

BILL ANALYSIS

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C.S.H.B. 2383
By: Eiland et al. (Duncan)
Health & Human Services
5/15/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 2383 amends current law relating to life settlement contracts for the payment of long-term care services and support 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) Defines "long-term care services and support" for this section.

(b) 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 or the state to offset the costs of providing those services to that recipient under the medical assistance program.

(c) Requires that the proceeds of a life settlement contract entered into under this section be used for the payment of long-term care services and support, except for the amount specified in Subsection (d)(1). Authorizes the medical assistance program, to the extent feasible and allowed under federal law, to only act as the secondary payor for long-term care services and support provided to a person who is eligible for medical assistance and for whose benefit an owner of a life insurance policy has entered into a life settlement contract under this section.

(d) 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 and is payable to the owner's estate or a named beneficiary for funeral expenses;

(2) provide that the balance of proceeds under the life settlement 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 long-term care services and support under the life settlement contract.

(e) 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 long-term care services and support or for payment as otherwise required by this section.

(f) Authorizes only a recipient of long-term care services and support 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 (e). 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.

(g) 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.

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

(i) 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.

(j) Prohibits a claim against a life settlement contract provider 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 life settlement contract provider to pay a claim under this subsection from the funds in an account described by Subsection (e).

(k) 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.

(l) Requires TDI to educate for long-term care services and support under the medical assistance program about options for life insurance policies, including options that do not allow a life insurance policy to be considered as an asset or resource in determining eligibility for medical assistance.

(m) Requires the executive commissioner of the Texas Health and Human Services Commission (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 long-term care services and support or the state to offset the cost of medical assistance long-term care services and support;

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

(3) payments to a provider of long-term care services and support and applied income payments are made in accordance with this chapter.

(n) 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.

(o) Prohibits TDI, notwithstanding the provisions of this section, from implementing a provision of this section if the Texas Health and Human Services Commission determines that implementation of the provision is not cost-effective or feasible.

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

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, subject to Section 32.02613(o), Human Resources Code, as added by this Act. 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.