S T A T E O F N E W Y O R K

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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:

Section 1. Article 2 of the elder law is amended by adding a new title 5 to read as follows:

TITLE 5

COMPACT FOR LONG TERM CARE

SECTION 260. SHORT TITLE.
261. DEFINITIONS.
262. COMPACT FOR LONG TERM CARE CREATED; PURPOSES.
263. REQUIREMENT FOR CONSULTATION.
264. IMPLEMENTATION.
265. SELECTION OF PROGRAM MANAGEMENT ENTITY.
266. PARTICIPATION AND PLEDGE.
267. BENEFITS OF PARTICIPATION.
268. PROTECTED INCOME.
269. IMPOSITION OF LIEN IN CERTAIN CASES.
270. PROHIBITED ACTS.
271. FRAUDULENT PRACTICES.

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

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

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

S 261. DEFINITIONS. AS USED IN THIS TITLE:

1. "ASSESSMENT" MEANS AN ASSESSMENT TO DETERMINE WHETHER AN INDIVIDUAL IS A CHRONICALLY ILL INDIVIDUAL. AN ASSESSMENT MAY BE PERFORMED ONLY BY A LICENSED HEALTH CARE PRACTITIONER CONTRACTED TO PERFORM SUCH ASSESSMENTS WITH AN INSURER, THE COMMISSIONER OR THE PROGRAM MANAGEMENT ENTITY. THE ASSESSMENT SHALL BE PERFORMED ANNUALLY OR WHENEVER A CHANGE IN THE CONDITION OF THE COMPACT BENEFICIARY OR COMPACT PARTICIPANTS WARRANTS AN UPDATE TO THE PLAN OF CARE. EXCEPT IN CASES IN WHICH THE COMMISSIONER WAIVES THE REQUIREMENT DUE TO HARDSHIP, THE COST OF AN ASSESSMENT SHALL BE PAID BY AN INDIVIDUAL SEEKING TO ENROLL IN THE COMPACT PROGRAM.

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

3. "COMMISSIONER" MEANS THE COMMISSIONER OF HEALTH.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. "PLEDGE AMOUNT" MEANS THE PLEDGE MADE BY A PARTICIPANT TO PAY THE COST OF QUALIFIED LONG TERM CARE SERVICES. THE PLEDGE AMOUNT SHALL BE: (A) THE "MAXIMUM PLEDGE AMOUNT", WHICH SHALL BE THE AMOUNT EQUAL TO THIRTY-SIX MONTHS OF PAYMENT AT THE REGIONAL RATE FOR NURSING HOME SERVICES IN THE REGION IN WHICH THE PARTICIPANT RESIDES, AS APPLICABLE AT THE TIME OF APPLICATION TO THE COMPACT; OR (B) THE "DOLLAR PLEDGE AMOUNT" WHICH SHALL BE AN AMOUNT EQUAL TO FIFTY PERCENT OF A PARTICIPANT'S COUNTABLE ASSETS. IN THE CASE OF A PARTICIPANT WHOSE COUNTABLE ASSETS ARE LESS THAN FORTY THOUSAND DOLLARS, THE DOLLAR PLEDGE AMOUNT SHALL BE LIMITED TO THE AMOUNT IN EXCESS OF A DEDUCTIBLE AMOUNT OF TWENTY THOUSAND DOLLARS, AND THE COMMISSIONER SHALL CALCULATE SUCH DOLLAR PLEDGE AMOUNT BY SUBTRACTING SUCH DEDUCTIBLE AMOUNT OF TWENTY THOUSAND DOLLARS FROM THE PARTICIPANT'S COUNTABLE ASSETS AND THE REMAINDER AMOUNT SHALL EQUAL THE DOLLAR PLEDGE AMOUNT; PROVIDED THAT THE COMMISSIONER SHALL ANNUALLY INCREASE OR DECREASE SUCH FORTY THOUSAND DOLLAR ASSET AMOUNT AND SUCH TWENTY THOUSAND DOLLAR DEDUCTIBLE AMOUNT AT THE SAME PERCENTAGE RATE AS THE INCREASE OR DECREASE IN THE REGIONAL RATE FOR NURSING HOME SERVICES FOR THE REGION IN WHICH THE ELIGIBLE INDIVIDUAL RESIDES.

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) MARKETING PLANS FOR THE PROGRAM;

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

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

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

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

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

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

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

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

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

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

(C) DOCUMENTATION CONCERNING THE PLEDGE AMOUNT, THE RESULTS OF THE ASSESSMENT AND EVIDENCE OF A FULFILLED PLEDGE SHALL BE SUBMITTED TO THE PROGRAM MANAGEMENT ENTITY IN A FORM AND MANNER PRESCRIBED BY THE COMMISSIONER.

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

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

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

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

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

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

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

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

4. THE BENEFICIARY SHALL NOT BE RESPONSIBLE FOR PAYMENT FOR SUCH QUALIFIED LONG TERM CARE SERVICES OF ANY AMOUNT GREATER THAN THE DIFFERENCE BETWEEN THE COMPACT RATE AND THE COMPACT SUBSIDY.

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

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

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

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

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

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

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

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

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

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

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

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

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

5. ANY OTHER PROVISION OF THIS TITLE TO THE CONTRARY NOTWITHSTANDING, THE COMMISSIONER MAY ADDITIONALLY, AFTER CONSULTATION WITH AND UPON RECOMMENDATION OF THE ADVISORY COMMITTEE, ESTABLISH AS AN ADDITIONAL BASIS FOR A REDUCTION OF THE PAYMENT FOR SERVICES BY THE BENEFICIARY OF ANY DIFFERENCE BETWEEN THE COMPACT RATE AND THE COMPACT SUBSIDY AND OF THE PARTICIPATION FEE TO BE PAID BY THE BENEFICIARY, A FINDING THAT A BENEFICIARY LACKS THE RESOURCES AFTER PAYMENT OF NECESSARY EXPENSES TO REMAIN IN HIS OR HER PLACE OF RESIDENCE AFTER PAYMENT OF SUCH PARTICIPATION FEE AND/OR PAYMENT FOR SERVICES, IRRESPECTIVE OF WHETHER THE BENEFICIARY'S COUNTABLE INCOME EXCEEDS THE PROTECTED INCOME AMOUNT. THE ADVISORY COMMITTEE SHALL PROVIDE THE COMMISSIONER WITH A DEFINITION OF NECESSARY EXPENSES AS USED IN THIS SECTION PRIOR TO THE COMMISSIONER TAKING ANY ACTION AUTHORIZED BY THIS SUBDIVISION. INSOFAR AS PRACTICABLE, SUCH DEFINITION SHALL BE QUANTIFIABLE, AND THE COMMISSIONER SHALL ESTABLISH A FORMULA BY RULE AND REGULATION FOR DETERMINING NECESSARY EXPENSES BASED ON SUCH DEFINITION AND FOR DETERMINING WHETHER A BENEFICIARY LACKS THE RESOURCES AFTER PAYMENT OF SUCH NECESSARY EXPENSES TO REMAIN IN HIS OR HER PLACE OF RESIDENCE.

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

S 270. PROHIBITED ACTS. NO PERSON ENGAGED IN THE DEVELOPMENT, MARKETING, ADVERTISING OR SALE OF ANY INSURANCE PLAN DESIGNED TO SATISFY THE PLEDGE AMOUNT SHALL:

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

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

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

3. STATE OR IMPLY THAT THE PERSON CAN OR WILL OBTAIN SPECIAL FAVORS FROM OR HAS SPECIAL INFLUENCE WITH THE DEPARTMENT OF HEALTH, THE ADMINISTRATIVE ENTITY OR ANY OTHER GOVERNMENTAL ENTITY.

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

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

6. DISCLOSE ANY INFORMATION TO, OR FILE ANY FORMS OR DOCUMENTS WITH THE DEPARTMENT OF HEALTH, ANY OTHER STATE DEPARTMENT OR THE ADMINISTRATIVE ENTITY WITHOUT THE KNOWLEDGE OR CONSENT OF THE CUSTOMER.

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

8. MAKE ANY MISREPRESENTATION OR FALSE STATEMENT, DIRECTLY OR INDIRECTLY.

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

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

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

3. ANY INDIVIDUAL WHO, WITH INTENT TO DEFRAUD, PRESENTS FOR ALLOWANCE OR PAYMENT ANY FALSE OR FRAUDULENT CLAIM FOR FURNISHING SERVICES OR MERCHANDISE, OR WHO KNOWINGLY SUBMITS FALSE INFORMATION FOR THE PURPOSE OF OBTAINING GREATER COMPENSATION THAN THAT TO WHICH SUCH INDIVIDUAL IS LEGALLY ENTITLED FOR FURNISHING SERVICES OR MERCHANDISE, OR WHO KNOWINGLY SUBMITS FALSE INFORMATION FOR THE PURPOSE OF OBTAINING AUTHORIZATION FOR FURNISHING SERVICES OR MERCHANDISE UNDER THIS TITLE, SHALL BE GUILTY OF A CLASS A MISDEMEANOR, UNLESS SUCH ACT CONSTITUTES A VIOLATION OF A PROVISION OF THE PENAL LAW, IN WHICH CASE HE OR SHE SHALL BE PUNISHED IN ACCORDANCE WITH THE PENALTIES FIXED BY SUCH PROVISION. SUCH INDIVIDUAL SHALL NOT BE PERMITTED TO PROVIDE SERVICES OR MERCHANDISE TO A PARTICIPANT, A BENEFICIARY OR TO ANOTHER INDIVIDUAL OR ENTITY PROVIDING SERVICES UNDER THE COMPACT PROGRAM FOR A PERIOD OF FIVE YEARS.

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

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

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

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

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

5. UPON RECOMMENDATION OF THE ADVISORY COMMITTEE, THE COMMISSIONER MAY ESTABLISH RULES, INCLUDING REQUIREMENTS FOR WRITTEN AGREEMENTS, GOVERNING THE PAYMENT AND COLLECTION OF DEBT BY PARTICIPANTS AND BENEFICIARIES TO SERVICE PROVIDERS AS WELL AS NOTIFICATION GUIDELINES TO THE BENEFICIARY, OR A PERSON OR ENTITY ACTING ON BEHALF OF THE BENEFICIARY TO ENSURE THAT A PAYMENT THAT IS MISSED IN ERROR CAN BE CORRECTED WITHOUT PUNISHMENT TO THE BENEFICIARY.

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

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

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

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

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

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

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

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

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

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

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

(F) IN ADDITION TO THE FOREGOING, THE FOLLOWING SHALL NOT BE CONSIDERED AS INCOME OR ASSETS:

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

(II) EXPENDITURES TO AN EDUCATIONAL INSTITUTION OR MEDICAL FACILITY ON BEHALF OF A SPOUSE OR CHILD, PROVIDED HOWEVER THAT THESE SHALL BE REASONABLE EXPENDITURES FOR THE PURPOSE OF MEDICAL TREATMENT OR EDUCATION;

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

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

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

S 274. SPECIAL PROVISIONS REGARDING SPOUSES. 1. THE REQUIREMENTS OF THIS TITLE CONCERNING DISCLOSURE OF ASSETS SHALL BE DEEMED TO MEAN AND INCLUDE DISCLOSURE OF ALL ASSETS, INCLUDING ALL ASSETS OF SPOUSES, WITHOUT DISTINCTION AS TO OWNERSHIP BY OR BETWEEN SPOUSES. NOTWITHSTANDING THE FOREGOING, IF THERE IS A PRE- OR POST-NUPTIAL AGREEMENT WHICH HAS BEEN EFFECTIVE THREE OR MORE YEARS PRIOR TO THE DATE OF ENROLLMENT IN THE COMPACT PROGRAM, THE VALUE OF THE ASSETS OF THE SPOUSE NOT ENROLLED IN THE COMPACT SHALL NOT BE DEEMED A COUNTABLE ASSET AND SHALL NOT REQUIRE DISCLOSURE TO THE COMMISSIONER OR PROGRAM MANAGEMENT ENTITY.

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

(A) THE ENROLLING SPOUSE BECOMES A BENEFICIARY AFTER MEETING THE MAXIMUM PLEDGE AMOUNT, THE COUPLE'S ASSETS SHALL BE EXEMPT FROM CONSIDERATION AS A COUNTABLE ASSET.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) IF THE SURVIVING SPOUSE OF THE OWNER OF SUCH ACCOUNT OR A CHRONICALLY ILL INDIVIDUAL ACQUIRES SUCH OWNER'S INTEREST IN SUCH ACCOUNT BY REASON OF BEING THE DESIGNATED BENEFICIARY OF SUCH ACCOUNT AT THE DEATH OF SUCH OWNER OF SUCH ACCOUNT, SUCH QUALIFIED LONG TERM CARE SAVINGS ACCOUNT SHALL BE TREATED AS IF THE SPOUSE OR SUCH CHRONICALLY ILL INDIVIDUAL WERE THE OWNER OF SUCH ACCOUNT;

(B) IN A CASE IN WHICH, UPON THE DEATH OF THE OWNER OF SUCH ACCOUNT, A PERSON WHO IS NOT THE SPOUSE OF THE BENEFICIARY OR WHO IS NOT CHRONICALLY ILL ACQUIRES THE INTEREST OF THE OWNER OF SUCH ACCOUNT IN A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT, SUCH ACCOUNT SHALL CEASE TO BE A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT AS OF THE DATE OF THE DEATH OF THE OWNER OF SUCH ACCOUNT, AND

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

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

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

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

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

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

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

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

5. IN ADDITION TO THE ADVISORY COMMITTEE, THE COMMISSIONER SHALL ESTABLISH A TEN MEMBER CONSUMER ISSUES AND INTEGRITY COMMITTEE, THE PURPOSE OF WHICH SHALL BE TO EXAMINE THE IMPLEMENTATION AND EFFECTIVENESS OF THE COMPACT WITH RESPECT TO CONSUMER ISSUES. MEMBERS OF THE COMMITTEE SHALL INCLUDE PERSONS WITH DISABILITIES, SENIORS, ADVOCATES FOR PERSONS WITH DISABILITIES AND SENIORS, AND INDIVIDUALS FROM THE ACADEMIC COMMUNITY WITH EXPERTISE IN LONG TERM CARE POLICY, HEALTH POLICY AND SOCIAL POLICY. THE COMMITTEE SHALL ADDRESS ISSUES REFERRED TO IT BY THE COMMISSIONER OR BY THE ADVISORY COMMITTEE, AND MAY ENGAGE IN STUDIES OF ISSUES AT ITS OWN DISCRETION. THE CONSUMER ISSUES AND INTEGRITY COMMITTEE SHALL MEET IN A PUBLIC SETTING AT LEAST FOUR TIMES PER YEAR AND AT SUCH OTHER TIMES AS THE COMMISSIONER OR THE CHAIR OF THE COMMITTEE SHALL DEEM APPROPRIATE.

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

1. REQUESTS FOR INFORMATION BASED UPON LEGITIMATE CRIMINAL JUSTICE PURPOSES, AS SUCH TERM SHALL BE DEFINED IN REGULATION BY THE COMMISSIONER;

2. JUDICIAL SUBPOENAS;

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

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

ANY PERSON WHO KNOWINGLY AND INTENTIONALLY PERMITS THE RELEASE OF ANY SUCH DATA AND INFORMATION NOT PERMITTED BY THIS TITLE SHALL BE GUILTY OF A CLASS A MISDEMEANOR. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS INSURING THE TIMELINESS, COMPLETENESS, CONFIDENTIALITY AND DISPOSITION OF SUCH DATA AND INFORMATION.

S 278. EDUCATION AND INFORMATION. THE PROGRAM MANAGEMENT ENTITY, IN CONSULTATION WITH THE SUPERINTENDENT OF INSURANCE, THE DIRECTOR AND THE COMMISSIONER, IS HEREBY AUTHORIZED AND DIRECTED, WITHIN AMOUNTS APPROPRIATED THEREFOR, TO ESTABLISH AN EDUCATION AND OUTREACH PROGRAM CONCERNING THE COMPACT PROGRAM OR TO COORDINATE SUCH EDUCATION AND OUTREACH PROGRAM WITH ANY SIMILAR PUBLICLY SPONSORED PROGRAM FOR THE PURPOSE OF INFORMING AND EDUCATING THE GENERAL PUBLIC OF THE AVAILABILITY AND ADVANTAGES OF THE COMPACT PROGRAM BY MEANS INCLUDING BUT NOT LIMITED TO THE FOLLOWING: EDUCATIONAL AND INFORMATIONAL MATERIALS IN PRINT, AUDIO, VISUAL, ELECTRONIC OR OTHER MEDIA; PUBLIC SERVICE ANNOUNCEMENTS, ADVERTISEMENTS, MEDIA CAMPAIGNS, WORKSHOPS, MASS MAILINGS, CONFERENCES OR PRESENTATIONS; ESTABLISHMENT OF A TOLL-FREE TELEPHONE HOTLINE AND ELECTRONIC SERVICES TO PROVIDE INFORMATION; AND MEETINGS CONDUCTED BY ARRANGEMENT WITH THE COMMISSIONER WITH ESTATE PLANNERS, ELDER LAW ATTORNEYS AND OTHER PROFESSIONALS CONCERNING LONG TERM CARE INSURANCE, INCLUDING THOSE POLICIES AVAILABLE THROUGH THE PARTNERSHIP FOR LONG TERM CARE PROGRAM. IN EXERCISING ANY POWERS UNDER THIS SECTION, THE PROGRAM DIRECTOR MAY CONSULT WITH APPROPRIATE AGENCIES, ORGANIZATIONS, CONSUMERS AND PROVIDERS OF LONG TERM CARE INSURANCE OR ORGANIZATIONS REPRESENTING THEM. IN ADDITION TO STATE FUNDS APPROPRIATED FOR PROGRAMS UNDER THIS SECTION, THE DIRECTOR MAY ACCEPT FUNDING FROM PUBLIC SOURCES FOR PROGRAMS UNDER THIS SECTION AND MAY UNDERTAKE JOINT OR COOPERATIVE PROGRAMS WITH OTHER PUBLIC AGENCIES OR PRIVATE NOT-FOR-PROFIT CORPORATIONS WHICH ARE NEITHER PROVIDERS NOR REGULATORS OF LONG TERM CARE INSURANCE OR AFFILIATES OR UNITS OF SUCH AGENCIES OR CORPORATIONS.

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

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

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

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

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

S 28-A. RULES CONCERNING QUALIFIED LONG TERM CARE SAVINGS ACCOUNTS. A TAXPAYER MAY ESTABLISH A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT PURSUANT TO TITLE FIVE OF ARTICLE TWO OF THE ELDER LAW. A TAXPAYER WHO ESTABLISHES SUCH ACCOUNT SHALL BE THE OWNER OF SUCH ACCOUNT. A TAXPAYER MAY NOT OWN MORE THAN ONE SUCH ACCOUNT. SUCH ACCOUNT SHALL BE SUBJECT TO THE FOLLOWING RULES:

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

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

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

(B) IN A CASE IN WHICH, UPON THE DEATH OF THE OWNER OF SUCH ACCOUNT, A PERSON WHO IS NOT THE SPOUSE OF THE BENEFICIARY OR WHO IS NOT CHRONICALLY ILL ACQUIRES THE INTEREST OF THE OWNER OF SUCH ACCOUNT IN A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT, SUCH ACCOUNT SHALL CEASE TO BE A QUALIFIED LONG TERM CARE SAVINGS ACCOUNT AS OF THE DATE OF THE DEATH OF THE OWNER OF SUCH ACCOUNT, AND

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

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

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

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

clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 5. This act shall take effect on the ninetieth day after it shall have become a law.