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**BULLETIN NO. 08-08**

**TO: ALL AUTHORIZED AND ADMITTED LIFE/HEALTH INSURERS AND ALL LICENSED INSURANCE PRODUCERS**

**FROM: STEVEN M. GOLDMAN, COMMISSIONER**

**RE: LONG-TERM CARE PARTNERSHIP PROGRAM IMPLEMENTATION: INFLATION PROTECTION; FORM CERTIFICATION AND DISCLOSURE REQUIREMENTS**

**BACKGROUND & PURPOSE**

The purpose of this Bulletin is to provide guidance regarding the implementation of the New Jersey Long-Term Care Insurance Partnership Program ("Partnership Program") to be reflected in amendments to N.J.A.C. 11:4-34 to be proposed by the Department of Banking and Insurance ("Department") in the near future. Any substantive comments or other concerns should be made as formal comments to the rules when proposed.

The Partnership Program operates under the direction of the New Jersey Department of Human Services in consultation with the Department. Federal enabling legislation pertaining to the Long-Term Care Insurance Partnership Program is set forth in the Deficit Reduction Act of 2005, P.L. 109-171 (the "DRA"), and implementing procedures are described in guidance issued by the Centers for Medicare and Medicaid Services ("CMS"). See State Medicaid Director's Letter (SMDL #06-019) dated July 27, 2006, issued by CMS.

Under the New Jersey Long-Term Care Partnership Program, individuals who purchase long-term care insurance policies that meet certain requirements specified by the DRA ("Partnership Policies") can apply for Medicaid under special rules for determining financial eligibility and estate recoveries. These special rules generally allow the individual to protect assets equal to the insurance benefits received from a Partnership Policy so that such assets will not be taken into account in determining financial eligibility for Medicaid and will not subsequently be subject to Medicaid liens and recoveries.

The New Jersey Long-Term Care Partnership Program was approved by CMS on February 12, 2008 and will become effective on July 1, 2008.

This Bulletin instructs insurers offering long-term care insurance products on the requirements the Department intends to propose relating to inflation protection, form certification, and partnership disclosure requirements in Partnership Policies. The Bulletin advises insurers of the requirements to be proposed so that they may begin to develop systems and forms to meet the requirements to offer Partnership Policies. Further, the Department will accept forms for Partnership Policies that meet the standards set forth herein prior to the effective date of the amendments to be proposed.

## **INFLATION PROTECTION**

The DRA and the State Medicaid Director's Letter (SMDL #06-019) require that New Jersey's Long-Term Care Insurance Partnership coverage provide inflation protection based on an insured's age at the time the policy is issued. Accordingly, the Department intends to propose amendments to N.J.A.C. 11:4-34 to provide that to qualify for New Jersey's Long-Term Care Partnership Program, a long-term care insurance policy must provide at least the following levels of inflation protection:

### **For Issue Ages under 61**

If a Partnership Policy is sold to an individual under the age of 61, it must provide compound annual inflation protection at a rate of at least 3%, or at a rate based on changes in the consumer price index for all urban consumers, U.S. city average, all items, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor.

### **For Issue Ages 61 through 75**

If a Partnership Policy is sold to an individual aged 61 through 75, the policy must provide inflation protection at least equivalent to a guaranteed purchase option of additional coverage each year in an amount equal to 3% of the original benefits provided under the policy.

### **For Issue Ages 76 and over**

If a policy is sold to an individual aged 76 or older, the insurer is required to offer inflation protection which meets the requirements for a partnership policy sold to an individual 61 through 75.

## **CERTIFICATION PROCESS FOR PARTNERSHIP POLICIES**

Under New Jersey's Long-Term Care Partnership Program, a person who received benefits under a qualified Partnership Policy may be entitled to have assets equivalent to those benefits disregarded when determining eligibility for New Jersey Medical Assistance. As provided under section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)), the Commissioner of Banking and Insurance ("Commissioner") may certify that long-term care insurance policies (including certificates issued under a group insurance contract) meet certain consumer protection requirements necessary for a policy to be Partnership Qualified. The proposed amendments will facilitate a process for the approval of such policies.

The consumer protection requirements necessary to certify a policy as Partnership Qualified are set forth in section 1917(b)(5)(A) of the Social Security Act (42 U.S.C. 1396p(b)(5)(A)) and principally include certain specified provisions of the Long-Term Care Model Regulation and Long-Term Care Insurance Model Act promulgated by the National Association of Insurance Commissioners (“NAIC”) as adopted in October, 2000. These NAIC model consumer protection provisions are contained within New Jersey’s Long-Term Care Insurance Rules, N.J.A.C. 11:4-34, adopted December 19, 2005.

In order to assist in the policy form review process, the Department will require that any carrier requesting approval of a long-term care insurance policy as a qualified Partnership Policy certify in writing that the policy meets all of the consumer protection standards required to qualify as a Partnership Policy. The required certification form is attached as Appendix 1 to this Bulletin.

Any long-term care insurance policy (including a certificate issued under a group policy) previously approved by the Department can be certified as meeting the consumer protection standards to be required by the amendments to be proposed by use of the attached form. Once this certification is submitted to the Department, the carrier may market the policy as a Partnership Policy provided the policy also meets the inflation protection standards to be required of a Partnership Policy by the amendments to be proposed.

If a carrier intends to use new policy or certificate forms, which have not been previously approved by the Department for sale as a Partnership Policy, the amendments to be proposed will provide that the attached certification should be included when submitting the new policy or certificate as part of the Department’s standard form filing and approval process.

### **PARTNERSHIP DISCLOSURE REQUIREMENTS**

The amendments to be proposed will provide that any Partnership Policy issued or delivered for issue in New Jersey shall be accompanied by the Notice of Long Term Care Partnership Status attached as Appendix 2, explaining the benefits associated with a Partnership Policy and indicating that at the time of issuance the policy is a Partnership Policy. In lieu of the notice set forth in Appendix 2, a similar notice may be used if filed and approved by the Commissioner. The amendments to be proposed will further provide that, in the case of a group insurance contract, such notice shall be provided to the insured under a certificate upon the issuance of the certificate. In determining whether to provide this notice with respect to a policy, the carrier may rely upon a statement by the policyholder, certificateholder, or insured that the insured is a resident of New Jersey.

4/7/08  
Date

/s/ Steven M. Goldman  
Steven M. Goldman  
Commissioner

APPENDIX 1

**STATE OF NEW JERSEY  
LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAM  
POLICY CERTIFICATION FORM**

**DIRECTIONS:** This certification must be completed and submitted with each long-term care policy or certificate that is intended to qualify under the state long-term care insurance partnership program. The certification must be signed by an officer of the company with authority to bind the company. A separate certification must be completed for each policy form.

For newly-submitted policy forms intended to qualify for the partnership program, this certification must be included as part of the policy form filing. With respect to a previously filed form that qualifies for the partnership program, this certification shall be submitted to the Department of Banking and Insurance (“Department”) and identify the previously filed form number and date of filing by the Department. If an insurer is filing an endorsement or rider to amend a previously filed form in order to make the form compliant with the partnership program, this certification must be filed with the endorsement or rider filing, and must identify the previously filed form with which the rider or endorsement is intended to be used by form number and filing date.

A long-term care policy or certificate may not be issued in New Jersey as a partnership program policy or certificate unless and until this certification has been submitted to the Department and the policy, certificate, rider or endorsement has been filed for use by the Department.

**CERTIFICATION**

Under Section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)), the Commissioner of Banking & Insurance (“Commissioner”) may certify that long-term care insurance policies (including certificates issued under a group insurance contract) meet certain consumer protection requirements necessary for a policy to qualify as a partnership policy under the New Jersey Long-Term Care Insurance Partnership Program. These consumer protection requirements are set forth in Section 1917(b)(5)(A) of the Social Security Act (42 U.S.C. 1396p(b)(5)(A)) and principally include certain specified provisions of the Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act promulgated by the National Association of Insurance Commissioners (“NAIC”) adopted as of October 2000 (referred to herein as the “2000 NAIC Model Regulation” and “2000 NAIC Model Act”, respectively.)

In order to provide the Commissioner with information necessary to provide a certification for policies, this certification form requests information and a certification from the insurance carrier regarding policy forms which will be issued as partnership policies. A separate form must be completed for each policy or certificate form.

**Part I. GENERAL INFORMATION**

A. Name, address, and NAIC Company Code of insurance carrier:

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B. Policy form covered by this certification, including the form number and filing date:

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A copy of the above policy form filled-in for specimen issue, including any riders and endorsements, shall be provided with this certification.

**Part II. QUESTIONS REGARDING APPLICABLE PROVISIONS OF THE 2000 MODEL REGULATION AND 2000 MODEL ACT**

Please answer each of the questions below with respect to the policy form identified in Part I above. For purposes of answering the questions below, any provision of the 2000 NAIC Model Regulation or 2000 NAIC Model Act listed below shall be treated as including any other provision of the 2000 NAIC Model Regulation or 2000 NAIC Model Act necessary to implement the provision.

Are the following requirements of the 2000 NAIC Model Regulation met with respect to the policy (including certificates issued under a group insurance contract) intended to be covered under the New Jersey Long-Term Care Insurance Partnership Program that are issued on the policy form identified in Part I above?

Yes \_\_\_ No \_\_\_ N/A \_\_\_ A. Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of section 6B of the 2000 NAIC Model Act relating to such section 6A. (N.J.A.C. 11:4-34.4(a), and N.J.S.A. 17B:27E-6a)

Yes \_\_\_ No \_\_\_ N/A \_\_\_ B. Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof. (N.J.A.C. 11:4-34.4(b))

Yes \_\_\_ No \_\_\_ N/A \_\_\_ C. Section 6C (relating to extension of benefits). (N.J.A.C. 11:4-34.4(c))

Yes \_\_\_ No \_\_\_ N/A \_\_\_ D. Section 6D (relating to continuation or conversion of coverage). (N.J.A.C. 11:4-34.4(d))

Yes \_\_\_ No \_\_\_ N/A \_\_\_ E. Section 6E (relating to discontinuance and replacement of policies). (N.J.A.C. 11:4-34.4(e))

Yes \_\_\_ No \_\_\_ N/A \_\_\_ F. Section 7 (relating to unintentional lapse). (N.J.A.C. 11:4-34.5)

- Yes \_\_\_ No \_\_\_ N/A \_\_\_ G. Section 8 (relating to disclosure), other than sections 8F, 8G, 8H, and 8I thereof. (N.J.A.C. 11:4-34.6(a) through (e))
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ H. Section 9 (relating to required disclosure of rating practices to consumer). (N.J.A.C. 11:4-34.7)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ I. Section 11 (relating to prohibitions against post-claims underwriting). (N.J.A.C. 11:4-34.9)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ J. Section 12 (relating to minimum standards). (N.J.A.C. 11:4-34.10)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ K. Section 14 (relating to application forms and replacement coverage). (N.J.A.C. 11:4-34.12)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ L. Section 15 (relating to reporting requirements). (N.J.A.C. 11:4-34.13)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ M. Section 22 (relating to filing requirements for marketing). (N.J.A.C. 11:4-34.20)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ N. Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C. (N.J.A.C. 11:4-34.21)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ O. Section 24 (relating to suitability). (N.J.A.C. 11:4-34.22)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ P. Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates). (N.J.A.C. 11:4-34.23)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ Q. The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in section 7702B(g)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(g)(4)). (N.J.A.C. 11:4-34.24)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ R. Section 29 (relating to standard format outline of coverage). (N.J.A.C. 11:4-34.27)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ S. Section 30 (relating to requirement to deliver shopper's guide). (N.J.A.C. 11:4-34.28)

Are the following requirements of the 2000 NAIC Model Act met with respect to the policy (including certificates issued under a group insurance contract) intended to be covered under the New Jersey Long-Term Care Insurance Partnership Program that are issued on the policy form identified in Part I above?

- Yes \_\_\_ No \_\_\_ N/A \_\_\_ A. Section 6C (relating to preexisting conditions). (N.J.S.A. 17B:27E-6b)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ B. Section 6D (relating to prior hospitalization). (N.J.S.A. 17B:27E-6c)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ C. The provisions of section 8 relating to contingent nonforfeiture benefits. (N.J.S.A. 17B:27E-8)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ D. Section 6F (relating to right to return). (N.J.S.A. 17B:27E-6d)

- Yes \_\_\_ No \_\_\_ N/A \_\_\_ E. Section 6G (relating to outline of coverage). (N.J.S.A. 17B:27E-6e)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ F. Section 6H (relating to requirements for certificates under group plans). (N.J.S.A. 17B:27E-6f)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ G. Section 6J (relating to policy summary). (N.J.S.A. 17B:27E-6g)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ H. Section 6K (relating to monthly reports on accelerated death benefits). (N.J.S.A. 17B:27E-6h)
- Yes \_\_\_ No \_\_\_ N/A \_\_\_ I. Section 7 (relating to incontestability period). (N.J.S.A. 17B:27E-7)

In order for a policy to be covered under the Qualified Partnership of the State, the answers to all questions above should be “yes” (or “N/A” where all requirements with respect to a provision above are not applicable).

**Part III. INFLATION PROTECTION**

Yes \_\_\_ No \_\_\_ Does the policy identified in Part I above contain the inflation protection of the New Jersey Long-Term Care Insurance Partnership Program described in **BULLETIN NO. 08-08**

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**IV. CERTIFICATION**

I hereby certify that the answers, accompanying documents, and other information set forth herein are, to the best of my knowledge and belief, true, correct, and complete. I understand that false, inaccurate or incomplete information on this form or accompanying documents may result in disapproval of the policy for use in New Jersey and other administrative sanctions against the insurance carrier.

_____	_____
Date	Signature of Officer
Contact Information (Please type)	
Name of Certifying Officer: _____	
Title: _____	
Name of Company Contact: _____	
(If other than Certifying Officer)	
Mailing Address: _____	
_____	
Telephone Number: _____	
Fax Number: _____	



## Notice of Long Term Care Partnership Status

Date \_\_\_\_\_

Insured's name: \_\_\_\_\_

Policy or certificate number: \_\_\_\_\_

Partnership issue date: \_\_\_\_\_

**Please Note: Your long-term care insurance coverage has been identified as qualifying for inclusion in New Jersey's Long Term Care Insurance Partnership program.**

### **Q: What is the Partnership program?**

The New Jersey Long Term Care Partnership is a public/private arrangement between state government and private long-term care insurers to assist individual in planning for their long-term care needs. It enables people who purchase certain long-term care insurance policies to have more of their assets protected if they later need to have the state pay for their long-term care. For example, if you receive \$100,000 in benefits under your long-term care insurance, you may be allowed to protect an additional \$100,000 in assets at the time you apply for Medicaid/Medical Assistance through a feature known as "Asset Disregard" under New Jersey's Medicaid program.

### **Q. What is "Asset Disregard"?**

Asset disregard means that an amount of the policyholder's assets equal to the amount of long-term care insurance benefits received under a qualified Partnership Policy will be disregarded for the purpose of determining the insured's eligibility for Medicaid. This generally allows a person to keep assets equal to the insurance benefits received under a qualified Partnership Policy without affecting the person's eligibility for Medicaid. All other Medicaid eligibility criteria will apply and special rules may apply to persons whose home equity exceeds \$500,000. Asset disregard is not available under a long-term care insurance policy that is not a Partnership Policy. Therefore, you should consider if Asset Disregard is important to you, and whether a Partnership Policy meets your needs. ***The purchase of a Partnership Policy does not automatically qualify you for Medicaid.***

### ***Q: Do I have to take any action now?***

No. You don't need to take any additional steps until you apply for Medicaid/Medical Assistance. At that time, you may be asked to provide information about your coverage and your insurer should be able to assist you.

### **Q: Will this have any affect on my premiums?**

No. This new status will not affect your premiums.

### **Q: What could affect my Partnership status?**

Your coverage may lose its Partnership status or your Partnership benefits may be altered if:

1. You change your inflation protection. Whether your coverage qualifies as a Partnership Policy depends in part on your age and the type of inflation protection you select and maintain. Therefore, before you make any change to your inflation protection, be sure to ask your insurer how a change may affect your partnership status.
2. You move to a state that does not have a Partnership program or does not agree to provide reciprocity with New Jersey.
3. State and/or federal laws change.