

## TALKING POINTS ON HOUSE BILL 93, PN 87

**\*\*\*Proposes to create a Long-Term Care Partnership Program in Pennsylvania that would allow people owning State-approved LTC policies to qualify for Medicaid without “spending down” their life savings. There are two Partnership models—dollar-for-dollar and total asset protection.**

**HB 93 provides for both—the dollar-for-dollar model allows beneficiaries to keep personal assets equal to the benefits paid by the policy. The total asset protection model allows all assets to be protected after a threshold for years of coverage has been crossed—HB 93 provides for a minimum of three years.**

**In both cases, Medicaid becomes the payer when the Partnership policy benefits are exhausted. States that utilize this concept are projected to realize savings since their treasury is the last payer, not the first.**

**\*\*\*Up until now, only 4 states were able to offer Partnership Policies to individuals. (Connecticut, Indiana, California, and New York)**

**\*\*\*Legislation to provide for LTC Partnerships has passed the House of Representatives 4 times. Partnership legislation has been introduced in every legislative session since 1991-1992.**

**1991-92—HBs 2624/2625—Rep. Roy Reinard**

**1993-94—HBs 491/492—Rep. Roy Reinard**

**1995-96—HB 655—Rep. Roy Reinard—Passed House 202-0**

**1997-98—HB 498—Rep. Roy Reinard—Passed House 197-0**

**1999-00—HB 488—Rep. Roy Reinard**

**2001-02—HB 721—Rep. Roy Reinard—Passed House 197-0**

**2003-04—HB 52—Rep. Larry Sather—Passed House 195-0**

**\*\*\*Although implementation of Partnership Programs in most states will not require legislative action, there are several reasons why a statutory base for the program is critical—**

- 1) The State would need to file a State Plan amendment with CMS for approval—the Administration is currently awaiting action by CMS on several waiver-related issues and approval may not be timely.**
- 2) Although the current Administration may be supportive of Partnerships, future Administration may not and may determine to discontinue the Program at their whim.**
- 3) The legislation requires an interagency approach in implementing Partnerships—including the Dept. of Aging as a key player in implementation. This Administration has already indicated that a “multi-State agency effort is**

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**PAGE 2—Talking Points on HB 93**

**necessary including DPW and the Insurance Dept.—no  
mention of Aging.**

**\*\*\*The Deficit Reduction Act of 2005, signed into law by President Bush on  
February 8, 2006 (P.L. 109-171) now allows the other 46 states to create  
Long-Term Care Partnership Programs.**



**LARRY O. SATHER, MEMBER**

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*House of Representatives*

COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

January 6, 2005

**MEMORANDUM**

**COMMITTEES**

INSURANCE  
AGING AND OLDER ADULTS  
SUBCOMMITTEE CHAIR ON  
PROGRAMS AND BENEFITS  
STATE GOVERNMENT  
VETERANS AFFAIRS AND  
EMERGENCY PREPAREDNESS  
POLICY  
DEPUTY WHIP

**CAUCUS**

MAJORITY VICE CHAIRMAN  
FIREFIGHTERS & EMERGENCY  
SERVICES LEGISLATIVE  
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RURAL HEALTH CAUCUS  
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**TO:** All House Members  
**FROM:** Representative Larry O. Sather  
**SUBJECT:** Proposed Legislation – Long-Term Care Partnership Program

I am reintroducing legislation that would create a Long-Term Care Partnership Program in the Commonwealth of Pennsylvania. Last session, this proposal passed the House unanimously as House Bill 52; however, it was not given consideration by the State Senate.

Specifically, the bill provides that a State Long-Term Care Partnership Program would be administered by the Departments of Aging, Public Welfare and Insurance, for the following purposes: to provide incentives for individuals to insure against the costs of providing for their long-term care needs; to provide a mechanism for individuals to qualify for coverage of the cost of their long-term care needs under Medical Assistance without first being required to substantially exhaust their resources; to provide counseling services to individuals planning for their long-term care needs; and, to alleviate the financial burden on the State's medical assistance program by encouraging the pursuit of private initiatives.

It is important to note that this proposal contains asset protection provisions; however, those provisions would not become effective until repeal is made of the 1993 asset protection restrictions contained in the Federal Omnibus Reconciliation Act. In recent years, legislation has been proposed in Congress to repeal that provision. In addition, the Bush Administration has expressed interest in the initiative due to increasing demands on Medical Assistance funding, and results in states with Partnership Programs showing a decreased dependence on Medical Assistance because of the purchase of long-term care insurance policies.

If you are interested in cosponsoring this legislation, please contact Jennifer in my office at 7-3335 or by e-mail [jhaines@pahousegop.com](mailto:jhaines@pahousegop.com).

LOS/jrh

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March 31, 2006

Brian Preski, Chief of Staff  
The Speaker's Office  
Room 139 Main Capitol  
Harrisburg, PA 17120

Dear Brian:

House Bill 93, of which I am the prime sponsor, was reported from the Aging and Older Adult Services committee on January 25, 2005.

HB 93 establishes the Long-Term Care Partnership Program; and conferring powers and duties on the Insurance Department, the Department of Aging and the Department of Public Welfare.

I am respectfully requesting that HB 93 be placed on the calendar for consideration by the full House.

Thank you in advance for your kind consideration to this request. Should there be any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Larry O. Sather".

Larry O. Sather

LOS/jrh

CC: Sharon Schwartz, Executive Director  
Aging & Older Adult Services Committee

**Larry Sather - Re: HB 93**

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MAY 02 2006

**From:** Lori Lochetto  
**To:** Sharon Schwartz  
**Date:** 5/2/2006 9:38 AM  
**Subject:** Re: HB 93

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Not a problem. Thanks.

>>> Sharon Schwartz 05/02/06 9:37 AM >>>

Lori---Just to confirm.....I spoke to Rep. Sather and he would like to hold his bill until June, so that we can work with the Gov's Office on the new national model legislation. SS

**Larry Sather - HB 93**

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**From:** "Vince Phillips" <[REDACTED]>  
**To:** <sschwart@pahousegop.com>  
**Date:** 5/1/2006 4:44 PM  
**Subject:** HB 93  
**CC:** <[REDACTED]>, <[REDACTED]>

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Sharon, please ask Larry to hold off. National Assn. of Health Underwriters (NAHU) is sending me additional information. They are also updating their state enabling legislation list in that some of the earlier laws in those states need to be updated.

No inclusion of precertified premium policy or total asset model in federal legislation.

I am told that there is a new model enabling law that supposedly passed muster with the LTC companies and NAHU and am trying to latch on to a copy.

Vince



JUN 23 2006

**From:** Sharon Schwartz  
**To:** Kathy McCormac  
**Date:** 6/23/2006 12:47:18 PM  
**Subject:** HOUSE BILL 93

Hi Kathy---Rep. Sather asked me to provide a copy of the attached---his HB 93 (LTC Partnership bill) with an amendment he will be offering to the bill next week. The bill is scheduled to be voted possibly Tuesday. Rep. Sather wanted you and Rep. Micozzie to understand that the amendment is a compromise that he reached with Sam Marshall from the Insurance Federation. Sam provided us with 16 items that he wanted changed and Larry agreed to 14. The other two Larry would not agree to were removing the Dept. of Aging completely from the bill and removing the notice provisions contained under Section 6. Please feel free to contact me if you or Rep. Micozzie have any questions. Thanks...SS

**CC:** Larry Sather



COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT  
HARRISBURG

*JBW* → 9007 I & TNP  
④ I had 2 copies  
made

THE COMMISSIONER

July 26, 2006

Honorable John Perzel  
Pennsylvania House of Representatives  
139 Main Capitol

Honorable David Brightbill  
Senate of Pennsylvania  
350 Main Capitol

Honorable Samuel Smith  
Pennsylvania House of Representatives  
110 Main Capitol

Honorable Robert Jubelirer  
Senate of Pennsylvania  
292 Main Capitol

Honorable Michael Veon  
Pennsylvania House of Representatives  
428 Main Capitol

Honorable Vincent Fumo  
Senate of Pennsylvania  
545 Main Capitol

Honorable William DeWeese  
Pennsylvania House of Representatives  
423 Main Capitol

Honorable Robert Mellow  
Senate of Pennsylvania  
535 Main Capitol

Re: House Bill 93 Comments

Dear Representative Perzel:

As you know, HB 93, which addresses issues related to establishing a Long Term Care Partnership (LTCP) Program in Pennsylvania, was recently referred to the Senate for consideration. We support the concept of LTCP Programs and believe they provide an important tool for planning for the future care of Pennsylvania's aging population. As such, we wish to take this opportunity to share our comments and concerns about this proposed legislation.

Based on discussions with the federal government and our own analysis of the Deficit Reduction Act of 2005 (DRA), state legislation is not necessary at this time to implement a LTCP Program. The federal government is working through numerous operational and implementation issues that may change some of the technical aspects of the LTCP Program. The federal agencies involved have indicated that it will take several months for this level of work to be completed. Given that the full federal requirements will not be known for several months, we believe that the passage of state legislation, albeit not necessary, may also be premature. Were this legislation to pass, there is a strong likelihood that it could conflict with federal requirements and hinder the implementation of a LTCP program in Pennsylvania.

Should the legislature move forward with legislation this year, the Administration strongly urges that consumer protections be included as part of the legislation to protect consumer value in their LTC insurance policies. As you know, the federal requirements mandate that states cannot place special conditions on LTCP program policies. Thus, we are interested in the proposed consumer

protections applying to all LTC insurance policies. The consumer protections we believe are necessary include:

- Assuring that LTC insurance policies can respond to changes in the evolving health care market (i.e. they can and will provide the most appropriate levels of coverage even as the health care delivery system changes and evolves).
- Assuring that LTC insurance policies provide some level of coverage/benefits regardless how/where the services are provided (i.e. nursing home or home and community based care).
- Assuring that policyholders can receive some value for their premiums if they need LTC services (i.e. if they purchased nursing home only coverage but need home or community based services instead).
- Assuring LTC insurance purchasers that their coverage will be available in the future when they may need it, even if their insurance carrier has become insolvent. Therefore, the Guarantee Fund coverage level for LTC insurance products needs to be increased from the current \$100,000 level to \$300,000, the same level as required for other health insurance products.

In addition to these consumer protections, following an analysis of this bill by several agencies including Public Welfare, Insurance and the Office of Health Care Reform, the Administration believes that certain technical amendments/revisions to the legislation are necessary. These changes are outlined in Attachment A.

Thank you for your time and consideration of these issues related to HB 93 and LTC insurance coverage. We look forward to working with you and the legislature on this important public policy issue.

Sincerely,



M. Diane Koken  
Insurance Commissioner

Attachment

cc: Honorable Gibson Armstrong, Senate of Pennsylvania  
Honorable Michael Stack, Senate of Pennsylvania  
Honorable Joe Conti, Senate of Pennsylvania  
Honorable Nicholas Micozzie, Pennsylvania House of Representatives  
Honorable Anthony DeLuca, Pennsylvania House of Representatives  
Honorable Dick Hess, Pennsylvania House of Representatives  
Honorable Larry Sather, Pennsylvania House of Representatives ✓  
Honorable Frank Pistella, Pennsylvania House of Representatives  
Donna Cooper, Governor's Office  
Colleen Kopp, Governor's Office

Attachment A  
HB 93 (P.N. 4365) LTC Partnership Program Legislation  
Proposed Legislative Language Changes

- General Issue: Legislative requirements may be too strict or could come into conflict with federal requirements if there are future federal program changes. These include: “Asset Disregard” definition with its reference to a dollar for dollar model and the listing of federal citations and requirements including the inflation protection requirements. We suggest a simple reference to the federal act (“\_\_\_ has the meaning set forth in the DRA”).
- Section 2 Definitions – Suggest changing “qualified LTC partnership policy” to “qualified Pennsylvania LTC partnership policy.” This will clarify that it relates to a policy issued in Pennsylvania, and should allow reciprocity with LTCP policies issued in other states.
- Section 2 Definition of “Contracting Agency” and Section 4(e): We believe that consumer education and counseling should be the responsibility of the agencies most appropriate to handle these responsibilities in their normal course of operations. We recommend deleting the definition of “Contracting Agency” and modifying Section 4(e) to assign the responsibilities for consumer counseling and education to the appropriate agency by replacing: “Department of Aging -- The Department of Aging or a Contracting Agency shall” with “Counseling Services -- The appropriate state agency shall.”.
- Section (4)(c) should read as follows: "Notwithstanding any other provision of law, the Department, the Insurance Department and the Department of Aging shall comply with all Federal rules developed pursuant to section 6021 of the Deficit Reduction Act of 2005 (Public Law 109-171, 120 Stat. 4) regarding data reporting, reciprocity with other states that develop long term care partnership programs and any other matters." This will insure that any state law provisions in HB 93 that are inconsistent with Federal regulations or policies promulgated under the DRA will not prevent the LTCP program from being implemented.
- Section 4(d) - The legislation requires the Department (DPW) to file a State Plan Amendment (SPA) within 60 days of the legislation’s effective date. This could force the Department to file an SPA when it was not yet ready to do so, and when HHS is not ready to receive the SPA. HHS is advising states that the states should consider the SPA the end, not the start, of the LTCP Program process. HHS is counseling states to move forward with the appropriate lead time to allow the necessary background work, including infrastructure development, necessary regulatory changes, etc. to be done first. Therefore, we recommend deleting “within 60 days of the effective date of this section”.
- Section 5(a)(3) - This section states that insurers shall report other information that may be appropriate to the program administration as determined by the recipients of the reports (HHS, Department and Insurance). This gives the impression that the state can dictate the data reporting elements. However, it is only HHS that will write regulations on this issue and decide the necessary data reporting elements for the



program. We suggest amending 5(a)(3) to say: “Such other information as the Secretary of HHS determines may be appropriate to the administration of the partnership program.”

- Section 6 Notice Requirement – This provision appears to conflict with the Deficit Reduction Act of 2005 (DRA) requirement that a state cannot impose any requirements on a partnership policy that it does not impose on other LTC policies. In addition, it appears to conflict with the requirements in Section 4(b) (which mirrors the DRA prohibition language) and 4(c) of the legislation. We recommend that this section be deleted.
- Add a new Section 6: Regulations – This section would require the Department to promulgate necessary regulations for the LTCP program, including changes necessary to remain in compliance with federal law, on a final-omitted basis. This would provide for more expeditious implementation of the LTCP program. The following legislative language is suggested: “The Department shall promulgate regulations as deemed necessary for the effective implementation and operation of this article. Regulations shall be promulgated as final-omitted.”

**Larry Sather - HB 93 Questions**

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*forwarded to  
Nancy / Ken*

**From:** Sharon Schwartz  
**To:** Larry Sather  
**Date:** 8/4/2006 10:17 AM  
**Subject:** HB 93 Questions

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AUG 04 2006

Hi Larry---I wanted to let you know that I contacted the Dept. of Insurance (Lisa Tressler--Legislative Office) to find out who they have been communicating with at the Federal level. She has not returned my call. I also spoke with Lisa Heyman at DPW regarding this....she indicated that there is another guy in her office that has been following this and that she would have him get back to me.....he has not. Also, I spoke with Greg Grasa regarding preparation for an "end run" by the Governor's Office on creating a Partnership Program.....Greg said that he will get everything ready and would await my call, in the event we get wind of Rendell announcing a program. I am on vacation all of next week.....will touch base with you when I return. SS