

SENATE AMENDMENTS

2nd Printing

By: Eiland, Goldman, Toth, Price

H.B. No. 2383

A BILL TO BE ENTITLED

AN ACT

relating to life settlement contracts for the payment of long-term care services under the medical assistance program and the consideration of a life insurance policy in determining eligibility for medical assistance.

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

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. (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.

(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.

(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

1 entered into a life settlement contract under this section until
2 the proceeds of the contract are exhausted.

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

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

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

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

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

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

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

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

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

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

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

14 (j) Section 1111A.022(a)(2)(A), Insurance Code, does not
15 apply to a life insurance policy that is the subject of a life
16 settlement contract entered into under this section if the contract
17 has been in force at least five years.

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

27 (l) In accordance with Chapter 1111A, Insurance Code, the

1 Texas Department of Insurance may conduct periodic market
2 examinations of each person who enters into a life settlement
3 contract with an owner of a life insurance policy under this
4 section.

5 (m) The department shall develop policies for educating an
6 applicant for nursing home care under the medical assistance
7 program about options for the applicant's life insurance policies,
8 including options that do not allow a life insurance policy to be
9 considered as an asset or resource in determining the applicant's
10 eligibility for medical assistance.

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

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

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

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

26 (o) The entry into a life settlement contract by an owner of
27 a life insurance policy under this section is not the only method by

1 which the owner may avoid having the policy considered as an asset
2 or resource in determining the eligibility of the owner for medical
3 assistance.

4 SECTION 2. Not later than January 1, 2014, the executive
5 commissioner of the Health and Human Services Commission shall
6 adopt rules necessary to implement Section 32.02613, Human
7 Resources Code, as added by this Act.

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

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

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

ADOPTED

MAY 21 2013

Atty. Gen.
Secretary of State

By: DUNCAN H.B. No. 2383
Substitute the following for H.B. No. 2383:
By: C. [Signature] C.S. H.B. No. 2383

A BILL TO BE ENTITLED

AN ACT

relating to life settlement contracts for the payment of long-term care services and support and the consideration of a life insurance policy in determining eligibility for medical assistance.

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

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. (a) For purposes of this section, "long-term care services and support" includes home health care, assisted living, and nursing home services.

(b) 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 long-term care services and support in exchange for direct payments to:

(1) a health care provider for the provision of those services to that recipient; or

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

(c) The proceeds of a life settlement contract entered into under this section must be used for the payment of long-term care services and support, except for the amount specified in Subsection (d)(1). To the extent feasible and allowed under federal law, the

1 medical assistance program may act only as the secondary payor for
2 long-term care services and support provided to a person who is
3 eligible for medical assistance and for whose benefit an owner of a
4 life insurance policy has entered into a life settlement contract
5 under this section.

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

9 (1) provide that the lesser of five percent of the face
10 amount of the life insurance policy or \$5,000 is reserved and is
11 payable to the owner's estate or a named beneficiary for funeral
12 expenses;

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

16 (3) specify the total amount payable for the benefit
17 of the recipient of long-term care services and support under the
18 life settlement contract.

19 (e) All proceeds of a life settlement contract entered into
20 under this section must be held in an irrevocable state or federally
21 insured account for the benefit of the recipient of long-term care
22 services and support or for payment as otherwise required by this
23 section.

24 (f) Only a recipient of long-term care services and support
25 for whose benefit an owner enters into a life settlement contract
26 under this section may choose the provider and type of services
27 provided to the recipient and paid for out of an account described

1 by Subsection (e). Any attempt by a person to require the recipient
2 to choose a specific provider is strictly prohibited and
3 constitutes an unfair method of competition or an unfair or
4 deceptive act or practice under the Insurance Code.

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

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

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

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

13 (h) In accordance with the requirements of Chapter 1111A,
14 Insurance Code, a life settlement contract provider who enters into
15 life settlement contracts with owners of life insurance policies
16 under this section must file with the Texas Department of
17 Insurance:

18 (1) all life settlement contract forms used by the
19 provider; and

20 (2) all advertising and marketing materials used by
21 the provider.

22 (i) Section 1111A.022(a)(2)(A), Insurance Code, does not
23 apply to a life insurance policy that is the subject of a life
24 settlement contract entered into under this section if the contract
25 has been in force at least five years.

26 (j) A claim against a life settlement contract provider with
27 whom an owner of a life insurance policy enters into a life

1 settlement contract under this section by the owner, the owner's
2 estate, a named beneficiary, or any other person with respect to the
3 contract may not exceed the face amount of the policy, less the
4 proceeds paid under the contract, plus the total amount of premiums
5 paid by the owner since entering into the contract. A life
6 settlement contract provider must pay a claim under this subsection
7 from the funds in an account described by Subsection (e).

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

13 (l) The department shall educate applicants for long-term
14 care services and support under the medical assistance program
15 about options for life insurance policies, including options that
16 do not allow a life insurance policy to be considered as an asset or
17 resource in determining eligibility for medical assistance.

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

22 (1) proceeds from a life settlement contract are used
23 to reimburse a provider of long-term care services and support or
24 the state to offset the cost of medical assistance long-term care
25 services and support;

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

1 settlement contract as provided in this section; and

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

5 (n) The entry into a life settlement contract by an owner of
6 a life insurance policy under this section is not the only method by
7 which the owner may avoid having the policy considered as an asset
8 or resource in determining the eligibility of the owner for medical
9 assistance.

10 (o) Notwithstanding the provisions of this section, the
11 department may not implement a provision of this section if the
12 commission determines that implementation of the provision is not
13 cost-effective or feasible.

14 SECTION 2. Subject to Section 32.02613(o), Human Resources
15 Code, as added by this Act, the executive commissioner of the Health
16 and Human Services Commission shall adopt rules necessary to
17 implement Section 32.02613, Human Resources Code, as added by this
18 Act, not later than January 1, 2014.

19 SECTION 3. The change in law made by this Act applies only
20 to a determination of eligibility of a person for medical
21 assistance benefits made on or after January 1, 2014, subject to
22 Section 32.02613(o), Human Resources Code, as added by this Act. A
23 determination of eligibility made before January 1, 2014, is
24 governed by the law in effect immediately before the effective date
25 of this Act, and the former law is continued in effect for that
26 purpose.

27 SECTION 4. If before implementing any provision of this Act

1 a state agency determines that a waiver or authorization from a
2 federal agency is necessary for implementation of that provision,
3 the agency affected by the provision shall request the waiver or
4 authorization and may delay implementing that provision until the
5 waiver or authorization is granted.

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 22, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2383 by Eiland (Relating to life settlement contracts for the payment of long-term care services and support and the consideration of a life insurance policy in determining eligibility for medical assistance.), **As Passed 2nd House**

<p>The fiscal implications of the bill cannot be determined at this time. The number of individuals who might become eligible for Medicaid and the cost of providing services to those individuals are unknown.</p>
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The bill would allow the owner of a life insurance policy, in certain circumstances, to enter into a life settlement contract for the benefit of a recipient of Medicaid long-term-care services and support in exchange for direct payments to a health care provider or the state. The bill requires that the proceeds of the life settlement contract be used for the payment of Medicaid long-term-care services and support and establishes Medicaid as the secondary payor. The bill specifies that only the Medicaid recipient may choose the provider and type of services provided and paid for, and that any attempt to require the recipient to choose a specific provider is prohibited and constitutes an unfair method of competition or an unfair or deceptive act under the Insurance Code. HHSC would be required to educate applicants for Medicaid long-term-care services and support about options for life insurance policies, including options that do not allow a life insurance policy to be considered as an asset or resource in determining Medicaid eligibility. HHSC would also be required to ensure that eligibility and need for Medicaid are determined without considering the balance of proceeds from a life settlement contract. HHSC would be prohibited from implementing any of these provisions if HHSC determined implementation is not cost-effective or feasible. HHSC would be required to adopt rules necessary to implement the provisions of the bill by January 1, 2014 and the change would only apply to eligibility determinations made on or after January 1, 2014. The bill authorizes the Texas Department of Insurance to conduct periodic market examinations of each person who enters into a life settlement contract with an owner of a life insurance policy under the provisions of the bill. The bill would be effective immediately if it receives a vote of two-thirds of the members of each house; otherwise, the bill would be effective September 1, 2013.

The number of persons for whom Medicaid ineligibility was based solely on the value of a life insurance policy is not known. Further, it is not known how many persons with policies would be willing to enter into a life settlement contract under the conditions set forth in the bill in order to become eligible for Medicaid nor what the value of any offsetting payments to health care providers or the state might be. The average annual cost is approximately \$40,000 for nursing facility care, \$15,000 for Community Based Alternatives (CBA) waiver services, and approximately \$27,000 for waiver-like services through the STAR+PLUS program with additional

costs associated with acute care services, prescription drugs, and Medicare premiums; services provided to persons not meeting the requirements for a nursing facility level of care would have a lower annual cost. Medicaid would continue to pay for services other than long-term-care services and support during the time a recipient's long-term-care services were being paid from life settlement contract proceeds and would begin paying for all services following the exhaustion of those proceeds.

Without significant offsets from payments under life settlement contracts, the cost to provide services to 25 clients could exceed \$1 million in All Funds in each fiscal year. There would be additional costs related to tracking payments from the life settlement contracts and for systems modifications related to eligibility changes. Managed care is mandatory for many persons receiving long-term-care services through Medicaid, and it is unclear how those premiums would be set and paid if recipients were making direct payments to providers. Additionally, if recipients are allowed to select any provider and are not required to use a network provider under managed care or a Medicaid provider under fee-for-service, it is not known what fiscal impact that might have. Further, if recipients are allowed to select the type of services they receive, they may elect to receive higher cost services for which they do not meet the functional eligibility requirements, which could increase the fiscal impact.

The requirement that HHSC not implement any provision if determined that implementation is not cost-effective or feasible would make it unlikely that the department would be able to implement the provisions of the bill since they are likely to increase costs to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: UP, SD, CL, MB, LR, NB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 17, 2013

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2383 by Eiland (Relating to life settlement contracts for the payment of long-term care services and support and the consideration of a life insurance policy in determining eligibility for medical assistance.), **Committee Report 2nd House, Substituted**

The fiscal implications of the bill cannot be determined at this time. The number of individuals who might become eligible for Medicaid and the cost of providing services to those individuals are unknown.

The bill would allow the owner of a life insurance policy, in certain circumstances, to enter into a life settlement contract for the benefit of a recipient of Medicaid long-term-care services and support in exchange for direct payments to a health care provider or the state. The bill requires that the proceeds of the life settlement contract be used for the payment of Medicaid long-term-care services and support and establishes Medicaid as the secondary payor. The bill specifies that only the Medicaid recipient may choose the provider and type of services provided and paid for, and that any attempt to require the recipient to choose a specific provider is prohibited and constitutes an unfair method of competition or an unfair or deceptive act under the Insurance Code. HHSC would be required to educate applicants for Medicaid long-term-care services and support about options for life insurance policies, including options that do not allow a life insurance policy to be considered as an asset or resource in determining Medicaid eligibility. HHSC would also be required to ensure that eligibility and need for Medicaid are determined without considering the balance of proceeds from a life settlement contract. HHSC would be prohibited from implementing any of these provisions if HHSC determined implementation is not cost-effective or feasible. HHSC would be required to adopt rules necessary to implement the provisions of the bill by January 1, 2014 and the change would only apply to eligibility determinations made on or after January 1, 2014. The bill authorizes the Texas Department of Insurance to conduct periodic market examinations of each person who enters into a life settlement contract with an owner of a life insurance policy under the provisions of the bill. The bill would be effective immediately if it receives a vote of two-thirds of the members of each house; otherwise, the bill would be effective September 1, 2013.

The number of persons for whom Medicaid ineligibility was based solely on the value of a life insurance policy is not known. Further, it is not known how many persons with policies would be willing to enter into a life settlement contract under the conditions set forth in the bill in order to become eligible for Medicaid nor what the value of any offsetting payments to health care providers or the state might be. The average annual cost is approximately \$40,000 for nursing facility care, \$15,000 for Community Based Alternatives (CBA) waiver services, and approximately \$27,000 for waiver-like services through the STAR+PLUS program with additional

costs associated with acute care services, prescription drugs, and Medicare premiums; services provided to persons not meeting the requirements for a nursing facility level of care would have a lower annual cost. Medicaid would continue to pay for services other than long-term-care services and support during the time a recipient's long-term-care services were being paid from life settlement contract proceeds and would begin paying for all services following the exhaustion of those proceeds.

Without significant offsets from payments under life settlement contracts, the cost to provide services to 25 clients could exceed \$1 million in All Funds in each fiscal year. There would be additional costs related to tracking payments from the life settlement contracts and for systems modifications related to eligibility changes. Managed care is mandatory for many persons receiving long-term-care services through Medicaid, and it is unclear how those premiums would be set and paid if recipients were making direct payments to providers. Additionally, if recipients are allowed to select any provider and are not required to use a network provider under managed care or a Medicaid provider under fee-for-service, it is not known what fiscal impact that might have. Further, if recipients are allowed to select the type of services they receive, they may elect to receive higher cost services for which they do not meet the functional eligibility requirements, which could increase the fiscal impact.

The requirement that HHSC not implement any provision if determined that implementation is not cost-effective or feasible would make it unlikely that the department would be able to implement the provisions of the bill since they are likely to increase costs to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: UP, CL, MB, LR, NB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 12, 2013

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2383 by Eiland (Relating to life settlement contracts for the payment of long-term care services under the medical assistance program and the consideration of a life insurance policy in determining eligibility for medical assistance.), **As Engrossed**

The fiscal implications of the bill cannot be determined at this time. The number of individuals who might become eligible for Medicaid pursuant to choosing a life-insurance disregard and the cost of providing services to those individuals is unknown.

The bill would allow the owner of a life insurance policy, in certain circumstances, to enter into a life settlement contract for the benefit of a recipient of Medicaid long-term-care services in exchange for direct payments to a health care provider. The bill would create a new resource disregard for purposes of determining Medicaid eligibility whereby the proceeds of such a life settlement contract could not be considered. The bill requires that the proceeds of the life settlement contract be used for the payment of Medicaid long-term-care services and prohibits the use of state or federal funds to provide those services until the proceeds are exhausted. The bill specifies that only the Medicaid recipient may choose the provider and type of services provided and paid for, and that any attempt to require the recipient to choose a specific provider is prohibited and constitutes an unfair method of competition or an unfair or deceptive act under the Insurance Code. HHSC would be required to adopt rules necessary to implement the provisions of the bill by January 1, 2014 and the change would only apply to eligibility determinations made on or after January 1, 2014. The bill authorizes the Texas Department of Insurance to conduct periodic market examinations of each person who enters into a life settlement contract with an owner of a life insurance policy under the provisions of the bill. The bill would be effective immediately if it receives a vote of two-thirds of the members of each house; otherwise, the bill would be effective September 1, 2013.

The number of persons for whom Medicaid ineligibility was based solely on the value of a life insurance policy is not known. Further, it is not known how many persons with policies would be willing to enter into a life settlement contract under the conditions set forth in the bill in order to become eligible for Medicaid nor what the value of any offsetting payments to health care providers might be. The average annual cost is approximately \$40,000 for nursing facility care, \$15,000 for Community Based Alternatives (CBA) waiver services, and approximately \$27,000 for waiver-like services through the STAR+PLUS program with additional costs associated with acute care services, prescription drugs, and Medicare premiums; services provided to persons not meeting the requirements for a nursing facility level of care would have a lower annual cost. Medicaid would continue to pay for services other than long-term-care services during the time a recipient's long-term-care services were being paid from life settlement contract proceeds and

would begin paying for all services immediately following the exhaustion of those proceeds.

Without significant offsets from payments under life settlement contracts, the cost to provide services to 25 clients could exceed \$1 million in All Funds in each fiscal year. There would be additional costs related to tracking payments from the life settlement contracts and for systems modifications related to eligibility changes. Managed care is mandatory for many persons receiving long-term-care services through Medicaid, and it is unclear how those premiums would be set and paid if recipients were making direct payments to providers. Additionally, if recipients are allowed to select any provider and are not required to use a network provider under managed care or a Medicaid provider under fee-for-service, it is not known what fiscal impact that might have. Further, if recipients are allowed to select the type of services they receive, they may elect to receive higher cost services for which they do not meet the functional eligibility requirements, which could increase the fiscal impact.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission, 454 Department of Insurance, 539 Aging and Disability Services, Department of

LBB Staff: UP, CL, MB, LR, VJC, NB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 19, 2013

TO: Honorable Richard Peña Raymond, Chair, House Committee on Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2383 by Eiland (Relating to life settlement contracts for the payment of long-term care services under the medical assistance program and the consideration of a life insurance policy in determining eligibility for medical assistance.), **Committee Report 1st House, Substituted**

The fiscal implications of the bill cannot be determined at this time. The number of individuals who might become eligible for Medicaid pursuant to choosing a life-insurance disregard and the cost of providing services to those individuals is unknown.

The bill would allow the owner of a life insurance policy, in certain circumstances, to enter into a life settlement contract for the benefit of a recipient of Medicaid long-term-care services in exchange for direct payments to a health care provider. The bill would create a new resource disregard for purposes of determining Medicaid eligibility whereby the proceeds of such a life settlement contract could not be considered. The bill requires that the proceeds of the life settlement contract be used for the payment of Medicaid long-term-care services and prohibits the use of state or federal funds to provide those services until the proceeds are exhausted. The bill specifies that only the Medicaid recipient may choose the provider and type of services provided and paid for, and that any attempt to require the recipient to choose a specific provider is prohibited and constitutes an unfair method of competition or an unfair or deceptive act under the Insurance Code. HHSC would be required to adopt rules necessary to implement the provisions of the bill by January 1, 2014 and the change would only apply to eligibility determinations made on or after January 1, 2014. The bill authorizes the Texas Department of Insurance to conduct periodic market examinations of each person who enters into a life settlement contract with an owner of a life insurance policy under the provisions of the bill. The bill would be effective immediately if it receives a vote of two-thirds of the members of each house; otherwise, the bill would be effective September 1, 2013.

The number of persons for whom Medicaid ineligibility was based solely on the value of a life insurance policy is not known. Further, it is not known how many persons with policies would be willing to enter into a life settlement contract under the conditions set forth in the bill in order to become eligible for Medicaid nor what the value of any offsetting payments to health care providers might be. The average annual cost is approximately \$40,000 for nursing facility care, \$15,000 for Community Based Alternatives (CBA) waiver services, and approximately \$27,000 for waiver-like services through the STAR+PLUS program with additional costs associated with acute care services, prescription drugs, and Medicare premiums; services provided to persons not meeting the requirements for a nursing facility level of care would have a lower annual cost. Medicaid would continue to pay for services other than long-term-care services during the time a

recipient's long-term-care services were being paid from life settlement contract proceeds and would begin paying for all services immediately following the exhaustion of those proceeds.

Without significant offsets from payments under life settlement contracts, the cost to provide services to 25 clients could exceed \$1 million in All Funds in each fiscal year. There would be additional costs related to tracking payments from the life settlement contracts and for systems modifications related to eligibility changes and providing written notice of the option to enter into a life settlement contract. Managed care is mandatory for many persons receiving long-term-care services through Medicaid, and it is unclear how those premiums would be set and paid if recipients were making direct payments to providers. Additionally, if recipients are allowed to select any provider and are not required to use a network provider under managed care or a Medicaid provider under fee-for-service, it is not known what fiscal impact that might have. Further, if recipients are allowed to select the type of services they receive, they may elect to receive higher cost services for which they do not meet the functional eligibility requirements, which could increase the fiscal impact.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance, 529 Health and Human Services Commission, 539 Aging and Disability Services, Department of

LBB Staff: UP, CL, MB, LR, VJC, NB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

March 25, 2013

TO: Honorable Richard Peña Raymond, Chair, House Committee on Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2383 by Eiland (Relating to the consideration of a life insurance policy in determining eligibility for medical assistance.), **As Introduced**

The fiscal implications of the bill cannot be determined at this time. The number of individuals who might become eligible for Medicaid pursuant to choosing a life-insurance disregard is unknown.

The bill would create a new resource disregard for purposes of determining Medicaid eligibility for persons meeting the functional eligibility requirements for a nursing home level of care. In certain circumstances, the value of a life insurance policy could not be considered if the person entered into a life settlement contract 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. The Health and Human Services Commission (HHSC) would be required to provide written notice of the option to enter into a life settlement contract as part of the Medicaid application process. HHSC would be required to adopt rules necessary to implement the provisions of the bill by January 1, 2014 and the change would only apply to eligibility determinations made on or after January 1, 2014. The bill would be effective immediately if it receives a vote of two-thirds of the members of each house; otherwise, the bill would be effective September 1, 2013.

The number of persons for whom Medicaid ineligibility was based solely on the value of a life insurance policy is not known. Further, it is not known how many persons with policies would be willing to enter into a life settlement contract under the conditions set forth in the bill in order to become eligible for Medicaid nor what the value of any offsetting payments to the state might be. The average annual cost is approximately \$40,000 for nursing facility care, \$15,000 for Community Based Alternatives (CBA) waiver services, and approximately \$27,000 for waiver-like services through the STAR+PLUS program with additional costs associated with acute care services, prescription drugs, and Medicare premiums. Without significant offsets from payments under life settlement contracts, the cost to provide services to 25 clients could exceed \$1 million in All Funds in each fiscal year. There would be additional costs related to receiving payments from the life settlement contracts and for systems modifications related to eligibility changes and providing written notice of the option to enter into a life settlement contract.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance, 529 Health and Human Services Commission, 539 Aging and Disability Services, Department of

LBB Staff: UP, CL, MB, LR, NB