DIGEST

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Talbot HB No. 1201

Abstract: Provides for an alternative long-term care benefit option for Medicaid applicants with life insurance policies who enter into certain viatical settlement contracts.

Present law provides for viatical settlement contracts by which the owner of a life insurance policy may enter into a written agreement under which compensation will be paid to that owner during his lifetime in return for his assignment, transfer, sale, or bequest of the death benefit or ownership of the policy at the time of his death.

Present law, relative to Medicaid estate recovery, requires that Medicaid applicants surrender life insurance policies with a cash value of at least $2,000 in order to qualify for Medicaid. Also, pursuant to regulations adopted pursuant to proposed law, Medicaid recipients are limited to a small amount of money per month on discretionary spending (thus resulting in the lapse or surrender of life insurance policies owned by some Medicaid recipients).

Proposed law provides for an alternative long-term care benefit option for Medicaid applicants with life insurance policies who enter into certain viatical settlement contracts, as follows:

(1) Requires that Medicaid applicants be notified that they may sell (rather than abandon) their life insurance policies pursuant to a viatical settlement contract, as further specifically provided in proposed law. Requires that the proceeds of such a contract be placed in a state or federally insured irrevocable trust that must spend the proceeds on Medicaid eligible expenses, paid directly to a health care provider (thus dedicating this money to pay for the applicant's health care needs with the applicant's own resources, so that the applicant will be delayed or completely diverted from entering the Medicaid system).

(2) Further provides that the lesser of 5% of the face amount of the policy or $5,000 shall be reserved in the trust to be for burial needs at the time of the recipient's death and that any other proceeds of the trust that are unused at the time of the recipient's death shall be paid to a named beneficiary or the deceased's estate.

(3) Requires that all such viatical settlement transactions meet the requirements of present law relative to viatical settlements generally.

(4) Places additional requirements on such viatical settlement contracts, including the following:

(a) That all such viatical settlement providers maintain a surety bond, executed and issued by an insurer authorized to issue surety bonds in this state, a policy of errors and omissions insurance, or a deposit of cash, certificates of deposit or securities, or any combination thereof in the amount of $500,000 and that all claims against a viatical settlement provider be limited and paid from these funds.

(b) That all such viatical settlement contract forms be filed with and approved by the commissioner of insurance.

(c) That all advertising and marketing materials used by such a viatical settlement provider be filed with the commissioner of insurance.

(5) Specifically requires the secretary of the Department of Health and Hospitals (DHH) to provide written notice of this alternative long-term care benefit option as part of the application for Medicaid, or in a separate document, signed by the applicant.

(6) Authorizes the commissioner of insurance and the secretary of DHH to promulgate and adopt rules to ensure that: (a) the proceeds from the viatical settlement contract shall be distributed directly to a health care provider; (b) eligibility for Medicaid shall be determined without considering the balance of the viatical settlement proceeds; and (c) Medicaid and applied income payments shall begin the day following the exhaustion of the life settlement proceeds.

(7) Exempts the settlement proceeds of a viatical settlement contract entered into pursuant to <u>proposed law</u> from state personal income taxation, applicable for all taxable periods beginning on or after Jan. 1, 2013.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:293(10); Adds R.S. 22:1806, R.S. 36:254(D)(2)(e), and R.S. 47:293(9)(a)(xviii))