
A BILL FOR AN ACT

RELATING TO LONG-TERM CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 **PART I**

2 SECTION 1. The Hawaii Revised Statutes is amended by
3 adding a new chapter to be appropriately designated and to read
4 as follows:

5 **"CHAPTER**

6 **LONG-TERM CARE PARTNERSHIP PROGRAM**

7 **§ -1 Purpose.** The purpose of the long-term care
8 partnership program is to reduce medicaid costs for long-term
9 care by encouraging individuals to purchase private long-term
10 care insurance plans. This program allows individuals to
11 benefit from a dollar for dollar asset disregard, for the
12 purposes of medicaid spend down requirements, for benefits paid
13 under their qualified long-term care insurance plans. By
14 providing incentives for individuals to insure against the
15 potentially high costs of long-term care, this program will
16 delay or eliminate dependence on medicaid.

17 **§ -2 Definitions.** For the purposes of this chapter:



1 "Assets" means real and personal property, income, and any
2 other economic resources owned, earned, or attributable to an
3 individual.

4 "Certified long-term care insurance partnership policy"
5 means a policy provided by a producer in accordance with chapter
6 431 and approved by the department that:

7 (1) Meets all of the requirements of a qualified long-term
8 care insurance contract as defined in section 7702B(b)
9 of the Internal Revenue Code; and

10 (2) Was issued not earlier than the effective date of the
11 state plan amendment.

12 "Department" means the department of human services.

13 "Medicaid" means the program for medical assistance
14 established under 42 United States Code chapter 7, subchapter
15 XIX, or any successor program.

16 "Partnership" means a cooperative agreement between the
17 state medicaid agency and the federal government.

18 "State medicaid agency" means the division of the
19 department of human services that is the federally designated
20 single state agency charged with administration and supervision
21 of the state medicaid program.



1 "State plan amendment" means the state medicaid plan
2 amendment made to the federal Department of Health and Human
3 Services that provides for the disregard of any assets in an
4 amount equal to the insurance benefit payments that are made to
5 or on the behalf of an individual who is a beneficiary under a
6 certified long-term care insurance policy.

7 **§ -3 Long-term care partnership established.** (a) The
8 department shall establish a long-term care partnership program
9 that enables an individual who has assets that would otherwise
10 disqualify the individual from receiving medicaid benefits to
11 receive medicaid benefits; provided that the individual
12 purchases and maintains long-term care insurance that is in
13 compliance with this chapter.

14 (b) All long-term care insurance plans authorized under
15 this chapter shall include a provision that specifies that the
16 long-term care insurance plan shall be the primary payer of
17 long-term care costs and that medicaid shall be the secondary
18 payer.

19 **§ -4 Eligibility for long-term care benefits under**
20 **medicaid; assets not considered.** An individual who purchases a
21 certified long-term care insurance partnership policy and has
22 assets above the eligibility levels for receipt of medicaid



1 benefits shall be eligible to receive medicaid benefits and any
2 other long-term care services specified by the department as
3 provided by title 42 United States Code section 1396p, as
4 amended.

5 **§ -5 Amendments to medicaid rules and state plan.** (a)

6 The department shall prepare a state plan amendment to seek
7 appropriate amendments to its medicaid rules and state plan to
8 allow protection of assets pursuant to section -4. The
9 protection shall be provided to the extent approved by the
10 federal Centers for Medicare and Medicaid Services for any
11 purchaser of a certified long-term care insurance partnership
12 policy and shall last for the life of the purchaser. The
13 protection shall be provided under the medicaid program. Any
14 purchaser of a certified long-term care insurance partnership
15 policy shall be guaranteed coverage under the medicaid program
16 if the individual meets all other applicable eligibility
17 requirements for the receipt of medicaid benefits that are not
18 related to the individual's assets.

19 (b) The department shall seek any federal waivers and
20 approvals necessary to accomplish the purposes of this chapter.

21 **§ -6 Certification of policies or plans.** The department

22 of commerce and consumer affairs shall certify a policy as a



1 certified long-term care insurance partnership policy only if it
2 meets the requirements of chapter 431, 42 United States Code
3 1396p, and section 7702B(b) of the Internal Revenue Code.

4 **§ -7 Rules.** The department shall adopt rules pursuant
5 to chapter 91 to implement this chapter.

6 **§ -8 Long-term care partnership program outreach.** The
7 department shall establish an outreach program to educate
8 consumers about the need for long-term care, the mechanisms for
9 financing long-term care, the availability of long-term care
10 insurance, and asset protection provided under this chapter.
11 The department shall coordinate with the executive office on
12 aging to establish the program."

13 **PART II**

14 SECTION 2. The legislature finds that according to the
15 Hawaii long-term care commission, only a minority of Americans
16 will ever have private long-term care insurance, even in an
17 optimistic economic environment. Therefore, an alternative that
18 matches the mandatory, universal long-term care insurance
19 programs, such as those in Japan, Germany, the Netherlands, some
20 parts of Canada, Spain, Scandinavia, and Korea, is to create a
21 more balanced delivery system for long-term care to all persons
22 who require it, regardless of their financial need.



1 The legislature also finds that according to advocates of
2 social insurance, there is no need for a welfare program, such
3 as medicaid, to be the primary funding source of long-term care.
4 Rather, a public insurance program designed to provide modest
5 income support financed through mandatory contributions by the
6 working-age population would provide a measure of financial
7 protection for individuals who are uninsurable and require long-
8 term care. In principle, a proposed public insurance program
9 would be similar to social security. Much like social security,
10 a public insurance program would not be intended to meet all
11 long-term care needs, but instead supplement, not replace,
12 private initiatives such as private long-term care insurance.

13 The legislature has attempted to address the issue of long-
14 term care since the late 1980s. Act 245, Session Laws of Hawaii
15 2002, established the Hawaii long-term care financing program to
16 provide a universal and affordable system of providing long-term
17 care. The board of trustees established by Act 245 recommended
18 funding such a program with a mandatory dedicated income tax.
19 In 2003, the legislature passed S.B. No. 1088, C.D. 1, which
20 would have implemented the design of the long-term care
21 insurance program and the requisite tax necessary to fund it.



1 However, the governor vetoed the measure, and the veto was not
2 overridden.

3 The legislature further finds that providing for and
4 funding a system of long-term care in the State remains an
5 important issue. According to the Hawaii long-term care
6 commission, a limited, mandatory, public long-term care
7 insurance program may be the only option that will provide
8 insurance coverage to a large majority of people in Hawaii and
9 benefit people with a wide range of income and assets. However,
10 the support for mandatory enrollment in a public long-term care
11 insurance program in Hawaii is low. Therefore, an actuarial
12 analysis is needed to provide the basis for a determination on a
13 mandatory tax to implement a limited, mandatory, public long-
14 term care insurance program.

15 The purpose of this part is to establish a long-term care
16 financing task force to expand on prior legislation, including
17 Act 245, Session Laws of Hawaii 2002, and S.B. 1088, C.D. 1
18 (2003), ascertain if there is public sentiment for a mandatory
19 tax to implement a long-term care insurance program for all
20 residents of the State, and contract for the performance of an
21 actuarial analysis.



1 SECTION 3. (a) The director of the executive office on
2 aging shall convene a long-term care financing task force within
3 thirty days after the effective date of this part to ascertain
4 if there is public sentiment for a mandatory tax to implement a
5 long-term care insurance program for all residents of the State.

6 (b) The task force shall expand on the work of Act 245,
7 Session Laws of Hawaii 2002, and S.B. 1088, C.D. 1 (2003), and
8 consider and make recommendations including but not limited to
9 the following:

- 10 (1) The premium required to adequately finance various
11 program designs;
- 12 (2) The minimum and maximum ages for employed persons to
13 be eligible to enroll;
- 14 (3) The definition of "employment" for the purposes of
15 determining eligibility;
- 16 (4) The method of collecting the premium;
- 17 (5) The length of covered benefit;
- 18 (6) The amount of cash benefit, whether it should vary by
19 disability, inflation adjustment over time, and
20 whether there should be restrictions on its use;



1 (7) Whether people need to pay for life, until retired, or
2 until they have paid for a specified number of years
3 before becoming eligible for benefits;

4 (8) Whether premiums should be level or increase with
5 inflation over time;

6 (9) Whether low-income people should be exempt from
7 participating or whether there should be some premium
8 subsidy from general revenues;

9 (10) How the program should be administered; and

10 (11) Which executive agency should administer this program.

11 (c) The task force shall be chaired by the director of the
12 executive office on aging and be composed of six individuals
13 from the long-term care community and insurance industry, three
14 of whom shall be selected by the senate president and three of
15 whom shall be selected by the speaker of the house of
16 representatives.

17 (d) In carrying out its duties under this section, the
18 task force may request staff assistance from the department of
19 health, department of commerce and consumer affairs, department
20 of human services, and other appropriate state and county
21 executive agencies.



1 (e) The members of the task force shall be exempt from
2 chapter 84, Hawaii Revised Statutes, and shall not be considered
3 state employees due to their service on the task force.

4 (f) The members of the task force shall serve without
5 compensation, but shall be reimbursed for expenses, including
6 travel expenses, necessary for the performance of their duties.

7 (g) The director of the executive office on aging shall
8 submit to the legislature no later than twenty days prior to the
9 convening of the 2014 regular session a report that includes:

- 10 (1) The activities and findings of the task force;
- 11 (2) Findings and recommendations of the actuarial analysis
12 described in section 3 of this part; and
- 13 (3) Recommendations, including those listed in subsection
14 (b), and proposed legislation, if any.

15 (h) The task force shall be dissolved on June 30, 2014.

16 SECTION 4. (a) The long-term care financing task force
17 shall contract for the performance of an actuarial analysis.
18 The actuarial analysis shall be prepared by a member of the
19 American Academy of Actuaries who is a fellow of the Society of
20 Actuaries.

21 (b) The actuarial analysis shall contain a statement by
22 the actuary certifying that the techniques and methods used are



1 generally accepted within the actuarial profession and that the
2 assumptions and cost estimates used are reasonable. The
3 analysis shall include:

4 (1) The amount of the mandatory tax required to implement
5 a mandatory long-term care insurance program in the
6 State;

7 (2) A statement on whether the mandatory tax should be an
8 income tax, payroll tax, or dedicated percentage of a
9 general excise tax;

10 (3) A projection of the amount of benefit each resident of
11 the State would derive from paying into a trust fund
12 dedicated to providing long-term care benefits;

13 (4) An estimate on how long the tax would need to be
14 collected before benefits could be paid out; and

15 (5) An estimate of the likely impact on medicaid roles, if
16 any.

17 (c) The actuarial analysis shall be completed and
18 submitted to the director of the executive office on aging by
19 June 30, 2013. The director of the executive office on aging
20 shall submit a report, including the director's findings and
21 recommendations based on the analysis, to the legislature no



1 later than twenty days prior to the convening of the regular
2 session of 2014.

3 SECTION 5. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2012-2013 to
6 provide reimbursements for travel expenses for task force
7 members and for the performance of an actuarial analysis.

8 The sum appropriated shall be expended by the executive
9 office on aging of the department of health for the purposes of
10 this part.

11 **PART III**

12 SECTION 6. The legislature finds the following:

- 13 (1) Americans are living longer today than in the past
14 with multiple, chronic health conditions and increased
15 rates of disability in old age;
- 16 (2) The aging of the population in Hawaii guarantees that
17 there will be a greater need for long-term care in the
18 future. Between 2007 and 2030, the population aged
19 eighty-five and older, which has the greatest need for
20 long-term care, will increase by almost two-thirds;
- 21 (3) Despite the fact that long-term care is not covered by
22 medicare or regular private health insurance,



1 according to a recent 2011 survey of Hawaii members of
2 the Association of American Retired Persons, twenty-
3 nine per cent of respondents said they expected
4 medicare to pay for their long-term care, if needed;

5 (4) Most people in Hawaii have limited knowledge on long-
6 term care issues, which can affect their motivation to
7 spend time and resources establishing their future
8 long-term care plans; and

9 (5) A long-term care education campaign will create
10 awareness among the next generation of long-term care
11 recipients, those presently between the ages of forty-
12 five and sixty-four, about the risks of not planning
13 for long-term care, available resources, and
14 maximizing the length of independent living.

15 The purpose of this part is to appropriate funds to the
16 executive office on aging of the department of health to
17 administer a public education and awareness campaign on long-
18 term care and obtain an evaluation of the campaign.

19 SECTION 7. (a) The department of health's executive
20 office on aging shall conduct a long-term care education and
21 awareness campaign.

22 (b) The campaign shall:



- 1 (1) Inform the public on the likelihood of needing long-
2 term care at some point in life;
- 3 (2) Educate the public about the cost of long-term care,
4 including the limits of medicaid eligibility and the
5 limits of medicaid benefits;
- 6 (3) Inform the public on the value and availability of
7 current financing and delivery options to obtain long-
8 term care; and
- 9 (4) Provide the public with resources to navigate the
10 complexities of planning for long-term care and the
11 agencies that provide these services.
- 12 (c) The director of the executive office on aging shall
13 have the impact of the campaign independently evaluated for its
14 effectiveness.
- 15 (d) The director of the executive office on aging shall
16 submit the report of the evaluation's findings and
17 recommendations, if any, to the legislature and the Hawaii long-
18 term care commission, established pursuant to Act 224, Session
19 Laws of Hawaii 2008, no later than twenty days prior to the
20 convening of the 2014 regular session.

21 SECTION 8. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2012-2013 for
2 the executive office on aging of the department of health to
3 conduct an education and awareness campaign on long-term care
4 and to have an independent evaluation performed on the campaign.

5 The sum appropriated shall be expended by the department of
6 health for the purposes of this part.

7 **PART IV**

8 SECTION 9. The legislature finds that Hawaii long-term
9 care stakeholders believe that the fragmentation of the long-
10 term care system is a major problem. The stakeholders contend
11 that there is no real long-term care system, every component is
12 designed for a different purpose, and the components do not work
13 together.

14 The legislature also finds that according to the Hawaii
15 long-term care commission:

16 (1) State government should assert stronger leadership
17 over the entire long-term care population, including
18 those not eligible for public programs;

19 (2) The successes or failures of long-term care can
20 contribute to or detract from the success of the other
21 programs; and



1 (3) Hawaii's laws are silent on the subject of leadership
2 over long-term care.

3 The purpose of this part is to establish a long-term care
4 task force, establish the position of deputy healthcare
5 transformation coordinator for long-term care within the office
6 of the governor, and appropriate funds to support the position
7 of the deputy healthcare transformation coordinator.

8 SECTION 10. (a) There is established a long-term care
9 task force under the direction of the deputy healthcare
10 transformation coordinator within the office of the healthcare
11 transformation coordinator for administrative purposes. The
12 purpose of the long-term care task force shall be to identify
13 state programs and services related to long-term care and
14 determine the feasibility of consolidating existing state
15 functions and funds relating to these programs and services
16 under a single executive department or division. The task force
17 shall convene within thirty days after the effective date of
18 this part.

19 (b) The task force shall be composed of:

20 (1) The deputy healthcare transformation coordinator
21 established pursuant to this part, who shall serve as
22 chairperson;



1 (2) One representative from the med-QUEST division of the
2 department of human services to be selected by the
3 director of human services;

4 (3) One member from the Aging and Disability Resource
5 Center program, who shall be requested to serve as a
6 representative;

7 (4) One member of the home- and community-based services
8 community, who shall be requested to serve as a
9 representative;

10 (5) One member of the nursing home community, who shall be
11 requested to serve as a representative;

12 (6) One member of the acute care hospitals community, who
13 shall be requested to serve as a representative; and

14 (7) Additional task force members selected by the task
15 force chairperson.

16 (c) In carrying out its duties, the task force may request
17 staff assistance from the department of health, department of
18 human services, and other appropriate state and county executive
19 agencies.

20 (d) The members of the task force shall serve without
21 compensation, but shall be reimbursed for expenses, including
22 travel expenses, necessary for the performance of their duties.



- 1 (e) The task force shall:
- 2 (1) Identify state programs and services related to long-
- 3 term care;
- 4 (2) Conduct a comprehensive review of the programs and
- 5 services identified under paragraph (1) to determine
- 6 the advantages, disadvantages, and feasibility of
- 7 consolidating the programs and services under a single
- 8 executive department or one division within an
- 9 executive department;
- 10 (3) Determine whether programs and services for people
- 11 with intellectual and developmental disabilities and
- 12 mental health programs should be included;
- 13 (4) Identify the most appropriate single executive
- 14 department or division within an executive department
- 15 to house long-term care programs and services;
- 16 (5) Formulate a timetable for the transfer of functions;
- 17 (6) Provide a timetable for compliance monitoring;
- 18 (7) Ensure that appropriations or funds for identified
- 19 state programs and services are transferred as
- 20 necessary to the identified executive department or
- 21 division;



- 1 (8) Ensure that all federal and state funds are fully
- 2 allocated in the course of the transfer of funds;
- 3 (9) Resolve any other issues relating to the transfer of
- 4 functions and funding to ensure the timely and
- 5 efficient consolidation of responsibility of state
- 6 long-term care programs and services under a single
- 7 executive department or division; and
- 8 (10) If a consolidation is determined to be advantageous
- 9 and feasible, recommend a single executive department
- 10 or division within a single executive department to
- 11 best house all identified long-term care programs and
- 12 services.

13 (f) The deputy healthcare transformation coordinator shall

14 submit a report of the activities of the task force, including

15 recommendations and proposed legislation, if any, to the

16 legislature no later than twenty days prior to the convening of

17 the 2014 regular session. The legislative reference bureau

18 shall assist the task force in drafting legislation to implement

19 the task force's recommendations; provided that the task force

20 shall submit its recommendations and proposed legislation, if

21 any, to the bureau no later than November 1, 2013. The task

22 force shall be dissolved on June 30, 2014.



1 SECTION 11. (a) There is established within the office of
2 the governor a deputy healthcare transformation coordinator for
3 long-term care to coordinate all state activities on long-term
4 care relating to financing, access, service delivery, and
5 quality assurance. The deputy healthcare transformation
6 coordinator for long-term care shall:

- 7 (1) Be nominated by the healthcare transformation
8 coordinator in consultation with the director of
9 health, the director of human services, and other
10 stakeholders, and be appointed by the governor as
11 provided in section 26-34, Hawaii Revised Statutes;
- 12 (2) Be under the authority of the healthcare
13 transformation coordinator;
- 14 (3) Convene a council of agencies responsible for long-
15 term care to develop policies and programs on quality
16 of care, workforce, public education, and other long-
17 term care issues;
- 18 (4) Coordinate the establishment and responsibilities of
19 the long-term care task force pursuant to this part;
- 20 (5) Work with the directors of health, human services, and
21 the executive office on aging, and stakeholders on all
22 issues relating to long-term care; and



1 (6) Annually report to the legislature on the state of the
2 long-term care system in Hawaii no later than twenty
3 days prior to the convening of each regular session.

4 (b) The position of the deputy healthcare transformation
5 coordinator shall be exempt from chapter 76 and 89, Hawaii
6 Revised Statutes, and shall terminate when management over all
7 long-term care services is consolidated under a single executive
8 department or division.

9 SECTION 12. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so
11 much thereof as may be necessary for fiscal year 2012-2013 to
12 establish the position of the deputy healthcare transformation
13 coordinator.

14 The sum appropriated shall be expended by the office of the
15 governor for the purposes of this part.

16 **PART V**

17 SECTION 13. This Act shall take effect on July 1, 2050.



Report Title:

Long-Term Care; Omnibus; Appropriation

Description:

Implements the long-term care partnership program, allowing individuals to qualify for medicaid coverage through an asset disregard for long-term care insurance plan benefits. Establishes a task force to ascertain if there is public sentiment for a mandatory tax to implement a long-term care insurance program for all residents of the State. Requires an actuarial analysis and a report to the legislature. Appropriates funds for reimbursement for travel expenses for task force members and the actuarial analysis. Requests the executive office on aging of the department of health to conduct an education and awareness campaign on long-term care and have the campaign evaluated. Appropriates funds for the evaluation. Establishes and directs a long-term care task force to coordinate and consolidate state long-term care programs and services. Establishes the position of deputy healthcare transformation coordinator. Appropriates funds for the establishment of the deputy healthcare transformation coordinator. (SD1)

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