

The background of the document is a circular stained glass window. The central figure is a person, possibly a saint or a historical figure, depicted in a dynamic, almost dancing pose. The figure is rendered in shades of brown, red, and white, with a halo or a similar circular element around their head. The surrounding glass is composed of various colored panes, including blues, purples, and greens, creating a rich, textured effect.

LOUISIANA DEPARTMENT OF INSURANCE
in collaboration with the
LOUISIANA DEPARTMENT OF HEALTH & HOSPITALS

HCR 210 of the 2014 Regular Session

**USE OF VIATICAL SETTLEMENT
FOR LONG-TERM CARE OF
MEDICAID APPLICANTS**

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This public document was published at a total cost of \$ 1,103.06. Thirty-one copies of this public document were published in this first printing at a cost of \$ 33.21. The total cost of all printings of this document including reprints is \$ 1,103.06. This document was published by the Louisiana Department of Insurance to report on House Concurrent Resolution 210 of the 2014 Regular Legislative Session. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31.

HCR 210

Use of Viatical Settlement for Long-Term Care of Medicaid Applicants

Department of Insurance, in collaboration with the Department of Health & Hospitals
January 15, 2015

Introduction

House Concurrent Resolution 210 by Representative Talbot urged and requested the Louisiana Department of Insurance (LDI) to study, in consultation with the Louisiana Department of Health and Hospitals, an alternative long-term care benefit option for Medicaid applicants with life insurance policies who enter into viatical settlement options.

Background

An aging population of baby boomers who began reaching 65 on January 1, 2011, presents the potential for enormous burdens on the Medicaid system that currently provides substantial last resort funding for both facility and community based long-term care. The LDI provided staff for an advisory work group created by SCR 104 of the 2012 Regular Legislative Session. This work group reported its findings on February 1, 2013. This report remains available on the [LDI website](#).

Subsequently, legislation was introduced twice, in 2013 and 2014, to address this looming state budget issue by proposing to authorize the use of the settlement of a life insurance policy for otherwise Medicaid eligible applicants. The settlement would be made through a private entity that is not regulated as a viatical settlement agent or broker but who would provide periodic payments to a client-chosen long-term care provider until the settlement amount was exhausted. Subsequently, the Medicaid system would begin providing payments to the provider on behalf of the Medicaid-eligible client. Neither bill received a committee hearing; the second became the basis for the 2014 HCR 210, which requested the LDI to consult with DHH to reexamine the issue and to report on the actions occurring in other states regarding the life settlement option.

Updates to the 2013 Report

Since the publication of the SCR 104 report in February 2013, some additional information has been made available by the Louisiana Department of Health and Hospitals (DHH) which demonstrates the size of the group that may be affected by legislation authorizing life insurance policy settlements for the purpose of funding long-term care.

Between April 1, 2012 and March 31, 2013, DHH denied 423 of approximately 12,000 applications for Medicaid because of resources in excess of what is allowed under Medicaid regulations. Of these 423, 80 (20 percent) had recorded life insurance policies, but the denial of only 22 (5 percent) was the life insurance policy a direct factor in the eligibility denial. Of these 22, only two applicants had life insurance valued in excess of \$50,000.

Of these 22, 16 applicants (73 percent of those with life insurance triggering denial) used the cash surrender value of the policy to pay the nursing home and, thereafter, became Medicaid eligible. Two were denied, then shortly thereafter were discharged home. Three have never applied again.

DHH further observed that viatical brokers purchase only policies with face value of \$50,000 or more, even though the previous legislative proposals would provide the option for policies valued starting at \$10,000. Standard practice is for a broker to pay 50 percent of the face value of the policy. With long-term care costs in Louisiana ranging from \$18,770 to \$57,305 per year depending on the level of care provided, the typical life settlement funding could be exhausted in six months.

DHH notes that the proposals previously introduced in the legislature would have placed an administrative burden on DHH that outweighs any savings value to the Medicaid program. Individuals with assets that exceed Medicaid eligibility generally spend down their assets by paying for their own care before applying for Medicaid.

Legislative Activity in Louisiana and Other States

An industry and governmental working group hosted by the Louisiana Department of Insurance reported in February 2013 that two states had adopted a public funding mechanism for using a person's life insurance policy to fund long-term care. Both Indiana and Kansas had passed legislation to allow their Department of Health and Hospitals to coordinate collateral assignment of benefits, so that persons owning life insurance policies who apply to Medicaid for long-term care benefits would make an irrevocable collateral assignment of the proceeds of their life insurance policy to the state. In turn, the state would continue paying the premium to keep the life insurance policy in force until the Medicaid recipient dies. Upon the death of the Medicaid recipient, the state would recoup its costs of providing Medicaid benefits and its costs of paying premium from the death benefit of the policy. Any excess funds available from the policy would be paid to the Medicaid recipient's estate or named beneficiaries. Laws in both states utilize the CMS Medicaid eligibility guidelines which permit Medicaid recipients to hold assets in the amount of \$10,000 for the purpose of paying funeral expenses. The working group's 2013 report referred to this as the "public option."

Since passage of the legislation in 2012, Kansas reports having utilized the assignment of life insurance benefits to the state for reimbursement of Medicaid expenses only one time. Brian Vazquez, Medicaid attorney with the Kansas Department of Health and Environment, reported that the state can hold only a second priority for the assignment of benefits under state law; funeral homes and cemetery open and close fees are the first priority to receive a collateral assignment. Instead, Vazquez has seen Medicaid applicants reduce the surrender value of life insurance to below the Medicaid asset threshold by making loans against the policy for other expenses in order to qualify for Medicaid assistance. The lack of use of the program established by the 2012 legislation is attributable to being not well known and only of limited desire.ⁱ

Indiana, having passed the legislation in 2011, has also not taken any action to implement the public option to assume a long-term care Medicaid applicant's life insurance. Indiana believes it has other statutory provisions addressing life insurance policies and funeral trusts that are exempt as countable resources when determining Medicaid eligibility and that this provision will affect very few individuals.ⁱⁱ

Also considered by the working group formed by Senate Concurrent Resolution 104 of the 2012 Regular Legislative Session was a “private option,” wherein legislation would authorize a private third party to purchase the life insurance policy of a person about to enter long-term care. The funds paid would be held in an irrevocable trust to be paid periodically and directly to the long-term care provider until the person’s death, at which time any remaining funds would be paid to the decedent’s estate or named beneficiary. The working group recommended that such a statutory framework impose the viatical settlement requirements existing in current law and additional safeguards to assure adequate market conduct, pricing and reserving standards to protect the consumers. [\(See p. 5-6 of previous report for details.\)](#)

While Louisiana was studying this issue, Florida was doing the same. Since the 2013 studies, legislation offering the private option (without many of the regulatory requirements recommended by the viatical and life insurance representatives of the Louisiana working group) has been offered in several states, including Louisiana. Florida considered but did not pass the combined public option/private option recommended by the Florida study committee, and the public option has been filed twice in the New Jersey legislature, including in its current session.

In 2013, the Florida legislature considered HB 535 and SB 0794. Neither bill survived the committee process. Also in 2013, HB 545 was filed with the Louisiana legislature, but it was not heard. In 2014, the Louisiana bill was refiled, becoming HB 1201; it did not pass, but a companion instrument HCR 210 requested the LDI to study the issue once again.

Currently pending in New Jersey is A. 1075, a duplicate of a bill introduced during New Jersey’s 2012-2013 legislative session. It proposes the public option where a person otherwise eligible for Medicaid could make an irrevocable election to name the state as beneficiary of the life insurance policy for an amount not greater than the amount of the Medicaid benefits provided plus any premiums or other costs paid by Medicaid to the insurer. It also contains text that appears to be more applicable to the private option; this legislation is subject to amendment through the 2015 session.

Two states, Texas and Kentucky, have passed legislation similar to the private option offered in HB 1201 during the 2014 Regular Session in Louisiana; however, both contain enactment clauses that leave implementation in doubt. Texas passed HB 2383 in 2013 with enactment clauses delaying implementation until the adoption of rules by the Texas Health and Human Services as well as the receipt of any necessary federal waivers or authorizations for this state-based variation on Medicaid eligibility requirements which are set by the federal government.

Kentucky passed HB 414 in 2014. While the Kentucky law passed without specifically directing its department of health and hospitals to seek an amendment to its state Medicaid plan, the statute acknowledges that implementation may be limited by federal law.

The Kentucky Act, which carried a second purpose of amending the state’s requirement that life insurers consult the Death Master File on behalf of all policyholders, is very similar to the proposed (but not passed) HB 1201 of Louisiana’s 2014 Regular Session. While some variations of the text exist, similar bills offering the private option were also introduced in six other states for consideration in 2014. None passed. These states included: California, Maine, Maryland, Massachusetts, New York, and Pennsylvania. Massachusetts set the issue for study in a companion resolution.

The LDI acknowledges that its search for similar legislation, while diligent, may not have resulted in finding all related legislation.

In written testimony during the joint legislative committee hearing of LD 1092 on April 24, 2013, in Maine, Bethany Hamm, Director of Policy and Programs, Office for Family Independence, in the Maine Department of Health and Human Services, expressed the following concerns:

Medicaid estate recovery laws must be followed and cannot be waived. Only assets disregarded as part of current Medicaid allowable long-term care partnership polices (sic) can be disregarded under federal Medicaid recovery laws.

Disregards relating to Medicaid eligibility that are outside of the current ones allowable under federal law must be approved through a State Plan Amendment and would be subject to comparability regulations with the Medicaid law.

The following are links to the legislation offered in the above named states:

Florida

<http://www.flsenate.gov/Session/Bill/2013/0794>

<http://www.flsenate.gov/Session/Bill/2013/0535>

New Jersey

<http://www.njleg.state.nj.us/bills/BillsByKeyword.asp>

Texas

www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=HB2383

Kentucky

www.lrc.ky.gov/record/14RS/HB414.htm

Louisiana

www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=HB1201&sbi=y

California

www.legislature.ca.gov/cgi-bin/port-postquery?bill_number=sb_214&sess=PREV&house=B&author=gaines <gaines>

Maine

www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0374&item=1&snum=126

Maryland

mgaleg.maryland.gov/webmga/frmMain.aspx?id=hb0846&stab=01&pid=billpage&tab=subject3&ys=2014RS

Massachusetts

malegislature.gov/Bills/188/Senate/S1977

New York

assembly.state.ny.us/leg/?bn=A07952&term=2013

Pennsylvania

www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2013&sInd=0&body=S&type=B&bn=1296

ⁱ Phone interview with Brian Vazquez, Medicaid attorney, Kansas Department of Health and Environment, December 15, 2014.

ⁱⁱ Email communication from Derris Harrison, Long-Term Care Reimbursement Manager, Office of Medicaid Policy and Planning, Family and Social Services Administration, December 31, 2014.

Regular Session, 2014

HOUSE CONCURRENT RESOLUTION NO. 210

BY REPRESENTATIVE TALBOT

A CONCURRENT RESOLUTION

To urge and request the Department of Insurance, in consultation with the Department of Health and Hospitals, to study an alternative long-term care benefit option for Medicaid applicants with life insurance policies who enter into certain viatical settlement contracts and to report its findings to the legislative committees on insurance.

WHEREAS, Senate Concurrent Resolution No. 104 of the 2012 Regular Session of the Legislature established an advisory work group within the Department of Insurance, with the assistance of the Department of Health and Hospitals, to examine options that may be available to allow an insured under a life insurance policy to fund long-term care benefits; and

WHEREAS, such work group considered a number of options, including enacting legislation on this subject, and the feasibility of such options but did not recommend specific action; and

WHEREAS, an aging population of "baby boomers" who began reaching the age of sixty-five on January 1, 2011, presents the potential for enormous burdens on the Medicaid system that currently provides substantial last-resort funding for both facility and community-based long-term care; and

WHEREAS, it is feasible that the proceeds of life insurance policies of such individuals could be utilized to supplement the state's expenditures for long-term care if a mechanism could be found to access those proceeds; and

WHEREAS, a statutory and regulatory framework, similar to what governs the viatical settlement industry, could be designed to assure the protection of consumers who choose to settle their insurance policies in order to obtain a payment source for their long-term care; and

WHEREAS, other states are currently considering legislation to enact such a statutory and regulatory framework, particularly one which will assure the protection of the interests of both consumers and the state; and

WHEREAS, this issue is especially timely not only because of the size of the state's rapidly aging population but also because it is anticipated that the younger members of this population will have longer life expectancies and life insurance policies of greater value.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Department of Insurance, in consultation with the Department of Health and Hospitals, to study an alternative long-term care benefit option for Medicaid applicants with life insurance policies who enter into certain viatical settlement contracts.

BE IT FURTHER RESOLVED that the Department of Insurance, in consultation with the Department of Health and Hospitals, may submit its findings from the study in the form of a report to the House Committee on Insurance and the Senate Committee on Insurance on or before January 15, 2015.

BE IT FURTHER RESOLVED that such a study include a review of other states to determine what actions, particularly the consideration or enactment of legislation, have been taken on this subject by any other state.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the commissioner of insurance and the secretary of the Department of Health and Hospitals.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE