Department of Public Health and Human Services MEDICAL ASSISTANCE	Section: RESIDENTIAL MEDICAL INSTITUTIONS Subject: ►Long Term Care Partnership

Supersedes: New to manual

Reference: 42 U.S.C. 1396p; ARM 37.82.101. 6.6.3101-.3115, .3117-.2120; P.L. 109-171

GENERAL RULE – An institutionalized/waiver individual or spouse who purchased a Qualified Long Term Care Partnership (LTC) policy or converted a previously-existing LTC policy to a Qualified LTC Partnership policy on or after July 1, 2009 may protect resources equal to the insurance benefits received from the policy.

Asset protection through LTC Partnership is available only after Qualified LTC Partnership policy lifetime limits have been fully exhausted on LTC services for the Medicaid applicant or spouse. The amount of assets protected will be equal to the insurance benefits paid.

An amount of resources equal to the amount of insurance benefits received from the Qualified LTC Partnership policy will be protected (disregarded) in the resource eligibility determination for institutional/waiver Medicaid coverage. In other words, this policy is applied by disregarding otherwise countable resources equal to the amount of policy benefits before testing the applicant's resources to the resource limit applicable to their household.

An amount equal to the amount of resources protected in the Medicaid institutional/waiver eligibility determination will also be protected from Medicaid estate recovery after receipt of Medicaid institutional/waiver coverage.

In the case of a joint Qualified LTC Partnership policy that covers both spouses, the couple is entitled to the full asset protection and estate recovery protection regardless of which spouse actually received the insurance benefits.

Protected assets will be subject to uncompensated asset transfer provisions in the same manner as countable resources. Transfers of protected assets cannot be considered to be for reasons other than to qualify for Medicaid simply due to the assets being protected. For example, transferring protected assets could result in a loss of a stream of countable income, which would affect Medicaid eligibility.

APPLICATION OF OTHER MEDICAID PROVISIONS

Eligibility for institutional/waiver Medicaid coverage for an applicant with a Qualifying LTC Partnership policy remains subject to all other non-financial and financial eligibility criteria and policies of Montana Medicaid. Qualifying LTC Partnership protection does not apply to Medicare Savings Programs or non-institutional Medicaid programs.

ESTATE RECOVERY PROTECTION

Assets equal to the amount of the maximum benefit amount that has been paid by the policy will be protected from Medicaid estate recovery unless benefits were received through fraud or an overpayment is due. The protected assets are subject to other non-Medicaid claims against the estate, including other state or county claims.

QUALIFIED LONG TERM CARE PARTNERSHIP POLICY

The Insurance Commissioner for the State of Montana must certify in writing that a LTC policy meets the definition of a Qualified LTC Partnership policy. In many cases, a Qualified LTC Partnership policy will include the required certification attached to the policy. The certification verifies that the policy meets the following conditions:

1. the insured person is a resident of a Partnership State when coverage first became effective under the policy;
2. the policy meets the IRS definition of a 'qualified LTC insurance policy' (IRS Code of 1986);
3. the policy issue date was not earlier than July 1, 2009 (the effective date of the Montana Long Term Care Partnership Medicaid State Plan Amendment);

   NOTE: A policy issued prior to July 1, 2009 is treated as newly issued for purposes of LTC Partnership policy only if it is reissued or exchanged on or after July 1, 2009. The addition of a rider, endorsement or change in the schedule page to policies issued prior to July 1, 2009 may be treated as an exchange for purposes of meeting this provision.

4. the policy meets specific rules of the National Association of Insurance Commissioners (NAIC)---; and

   NOTE: If the policy does not specifically say it meets this criteria, the applicant must provide written proof from the company or the MT Insurance Commissioner to verify this criterion is met.

5. the policy includes inflation protection. This requirement varies depending on the age of the insured at the time of purchase:
   - For purchasers under 61 years old, compound annual inflation protection;
   - For purchasers 61-76 years old, some level of inflation protection;
   - For purchasers over 76 years old, inflation protection is optional.

QUALIFIED LTC POLICY ISSUED IN ANOTHER STATE

A Qualified LTC Partnership policy issued in another Partnership state will be recognized if the covered individual later moves to Montana, if the other state offers reciprocity (currently, of states with LTC Partnership plans, only Wisconsin does not offer reciprocity). If the holder of a LTC Partnership policy from another state applies for Medicaid in Montana, OPA staff is to work closely with PAB Central Office (through the accepted chain of command). A federal database is being developed to identify LTC Partnership states and which of those have reciprocity agreements. However, until that database is available, PAB Central Office will assist with all reciprocity issues.

BOTH SPOUSES HAVE LTC PARTNERSHIP

If spouses have a joint LTC Partnership policy or each has a separate policy, and each applies for LTC Partnership resource protection, the protection will be allotted between them, but they cannot each receive the full protection separately.

If one spouse initially applies for nursing home/waiver Medicaid and the couple receives full resource protection, and those protected resources are transferred to the community spouse, the resources retain the protection if the community spouse is later institutionalized. If the protected resources remain in the name of the first nursing home spouse, the community spouse cannot receive the same resource protection against additional resources owned by him/her if he/she is later institutionalized.

If both spouses enter the nursing home in the same month and apply for Medicaid, their total resource protection cannot exceed the total of benefits paid from all exhausted LTC Partnership policies. Since each would be treated as an individual, they could opt to protect resources held jointly or allot the protection between them either equally or in amounts comparable to LTC Partnership benefits paid to each.

EXAMPLES

1. Linda has $21,000 in countable resources. She applies for nursing home care on 6/10/20**10**. From 8/1/09 through 4/30/10, she resided in an assisted living facility. She had a Qualified

LTC Partnership policy that she converted on 7/1/09, and that policy paid $20,000 toward her assisted living charges between 8/1/09 and 3/31/10 when the lifetime maximum of the policy was reached. Linda is resource-eligible for Medicaid, because $20,000 of her countable resources will be protected (disregarded) when testing her resources against the Medicaid resource limit of $2000, so only $1,000 in countable resources that are not disregarded.

2. John and Joan have $100,000. The resource assessment comes back allowing CSRMA of $50,000 for John, the community spouse. Normally, they'd be eligible for Medicaid for Joan once their total resources were at or below $52,000 ($50,000 CSRMA plus $2000 general resource limit for NH spouse). However, they had a joint LTC Partnership and the policy paid $30,000 in benefits ($10,000 for a short stay of John's, plus $20,000 recently for Joan). The LTC Partnership policy limit was $30,000 lifetime benefit. Because they had the LTC Partnership and the policy has paid out its lifetime maximum for them, they will be eligible to also have $30,000 in additional resources protected (disregarded) in the resource determination. This means that Joan will be eligible for Medicaid nursing home coverage when their total countable resources are at or below $82,000 (Joan's $2000 plus John's CSRMA of $50,000 plus the LTC Partnership resource disregard of $30,000).

3. Steve has $22,000 in countable assets when he applies for institutional Medicaid on 10/3/11; he has been in the nursing home since 7/1/09. On 6/18/09, Steve transferred $10,000 in assets without adequate compensation. He qualifies for a LTC Partnership resource disregard of $30,000 due to a qualifying LTC Partnership policy that paid $30,000 between 7/1/09 and 9/30/11. Because Steve's resources are within the resource standard after the LTC Partnership resource disregard is applied to his current resources, he 'otherwise qualifies' for nursing home Medicaid as of 10/1/11. An uncompensated asset transfer penalty is applied to the $10,000 transfer and the penalty may begin 10/1/11 when he otherwise qualified for institutional Medicaid. If the transferred assets were returned to him, they could be protected by the LTC Partnership resource disregard, because he only 'used' $20,000 of the disregard against his current resources to become resource-eligible at application.

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