SUBJECT: Long-term care insurance and partnership for long-term care program

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Delisi, Jackson, Cohen, Coleman, Gonzales, S. King, Olivo, Truitt

0 nays

1 absent — Laubenberg

SENATE VOTE: On final passage, April 26 — 30-0

WITNESSES: (*On House companion, HB 1834 by Delisi:*)
For — Mary Katherine Stout, Texas Public Policy Foundation; (*Registered, but did not testify:* Leticia Caballero, Texas Health Care Association; Cindy Gunn, Memorial Hermann Healthcare System; John Hawkins, Texas Hospital Association; John Holcomb, Texas Medical Association Primary Care Coalition; Brenda Nation, American Council of Life Insurers; Rod Perkins, American Council of Life Insurers, America's Health Insurance Plans; Gentry Woodard, St. Joseph Health System)

Against — None

On — Yolanda Davila, Legislative Budget Board; Heather Vasek, Texas Association for Home Care; (*Registered, but did not testify:* Audrey Deckinga, Health and Human Services Commission; Don Henderson, Department of Aging and Disability Services; Barbara Maxwell, Texas Association of Health Plans)

BACKGROUND: The federal Deficit Reduction Act (DRA) of 2005 was implemented to slow the growth in spending on Medicare and Medicaid. Among the provisions of the DRA are measures designed to reduce spending on long-term care (LTC) entitlements for qualified individuals who receive ongoing nursing home or attendant care. People qualify for LTC benefits based on age, disabled status, and income and asset limits.

Certain DRA provisions are aimed at reducing the ability of individuals to structure their finances so that they qualify for Medicaid LTC benefits.

These include extending the "look back" period to five years for the Medicaid program to review if individuals intentionally transferred assets at less-than-market value to qualify for LTC benefits. The Medicaid program also can recover assets from a beneficiary's estate. States must provide that home equity in excess of an amount elected by the state between $500,000 and $750,000 be counted as assets in determining Medicaid LTC eligibility.

The DRA establishes standards for LTC partnership programs designed to encourage individuals to obtain private LTC insurance rather than rely on public benefits. These standards lifted the moratorium on states implementing such programs that had been in place since 1993. With respect to LTC partnership programs, the DRA:

- requires state partnership programs to comply with model guidelines established by the National Association of Insurance Commissioners (NAIC);
- allows for portability of LTC policies across states; and
- allows asset protection incentives for Medicaid eligibility, including waiving estate recovery.

The Health and Human Services Commission (HHSC) determines eligibility for LTC benefits in Texas. SB 1188 by Nelson in the 79th Legislature directed HHSC to study methods to decrease Medicaid LTC costs. The Department of Aging and Disability Services (DADS) regulates LTC service providers. The Texas Department of Insurance (TDI) regulates insurance providers operating in Texas.

DIGEST:

SB 22 would require HHSC to adopt rules and implement a partnership for a long-term care program consistent with the provisions of the DRA. TDI would assist as necessary with this effort.

The LTC partnership program would allow a dollar-for-dollar asset disregard if the individual was covered by a TDI-approved LTC benefit plan. Each dollar spent on benefit payments for the qualifying LTC plan would be disregarded in the calculation of eligibility for Medicaid, the amount of Medicaid benefits provided, and the amount of assets recovered from an individual's estate. The individual would have to exhaust fully covered benefits under an LTC insurance plan before similar benefits could be paid under the Medicaid program. HHSC could enter reciprocal

agreements with other states to extend asset protection to a Texas resident who purchased LTC insurance in another state.

By September 30 of each even-numbered year, HHSC would report required statistics to the Legislature on the progress of the LTC program during the preceding biennium. HHSC would recommend each biennium whether to continue the program. If the partnership for LTC program was discontinued, an individual who purchased a plan under the partnership program would remain eligible for dollar-for-dollar asset disregards and protection under Medicaid.

HHSC would assist TDI in developing required training for providers of LTC benefit plans that participated in the partnership for the LTC program. The LTC insurance provider would be required to demonstrate an understanding of LTC plans and how they related to other public and private LTC coverage. LTC insurance providers participating in the partnership program would have to certify to the commissioner of TDI that they were in compliance with requirements to participate.

HHSC, DADS, and TDI would have to develop and implement a public awareness campaign to:

- educate the public on the cost of LTC, including limits of Medicaid eligibility and Medicare benefits;
- educate the public on the value and availability of LTC insurance; and
- encourage individuals to obtain LTC insurance.

HHSC would amend the state Medicaid plan as necessary to implement the partnership for LTC program and obtain any necessary federal waiver or authorization prior to program implementation. SB 22 would take effect March 1, 2008.

SUPPORTERS SAY:

SB 22 would help Texas achieve long-term Medicaid savings by encouraging people to plan for and finance their own LTC needs. The bill would create a Texas LTC partnership program that would align with federal standards defined in the DRA and with the results of a deliberative study by HHSC in response to the directives of SB 1188, enacted in 2005, to identify cost-saving LTC initiatives.

The current Medicaid LTC benefit system creates incentives for people to structure their finances to qualify for Medicaid LTC coverage rather than relying on private insurance. As of January 2007, only 1.5 percent of Texans had private LTC coverage. A limited, short-term investment now to establish an LTC partnership program would lead, according to the Legislative Budget Board (LBB), to anticipated savings by fiscal 2021. The bill would afford the protection that if HHSC determined the LTC partnership program were not cost-effective, the commission could recommend abolishing the program.

Medicaid already pays for 67 percent of cost-intensive nursing facility care. As more baby boomers turn 65, the Texas over-65 population is anticipated to grow 76 percent by 2020. This population growth will intensify the shortage of funding for expensive long-term care. The funding mechanism for LTC benefits is further endangered, because individuals receiving LTC benefits must contribute most of their income to pay for care. Many people on long-term care receive only social security income, and the federal government may not be able to continue providing social security at once-anticipated levels.

SB 22 would reward personal responsibility and planning for future needs by allowing people to maintain the assets they had acquired. At the same time, the bill would create an LTC private insurer infrastructure that would make continued LTC assistance sustainable as the aged population grows. LTC partnership programs ultimately would make private LTC insurance more robust, reliable, and affordable. Education programs for insurers and increased oversight by TDI would lead to higher quality LTC coverage in the private market. With increased oversight and greater public awareness provided by the bill's public education campaign, more consumers would purchase private LTC coverage with enhanced confidence in the quality and benefits of these products. Texas consumers also would begin to expect that providing for their long-term care would be as critical a part of standard financial planning as obtaining a life insurance policy.

As certain populations began purchasing LTC private insurance at a younger age, the risk pool would be expanded, and overall costs to purchase LTC insurance subsequently would be reduced. LTC insurance would become an increasingly affordable option for middle- and low-income purchasers. Simultaneously, the increased demand for private LTC coverage would increase the number of quality LTC insurers entering the market. Private LTC coverage would translate from a niche market to a

competitive and robust array of product options that responded to consumer demands. It is imperative to encourage this sort of competition among private insurers, because these insurers must carry the weight of more LTC benefits recipients as Medicaid coverage for growing populations becomes unsustainable.

OPPONENTS SAY:

SB 22 would create immediate costs, yet the fiscal note anticipates no savings from an LTC partnership program until fiscal 2021. It is not a given that an LTC partnership program would achieve any cost savings. Savings would be contingent on a significant population obtaining private LTC coverage rather than relying on Medicaid, yet there are many reasons why the population that would take advantage of LTC private insurance would be limited. LTC insurers would not insure people who already were disabled or in need of LTC services. The yearly cost for LTC insurance is prohibitive to the majority of people that could benefit from coverage. Much of the population would not insure themselves independently when they were not sure that they would ever need LTC coverage. Finally, much of the population distrusts LTC insurers because of highly publicized incidents of LTC providers not providing the benefits that they promised to their beneficiaries.

According to a U.S. Government Accountability Office report, GAO-05-102 4 1R Long-Term Care Partnership Program, among the four states that implemented LTC partnership programs in the early 1990s, program participation has been low and has been among higher income populations. Only 212,000 partnership policies were purchased by March 2005. The majority of policyholders had total assets greater than $350,000, and approximately half of the policyholders in three of the states reported average monthly household incomes in excess of $5,000. The GAO could not determine if existing LTC partnership programs realized any cost savings. State funds should be expended on programs that address current state needs rather than on programs that would not return any savings for at least 13 years.

OTHER OPPONENTS SAY:

While SB 22 would implement one Medicaid LTC reform measure, greater savings could be achieved if the LTC partnership program were implemented in conjunction with other long-term care programs such as a "Texas Tomorrow" program for LTC or a program granting stipends to lower income people to enable them to purchase LTC insurance.

NOTES:

The LBB estimates a $1.2 million cost in general revenue in fiscal 2009 and $238,074 per year thereafter from SB 22. Costs in fiscal 2009 would include modifications to the eligibility software system, training, program evaluation, implementation to the public education campaign, and 7.5 additional FTEs. Ongoing costs after fiscal 2009 would include the cost of 4.5 additional FTEs. Savings in long-term care would be expected in fiscal 2021.

The identical companion bill, HB 1834 by Delisi, was reported favorably, without amendment, by the House Public Health Committee on April 19.