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

5721

2013-2014 Regular Sessions

I N S E N A T E

June 7, 2013

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

AN ACT to amend the public health law, in relation to medicaid life settlements

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

Section 1. The public health law is amended by adding a new section 21 to read as follows:

S 21. MEDICAID LIFE SETTLEMENTS. (A) FOR PURPOSES OF THIS SECTION, "LONG-TERM CARE SERVICES" SHALL INCLUDE HOME HEALTH CARE, ASSISTED LIVING AND NURSING HOME SERVICES.

(B) THE OWNER OF A POLICY, AS DEFINED IN SUBSECTION (P) OF SECTION SEVEN THOUSAND EIGHT HUNDRED TWO OF THE INSURANCE LAW WITH ANY FACE AMOUNT IN EXCESS OF TEN THOUSAND DOLLARS, MAY ENTER INTO A LIFE SETTLEMENT CONTRACT PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE INSURANCE LAW, IN EXCHANGE FOR PAYMENTS DIRECTLY TO A HEALTH CARE PROVIDER FOR LONG-TERM CARE SERVICES FOR THE RECIPIENT OF SUCH SERVICES IN ACCORDANCE WITH THIS SECTION.

(C) THE PROCEEDS OF A LIFE SETTLEMENT CONTRACT ENTERED INTO PURSUANT TO THIS SECTION SHALL NOT BE CONSIDERED A RESOURCE OR ASSET IN DETERMINING A MEDICAID APPLICANT'S OR RECIPIENT'S ELIGIBILITY FOR MEDICAID AND SHALL ONLY BE USED AS ALLOWED FOR LONG-TERM CARE SERVICES IN ACCORDANCE WITH THIS SECTION. NO STATE OR FEDERAL MEDICAID FUNDS CAN BE USED FOR SUCH MEDICAID RECIPIENT'S CARE UNTIL SUCH AVAILABLE PROCEEDS ARE SPENT DOWN, EXCEPT FOR THE AMOUNT PROVIDED FOR IN PARAGRAPH (I) OF SUBDIVISION (D) OF THIS SECTION.

(D) IN ADDITION TO ANY REQUIREMENTS IN ARTICLE SEVENTY-EIGHT OF THE INSURANCE LAW, ANY LIFE SETTLEMENT CONTRACT ENTERED INTO PURSUANT TO THIS SECTION MUST PROVIDE FOR THE FOLLOWING:

(I) THAT THE LESSER OF FIVE PERCENT OF THE FACE AMOUNT OF THE LIFE INSURANCE OR FIVE THOUSAND DOLLARS IS RESERVED AND BE PAYABLE TO THE

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

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OWNER'S ESTATE OR A NAMED BENEFICIARY UPON THE DEATH OF THE INSURED UNDER THE POLICY THAT IS THE SUBJECT OF THE LIFE SETTLEMENT CONTRACT FOR FINAL EXPENSES; AND

(II) THAT THE BALANCE OF PROCEEDS OF THE LIFE SETTLEMENT CONTRACT UNPAID AT THE DEATH OF THE INSURED MUST BE PAID TO THE OWNER'S ESTATE OR A NAMED BENEFICIARY.

(E) ALL PROCEEDS OF THE LIFE SETTLEMENT CONTRACT MUST BE HELD IN AN IRREVOCABLE STATE OR FEDERALLY INSURED ACCOUNT FOR THE BENEFIT OF THE RECIPIENT OF THE LONG-TERM CARE SERVICES AND ADMINISTERED IN ACCORDANCE WITH THIS SECTION.

(F) ONLY A RECIPIENT OF LONG-TERM CARE SERVICES FOR WHOSE BENEFIT AN OWNER ENTERS INTO A LIFE SETTLEMENT CONTRACT UNDER THIS SECTION MAY CHOOSE THE PROVIDER AND TYPE OF SERVICES PROVIDED TO THE RECIPIENT AND PAID FOR OUT OF AN ACCOUNT DESCRIBED BY SUBDIVISION (D) OF THIS SECTION. ANY ATTEMPT BY A PERSON TO REQUIRE THE RECIPIENT TO CHOOSE A SPECIFIC PROVIDER IS STRICTLY PROHIBITED AND CONSTITUTES AN UNFAIR METHOD OF COMPETITION OR AN UNFAIR OR DECEPTIVE ACT OR PRACTICE UNDER THE INSURANCE LAW.

(G) (I) A LIFE SETTLEMENT PROVIDER ENTERING INTO A LIFE SETTLEMENT CONTRACT PURSUANT TO THIS SECTION MUST MAINTAIN A SURETY BOND EXECUTED AND ISSUED BY AN INSURER AUTHORIZED TO ISSUE SURETY BONDS IN THIS STATE, A POLICY OF ERRORS AND OMISSIONS INSURANCE, OR A DEPOSIT OF CASH, CERTIFICATES OF DEPOSIT OR SECURITIES OR ANY COMBINATION THEREOF IN THE AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS.

(II) NOTWITHSTANDING ANY PROVISION OF LAW, ANY CLAIM FROM AN OWNER OF A POLICY, THE OWNER'S ESTATE, ANY BENEFICIARY, OR ANY OTHER PERSON WITH RESPECT TO THE LIFE SETTLEMENT CONTRACT MAY NOT EXCEED THE FACE AMOUNT OF THE POLICY, LESS THE PROCEEDS PAID UNDER THE LIFE SETTLEMENT CONTRACT AND THE TOTAL AMOUNT OF PREMIUMS PAID SUBSEQUENT TO ENTERING INTO THE LIFE SETTLEMENT CONTRACT. ANY PAYMENT OF A CLAIM BY A LIFE SETTLEMENT PROVIDER MUST BE MADE FROM THE FUNDS ESTABLISHED PURSUANT TO SUBDIVISION (D) OF THIS SECTION.

(III) FOR THE PURPOSES OF THIS SECTION, THE PROVISIONS OF PARAGRAPH SIX OF SUBSECTION (B) OF SECTION FOUR HUNDRED ELEVEN OF THE INSURANCE LAW SHALL NOT APPLY TO ANY POLICY THAT IS THE SUBJECT OF A LIFE SETTLEMENT CONTRACT THAT HAS BEEN IN FORCE FOR FIVE YEARS OR MORE.

(H) THE DEPARTMENT SHALL, AS PART OF THE APPLICATION FOR MEDICAID, PROVIDE WRITTEN NOTICE OF THE OPTIONS TO ENTER INTO A LIFE SETTLEMENT CONTRACT AS PROVIDED IN THIS SECTION.

(I) THE DEPARTMENT IS AUTHORIZED TO PROMULGATE JURISDICTIONALLY APPROPRIATE RULES TO ENSURE THAT:

(I) PROCEEDS FROM A LIFE SETTLEMENT CONTRACT ARE USED TO REIMBURSE A PROVIDER OF LONG-TERM CARE SERVICES;

(II) ELIGIBILITY AND NEED FOR MEDICAL ASSISTANCE ARE DETERMINED WITHOUT CONSIDERING THE BALANCE OF PROCEEDS FROM A LIFE SETTLEMENT CONTRACT AS PROVIDED IN THIS SECTION; AND

(III) PAYMENTS TO A LONG-TERM CARE SERVICE PROVIDER ARE MADE IN ACCORDANCE WITH THIS SECTION.

(J) THE DEPARTMENT OF FINANCIAL SERVICES SHALL:

(I) CONDUCT PERIODIC EXAMINATIONS OF EACH LIFE SETTLEMENT PROVIDER WITH RESPECT TO ANY LIFE SETTLEMENT CONTRACTS ENTERED INTO PURSUANT TO THIS SECTION, IN ACCORDANCE WITH SECTION SEVEN THOUSAND EIGHT HUNDRED EIGHT OF THE INSURANCE LAW;

(II) REVIEW AND APPROVE LIFE SETTLEMENT CONTRACT FORMS ENTERED INTO PURSUANT TO THIS SECTION, IN ACCORDANCE WITH SECTION SEVEN THOUSAND EIGHT HUNDRED SIX OF THE INSURANCE LAW; AND

(III) REQUIRE ANY ADVERTISEMENTS USED BY A LIFE SETTLEMENT PROVIDER BE FILED WITH THE DEPARTMENT OF FINANCIAL SERVICES.

(K) THE DEPARTMENT IS INSTRUCTED TO SEEK ANY STATE PLAN AMENDMENTS OR FEDERAL WAIVERS THAT MAY BE REQUIRED TO IMPLEMENT THIS ACT.

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