

BILL ANALYSIS

Senate Research Center

H.B. 2383
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2383 enables Medicaid applicants who own a life insurance policy to convert their policy into a long-term care benefit plan. Once the policy is converted, the individual is able to receive funds rather than being forced to surrender the policy and use the proceeds from the sale of the life insurance policy for their long-term care needs. The funds are placed into an irrevocable trust or licensed financial institution that is used to spend-down the proceeds on Medicaid-eligible expenses, paid directly to a long-term care service provider.

The bill requires that Medicaid applicants be given notice about the option to convert their policy and requires all transactions to be in accordance with existing life settlement law and protections. H.B. 2383 requires that a funeral expense benefit be preserved for the family and that any unused proceeds from the account be paid to the owner's estate or beneficiary if the individual dies prior to exhausting the funds in their trust. Additionally, H.B. 2383 requires increased financial accountability of \$500,000 from licensed life settlement providers participating in this program; submission of advertising materials and new rule development to implement the program.

H.B. 2383 provides an option for an individual who qualifies for and is in need of long-term care Medicaid but is forced to relinquish the individual's life insurance policy to maintain eligibility and will delay the time when the individual is dependent on state funding for long-term care services.

H.B. 2383 amends current law relating to life settlement contracts for the payment of long-term care services under the medical assistance program and the consideration of a life insurance policy in determining eligibility for medical assistance.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 32.02613, Human Resources Code) and SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.02613, as follows:

Sec. 32.02613. LIFE INSURANCE ASSETS; LIFE INSURANCE POLICY CONVERSION. (a) Authorizes the owner of a life insurance policy with a face amount of more than \$10,000 to enter into a life settlement contract under Chapter 1111A (Life Settlement Contracts), Insurance Code, for the benefit of a recipient of medical assistance long-term care services in exchange for direct payments to a health care provider for the provision of those services to that recipient.

(b) Prohibits the proceeds of a life settlement contract entered into under this section from be considered as an asset or resource in determining the eligibility of a person for medical assistance.

(c) Requires that the proceeds of a life settlement contract entered into under this section be used for the payment of medical assistance long-term care services.

(d) Prohibits state or federal medical assistance funds from being used to provide medical assistance long-term care services to a person for whose benefit an owner of a life insurance policy has entered into a life settlement contract under this section until the proceeds of the contract are exhausted.

(e) Requires that a life settlement contract entered into under this section, in addition to the requirements under Chapter 1111A, Insurance Code, to:

(1) provide that the lesser of five percent of the face amount of the life insurance policy or \$5,000 is reserved as a death benefit payable to the owner's estate or a named beneficiary;

(2) provide that the balance of proceeds under the contract that are unpaid on the death of the owner must be paid to the owner's estate or a named beneficiary; and

(3) specify the total amount payable for the benefit of the recipient of medical assistance long-term care services under the contract.

(f) Requires that all proceeds of a life settlement contract entered into under this section be held in an irrevocable state or federally insured account for the benefit of the recipient of medical assistance long-term care services or for payment as otherwise required by this section.

(g) Authorizes only a recipient of medical assistance long-term care services for whose benefit an owner enters into a life settlement contract under this section to choose the provider and type of services provided to the recipient and paid for out of an account described by Subsection (f). Provides that any attempt by a person to require the recipient to choose a specific provider is strictly prohibited and constitutes an unfair method of competition or an unfair or deceptive act or practice under the Insurance Code.

(h) Requires a person who enters into a life settlement contract with an owner of a life insurance policy under this section to maintain:

(1) a surety bond executed and issued by an insurer authorized to issue surety bonds in this state;

(2) a policy of errors and omissions insurance; or

(3) a deposit in the amount of \$500,000 in any combination of cash, certificates of deposit, or securities.

(i) Requires a person who enters into life settlement contracts with owners of life insurance policies under this section, in addition to the requirements of Chapter 1111A, Insurance Code, to file with the Texas Department of Insurance (TDI) all life settlement contract forms and advertising and marketing materials used by the person.

(j) Provides that Section 1111A.022(a)(2)(A) (relating to requiring that antifraud initiatives include an antifraud plan, which is required to be submitted to the commissioner of insurance and is required to include a description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications), Insurance Code, does not apply to a life insurance policy that is the subject of a life settlement contract entered into under this section if the contract has been in force at least five years.

(k) Prohibits a claim against a person with whom an owner of a life insurance policy enters into a life settlement contract under this section by the owner, the owner's estate, a named beneficiary, or any other person with respect to the contract from exceeding the face amount of the policy, less the proceeds paid under the contract, plus the total amount of premiums paid by the owner since entering into the contract. Requires a person to pay a claim under this subsection from the funds in an account described by Subsection (f).

(l) Authorizes TDI, in accordance with Chapter 1111A, Insurance Code, to conduct periodic market examinations of each person who enters into a life settlement contract with an owner of a life insurance policy under this section.

(m) Requires the Health and Human Services Commission (HHSC) or an agency operating part of the medical assistance program, as appropriate, to develop policies for educating an applicant for nursing home care under the medical assistance program about options for the applicant's life insurance policies, including options that do not allow a life insurance policy to be considered as an asset or resource in determining the applicant's eligibility for medical assistance.

(n) Requires the executive commissioner of HHSC (executive commissioner), in consultation with the commissioner of insurance, to adopt rules necessary to implement this section. Requires that the rules ensure that:

(1) proceeds from a life settlement contract are used to reimburse the provider of medical assistance long-term care services chosen by the recipient for whose benefit the owner of a life insurance policy entered into the contract;

(2) eligibility and need for medical assistance are determined without considering the balance of proceeds from a life settlement contract; and

(3) medical assistance payments to a provider of medical assistance long-term care services and applied income payments to a recipient begin the day following exhaustion of the life settlement contract proceeds.

(o) Provides that the entry into a life settlement contract by an owner of a life insurance policy under this section is not the only method by which the owner may avoid having the policy considered as an asset or resource in determining the eligibility of the owner for medical assistance.

SECTION 2. Requires the executive commissioner, not later than January 1, 2014, to adopt rules necessary to implement Section 32.02613, Human Resources Code, as added by this Act.

SECTION 3. Provides that the change in law made by this Act applies only to a determination of eligibility of a person for medical assistance benefits made on or after January 1, 2014. Provides that a determination of eligibility made before January 1, 2014, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 4. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 5. Effective date: upon passage or September 1, 2013.