HYBRID LONG-TERM CARE INSURANCE INCOME TAX CREDITS - BACKGROUND MEMORANDUM

Senate Bill No. 2230 (2017) (Appendix A) provides for a Legislative Management study of the feasibility and desirability of providing an income tax credit to individuals for premiums for hybrid long-term care partnership plan insurance coverage. The study also must address the feasibility and desirability of incentivizing asset protection that may be equal to the amount paid out by the hybrid long-term care partnership plan.

As introduced, Senate Bill No. 2230 would have expanded the existing provisions in North Dakota Century Code Section 57-38-29.3, which provides an income tax credit of up to $250 per year for each insured individual for premiums paid for qualified long-term care partnership plan insurance coverage. The bill, as introduced, would have allowed the credit also to apply to premiums paid for long-term care insurance coverage that is part of a hybrid long-term care insurance policy.

BACKGROUND

As an individual ages, the likelihood of being afflicted with a disability, physical illness, or cognitive impairment (such as Alzheimer's disease) increases, as does the likelihood of requiring long-term care. Types of long-term care services include home health care, nursing home care, respite care, and hospice care. Services may be delivered in an individual's own home or in a nursing home or assisted living facility. Long-term care insurance may be purchased individually or through a group long-term care insurance plan offered by an employer. Long-term care insurance policies typically include certain consumer protection provisions as well as inflation protection so benefits associated with the policy increase along with the costs of long-term care. Benefits generally are paid on a reimbursement basis, as services are provided, or on an indemnity basis, which allows the insured to receive a set daily dollar amount when services are needed.

Testimony provided by a representative of the American Council of Life Insurers on Senate Bill No. 2230 indicated 35 percent of individuals age 85 or older are using some form of paid long-term care. According to the National Association of State Medicaid Directors, Medicaid currently pays over 40 percent of the costs of long-term care. Information published by the American Council of Life Insurers indicates 4.4 million individuals held long-term care policies in 2015. The number of seniors who will require long-term care is anticipated to grow to 15 million by 2050 when the youngest members of the Baby Boomer Generation reach age 85.

A number of states offer either tax credits or tax deductions to incentivize the purchase of long-term care partnership plan insurance and help ease the burden on state Medicaid systems. States that offer a tax credit for long-term care insurance include Colorado, Louisiana, Maine, Maryland, Minnesota, Mississippi, Montana, New Mexico, New York, North Dakota, and Virginia. North Dakota's tax credit was enacted by the 61st Legislative Assembly through the passage of 2009 House Bill No.1209. Pursuant to information provided by representatives of the Tax Department, 1,940 individuals claimed the credit in 2015 for a total of $485,213 in credits.

States that offer a tax deduction for long-term care insurance include Alabama, Arkansas, California, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine, Missouri, Montana, Nebraska, New Jersey, New Mexico, Ohio, Oklahoma, Virginia, West Virginia, and Wisconsin. A deduction also is offered at the federal level, pursuant to 26 U.S.C. Section 213, for premiums for qualified long-term care insurance policies meeting the requirements under 26 U.S.C. Section 7702B. Federal law allows premiums to be included as medical deductions, which must exceed 10 percent of a taxpayer's adjusted gross income. Self-employed individuals may deduct the entire amount paid for premiums as a business expense pursuant to 26 U.S.C. Section 162.

The primary difference between traditional long-term care insurance policies and "hybrid" long-term care insurance policies is that hybrid policies often combine long-term care insurance coverage with a life insurance policy or an annuity. Hybrid policies have gained popularity in recent years as the policies allow the insured more flexibility than traditional long-term care policies. A common example of a hybrid policy is a single premium life insurance policy sold with a long-term care acceleration rider. The acceleration rider allows the insured to access death benefits for a set period in the form of level monthly payments to cover qualified long-term care service expenses. Another example of a hybrid policy is a single premium deferred annuity that allows a policyholder to make penalty-free withdrawals from the account value for qualified long-term care service expenses. The federal tax treatments of hybrid plans vary based on the policy's structure. The National Association of Insurance Commissioners issued a number of long-term care federal policy recommendations (Appendix B) to Congress in June 2017, which included establishing more generous federal tax incentives and allowing products that combine long-term care coverage with various other insurance products.

PREVIOUS INTERIM STUDIES AND SIGNIFICANT LEGISLATION

The 2015-16 interim Human Services Committee was tasked with studying family caregiver supports and services pursuant to 2015 House Bill No. 1279. The committee received a report prepared by the North Dakota State University Extension Service in May 2016, entitled *North Dakota Family Caregiver Supports and Services Study - Final Report*, which included recommendations pertaining to long-term care. The report's recommendations included:

- Developing a plan to expand long-term care insurance coverage across the state;
- Educating citizens of the benefits for long-term care insurance;
- Expanding tax credits to individuals that purchase coverage and employers that provide a level of benefit toward the insurance; and
- Providing state employees with a subsidized long-term care insurance plan.

The committee recommended House Bill No. 1038 for introduction during the 2017 legislative session. Though the bill did not contain language pertaining to long-term care tax credits, it required the Department of Human Services to review services and related funding provided within its long-term care division for the 2015-17 and 2017-19 bienniums and report to the Legislative Management during the 2017-18 interim regarding various funding levels. House Bill No. 1038 was approved by the 65th Legislative Assembly and the 2017-18 interim Human Services Committee was tasked with receiving the report from the Department of Human Services.

POSSIBLE STUDY APPROACH

The following is a proposed study plan for the committee's consideration in its study of providing an income tax credit for payment of hybrid long-term care insurance premiums:

1. Receive testimony from representatives of the Tax Department regarding the number of claimants and amount claimed for the credit under Section 57-38-29.3 for premiums paid for qualified long-term care partnership plan insurance coverage.
2. Receive testimony from interested parties regarding the benefits or detriments of offering a credit for hybrid long-term care insurance premium payments.
3. Receive testimony from representatives of the Insurance Department and the North Dakota Association of Insurance and Financial Advisors regarding the types of hybrid long-term care insurance policies.
4. Receive testimony from representatives of the Department of Human Services regarding the costs incurred by the state in providing long-term care services to residents.
5. Develop recommendations and any bill drafts necessary to implement the recommendations.
6. Prepare a final report for submission to the Legislative Management.

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