In Texas, New Long-Term-Care Partership Program Outlined

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on November 12, 2008.

The Texas Health and Human Services Commission, the Medicaid agency in Texas, started a new Long-Term-Care ("LTC") Partnership Program, which began on September 15, 2008. This type of program has been in existence since 1997, when California, Connecticut, Indiana, and New York implemented partnership programs. The federal Deficit Reduction Act of 2005, enacted on February 8, 2006, expands LTC Partnership Programs by allowing additional states to participate. To date, a total of 14 states have implemented partnership programs, and 21 additional states are poised to do so.

The major advantages of a partnership program are as follows:

(1) After LTC insurance has paid its share of an individual's nursing home costs, that individual's assets are disregarded in the Medicaid eligibility determination to the extent of the LTC insurance payments (referred to as an "asset disregard"); and

(2) When the Medicaid recipient dies, an amount of assets included in that individual's estate up to the amount paid by LTC insurance on that individual's care is exempt from Medicaid estate recovery.

For example, an individual's LTC partnership policy has paid out $100,000 and she is now applying for Medicaid. Normally, for a single individual Medicaid allows only $2,000 in countable assets. But because the LTC insurance policy paid $100,000 for this individual's care, the state will disregard up to an equal amount ($100,000) of the individual's assets in determining her Medicaid eligibility. Moreover, when she dies, up to $100,000 of assets comprising her estate will be exempt from Medicaid estate recovery and thus may be passed on to her heirs.

So, clearly the intent of this new program is to encourage and reward the use of private LTC insurance rather than relying entirely upon the government (through the use of Medicaid) to cover nursing home costs.

The effective date of a LTC partnership policy must be September 15, 2008, or later, and the policy must include a provision for protection against inflation. The amount of the asset disregard for purposes of Medicaid eligibility includes all policy payments for LTC services, but not cash surrender values, premium refunds, etc. The Texas partnership program will allow individuals who have LTC insurance policies that were written on or after February 8, 2006, but prior to September 15, 2008, to exchange those policies for one that meets all requirements of a partnership policy. This option to exchange policies will continue through December 31, 2009.

The federal government has not yet formulated its guidelines for reciprocal recognition of LTC partnership policies between states. However, the Texas program will honor LTC partnership policies issued in other states and will disregard assets in an amount equal to total policy benefits.

There are varying opinions as to the overall impact of the new LTC Partnership Program. To be fair, we do not begrudge the government's efforts to reduce Medicaid expenditures by encouraging the use of private LTC insurance, as long as those efforts are reasonable, and even-handed. Patricia F. Sitchler, a leading Texas elder law attorney and adjunct elder law professor at St. Mary's University in San Antonio, said that "while this program is not going to help poor people pass on some small legacy to their children as repayment for all of their sacrifices, it may allow middle-class Texans to do so."