

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 196

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Lee S. Cotter

AN ACT

RELATING TO LONG-TERM CARE; ENACTING A SECTION OF THE PUBLIC ASSISTANCE ACT TO REQUIRE THE HUMAN SERVICES DEPARTMENT TO ESTABLISH A QUALIFIED STATE LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAM; PROVIDING FOR RULEMAKING; ENACTING A SECTION OF THE MEDICAID ESTATE RECOVERY ACT TO BAN ESTATE RECOVERY FROM THE ESTATE OF INDIVIDUALS WHO HAVE PARTICIPATED IN A QUALIFIED STATE LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAM; PROVIDING FOR CERTIFICATION OF QUALIFIED LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAM INSURANCE BY THE SUPERINTENDENT OF INSURANCE; PROVIDING FOR PRODUCER EDUCATION AND DISCLOSURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 27-2-1 NMSA 1978 (being Laws 1973, Chapter 376, Section 1) is amended to read:

.191231.1

underscoring material = new
~~[bracketed material]~~ = delete

underscored material = new
[bracketed material] = delete

1 "27-2-1. SHORT TITLE.--Sections [~~1 through 20 of this act~~
2 and Sections ~~13-1-9, 13-1-10, 13-1-12, 13-1-13, 13-1-17,~~
3 ~~13-1-18, 13-1-18.1, 13-1-19, 13-1-20, 13-1-20.1, 13-1-21,~~
4 ~~13-1-22, 13-1-27, 13-1-27.2, 13-1-27.3, 13-1-27.4, 13-1-28,~~
5 ~~13-1-28.6, 13-1-29, 13-1-30, 13-1-34, 13-1-35, 13-1-37,~~
6 ~~13-1-39, 13-1-40, 13-1-41 and 13-1-42 NMSA 1953]~~ 27-2-1 through
7 27-2-34 NMSA 1978 may be cited as the "Public Assistance Act"."

8 SECTION 2. A new section of the Public Assistance Act is
9 enacted to read:

10 "[NEW MATERIAL] QUALIFIED STATE LONG-TERM CARE INSURANCE
11 PARTNERSHIP PROGRAM--ESTABLISHMENT--RULEMAKING.--

12 A. Consistent with the federal act and subject to
13 the appropriation and availability of federal and state funds,
14 the secretary shall amend the state medicaid plan to establish
15 a qualified state long-term care insurance partnership program
16 pursuant to Section 1917(b) of the federal act. The program
17 shall:

18 (1) provide incentives for an individual to
19 obtain or maintain qualified insurance to cover the cost of
20 long-term care; and

21 (2) provide a mechanism for an individual to
22 qualify for medical assistance for institutional care or a
23 medical assistance home- and community-based long-term care
24 program on the basis of countable resources. Pursuant to the
25 qualified state long-term care insurance partnership program:

.191231.1

1 (a) an individual who otherwise
2 qualifies for medical assistance for institutional care or a
3 medical assistance home- and community-based long-term care
4 program shall qualify on the basis of countable resources when
5 the individual is the beneficiary of a qualified insurance
6 policy, insurance plan, certificate of insurance or rider; and

7 (b) for purposes of determining
8 eligibility, the individual's total countable resources shall
9 be reduced by an amount equal to the qualified insurance
10 benefits that are made to or on behalf of the individual.

11 B. The secretary shall consult with the
12 superintendent of insurance in the adoption and promulgation of
13 rules regarding the implementation and operation of the
14 qualified state long-term care partnership insurance program.
15 These rules shall provide for reciprocity with respect to
16 individuals who have purchased qualified insurance in another
17 state participating in a qualified state long-term care
18 insurance partnership program and shall provide that the amount
19 of that individual's countable resources shall be disregarded
20 with respect to that qualified insurance.

21 C. As used in this section:

22 (1) "qualified insurance" means an insurance
23 policy, insurance plan, certificate of insurance or rider that
24 the superintendent has certified as qualified long-term care
25 partnership program insurance pursuant to Section 4 of this

underscoring material = new
[bracketed material] = delete

1 2013 act; and

2 (2) "rider" means a long-term care coverage
3 provision added to any type of insurance plan, insurance policy
4 or certificate of insurance."

5 SECTION 3. Section 27-2A-4 NMSA 1978 (being Laws 1994,
6 Chapter 87, Section 4) is amended to read:

7 "27-2A-4. DEPARTMENT TO SEEK RECOVERY OF MEDICAL
8 ASSISTANCE PAYMENTS--RESTRICTION.--

9 A. The department shall seek recovery from the
10 estate of an individual:

11 [~~A.~~] (1) for medical assistance paid on behalf
12 of an individual who was an inpatient in a nursing facility,
13 intermediate care facility for the mentally retarded or other
14 medical institution if the individual was required, as a
15 condition of receiving services in the facility or institution
16 pursuant to the state plan, to spend for costs of services all
17 but a minimal amount of [~~his~~] the individual's income required
18 for personal needs, and with respect to whom the department
19 determined, after opportunity for a hearing in accordance with
20 procedures established by the department, could not reasonably
21 have been expected to have been discharged from the facility or
22 institution to return home; and

23 [~~B.~~] (2) for medical assistance payments made
24 for nursing facility services, home- and community-based
25 services and related hospital and prescription drug services on

.191231.1

underscored material = new
[bracketed material] = delete

1 behalf of an individual who was fifty-five years of age or
2 older when ~~[he]~~ the individual received medical assistance.

3 B. In the case of an individual who has
4 participated in the state's qualified state long-term care
5 insurance partnership program pursuant to Section 2 of this
6 2013 act, the department shall seek recovery of medical
7 assistance paid on behalf of the individual only of the value
8 of the individual's estate that exceeds the amount that the
9 department has disregarded from the individual's countable
10 resources pursuant to Paragraph (2) of Subsection A of Section
11 2 of this 2013 act in making its eligibility determination for
12 medical assistance for institutional care or a medical
13 assistance home- and community-based long-term care program."

14 SECTION 4. A new section of the New Mexico Insurance Code
15 is enacted to read:

16 "[NEW MATERIAL] MEDICAID LONG-TERM CARE PARTNERSHIP
17 PROGRAM--CERTIFICATION OF POLICIES--RULEMAKING.--

18 A. The superintendent shall certify an individual
19 or group insurance policy, insurance plan or certificate of
20 insurance to be qualified state long-term care insurance
21 partnership program insurance when the policy, plan or
22 certificate of insurance:

23 (1) covers an insured who was a resident of
24 the state when coverage first became effective under the
25 policy, plan or certificate;

.191231.1

underscored material = new
~~[bracketed material] = delete~~

1 (2) meets the definition of a qualified state
2 long-term care insurance contract pursuant to Section 7702B(b)
3 of the federal Internal Revenue Code of 1986;

4 (3) was not issued earlier than the effective
5 date of the state plan amendment required pursuant to Section 2
6 of this 2013 act;

7 (4) as of the date of purchase:

8 (a) is sold to an individual who is
9 sixty years of age or younger and provides some level of
10 inflation protection;

11 (b) is sold to an individual who is
12 between sixty-one and seventy-five years of age and provides
13 some level of inflation protection; or

14 (c) is sold to an individual who is over
15 seventy-five years of age; and

16 (5) meets all other applicable federal and
17 state laws relating to qualified state long-term care insurance
18 partnership programs.

19 B. The superintendent shall adopt and promulgate
20 rules establishing the procedures pursuant to which the
21 superintendent shall certify an individual or group insurance
22 policy, insurance plan, certificate of insurance or rider that
23 is delivered, issued for delivery or renewed in this state as
24 qualified state long-term care insurance partnership program
25 insurance.

.191231.1

underscoring material = new
~~[bracketed material] = delete~~

1 C. The superintendent shall consult with the
2 secretary of human services regarding the adoption of rules
3 regarding reciprocity with respect to individuals who have
4 purchased qualified state long-term care insurance partnership
5 program insurance in another state participating in a qualified
6 state long-term care insurance partnership program.

7 D. The superintendent shall ensure that any
8 licensed producer that sells a policy, plan, certificate or
9 rider pursuant to the Long-Term Care Insurance Law demonstrates
10 an understanding of qualified state long-term care partnership
11 program insurance and how it relates to other public and
12 private coverage of long-term care expenses.

13 E. The superintendent shall establish by rule the
14 disclosure requirements pursuant to Section 5 of this 2013 act
15 regarding the qualified state long-term care partnership
16 program for licensed producers that sell or offer for sale an
17 insurance plan, insurance policy or certificate of insurance
18 that is intended to qualify as long-term care partnership
19 program insurance.

20 F. As used in this section:

21 (1) "licensed producer" means an agent, broker
22 or reinsurance intermediary licensed pursuant to the applicable
23 provisions of the Insurance Code; and

24 (2) "rider" means a long-term care coverage
25 provision added to any type of insurance plan, insurance policy

.191231.1

underscored material = new
[bracketed material] = delete

1 or certificate of insurance."

2 SECTION 5. A new section of the New Mexico Insurance Code
3 is enacted to read:

4 "[NEW MATERIAL] LICENSED PRODUCERS--QUALIFIED STATE LONG-
5 TERM CARE PARTNERSHIP PROGRAM--DISCLOSURES.--

6 A. A licensed producer that sells or offers for
7 sale an insurance plan, insurance policy, certificate of
8 insurance or rider that is intended to qualify as qualified
9 state long-term care partnership program insurance shall
10 disclose the availability of qualified state long-term care
11 insurance partnership program insurance and outline the
12 requirements and benefits of participation in the qualified
13 state long-term care insurance partnership program.

14 B. As used in this section:

15 (1) "licensed producer" means an agent, broker
16 or reinsurance intermediary licensed pursuant to the applicable
17 provisions of the Insurance Code; and

18 (2) "rider" means a long-term care coverage
19 provision added to any type of insurance plan, insurance policy
20 or certificate of insurance."

21 - 8 -

22
23
24
25