

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

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I N S E N A T E

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Introduced by Sens. GOLDEN, DIAZ, LAVALLE, RANZENHOFER, HASSELL-THOMPSON, ONORATO, DeFRANCISCO, PADAVAN, BONACIC, MAZIARZ, MORAHAN, VOLKER, FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Aging -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the elder law and the insurance law, in relation to establishing the New York state compact for long term care

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 4 to read as follows:

TITLE 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.
17		271-A.	PAYMENTS AND DEFAULTS.
18		272.	APPEALS.
19		273.	TREATMENT OF ASSETS.
20		274.	SPECIAL PROVISIONS REGARDING COUPLES.

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

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275. ADVISORY COMMITTEE.

276. REQUIREMENT FOR CONFIDENTIALITY.

277. EDUCATION AND INFORMATION.

S 260. SHORT TITLE. THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "NEW YORK STATE 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 WHO QUALIFIES AS A PARTICIPANT OR AS A BENEFICIARY IN THE COMPACT, AND TO PROVIDE INFORMATION FOR THE PLAN OF CARE REQUIRED HEREUNDER FOR SUCH ENROLLEES. 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 BENEFICIARY OR PARTICIPANT WARRANTS AN UPDATE TO THE PLAN OF CARE. THE COST OF AN ASSESSMENT SHALL BE PAID BY AN INDIVIDUAL SEEKING TO ENROLL IN THE COMPACT.

2. "ADVISORY COMMITTEE" MEANS THE ADVISORY COMMITTEE ESTABLISHED 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 PAYING HIS OR HER PLEDGE AMOUNT AND MEETING OTHER REQUIREMENTS ESTABLISHED BY 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 AND HAS BEEN A STATE RESIDENT FOR AT LEAST TWO YEARS PRIOR TO THE DATE OF APPLICATION; (C) HAS BEEN DETERMINED BY AN ASSESSMENT TO BE A CHRONICALLY ILL PERSON, AND A PLAN OF CARE HAS BEEN DEVELOPED FOR SUCH PERSON; AND (D) HAS AGREED TO PAY A PLEDGE AMOUNT AS PROVIDED IN THIS TITLE. A PARTICIPANT SHALL BE DEEMED ENROLLED IN THE COMPACT.

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 COMPUTED BY THE COMMISSIONER AT ONE HUNDRED TEN PERCENT OF THE COMPACT SUBSIDY FOR THE SERVICE.

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. THE AMOUNT OF THE SUBSIDY SHALL EQUAL THE MEDICAID RATE ESTABLISHED FOR THE SAME OR A SIMILAR SERVICE IN THE REGION IN WHICH THE BENEFICIARY RESIDES. IF THERE IS NO MEDICAID RATE FOR A SERVICE IN A REGION, THE COMMISSIONER SHALL ESTABLISH A RATE ON RECOMMENDATION OF THE ADVISORY COMMITTEE WHICH SHALL BE APPLICABLE IN THE REGION FOR THE SERVICE. THE COMMISSIONER SHALL ADJUST THE METHODOLOGY FOR ESTABLISHING THE AMOUNT OF THE COMPACT SUBSIDY ONLY ON RECOMMENDATION OF THE ADVISORY COMMITTEE.

9. "COUNTABLE ASSET" SHALL HAVE THE SAME MEANING AS THE TERM "ASSETS" 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, EXCEPT AS OTHERWISE PROVIDED HEREIN OR BY RULES ESTABLISHED PURSUANT TO THIS TITLE. COUNTABLE ASSET DOES NOT 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, EXCEPT AS OTHERWISE PROVIDED HEREIN OR BY RULES ESTABLISHED PURSUANT TO THIS TITLE. THE FOLLOWING HEALTH

CARE EXPENDITURES SHALL BE EXCLUDED FROM COUNTABLE INCOME: 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, AND PREMIUMS FOR THE PURCHASE OF LONG TERM CARE INSURANCE.

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, PROMULGATE, OR ENFORCE ANY REQUIREMENT, RULE, REGULATION OR DEFINITION THAT IS MORE RESTRICTIVE THAN THE MEANINGS ASCRIBED TO SUCH TERMS PURSUANT TO THE FEDERAL ACT. IN ADDITION:

(A) THE FOREGOING TO THE CONTRARY NOTWITHSTANDING AND SOLELY FOR PURPOSES OF DETERMINING WHETHER A PARTICIPANT OR A BENEFICIARY IS SUFFERING FROM "SEVERE COGNITIVE IMPAIRMENT," 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. "SUBSTANTIAL SUPERVISION" AS USED IN THIS TITLE 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.

(B) "LICENSED HEALTH CARE PRACTITIONER" SHALL BE LIMITED TO A PHYSICIAN, AS DEFINED IN SECTION 1861(R)(1) OF THE SOCIAL SECURITY ACT OR A REGISTERED PROFESSIONAL NURSE, PROVIDED THAT SUCH PERSON IS NOT A FAMILY MEMBER AND FURTHER PROVIDED THAT SUCH INDIVIDUAL SHALL BE LICENSED, REGISTERED, OR CERTIFIED TO WORK IN NEW YORK.

(C) ANY LIMITATIONS IMPOSED BY THE FOREGOING TO THE CONTRARY NOTWITHSTANDING, "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.

1 13. "FULFILLED PLEDGE" MEANS A PLEDGE AMOUNT THAT HAS BEEN FULLY PAID.
2 ONLY PAYMENTS MADE BY A PARTICIPANT, OR BY ANY PERSON OR ENTITY ON
3 BEHALF OF SUCH PARTICIPANT SHALL BE COUNTED AS ELIGIBLE PAYMENTS FOR
4 FULFILLING A PLEDGE. ELIGIBLE PAYMENTS SHALL INCLUDE REASONABLE AND
5 NECESSARY PAYMENTS FOR QUALIFIED LONG TERM CARE SERVICES, AND ANY ADDI-
6 TIONAL EXPENSES FOR SERVICES AS MAY BE APPROVED BY THE COMMISSIONER UPON
7 RECOMMENDATION OF THE ADVISORY COMMITTEE. SUCH PAYMENTS SHALL ALSO
8 INCLUDE PAYMENTS FOR QUALIFIED LONG TERM CARE SERVICES FOR THE
9 THREE-MONTH PERIOD PRIOR TO AN INDIVIDUAL BECOMING A PARTICIPANT. COUNT-
10 ABLE PAYMENTS MADE FOR A QUALIFIED LONG TERM CARE SERVICE IN FULFILLING
11 A PLEDGE SHALL NOT BE GREATER THAN THE AMOUNT USUALLY AND CUSTOMARILY
12 CHARGED FOR SUCH SERVICE BY A PROVIDER TO A NON-MEDICAID RECIPIENT.

13 14. "PLAN OF CARE" MEANS A WRITTEN, INDIVIDUALIZED PLAN FOR CARE AND
14 SUPPORT SERVICES DEVELOPED BY A LICENSED HEALTH CARE PRACTITIONER FOR AN
15 INDIVIDUAL SEEKING TO ENROLL IN THE COMPACT AND AT OTHER SUCH TIMES AS
16 PROVIDED HEREIN. THE PLAN OF CARE SHALL BE DEVELOPED AS A RESULT OF AN
17 ASSESSMENT AND SHALL INCORPORATE ANY INFORMATION PROVIDED BY AN INDIVID-
18 UAL'S PERSONAL PHYSICIAN OR, AS APPROPRIATE, OTHER PHYSICIANS TREATING
19 THE INDIVIDUAL. IT SHALL FAIRLY, ACCURATELY, AND APPROPRIATELY ADDRESS
20 THE INDIVIDUAL'S LONG TERM CARE AND SUPPORT SERVICE NEEDS, AND SHALL
21 SPECIFY THE TYPE, FREQUENCY, AND DURATION OF ALL SERVICES REQUIRED TO
22 MEET THOSE NEEDS AND THE PROVIDERS APPROPRIATE TO FURNISH THOSE
23 SERVICES. A PLAN OF CARE SHALL BE COMPLETED AT THE SAME TIME THE ASSESS-
24 MENT IS PERFORMED, AND SHALL BE UPDATED ANNUALLY ON THE BASIS OF THE
25 ANNUAL ASSESSMENT OR WHENEVER A CHANGE IN THE CONDITION OF THE BENEFICI-
26 ARY OR PARTICIPANT WARRANTS AN UPDATE. THE COST OF THE PLAN OF CARE
27 SHALL BE PAID BY AN INDIVIDUAL SEEKING TO ENROLL IN THE COMPACT.

28 15. "PLEDGE AMOUNT" MEANS THE AMOUNT PLEDGED BY A PARTICIPANT FOR THE
29 COST OF QUALIFIED LONG TERM CARE SERVICES. THE PLEDGE AMOUNT SHALL BE
30 THE LESSER OF: (A) THE "MAXIMUM PLEDGE AMOUNT," WHICH SHALL BE THE
31 AMOUNT EQUAL TO THIRTY-SIX MONTHS OF PAYMENT FOR NURSING HOME SERVICES
32 IN THE REGION IN WHICH THE PARTICIPANT RESIDES, AS APPLICABLE AT THE
33 TIME OF APPLICATION TO THE COMPACT; OR

34 (B) THE "DOLLAR PLEDGE AMOUNT" WHICH SHALL BE AN AMOUNT EQUAL TO FIFTY
35 PERCENT OF A PARTICIPANT'S COUNTABLE ASSETS. IN THE CASE OF A PARTIC-
36 IPANT WHOSE COUNTABLE ASSETS ARE LESS THAN FORTY THOUSAND DOLLARS, THE
37 DOLLAR PLEDGE AMOUNT SHALL BE LIMITED TO THE AMOUNT IN EXCESS OF A
38 DEDUCTIBLE AMOUNT OF TWENTY THOUSAND DOLLARS, AND THE COMMISSIONER SHALL
39 CALCULATE SUCH DOLLAR PLEDGE AMOUNT BY SUBTRACTING SUCH DEDUCTIBLE
40 AMOUNT OF TWENTY THOUSAND DOLLARS FROM THE PARTICIPANT'S COUNTABLE
41 ASSETS AND THE REMAINDER AMOUNT SHALL EQUAL THE DOLLAR PLEDGE AMOUNT;
42 PROVIDED THAT THE COMMISSIONER SHALL ANNUALLY INCREASE OR DECREASE SUCH
43 FORTY THOUSAND DOLLAR ASSET AMOUNT AND SUCH TWENTY THOUSAND DOLLAR
44 DEDUCTIBLE AMOUNT AT THE SAME PERCENTAGE RATE AS THE INCREASE OR
45 DECREASE IN THE REGIONAL RATE FOR NURSING HOME SERVICES FOR THE REGION
46 IN WHICH THE ELIGIBLE INDIVIDUAL RESIDES.

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

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

1 S 262. COMPACT FOR LONG TERM CARE CREATED; PURPOSES. THE COMPACT FOR
2 LONG TERM CARE IS HEREBY CREATED. ITS PURPOSE SHALL BE TO PROVIDE COOR-
3 DINATED PUBLIC AND PRIVATE COVERAGE FOR THE EXPENSES OF PROVIDING QUALI-
4 FIED LONG TERM CARE SERVICES TO ELIGIBLE INDIVIDUALS PURSUANT TO A PLAN
5 OF CARE, A PURPOSE HEREBY DECLARED TO BE IN EVERY RESPECT AN APPROPRIATE
6 PUBLIC PURPOSE CONDUCTED FOR THE BENEFIT OF THE PEOPLE OF THE STATE OF
7 NEW YORK.

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

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

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

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

49 3. THE COMMISSIONER, AFTER CONSULTATION WITH THE DIRECTOR OF THE DIVI-
50 SION OF THE BUDGET, SHALL WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF
51 THIS SECTION, REPORT TO THE GOVERNOR AND THE LEGISLATURE WITH RECOMMEN-
52 DATIONS FOR THE IMPLEMENTATION OF THE SELECTION PROCESS. SUCH REPORT
53 SHALL DETAIL:

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

55 (B) THE PROCESS TO BE USED IN THE SELECTION, INCLUDING THE ISSUANCE OF
56 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 INSOFAR AS PRACTICABLE 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 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.

(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 FIVE YEARS PRECEDING SUCH DATE OF APPLICATION, (II) THE INDIVIDUAL'S FIVE 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

1 ADVISORY COMMITTEE, SHALL DEEM REASONABLE AND APPROPRIATE TO VERIFY
2 ASSETS, THE VALUES OF SUCH ASSETS, AND THE VALIDITY OF THE PLEDGE
3 AMOUNT.

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

8 (D) THE FOREGOING PROVISIONS OF THIS SECTION TO THE CONTRARY NOTWITH-
9 STANDING, THE PLEDGE AMOUNT MAY BE ADJUSTED IN THE EVENT THAT AN INDIV-
10 VIDUAL IS SUBJECT TO EXTRAORDINARY CIRCUMSTANCES, AS THE COMMISSIONER
11 SHALL DETERMINE, BUT THE DESCRIPTION OR DEFINITION OF EXTRAORDINARY
12 CIRCUMSTANCES SHALL BE ESTABLISHED ONLY UPON RECOMMENDATION OF THE ADVI-
13 SORY COMMITTEE.

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

20 3. NOTWITHSTANDING ANY SIMILARITY IN ELIGIBILITY REQUIREMENTS OR
21 COMMONALITY IN THE DEFINITIONS OF ASSET, INCOME OR OTHER ITEMS, AND
22 EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PARTICIPANT OR BENEFICI-
23 ARY, AS THE CASE MAY BE, SHALL BE EXEMPT FROM THE RESOURCE TESTS, LIENS
24 AND OTHER REQUIREMENTS AND IMPOSITIONS THAT WOULD OTHERWISE BE APPLICA-
25 BLE TO PERSONS APPLYING FOR OR RECEIVING MEDICAID.

26 4. THE PURCHASE OF QUALIFIED LONG TERM CARE SERVICES FOR THE PURPOSE
27 OF FULFILLING THE PLEDGE SHALL BE RESTRICTED TO THE PURCHASE OF QUALI-
28 FIED LONG TERM CARE SERVICES IN THE STATE SO LONG AS THE INDIVIDUAL
29 MEETS THE REQUIREMENTS OF THIS TITLE WITH RESPECT TO FULFILLING THE
30 PLEDGE, AND PROVIDED FURTHER THAT A BENEFICIARY MAY ONLY RECEIVE THE
31 COMPACT SUBSIDY FOR SERVICES RECEIVED WITHIN THIS STATE.

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

47 6. THE COMMISSIONER SHALL ESTABLISH A SEAMLESS PROCESS FOR TRANSITION
48 OF AN INDIVIDUAL FROM PARTICIPANT TO BENEFICIARY WHEN SUCH INDIVIDUAL
49 HAS FULFILLED THE REQUIREMENTS ESTABLISHED PURSUANT TO THIS TITLE. SUCH
50 SEAMLESS PROCESS MAY INCLUDE, FOR EXAMPLE, APPLICATION TO RECEIVE THE
51 PUBLIC SUBSIDY AS A BENEFICIARY AT THE SAME TIME THAT THE INDIVIDUAL
52 ENROLLS AS A PARTICIPANT IN THE COMPACT, SO THAT WHEN THE PLEDGE IS
53 FULFILLED, THE INDIVIDUAL AUTOMATICALLY TRANSITIONS TO THE STATUS OF
54 BENEFICIARY ELIGIBLE FOR THE COMPACT SUBSIDY. INsofar AS FEASIBLE, THE
55 TRANSITION SHOULD BE MANAGED BY THE PROGRAM MANAGEMENT ENTITY.

1 S 267. BENEFITS OF PARTICIPATION. 1. A BENEFICIARY WHO FULFILLS THE
2 PLEDGE SHALL BE ENTITLED TO PRESERVE HIS OR HER RESOURCES AND SHALL BE
3 ELIGIBLE TO RECEIVE THE COMPACT SUBSIDY.

4 2. A BENEFICIARY SHALL NOT BE REQUIRED TO SUBMIT TO RESOURCE REQUIRE-
5 MENTS OR LIMITATIONS, OR TO THE RECOVERY OF PAYMENTS MADE BY THE STATE
6 FROM THE ESTATES OF SUCH INDIVIDUALS, OR TO THE IMPOSITION OF LIENS ON
7 THE HOMES OF PERSONS, SUCH AS THOSE WHICH ARE IMPOSED ON BENEFICIARIES
8 OF THE MEDICAID PROGRAM PURSUANT TO SECTION THREE HUNDRED SIXTY-SIX OR
9 SECTION THREE HUNDRED SIXTY-NINE OF THE SOCIAL SERVICES LAW, UNLESS
10 OTHERWISE PROVIDED IN OR PURSUANT TO THIS TITLE.

11 3. A BENEFICIARY SHALL BE ELIGIBLE TO HAVE THE SUBSIDY PAID TO THE
12 PROVIDER OF SERVICES FOR THE COSTS OF QUALIFIED LONG TERM CARE SERVICES
13 FROM ANY WILLING PROVIDER SELECTED BY SUCH BENEFICIARY.

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

17 5. A BENEFICIARY SHALL NOT BE RESPONSIBLE FOR PAYMENT FOR SUCH QUALI-
18 FIED LONG TERM CARE SERVICES OF ANY AMOUNT GREATER THAN THE DIFFERENCE
19 BETWEEN THE COMPACT RATE AND THE COMPACT SUBSIDY.

20 6. A BENEFICIARY SHALL ANNUALLY REMIT A PARTICIPATION FEE TO MAINTAIN
21 ELIGIBILITY IN THE COMPACT, EQUAL TO TWENTY-FIVE PERCENT OF SUCH BENEFI-
22 CIARY'S COUNTABLE INCOME. SUCH FEE SHALL BE REMITTED TO THE COMMISSION-
23 ER OR, IF SO DIRECTED BY THE COMMISSIONER, TO THE PROGRAM MANAGEMENT
24 ENTITY FOR TRANSMITTAL TO THE COMMISSIONER. THE COMMISSIONER, AFTER
25 CONSULTATION WITH THE ADVISORY COMMITTEE, SHALL MAKE PROVISION TO ALLOW
26 A BENEFICIARY TO MAKE PAYMENTS ON A MONTHLY OR OTHER BASIS, AT THE
27 OPTION OF THE BENEFICIARY.

28 7. A BENEFICIARY SHALL RETAIN A PROTECTED AMOUNT OF INCOME DURING THE
29 PERIOD IN WHICH THE BENEFICIARY IS RECEIVING THE COMPACT SUBSIDY, AS SET
30 FORTH IN THIS TITLE.

31 8. A BENEFICIARY SHALL BE ELIGIBLE TO HAVE THE ANNUAL COMPACT SUBSIDY
32 PAID FOR NON-INSTITUTIONAL SERVICES FROM ONE OR MORE PROVIDERS FOR UP TO
33 AN AMOUNT THAT IS LESS THAN OR EQUAL TO THE ANNUAL REGIONAL MEDICAID
34 RATE COMPUTED FOR NURSING HOME SERVICES FOR THE REGION IN WHICH THE
35 BENEFICIARY RESIDES.

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

45 (A) FOR AN UNMARRIED BENEFICIARY RECEIVING CARE IN AN INSTITUTIONAL
46 SETTING SUCH AS A NURSING HOME, ADULT HOME, ASSISTED LIVING FACILITY OR
47 OTHER SIMILAR FACILITY, AN AMOUNT EQUAL TO THE INSTITUTIONAL PROTECTED
48 AMOUNT;

49 (B) FOR AN UNMARRIED BENEFICIARY RECEIVING CARE AT HOME, AN AMOUNT
50 EQUAL TO THE MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE;

51 (C) FOR A MARRIED COUPLE OF WHOM ONE IS A BENEFICIARY RECEIVING CARE
52 IN AN INSTITUTIONAL SETTING SUCH AS A NURSING HOME, ADULT HOME, ASSISTED
53 LIVING FACILITY OR OTHER SIMILAR FACILITY, AN AMOUNT EQUAL TO THE INSTI-
54 TUTIONAL PROTECTED AMOUNT FOR THE BENEFICIARY AND AN AMOUNT EQUAL TO THE
55 MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE FOR THE SPOUSE WHO IS NOT A
56 BENEFICIARY;

(D) FOR A MARRIED COUPLE OF WHOM ONE IS A BENEFICIARY RECEIVING CARE AT HOME, AN AMOUNT EQUAL TO ONE AND ONE-HALF TIMES 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 EQUAL TO AN INSTITUTIONAL PROTECTED AMOUNT FOR EACH BENEFICIARY; AND

(F) FOR A MARRIED COUPLE, BOTH OF WHOM ARE BENEFICIARIES RECEIVING CARE AT HOME, AN AMOUNT EQUAL TO ONE AND ONE-HALF TIMES 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" HAS THE SAME MEANING AS SUCH TERM 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 THE AMOUNT OF THE PARTICIPATION FEE TO BE PAID BY THE BENEFICIARY, (B) A REDUCTION IN PAYMENT FOR SERVICES BY THE BENEFICIARY OF ANY DIFFERENCE TO BE PAID BY THE BENEFICIARY BETWEEN THE COMPACT RATE AND THE COMPACT SUBSIDY, 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. ANY SUCH REDUCTION SHALL NOT BE EFFECTIVE FOR A PERIOD GREATER THAN TWELVE MONTHS IN ANY THIRTY-SIX MONTH PERIOD.

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.

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

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

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

9 2. ASSUME, USE OR ADVERTISE THE TITLE OF LAWYER OR ATTORNEY AT LAW, OR
10 EQUIVALENT TERMS IN THE ENGLISH LANGUAGE OR ANY OTHER LANGUAGE, OR
11 REPRESENT OR ADVERTISE OTHER TITLES OR CREDENTIALS, INCLUDING BUT NOT
12 LIMITED TO "NOTARY PUBLIC", "ACCREDITED REPRESENTATIVE OF THE DEPARTMENT
13 OF HEALTH" OR "COMPACT CONSULTANT", THAT COULD CAUSE AN INDIVIDUAL TO
14 BELIEVE THAT THE PERSON POSSESSES SPECIAL PROFESSIONAL SKILLS OR IS
15 AUTHORIZED TO PROVIDE ADVICE ON MATTERS RELATED TO THE COMPACT; PROVIDED
16 THAT A NOTARY PUBLIC LICENSED BY THE SECRETARY OF STATE MAY USE THE
17 TITLE "NOTARY PUBLIC".

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

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

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

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

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

35 8. MAKE ANY MISREPRESENTATION OR FALSE STATEMENT, DIRECTLY OR INDI-
36 RECTLY.

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

40 S 271. FRAUDULENT PRACTICES. 1. A PARTICIPANT WHO KNOWINGLY ENGAGES IN
41 FRAUDULENT PRACTICES WITH RESPECT TO FULFILLING OR CLAIMING TO HAVE
42 FULFILLED A PLEDGE AMOUNT SHALL BE DISQUALIFIED FROM THE COMPACT. SUCH
43 INDIVIDUAL SHALL NOT BE DEEMED TO BE A PARTICIPANT OR BENEFICIARY OR TO
44 HAVE FULFILLED HIS OR HER PLEDGE AMOUNT, BUT SHALL NOT SURRENDER ELIGI-
45 BILITY TO APPLY FOR MEDICAID.

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

55 3. ANY INDIVIDUAL WHO, WITH INTENT TO DEFRAUD, PRESENTS FOR ALLOWANCE
56 OR PAYMENT ANY FALSE OR FRAUDULENT CLAIM FOR FURNISHING SERVICES OR

1 MERCHANDISE, OR WHO KNOWINGLY SUBMITS FALSE INFORMATION FOR THE PURPOSE
2 OF OBTAINING GREATER COMPENSATION THAN THAT TO WHICH SUCH INDIVIDUAL IS
3 LEGALLY ENTITLED FOR FURNISHING SERVICES OR MERCHANDISE, OR WHO KNOWING-
4 LY SUBMITS FALSE INFORMATION FOR THE PURPOSE OF OBTAINING AUTHORIZATION
5 FOR FURNISHING SERVICES OR MERCHANDISE UNDER THIS TITLE, SHALL BE GUILTY
6 OF A CLASS A MISDEMEANOR, UNLESS SUCH ACT CONSTITUTES A VIOLATION OF A
7 PROVISION OF THE PENAL LAW, IN WHICH CASE HE OR SHE SHALL BE PUNISHED IN
8 ACCORDANCE WITH THE PENALTIES FIXED BY SUCH PROVISION. SUCH INDIVIDUAL
9 SHALL NOT BE PERMITTED TO PROVIDE SERVICES OR MERCHANDISE TO A PARTIC-
10 IPANT, A BENEFICIARY OR TO ANOTHER INDIVIDUAL OR ENTITY PROVIDING
11 SERVICES UNDER THE COMPACT PROGRAM FOR A PERIOD OF FIVE YEARS.

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

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

18 2. PAYMENTS TO SERVICE PROVIDERS FOR SERVICES PROVIDED TO BENEFICI-
19 ARIES SHALL BE MADE BY THE PROGRAM MANAGEMENT ENTITY. A BENEFICIARY
20 SHALL BE RESPONSIBLE TO PAY ANY DIFFERENCE BETWEEN THE COMPACT RATE AND
21 THE COMPACT SUBSIDY TO THE PROGRAM MANAGEMENT ENTITY. PAYMENTS TO
22 SERVICES PROVIDERS SHALL BE MADE NO LESS FREQUENTLY THAN PAYMENTS TO
23 PROVIDERS BY MEDICAID PURSUANT TO SECTION THREE HUNDRED SIXTY-SEVEN OF
24 THE SOCIAL SERVICES LAW.

25 3. A BENEFICIARY WHO KNOWINGLY FAILS TO PAY THE DIFFERENCE BETWEEN THE
26 COMPACT RATE AND THE COMPACT SUBSIDY AS REQUIRED IN THIS TITLE, UNLESS
27 SUCH BENEFICIARY IS EXCUSED PURSUANT TO THE HARDSHIP PROVISIONS OF THIS
28 TITLE, SHALL BE LIABLE TO THE PROGRAM MANAGEMENT ENTITY, WHICH MAY EXER-
29 CISE ANY AND ALL APPROPRIATE REMEDIES FOR COLLECTION OF THE DEBT. A
30 DEBT UNPAID FOR A PERIOD OF NINETY DAYS, EXCEPT IN THE CASE IN WHICH
31 HARDSHIP HAS BEEN DETERMINED, SHALL RESULT IN SUCH BENEFICIARY BEING
32 DECLARED IN DEFAULT AND NO LONGER ENROLLED IN THE COMPACT.

33 4. A PARTICIPANT WHO HAS FULFILLED HIS OR HER PLEDGE SHALL BE PRESUMED
34 ELIGIBLE TO RECEIVE SERVICES AS A BENEFICIARY FOR A PERIOD OF SIXTY DAYS
35 FROM THE DATE OF DETERMINATION. IF A PARTICIPANT DETERMINED TO BE
36 PRESUMPTIVELY ELIGIBLE TO RECEIVE THE COMPACT SUBSIDY AS A BENEFICIARY
37 IS SUBSEQUENTLY DETERMINED TO BE INELIGIBLE FOR SUCH ASSISTANCE, THE
38 COMMISSIONER MAY RECOUP FROM SUCH INDIVIDUAL ANY SUMS EXPENDED FOR
39 ASSISTANCE DURING THE PERIOD OF PRESUMED ELIGIBILITY.

40 5. A PARTICIPANT WHO KNOWINGLY DEFAULTS ON PAYMENT OF THE PLEDGE, OR A
41 BENEFICIARY WHO KNOWINGLY DEFAULTS ON PAYMENT OF THE DIFFERENCE BETWEEN
42 THE COMPACT RATE AND THE COMPACT SUBSIDY, AND WHO IS THEREFORE NO LONGER
43 ENROLLED IN THE PROGRAM, SHALL NOT BE ELIGIBLE TO RECEIVE PROTECTION OF
44 ASSETS OR INCOME OTHERWISE AFFORDED TO PARTICIPANTS AND BENEFICIARIES
45 UNDER THE COMPACT. NOTHING CONTAINED IN THIS TITLE SHALL BE DEEMED TO
46 SHIELD OR OTHERWISE EXCUSE A BENEFICIARY OR A PARTICIPANT FROM PAYMENT
47 OF A DEBT LAWFULLY INCURRED TO A SERVICE PROVIDER.

48 6. UPON RECOMMENDATION OF THE ADVISORY COMMITTEE, THE COMMISSIONER MAY
49 ESTABLISH RULES, INCLUDING REQUIREMENTS FOR WRITTEN AGREEMENTS, GOVERN-
50 ING THE PAYMENT AND COLLECTION OF DEBT BY PARTICIPANTS AND BENEFICIARIES
51 TO SERVICE PROVIDERS AND TO THE PROGRAM MANAGEMENT ENTITY AS WELL AS
52 NOTIFICATION GUIDELINES TO THE BENEFICIARY, OR A PERSON OR ENTITY ACTING
53 ON BEHALF OF THE BENEFICIARY TO ENSURE THAT PAYMENTS MISSED IN ERROR CAN
54 BE CORRECTED WITHOUT PUNISHMENT TO THE BENEFICIARY.

55 S 272. APPEALS. 1. ANY PERSON OR AN INDIVIDUAL AUTHORIZED TO ACT ON
56 BEHALF OF ANY SUCH PERSON MAY APPEAL TO THE COMMISSIONER FROM DECISIONS

1 OF THE PROGRAM MANAGEMENT ENTITY UPON GROUNDS SPECIFIED IN THIS SECTION.
2 ANY APPEAL PURSUANT TO THIS SECTION SHALL BE REQUESTED WITHIN SIXTY DAYS
3 AFTER THE DATE OF THE ACTION OR FAILURE TO ACT COMPLAINED OF.

4 2. THE COMMISSIONER SHALL SPECIFY THE GROUNDS AND THE FORUM FOR SUCH
5 APPEALS IN REGULATIONS.

6 (A) SUCH GROUNDS AND FORUMS SHALL INCLUDE PROVISION OF FAIR HEARING
7 FOR THE FOLLOWING AND SIMILAR ISSUES: (I) COMPUTATION OF THE VALUE OF
8 ASSETS OR INCOME; (II) WHETHER EXPENSES ARE ELIGIBLE EXPENSES FOR
9 PAYMENT OF THE PLEDGE, AND WHETHER THE PLEDGE WAS FULFILLED; (III)
10 AMOUNT OF PARTICIPATION FEE OR CO-PAY; (IV) DENIAL OF PAYMENT FOR A
11 SERVICE PROVIDED TO A BENEFICIARY.

12 (B) SUCH GROUNDS AND FORUMS SHALL ALSO INCLUDE PROVISION FOR THIRD
13 PARTY REVIEW AND ARBITRATION FOR SUCH ISSUES AS: (I) THE ASSESSMENT AND
14 PLAN OF CARE; (II) PAYMENTS TO PROVIDERS; AND (III) QUALITY OF PROVIDER
15 SERVICES.

16 3. DECISIONS OF THE COMMISSIONER PURSUANT TO THIS SECTION SHALL BE
17 BINDING UPON THE PROGRAM MANAGEMENT ENTITY. SUCH GROUNDS FOR APPEAL
18 SHALL NOT INCLUDE DENIALS FOR ISSUES AND CIRCUMSTANCES RELATED TO THE
19 LANGUAGE, PROCESSING OR APPROVAL OF COVERAGE UNDER A LONG TERM CARE
20 INSURANCE POLICY WHICH ARE OTHERWISE THE SUBJECT OF EXTERNAL APPEALS OF
21 ADVERSE DETERMINATIONS OF HEALTH CARE PLANS PURSUANT TO SECTIONS TWO
22 HUNDRED ONE, THREE HUNDRED ONE, ELEVEN HUNDRED NINE, THIRTY-TWO HUNDRED
23 ONE, THIRTY-TWO HUNDRED SIXTEEN, THIRTY-TWO HUNDRED SEVENTEEN,
24 THIRTY-TWO HUNDRED SEVENTEEN-A, THIRTY-TWO HUNDRED TWENTY-ONE, FORTY-TWO
25 HUNDRED THIRTY-FIVE, FORTY-THREE HUNDRED THREE, FORTY-THREE HUNDRED
26 FOUR, FORTY-THREE HUNDRED FIVE, FORTY-THREE HUNDRED TWENTY-ONE,
27 FORTY-THREE HUNDRED TWENTY-TWO AND FORTY-THREE HUNDRED TWENTY-FOUR,
28 ARTICLE FORTY-SEVEN AND ARTICLE FORTY-NINE OF THE INSURANCE LAW AND
29 CHAPTER FIVE HUNDRED EIGHTY-SIX OF THE LAWS OF NINETEEN HUNDRED NINETY-
30 EIGHT.

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

34 S 273. TREATMENT OF ASSETS. 1. A PARTICIPANT'S HOMESTEAD SHALL NOT BE
35 DEEMED A COUNTABLE ASSET IF THE HOMESTEAD WAS PURCHASED MORE THAN FIVE
36 YEARS PRIOR TO THE DATE THAT AN INDIVIDUAL APPLIES TO BECOME A PARTIC-
37 IPANT IN THE COMPACT. A HOMESTEAD PURCHASED WITHIN FIVE YEARS OF SUCH
38 DATE SHALL BE DEEMED A COUNTABLE ASSET, UNLESS SUCH HOMESTEAD IS A
39 REPLACEMENT FOR A HOMESTEAD SOLD WITHIN ONE YEAR PRIOR TO THE PURCHASE
40 DATE, IN WHICH CASE AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE SALE
41 PRICE OF THE OLD HOMESTEAD AND THE PURCHASE PRICE OF THE NEW HOMESTEAD
42 SHALL BE DEEMED A COUNTABLE ASSET. AS USED IN THIS SECTION, "HOMESTEAD"
43 MEANS THE PRIMARY RESIDENCE OCCUPIED BY A BENEFICIARY OR PARTICIPANT
44 AND/OR MEMBERS OF HIS OR HER FAMILY. FAMILY MEMBERS MAY INCLUDE THE
45 BENEFICIARY'S OR PARTICIPANT'S SPOUSE, MINOR CHILDREN, CERTIFIED BLIND
46 OR CERTIFIED DISABLED CHILDREN, A CARETAKER CHILD, AND OTHER DEPENDENT
47 RELATIVES. HOMESTEAD SHALL BE DEEMED TO MEAN AND INCLUDE THE HOME, LAND
48 AND INTEGRAL PARTS SUCH AS GARAGES AND OUTBUILDINGS, AND MAY BE A CONDO-
49 MINUM, COOPERATIVE APARTMENT OR MANUFACTURED HOME. HOMESTEAD SHALL NOT
50 BE DEEMED TO MEAN AND INCLUDE VACATION HOMES, SUMMER HOMES OR OTHER
51 PREMISES NOT USED AS A PRIMARY RESIDENCE. THE FOREGOING TO THE CONTRARY
52 NOTWITHSTANDING, TO THE EXTENT THAT A HOMESTEAD PURCHASED MORE THAN FIVE
53 YEARS PRIOR TO THE DATE THAT AN INDIVIDUAL APPLIES TO BECOME A PARTIC-
54 IPANT IN THE COMPACT IS DEEMED A RESOURCE UNDER THE RULES OF THE PART-
55 NERSHIP FOR LONG-TERM CARE ESTABLISHED PURSUANT TO SECTION THREE HUNDRED

1 SIXTY-SEVEN-F OF THE SOCIAL SERVICES LAW, IT SHALL ALSO BE DEEMED A
2 RESOURCE UNDER THE COMPACT.

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

8 3. (A) WITH RESPECT TO ANNUITIES, (I) THE PRINCIPAL AMOUNT OF ANY
9 ANNUITY SHALL BE DEEMED A COUNTABLE ASSET IF SUCH ANNUITY IN PERMANENT
10 PAYOUT STATUS WAS PURCHASED WITHIN FIVE YEARS OF THE DATE AN INDIVIDUAL
11 APPLIES TO BECOME A PARTICIPANT, PROVIDED HOWEVER THAT ANY PAYOUT
12 AMOUNTS SHALL NOT BE TREATED AS INCOME FOR PURPOSES OF THE INCOME CALCU-
13 LATION; (II) THE PRINCIPAL AMOUNT OF ANY ANNUITY SHALL NOT BE DEEMED A
14 COUNTABLE ASSET IF A LEVEL PAYMENT SCHEDULE HAS BEEN IN FORCE FOR THREE
15 YEARS OR MORE PRIOR TO THE DATE AN INDIVIDUAL APPLIES TO BECOME A
16 PARTICIPANT, AND NEITHER THE INDIVIDUAL NOR A PERSON ACTING ON SUCH
17 INDIVIDUAL'S BEHALF HAS THE ABILITY TO WITHDRAW AMOUNTS IN EXCESS OF
18 SCHEDULED PAYMENTS, PROVIDED HOWEVER THAT IN SUCH CASE, ANY PAYOUT
19 AMOUNTS SHALL BE COUNTED AS INCOME FOR PURPOSES OF THE INCOME CALCU-
20 LATION; AND (III) AN ANNUITY NOT IN PERMANENT PAYOUT STATUS FOR FIVE
21 YEARS PRIOR TO THE DATE AN INDIVIDUAL APPLIES TO BECOME A PARTICIPANT IN
22 THE COMPACT PROGRAM SHALL BE DEEMED A COUNTABLE ASSET.

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

26 (C) PRE-PAID FUNERALS PURCHASED FOR AN INDIVIDUAL WHO BECOMES A
27 PARTICIPANT OR A BENEFICIARY, A SPOUSE OR FOR CHILDREN WITH DISABILITIES
28 SHALL NOT BE INCLUDED AS A COUNTABLE ASSET, IF MADE PRIOR TO THE DATE ON
29 WHICH THE PARTICIPANT FULFILLS THE PLEDGE AMOUNT.

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

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

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

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

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

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

54 (IV) THE AMOUNT RECEIVED FROM A REVERSE MORTGAGE IF EXPENDED WITHIN
55 THIRTY DAYS OF THE TIME IN WHICH RECEIVED. AN AMOUNT FROM A REVERSE
56 MORTGAGE THAT IS HELD FOR LONGER THAN SUCH THIRTY DAY PERIOD SHALL BE

1 CONSIDERED AS COUNTABLE INCOME, UNLESS USED FOR THE PURCHASE OF LONG
2 TERM CARE SERVICES AS DEFINED IN THIS TITLE.

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

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

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

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

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

25 (C) THE NON-ENROLLING SPOUSE SUBSEQUENTLY APPLIES TO BECOME A PARTIC-
26 IPANT IN THE COMPACT, SUCH INDIVIDUAL MAY PLEDGE EITHER THE MAXIMUM
27 PLEDGE AMOUNT OR THE DOLLAR PLEDGE AMOUNT. FOR PURPOSES OF DETERMINING
28 THE DOLLAR PLEDGE AMOUNT IN SUCH CASE, THE COUNTABLE ASSETS OF SUCH
29 INDIVIDUAL SHALL MEAN, BEFORE ANY OTHER CALCULATIONS AS TO THE AMOUNT
30 REQUIRED TO MEET A DOLLAR PLEDGE AMOUNT, AN AMOUNT EQUAL TO FIFTY
31 PERCENT OF THE REMAINING ASSETS OF THE COUPLE LESS ANY AMOUNT STILL
32 REQUIRED TO MEET THE PLEDGE AMOUNT OF THE INITIAL ENROLLING SPOUSE.

33 3. A TRANSFER OR BEQUEST OF A PROTECTED AMOUNT SHALL NOT BE DEEMED A
34 COUNTABLE ASSET OF THE NON-ENROLLING SPOUSE, NOR SHALL INCOME OR GROWTH
35 ON SUCH INCOME BE COUNTED IF SUCH INCOME WAS PART OF A PROTECTED AMOUNT
36 AND HAS BEEN KEPT IN A SEPARATE ACCOUNT. FOR PURPOSES OF THIS SECTION, A
37 PROTECTED AMOUNT IS THE AMOUNT REMAINING AFTER A PLEDGE HAS BEEN MET.

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

42 S 275. ADVISORY COMMITTEE. 1. THE COMMISSIONER SHALL CONVENE AN ADVI-
43 SORY COMMITTEE TO THE COMPACT PROGRAM, CONSISTING OF ELEVEN PERSONS AS
44 FOLLOWS: TWO FROM THE ELDER LAW SECTION OF THE NEW YORK STATE BAR ASSO-
45 CIATION TO INCLUDE THE CHAIR OF SUCH SECTION OR A DESIGNEE APPOINTED BY
46 THE CHAIR WHO SHALL SERVE EX OFFICIO; TWO FROM STATEWIDE ADVOCACY GROUPS
47 PRIMARILY CONCERNED WITH SENIOR ISSUES; FOUR FROM PROVIDERS OF SERVICES,
48 INCLUDING TWO REPRESENTING INSTITUTIONAL PROVIDERS OF SERVICES AND TWO
49 REPRESENTING NON-INSTITUTIONAL PROVIDERS; TWO FROM INSURERS SELLING LONG
50 TERM CARE INSURANCE IN THE STATE WHO SHALL BE PERSONS WITH AT LEAST FIVE
51 YEARS EXPERIENCE IN THE DEVELOPMENT OF LONG TERM CARE INSURANCE PRODUCTS
52 AND WHO ARE OR WHO SHALL HAVE BEEN, SO FAR AS SHALL BE PRACTICABLE, IN
53 EXECUTIVE POSITIONS; AND ONE WITH AT LEAST FIVE YEARS ACTUARIAL EXPERI-
54 ENCE IN LONG TERM CARE INSURANCE MATTERS. MEMBERS SHALL RECEIVE NO
55 COMPENSATION FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND
56 NECESSARY EXPENSES INCURRED IN PERFORMANCE OF THEIR DUTIES HEREUNDER.

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

21 3. THE COMMITTEE SHALL ANNUALLY, OR MORE OFTEN IF THE COMMITTEE SHALL
22 SO DECIDE, REVIEW THE METHODOLOGY FOR SETTING THE AMOUNT OF THE COMPACT
23 SUBSIDY AND SHALL MAKE SUCH RECOMMENDATIONS FOR CHANGE TO THE COMMIS-
24 SIONER AS IT SHALL DEEM APPROPRIATE AND IN KEEPING WITH THE SPIRIT AND
25 INTENT OF THIS TITLE.

26 4. THE COMMITTEE SHALL ANNUALLY, OR MORE OFTEN IF THE COMMITTEE SHALL
27 SO DECIDE, REVIEW THE CONDUCT OF PROVIDERS OF SERVICE TO PARTICIPANTS
28 AND BENEFICIARIES AND MAY RECOMMEND TO THE COMMISSIONER THE ESTABLISH-
29 MENT OF REQUIREMENTS CONCERNING SUCH CONDUCT TO PREVENT ABUSES. IF THE
30 COMMITTEE SHALL MAKE SUCH RECOMMENDATION, THE COMMISSIONER IS HEREBY
31 AUTHORIZED TO AND SHALL PRESCRIBE SUCH REQUIREMENTS BY RULE AND REGU-
32 LATION.

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

47 S 276. REQUIREMENT FOR CONFIDENTIALITY. EXCEPT AS OTHERWISE PROVIDED
48 IN THIS SECTION, ALL INFORMATION GATHERED FROM AN INDIVIDUAL SEEKING
49 ENROLLMENT IN THE COMPACT PROGRAM SHALL BE CONFIDENTIAL, WITH THE
50 FOLLOWING EXCEPTIONS:

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

54 2. JUDICIAL SUBPOENAS;

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

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

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

8 S 277. EDUCATION AND INFORMATION. THE PROGRAM MANAGEMENT ENTITY, IN
9 CONSULTATION WITH THE SUPERINTENDENT OF INSURANCE, THE DIRECTOR AND THE
10 COMMISSIONER, IS HEREBY AUTHORIZED AND DIRECTED, WITHIN AMOUNTS APPRO-
11 PRIATED THEREFOR AND OTHER FUNDS MADE AVAILABLE PURSUANT TO THIS
12 SECTION, TO ESTABLISH AN EDUCATION AND OUTREACH PROGRAM CONCERNING THE
13 COMPACT PROGRAM OR TO COORDINATE SUCH EDUCATION AND OUTREACH PROGRAM
14 WITH ANY SIMILAR PUBLICLY SPONSORED PROGRAM FOR THE PURPOSE OF INFORMING
15 AND EDUCATING THE GENERAL PUBLIC OF THE AVAILABILITY AND ADVANTAGES OF
16 THE COMPACT PROGRAM BY MEANS INCLUDING BUT NOT LIMITED TO THE FOLLOWING:
17 EDUCATIONAL AND INFORMATIONAL MATERIALS IN PRINT, AUDIO, VISUAL, ELEC-
18 TRONIC OR OTHER MEDIA; PUBLIC SERVICE ANNOUNCEMENTS, ADVERTISEMENTS,
19 MEDIA CAMPAIGNS, WORKSHOPS, MASS MAILINGS, CONFERENCES OR PRESENTATIONS;
20 ESTABLISHMENT OF A TOLL-FREE TELEPHONE HOTLINE AND ELECTRONIC SERVICES
21 TO PROVIDE INFORMATION; AND MEETINGS CONDUCTED BY ARRANGEMENT WITH THE
22 COMMISSIONER AND THE DIRECTOR WITH ESTATE PLANNERS, ELDER LAW ATTORNEYS
23 AND OTHER PROFESSIONALS CONCERNING LONG TERM CARE INSURANCE, INCLUDING
24 THOSE POLICIES AVAILABLE THROUGH THE PARTNERSHIP FOR LONG TERM CARE
25 PROGRAM. IN EXERCISING ANY POWERS UNDER THIS SECTION, THE PROGRAM
26 MANAGEMENT ENTITY MAY CONSULT WITH APPROPRIATE AGENCIES, ORGANIZATIONS,
27 CONSUMERS AND PROVIDERS OF LONG TERM CARE INSURANCE OR ORGANIZATIONS
28 REPRESENTING THEM. IN ADDITION TO STATE FUNDS APPROPRIATED FOR PROGRAMS
29 UNDER THIS SECTION, THE COMMISSIONER AND THE DIRECTOR MAY ACCEPT FUNDING
30 FROM PUBLIC SOURCES FOR PROGRAMS UNDER THIS SECTION AND MAY UNDERTAKE
31 JOINT OR COOPERATIVE PROGRAMS WITH OTHER PUBLIC AGENCIES OR PRIVATE
32 NOT-FOR-PROFIT CORPORATIONS WHICH ARE NEITHER PROVIDERS NOR REGULATORS
33 OF LONG TERM CARE INSURANCE OR AFFILIATES OR UNITS OF SUCH AGENCIES OR
34 CORPORATIONS.

35 S 2. The insurance law is amended by adding a new section 3229-a to
36 read as follows:

37 S 3229-A. LONG TERM CARE INSURANCE PLANS QUALIFYING TO PROVIDE COVER-
38 AGE UNDER THE NEW YORK STATE COMPACT FOR LONG TERM CARE. ANY OTHER
39 PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, ANY TAX
40 QUALIFIED LONG TERM CARE INSURANCE PLANS MAY BE USED TO MAKE PAYMENTS
41 FOR SERVICES PROVIDED TO ALLOW PARTICIPANTS TO MEET PLEDGE AMOUNTS
42 PURSUANT TO THE NEW YORK STATE COMPACT FOR LONG TERM CARE PROGRAM ESTAB-
43 LISHED PURSUANT TO TITLE FOUR OF ARTICLE TWO OF THE ELDER LAW. THE
44 SUPERINTENDENT SHALL ADDITIONALLY APPROVE INSURANCE PLANS THAT PROVIDE
45 OR INCLUDE TOTAL BENEFITS IN AN AMOUNT WHICH WILL ALLOW THE INDIVIDUAL
46 TO MEET THE PARTICIPATION FEE AND THE CO-PAY REQUIREMENTS OF THE
47 COMPACT. FOR PURPOSES OF THIS SECTION, THE TERM "TAX QUALIFIED" HAS THE
48 SAME MEANING AS UNDER SECTION 7702B(B) OF THE INTERNAL REVENUE CODE OF
49 1986, AS AMENDED.

50 S 3. Severability. If any clause, sentence, paragraph, section or part
51 of this act shall be adjudged by any court of competent jurisdiction to
52 be invalid, such judgment shall not affect, impair or invalidate the
53 remainder thereof, but shall be confined in its operation to the clause,
54 sentence, paragraph, section or part thereof directly involved in the
55 controversy in which such judgment shall have been rendered.

1 S 4. This act shall take effect on the ninetieth day after it shall
2 have become a law.