

5418

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. ENGLEBRIGHT, CAHILL, DESTITO, PHEFFER, JACOBS, MILLMAN, KOON, DelMONTE, PEOPLES, PERRY, ARROYO, P. RIVERA, J. RIVERA, GALEF, SCHROEDER, MARKEY, COLTON, BOYLAND, COOK, BENEDETTO, JAFFEE, MAISEL, ROBINSON, GABRYSZAK, CARROZZA, MAYERSOHN, ESPAILLAT, SPANO -- Multi-Sponsored by -- M. of A. ABBATE, ALFANO, BRADLEY, BRENNAN, BROOK-KRASNY, DIAZ, EDDINGTON, GORDON, GUNTHER, HEASTIE, HIKIND, HOOPER, HYER-SPENCER, JEFFRIES, JOHN, LANCMAN, V. LOPEZ, LUPARDO, MAGEE, McENENY, ORTIZ, PRETLOW, ROSENTHAL, SCARBOROUGH, SCHIMEL, SWEENEY, TOWNS, WEISENBERG, WRIGHT -- read once and referred to the Committee on Aging

AN ACT to amend the elder law, in relation to establishing the New York state compact for long term care; and to amend the tax law, in relation to providing certain tax credits

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 2 of the elder law is amended by adding a new title
2 5 to read as follows:
3 TITLE 5
4 COMPACT FOR LONG TERM CARE
5 SECTION 260. SHORT TITLE.
6 261. DEFINITIONS.
7 262. COMPACT FOR LONG TERM CARE CREATED; PURPOSES.
8 263. REQUIREMENT FOR CONSULTATION.
9 264. IMPLEMENTATION.
10 265. SELECTION OF PROGRAM MANAGEMENT ENTITY.
11 266. PARTICIPATION AND PLEDGE.
12 267. BENEFITS OF PARTICIPATION.
13 268. PROTECTED INCOME.
14 269. IMPOSITION OF LIEN IN CERTAIN CASES.
15 270. PROHIBITED ACTS.
16 271. FRAUDULENT PRACTICES.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD08724-01-9

- 1 271-A. PAYMENTS AND DEFAULTS.
- 2 272. APPEALS.
- 3 273. TREATMENT OF ASSETS.
- 4 274. SPECIAL PROVISIONS REGARDING SPOUSES.
- 5 275. QUALIFIED LONG TERM CARE SAVINGS ACCOUNT.
- 6 276. ADVISORY COMMITTEE.
- 7 277. REQUIREMENT FOR CONFIDENTIALITY.
- 8 278. EDUCATION AND INFORMATION.

9 S 260. SHORT TITLE. THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE
10 "NEW YORK COMPACT FOR LONG TERM CARE".

11 S 261. DEFINITIONS. AS USED IN THIS TITLE:

12 1. "ASSESSMENT" MEANS AN ASSESSMENT TO DETERMINE WHETHER AN INDIVIDUAL
13 IS A CHRONICALLY ILL INDIVIDUAL. AN ASSESSMENT MAY BE PERFORMED ONLY BY
14 A LICENSED HEALTH CARE PRACTITIONER CONTRACTED TO PERFORM SUCH ASSESS-
15 MENTS WITH AN INSURER, THE COMMISSIONER OR THE PROGRAM MANAGEMENT ENTI-
16 TY. THE ASSESSMENT SHALL BE PERFORMED ANNUALLY OR WHENEVER A CHANGE IN
17 THE CONDITION OF THE COMPACT BENEFICIARY OR COMPACT PARTICIPANTS
18 WARRANTS AN UPDATE TO THE PLAN OF CARE. EXCEPT IN CASES IN WHICH THE
19 COMMISSIONER WAIVES THE REQUIREMENT DUE TO HARDSHIP, THE COST OF AN
20 ASSESSMENT SHALL BE PAID BY AN INDIVIDUAL SEEKING TO ENROLL IN THE
21 COMPACT PROGRAM.

22 2. "ADVISORY COMMITTEE" MEANS THE ADVISORY COMMITTEE ESTABLISHED BY
23 THE COMMISSIONER PURSUANT TO THIS TITLE.

24 3. "COMMISSIONER" MEANS THE COMMISSIONER OF HEALTH.

25 4. "COMPACT" MEANS THE COMPACT FOR LONG TERM CARE PROGRAM AUTHORIZED
26 BY THIS TITLE.

27 5. "COMPACT BENEFICIARY" OR "BENEFICIARY" MEANS A PARTICIPANT WHO BY
28 FULFILLING HIS OR HER PLEDGE AMOUNT AND MEETING OTHER REQUIREMENTS
29 ESTABLISHED PURSUANT TO THIS TITLE HAS BECOME ELIGIBLE FOR THE COMPACT
30 SUBSIDY.

31 6. "COMPACT PARTICIPANT" OR "PARTICIPANT" MEANS AN INDIVIDUAL WHO:
32 (A) HAS APPLIED FOR MEMBERSHIP IN THE COMPACT; (B) IS A STATE RESIDENT
33 RESIDING IN THIS STATE AT THE TIME OF SUCH APPLICATION; (C) HAS BEEN
34 DETERMINED BY ASSESSMENT TO BE A CHRONICALLY ILL PERSON; AND (D) HAS
35 AGREED TO FULFILL A PLEDGE AMOUNT AS PROVIDED IN THIS TITLE. A PARTIC-
36 IPANT SHALL BE DEEMED ENROLLED IN THE COMPACT PROGRAM.

37 7. "COMPACT RATE" MEANS THE RATE THAT A PROVIDER MAY CHARGE A COMPACT
38 BENEFICIARY FOR A SERVICE PROVIDED PURSUANT TO THE COMPACT. THE COMPACT
39 RATE SHALL BE THE RATE COMPUTED BY THE COMMISSIONER PURSUANT TO THIS
40 TITLE WHICH IS NOT MORE THAN ONE HUNDRED TEN PERCENT OF THE COMPACT
41 SUBSIDY FOR SUCH SERVICE PROVIDED BY SUCH PROVIDER.

42 8. "COMPACT SUBSIDY" OR "SUBSIDY" MEANS THE SUBSIDY PROVIDED PURSUANT
43 TO THE COMPACT FOR THE COSTS OF ANY QUALIFIED LONG TERM CARE SERVICE
44 RECEIVED BY A COMPACT BENEFICIARY PURSUANT TO THE PLAN OF CARE FOLLOWING
45 AN ASSESSMENT. THE AMOUNT OF THE SUBSIDY SHALL EQUAL THE MEDICAID RATE
46 ESTABLISHED FOR THE SAME OR A SIMILAR SERVICE PROVIDED BY THE INDIVIDUAL
47 PROVIDER SELECTED BY THE BENEFICIARY TO PROVIDE SUCH SERVICE IN THE
48 REGION IN WHICH THE BENEFICIARY RESIDES, IRRESPECTIVE OF THE PROVIDER
49 SELECTED BY THE BENEFICIARY. IN ANY CASE IN WHICH THERE IS NO MEDICAID
50 RATE FOR A SERVICE, THE COMMISSIONER SHALL ESTABLISH A COMPARABLE RATE
51 UPON RECOMMENDATION OF THE ADVISORY COMMITTEE WHICH SHALL BE APPLICABLE
52 IN SUCH REGION FOR SUCH PROVIDER FOR SUCH SERVICE, AND THE AMOUNT OF THE
53 SUBSIDY PROVIDED PURSUANT TO THE COMPACT FOR SUCH SERVICE SHALL EQUAL
54 SUCH ESTABLISHED RATE. THE COMMISSIONER SHALL ADJUST THE METHODOLOGY FOR
55 ESTABLISHING THE AMOUNT OF THE COMPACT SUBSIDY IF THE ADVISORY COMMITTEE
56 RECOMMENDS SUCH ADJUSTMENT. THE ANNUAL COMPACT SUBSIDY FOR AN INDIVID-

1 UAL BENEFICIARY RECEIVING NON-INSTITUTIONAL SERVICES FROM ONE OR MORE
2 PROVIDERS SHALL BE NO GREATER THAN THE ANNUAL REGIONAL MEDICAID RATE
3 COMPUTED FOR NURSING HOME SERVICES FOR THE REGION IN WHICH THE BENEFICI-
4 ARY RESIDES.

5 9. "COUNTABLE ASSET" SHALL HAVE THE SAME MEANING AS IS ASCRIBED TO THE
6 TERM "ASSETS", AS DEFINED IN CLAUSE (I) OF SUBPARAGRAPH ONE OF PARAGRAPH
7 (D) OF SUBDIVISION FIVE OF SECTION THREE HUNDRED SIXTY-SIX OF THE SOCIAL
8 SERVICES LAW APPLICABLE TO TRANSFERS MADE AFTER AUGUST TENTH, NINETEEN
9 HUNDRED NINETY-THREE, UNLESS ANY SUCH TRANSFER OF AN ASSET IS EXEMPTED
10 PURSUANT TO THIS TITLE OR BY COMPACT RULES ESTABLISHED PURSUANT TO
11 PROCEDURES ESTABLISHED PURSUANT THERETO. COUNTABLE ASSET SHALL NOT BE
12 DEEMED TO INCLUDE INCOME.

13 10. "COUNTABLE INCOME" MEANS INCOME REQUIRED TO BE CONSIDERED IN THE
14 CASE OF A PERSON APPLYING FOR MEDICAID PURSUANT TO SECTION THREE HUNDRED
15 SIXTY-SIX OF THE SOCIAL SERVICES LAW, AND SHALL EXCLUDE, DISREGARD AND
16 DEDUCT INCOME REQUIRED TO BE EXCLUDED, DISREGARDED OR DEDUCTED PURSUANT
17 TO SUCH SECTION, UNLESS ANY SUCH INCOME, EXCLUSIONS, DISREGARDS OR
18 DEDUCTIONS ARE EXEMPTED OR EXCLUDED PURSUANT TO THIS ARTICLE OR BY
19 COMPACT RULES ESTABLISHED PURSUANT TO PROCEDURES ESTABLISHED IN THIS
20 TITLE. EXPENDITURES FOR MEDICARE SUPPLEMENTAL INSURANCE POLICIES MEETING
21 THE STANDARDS ESTABLISHED PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED
22 EIGHTEEN OF THE INSURANCE LAW, EXPENDITURES FOR A MEDICARE PRESCRIPTION
23 DRUG PLAN APPROVED PURSUANT TO PROCEDURES ESTABLISHED BY THE U.S.
24 DEPARTMENT OF HEALTH AND HUMAN SERVICES, CONTRIBUTIONS MADE PURSUANT TO
25 THIS TITLE TO A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT, AND PREMIUMS
26 FOR THE PURCHASE OF LONG TERM CARE INSURANCE SHALL BE EXCLUDED FROM
27 COUNTABLE INCOME.

28 11. "DIRECTOR" MEANS THE DIRECTOR OF THE STATE OFFICE FOR THE AGING.

29 12. "FEDERAL ACT" MEANS THE HEALTH INSURANCE PORTABILITY AND ACCOUNT-
30 ABILITY ACT OF 1996 OR ANY SUCCESSOR THERETO, AND RULES PROMULGATED
31 THEREUNDER. THE FOLLOWING TERMS SHALL HAVE THE SAME MEANINGS AS UNDER
32 THE FEDERAL ACT: "QUALIFIED LONG TERM CARE SERVICES"; "LICENSED HEALTH
33 CARE PRACTITIONER"; "ACTIVITIES OF DAILY LIVING"; "CHRONICALLY ILL
34 PERSON". ANY PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING,
35 THE DEPARTMENT OF HEALTH SHALL NOT BE AUTHORIZED TO ISSUE, ENACT OR
36 ENFORCE ANY REQUIREMENT OR DEFINITION THAT IS MORE RESTRICTIVE THAN SUCH
37 MEANINGS AS INCLUDED IN SUCH FEDERAL ACT.

38 13. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION AND SOLELY FOR
39 PURPOSES OF DETERMINING WHETHER THE CONDITION OF "SEVERE COGNITIVE
40 IMPAIRMENT" EXISTS FOR A PARTICIPANT, THE COMMISSIONER SHALL REQUIRE
41 THAT SUCH CONDITION BE CHARACTERIZED BY A DETERIORATION OR IRREVERSIBLE
42 LOSS IN INTELLECTUAL CAPACITY THAT REQUIRES SUBSTANTIAL SUPERVISION TO
43 ASSURE THE SAFETY OF THE PARTICIPANT OR OF OTHERS, AND THAT IT SHALL BE
44 ESTABLISHED BY CLINICAL EVIDENCE AND STANDARDIZED TESTS THAT RELIABLY
45 MEASURE: SHORT-TERM OR LONG-TERM MEMORY; ORIENTATION AS TO PEOPLE, PLACE
46 OR TIME; DEDUCTIVE OR ABSTRACT REASONING; AND JUDGMENT AS IT RELATES TO
47 SAFETY AWARENESS. THE MEANS OF DETERMINATION AS TO WHETHER A PERSON HAS
48 SUFFERED SEVERE COGNITIVE IMPAIRMENT SHALL INsofar AS PRACTICAL BE THE
49 SAME AS THOSE USED PURSUANT TO THE FEDERAL ACT TO DETERMINE SEVERE
50 COGNITIVE IMPAIRMENT.

51 14. "SUBSTANTIAL SUPERVISION" MEANS CONTINUAL OVERSIGHT THAT MAY
52 INCLUDE CUEING BY VERBAL PROMPTING, GESTURES OR OTHER DEMONSTRATIONS BY
53 ANOTHER PERSON, AND THAT IS NECESSARY TO PROTECT THE PATIENT FROM
54 THREATS TO HIS OR HER HEALTH OR SAFETY.

55 15. "LICENSED HEALTH CARE PRACTITIONER" MEANS ANY OF THE FOLLOWING,
56 OTHER THAN A FAMILY MEMBER: A PHYSICIAN, AS DEFINED IN SECTION

1 1861(R)(1) OF THE SOCIAL SECURITY ACT; A REGISTERED PROFESSIONAL NURSE;
2 A LICENSED SOCIAL WORKER; OR ANOTHER PROFESSIONAL INDIVIDUAL WHO MEETS
3 THE REQUIREMENTS PRESCRIBED BY THE UNITED STATES SECRETARY OF THE TREAS-
4 URY PURSUANT TO THE FEDERAL ACT.

5 16. "QUALIFIED LONG TERM CARE SERVICES" SHALL INCLUDE ANY EXPENSES FOR
6 LONG TERM MEDICAL CARE AND SERVICES WHICH ARE OR, IN THE CASE OF AN
7 INDIVIDUAL WHO IS NOT A TAXPAYER, WHICH WOULD BE DEDUCTIBLE FROM FEDERAL
8 GROSS INCOME FOR SUCH TAXPAYER OR INDIVIDUAL AS LONG TERM CARE SERVICES
9 PURSUANT TO THE INTERNAL REVENUE CODE, AND BOTH MEDICAL AND NON-MEDICAL
10 SERVICES, INCLUDING HOME MODIFICATION AND THE PROVISION OF SERVICES
11 COORDINATION REQUIRED PURSUANT TO THE PLAN OF CARE PREPARED BY A
12 LICENSED HEALTH CARE PRACTITIONER IN ORDER TO MAINTAIN A PARTICIPANT OR
13 BENEFICIARY IN HIS OR HER OWN HOME, AND SUCH ADDITIONAL SERVICES AS MAY
14 BE APPROVED BY THE COMMISSIONER UPON RECOMMENDATION OF THE ADVISORY
15 COMMITTEE, SO LONG AS THE COMMISSIONER SHALL BE SATISFIED THAT INCLUSION
16 OF SUCH ADDITIONAL SERVICES DOES NOT PREVENT RECEIPT OF FEDERAL FINAN-
17 CIAL PARTICIPATION UNDER THE MEDICAL ASSISTANCE PROGRAM OR UNDER THE
18 COMPACT.

19 17. "FULFILLED PLEDGE" MEANS A PLEDGE AMOUNT THAT HAS BEEN FULLY PAID.
20 ONLY PAYMENTS MADE BY A PARTICIPANT, OR BY ANY PERSON OR ENTITY ON
21 BEHALF OF SUCH PARTICIPANT, PRIOR TO THE PARTICIPANT APPLYING FOR THE
22 COMPACT SUBSIDY SHALL BE COUNTED AS ELIGIBLE PAYMENTS IN FULFILLING A
23 PLEDGE. ELIGIBLE PAYMENTS SHALL INCLUDE REASONABLE AND NECESSARY
24 PAYMENTS FOR QUALIFIED LONG TERM CARE SERVICES, INCLUDING MEDICAL AND
25 NON-MEDICAL EXPENSES INCURRED AND PAID PURSUANT TO THE PLAN OF CARE, AND
26 ANY ADDITIONAL EXPENSES AS MAY BE APPROVED BY THE COMMISSIONER UPON
27 RECOMMENDATION OF THE ADVISORY COMMITTEE. SUCH PAYMENTS SHALL ALSO
28 INCLUDE PAYMENTS FOR QUALIFIED LONG TERM CARE SERVICES FOR THE
29 THREE-MONTH PERIOD PRIOR TO AN INDIVIDUAL BECOMING A PARTICIPANT.
30 COUNTABLE PAYMENTS MADE FOR A QUALIFIED LONG TERM CARE SERVICE IN
31 FULFILLING A PLEDGE SHALL NOT BE GREATER THAN THE AMOUNT USUALLY AND
32 CUSTOMARILY CHARGED FOR SUCH SERVICE BY A PROVIDER TO A NON-MEDICAID
33 RECIPIENT.

34 18. "PLEDGE AMOUNT" MEANS THE PLEDGE MADE BY A PARTICIPANT TO PAY THE
35 COST OF QUALIFIED LONG TERM CARE SERVICES. THE PLEDGE AMOUNT SHALL BE:
36 (A) THE "MAXIMUM PLEDGE AMOUNT", WHICH SHALL BE THE AMOUNT EQUAL TO
37 THIRTY-SIX MONTHS OF PAYMENT AT THE REGIONAL RATE FOR NURSING HOME
38 SERVICES IN THE REGION IN WHICH THE PARTICIPANT RESIDES, AS APPLICABLE
39 AT THE TIME OF APPLICATION TO THE COMPACT; OR (B) THE "DOLLAR PLEDGE
40 AMOUNT" WHICH SHALL BE AN AMOUNT EQUAL TO FIFTY PERCENT OF A PARTIC-
41 IPANT'S COUNTABLE ASSETS. IN THE CASE OF A PARTICIPANT WHOSE COUNTABLE
42 ASSETS ARE LESS THAN FORTY THOUSAND DOLLARS, THE DOLLAR PLEDGE AMOUNT
43 SHALL BE LIMITED TO THE AMOUNT IN EXCESS OF A DEDUCTIBLE AMOUNT OF TWEN-
44 TY THOUSAND DOLLARS, AND THE COMMISSIONER SHALL CALCULATE SUCH DOLLAR
45 PLEDGE AMOUNT BY SUBTRACTING SUCH DEDUCTIBLE AMOUNT OF TWENTY THOUSAND
46 DOLLARS FROM THE PARTICIPANT'S COUNTABLE ASSETS AND THE REMAINDER AMOUNT
47 SHALL EQUAL THE DOLLAR PLEDGE AMOUNT; PROVIDED THAT THE COMMISSIONER
48 SHALL ANNUALLY INCREASE OR DECREASE SUCH FORTY THOUSAND DOLLAR ASSET
49 AMOUNT AND SUCH TWENTY THOUSAND DOLLAR DEDUCTIBLE AMOUNT AT THE SAME
50 PERCENTAGE RATE AS THE INCREASE OR DECREASE IN THE REGIONAL RATE FOR
51 NURSING HOME SERVICES FOR THE REGION IN WHICH THE ELIGIBLE INDIVIDUAL
52 RESIDES.

53 19. "REGION" MEANS THE FOLLOWING REGIONS: LONG ISLAND, NEW YORK CITY,
54 NORTHERN METROPOLITAN NEW YORK, NORTHEASTERN NEW YORK, UTICA REGION,
55 CENTRAL NEW YORK, ROCHESTER REGION AND WESTERN NEW YORK.

1 20. "REGIONAL RATE" MEANS THE RATE SET ANNUALLY BY THE COMMISSIONER AT
2 EQUAL TO THE AVERAGE OF ALL RATES, EXCLUSIVE OF MEDICAID RATES, PAID FOR
3 THE SAME OR SIMILAR SERVICES WITHIN A REGION. THE COMMISSIONER SHALL
4 COMPUTE AND ANNUALLY UPDATE REGIONAL RATES FOR EACH REGION OF THE STATE
5 FOR ANY YEAR NOT LATER THAN THE LAST WEEK OF DECEMBER OF THE YEAR
6 PRECEDING SUCH YEAR.

7 S 262. COMPACT FOR LONG TERM CARE CREATED; PURPOSES. THE COMPACT FOR
8 LONG TERM CARE IS HEREBY CREATED. ITS PURPOSE SHALL BE TO PROVIDE COOR-
9 DINATED COVERAGE FOR THE EXPENSES OF QUALIFIED LONG TERM CARE SERVICES
10 TO ELIGIBLE INDIVIDUALS, A PURPOSE HEREBY DECLARED TO BE IN EVERY
11 RESPECT AN APPROPRIATE PUBLIC PURPOSE CONDUCTED FOR THE BENEFIT OF THE
12 PEOPLE OF THE STATE.

13 S 263. REQUIREMENT FOR CONSULTATION. ANY PROVISION OF ANY OTHER LAW
14 TO THE CONTRARY NOTWITHSTANDING, AND IN ADDITION TO ANY OTHER REQUIRE-
15 MENT IMPOSED IN THIS TITLE, THE COMMISSIONER SHALL CONSULT WITH THE
16 DIRECTOR AND WITH THE SUPERINTENDENT OF INSURANCE PRIOR TO TAKING ANY
17 ACTION CONCERNING POLICY OR PROGRAM MATTERS REQUIRED OR PERMITTED BY
18 THIS TITLE, PROVIDED HOWEVER THAT THE FAILURE TO RESPOND TIMELY TO A
19 REQUEST FOR CONSULTATION AND ADVICE SHALL NOT IMPAIR OR INVALIDATE ANY
20 SUCH ACTION TAKEN BY THE COMMISSIONER.

21 S 264. IMPLEMENTATION. ANY PROVISION OF ANY OTHER LAW TO THE CONTRARY
22 NOTWITHSTANDING, THE COMMISSIONER IS HEREBY AUTHORIZED TO AND SHALL
23 IMPLEMENT THE COMPACT FOR LONG TERM CARE PROGRAM CREATED BY THIS TITLE
24 AND TO SUBMIT SUCH WAIVER APPLICATIONS AND/OR STATE PLAN AMENDMENTS AS
25 MAY BE NECESSARY FOR SUCH IMPLEMENTATION, PROVIDED THAT SUCH PROGRAM AND
26 THE PROVISIONS OF THIS TITLE SHALL BE IMPLEMENTED ONLY IF AND FOR SO
27 LONG AS THE COMMISSIONER SHALL BE SATISFIED THAT THEY DO NOT PREVENT
28 RECEIPT OF FEDERAL FINANCIAL PARTICIPATION UNDER THE MEDICAL ASSISTANCE
29 PROGRAM OR UNDER THE COMPACT. IN APPLYING FOR THE WAIVER, THE COMMIS-
30 SIONER SHALL CONSULT WITH THE ADVISORY COMMITTEE CONCERNING SUBMISSION
31 OF APPROPRIATE CRITERIA FOR ASSURING THAT A SERVICE IS PROPERLY PROVIDED
32 AND MEETS APPROPRIATE STANDARDS OF QUALITY AND COST.

33 S 265. SELECTION OF PROGRAM MANAGEMENT ENTITY. 1. THE COMMISSIONER IS
34 HEREBY AUTHORIZED TO AND SHALL CONTRACT WITH A PROGRAM MANAGEMENT ENTITY
35 TO ADMINISTER THE COMPACT. THE PROCESS FOR SELECTING A PROGRAM MANAGE-
36 MENT ENTITY TO MANAGE THE COMPACT PROGRAM SHALL BE GOVERNED SOLELY BY
37 THIS TITLE.

38 2. INSOFAR AS PERMITTED UNDER ANY FEDERAL WAIVERS OR STATE PLAN AMEND-
39 MENTS REQUIRED FOR IMPLEMENTATION, THE COMPACT SHALL BE MANAGED BY A
40 PROGRAM MANAGEMENT ENTITY CONTRACTED TO AND SELECTED BY THE COMMISSIONER
41 BY A REQUEST FOR PROPOSALS OR A REQUEST FOR QUALIFICATIONS IN THIS
42 TITLE. SUCH ENTITY SHALL BE RESPONSIBLE FOR COORDINATING AND MANAGING
43 ALL ASPECTS OF THE COMPACT PROGRAM AND LIAISING WITH THE DEPARTMENT OF
44 HEALTH, INDIVIDUALS, INSURANCE COMPANIES AND OTHER ENTITIES TO ASSURE
45 APPROPRIATE COLLECTION AND VERIFICATION OF DATA, COLLECTION OF PAYMENTS
46 REQUIRED TO BE MADE TO THE STATE PURSUANT TO THIS TITLE, VERIFICATION OF
47 ASSESSMENTS AND CLAIMS TRACKING, AND OTHER SIMILAR ADMINISTRATIVE
48 RESPONSIBILITIES. THE PROGRAM MANAGEMENT ENTITY SHALL NOT BE AN INSUR-
49 ANCE ENTITY OFFERING AN INSURANCE PLAN UNDER THE COMPACT OR, UNLESS
50 REQUIRED BY FEDERAL LAW OR REGULATION, OR AS A CONDITION OF FEDERAL
51 APPROVAL OF ANY WAIVERS OR STATE PLAN AMENDMENTS NECESSARY TO IMPLEMENT
52 THE COMPACT, A STATE AGENCY OR A COVERED AUTHORITY AS SUCH TERMS ARE
53 DEFINED IN SECTION TWO-A OF THE STATE FINANCE LAW.

54 3. THE COMMISSIONER, AFTER CONSULTATION WITH THE DIRECTOR OF THE DIVI-
55 SION OF THE BUDGET, SHALL WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF
56 THIS SECTION, REPORT TO THE GOVERNOR AND THE LEGISLATURE WITH RECOMMEN-

1 DATIONS FOR THE IMPLEMENTATION OF THE SELECTION PROCESS. SUCH REPORT
2 SHALL DETAIL:

3 (A) THE CRITERIA TO BE USED IN SELECTING THE ENTITY;

4 (B) THE PROCESS TO BE USED IN THE SELECTION, INCLUDING THE ISSUANCE OF
5 REQUESTS FOR PROPOSALS, REQUESTS FOR QUALIFICATIONS OR OTHER MEANS;

6 (C) THE NAMES OF ANY ENTITIES ENGAGED TO DEVELOP CRITERIA AND ASSIST
7 IN THE SELECTION;

8 (D) TIMELINESS FOR THE SELECTION OF THE ENTITY AND ISSUANCE OF
9 CONTRACTS;

10 (E) MARKETING PLANS FOR THE PROGRAM;

11 (F) MEANS TO MAKE THE SELECTION PROCESS AS TRANSPARENT AS POSSIBLE;

12 (G) MEANS BY WHICH TRADE AND COMPETITIVE SECRETS SHALL BE PROTECTED;

13 (H) MEANS BY WHICH INDIVIDUAL IDENTIFYING INFORMATION RELATING TO ANY
14 PATIENT OR CONSUMER ACQUIRED BY THE PROGRAM SHALL BE KEPT CONFIDENTIAL;
15 AND

16 (I) ANY OTHER INFORMATION THE DIRECTOR OF THE DIVISION OF THE BUDGET
17 OR THE COMMISSIONER SHALL DEEM PERTINENT.

18 IN PREPARING THE REPORT, THE DIRECTOR OF THE DIVISION OF THE BUDGET
19 AND THE COMMISSIONER SHALL CONSULT WITH THE ADVISORY COMMITTEE AND THE
20 SUPERINTENDENT OF INSURANCE, AND SHALL ADDITIONALLY CONVENE AN ADVISORY
21 GROUP OF INSURERS AUTHORIZED TO WRITE LONG TERM CARE INSURANCE IN THIS
22 STATE TO PROVIDE COMMENTS ON THE REPORT, OR IF CONVENING SUCH GROUP
23 SHALL PROVE IMPRACTICABLE OR INAPPROPRIATE, SHALL SHARE THE REPORT WITH
24 SUCH INSURERS AND INCLUDE ANY WRITTEN COMMENTS RECEIVED FROM SUCH INSUR-
25 ERS AND THE ADVISORY COMMITTEE WHEN THE REPORT IS ISSUED TO THE GOVERNOR
26 AND THE LEGISLATURE.

27 4. AFTER CONSIDERATION OF ANY COMMENTS THEY MAY RECEIVE CONCERNING THE
28 REPORT, THE COMMISSIONER AND/OR THE DIRECTOR OF THE DIVISION OF THE
29 BUDGET, AS APPROPRIATE, SHALL PROMULGATE RULES AND REGULATIONS GOVERNING
30 THE SELECTION PROCESS FOR A PROGRAM MANAGEMENT ENTITY. SUCH RULES AND
31 REGULATIONS SHALL REFLECT THE RECOMMENDATIONS IN THE REPORT AND ANY
32 RECOMMENDATIONS RECEIVED BY THE COMMISSIONER AND THE DIRECTOR OF THE
33 DIVISION OF THE BUDGET. THE PROGRAM MANAGEMENT ENTITY SHALL BE SELECTED
34 THROUGH ISSUANCE OF A REQUEST FOR PROPOSALS OR IF APPROPRIATE AND
35 APPROVED BY THE DIRECTOR OF THE DIVISION OF THE BUDGET, BY ISSUANCE OF A
36 REQUEST FOR QUALIFICATIONS, AND SUCH REQUEST FOR PROPOSALS OR REQUEST
37 FOR QUALIFICATIONS SHALL INCORPORATE THE CRITERIA AND OTHER CONDITIONS
38 AGREED UPON AS A RESULT OF THE PROCESS REQUIRED IN THIS SUBDIVISION AND
39 IN SUBDIVISION THREE OF THIS SECTION.

40 S 266. PARTICIPATION AND PLEDGE. 1. AN INDIVIDUAL WHO MEETS THE
41 CRITERIA FOR BECOMING A PARTICIPANT SHALL BE ENROLLED IN THE COMPACT
42 PROGRAM. IN MEETING SUCH CRITERIA, THE INDIVIDUAL SHALL HAVE THE OPTION
43 AT THE TIME OF APPLICATION TO PLEDGE EITHER THE MAXIMUM PLEDGE AMOUNT OR
44 THE DOLLAR PLEDGE AMOUNT.

45 (A) AN INDIVIDUAL WHO ELECTS TO PLEDGE THE MAXIMUM PLEDGE AMOUNT SHALL
46 PAY OR HAVE PAID ON HIS OR HER BEHALF BY ANY PERSON OR ENTITY AN AMOUNT
47 FOR THE PURCHASE OF QUALIFIED LONG TERM CARE SERVICES THAT IS EQUAL TO
48 THIRTY-SIX MONTHS OF PAYMENT AT THE REGIONAL RATE FOR NURSING HOME
49 SERVICES IN THE REGION IN WHICH THE PARTICIPANT RESIDES AS OF THE DATE
50 THE INDIVIDUAL APPLIES TO BECOME A PARTICIPANT BY HAVING MET ALL OTHER
51 QUALIFICATIONS AND BY MAKING SUCH PLEDGE.

52 (B) AN INDIVIDUAL WHO ELECTS TO PLEDGE THE DOLLAR PLEDGE AMOUNT SHALL
53 PAY OR HAVE PAID ON HIS OR HER BEHALF BY ANY PERSON OR ENTITY AN AMOUNT
54 FOR THE PURCHASE OF QUALIFIED LONG TERM CARE SERVICES THAT IS EQUAL TO
55 FIFTY PERCENT OF A PARTICIPANT'S COUNTABLE ASSETS. SUCH INDIVIDUAL
56 SHALL SUBMIT: (I) A VERIFIED STATEMENT OF COUNTABLE ASSETS UNDER PENALTY

1 OF PERJURY LISTING ALL COUNTABLE CURRENT ASSETS HELD BY THE INDIVIDUAL
2 AT THE TIME OF APPLICATION AND ANY ASSET TRANSFERS FOR LESS THAN FULL
3 VALUE DURING THE THREE YEARS PRECEDING SUCH DATE OF APPLICATION, (II)
4 THE INDIVIDUAL'S THREE MOST RECENT YEARS OF STATE AND FEDERAL INCOME TAX
5 RETURNS AND (III) ADDITIONAL DOCUMENTATION AS THE PROGRAM MANAGEMENT
6 ENTITY, WITH THE APPROVAL OF THE COMMISSIONER UPON RECOMMENDATION OF THE
7 ADVISORY COMMITTEE, SHALL DEEM REASONABLE AND APPROPRIATE TO VERIFY
8 ASSETS, THE VALUES OF SUCH ASSETS AND THE VALIDITY OF THE PLEDGE AMOUNT.

9 (C) DOCUMENTATION CONCERNING THE PLEDGE AMOUNT, THE RESULTS OF THE
10 ASSESSMENT AND EVIDENCE OF A FULFILLED PLEDGE SHALL BE SUBMITTED TO THE
11 PROGRAM MANAGEMENT ENTITY IN A FORM AND MANNER PRESCRIBED BY THE COMMIS-
12 SIONER.

13 (D) THE FOREGOING PROVISIONS OF THIS SUBDIVISION TO THE CONTRARY
14 NOTWITHSTANDING, THE PLEDGE AMOUNT MAY BE ADJUSTED IN THE EVENT THAT AN
15 INDIVIDUAL IS SUBJECT TO EXTRAORDINARY CIRCUMSTANCES, AS THE COMMISSION-
16 ER SHALL DETERMINE BASED ON RECOMMENDATIONS OF THE ADVISORY COMMITTEE.

17 2. A PARTICIPANT WHO FULFILLS HIS OR HER PLEDGE SHALL BE DEEMED A
18 BENEFICIARY AND SHALL BE ELIGIBLE FOR THE COMPACT SUBSIDY. A PARTICIPANT
19 WHO FAILS TO FULFILL HIS OR HER PLEDGE SHALL NOT BE ELIGIBLE TO BECOME A
20 BENEFICIARY, BUT SHALL NOT SURRENDER ELIGIBILITY TO APPLY FOR MEDICAID
21 OR ELIGIBILITY TO APPLY FOR THE COMPACT SUBSIDY IF SUCH PARTICIPANT
22 SHALL LATER BECOME ELIGIBLE.

23 3. NOTWITHSTANDING ANY SIMILARITY IN ELIGIBILITY REQUIREMENTS OR
24 COMMONALITY IN THE DEFINITIONS OF ASSET, INCOME OR OTHER ITEMS, EXCEPT
25 AS OTHERWISE PROVIDED IN THIS TITLE, A PARTICIPANT OR BENEFICIARY, AS
26 THE CASE MAY BE, SHALL BE EXEMPT FROM THE RESOURCE TESTS, LIENS AND
27 OTHER REQUIREMENTS THAT WOULD OTHERWISE BE APPLICABLE TO PERSONS APPLY-
28 ING FOR MEDICAL ASSISTANCE FOR THE NEEDY.

29 4. THE PURCHASE OF QUALIFIED LONG TERM CARE SERVICES FOR THE PURPOSE
30 OF FULFILLING THE COMPACT PLEDGE SHALL NOT BE RESTRICTED TO THE PURCHASE
31 OF QUALIFIED LONG TERM CARE SERVICES IN THE STATE SO LONG AS THE INDI-
32 VIDUAL MEETS THE REQUIREMENTS OF THIS TITLE WITH RESPECT TO FULFILLING
33 THE PLEDGE REQUIRED UNDER THIS SECTION, PROVIDED HOWEVER THAT A COMPACT
34 BENEFICIARY MAY ONLY RECEIVE THE COMPACT SUBSIDY FOR SERVICES RECEIVED
35 WITHIN THIS STATE.

36 5. COUNTABLE PAYMENTS MADE FOR A QUALIFIED LONG TERM CARE SERVICE IN
37 FULFILLING A PLEDGE SHALL NOT BE GREATER THAN THE AMOUNT USUALLY AND
38 CUSTOMARILY CHARGED FOR SUCH SERVICE BY A PROVIDER TO A NON-MEDICAID
39 RECIPIENT AND SHALL INCLUDE REASONABLE AND NECESSARY EXPENSES PAID FOR
40 SUCH SERVICES, PROVIDED, HOWEVER THAT THE COMMISSIONER, ON RECOMMENDA-
41 TION OF THE ADVISORY COMMITTEE, MAY ESTABLISH CRITERIA FOR ASSURING THAT
42 A SERVICE IS PROPERLY PROVIDED AND MEETS APPROPRIATE STANDARDS OF QUALI-
43 TY AND COST. THE PROGRAM MANAGEMENT ENTITY SHALL BE AUTHORIZED TO
44 UTILIZE SUCH CRITERIA IN ESTABLISHING PARAMETERS FOR PROPER AND APPRO-
45 PRIATE PAYMENT FOR SERVICES AND ASSURANCES OF QUALITY.

46 S 267. BENEFITS OF PARTICIPATION. 1. A BENEFICIARY WHO FULFILLS THE
47 MAXIMUM PLEDGE AMOUNT OR THE DOLLAR PLEDGE AMOUNT SHALL BE ENTITLED TO
48 PRESERVE HIS OR HER RESOURCES AND SHALL BE ELIGIBLE TO RECEIVE THE
49 COMPACT SUBSIDY FOR SERVICES PROVIDED TO SUCH BENEFICIARY PURSUANT TO
50 THIS TITLE. SUCH BENEFICIARY SHALL NOT BE REQUIRED TO SUBMIT TO ANY
51 RESOURCE REQUIREMENTS OR LIMITATIONS, OR TO THE RECOVERY OF PAYMENTS
52 MADE BY THE STATE FROM THE ESTATES OF SUCH INDIVIDUALS, OR TO THE IMPO-
53 SITION OF LIENS ON THE HOMES OF PERSONS, SUCH AS THOSE WHICH ARE IMPOSED
54 ON BENEFICIARIES OF THE MEDICAID PROGRAM PURSUANT TO SECTION THREE
55 HUNDRED SIXTY-SIX OR SECTION THREE HUNDRED SIXTY-NINE OF THE SOCIAL
56 SERVICES LAW.

1 2. A BENEFICIARY SHALL BE ELIGIBLE TO RECEIVE THE COMPACT SUBSIDY OR
2 TO HAVE THE SUBSIDY PAID TO THE PROVIDER OF SERVICES FOR THE COSTS OF
3 QUALIFIED LONG TERM CARE SERVICES FROM ANY WILLING PROVIDER SELECTED BY
4 SUCH BENEFICIARY.

5 3. A BENEFICIARY SHALL BE ELIGIBLE TO RECEIVE SUCH QUALIFIED LONG TERM
6 CARE SERVICES AT A RATE CHARGED BY A PROVIDER OF SERVICES WHICH IS NO
7 GREATER THAN THE COMPACT RATE.

8 4. THE BENEFICIARY SHALL NOT BE RESPONSIBLE FOR PAYMENT FOR SUCH QUAL-
9 IFIED LONG TERM CARE SERVICES OF ANY AMOUNT GREATER THAN THE DIFFERENCE
10 BETWEEN THE COMPACT RATE AND THE COMPACT SUBSIDY.

11 5. A BENEFICIARY SHALL ANNUALLY REMIT A PARTICIPATION FEE FOR THE
12 COMPACT PROGRAM WHICH SHALL NOT EXCEED TWENTY-FIVE PERCENT OF SUCH BENE-
13 FICIARY'S COUNTABLE INCOME TO THE COMMISSIONER OR, IF SO DIRECTED BY THE
14 COMMISSIONER, TO THE PROGRAM MANAGEMENT ENTITY FOR TRANSMITTAL TO THE
15 COMMISSIONER. THE COMMISSIONER, AFTER CONSULTATION WITH THE ADVISORY
16 COMMITTEE, SHALL MAKE PROVISION TO ALLOW A BENEFICIARY TO MAKE PAYMENTS
17 ON A MONTHLY OR OTHER BASIS, AT THE OPTION OF THE BENEFICIARY.

18 6. A BENEFICIARY SHALL RETAIN A PROTECTED AMOUNT OF INCOME DURING THE
19 PERIOD IN WHICH THE BENEFICIARY IS RECEIVING THE COMPACT SUBSIDY, AS SET
20 FORTH IN SECTION TWO HUNDRED SIXTY-EIGHT OF THIS TITLE.

21 7. A PARTICIPANT WHO HAS BEEN DENIED LONG TERM CARE INSURANCE SHALL BE
22 ENTITLED TO ESTABLISH A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT AS
23 PROVIDED IN THIS TITLE, AND USE THE PROCEEDS TO PAY FOR ANY LONG TERM
24 CARE SERVICES NEEDS, SUBJECT TO THE REQUIREMENTS OF THIS TITLE AND
25 APPLICABLE PROVISIONS OF TAX LAW.

26 S 268. PROTECTED INCOME. 1. THE COMMISSIONER, AFTER CONSULTATION WITH
27 THE ADVISORY COMMITTEE, SHALL ESTABLISH PROVISIONS TO WAIVE ALL OR PART
28 OF THE PARTICIPATION FEE AND ALL OR PART OF THE REQUIREMENT THAT A BENE-
29 FICIARY PAY ANY DIFFERENCE BETWEEN THE COMPACT RATE AND THE COMPACT
30 SUBSIDY IF THE BENEFICIARY'S COUNTABLE INCOME IN ANY MONTH, AFTER
31 DEDUCTION OF THE PARTICIPATION FEE AND PAYMENT OF THE DIFFERENCE BETWEEN
32 THE COMPACT RATE AND THE COMPACT SUBSIDY AMOUNT WHICH THE BENEFICIARY IS
33 REQUIRED TO PAY FOR SERVICES, SHALL BE LESS THAN THE FOLLOWING PROTECTED
34 INCOME AMOUNTS:

35 (A) FOR AN UNMARRIED BENEFICIARY RECEIVING CARE IN AN INSTITUTIONAL
36 SETTING SUCH AS A NURSING HOME, ADULT HOME, ASSISTED LIVING FACILITY OR
37 OTHER SIMILAR FACILITY, AN AMOUNT NOT LESS THAN THE INSTITUTIONAL
38 PROTECTED AMOUNT;

39 (B) FOR AN UNMARRIED BENEFICIARY RECEIVING CARE AT HOME, AN AMOUNT NOT
40 LESS THAN THE MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE;

41 (C) FOR A MARRIED COUPLE OF WHOM ONE IS A BENEFICIARY RECEIVING CARE
42 IN AN INSTITUTIONAL SETTING SUCH AS A NURSING HOME, ADULT HOME, ASSISTED
43 LIVING FACILITY OR OTHER SIMILAR FACILITY, AN AMOUNT NOT LESS THAN THE
44 INSTITUTIONAL PROTECTED AMOUNT FOR THE BENEFICIARY AND AN AMOUNT NOT
45 LESS THAN THE MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE FOR THE SPOUSE
46 WHO IS NOT A BENEFICIARY;

47 (D) FOR A MARRIED COUPLE OF WHOM ONE IS A BENEFICIARY RECEIVING CARE
48 AT HOME, AN AMOUNT NOT LESS THAN TWICE THE MINIMUM MONTHLY MAINTENANCE
49 NEEDS ALLOWANCE;

50 (E) FOR A MARRIED COUPLE BOTH OF WHOM ARE BENEFICIARIES RECEIVING CARE
51 IN AN INSTITUTIONAL SETTING SUCH AS A NURSING HOME, ADULT HOME, ASSISTED
52 LIVING FACILITY OR OTHER SIMILAR FACILITY, AN AMOUNT NOT LESS THAN AN
53 INSTITUTIONAL PROTECTED AMOUNT FOR EACH BENEFICIARY; AND

54 (F) FOR A MARRIED COUPLE BOTH OF WHOM ARE BENEFICIARIES RECEIVING CARE
55 AT HOME, AN AMOUNT NOT LESS THAN TWICE THE MINIMUM MONTHLY MAINTENANCE
56 NEEDS ALLOWANCE.

1 2. THE COMMISSIONER SHALL ANNUALLY ADJUST SUCH INSTITUTIONAL PROTECTED
2 AMOUNT BY THE PERCENTAGE INCREASE OR DECREASE IN THE COST OF LIVING
3 INDEX, USING THE YEAR IN WHICH THIS TITLE SHALL HAVE BECOME LAW AS THE
4 BASE YEAR.

5 3. AS USED IN THIS SECTION, "MINIMUM MONTHLY MAINTENANCE NEEDS ALLOW-
6 ANCE" MEANS THE SAME AS SUCH TERM IS DEFINED IN PARAGRAPH (H) OF SUBDI-
7 VISION TWO OF SECTION THREE HUNDRED SIXTY-SIX-C OF THE SOCIAL SERVICES
8 LAW AND "INSTITUTIONAL PROTECTED AMOUNT" MEANS THE SUM OF ONE HUNDRED
9 DOLLARS, WHICH AMOUNT SHALL BE ADJUSTED BY THE COMMISSIONER ANNUALLY BY
10 THE SAME PERCENTAGE AS THE PERCENTAGE INCREASE IN THE FEDERAL CONSUMER
11 PRICE INDEX.

12 4. WHEN MAKING THE COMPUTATION TO DETERMINE IF A BENEFICIARY'S INCOME
13 WOULD FALL BELOW THE APPROPRIATE PROTECTED INCOME AMOUNT, THE COMMIS-
14 SIONER SHALL SUBTRACT FROM THE BENEFICIARY'S MONTHLY COUNTABLE INCOME
15 THE DIFFERENCE BETWEEN THE COMPACT RATE AND THE COMPACT SUBSIDY THAT THE
16 BENEFICIARY IS REQUIRED TO PAY, AND THEN THE PARTICIPATION FEE. IF THE
17 REMAINING COUNTABLE INCOME AFTER SUCH SUBTRACTION IS LESS THAN THE
18 PROTECTED AMOUNT APPROPRIATE TO SUCH BENEFICIARY, THE COMMISSIONER
19 SHALL, AFTER CONSULTATION WITH THE ADVISORY COMMITTEE, ESTABLISH
20 PROVISIONS FOR: (A) A REDUCTION IN PAYMENT FOR SERVICES BY THE BENEFICI-
21 ARY OF ANY DIFFERENCE BETWEEN THE COMPACT RATE AND THE COMPACT SUBSIDY,
22 (B) A REDUCTION IN THE AMOUNT OF THE PARTICIPATION FEE TO BE PAID BY THE
23 BENEFICIARY, AND (C) THE PERIOD OF TIME DURING WHICH REDUCTION OR
24 REDUCTIONS SHALL BE EFFECTIVE, IN ORDER TO ASSURE THAT THE BENEFICIARY
25 SHALL ALWAYS RETAIN THE PROTECTED AMOUNT OF INCOME.

26 5. ANY OTHER PROVISION OF THIS TITLE TO THE CONTRARY NOTWITHSTANDING,
27 THE COMMISSIONER MAY ADDITIONALLY, AFTER CONSULTATION WITH AND UPON
28 RECOMMENDATION OF THE ADVISORY COMMITTEE, ESTABLISH AS AN ADDITIONAL
29 BASIS FOR A REDUCTION OF THE PAYMENT FOR SERVICES BY THE BENEFICIARY OF
30 ANY DIFFERENCE BETWEEN THE COMPACT RATE AND THE COMPACT SUBSIDY AND OF
31 THE PARTICIPATION FEE TO BE PAID BY THE BENEFICIARY, A FINDING THAT A
32 BENEFICIARY LACKS THE RESOURCES AFTER PAYMENT OF NECESSARY EXPENSES TO
33 REMAIN IN HIS OR HER PLACE OF RESIDENCE AFTER PAYMENT OF SUCH PARTIC-
34 IPATION FEE AND/OR PAYMENT FOR SERVICES, IRRESPECTIVE OF WHETHER THE
35 BENEFICIARY'S COUNTABLE INCOME EXCEEDS THE PROTECTED INCOME AMOUNT. THE
36 ADVISORY COMMITTEE SHALL PROVIDE THE COMMISSIONER WITH A DEFINITION OF
37 NECESSARY EXPENSES AS USED IN THIS SECTION PRIOR TO THE COMMISSIONER
38 TAKING ANY ACTION AUTHORIZED BY THIS SUBDIVISION. INSOFAR AS PRACTICA-
39 BLE, SUCH DEFINITION SHALL BE QUANTIFIABLE, AND THE COMMISSIONER SHALL
40 ESTABLISH A FORMULA BY RULE AND REGULATION FOR DETERMINING NECESSARY
41 EXPENSES BASED ON SUCH DEFINITION AND FOR DETERMINING WHETHER A BENEFI-
42 CIARY LACKS THE RESOURCES AFTER PAYMENT OF SUCH NECESSARY EXPENSES TO
43 REMAIN IN HIS OR HER PLACE OF RESIDENCE.

44 S 269. IMPOSITION OF LIEN IN CERTAIN CASES. NOTHING CONTAINED IN THIS
45 TITLE SHALL PREVENT THE IMPOSITION OF A LIEN OR RECOVERY AGAINST THE
46 PROPERTY OF AN INDIVIDUAL ON ACCOUNT OF EXPENSES INCORRECTLY PAID UNDER
47 THE COMPACT SUBSIDY.

48 S 270. PROHIBITED ACTS. NO PERSON ENGAGED IN THE DEVELOPMENT, MARKET-
49 ING, ADVERTISING OR SALE OF ANY INSURANCE PLAN DESIGNED TO SATISFY THE
50 PLEDGE AMOUNT SHALL:

51 1. GIVE LEGAL ADVICE OR OTHERWISE ENGAGE IN THE PRACTICE OF LAW.

52 2. ASSUME, USE OR ADVERTISE THE TITLE OF LAWYER OR ATTORNEY AT LAW, OR
53 EQUIVALENT TERMS IN THE ENGLISH LANGUAGE OR ANY OTHER LANGUAGE, OR
54 REPRESENT OR ADVERTISE OTHER TITLES OR CREDENTIALS, INCLUDING BUT NOT
55 LIMITED TO "NOTARY PUBLIC", "ACCREDITED REPRESENTATIVE OF THE DEPARTMENT
56 OF HEALTH" OR "COMPACT CONSULTANT", THAT COULD CAUSE AN INDIVIDUAL TO

1 BELIEVE THAT THE PERSON POSSESSES SPECIAL PROFESSIONAL SKILLS OR IS
2 AUTHORIZED TO PROVIDE ADVICE ON MATTER RELATED TO THE COMPACT; PROVIDED
3 THAT A NOTARY PUBLIC APPOINTED AND COMMISSIONED BY THE SECRETARY OF
4 STATE MAY USE THE TITLE "NOTARY PUBLIC".

5 3. STATE OR IMPLY THAT THE PERSON CAN OR WILL OBTAIN SPECIAL FAVORS
6 FROM OR HAS SPECIAL INFLUENCE WITH THE DEPARTMENT OF HEALTH, THE ADMIN-
7 ISTRATIVE ENTITY OR ANY OTHER GOVERNMENTAL ENTITY.

8 4. DEMAND OR RETAIN ANY FEES OR COMPENSATION FOR SERVICES NOT
9 PERFORMED OR COSTS THAT ARE NOT ACTUALLY INCURRED.

10 5. ADVISE, DIRECT OR PERMIT A CUSTOMER TO ANSWER QUESTIONS ON A
11 GOVERNMENT DOCUMENT, OR IN A DISCUSSION WITH A GOVERNMENT OFFICIAL, IN A
12 SPECIFIC WAY WHERE SUCH PERSON KNOWS OR HAS REASONABLE CAUSE TO BELIEVE
13 THAT THE ANSWERS ARE FALSE OR MISLEADING.

14 6. DISCLOSE ANY INFORMATION TO, OR FILE ANY FORMS OR DOCUMENTS WITH
15 THE DEPARTMENT OF HEALTH, ANY OTHER STATE DEPARTMENT OR THE ADMINISTRA-
16 TIVE ENTITY WITHOUT THE KNOWLEDGE OR CONSENT OF THE CUSTOMER.

17 7. FAIL TO PROVIDE AN INDIVIDUAL WITH COPIES OF DOCUMENTS FILED WITH A
18 GOVERNMENTAL ENTITY OR REFUSE TO RETURN ORIGINAL DOCUMENTS SUPPLIED BY,
19 PREPARED ON BEHALF OF OR PAID FOR BY THE INDIVIDUAL, UPON THE REQUEST OF
20 THE INDIVIDUAL. ORIGINAL DOCUMENTS MUST BE RETURNED PROMPTLY UPON
21 REQUEST, EVEN IF THERE IS A FEE DISPUTE WITH THE INDIVIDUAL.

22 8. MAKE ANY MISREPRESENTATION OR FALSE STATEMENT, DIRECTLY OR INDI-
23 RECTLY.

24 9. MAKE ANY GUARANTEE OR PROMISE TO AN INDIVIDUAL, UNLESS THERE IS A
25 BASIS IN FACT FOR SUCH REPRESENTATION, AND THE GUARANTEE OR PROMISE IS
26 IN WRITING.

27 S 271. FRAUDULENT PRACTICES. 1. A PARTICIPANT WHO KNOWINGLY ENGAGES
28 IN FRAUDULENT PRACTICES WITH RESPECT TO FULFILLING OR CLAIMING TO HAVE
29 FULFILLED A PLEDGE AMOUNT SHALL BE DISQUALIFIED FROM THE COMPACT
30 PROGRAM. SUCH INDIVIDUAL SHALL NOT BE DEEMED TO BE A PARTICIPANT OR
31 BENEFICIARY OR TO HAVE FULFILLED HIS OR HER PLEDGE AMOUNT, BUT SHALL NOT
32 SURRENDER ELIGIBILITY TO APPLY FOR MEDICAID.

33 2. ANY INDIVIDUAL WHO KNOWINGLY MAKES A FALSE STATEMENT OR REPRESEN-
34 TATION, OR WHO BY DELIBERATE CONCEALMENT OF ANY MATERIAL FACT, OR BY
35 IMPERSONATION OR OTHER FRAUDULENT DEVICE, OBTAINS OR ATTEMPTS TO OBTAIN
36 OR AIDS OR ABETS ANY INDIVIDUAL TO QUALIFY TO BECOME A PARTICIPANT OR A
37 BENEFICIARY UNDER THE COMPACT PROGRAM WHEN SUCH INDIVIDUAL IS NOT OTHER-
38 WISE ENTITLED TO BECOME A PARTICIPANT OR A BENEFICIARY SHALL BE GUILTY
39 OF A CLASS A MISDEMEANOR, UNLESS SUCH ACT CONSTITUTES A VIOLATION OF A
40 PROVISION OF THE PENAL LAW, IN WHICH CASE SUCH PERSON SHALL BE PUNISHED
41 IN ACCORDANCE WITH THE PENALTIES FIXED BY SUCH PROVISION.

42 3. ANY INDIVIDUAL WHO, WITH INTENT TO DEFRAUD, PRESENTS FOR ALLOWANCE
43 OR PAYMENT ANY FALSE OR FRAUDULENT CLAIM FOR FURNISHING SERVICES OR
44 MERCHANDISE, OR WHO KNOWINGLY SUBMITS FALSE INFORMATION FOR THE PURPOSE
45 OF OBTAINING GREATER COMPENSATION THAN THAT TO WHICH SUCH INDIVIDUAL IS
46 LEGALLY ENTITLED FOR FURNISHING SERVICES OR MERCHANDISE, OR WHO KNOWING-
47 LY SUBMITS FALSE INFORMATION FOR THE PURPOSE OF OBTAINING AUTHORIZATION
48 FOR FURNISHING SERVICES OR MERCHANDISE UNDER THIS TITLE, SHALL BE GUILTY
49 OF A CLASS A MISDEMEANOR, UNLESS SUCH ACT CONSTITUTES A VIOLATION OF A
50 PROVISION OF THE PENAL LAW, IN WHICH CASE HE OR SHE SHALL BE PUNISHED IN
51 ACCORDANCE WITH THE PENALTIES FIXED BY SUCH PROVISION. SUCH INDIVIDUAL
52 SHALL NOT BE PERMITTED TO PROVIDE SERVICES OR MERCHANDISE TO A PARTIC-
53 IPANT, A BENEFICIARY OR TO ANOTHER INDIVIDUAL OR ENTITY PROVIDING
54 SERVICES UNDER THE COMPACT PROGRAM FOR A PERIOD OF FIVE YEARS.

1 4. NOTHING CONTAINED IN THIS TITLE SHALL PREVENT THE IMPOSITION OF A
2 LIEN OR RECOVERY AGAINST THE PROPERTY OF AN INDIVIDUAL WHO HAS COMMITTED
3 AN ACT OR ACTS IN VIOLATION OF THIS SECTION.

4 S 271-A. PAYMENTS AND DEFAULTS. 1. PAYMENTS TO SERVICE PROVIDERS FOR
5 SERVICES TO COMPACT PARTICIPANTS SHALL BE MADE BY OR ON BEHALF OF
6 PARTICIPANTS OR A PERSON OR ENTITY ACTING ON BEHALF OF THE PARTICIPANT.

7 2. PAYMENTS TO SERVICE PROVIDERS FOR SERVICES PROVIDED TO COMPACT
8 BENEFICIARIES SHALL BE MADE AS FOLLOWS: THE COMPACT SUBSIDY SHALL BE
9 PAID TO THE SERVICE PROVIDER BY THE PROGRAM MANAGEMENT ENTITY, AND THE
10 BENEFICIARY OR A PERSON OR ENTITY ACTING ON BEHALF OF THE BENEFICIARY
11 SHALL BE RESPONSIBLE FOR PAYMENT OF ANY DIFFERENCE BETWEEN THE COMPACT
12 RATE AND THE COMPACT SUBSIDY.

13 3. A BENEFICIARY WHO KNOWINGLY FAILS TO PAY THE DIFFERENCE BETWEEN THE
14 COMPACT RATE AND THE COMPACT SUBSIDY AS REQUIRED IN THIS TITLE, UNLESS
15 SUCH BENEFICIARY IS EXCUSED PURSUANT TO THE HARDSHIP PROVISIONS OF THIS
16 TITLE, SHALL BE LIABLE TO THE SERVICE PROVIDER, WHO MAY EXERCISE ANY AND
17 ALL APPROPRIATE REMEDIES FOR COLLECTION OF THE DEBT.

18 4. A PARTICIPANT WHO KNOWINGLY DEFAULTS ON PAYMENT OF THE PLEDGE, OR A
19 BENEFICIARY WHO KNOWINGLY DEFAULTS ON PAYMENT OF THE DIFFERENCE BETWEEN
20 THE COMPACT RATE AND THE COMPACT SUBSIDY, AND WHO IS THEREFORE NO LONGER
21 ENROLLED IN THE PROGRAM, SHALL NOT BE ELIGIBLE TO RECEIVE ANY PROTECTION
22 OF ASSETS OR INCOME OTHERWISE AFFORDED TO PARTICIPANTS AND BENEFICIARIES
23 BY VIRTUE OF ENROLLMENT IN THE PROGRAM. NOTHING CONTAINED IN THIS TITLE
24 SHALL BE DEEMED TO SHIELD OR OTHERWISE EXCUSE A BENEFICIARY OR A PARTIC-
25 IPANT FROM PAYMENT OF A DEBT LAWFULLY INCURRED TO A SERVICE PROVIDER.

26 5. UPON RECOMMENDATION OF THE ADVISORY COMMITTEE, THE COMMISSIONER MAY
27 ESTABLISH RULES, INCLUDING REQUIREMENTS FOR WRITTEN AGREEMENTS, GOVERN-
28 ING THE PAYMENT AND COLLECTION OF DEBT BY PARTICIPANTS AND BENEFICIARIES
29 TO SERVICE PROVIDERS AS WELL AS NOTIFICATION GUIDELINES TO THE BENEFICI-
30 ARY, OR A PERSON OR ENTITY ACTING ON BEHALF OF THE BENEFICIARY TO ENSURE
31 THAT A PAYMENT THAT IS MISSED IN ERROR CAN BE CORRECTED WITHOUT PUNISH-
32 MENT TO THE BENEFICIARY.

33 S 272. APPEALS. 1. ANY PERSON OR AN INDIVIDUAL AUTHORIZED TO ACT ON
34 BEHALF OF ANY SUCH PERSON MAY APPEAL TO THE COMMISSIONER FROM DECISIONS
35 OF THE PROGRAM MANAGEMENT ENTITY UPON GROUNDS SPECIFIED IN THIS SECTION.
36 ANY APPEAL PURSUANT TO THIS SECTION SHALL BE REQUESTED WITHIN SIXTY DAYS
37 AFTER THE DATE OF THE ACTION OR FAILURE TO ACT COMPLAINED OF.

38 2. THE GROUNDS FOR SUCH APPEALS SHALL BE SPECIFIED IN REGULATIONS OF
39 THE DEPARTMENT OF HEALTH, AND SHALL INCLUDE BUT NOT BE LIMITED TO,
40 DENIAL OF AN APPLICATION TO BECOME A PARTICIPANT, FAILURE TO ACT UPON AN
41 APPLICATION TO BECOME A PARTICIPANT, FAILURE OF A PARTICIPANT TO BE
42 DEEMED ELIGIBLE FOR THE COMPACT SUBSIDY WITHIN THIRTY DAYS OF FILING
43 INFORMATION ESTABLISHING THAT SUCH PARTICIPANT HAS MET THE REQUIREMENTS
44 OF BECOMING A BENEFICIARY, AND ANY OTHER PROVISION OF THE COMPACT
45 PROGRAM. DECISIONS OF THE COMMISSIONER PURSUANT TO THIS SECTION SHALL BE
46 BINDING UPON THE PROGRAM MANAGEMENT ENTITY. SUCH GROUNDS FOR APPEAL
47 SHALL NOT INCLUDE DENIALS FOR ISSUES AND CIRCUMSTANCES RELATED TO THE
48 LANGUAGE, PROCESSING OR APPROVAL OF COVERAGE UNDER A LONG TERM CARE
49 INSURANCE POLICY WHICH ARE OTHERWISE THE SUBJECT OF EXTERNAL APPEALS OF
50 ADVERSE DETERMINATIONS OF HEALTH CARE PLANS PURSUANT TO SECTIONS TWO
51 HUNDRED ONE, THREE HUNDRED ONE, ONE THOUSAND ONE HUNDRED NINE, THREE
52 THOUSAND TWO HUNDRED ONE, THREE THOUSAND TWO HUNDRED SIXTEEN, THREE
53 THOUSAND TWO HUNDRED SEVENTEEN, THREE THOUSAND TWO HUNDRED SEVENTEEN-A,
54 THREE THOUSAND TWO HUNDRED TWENTY-ONE, FOUR THOUSAND TWO HUNDRED THIR-
55 TY-FIVE, FOUR THOUSAND THREE HUNDRED THREE, FOUR THOUSAND THREE HUNDRED
56 FOUR, FOUR THOUSAND THREE HUNDRED FIVE, FOUR THOUSAND THREE HUNDRED

1 TWENTY-ONE, FOUR THOUSAND THREE HUNDRED TWENTY-TWO AND FOUR THOUSAND
2 THREE HUNDRED TWENTY-FOUR, ARTICLE FORTY-SEVEN AND ARTICLE FORTY-NINE OF
3 THE INSURANCE LAW AND CHAPTER FIVE HUNDRED EIGHTY-SIX OF THE LAWS OF
4 NINETEEN HUNDRED NINETY-EIGHT.

5 3. ANY AGGRIEVED PARTY TO AN APPEAL, OTHER THAN THE PROGRAM MANAGEMENT
6 ENTITY, MAY APPLY FOR REVIEW AS PROVIDED IN ARTICLE SEVENTY-EIGHT OF THE
7 CIVIL PRACTICE LAW AND RULES.

8 S 273. TREATMENT OF ASSETS. 1. A PARTICIPANT'S HOMESTEAD SHALL NOT BE
9 DEEMED A COUNTABLE ASSET IF THE HOMESTEAD WAS PURCHASED MORE THAN THREE
10 YEARS PRIOR TO THE DATE THAT AN INDIVIDUAL APPLIES TO BECOME A PARTIC-
11 IPANT IN THE COMPACT PROGRAM. A HOMESTEAD PURCHASED WITHIN THREE YEARS
12 OF SUCH DATE SHALL BE DEEMED A COUNTABLE ASSET, UNLESS SUCH HOMESTEAD IS
13 A REPLACEMENT FOR A HOMESTEAD SOLD WITHIN ONE YEAR PRIOR TO THE PURCHASE
14 DATE, IN WHICH CASE AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE SALE
15 PRICE OF THE OLD HOMESTEAD AND THE PURCHASE PRICE OF THE NEW HOMESTEAD
16 SHALL BE DEEMED A COUNTABLE ASSET. AS USED IN THIS SECTION, "HOMESTEAD"
17 MEANS THE PRIMARY RESIDENCE OCCUPIED BY A BENEFICIARY OR PARTICIPANT
18 AND/OR MEMBERS OF HIS OR HER FAMILY. FAMILY MEMBERS MAY INCLUDE THE
19 BENEFICIARY'S OR PARTICIPANT'S SPOUSE, MINOR CHILDREN, CERTIFIED BLIND
20 OR CERTIFIED DISABLED CHILDREN, A CARETAKER CHILD, AND OTHER DEPENDENT
21 RELATIVES. HOMESTEAD SHALL BE DEEMED TO MEAN AND INCLUDE THE HOME, LAND
22 AND INTEGRAL PARTS SUCH AS GARAGES AND OUTBUILDINGS, AND MAY BE A CONDO-
23 MINUM, COOPERATIVE APARTMENT OR MANUFACTURED HOME. HOMESTEAD SHALL NOT
24 BE DEEMED TO MEAN AND INCLUDE VACATION HOMES, SUMMER HOMES OR OTHER
25 PREMISES NOT USED AS A PRIMARY RESIDENCE.

26 2. ANY OTHER PROVISION OF ANY OTHER LAW OR OF THIS TITLE TO THE
27 CONTRARY NOTWITHSTANDING, THE COMMISSIONER, ACTING ON RECOMMENDATION OF
28 THE ADVISORY COMMITTEE, MAY EXEMPT CERTAIN INCOME AND RESOURCES OF AN
29 INDIVIDUAL AND OF THE INDIVIDUAL'S SPOUSE FROM INCLUSION AS A COUNTABLE
30 ASSET.

31 3. (A) WITH RESPECT TO ANNUITIES, (I) THE PRINCIPAL AMOUNT OF ANY
32 ANNUITY SHALL BE DEEMED A COUNTABLE ASSET IF SUCH ANNUITY IN PERMANENT
33 PAYOUT STATUS WAS PURCHASED WITHIN THREE YEARS OF THE DATE AN INDIVIDUAL
34 APPLIES TO BECOME A PARTICIPANT, PROVIDED HOWEVER THAT ANY PAYOUT
35 AMOUNTS SHALL NOT BE TREATED AS INCOME FOR PURPOSES OF THE INCOME CALCU-
36 LATION; (II) THE PRINCIPAL AMOUNT OF ANY ANNUITY SHALL NOT BE DEEMED A
37 COUNTABLE ASSET IF A LEVEL PAYMENT SCHEDULE HAS BEEN IN FORCE FOR THREE
38 YEARS OR MORE PRIOR TO THE DATE AN INDIVIDUAL APPLIES TO BECOME A
39 PARTICIPANT, AND NEITHER THE INDIVIDUAL NOR A PERSON ACTING ON SUCH
40 INDIVIDUAL'S BEHALF HAS THE ABILITY TO WITHDRAW AMOUNTS IN EXCESS OF
41 SCHEDULED PAYMENTS, PROVIDED HOWEVER THAT IN SUCH CASE, ANY PAYOUT
42 AMOUNTS SHALL BE COUNTED AS INCOME FOR PURPOSES OF THE INCOME CALCU-
43 LATION; AND (III) AN ANNUITY NOT IN PERMANENT PAYOUT STATUS FOR THREE
44 YEARS PRIOR TO THE DATE AN INDIVIDUAL APPLIES TO BECOME A PARTICIPANT IN
45 THE COMPACT PROGRAM SHALL BE DEEMED A COUNTABLE ASSET.

46 (B) THE VALUE OF AN ASSET TRANSFERRED INTO AN IRREVOCABLE TRUST FOR
47 LESS THAN FULL CONSIDERATION WITHIN THREE YEARS PRIOR TO THE DATE OF
48 APPLICATION TO THE COMPACT PROGRAM SHALL BE DEEMED A COUNTABLE ASSET.

49 (C) PRE-PAID FUNERALS PURCHASED FOR ONESELF, A SPOUSE OR FOR CHILDREN
50 WITH DISABILITIES SHALL NOT BE INCLUDED AS A COUNTABLE ASSET, IF MADE
51 PRIOR TO THE DATE ON WHICH THE PARTICIPANT FULFILLS THE PLEDGE AMOUNT.

52 (D) THE VALUE OF ANY DEBTS, INCLUDING BUT NOT LIMITED TO OUTSTANDING
53 DEBT ON CREDIT CARDS, AUTO PAYMENTS, MONTHLY MORTGAGE PAYMENTS, HOME
54 EQUITY LOANS, REVERSE MORTGAGES AND ANY OTHER SUCH SIMILAR DEBT INSTRU-
55 MENTS SHALL BE DEDUCTED WHEN CALCULATING THE TOTAL VALUE OF COUNTABLE
56 ASSETS.

1 (E) THE PRINCIPAL AMOUNT OF A MORTGAGE ON A HOMESTEAD SHALL NOT BE
2 DEDUCTED IF THE HOMESTEAD IS NOT DEEMED A COUNTABLE ASSET, PROVIDED
3 HOWEVER THAT PAYMENTS MADE TO REDUCE OR ELIMINATE ANY SUCH MORTGAGE
4 SHALL BE DEDUCTED WHEN CALCULATING THE TOTAL VALUE OF COUNTABLE ASSETS.
5 IF THE HOMESTEAD IS DEEMED A COUNTABLE ASSET, THE PRINCIPAL AMOUNT OF
6 THE MORTGAGE SHALL BE DEDUCTED WHEN CALCULATING THE TOTAL VALUE OF
7 COUNTABLE ASSETS.

8 (F) IN ADDITION TO THE FOREGOING, THE FOLLOWING SHALL NOT BE CONSID-
9 ERED AS INCOME OR ASSETS:

10 (I) ANY GIFT OR GIFTS MADE BY AN INDIVIDUAL OR AN INDIVIDUAL'S SPOUSE
11 THAT TOTAL LESS THAN TWELVE THOUSAND DOLLARS IN ANY CALENDAR YEAR. THE
12 COMMISSIONER SHALL ANNUALLY ADJUST SUCH AMOUNT BY THE SAME PERCENTAGE AS
13 THE PERCENTAGE INCREASE IN THE FEDERAL CONSUMER PRICE INDEX;

14 (II) EXPENDITURES TO AN EDUCATIONAL INSTITUTION OR MEDICAL FACILITY ON
15 BEHALF OF A SPOUSE OR CHILD, PROVIDED HOWEVER THAT THESE SHALL BE
16 REASONABLE EXPENDITURES FOR THE PURPOSE OF MEDICAL TREATMENT OR EDUCA-
17 TION;

18 (III) GIFTS THAT QUALIFY AS A CHARITABLE DEDUCTION ON THE INDIVIDUAL'S
19 FEDERAL INCOME TAX RETURN; AND

20 (IV) THE AMOUNT RECEIVED FROM A REVERSE MORTGAGE IF EXPENDED WITHIN
21 THIRTY DAYS OF THE TIME IN WHICH RECEIVED. AN AMOUNT FROM A REVERSE
22 MORTGAGE THAT IS HELD FOR LONGER THAN SUCH THIRTY DAY PERIOD SHALL BE
23 CONSIDERED AS COUNTABLE INCOME, UNLESS USED FOR THE PURCHASE OF LONG
24 TERM CARE SERVICES AS DEFINED IN THIS TITLE.

25 THE COMMISSIONER, AFTER CONSULTING WITH THE ADVISORY COMMITTEE, SHALL
26 ESTABLISH CRITERIA TO DETERMINE WHETHER EXPENDITURES AND GIFTS MADE
27 PURSUANT TO THIS SUBDIVISION ARE DISALLOWABLE TRANSACTIONS.

28 S 274. SPECIAL PROVISIONS REGARDING SPOUSES. 1. THE REQUIREMENTS OF
29 THIS TITLE CONCERNING DISCLOSURE OF ASSETS SHALL BE DEEMED TO MEAN AND
30 INCLUDE DISCLOSURE OF ALL ASSETS, INCLUDING ALL ASSETS OF SPOUSES, WITH-
31 OUT DISTINCTION AS TO OWNERSHIP BY OR BETWEEN SPOUSES. NOTWITHSTANDING
32 THE FOREGOING, IF THERE IS A PRE- OR POST-NUPTIAL AGREEMENT WHICH HAS
33 BEEN EFFECTIVE THREE OR MORE YEARS PRIOR TO THE DATE OF ENROLLMENT IN
34 THE COMPACT PROGRAM, THE VALUE OF THE ASSETS OF THE SPOUSE NOT ENROLLED
35 IN THE COMPACT SHALL NOT BE DEEMED A COUNTABLE ASSET AND SHALL NOT
36 REQUIRE DISCLOSURE TO THE COMMISSIONER OR PROGRAM MANAGEMENT ENTITY.

37 2. IF ONE SPOUSE ENROLLS IN THE COMPACT PROGRAM AND THE OTHER DOES
38 NOT, AND

39 (A) THE ENROLLING SPOUSE BECOMES A BENEFICIARY AFTER MEETING THE MAXI-
40 MUM PLEDGE AMOUNT, THE COUPLE'S ASSETS SHALL BE EXEMPT FROM CONSIDER-
41 ATION AS A COUNTABLE ASSET.

42 (B) THE ENROLLING SPOUSE BECOMES A PARTICIPANT PLEDGING A DOLLAR
43 PLEDGE AMOUNT, ONE-HALF OF THE TOTAL VALUE OF THE SPOUSES' ASSETS SHALL
44 BE EXCLUDED FROM CONSIDERATION AS A COUNTABLE ASSET BEFORE ANY OTHER
45 CALCULATIONS AS TO THE AMOUNT REQUIRED TO MEET A DOLLAR PLEDGE AMOUNT.

46 (C) THE NON-ENROLLING SPOUSE SUBSEQUENTLY APPLIES TO BECOME A PARTIC-
47 IPANT IN THE COMPACT, SUCH INDIVIDUAL MAY PLEDGE EITHER THE MAXIMUM
48 PLEDGE AMOUNT OR THE DOLLAR PLEDGE AMOUNT. FOR PURPOSES OF DETERMINING
49 THE DOLLAR PLEDGE AMOUNT IN SUCH CASE, THE COUNTABLE ASSETS OF SUCH
50 INDIVIDUAL SHALL MEAN, BEFORE ANY OTHER CALCULATIONS AS TO THE AMOUNT
51 REQUIRED TO MEET A DOLLAR PLEDGE AMOUNT, AN AMOUNT EQUAL TO FIFTY
52 PERCENT OF THE REMAINING ASSETS OF THE SPOUSES LESS ANY AMOUNT STILL
53 REQUIRED TO MEET THE PLEDGE AMOUNT OF THE INITIAL ENROLLING SPOUSE.

54 3. A TRANSFER OR BEQUEST OF A PROTECTED AMOUNT SHALL NOT BE DEEMED A
55 COUNTABLE ASSET OF THE NON-ENROLLING SPOUSE, NOR SHALL INCOME OR GROWTH
56 ON SUCH INCOME BE COUNTED IF SUCH INCOME WAS PART OF A PROTECTED AMOUNT

1 AND HAS BEEN KEPT IN A SEPARATE ACCOUNT. FOR PURPOSES OF THIS SECTION, A
2 PROTECTED AMOUNT IS THE AMOUNT REMAINING AFTER A PLEDGE HAS BEEN MET.

3 4. A SURVIVING SPOUSE WHO APPLIES TO BECOME A PARTICIPANT, OR WHO IS A
4 PARTICIPANT OR BENEFICIARY IN THE COMPACT PROGRAM SHALL NOT BE REQUIRED
5 TO EXERCISE A RIGHT OF ELECTION UNDER SECTION 5-1.1-A OF THE ESTATES,
6 POWERS AND TRUSTS LAW.

7 S 275. QUALIFIED LONG TERM CARE SAVINGS ACCOUNT. AN INDIVIDUAL WHO
8 HAS BEEN REFUSED COVERAGE FOR LONG TERM CARE INSURANCE MAY ESTABLISH A
9 QUALIFIED LONG TERM CARE SAVINGS ACCOUNT, SUBJECT TO THE REQUIREMENTS OF
10 THIS SECTION. SUCH INDIVIDUAL SHALL BE THE OWNER OF SUCH ACCOUNT.

11 1. A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT IS A SAVINGS ACCOUNT
12 APPROVED BY THE COMMISSIONER FOR AN INDIVIDUAL WHO HAS BEEN SUBJECT TO
13 DENIAL OF LONG TERM CARE INSURANCE COVERAGE. AS USED IN THIS TITLE,
14 "DENIAL OF LONG TERM CARE INSURANCE COVERAGE" SHALL MEAN THAT:

15 (A) THE INDIVIDUAL HAS APPLIED FOR AND BEEN DENIED COVERAGE BY AT
16 LEAST TWO LONG TERM CARE INSURANCE PLANS WHICH HAVE BEEN APPROVED BY THE
17 SUPERINTENDENT OF INSURANCE FOR OPERATION IN THIS STATE, OR

18 (B) THE INDIVIDUAL HAS BEEN CERTIFIED BY A PHYSICIAN TO BE UNINSURABLE
19 FOR LONG TERM CARE INSURANCE COVERAGE BY REASON OF HAVING A CONDITION,
20 DISEASE OR DISABILITY THAT PRECLUDES ANY CONSIDERATION FOR ISSUANCE OF
21 LONG TERM CARE INSURANCE COVERAGE.

22 THE COMMISSIONER, AFTER CONSULTATION WITH AND UPON RECOMMENDATION BY
23 THE ADVISORY COMMITTEE, SHALL ESTABLISH AND MAINTAIN A LIST OF SUCH
24 DISQUALIFYING CONDITIONS, DISEASES AND DISABILITIES. AN INDIVIDUAL SHALL
25 PROVIDE PROOF OF DENIAL OF LONG TERM CARE INSURANCE COVERAGE OR SUCH
26 CERTIFICATION FROM A PHYSICIAN IN A FORM AND MANNER SATISFACTORY TO THE
27 COMMISSIONER.

28 2. THE OWNER OF SUCH ACCOUNT MAY ANNUALLY CONTRIBUTE OR HAVE CONTRIB-
29 UTED ON HIS OR HER BEHALF AN AMOUNT OF UP TO TEN THOUSAND DOLLARS TO A
30 QUALIFIED LONG TERM CARE SAVINGS ACCOUNT. PURSUANT TO SECTION
31 TWENTY-EIGHT-A OF THE TAX LAW, SUCH AMOUNT SHALL BE ANNUALLY INCREASED
32 BY THE COMMISSIONER OF TAXATION AND FINANCE BY THE SAME PERCENTAGE AS
33 THE PERCENTAGE INCREASE IN THE FEDERAL CONSUMER PRICE INDEX.

34 3. ANY INDIVIDUAL WHO CONTRIBUTES TO A QUALIFIED LONG TERM CARE
35 SAVINGS ACCOUNT, IRRESPECTIVE OF WHETHER SUCH INDIVIDUAL IS THE OWNER OF
36 SUCH ACCOUNT, SHALL BE ELIGIBLE FOR THE LONG-TERM CARE SAVINGS CREDIT
37 PURSUANT TO SECTION SIX HUNDRED SIX OF THE TAX LAW.

38 4. THE PROCEEDS OF A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT MAY BE
39 USED TO PAY FOR ANY LONG TERM CARE SERVICES NEEDS PERMITTED PURSUANT TO
40 THIS TITLE IN FULFILLMENT OF A PLEDGE BY THE OWNER OF SUCH ACCOUNT.
41 DISTRIBUTIONS FROM THE QUALIFIED LONG TERM CARE SAVINGS ACCOUNT TO PAY
42 FOR SERVICES OR ITEMS NOT PERMITTED PURSUANT TO THIS TITLE SHALL BE
43 SUBJECT TO A PENALTY OF TEN PERCENT OF EVERY DOLLAR SO EXPENDED DURING
44 THE LIFETIME OF THE OWNER OF SUCH ACCOUNT, IRRESPECTIVE OF WHETHER SUCH
45 OWNER IS A PARTICIPANT OR BENEFICIARY. SUCH PENALTY SHALL BE LEVIED
46 ONLY AGAINST THE OWNER OF SUCH ACCOUNT.

47 5. ANY OTHER PROVISION OF LAW OR OF THIS TITLE TO THE CONTRARY
48 NOTWITHSTANDING, THE AMOUNTS IN A QUALIFIED LONG TERM CARE SAVINGS
49 ACCOUNT SHALL NOT BE DEEMED A COUNTABLE ASSET PURSUANT TO THIS TITLE OF
50 THE OWNER OF SUCH ACCOUNT.

51 6. THE COMMISSIONER, AFTER CONSULTATION WITH THE ADVISORY COMMITTEE,
52 SHALL ESTABLISH APPROPRIATE RULES AND QUALIFICATIONS FOR QUALIFIED LONG
53 TERM CARE SAVINGS ACCOUNTS, INCLUDING BUT NOT LIMITED TO ELIGIBILITY AND
54 APPROVAL, USE OF PROCEEDS, THE MANNER OF PROOF OF DENIAL OF LONG TERM
55 CARE INSURANCE COVERAGE AND THE MEANS BY WHICH THE OWNER OF SUCH ACCOUNT

1 SHALL PLEDGE TO USE THE PROCEEDS OF A QUALIFIED LONG TERM CARE SAVINGS
2 ACCOUNT IN FULFILLMENT OF A PLEDGE.

3 7. ANY OTHER PROVISION OF LAW OR OF THIS TITLE TO THE CONTRARY
4 NOTWITHSTANDING, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IF THE
5 DISTRIBUTION FROM THE ACCOUNT IS MADE AFTER THE DEATH OF THE OWNER OF
6 SUCH ACCOUNT, PROVIDED HOWEVER THAT:

7 (A) IF THE SURVIVING SPOUSE OF THE OWNER OF SUCH ACCOUNT OR A CHRON-
8 ICALLY ILL INDIVIDUAL ACQUIRES SUCH OWNER'S INTEREST IN SUCH ACCOUNT BY
9 REASON OF BEING THE DESIGNATED BENEFICIARY OF SUCH ACCOUNT AT THE DEATH
10 OF SUCH OWNER OF SUCH ACCOUNT, SUCH QUALIFIED LONG TERM CARE SAVINGS
11 ACCOUNT SHALL BE TREATED AS IF THE SPOUSE OR SUCH CHRONICALLY ILL INDI-
12 VIDUAL WERE THE OWNER OF SUCH ACCOUNT;

13 (B) IN A CASE IN WHICH, UPON THE DEATH OF THE OWNER OF SUCH ACCOUNT, A
14 PERSON WHO IS NOT THE SPOUSE OF THE BENEFICIARY OR WHO IS NOT CHRON-
15 ICALLY ILL ACQUIRES THE INTEREST OF THE OWNER OF SUCH ACCOUNT IN A QUAL-
16 IFIED LONG TERM CARE SAVINGS ACCOUNT, SUCH ACCOUNT SHALL CEASE TO BE A
17 QUALIFIED LONG TERM CARE SAVINGS ACCOUNT AS OF THE DATE OF THE DEATH OF
18 THE OWNER OF SUCH ACCOUNT, AND

19 (I) IF SUCH PERSON IS NOT THE ESTATE OF SUCH BENEFICIARY, AN AMOUNT
20 EQUAL TO THE FAIR MARKET VALUE OF THE ASSETS IN SUCH ACCOUNT ON SUCH
21 DATE SHALL BE INCLUDIBLE IN SUCH PERSON'S GROSS INCOME FOR THE TAXABLE
22 YEAR WHICH INCLUDES SUCH DATE, PROVIDED HOWEVER THAT SUCH INCLUDIBLE
23 AMOUNT SHALL BE REDUCED BY DISTRIBUTIONS TO PAY FOR LONG TERM CARE
24 SERVICES PERMITTED PURSUANT TO THIS TITLE WHICH WERE INCURRED BY THE
25 DECEDENT BEFORE THE DATE OF THE DECEDENT'S DEATH AND PAID BY SUCH PERSON
26 WITHIN ONE YEAR AFTER SUCH DATE, OR

27 (II) IF SUCH PERSON IS THE ESTATE OF SUCH BENEFICIARY, AN AMOUNT EQUAL
28 TO THE FAIR MARKET VALUE OF THE ASSETS IN SUCH ACCOUNT ON SUCH DATE
29 SHALL BE INCLUDIBLE IN SUCH BENEFICIARY'S GROSS INCOME FOR THE LAST
30 TAXABLE YEAR OF SUCH BENEFICIARY, PROVIDED HOWEVER THAT SUCH FAIR MARKET
31 VALUE SHALL BE REDUCED BY DISTRIBUTIONS TO PAY FOR LONG TERM CARE
32 SERVICES PERMITTED PURSUANT TO THIS TITLE WHICH WERE INCURRED BY THE
33 DECEDENT BEFORE THE DATE OF THE DECEDENT'S DEATH AND PAID BY SUCH PERSON
34 WITHIN ONE YEAR AFTER SUCH DATE; AND

35 (C) THE TRANSFER OF THE INTEREST OF THE OWNER OF SUCH ACCOUNT TO SUCH
36 OWNER'S SPOUSE OR FORMER SPOUSE UNDER A DIVORCE OR SEPARATION INSTRUMENT
37 SHALL NOT BE CONSIDERED A TAXABLE TRANSFER MADE BY SUCH OWNER OF SUCH
38 ACCOUNT NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR OF THIS TITLE, AND
39 SUCH INTEREST SHALL, AFTER SUCH TRANSFER, BE TREATED AS A QUALIFIED LONG
40 TERM CARE SAVINGS ACCOUNT WITH RESPECT TO WHICH SUCH SPOUSE IS THE OWNER
41 OF SUCH ACCOUNT.

42 S 276. ADVISORY COMMITTEE. 1. THE COMMISSIONER SHALL ESTABLISH AN
43 ADVISORY COMMITTEE TO THE COMPACT PROGRAM, CONSISTING OF NINE PERSONS
44 APPOINTED BY THE COMMISSIONER AS FOLLOWS: TWO FROM THE ELDER LAW SECTION
45 OF THE NEW YORK STATE BAR ASSOCIATION TO INCLUDE THE CHAIR OF SUCH
46 SECTION OR A DESIGNEE APPOINTED BY THE CHAIR WHO SHALL SERVE EX OFFICIO;
47 TWO FROM STATEWIDE ADVOCACY GROUPS PRIMARILY CONCERNED WITH SENIOR
48 ISSUES; TWO FROM PROVIDERS OF SERVICES, INCLUDING ONE REPRESENTING
49 INSTITUTIONAL PROVIDERS OF SERVICES AND ONE REPRESENTING NON-INSTITU-
50 TIONAL PROVIDERS; TWO FROM INSURERS SELLING LONG TERM CARE INSURANCE IN
51 THE STATE WHO SHALL BE PERSONS WITH AT LEAST FIVE YEARS EXPERIENCE IN
52 THE DEVELOPMENT OF LONG TERM CARE INSURANCE PRODUCTS AND WHO ARE OR WHO
53 SHALL HAVE BEEN, SO FAR AS SHALL BE PRACTICABLE, IN EXECUTIVE POSITIONS;
54 AND ONE WITH AT LEAST FIVE YEARS ACTUARIAL EXPERIENCE IN LONG TERM CARE
55 INSURANCE MATTERS. MEMBERS SHALL RECEIVE NO COMPENSATION FOR THEIR

1 SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES
2 INCURRED IN PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS TITLE.

3 2. THE PURPOSE OF SUCH ADVISORY COMMITTEE SHALL BE TO PROVIDE ADVICE,
4 CONSULTATION AND RECOMMENDATIONS ON SPECIFIC ISSUES CONCERNING THE
5 COMPACT PROGRAM AND ON THE FURTHER DEVELOPMENT OF THE PROGRAM, INCLUDING
6 BUT NOT LIMITED TO SUCH ISSUES AS THE DEFINITION OF HARDSHIP AND THE
7 TREATMENT OF PERSONS EXPERIENCING HARDSHIP UNDER THE COMPACT, THE TREAT-
8 MENT OF ASSETS OF PERSONS WHO ARE LIVING SEPARATELY BUT NOT DIVORCED,
9 LOSS OF INCOME OR ASSETS AFTER A PARTICIPANT HAS AGREED TO A PLEDGE
10 AMOUNT, SPOUSAL PROTECTIONS, ESTABLISHMENT AND USE OF LONG TERM CARE
11 SAVINGS ACCOUNTS, AND ANY OTHER ISSUES WHICH THE COMMISSIONER OR THE
12 ADVISORY COMMITTEE SHALL DEEM NECESSARY OR APPROPRIATE TO THE OPERATION
13 OF THE COMPACT. THE ADVISORY COMMITTEE SHALL ADDITIONALLY CONSIDER
14 ISSUES RELATED TO CONTINUITY OF CARE BY PROVIDERS AND ANY ISSUES RELATED
15 TO SHIFTING OR FAILING TO PROVIDE SERVICES OR DROPPING PARTICIPANTS FROM
16 COVERAGE WHEN THEY BECOME BENEFICIARIES. IN PROMULGATING REGULATIONS
17 PURSUANT TO THIS TITLE, THE COMMISSIONER SHALL CONSULT THE ADVISORY
18 COMMITTEE, PROVIDED HOWEVER THAT FAILURE TO RESPOND TIMELY BY THE ADVI-
19 SORY COMMITTEE SHALL NOT BE DEEMED A DEFECT IN THE PROMULGATION OF SUCH
20 REGULATIONS. THE ADVISORY COMMITTEE MAY REQUEST AND SHALL RECEIVE FROM
21 THE COMMISSIONER SUCH DATA AND ANALYSIS, OR MAY MAKE SUCH ANALYSIS OF
22 SUCH DATA, AS SHALL ENABLE IT TO FULFILL ITS MISSION PURSUANT TO THIS
23 TITLE.

24 3. THE COMMITTEE SHALL ANNUALLY OR MORE OFTEN IF THE COMMITTEE SHALL
25 SO DECIDE REVIEW THE METHODOLOGY FOR SETTING THE AMOUNT OF THE COMPACT
26 SUBSIDY AND SHALL MAKE SUCH RECOMMENDATIONS FOR CHANGE AS IT SHALL DEEM
27 APPROPRIATE AND IN KEEPING WITH THE SPIRIT AND INTENT OF THIS TITLE TO
28 THE COMMISSIONER.

29 4. THE COMMITTEE SHALL ANNUALLY OR MORE OFTEN IF THE COMMITTEE SHALL
30 SO DECIDE REVIEW THE CONDUCT OF PROVIDERS OF SERVICE TO PARTICIPANTS AND
31 BENEFICIARIES AND MAY RECOMMEND TO THE COMMISSIONER THE ESTABLISHMENT OF
32 REQUIREMENTS CONCERNING SUCH CONDUCT TO PREVENT ABUSES. IF THE COMMITTEE
33 SHALL MAKE SUCH RECOMMENDATION, THE COMMISSIONER IS HEREBY AUTHORIZED TO
34 AND SHALL PRESCRIBE SUCH REQUIREMENTS BY RULE AND REGULATION.

35 5. IN ADDITION TO THE ADVISORY COMMITTEE, THE COMMISSIONER SHALL
36 ESTABLISH A TEN MEMBER CONSUMER ISSUES AND INTEGRITY COMMITTEE, THE
37 PURPOSE OF WHICH SHALL BE TO EXAMINE THE IMPLEMENTATION AND EFFECTIVE-
38 NESS OF THE COMPACT WITH RESPECT TO CONSUMER ISSUES. MEMBERS OF THE
39 COMMITTEE SHALL INCLUDE PERSONS WITH DISABILITIES, SENIORS, ADVOCATES
40 FOR PERSONS WITH DISABILITIES AND SENIORS, AND INDIVIDUALS FROM THE
41 ACADEMIC COMMUNITY WITH EXPERTISE IN LONG TERM CARE POLICY, HEALTH POLI-
42 CY AND SOCIAL POLICY. THE COMMITTEE SHALL ADDRESS ISSUES REFERRED TO IT
43 BY THE COMMISSIONER OR BY THE ADVISORY COMMITTEE, AND MAY ENGAGE IN
44 STUDIES OF ISSUES AT ITS OWN DISCRETION. THE CONSUMER ISSUES AND INTEG-
45 RITY COMMITTEE SHALL MEET IN A PUBLIC SETTING AT LEAST FOUR TIMES PER
46 YEAR AND AT SUCH OTHER TIMES AS THE COMMISSIONER OR THE CHAIR OF THE
47 COMMITTEE SHALL DEEM APPROPRIATE.

48 S 277. REQUIREMENT FOR CONFIDENTIALITY. EXCEPT AS OTHERWISE PROVIDED
49 IN THIS SECTION, ALL INFORMATION GATHERED FROM AN INDIVIDUAL SEEKING
50 ENROLLMENT IN THE COMPACT PROGRAM SHALL BE CONFIDENTIAL, WITH THE
51 FOLLOWING EXCEPTIONS:

52 1. REQUESTS FOR INFORMATION BASED UPON LEGITIMATE CRIMINAL JUSTICE
53 PURPOSES, AS SUCH TERM SHALL BE DEFINED IN REGULATION BY THE COMMISSION-
54 ER;

55 2. JUDICIAL SUBPOENAS;

1 3. REQUESTS FOR INFORMATION BY THE VICTIM OR CLAIMANT OR HIS OR HER
2 AUTHORIZED REPRESENTATIVE; AND

3 4. FOR PURPOSES NECESSARY AND PROPER FOR THE ADMINISTRATION OF THIS
4 TITLE.

5 ANY PERSON WHO KNOWINGLY AND INTENTIONALLY PERMITS THE RELEASE OF ANY
6 SUCH DATA AND INFORMATION NOT PERMITTED BY THIS TITLE SHALL BE GUILTY OF
7 A CLASS A MISDEMEANOR. THE COMMISSIONER SHALL PROMULGATE RULES AND REGU-
8 LATIONS INSURING THE TIMELINESS, COMPLETENESS, CONFIDENTIALITY AND
9 DISPOSITION OF SUCH DATA AND INFORMATION.

10 S 278. EDUCATION AND INFORMATION. THE PROGRAM MANAGEMENT ENTITY, IN
11 CONSULTATION WITH THE SUPERINTENDENT OF INSURANCE, THE DIRECTOR AND THE
12 COMMISSIONER, IS HEREBY AUTHORIZED AND DIRECTED, WITHIN AMOUNTS APPRO-
13 PRIATED THEREFOR, TO ESTABLISH AN EDUCATION AND OUTREACH PROGRAM
14 CONCERNING THE COMPACT PROGRAM OR TO COORDINATE SUCH EDUCATION AND
15 OUTREACH PROGRAM WITH ANY SIMILAR PUBLICLY SPONSORED PROGRAM FOR THE
16 PURPOSE OF INFORMING AND EDUCATING THE GENERAL PUBLIC OF THE AVAILABILITY
17 AND ADVANTAGES OF THE COMPACT PROGRAM BY MEANS INCLUDING BUT NOT
18 LIMITED TO THE FOLLOWING: EDUCATIONAL AND INFORMATIONAL MATERIALS IN
19 PRINT, AUDIO, VISUAL, ELECTRONIC OR OTHER MEDIA; PUBLIC SERVICE
20 ANNOUNCEMENTS, ADVERTISEMENTS, MEDIA CAMPAIGNS, WORKSHOPS, MASS MAIL-
21 INGS, CONFERENCES OR PRESENTATIONS; ESTABLISHMENT OF A TOLL-FREE TELE-
22 PHONE HOTLINE AND ELECTRONIC SERVICES TO PROVIDE INFORMATION; AND MEET-
23 INGS CONDUCTED BY ARRANGEMENT WITH THE COMMISSIONER WITH ESTATE
24 PLANNERS, ELDER LAW ATTORNEYS AND OTHER PROFESSIONALS CONCERNING LONG
25 TERM CARE INSURANCE, INCLUDING THOSE POLICIES AVAILABLE THROUGH THE
26 PARTNERSHIP FOR LONG TERM CARE PROGRAM. IN EXERCISING ANY POWERS UNDER
27 THIS SECTION, THE PROGRAM DIRECTOR MAY CONSULT WITH APPROPRIATE AGEN-
28 CIES, ORGANIZATIONS, CONSUMERS AND PROVIDERS OF LONG TERM CARE INSURANCE
29 OR ORGANIZATIONS REPRESENTING THEM. IN ADDITION TO STATE FUNDS APPROPRI-
30 ATED FOR PROGRAMS UNDER THIS SECTION, THE DIRECTOR MAY ACCEPT FUNDING
31 FROM PUBLIC SOURCES FOR PROGRAMS UNDER THIS SECTION AND MAY UNDERTAKE
32 JOINT OR COOPERATIVE PROGRAMS WITH OTHER PUBLIC AGENCIES OR PRIVATE
33 NOT-FOR-PROFIT CORPORATIONS WHICH ARE NEITHER PROVIDERS NOR REGULATORS
34 OF LONG TERM CARE INSURANCE OR AFFILIATES OR UNITS OF SUCH AGENCIES OR
35 CORPORATIONS.

36 S 2. Section 606 of the tax law is amended by adding a new subsection
37 (qq) to read as follows:

38 (QQ) LONG-TERM CARE SAVINGS CREDIT. (1) RESIDENTS. A TAXPAYER SHALL BE
39 ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE
40 LESSER OF ONE THOUSAND FIVE HUNDRED DOLLARS OR TWENTY PERCENT OF THE
41 AMOUNT CONTRIBUTED TO A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT ESTAB-
42 LISHED PURSUANT TO TITLE FIVE OF ARTICLE TWO OF THE ELDER LAW.

43 IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBSECTION FOR ANY
44 TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS
45 MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED
46 FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

47 (2) NONRESIDENTS AND PART-YEAR RESIDENTS. IN THE CASE OF A NONRESIDENT
48 TAXPAYER OR A PART-YEAR RESIDENT TAXPAYER, THE CREDIT DETERMINED UNDER
49 THIS SUBSECTION SHALL BE LIMITED TO THE AMOUNT DETERMINED BY MULTIPLYING
50 THE AMOUNT OF SUCH CREDIT BY THE NEW YORK SOURCE FRACTION AS SET FORTH
51 IN PARAGRAPH THREE OF SUBSECTION (E) OF SECTION SIX HUNDRED ONE OF THIS
52 PART. THE CREDIT AS SO LIMITED SHALL BE APPLIED AS PROVIDED IN PARAGRAPH
53 ONE OF THIS SUBSECTION.

54 S 3. The tax law is amended by adding a new section 28-a to read as
55 follows:

1 S 28-A. RULES CONCERNING QUALIFIED LONG TERM CARE SAVINGS ACCOUNTS. A
2 TAXPAYER MAY ESTABLISH A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PURSU-
3 ANT TO TITLE FIVE OF ARTICLE TWO OF THE ELDER LAW. A TAXPAYER WHO ESTAB-
4 LISHES SUCH ACCOUNT SHALL BE THE OWNER OF SUCH ACCOUNT. A TAXPAYER MAY
5 NOT OWN MORE THAN ONE SUCH ACCOUNT. SUCH ACCOUNT SHALL BE SUBJECT TO
6 THE FOLLOWING RULES:

7 1. A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT SHALL BE ELIGIBLE FOR
8 CREDITS PURSUANT TO SECTION SIX HUNDRED SIX OF THIS CHAPTER, AND ANY
9 INDIVIDUAL WHO CONTRIBUTES TO A QUALIFIED LONG TERM CARE SAVINGS
10 ACCOUNT, IRRESPECTIVE OF WHETHER SUCH INDIVIDUAL IS THE OWNER OF SUCH
11 ACCOUNT, SHALL BE ELIGIBLE FOR SUCH CREDITS.

12 2. ANY OTHER PROVISION OF LAW TO THE CONTRARY NOTWITHSTANDING, THE
13 PROVISIONS OF THIS SECTION RELATING TO CREDITS, CONTRIBUTIONS OR
14 DISTRIBUTIONS FROM SUCH LONG TERM CARE SAVINGS ACCOUNTS SHALL NOT APPLY
15 IF THE DISTRIBUTION FROM THE ACCOUNT IS MADE AFTER THE DEATH OF THE
16 OWNER OF SUCH ACCOUNT, PROVIDED HOWEVER THAT:

17 (A) IF THE SURVIVING SPOUSE OF THE OWNER OF SUCH ACCOUNT, OR A CHRON-
18 ICALLY ILL INDIVIDUAL AS PROVIDED BY TITLE FIVE OF ARTICLE TWO OF THE
19 ELDER LAW, ACQUIRES SUCH OWNER'S INTEREST IN SUCH ACCOUNT BY REASON OF
20 BEING THE DESIGNATED BENEFICIARY OF SUCH ACCOUNT AT THE DEATH OF SUCH
21 OWNER OF SUCH ACCOUNT, SUCH QUALIFIED LONG TERM CARE SAVINGS ACCOUNT
22 SHALL BE TREATED AS IF THE SPOUSE OR SUCH CHRONICALLY ILL INDIVIDUAL
23 WERE THE OWNER OF SUCH ACCOUNT. SUCH SPOUSE MAY USE THE PROCEEDS OF THE
24 ACCOUNT WITHOUT PENALTY.

25 (B) IN A CASE IN WHICH, UPON THE DEATH OF THE OWNER OF SUCH ACCOUNT, A
26 PERSON WHO IS NOT THE SPOUSE OF THE BENEFICIARY OR WHO IS NOT CHRON-
27 ICALLY ILL ACQUIRES THE INTEREST OF THE OWNER OF SUCH ACCOUNT IN A QUAL-
28 IFIED LONG TERM CARE SAVINGS ACCOUNT, SUCH ACCOUNT SHALL CEASE TO BE A
29 QUALIFIED LONG TERM CARE SAVINGS ACCOUNT AS OF THE DATE OF THE DEATH OF
30 THE OWNER OF SUCH ACCOUNT, AND

31 (I) IF SUCH PERSON IS NOT THE ESTATE OF SUCH BENEFICIARY, THE VALUE OF
32 THE ASSETS IN SUCH ACCOUNT ON SUCH DATE SHALL BE INCLUDIBLE IN SUCH
33 PERSON'S GROSS INCOME FOR THE TAXABLE YEAR WHICH INCLUDES SUCH DATE,
34 PROVIDED HOWEVER THAT SUCH INCLUDIBLE AMOUNT SHALL BE REDUCED BY
35 DISTRIBUTIONS TO PAY FOR LONG TERM CARE SERVICES PERMITTED PURSUANT TO
36 THIS SECTION WHICH WERE INCURRED BY THE DECEDENT BEFORE THE DATE OF THE
37 DECEDENT'S DEATH AND PAID BY SUCH PERSON WITHIN ONE YEAR AFTER SUCH
38 DATE, OR

39 (II) IF SUCH PERSON IS THE ESTATE OF SUCH BENEFICIARY, THE VALUE OF
40 THE ASSETS IN SUCH ACCOUNT ON SUCH DATE SHALL BE INCLUDIBLE IN SUCH
41 BENEFICIARY'S GROSS INCOME FOR THE LAST TAXABLE YEAR OF SUCH BENEFICI-
42 ARY, PROVIDED HOWEVER THAT SUCH VALUE SHALL BE REDUCED BY DISTRIBUTIONS
43 TO PAY FOR LONG TERM CARE SERVICES PERMITTED PURSUANT TO THIS SECTION
44 WHICH WERE INCURRED BY THE DECEDENT BEFORE THE DATE OF THE DECEDENT'S
45 DEATH AND PAID BY SUCH PERSON WITHIN ONE YEAR AFTER SUCH DATE.

46 (C) THE TRANSFER OF THE INTEREST OF THE OWNER OF SUCH ACCOUNT TO SUCH
47 OWNER'S SPOUSE OR FORMER SPOUSE UNDER A DIVORCE OR SEPARATION INSTRU-
48 MENT SHALL NOT BE CONSIDERED A TAXABLE TRANSFER MADE BY SUCH OWNER OF
49 SUCH ACCOUNT NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR OF THIS
50 ARTICLE, AND SUCH INTEREST SHALL, AFTER SUCH TRANSFER, BE TREATED AS A
51 QUALIFIED LONG TERM CARE SAVINGS ACCOUNT WITH RESPECT TO WHICH SUCH
52 SPOUSE IS THE OWNER OF SUCH ACCOUNT.

53 S 4. Severability. If any clause, sentence, paragraph, section or
54 part of this act shall be adjudged by any court of competent jurisdic-
55 tion to be invalid, such judgment shall not affect, impair or invalidate
56 the remainder thereof, but shall be confined in its operation to the

1 clause, sentence, paragraph, section or part thereof directly involved
2 in the controversy in which such judgment shall have been rendered.
3 S 5. This act shall take effect on the ninetieth day after it shall
4 have become a law.