MONTANA STATE AUDITOR

MONICA J. LINDEEN
STATE AUDITOR

COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

Advisory Memorandum

To: **ALL LONG-TERM CARE INSURERS**

From: **MONICA J. LINDEEN – Commissioner of Securities and Insurance**
Office of the Montana State Auditor [CSI]

Date: **February 23, 2010**

Long-Term Care Partnership Program
Required Issuer Certification
And Policy Notice

The Deficit Reduction Act of 2005, Public Law 109-171, allows for the expansion of Qualified Long-Term Care Insurance Partnership Programs by states. Montana's Long-Term Care Insurance Partnership Program was authorized by the legislature in Sections 53-6-801 through 53-6-805, Montana Code Annotated (MCA) and implemented by the Montana Department of Public Health and Human Services to become effective on July 1, 2009. The Medicaid plan amendment was approved by the Centers for Medicare Medicaid Services (CMS) in November 2009, with a retroactive effective date of July 1, 2009. Under the Partnership Program, persons who purchase a qualifying long-term care insurance policy ("Partnership Policy" or "Partnership Policies") may be subject to special rules relating to eligibility for Medicaid in Montana. These rules allow assets equal to the amount of benefits received from a qualifying long-term care insurance policy to be disregarded for the purpose of determining Medicaid eligibility. [See Medical Assistance Manual (MA) 903-2, attached.]

Phone: 1-800-332-6148 / (406) 444-2040 / Fax: (406) 444-3497
840 Helena Ave., Helena MT 59601 Website: www.sao.mt.gov E-Mail: stateauditor@mt.gov

CERTIFICATION PROCESS

A Partnership Policy shall not be issued or issued for delivery in Montana unless the Policy form is filed with and approved by the Montana State Auditor, Commissioner of Securities and Insurance (CSI). Any policy submitted for certification as a Partnership Policy shall be accompanied by a Partnership Certification Form (Appendix A) signed by an officer of the insurer.

Insurers requesting to make use of a previously approved policy form as a Partnership Policy shall submit to the CSI a Partnership Certification Form (Appendix A) signed by an officer of the company. A Partnership Certification Form shall be required for each policy form submitted for Partnership qualification. If the previously approved policy form was approved as an IRS Qualified Long-Term Care policy on or after July 1, 2008, then additional review of the form will not be required. However, so that CSI's records are complete, please provide the form number, date the form was approved and a complete copy of the previously approved policy form for informational purposes. If the previously approved forms do not contain the inflation protection required for the partnership program, endorsements must be filed at the same time as the Partnership Certification Form.

If the previously approved policy form was approved prior to July 1, 2008, the form must be resubmitted for complete review and approval.

In addition to complying with all applicable provisions of Montana law, a Partnership Policy must also meet the following conditions:

1. The insured person was a resident of Montana when coverage first became effective under the policy.
2. The policy meets the IRS definition of a "qualified long-term care insurance contract" pursuant to Sections 33-22-1107(9) and 33-22-1126, MCA and the applicable Internal Revenue Code.
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). A policy issued prior to July 1, 2009, may be treated as newly issued for purposes of a Long-term Care Partnership Policy <u>only</u> 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 the applicable requirements of Title 33, Chapter 22, Part 11, MCA (as amended in 2007) and ARM Title 6, Chapter 6, SubChapter 31(as amended in 2008).
5. The policy provides at least the following inflation protections:
    (A) For a person who is less than sixty-one years of age as of the date of purchase of the policy, the policy provides compound annual inflation protection.

(B) For a person who is at least sixty-one years of age but less than seventy-six years of age as of the date of purchase of the policy, the policy provides some level of inflation protection.

(C) For a person who is at least seventy-six years of age as of the date of purchase of the policy, the policy may provide inflation protection, but there is no requirement to do so. [MA-903-2]

(D) The offer of inflation protection required by ARM 6.6.3108 must still be provided.

NOTICE OF PARTNERSHIP POLICY STATUS

A Partnership Policy issued or issued for delivery in Montana shall be accompanied by a Partnership Disclosure Notice (Appendix B) explaining the benefits associated with a Partnership Policy and indicating that at the time issued, the policy is a Partnership Policy. A substantially similar notice may be used if the notice is filed with and approved by the CSI. The Partnership Disclosure Notice shall also include a statement informing the insured that the insured does not automatically qualify for Medicaid by purchasing a Partnership Policy.

MISCELLANEOUS INFORMATION

All producers must have appropriate training in order to sell long-term care products. Please refer to the bulletin issued on Producer Training for Long-Term Care issued on September 7, 2007, and found at the CSI website at http://www.csi.mt.gov.

A qualified long-term care Partnership Policy issued in another partnership state will be recognized if the covered individual later moves to Montana and if the other state offers reciprocity to Montana. [MA 903-2]

If spouses have a joint long-term care Partnership Policy or each has a separate policy, and each applies for long-term care Partnership resource protection, the protection will be allotted based upon the amount of benefits paid to each individual, but they cannot each receive the full protection separately. The total protection benefit given to both spouses combined cannot exceed the total amount of insurance benefit. [See MA 903-2]

Any questions regarding this bulletin should be directed to the CSI's Forms Bureau at 406-444-2040.

Appendix A

ISSUER CERTIFICATION FORM

(Relating to Qualified State Long-Term Care Insurance Partnership)

Under Section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)), the state insurance commissioner of a state implementing a qualified state long-term care insurance partnership ("Qualified Partnership") may certify that long-term care insurance policies (including certificates issued under a group insurance contract) covered under the Qualified Partnership meet certain consumer protection requirements, and policies so certified are deemed to satisfy such requirements. 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 (as adopted as of October 2000) (referred to herein as the "2000 Model Regulation" and "2000 Model Act" respectively).

The model rule was adopted by the Montana State Auditor, Commissioner of Securities and Insurance (CSI), as an administrative rule at Administrative Rules of Montana (ARM) Title 6, Chapter 6, Subchapter 31, as amended in 2008 (Long-Term Care Insurance Rules). The model act has been enacted in Montana in Title 33, Chapter 22, Part 11, Montana Code Annotated (MCA), as amended in 2007 (Long-Term Care Act). Policies that are submitted for certification to the CSI must comply with the applicable provisions of those laws as amended on those dates.

In order to provide the CSI with information necessary to provide a certification for policies, this Issuer Certification Form requests information and a certification from issuers of long-term care insurance policies with respect to policy forms that may be covered under the Qualified Partnership Program of Montana. However, policies and certificates that are submitted must comply with all applicable Montana laws, not just those provisions that are identified on this form. Montana law requires that forms must be approved before use.

By submitting this form, you are certifying that the information contained on the form is complete and accurate.

I. GENERAL INFORMATION

A. Name, address and telephone number of issuer:

____

____

____

B. Name, address, telephone number, and email address (if available) of an employee of issuer who will be the contact person for information relating to this form:

____

____

____

C. Policy form number(s) (or other identifying information, such as certificate series) for policies covered by this Issuer Certification Form:

____

____

____

Specimen copies of each of the above policy forms, including any riders and endorsements, must be provided with the submission of this form.

II. QUESTIONS REGARDING APPLICABLE PROVISIONS OF the Montana Long Term Care Insurance Act and Rule:

Please answer each of the questions below with respect to the policy forms identified in Section I.C above. For purposes of answering the questions below, any provision of the Long-Term Care Rule listed below shall be treated as including any other provision of the Long-Term Care Rule necessary to implement the provision.

Are the following requirements of the Montana Long-Term Care Administrative Rules, as amended in 2008, met with respect to all policies (including certificates issued under a group insurance contract) intended to be covered under the Qualified Partnership Program that are issued on each of the policy forms identified in Section I.C above?

Yes ___ No ___ N/A ___ A. ARM 6.6.3104 (guaranteed renewal or noncancellability)

Yes ___ No ___ N/A ___ B. ARM 6.6.3104 (prohibitions on limitations and exclusions)

Yes ___ No ___ N/A ___ C. ARM 6.6.3104 (extension of benefits)

Yes ___ No ___ N/A ___ D. ARM 6.6.3104 (continuation or conversion of coverage)

Yes ___ No ___ N/A ___ E. ARM 6.6.3104 and 6.6.3109 (discontinuance and replacement of policies)

Yes ___ No ___ N/A ___ F. ARM 6.6.3104A (unintentional lapse)

Yes ___ No ___ N/A ___ G. ARM 6.6.3105 (disclosure)

Yes ___ No ___ N/A ___ H. ARM 6.6.3106 (prohibitions against post-claims underwriting)

Yes ___ No ___ N/A ___ I. ARM 6.6.3107 (minimum standards)

Yes ___ No ___ N/A ___ J. ARM 6.6.3109 (application forms and replacement coverage)

Yes ___ No ___ N/A ___ K. ARM 6.6.3109A (reporting requirements)

Yes ___ No ___ N/A ___ L. ARM 6.6.3113A (filing requirements for marketing)

Yes ___ No ___ N/A ___ M. ARM 6.6.3114 (standard format outline of coverage)

Yes ___ No ___ N/A ___ N. ARM 6.6.3115 (requirement to deliver shopper's guide)

Yes ___ No ___ N/A ___ O. ARM 6.6.3117 (standards for marketing)

Yes ___ No ___ N/A ___ P. ARM 6.6.3118 (suitability)

Yes ___ No ___ N/A ___ Q. ARM 6.6.3119 (contingent nonforfeiture benefits)

Yes ___ No ___ N/A ___ R. ARM 6.6.3121 (required disclosure of rating practices to consumer

Yes ___ No ___ N/A ___ S. ARM 6.6.3126 (prohibition against preexisting conditions and probationary periods in replacement policies or certificates)

Are the following requirements of the Montana Long-Term Care Insurance Act, as amended in 2007, met with respect to all policies (including certificates issued under a group insurance contract) intended to be covered under the Qualified Partnership Program that are issued on each of the policy forms identified in Section I.C above?

Yes ___ No ___ N/A ___ A. Section 33-22-1108, MCA (preexisting conditions)

Yes ___ No ___ N/A ___ B. Section 33-22-1111, MCA (outline of coverage)

Yes ___ No ___ N/A ___ C. Section 33-22-1112, MCA (requirements for certificates under group plans)

Yes ___ No ___ N/A ___ D. Section 33-22-1115, MCA (prior hospitalization)

Yes ___ No ___ N/A ___ E. Section 33-22-1116, MCA (contingent nonforfeiture benefits)

Yes ___ No ___ N/A ___ F. Section 33-22-1119, MCA (right to return)

Yes ___ No ___ N/A ___ G. Section 33-22-1123, MCA (policy summary)

Yes ___ No ___ N/A ___ H. Section 33-22-1123, MCA (monthly reports on accelerated death benefits)

Yes ___ No ___ N/A ___ I. Section 33-22-1127, MCA (incontestability period)

In order for a policy to be covered under the Qualified Partnership Program of Montana, the answers to all questions above should be "Yes" (or "N/A" where all requirements with respect to a provision above are not applicable). If answers differ between policy forms (*e.g.*, a requirement would be answered "Yes" for one form and "N/A" for another), use separate Issuer Certification Forms.

III. 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.

____
Date

____
Name and title of officer of the Issuer

____
Signature of officer of the Issuer

__Appendix B__

Partnership Status Disclosure Notice

Important Information Regarding Your [Policy's] [Certificate's] Long-Term Care Insurance Partnership Status

This disclosure notice is issued in conjunction with your long-term care policy:

Some long-term care insurance policies [certificates] sold in Montana qualify for the Montana Long-Term Care Insurance Partnership Program. Insurance companies voluntarily agree to participate in the Partnership Program by offering long-term care insurance coverage that meets certain state and federal requirements. Long-term care insurance policies [certificates] that qualify as Partnership Policies [Certificates] may be entitled to special treatment, and in particular, an "Asset Disregard" under Montana's Medicaid program.

__Asset Disregard__ means that an amount of the policyholder's [certificateholder's] assets equal to the amount of long-term care insurance benefits received under a qualified Partnership Policy [Certificates] will be disregarded for the purpose of determining the insured's eligibility for Medicaid. This generally allows a policyholder [certificateholder] to keep assets equal to the insurance benefits received under a qualified Partnership Policy [Certificate] without affecting the policyholder's [certificateholder's] eligibility for Medicaid. All other Medicaid eligibility criteria will apply and special rules may apply to policyholders [certificateholders] whose home equity exceeds $500,000. Asset Disregard is **not** available under a long-term care insurance policy [certificate] that is not a Partnership Policy [Certificate]. **The purchase of a Partnership Policy does not automatically qualify you for Medicaid.**

__Partnership Policy [Certificate] Status__. **Your long-term care insurance policy [certificate] is intended to qualify as a Partnership Policy [Certificate] under the Montana Long-Term Care Partnership Program as of your Policy's [Certificate's] effective date.**

__What Could Disqualify Your [Policy] [Certificate] as a Partnership Policy__. If you make any changes to your [Policy] [Certificate], such changes could affect whether your [Policy] [Certificate] continues to be a Partnership Policy. ***Before you make any changes, you should consult with [insert name of carrier] to determine the effect of a proposed change.*** In addition, if you move to a state that does not maintain a Partnership Program or does not recognize your [Policy] [Certificate] as a Partnership Policy [Certificate], you would not receive beneficial treatment of your [Policy] [Certificate] under the Medicaid program of that state. The information contained in this Notice is based on current Montana and federal laws. These laws may be subject to change. Any change in law could reduce or eliminate the beneficial treatment of your [Policy] [Certificate] under Montana's Medicaid program.

__Additional Information.__ If you have questions regarding your insurance policy [certificate] please contact [insert name of carrier.] If you have questions regarding current laws governing Medicaid eligibility, you should contact the Montana Department of Public Health and Human Services, Public Assistance Bureau at (406) 444-1788.

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

Eligibility for institutional/waiver Medicaid coverage for an applicant with a Qualifying LTC Partnership policy remains subject to all

PROVISIONS

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.