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Congress Considers Legislation Allowing Life Insurance Policies To Be Used As A Private-Pay Solution For Long Term Care Costs

A proposed federal law that would enable consumers to sell life insurance policies and use the money to pay for long term care, tax free, has the potential to save taxpayers billions of dollars while improving the quality of life for millions of seniors.

H.R. 7203, introduced by U.S. Rep. Kenny Marchant (R-TX) and U.S. Rep. Brian Higgins (D-NY) in November, would, for the first time, permit seniors, regardless of their health status, to use life insurance policies they already own to fund a wide range of health care costs including long term care expenses and long term care insurance premiums.

If passed into law, the bill would create Long Term Care Accounts as a private pay solution to the public policy problem of sky-high post-retirement costs. By keeping seniors off Medicaid for their long term care, the legislation has the potential to save taxpayers as much as $2 billion over the next nine years, according to the Alliance for Senior Health Care Financing, and it gives seniors access to assets that can improve the quality of life in their final years. Supporters of H.R. 7203 believe it has widespread, bipartisan support as a solution to the growing cost of senior care in the country that cuts the costs of a massive taxpayer-financed government program. The bill has been referred to the House Ways and Means Committee on which Marchant and Higgins serve.

Often, end-of-life decisions about care become a race to find assets to pay for what can be very expensive options. Fidelity Investments estimates the total cost of healthcare and long term care costs in retirement will average $280,000 for the senior who retires this year. With these costs so prohibitively high, 62 percent of all nursing home residents rely on Medicaid funding to pay for their care according to the Kaiser Family Foundation. Of that population, the Government Accounting Office estimates

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38 percent own a life insurance policy that they will abandon to qualify for Medicaid.

For many seniors a life insurance policy is one of their most valuable assets, but the policies may only pay out benefits when the holder dies leaving untapped resources for many retirees. A secondary market has evolved to purchase the policies, but many seniors abandon the policies as the premiums rise or sell them back to the original insurer for pennies on the dollar.

The concept of using life insurance proceeds to fund a tax-free account only to be used for post-retirement health and long term care costs was created over a decade ago. Known as LifeCare Xchange®, it gives seniors with chronic illness or a terminal condition the ability to exchange a life insurance policy for a tax-free benefit plan paying for living expenses and long term care. It was endorsed in 2017 as part of the National Association of Insurance Commissioners (NAIC) white paper "*Private Market Options for Financing Long-Term Care*."

Legislative action to support tax-free long term care benefits started in the states

The idea of opening up the life settlement market to seniors so they could use the secondary market value of their life insurance policies to pay for long term care was first recognized by state governments. Medicaid departments and state legislatures saw this as a potential way to save taxpayers' dollars while opening up access to a critically needed private-pay funding source.

Starting in 2010, thirteen states introduced life settlement disclosure legislation to educate policy owners about the option to sell a life insurance policy to fund a long term care benefit plan and remain private pay: California, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Texas, and Washington. The bills codified the long term care benefit plan structure as a way to protect the funds and ensure they will only be used to pay for long term care services in a tax-advantaged, Medicaid-qualified spend down.

A Federal law to create a national solution

H.R. 7203 takes the concept one step further by giving seniors the right to set aside money received from life insurance policies tax-free before they need it. This would allow seniors to plan for long term care and not have to wait to cash in their policies when they are ill.

This bill would authorize using the proceeds of a life settlement—the sale of a life insurance policy for a market value return—to be rolled over, tax-free, into accounts dedicated to permitted health care expenses. Under the proposed legislation, distributions from the accounts would not be taxed if used for permitted expenses. Distributions for unauthorized purposes would be subject to both income taxes and penalties. Any undistributed amounts in the accounts, including investment earnings, would not be taxed during the lifetime of the account holder or their spouse.

The 2017 National Association of Insurance Commissioners white paper identified life settlements as "one option seniors might use to generate resources to pay for their long term care needs."

"Policy owners who sell their policies receive a lump sum payment that is generally four or more times greater than if they lapsed or surrendered their policy, according to government and university studies," the report found.

Seniors who have felt they had no choice but to lapse a life insurance policy to qualify for Medicaid now have an option that can improve their lives in their final years. This is an important step toward finding solutions to the long term care crisis facing the United States.

Legislative Timeline

In 2009, Conning & Company released a research paper about the evolution of the life settlement industry. In it, they specifically analyzed the growing use of converting life insurance policies to pay for long term care services. They surmised that there would be an alignment of interests between owners of life insurance policies, providers of long term care services and state governments. Their goal would be to find ways to encourage the use of the secondary market value of a life insurance policy to pay for long term care as an alternative to the lapse or surrender of a policy to go onto Medicaid. The Conning & Company report wrote: "What is new is the concerted effort to integrate life insurance policies and long term care providers. This new source of funds represents a potential alignment of long term care providers and state governments. Both state governments and the long term care industry are working to find a solution to the budgetary threat to Medicaid created as aging Baby Boomers impoverish themselves in order to have the state pay for long term care."

In 2010, the National Conference of Insurance Legislators (NCOIL) unanimously passed the Life Insurance Consumer Disclosure Model Law. Conversion of a life insurance policy to a Long Term Care Benefit Plan is one of the approved options in the Model Law. "It is imperative that policyholders understand that they have alternatives to merely lapsing or surrendering their policy. The model would require a clear notice to consumers…including conversion to long term care," said NCOIL President Rob Damron.

In 2012, the state of Florida passed HB 5001, "to examine methods to allow an insured under a life insurance policy or the contract holder of an annuity, to convert the policy or annuity to a long term care benefit. The agency shall submit a report of findings and activities of the workgroup, including recommendations and proposed legislation, no later than January 15, 2013."

In 2012, Florida State University Center for Economic Forecasting and Analysis released a study analyzing the cost savings of policy conversions to pay for long term care that projected savings to taxpayers of $150 million annually.

In January, 2013, Florida Agency for Health Care Administration (AHCA) released a legislative report and bill language to the Florida Legislature recommending the use of life insurance policies to defray costs of Medicaid.

Over 2013 and 2014, legislative testimony is presented during special hearings before NCOIL, the state legislatures of Florida, Texas, Maine, a joint meeting of the New Jersey Medicaid and Insurance Departments, and before legislative work-

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groups in Florida, Louisiana and Maine.

By 2014, thirteen states had introduced legislation to educate policy owners about the option to sell a life insurance policy to fund a Long Term Care Benefit Plan and remain private pay as part of a tax-advantaged Medicaid spend-down.

On July 19, 2017, the NAIC's Long Term Care Innovations (B) Subgroup released the policy paper *Private Market Options for Financing Long-Term Care* endorsing the life insurance secondary market as a viable option to help people pay for long term care. In it, the NAIC points out the disparity between the cash surrender value of a life policy and its much higher secondary market value. In the policy memo the NAIC discussed the use of a "bank and trust account" (Long Term Care Benefit Account) that is recommended to families at the point of need by "elder care providers and professional advisors."

All of this led up to the introduction of H.R. 7203.

A Solution that has come of age

We have reached the point where we can no longer ignore the realities of an ever-growing, aging population that will require long term care but have diminishing resources to pay for it. People need to arm themselves with information and options to fund long term care if they are going to maintain dignity and quality in their lives. It is hard to predict the future of government programs such as Medicare and Medicaid. However, pressure on these programs will continue to grow and the pushback from lawmakers will only get more forceful.

This marketplace innovation has been growing in use around the U.S. for over a decade. Financial and legal advisors, insurance professionals, and long term care service providers all recognize the value of using the secondary market value of a life insurance policy to pay for long term care. It is a far better alternative than lapsing or surrendering a policy, particularly when surrender is only used as a way to qualify for Medicaid.

Congress has now joined numerous state legislatures and regulatory bodies to carefully examine and endorse this approach to fund long term care. By creating a tax-free incentive for life insurance policy owners to settle a life insurance policy instead of abandoning it, we could be creating a win-win for seniors and the taxpayers who have had to fund many of the costs of long term care in America.

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