

BULLETIN 368

Implementation of the Maine Long-Term Care Partnership Program

(Supersedes Bulletin 362)

This Bulletin explains the implementation of the Maine Long-Term Care Partnership Program, established pursuant to 22 M.R.S.A. § 3174-GG, and the procedures to be followed by insurers in order to comply with the requirements of the Partnership Program and applicable federal law. The Partnership Program operates under the direction of the Maine Department of Health and Human Services in consultation with the Maine Bureau of Insurance.

This Bulletin replaces Bulletin 362. The inflation protection guidelines have been revised to offer additional consumer choices and to provide greater consistency among Partnership states, and additional explanatory material has been added in response to questions about the retroactive effective date of the program, interstate reciprocity, and the inflation protection requirements.

Federal enabling legislation for the Long-Term Care Partnership Program is set forth in the Deficit Reduction Act of 2005, Pub. L. 109-171 (the “DRA”), and implementing procedures are described in guidance issued by the Centers for Medicare and Medicaid Services (CMS).

Under Maine’s Long-Term Care Partnership Program, individuals who purchase long-term care insurance policies that meet certain requirements specified by the DRA (“Partnership Policies”) can apply for MaineCare assistance under special rules for determining financial eligibility and estate recoveries. (In the case of group insurance, each certificate that meets the DRA’s requirements is considered a Partnership Policy.) These special rules generally allow an individual to protect assets equal to the insurance benefits received from a Partnership Policy so that such assets will not be taken into account in determining financial eligibility for MaineCare and will not subsequently be subject to MaineCare liens and recoveries.

The Maine Long-Term Care Partnership Program, approved by CMS on November 10, 2009, has a retroactive effective date of July 1, 2009.

- A. **Asset Protection Provided.** Under the Maine Long-Term Care Partnership Program, the asset eligibility, adjustment, and recovery provisions of the MaineCare plan are modified by disregarding an amount of assets, above and beyond the asset disregard or allowance otherwise provided under the MaineCare plan, equal to the amount of insurance benefits received from a Partnership Policy.

This Asset Disregard applies to all insurance benefits received from a Partnership Policy, regardless of the mode of payment, as discussed more fully in B(1) below. It applies to all

insurance benefits received from a Partnership Policy even if they are for costs that would not be covered by MaineCare. The Asset Disregard as of any date equals the insurance benefit that has been received to that date from a Partnership Policy, and is subject to adjustment if additional insurance benefits are received.

If a previously issued policy is exchanged for a new policy after the effective date of the Maine Long-Term Care Partnership Program, and the new policy qualifies as a Partnership Policy, the Asset Disregard will apply only with respect to insurance benefits received under the new Partnership Policy and does not include insurance benefits, if any, received under the previously issued policy.

Partnership Policies that cover more than one insured are treated separately for each insured. The Asset Disregard for each insured equals the insurance benefits received from the Partnership Policy on account of that insured having become a “chronically ill individual” within the meaning of § 7702B(c)(2) of the Internal Revenue Code of 1986.¹

The Asset Disregard does not include return of premium payments made upon the termination of a Partnership Policy (due to cancellation or death), because such payments do not represent insurance benefits.

Eligibility for benefits under MaineCare remains subject to all other eligibility requirements, such as applicable income limitations and home equity limitations.

B. Partnership Policies. A Partnership Policy is a long-term care insurance contract that satisfies all of the following requirements. It may take the form of a stand-alone long-term care policy, a certificate to a group policy, or a long-term care provision of another type of insurance contract, such as a rider to a life insurance or annuity contract.

1. *Qualified under federal tax law.* The policy must be a qualified long-term care insurance contract for tax purposes, as defined in Internal Revenue Code § 7702B(b).
2. *Effective date.* The policy must have an effective date that is no earlier than July 1, 2009, the effective date of the Maine Long-Term Care Partnership Program. For a certificate issued under a group insurance contract, the relevant effective date is the effective date of the certificate.

Policies not originally issued as Partnership Policies may be exchanged for qualified policies after the effective date of the Maine Long-Term Care Partnership Program. The policy received in exchange is treated as newly issued and thus is eligible for Partnership Policy status. The addition of a rider, endorsement, or change in schedule page to an in-force policy, for the purpose of meeting Long-Term Care Partnership requirements, constitutes a qualifying policy replacement if the effective date of the policy revision is on or after July 1, 2009. A policy issued after July 1, 2009, is eligible for Partnership status if it meets the requirements described in this Section and the policy form has been certified in accordance with Section C.

An insurer may not impose additional underwriting requirements or place the insured in a less favorable rating plan or classification in order to reissue pre-Partnership coverage as a Partnership Policy. If a policy is rated on an issue age basis, then the rate at issue of the original policy must continue to apply. If additional inflation protection benefits are required in order to qualify for Partnership Policy status, the charge for those benefits must be consistent with the insured's existing rating plan and classification. However, if the policyholder or certificate holder has requested benefit changes or new benefits beyond the Partnership Policy requirements, the insurer may apply its generally applicable underwriting and rating standards to that request.

3. *State of residence.* The policy must cover an insured who was a resident of Maine when coverage first became effective under the policy. A certificate covering an insured who is a resident of Maine may qualify as a Partnership Policy even if the situs of the underlying group insurance contract is in another state. An insured who moves to Maine after buying a Partnership Policy in a different state may qualify for reciprocal treatment as described below in Section H, if the state participates in reciprocity, or the insured may exchange the policy for a Maine Partnership Policy.
4. *Consumer protection requirements.* The policy must satisfy the federal consumer protection requirements of Social Security Act ("SSA") § 1917(b)(1)(C)(iii)(III) (42 U.S.C. § 1396p(b)(1)(C)(iii)(III)), which incorporates by reference designated provisions of the Model Act and Model Regulation adopted by the National Association of Insurance Commissioners. See Section C below for a discussion of the certification process.
5. *Inflation protection.* Pursuant to SSA § 1917(b)(1)(C)(iii)(IV) (42 U.S.C. § 1396p(b)(1)(C)(iii)(IV)), the policy must provide inflation protection if the insured individual has not attained age 76 as of the purchase date of his or her policy or certificate. Every insurer must also offer each policyholder or certificate holder, regardless of age, the option to buy a higher level of inflation protection consistent with the requirements of Bureau of Insurance Rule 425. As discussed more fully in [Bulletin 369](#), the required levels of inflation protection are:
 - *Through age 60:* either compound interest of at least 3% or benefits linked to the consumer price index (CPI-U);
 - *Ages 61 through 75:* simple or compound interest of at least 3% or benefits linked to the consumer price index (CPI-U);
 - *Age 76 and higher:* no inflation protection required.

In the case of an exchange, the level of inflation protection required is based upon the effective date of coverage under the new policy; *i.e.*, the determination is made without regard to any predecessor policy.

- C. **Certification Process.** Pursuant to SSA § 1917(b)(5)(B)(iii) (42 U.S.C. § 1396p(b)(5)(B)(iii)), a qualified long-term care insurance policy is deemed to meet the consumer protection requirements of the applicable model laws if the Maine Superintendent of Insurance certifies, in a manner established by the Maine Partnership

Program and satisfactory to the Secretary of the U.S. Department of Health & Human Services (the “Secretary”), that the policy meets those requirements.

The Maine Long-Term Care Act and Bureau of Insurance Rule 425 are based on the applicable model laws. The checklist includes provisions based on each of the model law provisions referenced in 42 U.S.C. § 1396p(b)(1)(C)(iii)(III). The Superintendent has determined that compliance with the provisions of Maine law cited in the checklist is sufficient to satisfy the corresponding federal requirements.

Therefore, in accordance with the statutory safe harbor procedure, subject to the Secretary’s authority to issue further guidance clarifying or superseding this Bulletin, policies shall be deemed to meet the consumer protection requirements of SSA § 1917(b)(1)(C)(iii)(III) (42 U.S.C. § 1396p(b)(1)(C)(iii)(III)) if the issuer identifies the policy forms on which such policies are issued, completes the applicable Bureau of Insurance form filing checklist for each policy form, and an officer of the issuer certifies to the Superintendent that the information provided in the checklist is complete and accurate.

If there is a change made by the National Association of Insurance Commissioners to its Long-Term Care Insurance Model Act or Regulation that affects these consumer protection standards, and the Secretary makes the change applicable to Partnership Policies pursuant to SSA § 1917(b)(5)(C) (42 U.S.C. § 1396p(b)(5)(C)), then any necessary modifications will be made to the checklist to reflect the new requirements.

The checklist also includes verification of the level of inflation protection provided by the form or rider, to identify which groups of consumers may be offered the policy as a Partnership Policy.

- D. Notice of Partnership Policy Status.** Pursuant to the Maine Long-Term Care Partnership Program as approved by CMS, the Maine Department of Health and Human Services relies where appropriate on attestations by the Superintendent that a policy is a Partnership Policy. A Partnership Policy issued in Maine or issued for delivery in Maine shall be accompanied by a Partnership disclosure notice explaining the benefits associated with a Partnership Policy and indicating that at the time issued, the policy is intended to be a Partnership Policy. If a policy form is certified pursuant to Section C after it is already in use in Maine, the insurer shall send the Partnership disclosure notice to all eligible individuals who have purchased the policy on or after July 1, 2009. The Partnership disclosure notice shall include a statement indicating that by purchasing a Partnership Policy, the insured does not automatically qualify for MaineCare.

The issuer may provide written notice to the insured using the model notice (based on one used in other partnership states) that is attached to this Bulletin as an Appendix, and can be found at the Maine Bureau of Insurance website at <http://www.maine.gov/pfr/insurance>. A substantially similar notice may be used with the prior approval of the Superintendent.

The Partnership disclosure notice shall not be sent to individuals for whom the policy does not provide sufficient inflation protection, based on their age at the time the policy is sold. If the notice is sent in error, the insurer shall take prompt corrective action and offer the policyholder the choice between upgrading to Partnership coverage, rescinding the purchase, or keeping the existing non-Partnership policy.

In determining whether to provide notice that specifically references the Maine Long-Term Care Insurance Partnership, the issuer may rely upon a statement by the insured that he or she is a resident of Maine.

- E. **Limitation on Partnership-Policy-Specific Rules.** In accordance with SSA § 1917(b)(1)(C)(iii)(VII) (42 U.S.C. § 1396p(b)(1)(C)(iii)(VII)), apart from the requirements described in B above that are specified by the DRA, no requirement affecting the terms or benefits of a Partnership Policy may be imposed unless the same requirement is imposed generally on long-term care insurance policies without regard to whether the policy is a Partnership Policy. This limitation does not exempt Partnership Policies or their issuers from compliance with Maine Bureau of Insurance Rule 425 or any other requirements of general applicability.
- F. **Reporting Requirements.** Pursuant to SSA § 1917(b)(1)(C)(iii)(VI) (42 U.S.C. § 1396p(b)(1)(C)(iii)(VI)), issuers of Partnership Policies must provide regular reports to the Secretary in accordance with any regulations of the Secretary. On December 18, 2008, the Secretary promulgated regulation 45 CFR Part 144 Subchapter B, effective April 17, 2009, which enacted the reporting requirements for insurers that issue qualified long-term care insurance policies in states that have established a Long-Term Care Partnership Program. Carriers should consult this regulation for all reporting requirements under the Maine Long-Term Care Partnership Program. Pursuant to SSA § 1917(b)(1)(C)(V) (42 U.S.C. § 1396p(b)(1)(C)(V)), the Secretary, as appropriate, will provide copies of the reports to the State of Maine.
- G. **Producer Training and Coordination Between State Departments.** The Maine Bureau of Insurance has the responsibility to assure that anyone who sells a Partnership Policy receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. The Maine Department of Health and Human Services, as the designated program supervisor pursuant to SSA § 1902(a)(5) (42 U.S.C. § 1396a(a)(5)), shall provide information and technical assistance to the Bureau in carrying out this responsibility.

The training requirements established by the Superintendent are specified in Maine Bureau of Insurance Bulletin 347, Producer Training – Long-Term Care Insurance Policies.

- H. **Reciprocity.** Pending the issuance of guidance by the Secretary pursuant to Subsection 6021(b) of the DRA, the Maine Long-Term Care Partnership Program shall provide reciprocity with all other state long-term care insurance partnerships that provide similar reciprocity for Maine Partnership Policies.

A policy purchased under a reciprocal state's long-term care insurance partnership shall be entitled to the same Asset Disregard that would apply to a Partnership Policy covered directly by the Maine Long-Term Care Partnership Program. The provision of reciprocity under the Maine Long-Term Care Partnership Program does not affect eligibility requirements for MaineCare benefits that apply apart from those pertaining to permissible assets and resources.

After the issuance of guidance by the Secretary pursuant to DRA § 6021(b), the Maine Medicaid Agency, if it elects to be exempt from the federal standards, shall notify the Secretary in writing within the period of time prescribed by the Secretary.

- I. **Federal Long-Term Care Insurance Program.** The Superintendent recognizes that the enabling law for the Federal Long-Term Care Insurance Program ("FLTCIP"), 5 U.S.C. §§ 9001–9009, provides for the preemption of state laws with respect to this program. Therefore, a certification by the Director of the U.S. Office of Personnel Management that a certificate issued pursuant to the FLTCIP qualifies as a Partnership Policy shall be sufficient to qualify the certificate for the Asset Disregard.

¹ The Internal Revenue Code is Title 26 of the United States Code, with the same numbering scheme.

January 22, 2010

Mila Kofman
Superintendent of Insurance

NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.

APPENDIX

[Company Letterhead]

IMPORTANT NOTICE REGARDING YOUR POLICY'S LONG-TERM CARE INSURANCE PARTNERSHIP STATUS

(Please Keep This Notice with Your Policy or Certificate)

Policy Number _____

Insured's Name _____

The Maine Long-Term Care Partnership Program is a partnership between Maine and private insurers offering long-term care insurance policies. The **Maine Long-Term Care Partnership Program** became effective on July 1, 2009, and is provided in accordance with the federal Deficit Reduction Act of 2005 (P.L. 109-171).

Notice of Partnership Policy Status. This Notice verifies that the long-term care insurance policy or certificate that you have purchased is intended to qualify under the Maine Long-Term Care Partnership Program as of the policy's or certificate's effective date. This Notice explains the valuable MaineCare (Medicaid) asset protection that you may receive from purchasing a Partnership Policy. The purchase of a Partnership Policy does not automatically qualify you for MaineCare.

MaineCare Asset Protection. Long-term care insurance is an important tool that helps individuals prepare for future long-term care needs. Partnership Policies provide an additional level of protection. In particular, such policies permit individuals to protect additional assets from spend-down requirements under the MaineCare program if assistance under this program is ever needed and you otherwise qualify for MaineCare.

Specifically, when your assets are calculated for purposes of the eligibility and recovery provisions of the MaineCare program, MaineCare will disregard an additional amount of assets that is equal to the amount of insurance benefits you have received from your Partnership Policy.

For example, if you receive \$200,000 of insurance benefits from your Partnership Policy, you generally would be able to retain \$200,000 of assets above and beyond the amount of assets normally permitted for MaineCare eligibility. Other MaineCare eligibility requirements regarding assets and income must still be met. Medicaid eligibility requirements may vary from one state to another and may change over time.

Additional Consumer Protections. In addition to providing MaineCare asset protection, your Partnership Policy has other important features. Under the rules governing the Maine Long-Term Care Partnership Program, your Partnership Policy must be a qualified long-term care insurance contract under federal tax law, and as such, the insurance benefits you receive from the policy generally will be subject to beneficial income tax treatment. (Please note that these tax benefits are not exclusive to Partnership Policies. A policy can be a qualified long-term care insurance contract under federal tax law even if it is not a Partnership Policy.) In order to qualify for the Partnership Program, your policy must also contain certain inflation protections if sold to you under age 76, with stronger protections required if you are under age 61.

What Could Disqualify Your Policy as a Partnership Policy. If you make any changes to your policy or certificate, such changes could affect whether your policy or certificate continues to qualify as a Partnership Policy. Before you make any changes, you should consult with the issuer of your policy to determine the effect of a proposed change. In addition, if you move to a state that does not maintain a Partnership program or does not recognize your policy as a Partnership Policy, you would not receive Medicaid asset protection in that state. Also, changes in federal or state law could affect the Medicaid asset protection available with respect to your Partnership Policy.

Additional Information. If you would like further information about the MaineCare asset protection provided by your Partnership Policy, please contact the Maine Department of Health and Human Services at (207) 287-3707 or visit their website at <http://www.maine.gov/dhhs>. If you would like further information about the Maine Long-Term Care Partnership Program, please call the Maine Bureau of Insurance at (800) 300-5000 (in state) or (207) 624- 8458 or visit their website at <http://www.maine.gov/pfr/insurance>.