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

5037

2011-2012 Regular Sessions

I N S E N A T E

May 2, 2011

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to establishing a public awareness program on the availability of long term health care insurance and the tax credits therefor and accelerating payment of death benefits or a special surrender value pursuant to a life insurance policy upon receipt of end of life or palliative care; to amend the tax law, in relation to credits for premiums paid for long-term care insurance policies; and to amend the public health law, the insurance law and the social services law, in relation to the provision of homemaker services

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

Section 1. The insurance law is amended by adding a new section 342 to read as follows:

S 342. PUBLIC AWARENESS OF LONG TERM CARE INSURANCE. THE DEPARTMENT, DEPARTMENT OF HEALTH, OFFICE FOR THE AGING AND DEPARTMENT OF TAXATION AND FINANCE SHALL JOINTLY ESTABLISH AND CONDUCT A PUBLIC AWARENESS PROGRAM ON THE AVAILABILITY AND COVERAGE PROVIDED BY HEALTH INSURANCE PLANS FOR LONG TERM CARE, AND THE PROVISIONS OF VARIOUS TAX CREDITS THEREFOR.

S 2. Paragraph 1 of subsection (a) of section 1113 of the insurance law, as amended by chapter 563 of the laws of 2010, is amended to read as follows:

(1) "Life Insurance," means every insurance upon the lives of human beings, and every insurance appertaining thereto, including the granting of endowment benefits, additional benefits in the event of death by accident, additional benefits to safeguard the contract from lapse, accelerated payments of part or all of the death benefit or a special surrender value upon (A) diagnosis of terminal illness defined as a life expectancy of twelve months or less, (B) diagnosis of a medical condi-

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

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tion requiring extraordinary medical care or treatment regardless of life expectancy, (C) certification by a licensed health care practitioner of any condition which requires continuous care for the remainder of the insured's life in an eligible facility or at home when the insured is chronically ill as defined by Section 7702(B) of the Internal Revenue Code and regulations thereunder, provided the accelerated payments qualify under Section 101(g)(3) of the Internal Revenue Code and all other applicable sections of federal law in order to maintain favorable tax treatment, (D) certification by a licensed health care practitioner that the insured is chronically ill as defined by Section 7702 (B) of the Internal Revenue Code and regulations thereunder, provided the accelerated payments qualify under Section 101(g)(3) of the Internal Revenue Code and all other applicable sections of federal law in order to maintain favorable tax treatment and the insurer that issues such policy is a qualified long term care insurance carrier under Section 4980c of the Internal Revenue Code or provide a special surrender value, upon total and permanent disability of the insured, and optional modes of settlement of proceeds, [or] (E) the insured's having been a resident of a nursing home, as defined in section twenty-eight hundred one of the public health law, for a period of three months or more, with an expectation that such insured will remain a resident of a nursing home until death, OR (F) THE INSURED'S HAVING BEEN THE RECIPIENT OF LONG TERM HOME HEALTH CARE, HOSPICE OR ADULT DAY CARE SERVICES, OR OTHER SERVICES, WHICH PROVIDE END OF LIFE OR PALLIATIVE CARE TO THE INSURED. "Life insurance" also includes additional benefits to safeguard the contract against lapse in the event of unemployment of the insured or in the event the insured is a resident of a nursing home. Amounts paid the insurer for life insurance and proceeds applied under optional modes of settlement or under dividend options may be allocated by the insurer to one or more separate accounts pursuant to section four thousand two hundred forty of this chapter.

S 3. Subparagraph (A) of paragraph 11 of subsection (c) of section 3201 of the insurance law, as amended by chapter 563 of the laws of 2010, is amended to read as follows:

(A) The superintendent shall not approve a life insurance policy which provides for accelerated payment of death benefits or special surrender values pursuant to subparagraph (B), (C), (D) [or], (E) OR (F) of paragraph one of subsection (a) of section one thousand one hundred thirteen of this chapter unless it also provides for such accelerated payments or special surrender values pursuant to subparagraph (A) of paragraph one of subsection (a) of such section.

S 4. Subsection (f) of section 3230 of the insurance law, as amended by chapter 563 of the laws of 2010, is amended to read as follows:

(f) This section shall apply to all life insurance policies or policy riders or provisions thereof that provide for accelerated payment of death benefits or a special surrender value pursuant to subparagraph (A), (B), (C) [or], (E) OR (F) of paragraph one of subsection (a) of section one thousand one hundred thirteen of this chapter.

S 5. Subdivision 1 of section 190 of the tax law, as amended by section 17 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

1. General. A taxpayer shall be allowed a credit against the tax imposed by this article, other than the taxes and fees imposed by sections one hundred eighty and one hundred eighty-one of this article, equal to [twenty percent] THE FOLLOWING PERCENTAGES of the premium paid during the taxable year for long-term care insurance:

(A) FORTY PERCENT IF THE INSURED IS LESS THAN FORTY YEARS OF AGE AT THE END OF THE TAX YEAR;
(B) THIRTY PERCENT IF THE INSURED IS LESS THAN FIFTY YEARS OF AGE, BUT FORTY OR MORE YEARS OF AGE, AT THE END OF THE TAX YEAR;
(C) TWENTY-FIVE PERCENT IF THE INSURED IS LESS THAN FIFTY-FIVE YEARS OF AGE, BUT FIFTY OR MORE YEARS OF AGE, AT THE END OF THE TAX YEAR; OR
(D) TWENTY PERCENT IF THE INSURED IS FIFTY-FIVE OR MORE YEARS OF AGE AT THE END OF THE TAX YEAR.

In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred seventeen of the insurance law.

S 6. Paragraph (a) of subdivision 25-a of section 210 of the tax law, as amended by section 18 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

(a) A taxpayer shall be allowed a credit against the tax imposed by this article equal to [twenty percent] THE FOLLOWING PERCENTAGES of the premium paid during the taxable year for long-term care insurance:
(I) FORTY PERCENT IF THE INSURED IS LESS THAN FORTY YEARS OF AGE AT THE END OF THE TAX YEAR;
(II) THIRTY PERCENT IF THE INSURED IS LESS THAN FIFTY YEARS OF AGE, BUT FORTY OR MORE YEARS OF AGE, AT THE END OF THE TAX YEAR;
(III) TWENTY-FIVE PERCENT IF THE INSURED IS LESS THAN FIFTY-FIVE YEARS OF AGE, BUT FIFTY OR MORE YEARS OF AGE, AT THE END OF THE TAX YEAR; OR
(IV) TWENTY PERCENT IF THE INSURED IS FIFTY-FIVE OR MORE YEARS OF AGE AT THE END OF THE TAX YEAR.

In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred seventeen of the insurance law.

S 7. Paragraph 1 of subsection (aa) of section 606 of the tax law, as amended by section 1 of part P of chapter 61 of the laws of 2005, is amended to read as follows:

(1) Residents. A taxpayer shall be allowed a credit against the tax imposed by this article equal to [twenty percent] THE FOLLOWING PERCENTAGES of the premium paid during the taxable year for long-term care insurance:
(A) FORTY PERCENT IF THE INSURED IS LESS THAN FORTY YEARS OF AGE AT THE END OF THE TAX YEAR;
(B) THIRTY PRESENT IF THE INSURED IS LESS THAN FIFTY YEARS OF AGE, BUT FORTY OR MORE YEARS OF AGE, AT THE END OF THE TAX YEAR;
(C) TWENTY-FIVE PERCENT IF THE INSURED IS LESS THAN FIFTY-FIVE YEARS OF AGE, BUT FIFTY OR MORE YEARS OF AGE, AT THE END OF THE TAX YEAR; OR
(D) TWENTY PERCENT IF THE INSURED IS FIFTY-FIVE OR MORE YEARS OF AGE AT THE END OF THE TAX YEAR.

In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred seventeen of the insurance 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.

S 8. Paragraph 1 of subsection (k) of section 1456 of the tax law, as amended by section 20 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

(1) A taxpayer shall be allowed a credit against the tax imposed by this article equal to [twenty percent] THE FOLLOWING PERCENTAGES of the premium paid during the taxable year for long-term care insurance:

(A) FORTY PERCENT IF THE INSURED IS LESS THAN FORTY YEARS OF AGE AT THE END OF THE TAX YEAR;

(B) THIRTY PERCENT IF THE INSURED IS LESS THAN FIFTY YEARS OF AGE, BUT FORTY OR MORE YEARS OF AGE, AT THE END OF THE TAX YEAR;

(C) TWENTY-FIVE PERCENT IF THE INSURED IS LESS THAN FIFTY-FIVE YEARS OF AGE, BUT FIFTY OR MORE YEARS OF AGE, AT THE END OF THE TAX YEAR; OR

(D) TWENTY PERCENT IF THE INSURED IS FIFTY-FIVE OR MORE YEARS OF AGE AT THE END OF THE TAX YEAR.

In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred seventeen of the insurance law.

S 9. Paragraph 1 of subdivision (m) of section 1511 of the tax law, as amended by section 21 of part B of chapter 58 of the laws of 2004, is amended to read as follows:

(1) A taxpayer shall be allowed a credit against the tax imposed by this article equal to [twenty percent] THE FOLLOWING PERCENTAGES of the premium paid during the taxable year for long-term care insurance:

(A) FORTY PERCENT IF THE INSURED IS LESS THAN FIFTY YEARS OF AGE AT THE END OF THE TAX YEAR;

(B) THIRTY PERCENT IF THE INSURED IS LESS THAN FIFTY YEARS OF AGE, BUT FORTY OR MORE YEARS OF AGE, AT THE END OF THE TAX YEAR;

(C) TWENTY-FIVE PERCENT IF THE INSURED IS LESS THAN FIFTY-FIVE YEARS OF AGE, BUT FIFTY OR MORE YEARS OF AGE, AT THE END OF THE TAX YEAR; OR

(D) TWENTY PERCENT IF THE INSURED IS FIFTY-FIVE OR MORE YEARS OF AGE AT THE END OF THE TAX YEAR.

In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred seventeen of the insurance law.

S 10. Subdivision 4 of section 3602 of the public health law, as amended by chapter 600 of the laws of 2002, is amended to read as follows:

4. "Home health aide services" means simple health care tasks, personal hygiene services, housekeeping tasks essential to the patient's health and other related supportive services. Such services shall be prescribed by a physician in accordance with a plan of treatment for the patient and: (A) shall be under the supervision of a registered professional nurse from a certified home health agency or, when appropriate, from a provider of a long term home health care program and of the appropriate professional therapist from such agency or provider when the aide carries out simple procedures as an extension of physical, speech or occupational therapy, OR (B) HOMEMAKER SERVICES WHICH CAN BE ENGAGED THROUGH A PRIVATE HOME AIDE, PROVIDED HOWEVER THAT SUCH AIDE HAS (1) MET THE STANDARDS ESTABLISHED BY THE DEPARTMENT OF FAMILY ASSISTANCE, AND (2) SUCH SERVICES ARE REIMBURSABLE THROUGH THE PARTNERSHIP FOR LONG TERM CARE PROGRAM PURSUANT TO SECTION THREE HUNDRED SIXTY-SEVEN-F OF THE SOCIAL SERVICES LAW. Such services may also be prescribed or ordered by a nurse practitioner to the extent authorized by law and consistent with the written practice agreement pursuant to subdivision three of section six thousand nine hundred two of the education law and not prohibited by federal law or regulation.

S 11. Subparagraph (A) of paragraph 6 of subsection (i) of section 3216 of the insurance law, as amended by chapter 557 of the laws of 2000, is amended to read as follows:

(A) Home care means the care and treatment of a covered person who is under the care of a physician but only if hospitalization or confinement in a nursing facility as defined in subchapter XVIII of the federal Social Security Act, 42 U.S.C. SS 1395 et seq, would otherwise have been required if home care was not provided, and the plan covering the home health service is established and approved in writing by such physician. Home care shall be provided by an agency [possessing] OR THROUGH A PRIVATE HOME AIDE SERVICE PURSUANT TO THIS SUBPARAGRAPH. WHERE HOME CARE IS PROVIDED BY AN AGENCY SUCH AGENCY SHALL POSSESS a valid certificate of approval or license issued pursuant to article thirty-six of the public health law and shall consist of one or more of the following:

(i) Part-time or intermittent home nursing care by or under the supervision of a registered professional nurse (R.N.).

(ii) Part-time or intermittent home health aide services which consist primarily of caring for the patient.

(iii) Physical, occupational or speech therapy if provided by the home health service or agency.

(iv) Medical supplies, drugs and medications prescribed by a physician, and laboratory services by or on behalf of a certified home health agency or licensed home care services agency to the extent such items would have been covered under the contract if the covered person had been hospitalized or confined in a skilled nursing facility as defined in [title] subchapter XVIII of the federal Social Security Act, 42 U.S.C. SS 1395 et seq.

WHERE HOMEMAKER SERVICES ARE PROVIDED THROUGH PRIVATE HOME AIDE SERVICES SUCH CARE SHALL CONSIST OF ONE OR MORE OF THE FOLLOWING:

(I) SUCH AIDE SHALL HAVE MET THE STANDARDS ESTABLISHED BY THE DEPARTMENT OF FAMILY ASSISTANCE.

(II) SUCH SERVICES ARE REIMBURSABLE THROUGH THE PARTNERSHIP FOR LONG TERM CARE PROGRAM PURSUANT TO SECTION THREE HUNDRED SIXTY-SEVEN-F OF THE SOCIAL SERVICES LAW.

(III) PART-TIME OR INTERMITTENT HOMEMAKER SERVICES WHICH CONSIST PRIMARILY OF CARING FOR THE PATIENT.

S 12. Subparagraph (D) of paragraph 1 of subsection (k) of section 3221 of the insurance law, as amended by chapter 557 of the laws of 2000, is amended to read as follows:

(D) Home care shall be provided by an agency [possessing] OR THROUGH A PRIVATE HOME AIDE SERVICE PURSUANT TO THIS SUBPARAGRAPH. WHERE HOME CARE IS PROVIDED BY AN AGENCY SUCH AGENCY SHALL POSSESS a valid certificate of approval or license issued pursuant to article thirty-six of the public health law and shall consist of one or more of the following:

(i) Part-time or intermittent home nursing care by or under the supervision of a registered professional nurse (R.N.).

(ii) Part-time or intermittent home health aide services which consist primarily of caring for the patient.

(iii) Physical, occupational or speech therapy if provided by the home health service or agency.

(iv) Medical supplies, drugs and medications prescribed by a physician, and laboratory services by or on behalf of a certified home health agency or licensed home care services agency to the extent such items would have been covered under the contract if the covered person had been hospitalized or confined in a skilled nursing facility as defined

in subchapter XVIII of the federal Social Security Act, 42 U.S.C. SS 1395 et seq.

WHERE HOMEMAKER SERVICES ARE PROVIDED THROUGH PRIVATE HOME AIDE SERVICES SUCH CARE SHALL CONSIST OF ONE OR MORE OF THE FOLLOWING:

(I) SUCH AIDE SHALL HAVE MET THE STANDARDS ESTABLISHED BY THE DEPARTMENT OF FAMILY ASSISTANCE.

(II) SUCH SERVICES ARE REIMBURSABLE THROUGH THE PARTNERSHIP FOR LONG TERM CARE PROGRAM PURSUANT TO SECTION THREE HUNDRED SIXTY-SEVEN-F OF THE SOCIAL SERVICES LAW.

(III) PART-TIME OR INTERMITTENT HOMEMAKER SERVICES WHICH CONSIST PRIMARILY OF CARING FOR THE PATIENT.

S 13. Subparagraphs (B) and (C) of paragraph 3 of subsection (a) of section 4303 of the insurance law, as amended by chapter 557 of the laws of 2000, are amended and a new subparagraph (C-1) is added to read as follows:

(B) Home care shall be provided by an agency [possessing] OR THROUGH A PRIVATE HOME AIDE SERVICE PURSUANT TO THIS PARAGRAPH. WHERE HOME CARE IS PROVIDED BY AN AGENCY SUCH AGENCY SHALL POSSESS a valid certificate of approval or license issued pursuant to article thirty-six of the public health law.

(C) Home care PROVIDED BY AN AGENCY shall consist of one or more of the following:

(i) part-time or intermittent home nursing care by or under the supervision of a registered professional nurse (R.N.),

(ii) part-time or intermittent home health aide services which consist primarily of caring for the patient,

(iii) physical, occupational or speech therapy if provided by the home health service or agency, and

(iv) medical supplies, drugs and medications prescribed by a physician, and laboratory services by or on behalf of a certified home health agency or licensed home care services agency to the extent such items would have been covered or provided under the contract if the covered person had been hospitalized or confined in a skilled nursing facility as defined in subchapter XVIII of the Social Security Act, 42 U.S.C. S 1395 et seq.

(C-1) HOMEMAKER SERVICES PROVIDED THROUGH A PRIVATE HOME AIDE SERVICE SHALL CONSIST OF ONE OR MORE OF THE FOLLOWING:

(I) SUCH AIDE SHALL HAVE MET THE STANDARDS ESTABLISHED BY THE DEPARTMENT OF FAMILY ASSISTANCE.

(II) SUCH SERVICES ARE REIMBURSABLE THROUGH THE PARTNERSHIP FOR LONG TERM CARE PROGRAM PURSUANT TO SECTION THREE HUNDRED SIXTY-SEVEN-F OF THE SOCIAL SERVICES LAW.

(III) PART-TIME OR INTERMITTENT HOMEMAKER SERVICES WHICH CONSIST PRIMARILY OF CARING FOR THE PATIENT.

S 14. Paragraph (b) of subdivision 1 of section 367-f of the social services law, as added by chapter 659 of the laws of 1997, is amended to read as follows:

(b) "Long term care services" shall include, but not be limited to care, treatment, maintenance, and services: provided in a nursing facility licensed under article twenty-eight of the public health law; provided by a home care services agency, certified home health agency or long term home health care program, as defined in section thirty-six hundred two of the public health law; provided by an adult day health care program in accordance with regulations of the department of health; [or] provided by a personal care provider licensed or regulated by any other state or local agency; OR HOMEMAKER SERVICES THROUGH PRIVATE HOME

AIDES AS PROVIDED IN SUBDIVISION FOUR OF SECTION THIRTY-SIX HUNDRED TWO OF THE PUBLIC HEALTH LAW; and such other services for which medical assistance is otherwise available under this chapter which are designated as long term care services in law or regulations of the department of health.

S 15. The department of insurance shall analyze and compare expenditures, utilization rates, and utilization patterns for claims for home care services covered by individual and group accident and health insurance for the period commencing two years immediately preceding the effective date of this act and ending two years immediately following the effective date of this act. The department of insurance shall report its findings to the governor, the temporary president of the senate, and the speaker of the assembly on or before April 1, 2013.

S 16. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to policies or contracts issued, renewed, modified, altered, or amended on or after such date.