

AN ACT

relating to life settlement contracts for the payment of long-term care services and support and the consideration of a life insurance policy in determining eligibility for medical assistance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.02613 to read as follows:

Sec. 32.02613. LIFE INSURANCE ASSETS; LIFE INSURANCE POLICY CONVERSION. (a) For purposes of this section, "long-term care services and support" includes home health care, assisted living, and nursing home services.

(b) The owner of a life insurance policy with a face amount of more than \$10,000 may enter into a life settlement contract under Chapter 1111A, Insurance Code, for the benefit of a recipient of long-term care services and support in exchange for direct payments to:

(1) a health care provider for the provision of those services to that recipient; or

(2) the state to offset the costs of providing those services to that recipient under the medical assistance program.

(c) The proceeds of a life settlement contract entered into under this section must be used for the payment of long-term care services and support, except for the amount specified in Subsection (d)(1). To the extent feasible and allowed under federal law, the

1 medical assistance program may act only as the secondary payor for  
2 long-term care services and support provided to a person who is  
3 eligible for medical assistance and for whose benefit an owner of a  
4 life insurance policy has entered into a life settlement contract  
5 under this section.

6 (d) In addition to the requirements under Chapter 1111A,  
7 Insurance Code, a life settlement contract entered into under this  
8 section must:

9 (1) provide that the lesser of five percent of the face  
10 amount of the life insurance policy or \$5,000 is reserved and is  
11 payable to the owner's estate or a named beneficiary for funeral  
12 expenses;

13 (2) provide that the balance of proceeds under the  
14 life settlement contract that are unpaid on the death of the owner  
15 must be paid to the owner's estate or a named beneficiary; and

16 (3) specify the total amount payable for the benefit  
17 of the recipient of long-term care services and support under the  
18 life settlement contract.

19 (e) All proceeds of a life settlement contract entered into  
20 under this section must be held in an irrevocable state or federally  
21 insured account for the benefit of the recipient of long-term care  
22 services and support or for payment as otherwise required by this  
23 section.

24 (f) Only a recipient of long-term care services and support  
25 for whose benefit an owner enters into a life settlement contract  
26 under this section may choose the provider and type of services  
27 provided to the recipient and paid for out of an account described

1 by Subsection (e). Any attempt by a person to require the recipient  
2 to choose a specific provider is strictly prohibited and  
3 constitutes an unfair method of competition or an unfair or  
4 deceptive act or practice under the Insurance Code.

5 (g) A person who enters into a life settlement contract with  
6 an owner of a life insurance policy under this section must  
7 maintain:

8 (1) a surety bond executed and issued by an insurer  
9 authorized to issue surety bonds in this state;

10 (2) a policy of errors and omissions insurance; or

11 (3) a deposit in the amount of \$500,000 in any  
12 combination of cash, certificates of deposit, or securities.

13 (h) In accordance with the requirements of Chapter 1111A,  
14 Insurance Code, a life settlement contract provider who enters into  
15 life settlement contracts with owners of life insurance policies  
16 under this section must file with the Texas Department of  
17 Insurance:

18 (1) all life settlement contract forms used by the  
19 provider; and

20 (2) all advertising and marketing materials used by  
21 the provider.

22 (i) Section 1111A.022(a)(2)(A), Insurance Code, does not  
23 apply to a life insurance policy that is the subject of a life  
24 settlement contract entered into under this section if the contract  
25 has been in force at least five years.

26 (j) A claim against a life settlement contract provider with  
27 whom an owner of a life insurance policy enters into a life

1 settlement contract under this section by the owner, the owner's  
2 estate, a named beneficiary, or any other person with respect to the  
3 contract may not exceed the face amount of the policy, less the  
4 proceeds paid under the contract, plus the total amount of premiums  
5 paid by the owner since entering into the contract. A life  
6 settlement contract provider must pay a claim under this subsection  
7 from the funds in an account described by Subsection (e).

8 (k) In accordance with Chapter 1111A, Insurance Code, the  
9 Texas Department of Insurance may conduct periodic market  
10 examinations of each life settlement contract provider who enters  
11 into a life settlement contract with an owner of a life insurance  
12 policy under this section.

13 (l) The department shall educate applicants for long-term  
14 care services and support under the medical assistance program  
15 about options for life insurance policies, including options that  
16 do not allow a life insurance policy to be considered as an asset or  
17 resource in determining eligibility for medical assistance.

18 (m) The executive commissioner of the Health and Human  
19 Services Commission, in consultation with the commissioner of  
20 insurance, shall adopt rules necessary to implement this section.  
21 The rules must ensure that:

22 (1) proceeds from a life settlement contract are used  
23 to reimburse a provider of long-term care services and support or  
24 the state to offset the cost of medical assistance long-term care  
25 services and support;

26 (2) eligibility and need for medical assistance are  
27 determined without considering the balance of proceeds from a life

1 settlement contract as provided in this section; and

2 (3) payments to a provider of long-term care services  
3 and support and applied income payments are made in accordance with  
4 this chapter.

5 (n) The entry into a life settlement contract by an owner of  
6 a life insurance policy under this section is not the only method by  
7 which the owner may avoid having the policy considered as an asset  
8 or resource in determining the eligibility of the owner for medical  
9 assistance.

10 (o) Notwithstanding the provisions of this section, the  
11 department may not implement a provision of this section if the  
12 commission determines that implementation of the provision is not  
13 cost-effective or feasible.

14 SECTION 2. Subject to Section 32.02613(o), Human Resources  
15 Code, as added by this Act, the executive commissioner of the Health  
16 and Human Services Commission shall adopt rules necessary to  
17 implement Section 32.02613, Human Resources Code, as added by this  
18 Act, not later than January 1, 2014.

19 SECTION 3. The change in law made by this Act applies only  
20 to a determination of eligibility of a person for medical  
21 assistance benefits made on or after January 1, 2014, subject to  
22 Section 32.02613(o), Human Resources Code, as added by this Act. A  
23 determination of eligibility made before January 1, 2014, is  
24 governed by the law in effect immediately before the effective date  
25 of this Act, and the former law is continued in effect for that  
26 purpose.

27 SECTION 4. If before implementing any provision of this Act

1 a state agency determines that a waiver or authorization from a  
2 federal agency is necessary for implementation of that provision,  
3 the agency affected by the provision shall request the waiver or  
4 authorization and may delay implementing that provision until the  
5 waiver or authorization is granted.

6       SECTION 5. This Act takes effect immediately if it receives  
7 a vote of two-thirds of all the members elected to each house, as  
8 provided by Section 39, Article III, Texas Constitution. If this  
9 Act does not receive the vote necessary for immediate effect, this  
10 Act takes effect September 1, 2013.

H.B. No. 2383

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2383 was passed by the House on May 4, 2013, by the following vote: Yeas 114, Nays 17, 4 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2383 on May 23, 2013, by the following vote: Yeas 134, Nays 5, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2383 was passed by the Senate, with amendments, on May 21, 2013, by the following vote: Yeas 25, Nays 6.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor