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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 52

Session of  
2003

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JANUARY 29, 2003

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REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,  
JANUARY 29, 2003

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AN ACT

1 Establishing the Long-Term Care Partnership Program; and  
2 conferring powers and duties on the Insurance Department, the  
3 Department of Aging and the Department of Public Welfare.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Long-Term  
8 Care Partnership Program Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall  
11 have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Asset disregard." A concept which allows for one of the  
14 following:

15 (1) The total assets an individual owns and may retain

1 under Medicaid and still qualify for benefits under Medicaid  
2 at the time the individual applies for benefits if the  
3 individual:

4 (i) is the beneficiary of a premium precertified  
5 long-term care policy which provides long-term care  
6 insurance for at least three years, with no less than  
7 \$150,000 worth of long-term care insurance for 2003, and  
8 which includes a provision under which the daily benefit  
9 increases by at least 5% per year, compounded at least  
10 annually;

11 (ii) meets requirements of section 5(a);

12 (iii) has exhausted the benefits of a premium  
13 precertified long-term care policy; and

14 (iv) does not reduce the limits of coverage below  
15 what is necessary for total asset disregard after initial  
16 purchase.

17 (2) A \$1 increase in the amount of assets an individual  
18 may retain under Medicaid for each \$1 of benefit paid out  
19 under the individual's long-term care policy for long-term  
20 care services if the individual:

21 (i) purchases a precertified long-term care policy;

22 and

23 (ii) meets the requirements of section 5(a).

24 "Contracting agency." A local office of aging, an area  
25 agency on aging or a nonprofit organization, which can assist  
26 the Insurance Department with the implementation of the program.

27 "Department." The Department of Public Welfare of the  
28 Commonwealth.

29 "Long-term care insurance." As defined in section 1103 of  
30 the act of May 17, 1921 (P.L.682, No.284), known as The

1 Insurance Company Law of 1921.

2 "Medicaid." The Federal medical assistance program  
3 established under Title XIX of the Social Security Act (49 Stat.  
4 620, 42 U.S.C. § 1396 et seq.).

5 "Precertified long-term care policy." A long-term care  
6 insurance policy which is approved by the Insurance Department  
7 under Article XI of the act of May 17, 1921 (P.L.682, No.284),  
8 known as The Insurance Company Law of 1921, and which contains  
9 provisions to:

10 (1) alert the purchaser of the availability of consumer  
11 information provided through the Insurance Department or the  
12 contracting agency;

13 (2) offer automatic inflation protection of at least 5%  
14 per year compounded annually as long as the policy is in  
15 force;

16 (3) provide for the keeping of records and an  
17 explanation of benefit reports on insurance payments which  
18 count toward asset disregard;

19 (4) provide the management information and reports  
20 necessary to document the extent of asset disregard and to  
21 evaluate the program;

22 (5) offer in-home or community-based long-term care  
23 service benefits to be determined by the Insurance  
24 Department; and

25 (6) provide a minimum daily long-term care benefit as  
26 determined by the Insurance Department.

27 "Premium precertified long-term care policy." A long-term  
28 care insurance policy which is approved by the Insurance  
29 Department under Article XI of the act of May 17, 1921 (P.L.682,  
30 No.284), known as The Insurance Company Law of 1921, and which

1 contains provisions to:

2 (1) provide coverage for \$150,000 of long-term care  
3 insurance for at least three years, with no less than  
4 \$150,000 worth of long-term care insurance for 2003;

5 (2) alert the purchaser of the availability of consumer  
6 information provided through the Insurance Department or the  
7 contracting agency;

8 (3) provide automatic inflation protection of at least  
9 5% per year compounded annually as long as the policy is in  
10 force;

11 (4) provide for the keeping of records and an  
12 explanation of benefit reports on insurance payments which  
13 count toward asset disregard;

14 (5) provide the management information and reports  
15 necessary to document the extent of asset disregard and to  
16 evaluate the program;

17 (6) offer in-home or community-based long-term care  
18 service benefits to be determined by the Insurance  
19 Department; and

20 (7) provide a minimum daily long-term care benefit as  
21 determined by the Insurance Department.

22 "Program." The Long-Term Care Partnership Program  
23 established in section 4.

24 Section 3. Administration.

25 (a) General rule.--This act shall be administered by the  
26 department, the Insurance Department and the Department of  
27 Aging.

28 (b) Department of Public Welfare.--

29 (1) The department shall promulgate regulations to  
30 administer the program. This paragraph includes:

1 (i) Amending Medicaid regulations and the State plan  
2 to accomplish asset disregard under section 4(c).

3 (ii) Eligibility of applicants.

4 (iii) Coverage requirements for long-term care  
5 benefits.

6 (2) No regulation of the department shall prohibit the  
7 issuance of a premium precertified long-term care policy  
8 which provides for asset disregard.

9 (3) Obtain Federal approvals necessary for the program.

10 (c) Insurance Department.--

11 (1) The Insurance Department has the following powers  
12 and duties:

13 (i) Make an annual report to the General Assembly on  
14 the following:

15 (A) The success in implementing the program.

16 (B) The number of precertified and premium  
17 precertified long-term care policies.

18 (C) The number of individuals seeking consumer  
19 information services.

20 (D) The extent and type of benefits paid under  
21 precertified and premium long-term care policies  
22 which could count toward asset disregard.

23 (E) Estimates of impact on present and future  
24 asset disregard.

25 (F) Cost-effectiveness of the program.

26 (G) A determination regarding the  
27 appropriateness of continuing the program.

28 (2) No regulation of the Insurance Department shall  
29 prohibit a precertified or premium precertified long-term  
30 care policy from being a "tax-qualified" long-term care

insurance policy as provided in section 7702B of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 7702B).

(d) Department of Aging.--The Department of Aging or a contracting agency has the following powers and duties:

(1) Provide counseling services under the program.

(2) Make available to individuals interested in participating in the program information on Medicaid, the program, long-term care insurance policies, Medicare supplemental policies, parts A and B of the Medicare premium under Title XVIII of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1395 et seq.) and health maintenance organizations that are contracted with Medicare.

#### Section 4. Long-Term Care Partnership Program.

(a) Establishment.--There is established the Long-Term Care Partnership Program, to be administered by the department with the assistance of the Insurance Department and the Department of Aging, to do the following:

(1) Provide incentives for individuals to insure against the costs of providing for their long-term care needs.

(2) 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.

(3) Provide counseling services to individuals planning for their long-term care needs.

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

(b) Operation.--Upon exhausting a precertified or premium precertified long-term care insurance policy certain resources

1 of an individual, as described in subsection (c), shall not be  
2 considered by the department as a determination of any of the  
3 following:

4 (1) Eligibility for Medicaid.

5 (2) Amount of any Medicaid payment.

6 (3) Any subsequent recovery by the Commonwealth of a  
7 payment for medical services.

8 (c) Asset disregard.--Only upon the repeal of the  
9 restrictions to asset protection contained in the Omnibus Budget  
10 Reconciliation Act of 1993 (Public Law 103-66, 107 Stat. 312),  
11 may the department promulgate amendments to its Medicaid  
12 regulations and Commonwealth plan to allow for asset disregard.  
13 Asset disregard shall be provided, to the extent approved by the  
14 Federal Health Care Financing Administration, for any purchasers  
15 of either a precertified or a premium precertified long-term  
16 care policy delivered, issued for delivery or renewed after  
17 December 31, 2003. The department shall count insurance benefits  
18 toward asset disregard to the extent the payments are for any of  
19 the following:

20 (1) The lower of the actual charge or the amount paid by  
21 the insurance company.

22 (2) Nursing home care or formal services delivered to  
23 insureds in the community.

24 (3) Services provided after the individual meets the  
25 coverage requirements for long-term care benefits established  
26 by the department.

27 (d) Prohibited policy provision.--No precertified long-term  
28 care or premium precertified long-term care policy shall require  
29 a prior hospitalization or a prior stay in a nursing home as a  
30 condition of providing benefits.

1 Section 5. Specific eligibility.

2 (a) Individuals.--An individual who is a beneficiary of a  
3 precertified or a premium precertified long-term care policy is  
4 eligible for assistance under Medicaid using the asset disregard  
5 under section 4(c).

6 (b) Discontinuance.--If the program is discontinued, an  
7 individual who purchased a precertified or a premium  
8 precertified long-term care policy prior to the date the program  
9 is discontinued shall be eligible to receive asset disregard.

10 (c) Reciprocity.--The department may enter into reciprocal  
11 agreements with other states to extend the asset disregard to  
12 residents of this Commonwealth who purchase long-term care  
13 policies in another state which has a substantially similar  
14 asset disregard program to the program under section 4.

15 Section 6. Notice requirement.

16 (a) General rule.--A long-term care insurance policy issued  
17 after the effective date of this act shall contain a notice  
18 provision to the consumer detailing in plain language the  
19 current law pertaining to asset disregard and asset tests.

20 (b) Duty of Insurance Commissioner.--The notice to the  
21 consumer under subsection (a) shall be developed by the  
22 Insurance Commissioner.

23 Section 7. Effective date.

24 This act shall take effect in 60 days.