

BILL ANALYSIS

C.S.H.B. 2383
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Some applicants for Medicaid who have a life insurance policy currently must surrender the policy for an amount far below its actual value in order to be eligible for benefits, at which point the state begins to pay Medicaid expenses for the person. Interested parties contend that a better option for the individual and the state would be a life settlement contract in which a life insurance policy is sold to a third party for more than its cash surrender value but less than its net death benefit, allowing a policy owner to use the policy to help pay for long-term care expenses and delay the policy owner's reliance on the Medicaid program. The parties assert that life settlement contracts, which currently are regulated by the Texas Department of Insurance, would generate significant, recurring Medicaid savings to the state if the state were able to advise owners of a life insurance policy of the option to convert policies into a long-term care benefit plan instead of abandoning the plan and relying on state assistance. C.S.H.B. 2383 seeks to establish provisions relating to the use of a life settlement contract for the provision of certain long-term care services.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1 and 2 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.H.B. 2383 amends the Human Resources Code to authorize the owner of a life insurance policy with a face amount of more than \$10,000 to enter into a life settlement contract under the Life Settlements Act for the benefit of a recipient of Medicaid long-term care services in exchange for direct payments to a health care provider for the provision of those services to that recipient. The bill prohibits the proceeds of such a life settlement contract from being considered as an asset or resource in determining a person's eligibility for Medicaid and requires such proceeds to be used for the payment of Medicaid long-term care services. The bill prohibits state or federal Medicaid funds from being used to provide such services to a person for whose benefit an owner of a life insurance policy has entered into a life settlement contract under the bill's provisions until the proceeds of the contract are exhausted.

C.S.H.B. 2383 requires a life settlement contract entered into by a person under the bill's

provisions, in addition to the requirements under the Life Settlements Act, to provide that the lesser of five percent of the face amount of the life insurance policy or \$5,000 is reserved as a death benefit payable to the owner's estate or a named beneficiary; to provide that the balance of proceeds under the contract that are unpaid on the death of the owner must be paid to the owner's estate or a named beneficiary; and to specify the total amount payable for the benefit of the recipient of Medicaid long-term care services under the contract. The bill requires all proceeds of such a life settlement contract to be held in an irrevocable state or federally insured account for the benefit of the recipient of Medicaid long-term care services or for payment otherwise required by the bill's provisions. The bill authorizes only a recipient of Medicaid long-term care services for whose benefit an owner enters into such a life settlement contract to choose the provider and type of services provided to the recipient and paid for out of an applicable account. The bill strictly prohibits any attempt by a person to require the recipient to choose a specific provider and establishes that such an act constitutes an unfair method of competition or an unfair or deceptive act or practice.

C.S.H.B. 2383 requires a person who enters into a life settlement contract with an owner of a life insurance policy to maintain a surety bond executed and issued by an insurer authorized to issue surety bonds in Texas; a policy of errors and omissions insurance; or a deposit in the amount of \$500,000 in any combination of cash, certificates of deposit, or securities. The bill requires a person who enters into such a contract, in addition to the requirements under the Life Settlements Act, to file with the Texas Department of Insurance (TDI) all life settlement contract forms and advertising and marketing materials used by the person. The bill establishes that the requirement that the life settlement antifraud initiatives implemented by a provider or broker include a description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications does not apply to a life insurance policy that is the subject of a life settlement contract entered into under the bill's provisions if the contract has been in force at least five years. The bill prohibits a claim against a person with whom an owner of a life insurance policy enters into a life settlement contract by the owner, the owner's estate, a named beneficiary, or any other person with respect to the contract from exceeding the face amount of the policy, less the proceeds paid under the contract, plus the total amount of premiums paid by the owner since entering into the contract. The bill requires a person to pay such a claim from the funds in an irrevocable state or federally insured account and authorizes TDI to conduct periodic market examinations of each person who enters into a life settlement contract with the owner of a life insurance policy. The bill requires the Health and Human Services Commission (HHSC) to provide an applicant for Medicaid notice of the option to enter into a life settlement contract.

C.S.H.B. 2383 requires the executive commissioner of HHSC, not later than January 1, 2014, and in consultation with the commissioner of insurance, to adopt rules necessary to implement the bill's provisions. The bill requires the rules to ensure that proceeds from a life settlement contract are used to reimburse the provider of Medicaid long-term care services chosen by the recipient for whose benefit the owner of a life insurance policy entered into the contract, that eligibility and need for Medicaid are determined without considering the balance of proceeds from a life settlement contract, and that Medicaid payments to a provider of Medicaid long-term care services and applied income payments to a recipient begin the day following exhaustion of the life settlement contract proceeds.

C.S.H.B. 2383 applies only to a determination of eligibility of a person for Medicaid made on or after January 1, 2014.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2383 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.02613 to read as follows:

Sec. 32.02613. EXCLUSION OF LIFE INSURANCE POLICIES UNDER CERTAIN CIRCUMSTANCES. (a) In determining eligibility and need of a person for medical assistance, the department shall treat a life insurance policy owned by the person in the manner provided by this section.

(b) The department may not consider as assets or resources of a person who meets the state's nursing home level of care the value of a life insurance policy that is in force and owned by the person if the person enters into a life settlement contract in accordance with this section. In this subsection, "value" means the total amount of guaranteed periodic payments a person is entitled to receive under Subsection (c).

(c) The owner of a life insurance policy with a face amount of more than \$10,000 may enter into a life settlement contract under Chapter 1111A, Insurance Code, in exchange for guaranteed periodic payments to the state to be used only for the provision of Medicaid long-term care services to the owner of the policy.

(d) In addition to the requirements under Chapter 1111A, Insurance Code, a life settlement contract entered into as provided by Subsection (b) must:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.02613 to read as follows:

Sec. 32.02613. LIFE INSURANCE ASSETS; LIFE INSURANCE POLICY CONVERSION.

(b) The proceeds of a life settlement contract entered into under this section may not be considered as an asset or resource in determining the eligibility of a person for medical assistance.

(a) The owner of a life insurance policy with a face amount of more than \$10,000 may enter into a life settlement contract under Chapter 1111A, Insurance Code, for the benefit of a recipient of medical assistance long-term care services in exchange for direct payments to a health care provider for the provision of those services to that recipient.

(c) The proceeds of a life settlement contract entered into under this section must be used for the payment of medical assistance long-term care services.

(d) State or federal medical assistance funds may not be used to provide medical assistance long-term care services to a person for whose benefit an owner of a life insurance policy has entered into a life settlement contract under this section until the proceeds of the contract are exhausted.

(e) In addition to the requirements under Chapter 1111A, Insurance Code, a life settlement contract entered into under this section must:

(1) provide that the lesser of five percent of the face amount of the life insurance policy or \$5,000 is reserved as a death benefit payable to the owner's estate or a named beneficiary;

(2) provide that the balance of payments required under the contract that are unpaid on the death of the owner must be paid to the owner's estate or a named beneficiary;

(3) include a schedule evidencing the total amount payable, the number of payments, and the amount of each payment required to be paid under the life settlement contract; and

(4) require that all proceeds of the life settlement contract be held in an irrevocable state or federally insured account.

(1) provide that the lesser of five percent of the face amount of the life insurance policy or \$5,000 is reserved as a death benefit payable to the owner's estate or a named beneficiary;

(2) provide that the balance of proceeds under the contract that are unpaid on the death of the owner must be paid to the owner's estate or a named beneficiary; and

(3) specify the total amount payable for the benefit of the recipient of medical assistance long-term care services under the contract.

(f) All proceeds of a life settlement contract entered into under this section must be held in an irrevocable state or federally insured account for the benefit of the recipient of medical assistance long-term care services or for payment as otherwise required by this section.

(g) Only a recipient of medical assistance long-term care services for whose benefit an owner enters into a life settlement contract under this section may choose the provider and type of services provided to the recipient and paid for out of an account described by Subsection (f). Any attempt by a person to require the recipient to choose a specific provider is strictly prohibited and constitutes an unfair method of competition or an unfair or deceptive act or practice under the Insurance Code.

(h) A person who enters into a life settlement contract with an owner of a life insurance policy under this section must maintain:

(1) a surety bond executed and issued by an insurer authorized to issue surety bonds in this state;

(2) a policy of errors and omissions insurance; or

(3) a deposit in the amount of \$500,000 in any combination of cash, certificates of deposit, or securities.

(i) In addition to the requirements of Chapter 1111A, Insurance Code, a person who enters into life settlement contracts with owners of life insurance policies under this section must file with the Texas Department of Insurance all life settlement contract forms and advertising and marketing materials used by the person.

(j) Section 1111A.022(a)(2)(A), Insurance Code, does not apply to a life insurance

(e) The department must provide as part of the application for medical assistance written notice of the option to enter into a life settlement contract as provided in this section.

(f) The executive commissioner of the Health and Human Services Commission in consultation with the commissioner of insurance shall adopt rules necessary to implement this section.

SECTION 2. Not later than January 1, 2014, the executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement Section 32.02613, Human Resources Code,

policy that is the subject of a life settlement contract entered into under this section if the contract has been in force at least five years.

(k) A claim against a person with whom an owner of a life insurance policy enters into a life settlement contract under this section by the owner, the owner's estate, a named beneficiary, or any other person with respect to the contract may not exceed the face amount of the policy, less the proceeds paid under the contract, plus the total amount of premiums paid by the owner since entering into the contract. A person must pay a claim under this subsection from the funds in an account described by Subsection (f).

(l) In accordance with Chapter 1111A, Insurance Code, the Texas Department of Insurance may conduct periodic market examinations of each person who enters into a life settlement contract with an owner of a life insurance policy under this section.

(m) The department must provide an applicant for medical assistance notice of the option to enter into a life settlement contract as provided in this section.

(n) The executive commissioner of the Health and Human Services Commission, in consultation with the commissioner of insurance, shall adopt rules necessary to implement this section. The rules must ensure that:

(1) proceeds from a life settlement contract are used to reimburse the provider of medical assistance long-term care services chosen by the recipient for whose benefit the owner of a life insurance policy entered into the contract;

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

(3) medical assistance payments to a provider of medical assistance long-term care services and applied income payments to a recipient begin the day following exhaustion of the life settlement contract proceeds.

SECTION 2. Same as introduced version.

as added by this Act.

SECTION 3. The change in law made by this Act applies only to a determination of eligibility of a person for medical assistance benefits made on or after January 1, 2014. A determination of eligibility made before January 1, 2014, is governed by the law in effect on the date the determination was made, and the former law is continued in effect for that purpose.

SECTION 4. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 3. Substantially the same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.