such policy only upon renewal of such policy on or after July 1, 2008, and the policy shall so provide by endorsement to the policy.

Section 12. This act shall take effect upon becoming a law.

Approved by the Governor June 20, 2006.

Filed in Office Secretary of State June 20, 2006.