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State of Minnesota

S.F. No. 2898 - Long-term Care Partnership Program (first engrossment)

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S.F. No. 2898 modifies state law as required by recent federal legislation in order to allow implementation of a Long-Term Care Partnership Program under which persons who exhaust the benefits of a qualifying long-term care insurance policy are permitted, when applying for Medical Assistance (MA) payment of long-term care services, to protect from MA recovery an amount of assets equal to the policy benefits utilized.

Article 1
Qualified Long-Term Care Insurance Regulatory Changes

This article modifies Chapter 62S, which regulates long-term care insurance in Minnesota. All of the changes are mandated by federal law in order to permit the state to implement the long-term care partnership program. The most significant changes are to (1) increase consumer disclosures; (2) require development of product suitability standards; and (3) require new insurance agent training. Numerous technical regulatory changes are made to reflect the current National Association of Insurance Commissioners (NAIC) model law.

Section 1 allows the Commissioner of Commerce to extend the six-month pre-existing condition limitations period as to specific age group categories upon finding the extension is in the best interest of the public.

Section 2 adds language to the standard format outline of coverage related to policy renewability provisions and terms under which the company may change premiums. Also gives resources for consumer questions.

Section 3 names the referenced forms.

Section 4 specifies that a summary for an individual life insurance policy that provides long-term care benefits by rider must include a statement that the long-term care inflation protection option required by section 62S.23 is not available under that policy.

Section 5 provides that the contestability provisions of this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In that situation, the remaining death benefits are governed by the contestability provisions of the life insurance statutes.

Section 6 provides that the term "level premium" may only be used when the insurer does not have the right to change the premium.

Section 7 specifies that a policy may exclude coverage for expenses for services or items available or paid under another long-term care insurance policy or health insurance policy.

Section 8 requires a long-term care insurance policy to include a statement that coverage is guaranteed renewable or noncancelable and a statement that premium rates may change if the insurer has the right to change the premium.

Section 9 modifies required questions on the application form.

Section 10 requires agents to list on the application form all other health insurance policies they have sold to the applicant that are still in force or were sold in the past five years and are no longer in force.

Sections 11 and 12 modify language in the notice required if replacement coverage is involved in a sale of long-term care insurance.

Section 13 requires that life insurance policies that accelerate benefits for long-term care comply with the section related to application forms and replacement coverage if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with replacement requirements of the life insurance statutes. If a life insurance policy that accelerates benefits for long-term care is replaced by another policy, the insurer must comply with both the long-term care and the life insurance replacement requirements.

Section 14 provides a definition of "claim" for purposes of insurer reporting.

Section 15 specifies the form of required reports on claim denial and replacement and lapse.

Section 16 provides that minimum loss ratio requirements do not apply to life insurance policies that accelerate benefits for long-term care if the policy complies with specified provisions, including the filing of an actuarial memorandum with the commissioner.

Section 17 specifies nonforfeiture benefit offer requirements for group long-term care policies.

Section 18 requires insurers to establish agent training requirements to assure that marketing activities are fair and accurate. Requires copies of specified disclosure forms be provided to the applicant along with an explanation of contingent benefit upon lapse.

Section 19 requires every insurer marketing long-term care insurance to develop and use suitability standards to determine whether the purchase of long-term care insurance is appropriate for the needs of the applicant and to train its agents in the use of the standards. Requires the agent to obtain detailed information from the applicant and fill out a long-term care insurance personal worksheet. Requires insurer reporting.

Section 20 requires insurers to require that agents authorized to sell consumers long-term care insurance shall complete specified training requirements. Training must be verified before a producer is permitted to sell the insurer's long-term care products.

Section 21 makes article 1 effective July 1, 2006.

Article 2
Long-Term Care Partnership Program

Section 1 (256B.0571) modifies the Partnership Program adopted last year in order to comply with recent federal law.

Subdivisions 1 to 7a delete several unneeded definitions; clarify that a Partnership Policy must be issued on or after July 1, 2006, and add a definition of "protected assets."

Subdivision 8 clarifies that in order to participate in the Partnership Program, a person must be a Minnesota resident at the time coverage first becomes effective under a partnership policy and that the policy must be issued no earlier than July 1, 2006. This subdivision deletes a reference to minimum policy benefits, which are removed later in this section, and requires a person to exhaust all policy benefits in order to receive asset protection under the MA program.

Subdivision 9 establishes procedures for allowing qualifying individuals, when applying for MA payment of long-term care services, to designate protected assets, including the determination of market value, valuation of life estates and joint tenancies, and the extent of and limits on the right to protect assets. Protection does not apply to recovery from trusts or annuities and similar legal instruments.

Subdivision 10 deletes policy requirements not allowed under federal law and establishes inflation protection required by federal law.

Subdivision 11 is stricken. It authorized "total asset protection policies," which are not permitted under federal law.

Subdivision 12 updates a reference to applicable federal law.

Subdivision 13 modifies the language placing limits on MA estate recovery. It states that protected assets are not subject to MA estate claims nor to the collection procedure for small claims under the uniform probate code. However, protected assets do not continue to be protected in the surviving spouse's estate if the surviving spouse also receives MA benefits. This subdivision requires personal representatives to use the value of available asset protection to protect the full value of each protected asset to the extent possible, rather than partially protecting a larger number of assets. The asset protection expires when the estate distributes an asset or if the estate is not probated within one year of death.

Subdivision 14 requires DHS to submit a state plan amendment to the federal government by September 30, 2006, so that the Partnership Program may take effect for policies issued on or after July 1, 2006.

Subdivision 15 exempts protected assets from the MA lien law to the extent the heir owns the property in the heir's own name. This protection does not apply once the heir disposes of the property or dies.

Subdivision 16 places the burden of proof on the individual or the individual's estate to document that an asset has been protected and remains protected.

DG/CBS:rdr/cs

A-2 amendment adopted
→ amendment to A-2 amendment adopted
recommended to pass + re-referred to finance. adopted

A bill for an act

relating to insurance; conforming regulation of qualified long-term care insurance to requirements for state participation in the federal long-term care partnership program; amending state long-term care partnership program requirements; amending Minnesota Statutes 2004, sections 62S.05, by adding a subdivision; 62S.08, subdivision 3; 62S.081, subdivision 4; 62S.10, subdivision 2; 62S.13, by adding a subdivision; 62S.14, subdivision 2; 62S.15; 62S.20, subdivision 1; 62S.24, subdivisions 1, 3, 4, by adding subdivisions; 62S.25, subdivision 6, by adding a subdivision; 62S.26; 62S.266, subdivision 2; 62S.29, subdivision 1; 62S.30; Minnesota Statutes 2005 Supplement, section 256B.0571; proposing coding for new law in Minnesota Statutes, chapter 62S.

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

ARTICLE 1

QUALIFIED LONG-TERM CARE INSURANCE REGULATORY CHANGES

Section 1. Minnesota Statutes 2004, section 62S.05, is amended by adding a subdivision to read:

Subd. 4. **Extension of limitation periods.** The commissioner may extend the limitation periods set forth in subdivisions 1 and 2 as to specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.

Sec. 2. Minnesota Statutes 2004, section 62S.08, subdivision 3, is amended to read:

Subd. 3. **Mandatory format.** The following standard format outline of coverage must be used, unless otherwise specifically indicated:

COMPANY NAME
ADDRESS - CITY AND STATE
TELEPHONE NUMBER
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE

Policy Number or Group Master Policy and Certificate Number

(Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.)

CAUTION: The issuance of this long-term care insurance (policy) (certificate) is based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises. If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address).

(1) This policy is (an individual policy of insurance) (a group policy) which was issued in the (indicate jurisdiction in which group policy was issued).

(2) PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY.

(3) THIS PLAN IS INTENDED TO BE A QUALIFIED LONG-TERM CARE INSURANCE CONTRACT AS DEFINED UNDER SECTION 7702(B)(b) OF THE INTERNAL REVENUE CODE OF 1986.

(4) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) (For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

(1) Policies and certificates that are guaranteed renewable shall contain the following statement:) RENEWABILITY: THIS POLICY (CERTIFICATE) IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, (certificate) to continue this policy as long as you pay your premiums on time. (company name) cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

(2) (Policies and certificates that are noncancelable shall contain the following statement:) RENEWABILITY: THIS POLICY (CERTIFICATE) IS NONCANCELABLE.

This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. (company name) cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, (company name) may increase your premium at that time for those additional benefits.

(b) (For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy.)

(c) (Describe waiver of premium provisions or state that there are not such provisions.)

(5) TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

(In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium and, if a right exists, describe clearly and concisely each circumstance under which the premium may change.)

(6) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) (Provide a brief description of the right to return – "free look" provision of the policy.)

(b) (Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.)

~~(5)~~ (7) THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) (For agents) neither (insert company name) nor its agents represent Medicare, the federal government, or any state government.

(b) (For direct response) (insert company name) is not representing Medicare, the federal government, or any state government.

~~(6)~~ (8) LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy (limitations), (waiting periods), and (coinsurance) requirements. (Modify this paragraph if the policy is not an indemnity policy.)

~~(7)~~ (9) BENEFITS PROVIDED BY THIS POLICY.

(a) (Covered services, related deductible(s), waiting periods, elimination periods, and benefit maximums.)

(b) (Institutional benefits, by skill level.)

(c) (Noninstitutional benefits, by skill level.)

(d) (Eligibility for payment of benefits.)

(Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.)

(Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.)

~~(8)~~ (10) LIMITATIONS AND EXCLUSIONS:

Describe:

(a) preexisting conditions;

(b) noneligible facilities/provider;

(c) noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

(d) exclusions/exceptions; and

(e) limitations.

(This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph ~~(6)~~ (8).)

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

~~(9)~~ (11) RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. As applicable, indicate the following:

(a) that the benefit level will not increase over time;

(b) any automatic benefit adjustment provisions;

(c) whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

(d) if there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations; and

(e) whether there will be any additional premium charge imposed and how that is to be calculated.

~~(10)~~ (12) ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS. (State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically, describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.)

~~(11)~~ (13) PREMIUM.

(a) State the total annual premium for the policy.

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.

~~(12)~~ (14) ADDITIONAL FEATURES.

(a) Indicate if medical underwriting is used.

(b) Describe other important features.

(15) CONTACT THE STATE DEPARTMENT OF COMMERCE OR SENIOR LINKAGE LINE IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

Sec. 3. Minnesota Statutes 2004, section 62S.081, subdivision 4, is amended to read:

Subd. 4. **Forms.** An insurer shall use the forms in Appendices B (Personal Worksheet) and F (Potential Rate Increase Disclosure Form) of the Long-term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners to comply with the requirements of subdivisions 1 and 2.

Sec. 4. Minnesota Statutes 2004, section 62S.10, subdivision 2, is amended to read:

Subd. 2. **Contents.** The summary must include the following information:

(1) an explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(2) an illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits, if any, for each covered person; ~~and~~

(3) any exclusions, reductions, and limitations on benefits of long-term care; and

(4) a statement that any long-term care inflation protection option required by section 62S.23 is not available under this policy.

Sec. 5. Minnesota Statutes 2004, section 62S.13, is amended by adding a subdivision to read:

Subd. 6. **Death of insured.** In the event of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In this situation, the remaining death benefits under these policies shall be governed by section 61A.03, subdivision 1, paragraph (c). In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.

Sec. 6. Minnesota Statutes 2004, section 62S.14, subdivision 2, is amended to read:

Subd. 2. **Terms.** The terms "guaranteed renewable" and "noncancelable" may not be used in an individual long-term care insurance policy without further explanatory language that complies with the disclosure requirements of section 62S.20. The term "level premium" may only be used when the insurer does not have the right to change the premium.

Sec. 7. Minnesota Statutes 2004, section 62S.15, is amended to read:

62S.15 AUTHORIZED LIMITATIONS AND EXCLUSIONS.

No policy may be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(1) preexisting conditions or diseases;

(2) mental or nervous disorders; except that the exclusion or limitation of benefits on the basis of Alzheimer's disease is prohibited;

(3) alcoholism and drug addiction;

(4) illness, treatment, or medical condition arising out of war or act of war; participation in a felony, riot, or insurrection; service in the armed forces or auxiliary units; suicide, attempted suicide, or intentionally self-inflicted injury; or non-fare-paying aviation; ~~and~~

(5) treatment provided in a government facility unless otherwise required by law, services for which benefits are available under Medicare or other government program except Medicaid, state or federal workers' compensation, employer's liability or occupational disease law, motor vehicle no-fault law; services provided by a member of the covered person's immediate family; and services for which no charge is normally made in the absence of insurance; and

(6) expenses for services or items available or paid under another long-term care insurance or health insurance policy.

This subdivision does not prohibit exclusions and limitations by type of provider or territorial limitations.

Sec. 8. Minnesota Statutes 2004, section 62S.20, subdivision 1, is amended to read:

Subdivision 1. **Renewability.** (a) Individual long-term care insurance policies must contain a renewability provision that is appropriately captioned, appears on the first page of the policy, and clearly states ~~the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed~~ that the coverage is guaranteed renewable or noncancelable. This subdivision does not apply to policies which are part of or combined with life insurance policies which do not contain a renewability provision and under which the right to nonrenew is reserved solely to the policyholder.

(b) A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

Sec. 9. Minnesota Statutes 2004, section 62S.24, subdivision 1, is amended to read:

Subdivision 1. **Required questions.** An application form must include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing the following questions may be used. If a replacement policy is issued to a group as defined under section 62S.01, subdivision 15, clause (1), the following questions may be modified only to the extent necessary to elicit information about long-term care insurance policies other than the group policy being replaced; provided, however, that the certificate holder has been notified of the replacement:

(1) do you have another long-term care insurance policy or certificate in force (including health care service contract or health maintenance organization contract)?;

(2) did you have another long-term care insurance policy or certificate in force during the last 12 months?;

(i) if so, with which company?; and

(ii) if that policy lapsed, when did it lapse?; ~~and~~

(3) are you covered by Medicaid?; and

(4) do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

Sec. 10. Minnesota Statutes 2004, section 62S.24, is amended by adding a subdivision to read:

Subd. 1a. **Other health insurance policies sold by agent.** Agents shall list all other health insurance policies they have sold to the applicant that are still in force or were sold in the past five years and are no longer in force.

Sec. 11. Minnesota Statutes 2004, section 62S.24, subdivision 3, is amended to read:

Subd. 3. **Solicitations other than direct response.** After determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods or its agent, shall furnish the applicant, before issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of the notice must be retained by the applicant and an additional copy signed by the applicant must be retained by the insurer. The required notice must be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (company name) insurance company. Your new policy provides 30 days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT
(BROKER OR OTHER REPRESENTATIVE):
(Use additional sheets, as necessary.)

I have reviewed your current medical health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

(a) Health conditions which you presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

....

(Signature of Agent, Broker, or Other Representative)

(Typed Name and Address of Agency or Broker)

The above "Notice to Applicant" was delivered to me on:

.....
(Date)

.....
(Applicant's Signature)

Sec. 12. Minnesota Statutes 2004, section 62S.24, subdivision 4, is amended to read:

Subd. 4. **Direct response solicitations.** Insurers using direct response solicitation methods shall deliver a notice regarding replacement of long-term care coverage to the applicant upon issuance of the policy. The required notice must be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF

ACCIDENT AND SICKNESS OR
LONG-TERM CARE INSURANCE

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE
IMPORTANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (company name) insurance company.

Your new policy provides 30 days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

(a) Health conditions which you presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of

your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) (To be included only if the application is attached to the policy.)

If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (company name and address) within 30 days if any information is not correct and complete, or if any past medical history has been left out of the application.

.....
(Company Name)

Sec. 13. Minnesota Statutes 2004, section 62S.24, is amended by adding a subdivision to read:

Subd. 7. **Life insurance policies.** Life insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of sections 61A.53 to 61A.60. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

Sec. 14. Minnesota Statutes 2004, section 62S.25, subdivision 6, is amended to read:

Subd. 6. **Claims denied.** Each insurer shall report annually by June 30 the number of claims denied for any reason during the reporting period for each class of business, expressed as a percentage of claims denied, other than claims denied for failure to meet the waiting period or because of any applicable preexisting condition. For purposes of this subdivision, "claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

Sec. 15. Minnesota Statutes 2004, section 62S.25, is amended by adding a subdivision to read:

Subd. 7. **Reports.** Reports under this section shall be done on a statewide basis and filed with the commissioner. They shall include, at a minimum, the information in the format contained in Appendix E (Claim Denial Reporting Form) and in Appendix G

(Replacement and Lapse Reporting Form) of the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners.

Sec. 16. Minnesota Statutes 2004, section 62S.26, is amended to read:

62S.26 LOSS RATIO.

Subdivision 1. **Minimum loss ratio.** ~~(a)~~ The minimum loss ratio must be at least 60 percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, the commissioner shall give consideration to all relevant factors, including:

(1) statistical credibility of incurred claims experience and earned premiums;

(2) the period for which rates are computed to provide coverage;

(3) experienced and projected trends;

(4) concentration of experience within early policy duration;

(5) expected claim fluctuation;

(6) experience refunds, adjustments, or dividends;

(7) renewability features;

(8) all appropriate expense factors;

(9) interest;

(10) experimental nature of the coverage;

(11) policy reserves;

(12) mix of business by risk classification; and

(13) product features such as long elimination periods, high deductibles, and high maximum limits.

Subd. 2. **Life insurance policies.** Subdivision 1 shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

(1) the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(2) the portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of section 61A.24;

(3) the policy meets the disclosure requirements of sections 62S.09, 62S.10, and 62S.11; and

(4) an actuarial memorandum is filed with the insurance department that includes:

(i) a description of the basis on which the long-term care rates were determined;

(ii) a description of the basis for the reserves;

(iii) a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) a description and a table of each actuarial assumption used. For expenses, an insurer must include percentage of premium dollars per policy and dollars per unit of benefits, if any;

(v) a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) the estimated average annual premium per policy and the average issue age;

(vii) a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

Subd. 3. **Nonapplication.** ~~(b)~~ This section does not apply to policies or certificates that are subject to sections 62S.021, 62S.081, and 62S.265, and that comply with those sections.

Sec. 17. Minnesota Statutes 2004, section 62S.266, subdivision 2, is amended to read:

Subd. 2. **Requirement.** (a) An insurer must offer each prospective policyholder a nonforfeiture benefit in compliance with the following requirements:

(1) a policy or certificate offered with nonforfeiture benefits must have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer must be the benefit described in subdivision 5; and

(2) the offer must be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(b) When a group long-term care insurance policy is issued, the offer required in paragraph (a) shall be made to the group policy holder. However, if the policy is issued as group long-term care insurance as defined in section 62S.01, subdivision 15, clause (4),

other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

Sec. 18. Minnesota Statutes 2004, section 62S.29, subdivision 1, is amended to read:

Subdivision 1. **Requirements.** An insurer or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

(1) establish marketing procedures and agent training requirements to assure that ~~a~~ any marketing activities, including any comparison of policies by its agents or other producers, are fair and accurate;

(2) establish marketing procedures to assure excessive insurance is not sold or issued;

(3) display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy, the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.";

(4) provide copies of the disclosure forms required in section 62S.081, subdivision 4, to the applicant;

(5) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has long-term care insurance and the types and amounts of the insurance;

~~(5)~~ (6) establish auditable procedures for verifying compliance with this subdivision; ~~and~~

~~(6)~~ (7) if applicable, provide written notice to the prospective policyholder and certificate holder, at solicitation, that a senior insurance counseling program approved by the commissioner is available and the name, address, and telephone number of the program;

(8) use the terms "noncancelable" or "level premium" only when the policy or certificate conforms to section 62S.14; and

(9) provide an explanation of contingent benefit upon lapse provided for in section 62S.266.

Sec. 19. Minnesota Statutes 2004, section 62S.30, is amended to read:

62S.30 ~~APPROPRIATENESS OF RECOMMENDED PURCHASE~~ SUITABILITY.

~~In recommending the purchase or replacement of a long-term care insurance policy or certificate, an agent shall comply with section 60K.46, subdivision 4.~~

Subdivision 1. **Standards.** Every insurer or other entity marketing long-term care insurance shall:

(1) develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(2) train its agents in the use of its suitability standards; and

(3) maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

Subd. 2. **Procedures.** (a) To determine whether the applicant meets the standards developed by the insurer or other entity marketing long-term care insurance, the agent and insurer or other entity marketing long-term care insurance shall develop procedures that take the following into consideration:

(1) the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(2) the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet those goals or needs; and

(3) the values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

(b) The insurer or other entity marketing long-term care insurance, and where an agent is involved, the agent, shall make reasonable efforts to obtain the information set forth in paragraph (a). The efforts shall include presentation to the applicant, at or prior to application, of the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the insurer or other entity marketing long-term care insurance shall contain, at a minimum, the information in the format contained in Appendix B of the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners, in not less than 12-point type. The insurer or other entity marketing long-term care insurance may request the applicant to provide additional information to comply with its suitability standards. The insurer or other entity marketing long-term care insurance shall file a copy of its personal worksheet with the commissioner.

(c) A completed personal worksheet shall be returned to the insurer or other entity marketing long-term care insurance prior to consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses. The sale or dissemination by the insurer or other entity marketing long-term care insurance, or the agent, of information obtained through the personal worksheet, is prohibited.

(d) The insurer or other entity marketing long-term care insurance shall use the suitability standards it has developed under this section in determining whether issuing

long-term care insurance coverage to an applicant is appropriate. Agents shall use the suitability standards developed by the insurer or other entity marketing long-term care insurance in marketing long-term care insurance.

(e) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C of the Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners in not less than 12-point type.

(f) If the insurer or other entity marketing long-term care insurance determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the insurer or other entity marketing long-term care insurance may reject the application. In the alternative, the insurer or other entity marketing long-term care insurance shall send the applicant a letter similar to Appendix D of the Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners. However, if the applicant has declined to provide financial information, the insurer or other entity marketing long-term care insurance may use some other method to verify the applicant's intent. The applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

Subd. 3. **Reports.** The insurer or other entity marketing long-term care insurance shall report annually to the commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

Subd. 4. **Application.** This section shall not apply to life insurance policies that accelerate benefits for long-term care.

Sec. 20. **[62S.315] PROVIDER TRAINING REQUIREMENTS.**

(a) Every insurer and other entity providing long-term care insurance in this state shall require that each producer authorized to solicit individual consumers for the sale of long-term care insurance shall complete the following training requirements that, for resident licensees, may be part of, and not in addition to, the continuing education requirements of section 60K.56:

(1) for producers issued a license after August 1, 2006, eight hours of training in the 24-month period prior to first soliciting individual consumers for the sale of long-term care insurance and eight hours of training in every 24-month period following licensure; and

(2) for producers issued a license before August 1, 2006, eight hours of training in every 24-month period after August 1, 2006.

(b) The training required by this section shall consist of topics related to long-term care insurance and long-term care services including, but not limited to:

(1) state and federal regulations and requirements;

(2) available long-term care services and providers;

(3) changes or improvements in long-term care services or providers;

(4) alternatives to the purchase of private long-term care insurance;

(5) differences in eligibility for benefits and tax treatment between policies intended to be federally qualified and those not intended to be federally qualified;

(6) the effect of inflation in eroding the value of benefits and the importance of inflation protection; and

(7) consumer suitability standards and guidelines.

The training required by this section shall not include any training that is insurer or company product specific or that includes any sales or marketing information, materials, or training, other than those required by state or federal laws or regulations.

(c) Every insurer and other entity providing long-term care insurance in this state shall obtain verification of the training required by this section before a producer is permitted to sell the entity's long-term care insurance products. Every insurer and other entity providing long-term care insurance or benefits in this state shall maintain an accurate record of producers authorized to sell the entity's long-term care insurance products to ensure continued compliance with the requirements of this section. All records of authorized producers, past and present, shall be made available to the commissioner upon request.

Sec. 21. **EFFECTIVE DATE.**

Sections 1 to 20 are effective July 1, 2006.

ARTICLE 2

LONG-TERM CARE PARTNERSHIP PROGRAM

Section 1. Minnesota Statutes 2005 Supplement, section 256B.0571, is amended to read:

256B.0571 LONG-TERM CARE PARTNERSHIP PROGRAM.

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given them.

~~Subd. 2. **Home care service.** "Home care service" means care described in section 144A.43.~~

Subd. 3. **Long-term care insurance.** "Long-term care insurance" means a policy described in section 62S.01.

Subd. 4. **Medical assistance.** "Medical assistance" means the program of medical assistance established under section 256B.01.

~~Subd. 5. **Nursing home.** "Nursing home" means a nursing home as described in section 144A.01.~~

Subd. 6. **Partnership policy.** "Partnership policy" means a long-term care insurance policy that meets the requirements under subdivision 10 ~~or 11, regardless of when the policy~~ and was first issued on or after July 1, 2006.

Subd. 7. **Partnership program.** "Partnership program" means the Minnesota partnership for long-term care program established under this section.

Subd. 7a. **Protected assets.** "Protected assets" means assets or proceeds of assets that are protected from recovery under subdivisions 13 and 15.

Subd. 8. **Program established.** (a) The commissioner, in cooperation with the commissioner of commerce, shall establish the Minnesota partnership for long-term care program to provide for the financing of long-term care through a combination of private insurance and medical assistance.

(b) An individual who meets the requirements in this paragraph is eligible to participate in the partnership program. The individual must:

(1) be a Minnesota resident at the time coverage first became effective under the partnership policy;

(2) ~~purchase a partnership policy that is delivered, issued for delivery, or renewed on or after the effective date of Laws 2005, First Special Session chapter 4, article 7, section 5, and maintain the partnership policy in effect throughout the period of participation in the partnership program~~ be a beneficiary of a partnership policy issued no earlier than July 1, 2006; and

(3) ~~exhaust the minimum~~ have exhausted all of the benefits under the partnership policy as described in this section. Benefits received under a long-term care insurance policy before ~~the effective date of Laws 2005, First Special Session chapter 4, article 7, section 5~~ July 1, 2006, do not count toward the exhaustion of benefits required in this subdivision.

Subd. 9. **Medical assistance eligibility.** (a) Upon application ~~of~~ for medical assistance program payment of long-term care services by an individual who meets the

requirements described in subdivision 8, the commissioner shall determine the individual's eligibility for medical assistance according to paragraphs (b) ~~and (c)~~ to (i).

(b) After ~~disregarding financial~~ determining assets ~~exempted under medical assistance eligibility requirements~~ subject to the asset limit under section 256B.056, subdivision 3 or 3c, or section 256B.057, subdivision 9 or 10, the commissioner shall ~~disregard an additional amount of financial assets equal~~ allow the individual to designate assets to be protected from recovery under subdivisions 13 and 15 of this section up to the dollar amount of ~~coverage~~ the benefits utilized under the partnership policy. Designated assets shall be disregarded for purposes of determining eligibility for payment of long-term care services.

(c) ~~The commissioner shall consider the individual's income according to medical assistance eligibility requirements.~~ The individual shall identify the designated assets and the full fair market value of those assets and designate them as assets to be protected at the time of initial application for medical assistance. The full fair market value of real property or interests in real property shall be based on the most recent full assessed value for property tax purposes for the real property, unless the individual provides a complete professional appraisal by a licensed appraiser to establish the full fair market value. The extent of a life estate in real property shall be determined using the life estate table in the health care program's manual. Ownership of any asset in joint tenancy shall be treated as ownership as tenants in common for purposes of its designation as a disregarded asset. The unprotected value of any protected asset is subject to estate recovery according to subdivisions 13 and 15.

(d) The right to designate assets to be protected is personal to the individual and ends when the individual dies, except as otherwise provided in subdivisions 13 and 15. It does not include the increase in the value of the protected asset and the income, dividends, or profits from the asset. It may be exercised by the individual or by anyone with the legal authority to do so on the individual's behalf. It shall not be sold, assigned, transferred, or given away.

(e) If the dollar amount of the benefits utilized under a partnership policy is greater than the full fair market value of all assets protected at the time of the application for medical assistance long-term care services, the individual may designate additional assets that become available during the individual's lifetime for protection under this section. The individual must make the designation in writing to the county agency no later than the last date on which the individual must report a change in circumstances to the county agency, as provided for under the medical assistance program. Any excess used for this

purpose shall not be available to the individual's estate to protect assets in the estate from recovery under section 256B.15, section 524.3-1202, or otherwise.

(f) This section applies only to estate recovery under United States Code, title 42, section 1496p, subsections (a) and (b), and does not apply to recovery authorized by other provisions of federal law, including, but not limited to, recovery from trusts under United States Code, title 42, section 1396p, subsection (d)(4)(A) and (C), or to recovery from annuities, or similar legal instruments, subject to section 6012, subsections (a) and (b), of the Deficit Reduction Act of 2005, Public Law 109-171.

(g) An individual's protected assets owned by the individual's spouse who applies for payment of medical assistance long-term care services shall not be protected assets or disregarded for purposes of eligibility of the individual's spouse solely because they were protected assets of the individual.

(h) Assets designated under this subdivision shall not be subject to penalty under section 256B.0595.

(i) The commissioner shall otherwise determine the individual's eligibility for payment of long-term care services according to medical assistance eligibility requirements.

Subd. 10. ~~**Dollar-for-dollar asset protection policies**~~ **Long-term care partnership policy requirements.** (a) A ~~dollar-for-dollar asset protection~~ long-term care partnership policy must meet all of the requirements in paragraphs (b) ~~to (c)~~ and (c).

(b) The policy must satisfy the requirements of chapter 62S.

(c) ~~The policy must offer an elimination period of not more than 180 days for an adjusted premium.~~

~~(d) The policy must satisfy the requirements established by the commissioner of human services under subdivision 14.~~

~~(e) Minimum daily benefits shall be $130 for nursing home care or $65 for home care, with inflation protection provided in the policy as described in section 62S.23, subdivision 1, clause (1). These minimum daily benefit amounts shall be adjusted by the commissioner on October 1 of each year by a percentage equal to the inflation protection feature described in section 62S.23, subdivision 1, clause (1), for purposes of setting minimum requirements that a policy must meet in future years in order to initially qualify as an approved policy under this subdivision. Adjusted minimum daily benefit amounts shall be rounded to the nearest whole dollar.~~ The policy must provide the inflation protection described in this paragraph. If the policy is sold to an individual who:

(1) is age 60 or younger as of the date of purchase, the policy must provide compound annual inflation protection;

(2) is age 61 to 75 as of the date of purchase, the policy must provide some level of inflation protection; and

(3) is age 76 or older as of the date of purchase, the policy may, but is not required to, provide some level of inflation protection.

~~Subd. 11. **Total asset protection policies.** (a) A total asset protection policy must meet all of the requirements in subdivision 10, paragraphs (b) to (d), and this subdivision.~~

~~(b) Minimum coverage shall be for a period of not less than three years and for a dollar amount equal to 36 months of nursing home care at the minimum daily benefit rate determined and adjusted under paragraph (c).~~

~~(c) Minimum daily benefits shall be $150 for nursing home care or $75 for home care, with inflation protection provided in the policy as described in section 62S.23, subdivision 1, clause (1). These minimum daily benefit amounts shall also be adjusted by the commissioner on October 1 of each year by a percentage equal to the inflation protection feature described in section 62S.23, subdivision 1, clause (1), for purposes of setting minimum requirements that a policy must meet in future years in order to initially qualify as an approved policy under this subdivision. Adjusted minimum daily benefit amounts shall be rounded to the nearest whole dollar.~~

~~(d) The policy must cover all of the following services:~~

~~(1) nursing home stay;~~

~~(2) home care service; and~~

~~(3) care management.~~

Subd. 12. **Compliance with federal law.** An issuer of a partnership policy must comply with ~~any federal law authorizing partnership policies in Minnesota~~ Public Law 109-171, section 6021, including any federal regulations, as amended, adopted under that law. ~~This subdivision does not require compliance with any provision of this federal law until the date upon which the law requires compliance with the provision. The commissioner has authority to enforce this subdivision.~~

Subd. 13. **Limitations on estate recovery.** (a) ~~For an individual who exhausts the minimum benefits of a dollar-for-dollar asset protection policy under subdivision 10, and is determined eligible for medical assistance under subdivision 9, the state shall limit recovery under the provisions of section 256B.15 against the estate of the individual or individual's spouse for medical assistance benefits received by that individual to an amount that exceeds the dollar amount of coverage utilized under the partnership policy.~~ Protected assets of the individual shall not be subject to recovery under section 256B.15 or section 524.3-1201 for medical assistance or alternative care paid on behalf of the individual. Protected assets of the individual in the estate of the individual's surviving

spouse shall not be liable to pay a claim for recovery of medical assistance paid for the predeceased individual that is filed in the estate of the surviving spouse under section 256B.15. Protected assets of the individual shall not be protected assets in the surviving spouse's estate by reason of the preceding sentence and shall be subject to recovery under section 256B.15 or section 524.3-1201 for medical assistance paid on behalf of the surviving spouse.

(b) ~~For an individual who exhausts the minimum benefits of a total asset protection policy under subdivision 11, and is determined eligible for medical assistance under subdivision 9, the state shall not seek recovery under the provisions of section 256B.15 against the estate of the individual or individual's spouse for medical assistance benefits received by that individual.~~ The personal representative may protect the full fair market value of an individual's unprotected assets in the individual's estate in an amount equal to the unused amount of asset protection the individual had on the date of death. The personal representative shall apply the asset protection so that the full fair market value of any unprotected asset in the estate is protected. When or if the asset protection available to the personal representative is or becomes less than the full fair market value of any remaining unprotected asset, it shall be applied to partially protect one unprotected asset.

(c) The asset protection described in paragraph (a) terminates with respect to an asset includable in the individual's estate under chapter 524 or section 256B.15:

(1) when the estate distributes the asset; or

(2) if the estate of the individual has not been probated within one year from the date of death.

(d) If an individual owns a protected asset on the date of death and the estate is opened for probate more than one year after death, the state or a county agency may file and collect claims in the estate under section 256B.15, and no statute of limitations in chapter 524 that would otherwise limit or bar the claim shall apply.

(e) Except as otherwise provided, nothing in this section shall limit or prevent recovery of medical assistance.

Subd. 14. **Implementation.** ~~(a) If federal law is amended or a federal waiver is granted to permit implementation of this section, the commissioner, in consultation with the commissioner of commerce, may alter the requirements of subdivisions 10 and 11, and may establish additional requirements for approved policies in order to conform with federal law or waiver authority. In establishing these requirements, the commissioner shall seek to maximize purchase of qualifying policies by Minnesota residents while controlling medical assistance costs.~~

~~(b) The commissioner is authorized to suspend implementation of this section until the next session of the legislature if the commissioner, in consultation with the commissioner of commerce, determines that the federal legislation or federal waiver authorizing a partnership program in Minnesota is likely to impose substantial unforeseen costs on the state budget.~~

~~(c) The commissioner must take action under paragraph (a) or (b) within 45 days of final federal action authorizing a partnership policy in Minnesota.~~

~~(d) The commissioner must notify the appropriate legislative committees of action taken under this subdivision within 50 days of final federal action authorizing a partnership policy in Minnesota.~~

~~(e) The commissioner must publish a notice in the State Register of implementation decisions made under this subdivision as soon as practicable.~~ The commissioner shall submit a state plan amendment to the federal government by September 30, 2006, to implement the long-term care partnership program in accordance with this section, in order that the program may take effect for policies issued on or after July 1, 2006.

Subd. 15. **Limitations on liens.** (a) If the interest of an individual in real property is designated as protected under subdivision 9 or is protected property in the estate of the individual and is subject to a medical assistance lien under sections 514.980 to 514.985, or a lien arising under section 256B.15, the gross proceeds from the gross sale price of any sale of the property by that individual or the individual's estate that are allocable to the protected interest are not subject to recovery of medical assistance under the lien.

(b) Paragraph (a) applies to protected real property to the extent an heir or devisee of the estate of the individual owns the protected property or an interest in the protected property in the individual's own name when the individual sells it. Paragraph (a) does not apply to any of the heirs, successors, assigns, or transferees of those individuals.

Subd. 16. **Burden of proof.** Any individual or the personal representative of the individual's estate who asserts that an asset is a disregarded or protected asset under this section in connection with any determination of eligibility for benefits under the medical assistance program or any appeal, case, controversy, or other proceedings, shall have the initial burden of:

(1) documenting and proving by convincing evidence that the asset or source of funds for the asset in question was designated as disregarded or protected;

(2) tracing the asset and the proceeds of the asset from that time forward; and

(3) documenting that the asset or proceeds of the asset remained disregarded or protected at all relevant times.

EFFECTIVE DATE. This section is effective July 1, 2006.

Belanger adopted

Senator ..... moves to amend S.F. No. 2898 as follows:

Page 12, line 35, delete "insurance department" and insert "commissioner"

Page 16, delete section 20, and insert:

"Producer"

"Sec. 20. **[62S.315] ~~PROVIDER~~ TRAINING.**

The commissioner shall approve insurer and producer training requirements in accordance with the NAIC Long-Term Care Insurance Model Act provisions. The commissioner of human services shall provide technical assistance and information to the commissioner in accordance with Public Law 109-171, section 6021."

Page 18, line 11, strike "first" and delete "July 1, 2006" and insert "the effective date of the state plan amendment"

Pages 20, delete subdivision 10 and insert:

"Subd. 10. ~~**Dollar-for-dollar asset protection policies**~~ **Long-term care partnership policy inflation protection.** ~~(a) A dollar-for-dollar asset protection policy must meet all of the requirements in paragraphs (b) to (e).~~

~~(b) The policy must satisfy the requirements of chapter 62S.~~

~~(c) The policy must offer an elimination period of not more than 180 days for an adjusted premium.~~

~~(d) The policy must satisfy the requirements established by the commissioner of human services under subdivision 14.~~

~~(e) Minimum daily benefits shall be $130 for nursing home care or $65 for home care, with inflation protection provided in the policy as described in section 62S.23, subdivision 1, clause (1). These minimum daily benefit amounts shall be adjusted by the commissioner on October 1 of each year by a percentage equal to the inflation protection feature described in section 62S.23, subdivision 1, clause (1), for purposes of setting minimum requirements that a policy must meet in future years in order to initially qualify as an approved policy under this subdivision. Adjusted minimum daily benefit amounts shall be rounded to the nearest whole dollar.~~

A long-term care partnership policy must provide the inflation protection described in this paragraph. If the policy is sold to an individual who:

(1) has not attained age 61 as of the date of purchase, the policy must provide compound annual inflation protection;

(2) has attained age 61, but has not attained age 76 as of such date, the policy must provide some level of inflation protection; and

(3) has attained age 76 as of such date, the policy may, but is not required to, provide some level of inflation protection."

2.1 Page 23, line 13, delete "by September 30, 2006,"

2.2 Page 23, line 14, delete everything after "section"

2.3 Page 23, line 15, delete everything before the period

Senator Scheid from the Committee on Commerce, to which was re-referred

S.F. No. 2898: A bill for an act relating to insurance; conforming regulation of qualified long-term care insurance to requirements for state participation in the federal long-term care partnership program; amending state long-term care partnership program requirements;amending Minnesota Statutes 2004, sections 62S.05, by adding a subdivision; 62S.08, subdivision 3; 62S.081, subdivision 4; 62S.10, subdivision 2; 62S.13, by adding a subdivision; 62S.14, subdivision 2; 62S.15; 62S.20, subdivision 1; 62S.24, subdivisions 1, 3, 4, by adding subdivisions; 62S.25, subdivision 6, by adding a subdivision; 62S.26; 62S.266, subdivision 2; 62S.29, subdivision 1; 62S.30; Minnesota Statutes 2005 Supplement, section 256B.0571; proposing coding for new law in Minnesota Statutes, chapter 62S.

Reports the same back with the recommendation that the bill be amended as follows:

Page 12, line 35, delete "insurance department" and insert "commissioner"

Page 16, delete section 20 and insert:

"Sec. 20. **[62S.315] PRODUCER TRAINING.**

The commissioner shall approve insurer and producer training requirements in accordance with the NAIC Long-Term Care Insurance Model Act provisions. The commissioner of human services shall provide technical assistance and information to the commissioner in accordance with Public Law 109-171, section 6021."

Page 18, line 11, strike "first" and delete "July 1, 2006" and insert "the effective date of the state plan amendment"

Page 20, delete subdivision 10 and insert:

"Subd. 10. ~~**Dollar-for-dollar asset protection policies**~~ **Long-term care partnership policy inflation protection.** ~~(a) A dollar-for-dollar asset protection policy must meet all of the requirements in paragraphs (b) to (e).~~

~~(b) The policy must satisfy the requirements of chapter 62S.~~

~~(c) The policy must offer an elimination period of not more than 180 days for an adjusted premium.~~

~~(d) The policy must satisfy the requirements established by the commissioner of human services under subdivision 14.~~

~~(e) Minimum daily benefits shall be $130 for nursing home care or $65 for home care, with inflation protection provided in the policy as described in section 62S.23, subdivision 1, clause (1). These minimum daily benefit amounts shall be adjusted by the commissioner on October 1 of each year by a percentage equal to the inflation protection feature described in section 62S.23, subdivision 1, clause (1), for purposes of setting minimum requirements that a policy must meet in future years in order to initially qualify as an approved policy under this subdivision. Adjusted minimum daily benefit amounts shall be rounded to the nearest whole dollar.~~ A long-term care partnership policy must provide the inflation protection described in this paragraph. If the policy is sold to an individual who:

(1) has not attained age 61 as of the date of purchase, the policy must provide compound annual inflation protection;

(2) has attained age 61, but has not attained age 76 as of such date, the policy must provide some level of inflation protection; and

(3) has attained age 76 as of such date, the policy may, but is not required to, provide some level of inflation protection."

Page 23, line 13, delete "by September 30, 2006,"

Page 23, line 14, delete everything after "section"

Page 23, line 15, delete everything before the period

Amend the title accordingly

And when so amended the bill do pass and be re-referred to the Committee on Finance. Amendments adopted. Report adopted.

Linda Scheid .....
(Committee Chair)

March 22, 2006 .....
(Date of Committee recommendation)

Senate Counsel, Research, and Fiscal Analysis

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State of Minnesota

S.F. No. 2823 - Vehicle Forfeiture and Information Release Fees

Author: Senator David J. Tomassoni

Prepared by: Matthew S. Grosser, Senate Research (651/296-1890) MG

Date: March 20, 2006

The bill eliminates a provision which prohibited financial intermediaries from imposing a fee for the release of information when records are requested by a law enforcement agency or prosecuting authority, or for requests made regarding the issuance of dishonored checks.

The bill also eliminates a restriction on who a financial institution may sell a forfeited vehicle to, and eliminates a requirement that the financial institution reimburse the appropriate agency for seizure, storage, and forfeiture costs associated with a forfeited vehicle.

MSG:cs

delete Section 4
as ammended be recommended to pass and be re-referred to the Committee on Crime prevention

Senators Tomassoni and Bakk introduced–

S.F. No. 2823: Referred to the Committee on Commerce.

A bill for an act

relating to financial institutions; modifying certain provisions relating to vehicle forfeitures and fees for information releases; amending Minnesota Statutes 2004, sections 48.513; 169A.63, subdivision 11; 609.535, subdivision 6.

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

Section 1. Minnesota Statutes 2004, section 48.513, is amended to read:

48.513 FINANCIAL INTERMEDIARY FEES.

A financial intermediary may charge a fee for the assembly, production, and copying of records requested under chapter 13A, not to exceed the schedule established from time to time by the Federal Reserve System under Regulation S, Code of Federal Regulations, title 12, part 219~~, except that a fee may not be imposed if the records are requested by a law enforcement agency or prosecuting authority. This section does not apply to requests made under section 609.535~~. For purposes of this section, "financial intermediary" has the meaning given in section 48.512, subdivision 1.

Sec. 2. Minnesota Statutes 2004, section 169A.63, subdivision 11, is amended to read:

Subd. 11. **Sale of forfeited vehicle by secured party.** (a) A financial institution with a valid security interest in or a valid lease covering a forfeited vehicle may choose to dispose of the vehicle under this subdivision, in lieu of the appropriate agency disposing of the vehicle under subdivision 9. A financial institution wishing to dispose of a vehicle under this subdivision shall notify the appropriate agency of its intent, in writing, within 30 days after receiving notice of the seizure and forfeiture. The appropriate agency shall release the vehicle to the financial institution or its agent after the financial institution presents proof of its valid security agreement or of its lease agreement ~~and the financial~~

~~institution agrees not to sell the vehicle to a member of the violator's household, unless the violator is not convicted of the offense on which the forfeiture is based~~. The financial institution shall dispose of the vehicle in a commercially reasonable manner as defined in section 336.9-610.

(b) After disposing of the forfeited vehicle, the financial institution ~~shall reimburse the appropriate agency for its seizure, storage, and forfeiture costs. The financial institution~~ may then apply the proceeds of the sale to its storage costs, to its sale expenses, and to satisfy the lien or the lease on the vehicle. If any proceeds remain, the financial institution shall reimburse the appropriate agency for the agency's seizure, storage, and forfeiture costs and then forward ~~the~~ any remaining proceeds to the state treasury, which shall credit the appropriate fund as specified in subdivision 9.

Sec. 3. Minnesota Statutes 2004, section 609.535, subdivision 6, is amended to read:

Subd. 6. **Release of account information to law enforcement authorities.** A drawee shall release the information specified below to any state, county, or local law enforcement or prosecuting authority which certifies in writing that it is investigating or prosecuting a complaint against the drawer under this section or section 609.52, subdivision 2, clause (3)(a), and that 15 days have elapsed since the mailing of the notice of dishonor required by subdivisions 3 and 8. This subdivision applies to the following information relating to the drawer's account:

(1) documents relating to the opening of the account by the drawer and to the closing of the account;

(2) notices regarding nonsufficient funds, overdrafts, and the dishonor of any check drawn on the account within a period of six months of the date of request;

(3) periodic statements mailed to the drawer by the drawee for the periods immediately prior to, during, and subsequent to the issuance of any check which is the subject of the investigation or prosecution; or

(4) the last known home and business addresses and telephone numbers of the drawer.

The drawee shall release all of the information described in clauses (1) to (4) that it possesses within ten days after receipt of a request conforming to all of the provisions of this subdivision. The drawee may ~~not~~ impose a fee for furnishing this information ~~to law enforcement or prosecuting authorities~~.

A drawee is not liable in a criminal or civil proceeding for releasing information in accordance with this subdivision.

~~Sec. 4.~~ **~~EFFECTIVE DATE.~~**

~~Sections 2 and 3 are effective August 1, 2006, and apply to security agreements entered into on and after that date.~~

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Senate

State of Minnesota

S.F. No. 3121 - Financial Terminal Filing Elimination

Author: Senator Dan Sparks

Prepared by: Matthew S. Grosser, Senate Research (651/296-1890) MG

Date: March 20, 2006

The bill eliminates the requirement that financial institutions file notification with the Commissioner of Commerce to establish and maintain an electronic financial terminal in Minnesota.

The bill also repeals a statutory limit on the expenses of organization and incorporation paid by a bank, as well as the requirement to report those expenses to the Commissioner of Commerce.

MSG:cs

A-1 adopted
as amended, recommended to pass.

Senator Sparks introduced–

S.F. No. 3121: Referred to the Committee on Commerce.

A bill for an act

relating to financial institutions; regulating electronic financial terminals, and the expenses of organizing and incorporating banks; amending Minnesota Statutes 2004, section 47.62, subdivision 1; repealing Minnesota Statutes 2004, sections 46.043; 47.62, subdivision 5.

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

Section 1. Minnesota Statutes 2004, section 47.62, subdivision 1, is amended to read:

Subdivision 1. **General authority.** Any person may establish and maintain one or more electronic financial terminals. Any financial institution may provide for its customers the use of an electronic financial terminal by entering into an agreement with any person who has established and maintains one or more electronic financial terminals if that person authorizes use of the electronic financial terminal to all financial institutions on a nondiscriminatory basis pursuant to section 47.64. ~~Electronic financial terminals to be established and maintained in this state by financial institutions located in states other than Minnesota must file a notification to the commissioner as required in this section. The notification may be in the form lawfully required by the state regulator responsible for the examination and supervision of that financial institution. If there is no such requirement, then notification must be in the form required by this section for Minnesota financial institutions.~~

Sec. 2. **REPEALER.**

Minnesota Statutes 2004, sections 46.043; and 47.62, subdivision 5, are repealed.

APPENDIX
Repealed Minnesota Statutes: 06-4914

46.043 EXPENSES OF ORGANIZATION AND INCORPORATION OF BANKS LIMITED.

The expenses of organization and incorporation to be paid by a bank may not exceed the statutory fees for filing applications as provided in section 46.041 and the necessary legal expenses incurred incident to drawing articles of incorporation, publication, and recording. The incorporators shall, prior to the issuance of the certificate of authorization, file with the commissioner a verified statement showing the total amount of expense incurred in the organization of the bank to be paid by it after commencing operation.

47.62 AUTHORIZATION.

Subd. 5. **Establishment by notice.** A bank, savings bank, savings association, or credit union organized under the laws of this state may, after completing the notification procedure required by this subdivision, establish and maintain one or more electronic financial terminals. The filing must be on forms provided by the commissioner. No electronic financial terminal may be established under sections 47.61 to 47.74 if disallowed by order of the commissioner within 15 days of the filing of a complete and acceptable notification of the intent to establish an electronic financial terminal.

Senator Sparks ..... moves to amend S.F. No. 3121 as follows:

Page 1, after line 19, insert:

"Sec. 2. Minnesota Statutes 2005 Supplement, section 47.75, subdivision 1, is amended to read:

Subdivision 1. **Retirement, health savings, and medical savings accounts.** (a) A commercial bank, savings bank, savings association, credit union, or industrial loan and thrift company may act as trustee or custodian:

(1) under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended;

(2) of a medical savings account under the Federal Health Insurance Portability and Accountability Act of 1996, as amended;

(3) of a health savings account under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, as amended; and

(4) under the Federal Employee Retirement Income Security Act of 1974, as amended.

(b) The trustee or custodian may accept the trust funds if the funds are invested only in savings accounts or time deposits in the commercial bank, savings bank, savings association, credit union, or industrial loan and thrift company, except that health savings accounts may also be invested in transaction accounts. Health savings accounts invested in transaction accounts shall not be subject to the restrictions in section 48.512, subdivision 3. All funds held in the fiduciary capacity may be commingled by the financial institution in the conduct of its business, but individual records shall be maintained by the fiduciary for each participant and shall show in detail all transactions engaged under authority of this subdivision.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2005 Supplement, section 48.15, subdivision 4, is amended to read:

Subd. 4. **Retirement, health savings, and medical savings accounts.** (a) A state bank may act as trustee or custodian:

(1) of a self-employed retirement plan under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended;

(2) of a medical savings account under the Federal Health Insurance Portability and Accountability Act of 1996, as amended;

(3) of a health savings account under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, as amended; and

(4) of an individual retirement account under the Federal Employee Retirement Income Security Act of 1974, as amended,

if the bank's duties as trustee or custodian are essentially ministerial or custodial in nature and the funds are invested only (i) in the bank's own savings or time deposits, except that health savings accounts may also be invested in transaction accounts. Health savings accounts invested in transaction accounts shall not be subject to the restrictions in section 48.512, subdivision 3; or (ii) in any other assets at the direction of the customer if the bank does not exercise any investment discretion, invest the funds in collective investment funds administered by it, or provide any investment advice with respect to those account assets.

(b) Affiliated discount brokers may be utilized by the bank acting as trustee or custodian for self-directed IRAs, if specifically authorized and directed in appropriate documents. The relationship between the affiliated broker and the bank must be fully disclosed. Brokerage commissions to be charged to the IRA by the affiliated broker should be accurately disclosed. Provisions should be made for disclosure of any changes in commission rates prior to their becoming effective. The affiliated broker may not provide investment advice to the customer.

(c) All funds held in the fiduciary capacity may be commingled by the financial institution in the conduct of its business, but individual records shall be maintained by the fiduciary for each participant and shall show in detail all transactions engaged under authority of this subdivision.

(d) The authority granted by this section is in addition to, and not limited by, section 47.75.

EFFECTIVE DATE. This section is effective the day following final enactment."

Renumber the sections in sequence and correct the internal references

Amend the title accordingly

Senator Scheid from the Committee on Commerce, to which was referred

S.F. No. 3121: A bill for an act relating to financial institutions; regulating electronic financial terminals, and the expenses of organizing and incorporating banks; amending Minnesota Statutes 2004, section 47.62, subdivision 1; repealing Minnesota Statutes 2004, sections 46.043; 47.62, subdivision 5.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, after line 19, insert:

"Sec. 2. Minnesota Statutes 2005 Supplement, section 47.75, subdivision 1, is amended to read:

Subdivision 1. **Retirement, health savings, and medical savings accounts.** (a) A commercial bank, savings bank, savings association, credit union, or industrial loan and thrift company may act as trustee or custodian:

(1) under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended;

(2) of a medical savings account under the Federal Health Insurance Portability and Accountability Act of 1996, as amended;

(3) of a health savings account under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, as amended; and

(4) under the Federal Employee Retirement Income Security Act of 1974, as amended.

(b) The trustee or custodian may accept the trust funds if the funds are invested only in savings accounts or time deposits in the commercial bank, savings bank, savings association, credit union, or industrial loan and thrift company, except that health savings accounts may also be invested in transaction accounts. Health savings accounts invested in transaction accounts shall not be subject to the restrictions in section 48.512, subdivision 3. All funds held in the fiduciary capacity may be commingled by the financial institution in the conduct of its business, but individual records shall be maintained by the fiduciary for each participant and shall show in detail all transactions engaged under authority of this subdivision.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2005 Supplement, section 48.15, subdivision 4, is amended to read:

Subd. 4. **Retirement, health savings, and medical savings accounts.** (a) A state bank may act as trustee or custodian:

(1) of a self-employed retirement plan under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended;

(2) of a medical savings account under the Federal Health Insurance Portability and Accountability Act of 1996, as amended;

(3) of a health savings account under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, as amended; and

(4) of an individual retirement account under the Federal Employee Retirement Income Security Act of 1974, as amended,

if the bank's duties as trustee or custodian are essentially ministerial or custodial in nature and the funds are invested only (i) in the bank's own savings or time deposits, except that health savings accounts may also be invested in transaction accounts. Health savings accounts invested in transaction accounts shall not be subject to the restrictions in section 48.512, subdivision 3; or (ii) in any other assets at the direction of the customer if the bank does not exercise any investment discretion, invest the funds in collective investment funds administered by it, or provide any investment advice with respect to those account assets.

(b) Affiliated discount brokers may be utilized by the bank acting as trustee or custodian for self-directed IRAs, if specifically authorized and directed in appropriate documents. The relationship between the affiliated broker and the bank must be fully disclosed. Brokerage commissions to be charged to the IRA by the affiliated broker should be accurately disclosed. Provisions should be made for disclosure of any changes in commission rates prior to their becoming effective. The affiliated broker may not provide investment advice to the customer.

(c) All funds held in the fiduciary capacity may be commingled by the financial institution in the conduct of its business, but individual records shall be maintained by the fiduciary for each participant and shall show in detail all transactions engaged under authority of this subdivision.

(d) The authority granted by this section is in addition to, and not limited by, section 47.75.

EFFECTIVE DATE. This section is effective the day following final enactment."

Renumber the sections in sequence

Amend the title accordingly

And when so amended the bill do pass. Amendments adopted. Report adopted.

Linda Scheid .....
(Committee Chair)

March 22, 2006 .....
(Date of Committee recommendation)

Senator Scheid from the Committee on Commerce, to which was referred

S.F. No. 2823: A bill for an act relating to financial institutions; modifying certain provisions relating to vehicle forfeitures and fees for information releases; amending Minnesota Statutes 2004, sections 48.513; 169A.63, subdivision 11; 609.535, subdivision 6.

Reports the same back with the recommendation that the bill be amended as follows:

Page 3, delete section 4

And when so amended the bill do pass and be re-referred to the Committee on Crime Prevention and Public Safety. Amendments adopted. Report adopted.

Linda Scheid
(Committee Chair)

March 22, 2006
(Date of Committee recommendation)