

1 AN ACT

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

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "27-2-1. SHORT TITLE.--Sections 27-2-1 through 27-2-34  
18 NMSA 1978 may be cited as the "Public Assistance Act"."

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

21 "QUALIFIED STATE LONG-TERM CARE INSURANCE PARTNERSHIP  
22 PROGRAM--ESTABLISHMENT--RULEMAKING.--

23 A. Consistent with the federal act and subject to  
24 the appropriation and availability of federal and state  
25 funds, the secretary shall amend the state medicaid plan to

1 establish a qualified state long-term care insurance  
2 partnership program pursuant to Section 1917(b) of the  
3 federal act. The program shall:

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

7 (2) provide a mechanism for an individual to  
8 qualify for medical assistance for institutional care or a  
9 medical assistance home- and community-based long-term care  
10 program on the basis of countable resources. Pursuant to the  
11 qualified state long-term care insurance partnership program:

12 (a) an individual who otherwise  
13 qualifies for medical assistance for institutional care or a  
14 medical assistance home- and community-based long-term care  
15 program shall qualify on the basis of countable resources  
16 when the individual is the beneficiary of a qualified  
17 insurance policy, insurance plan, certificate of insurance or  
18 rider; and

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

23 B. The secretary shall consult with the  
24 superintendent of insurance in the adoption and promulgation  
25 of rules regarding the implementation and operation of the

1 qualified state long-term care partnership insurance program.  
2 These rules shall provide for reciprocity with respect to  
3 individuals who have purchased qualified insurance in another  
4 state participating in a qualified state long-term care  
5 insurance partnership program and shall provide that the  
6 amount of that individual's countable resources shall be  
7 disregarded with respect to that qualified insurance.

8 C. As used in this section:

9 (1) "qualified insurance" means an insurance  
10 policy, insurance plan, certificate of insurance or rider  
11 that the superintendent has certified as qualified long-term  
12 care partnership program insurance pursuant to Section 4 of  
13 this 2013 act; and

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

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

19 "27-2A-4. DEPARTMENT TO SEEK RECOVERY OF MEDICAL  
20 ASSISTANCE PAYMENTS--RESTRICTION.--

21 A. The department shall seek recovery from the  
22 estate of an individual:

23 (1) for medical assistance paid on behalf of  
24 an individual who was an inpatient in a nursing facility,  
25 intermediate care facility for the mentally retarded or other

1 medical institution if the individual was required, as a  
2 condition of receiving services in the facility or  
3 institution pursuant to the state plan, to spend for costs of  
4 services all but a minimal amount of the individual's income  
5 required for personal needs, and with respect to whom the  
6 department determined, after opportunity for a hearing in  
7 accordance with procedures established by the department,  
8 could not reasonably have been expected to have been  
9 discharged from the facility or institution to return home;  
10 and

11 (2) for medical assistance payments made for  
12 nursing facility services, home- and community-based services  
13 and related hospital and prescription drug services on behalf  
14 of an individual who was fifty-five years of age or older  
15 when the individual received medical assistance.

16 B. In the case of an individual who has  
17 participated in the state's qualified state long-term care  
18 insurance partnership program pursuant to Section 2 of this  
19 2013 act, the department shall seek recovery of medical  
20 assistance paid on behalf of the individual only of the value  
21 of the individual's estate that exceeds the amount that the  
22 department has disregarded from the individual's countable  
23 resources pursuant to Paragraph (2) of Subsection A of  
24 Section 2 of this 2013 act in making its eligibility  
25 determination for medical assistance for institutional care

1 or a medical assistance home- and community-based long-term  
2 care program."

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

5 "MEDICAID LONG-TERM CARE PARTNERSHIP PROGRAM--  
6 CERTIFICATION OF POLICIES--RULEMAKING.--

7 A. The superintendent shall certify an individual  
8 or group insurance policy, insurance plan or certificate of  
9 insurance to be qualified state long-term care insurance  
10 partnership program insurance when the policy, plan or  
11 certificate of insurance:

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

15 (2) meets the definition of a qualified  
16 state long-term care insurance contract pursuant to Section  
17 7702B(b) of the federal Internal Revenue Code of 1986;

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

21 (4) as of the date of purchase:

22 (a) is sold to an individual who is  
23 sixty years of age or younger and provides some level of  
24 inflation protection;

25 (b) is sold to an individual who is

1 between sixty-one and seventy-five years of age and provides  
2 some level of inflation protection; or

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

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

8 B. The superintendent shall adopt and promulgate  
9 rules establishing the procedures pursuant to which the  
10 superintendent shall certify an individual or group insurance  
11 policy, insurance plan, certificate of insurance or rider  
12 that is delivered, issued for delivery or renewed in this  
13 state as qualified state long-term care insurance partnership  
14 program insurance.

15 C. The superintendent shall consult with the  
16 secretary of human services regarding the adoption of rules  
17 regarding reciprocity with respect to individuals who have  
18 purchased qualified state long-term care insurance  
19 partnership program insurance in another state participating  
20 in a qualified state long-term care insurance partnership  
21 program.

22 D. The superintendent shall ensure that any  
23 licensed producer that sells a policy, plan, certificate or  
24 rider pursuant to the Long-Term Care Insurance Law  
25 demonstrates an understanding of qualified state long-term

1 care partnership program insurance and how it relates to  
2 other public and private coverage of long-term care expenses.

3 E. The superintendent shall establish by rule the  
4 disclosure requirements pursuant to Section 5 of this 2013  
5 act regarding the qualified state long-term care partnership  
6 program for licensed producers that sell or offer for sale an  
7 insurance plan, insurance policy or certificate of insurance  
8 that is intended to qualify as long-term care partnership  
9 program insurance.

10 F. As used in this section:

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

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

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

19 "LICENSED PRODUCERS--QUALIFIED STATE LONG-TERM CARE  
20 PARTNERSHIP PROGRAM--DISCLOSURES.--

21 A. A licensed producer that sells or offers for  
22 sale an insurance plan, insurance policy, certificate of  
23 insurance or rider that is intended to qualify as qualified  
24 state long-term care partnership program insurance shall  
25 disclose the availability of qualified state long-term care

1 insurance partnership program insurance and outline the  
2 requirements and benefits of participation in the qualified  
3 state long-term care insurance partnership program.

4 B. As used in this section:

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

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

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