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FOR IMMEDIATE RELEASE
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Legislative Performance Audit Committee releases report on Long-Term Care Savings Plan

Committee to introduce legislation to eliminate the program

An audit of the Long-Term Care Savings Plan, released Friday by the Legislative Performance Audit Committee, found that the program is not effective in encouraging Nebraskans to save for long-term care and not sufficient to have a noticeable impact on future Medicaid costs. As a result, the Committee plans to introduce legislation to eliminate the program. In his response to the audit, State Treasurer Don Stenberg, whose office administers the program, agreed that the program should be eliminated.

Committee members, prompted in part by a recommendation of the Aging Nebraskans Task Force, authorized the audit in February. The main audit question was whether the Plan was effective in encouraging Nebraskans to save for long-term care needs and in reducing the long-term care burden on Nebraska taxpayers. The audit also examined other methods of incentivizing long-term care savings across the country.

Other recommendations include the need to address weakness in the Treasurer's Office administration. More specifically, the audit found that the Treasurer's Office is not ensuring that program participants are using deposits for long-term care expenses, despite a statutory requirement to assess penalties for improper withdrawals. However, the audit found that even if deficiencies in administration were addressed, the program would continue to be ineffective.

Sen. Dan Watermeier, chairman of the Performance Audit Committee said, "The unfortunate reality is that this program is just not doing what legislators intended it to do. I think the bill's sponsors believed that large numbers of Nebraskans would want to create savings accounts and the program would be as successful as the College Savings Plan. The audit shows this isn't the case. Getting people to save for long-term care is a problem around the country, one the current policy options have not been very good at solving."

In drafting legislation to eliminate the Long-Term Care Savings Plan, the Committee will seek to ensure minimal impact on program participants.

The report is available on the Legislative Performance Audit Office's website: nebraskalegislature.gov/reports/audit.php

Nebraska State Treasurer: Utility and Effectiveness of the Long-Term Care Savings Plan

Performance Audit Committee
Nebraska Legislature

November 2015

Audit reports are available on the Unicameral's Web site (www.nebraskalegislature.gov) or can be obtained from the Legislative Audit Office at (402) 471-1282.

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Audit Summary and Committee Recommendations

Audit Summary

The Long-Term Care Savings Plan (LTC Savings Plan or Plan) Act was adopted in 2006, and is the only incentive of its kind in the nation. While many other states provide tax credits or deductions for long-term care insurance premiums, Nebraska is the only state to tie an incentive to a long-term care savings account. The purpose of the Act was to reduce future Medicaid spending for long-term care by increasing the number of people who pay for long-term care themselves.

When filing Nebraska taxes, a participant in the LTC Savings Plan can reduce his or her adjusted gross income by the amount saved in a Plan account, up to $1,000 (a married couple filing jointly can reduce their income by up to $2,000). Currently, the maximum annual tax benefit on contributions is $68 for an individual and $136 for a married couple. Any investment earnings on the account can be deducted as well, to the extent they are not deducted for federal income tax purposes.

Section I of the audit report examines whether the Long-Term Care Savings Plan is effective in encouraging Nebraskans to save for long-term care and reducing the long-term care cost to Nebraska taxpayers. To answer this question, we reviewed program data as well as program administration, including the cost to the state. We found that the LTC Savings Plan is not effective in meeting program goals. We also identified some problems in the program's administration, but believe that even if those problems are resolved, there will not be a meaningful increase in overall effectiveness.

Section II provides an overview of policy options used at the national level and by other states. Our review of the research indicates that long-term care incentives are not effective at increasing the number of individuals who purchase long-term care insurance or at reducing the population who relies on Medicaid for long-term care.

Committee Conclusions and Recommendations

The purpose of the Long-Term Care Savings Plan Act was to increase the number of individuals who prepare for potential long-term care costs, which would lessen the future demand on Medicaid. The principle behind the program was that tax deductions for the savings accounts would incentivize more Nebraskans to buy long-term care insurance or, alternatively, to save for long-term care costs if they were ineligible for insurance. However, the contribution data suggests that most participants are only depositing enough to claim the tax benefit and not enough to save for long-term care expenses. Likewise, the number of individuals participating is so low that we cannot see any impact on the rate of long-term care insurance purchase in Nebraska.

Our first conclusion is that, based on the findings relating to the Long-Term Care Savings Plan as well as similar results in most research on other long-term care incentives, the LTC Savings Plan and policy options like it do not change the behavior of enough people to have a noticeable impact on Medicaid costs for long-term care services. Consequently, the program should be eliminated.

Recommendation: The Legislative Performance Audit Committee will introduce legislation to eliminate the Long-Term Care Savings Plan.

Our second conclusion is that there are weaknesses in the Treasurer's Office's administration of the Long-Term Care Savings Plan that should be addressed. At a minimum, the Office should institute a process for this program similar to the one it uses for the College Savings Plan, which requires participants to sign a form, under penalty of perjury, that their withdrawals are for purposes allowed by the Act. The Office should also consider reviewing the deposit information it receives from financial institutions for obvious errors and better targeting its marketing efforts. We note, however, that even if these weaknesses are fully resolved, there will not be a meaningful increase in the program's overall effectiveness.

Recommendation: The Treasurer's Office should institute a process for having participants sign a form, under penalty of perjury, that their withdrawals are for purposes allowed by the Act.

Specific Audit Findings

Section I: Program Participation and Administration

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Finding #2: Program data suggests that participants are depositing only enough to obtain the maximum tax deduction, not the larger amounts needed to cover actual long-term care costs or have an impact on the state's future Medicaid spending.

Finding #3: The administrative costs for the Long-Term Care Savings Plan for the 2013-2015 budget cycle were about $42,000; the amount of forgone tax revenue from the tax deduction is unknown.

Finding #4: Because the Treasurer's Office does not know if withdrawals are used only for approved purposes, the Office cannot collect penalties as required by statute and there is a higher risk that program participants could receive the tax benefit for withdrawals that are not authorized under the Act.

Finding #5: The lack of data review by the Treasurer's Office reduces the reliability of the data, which may have tax implications for participants and limits the usefulness of the data for program analysis by the Treasurer's Office or policymakers.

Finding #6: Marketing that is targeted to nursing homes and assisted living facilities may increase the number of participants who claim the tax benefits, but is not likely to increase the number of participants who were not otherwise interested in saving for long-term care.

Section II: Research on Other Long-Term Care Incentive Programs

Finding #7: Researchers have found that the federal tax deduction available for long-term care insurance premiums is not effective in increasing the number of individuals that purchase insurance.

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II. Legislative Audit Office Report

Legislative Audit Office Report

Nebraska State Treasurer: Utility and Effectiveness of the Long-Term Care Savings Plan

November 2015

Prepared by
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INTRODUCTION

The Long-Term Care Savings Plan (LTC Savings Plan or Plan) allows Nebraskans to receive a tax deduction for creating savings accounts with participating financial institutions to save for long-term care expenses. By law, the Plan is the responsibility of the Treasurer's Office. Under the LTC Savings Plan, a person of any age can create an account and withdraw funds tax-free for long-term care expenses accrued during the year. After age 50, participants may also withdraw funds for long-term care insurance premiums.

In February 2015, the Legislative Performance Audit Committee (Committee) directed the Legislative Audit Office to conduct a performance audit of Nebraska's LTC Savings Plan. The audit was requested, in part, in response to a 2014 recommendation by the Aging Nebraskans Task Force. This task force, created by statute to develop a statewide strategic plan for addressing the needs of Nebraska's aging population, included a recommendation in its final report for a performance audit of tools for financing long-term care, including the LTC Savings Plan.

The Committee directed the Audit Office to answer the following questions:

1. Is the Long-Term Care Savings Plan effective in encouraging Nebraskans to save for long-term care needs and reducing the long-term care burden on Nebraska taxpayers?

2. How does the Long-Term Care Savings Plan compare with other ways of incentivizing self-pay for long-term care?

Section I of this report provides the history and an analysis of the LTC Savings Plan Act and how it is administered by the Treasurer's Office. Section II discusses what other states, as well as the federal government, are doing to incentivize saving for long-term care and whether or not these incentives are effective.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

We appreciate the cooperation and assistance of the Treasurer's Office, as well as the Department of Revenue and the Department of Insurance, during the audit.

SECTION I: The Nebraska Long-Term Care Savings Plan

In this section, we examine whether the Long-Term Care Savings Plan (LTC Savings Plan or Plan) is effective in encouraging Nebraskans to save for long-term care and reducing the long-term care cost to Nebraska taxpayers. To answer this question, we reviewed program data as well as program administration, including the cost to the state.

We found that the LTC Savings Plan is not effective in meeting these goals. As discussed in Section II, this finding is consistent with research on the national tax deduction and other states' long-term care incentive programs. The research indicates that such incentives are unsuccessful at encouraging purchase of long-term care insurance by people who are not already inclined to do so. We also identified some problems in the program's administration, but believe that even if those problems are resolved, there will not be a meaningful increase in the program's overall effectiveness.

Nebraska Long-Term Care Savings Plan Act

The Long-Term Care Savings Plan Act (Act) was adopted in 2006, and is the only incentive of its kind in the nation. While many other states provide tax credits or deductions for long-term care insurance premiums, Nebraska is the only state to tie an incentive to a long-term care savings account. The purpose of the Act was to reduce future Medicaid spending for long-term care by increasing the number of people who pay for long-term care themselves. Senators envisioned the LTC Savings Plan would operate like the Nebraska College Savings Plan program, which incentivizes saving for college through tax deductions.

The Act gives the State Treasurer oversight responsibilities for the Long-Term Care Savings Plan. Participants in the Plan can make contributions to an account created at any financial institution with which the Treasurer has an agreement, in order to save for long-term care expenses.

Anyone can open an account under the Plan. However, in order to make a withdrawal and not be charged a penalty, the participant must have incurred long-term care expenses during the year *or* be at least 50 years old and have made payments for long-term care insurance premiums.[1] Under the Act, long-term care expenses include the cost of care in a long-term care facility and the cost of care provided in a person's home when the person receiving the care is unable to perform multiple basic life functions independently. Eligible long-term care insurance premiums are those paid for a long-term care insurance policy that offers coverage to the individual, the individual's spouse, or another person for whom the taxpayer has an insurable interest.

When filing Nebraska taxes, a participant in the LTC Savings Plan can reduce his or her adjusted gross income by up to $1,000 (a married couple filing jointly can reduce their income by up to $2,000). Currently, the maximum annual tax benefit on contributions is $68 for an individual and $136 for a married couple. Any investment earnings on the account can be deducted as well, to the extent they are not deducted for federal income tax purposes.

Plan Considered for Elimination: LB 400 (2011)

In 2010, as part of the Legislature's response to a drop in state revenues, the Appropriations Committee Chairman introduced LR 542 to identify government programs that should be considered for reduction or elimination. During the LR 542 process, the Government Committee suggested that the Long-Term Care Savings Plan be eliminated and LB 400 (2011) was introduced the following session to do so.

At the LB 400 hearing, newly elected Treasurer Don Stenberg testified in favor of the Plan's elimination. Treasurer Stenberg stated that the LTC Savings Plan was "a government program that simply hasn't achieved what it was expected it would achieve." He continued by saying, "it's clear to me that very few Nebraskans have found this program to be of interest, and that the small participation does not justify the … expense of administering it."[2] The LB 400 provisions to eliminate the LTC Savings Plan did not advance out of committee. At the time of this report's release, Treasurer Stenberg continues to be in favor of the program's elimination.

[1] Originally, the Act only allowed individuals who were at least 62 years old to use withdrawals for insurance premiums. However, only a year after the Act's adoption the Legislature lowered the age to 50, to encourage younger individuals to purchase long-term care insurance.
[2] Nebraska Legislature, Revenue Committee, *LB 400 (2011) Transcript*, testimony of Treasurer Don Stenberg, March, 4, 2011.

Long-Term Care Savings Plan Participation

Because the purpose of the Long-Term Care Savings Plan is to encourage saving and reduce taxpayer costs for long-term care, we examined data to determine how participants were using the accounts. We looked at yearly total contributions made for each account over the entirety of the program. We also compared the number of individuals who participate in the LTC Savings Plan to those who purchase long-term care insurance to estimate the impact of the incentive.

Number of Participants

Contribution data shows that participation in the program has increased from 151 accounts in 2007 to 506 accounts in 2014. Similarly, the total amount of contributions increased from $279,222 to $742,178 as shown in Table 1.1.

Table 1.1. Long-Term Care Savings Plan Accounts

Year	Number of Accounts	Total Amount Contributed Per Year
2007	151	$279,222
2008	278	$493,711
2009	369	$469,947
2010	421	$585,927
2011	425	$633,639
2012	483	$688,356
2013	468	$684,668
2014	506	$742,178

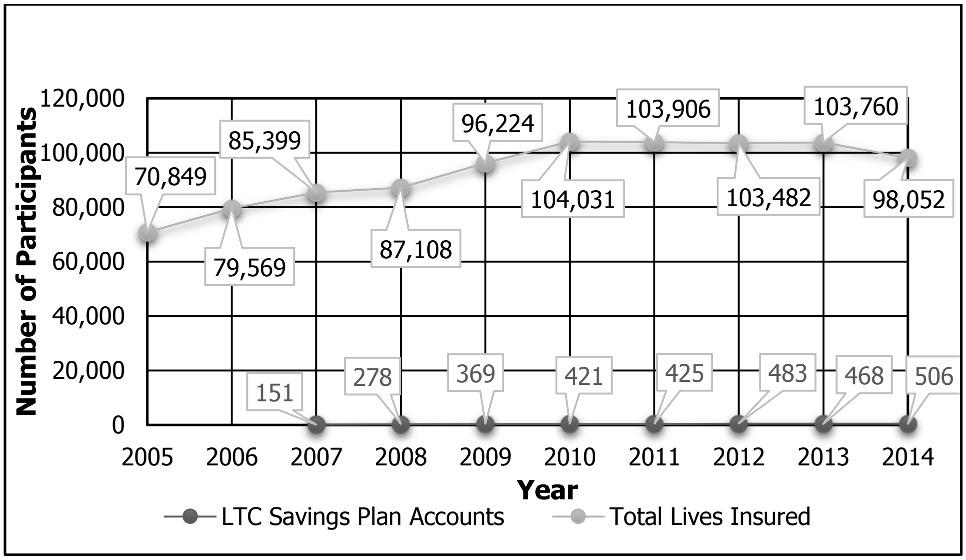
Source: Table prepared by Legislative Audit Office with data provided by State Treasurer's Office.

However, the number of program participants is very small compared to the number of Nebraskans covered by long-term care insurance. From 2005 to 2014, a range of about 71,000 to 104,000 individuals have had long-term care insurance, but participation in the LTC Savings Plan, at its peak, was a little over 500 participants (*see Figure 1.2*).[3] If *all* Plan participants used their yearly contributions to pay for long-

[3] Data on the number of people with long-term care insurance is maintained by the Nebraska Department of Insurance. However, the Department does not have an actual count of insured individuals; the numbers provided are estimates. To the extent that these figures may differ from the actual counts, it is most likely that there are more people with long-term care insurance than are reflected in the estimates. That means our estimate that less than half a percent of those with long-term care insurance also have long-term care savings accounts may be a high estimate and the true proportion may even be lower.

term care insurance premiums, they would account for *less than half a percent* of all long-term care insurance policyholders in Nebraska.

Figure 1.2. Total Number of Nebraska Lives Covered by Long-Term Care Insurance Compared to Long-Term Savings Plan Accountholders



Source: Figure prepared by Legislative Audit Office with data from State Treasurer's Office and Department of Insurance.

Additionally, the average amount contributed would not cover the average yearly premium required to obtain a policy, much less make a noticeable impact in actual long-term care costs. For example, in 2012,[4] the average contribution to a long-term care savings account was $1,425, while the average long-term care insurance premium was just over $2,000 for a person aged 55 with a $164,000 policy (*see Table 1.3 for a breakdown of average contributions by year*).

Table 1.3. Long-Term Savings Plan Average Contribution Per Year

Year	2007	2008	2009	2010	2011	2012	2013	2014
Average Contribution	$1,849	$1,782	$1,274	$1,392	$1,491	$1,425	$1,463	$1,467

Source: Table prepared by Legislative Audit Office with data from State Treasurer's Office.

[4] 2012 is the most recent year for which we have average long-term care premium costs.

Finding #1: The number of participants in the Long-Term Care Savings Plan is very small compared to the number of people covered by long-term care insurance in Nebraska.

Contributions

While participation in the LTC Savings Plan has increased from 2007 to 2014, contribution data also shows that 80% of contributions are for $2,000 or less (*see Table 1.4 and Figure 1.5*). This amount is noteworthy because it is the maximum on which a couple filing jointly can receive a tax benefit, which suggests that most program participants are depositing only enough to obtain the maximum tax deduction, not the larger amounts needed to cover actual long-term care costs or have an impact on the state's future Medicaid spending.

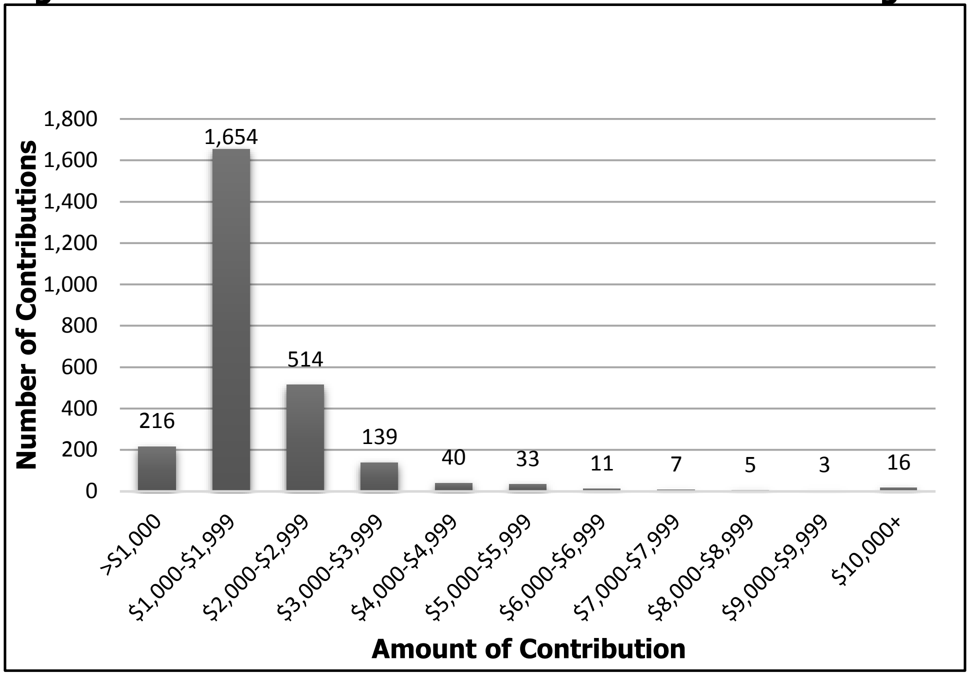
Finding #2: Program data suggests that participants are depositing only enough to obtain the maximum tax deduction, not the larger amounts needed to cover actual long-term care costs or have an impact on the state's future Medicaid spending.

Moreover, after the first year, a small but noticeable number of individuals with open accounts did not make a contribution (*see Table 1.4*). For example, in 2014, of the 506 accounts, 413 had contributions, meaning 93 (18%) of account holders made no contribution that year. Thus, even when they already have access to a LTC Savings Plan account, some participants are not making a habit of regularly saving for long-term care.

Table 1.4. Long-Term Savings Account Annual Contributions

Year	Accounts	Number of Contributions	Percent of Accounts with Contributions	Contributions of $2,000 or Less	Percent of Accounts with Contributions of $2,000 or Less
2007	151	151	100%	138	91%
2008	278	249	90%	204	82%
2009	369	305	83%	251	82%
2010	421	359	85%	295	82%
2011	425	351	83%	285	81%
2012	483	394	82%	307	78%
2013	468	416	89%	325	78%
2014	506	413	82%	318	77%

Figure 1.5. Total Contributions Over the Life of the Program



Source: Figure prepared by Legislative Audit Office with data provided by State Treasurer's Office.

Program Costs

The Long-Term Care Savings Plan has two types of costs to the state: administration and forgone tax revenue on contributions and account interest. We cannot report on forgone revenue because the Department of Revenue does not track this information and we did not have statutory authority to review tax records for this audit.[5]

We were, however, able to access budget data for the LTC Savings Plan for the last two budget cycles. The administrative costs of the Plan have decreased each year. In FY 2011-12, the program cost approximately $57,000 to administer, and in FY 2014-15, the program cost about $19,000 (*see Table 1.6*).

[5] The Audit Office has statutory authority to review tax records when auditing programs administered by the Department of Revenue but not for programs administered by other agencies.

Table 1.6: Long-Term Care Savings Plan Administrative Cost

Fiscal Year	Expenditure by Year	Expenditure by Budget Cycle
2011-12	$57,070.36	$94,613.46
2012-13	$37,543.10	
2013-14	$23,235.38	$42,070.82
2014-15	$18,835.44	

Source: Table prepared by Legislative Audit Office with data provided from State Treasurer's Office.

Finding #3: The administrative cost for the Long-Term Care Savings Plan for the most recent budget cycle (2013-2015) was about $42,000; the amount of forgone tax revenue from the tax deduction is unknown.

Program Administration and Oversight

The Long-Term Care Savings Plan Act requires the Treasurer to seek an administrator to manage the Plan; however, if an administrator is not found, the Treasurer can enter into individual agreements with financial institutions. The Act also requires limited oversight of the LTC Savings Plan by the Treasurer.

Under the previous Treasurer, a request for proposal was sent out seeking an administrator for the Plan, but there were no applicants. Because no administrator was selected, the Treasurer's Office entered into individual participation agreements with banks and credit unions. Initially, 28 financial institutions agreed to service long-term care savings accounts; however, in 2015, only 16 remain, a decline of nearly 45 percent.

The participation agreement contains requirements governing financial institutions that provide long-term care accounts. The agreement ensures that account holders have certain account termination and transfer rights. It requires participating banks and credit unions to annually report account information to the Treasurer's Office including account year-end balances, calendar year contributions, the participant's name, address, and social security number. The participation agreement does not include interest rates, fees, or minimum balances, which can vary by financial institution.

The Act contains no requirements regarding the Treasurer's responsibilities once the required information is received. In fact, the single statutory oversight requirement for the Treasurer is to collect a penalty if participants make unauthorized withdrawals from their accounts. By law, Plan funds must be used for long-term care expenses or long-term care insurance premiums.[6] The withdrawal must also be made by and for a qualified individual: the account holder, spouse, or person in whom the account holder has an insurable interest.

We found, however, that the Treasurer's Office (Office) has no mechanism for ensuring that withdrawals are qualified, nor does the Treasurer's Office know if banks are enforcing withdrawal requirements. In contrast, participants in the College Savings Plan must sign a form, under penalty of perjury, that withdrawals are for education expenses. Without some kind of mechanism, the Treasurer cannot collect penalties as required by statute and there is a higher risk that program participants could receive the tax benefit without using their savings for purposes intended by the Act.

Finding #4: Because the Treasurer's Office does not know if withdrawals are used only for approved purposes, it cannot collect penalties as required by statute and there is a higher risk that program participants could receive the tax benefit for withdrawals that are not authorized under the Long-Term Care Savings Plan Act.

We also identified two additional administrative problems that could impact the program's overall effectiveness. First, the Treasurer's Office does not perform checks to ensure the data received from the individual financial institutions is accurate or complete. In our review of the data, we found errors that could have easily been identified and corrected, including incorrect deposit amounts and duplicate accounts.

When the Office receives yearly reports from the institutions, a staff person compiles the information into a spreadsheet and provides it to the Department of Revenue. According to the Treasurer's Office, corrections are made if mistakes are identified by account holders or the Department of Revenue in reviewing tax filings. However, the lack of review by the Treasurer's Office reduces the reliability of the data. If correct information is not reported to the Department of Revenue,

[6]Neb. Rev. Stat. § 77-6105; 429 NAC 2.

account holders may not receive the correct tax benefit. Additionally, unreliable data limits its usefulness for program analysis by the Treasurer's Office or policymakers.

Finding #5: The lack of data review by the Treasurer's Office reduces the reliability of the data, which may have tax implications for participants and limits the usefulness of the data for program analysis by the Treasurer's Office or policymakers.

The second problem we identified relates to the way the Treasurer's Office markets the LTC Savings Plan. The Treasurer's Office purchases print and radio advertising, with an emphasis on utilizing media that reaches the entire state. The Treasurer and his staff conduct in-person outreach at Husker Harvest Days and the State Fair. Additionally, LTC Savings Plan-specific brochures and information are sent to the American Association of Retired Persons, the Nebraska Health Care Association (whose members are nursing homes and assisted living facilities), as well as insurance agents' organizations. The Treasurer writes letters to several nursing homes across the state and provides brochures for nursing home visitors and staff.

While the Treasurer's Office makes efforts to ensure that its marketing reaches a broad audience by including the entire state, marketing that is targeted to nursing homes and assisted living facilities may increase the number of participants who claim the tax benefits, but is not likely to increase the number of participants who were not otherwise interested in saving for long-term care. This concern was echoed by Treasurer's Office staff, who acknowledged that this might not be the best form of outreach to target the intended audience.

Finding #6: Marketing that is targeted to nursing homes and assisted living facilities may increase the number of participants who claim the tax benefits, but is not likely to increase the number of participants who were not otherwise interested in saving for long-term care.

We acknowledge that the Act does not require the Treasurer's Office to review the data or to market the Plan in a specific way. Nevertheless, best practices suggest the need for minimal review of data to detect and correct obvious errors and targeting Plan marketing to people who would not otherwise save for long term care.

SECTION II: Tax Incentives for Long-Term Care Nationwide

In this section, we provide an overview of long-term care incentive policy options used at the national level and by other states. Our review of the research indicates that long-term care incentives are not effective at increasing the number of individuals who purchase long-term care insurance or at reducing the population who relies on Medicaid for long-term care.

Long-Term Care National Picture

While an estimated 70% of Americans who reach the age of 65 will need long-term care, fewer than 10% of Americans save specifically for long-term care costs and only about 8% of Americans have private long-term care insurance. The majority of individuals typically utilize their own resources, and when those are exhausted, seek coverage under Medicaid. Nationally, about 67% of the cost of long-term care is paid by Medicaid, while 12% is paid for by private long-term care insurance.

Researchers cite many reasons why saving for long-term care is not typically a priority, starting with cost. Many middle class Americans cannot afford the premiums for long-term care insurance and do not have enough personal savings to pay for long-term care for a significant amount of time. A 2010 study found that 56% of individuals who considered purchasing long-term care insurance, but did not, said that cost was their major reason for not purchasing insurance.

The 2013 national median cost for a private room in a nursing home was $84,000 a year. In 2012, the average premium for a 55 year old was $2,007 per year for a $164,000 policy with a three year benefit period. Consequently, even with long-term care insurance, an individual may require additional funds for long-term care.

In addition to affordability, barriers to purchasing long-term care insurance include a distrust of private insurers and a lack of awareness regarding the risk of needing long-term care. Also, some individuals may be unable to get long-term care insurance due to pre-existing conditions. Some research also suggests that the availability of Medicaid may be in part to blame, but the evidence is mixed. “Medicaid crowd-out” is the idea that individuals do not purchase long-term care insurance because they plan to rely on Medicaid for long-term care. At least two researchers have found that some crowd-out exists, while another found Medicaid had very little impact on purchasing decisions.

Because accessing Medicaid requires exhausting personal resources, it is not surprising that individuals with higher incomes are much more likely to have long-term care insurance. Those with household incomes over $100,000 were found to be more than twice as likely to have long-term care insurance as those with an income between $20,000 and $50,000. Although higher income individuals are more likely to have long-term care insurance, they are actually less likely to require full-time care because of the health benefits associated with higher socio-economic status.

Policy Options to Incent Saving for Long-Term Care

In the last 20 years, Congress and state policymakers across the country have tried various methods to incentivize purchase of long-term care insurance. Researchers studying these policy options often find little impact.

Federal Tax Deduction

In 1996, Congress created a tax deduction for long-term care premiums, by allowing the inclusion of these costs as a medical expense that can be itemized on an individual's tax return. Only the portion of medical expenses that exceed 10% of adjusted gross income is deductible. The allowance for premiums that qualify as a medical expense increases with age (*see Table 2.1*).

Table 2.1. Long-Term Care Insurance Premiums Eligible for Federal Tax Deduction

Age	Maximum Amount of Premium Able to be Used as Qualified Medical Expense
40 or less	$380
41-50	$710
51-60	$1,430
61-70	$3,800
71+	$4,750

Source: Table prepared by Legislative Audit Office with data from IRS Publication 502.

Economists studying the response to the federal deduction found that although it is likely to target more middle income Americans than other policies (income range of $34,876 to $56,066 and a wealth range of $91,349 to $226,343), the deduction increased the purchase of long-term care insurance by less than half a percentage point. Some researchers have suggested that the federal tax deduction is not effective because the barriers to entry are so great. A 2004 study showed that fewer than 5% of people deduct itemized medical expenses, likely because the deduction threshold is high. Even for those who do itemize, about 10% of long-term care insurance plans do not qualify.

Finding #7: Researchers have found that the federal tax deduction available for long-term care insurance premiums is not effective in increasing the number of individuals who purchase insurance.

Partnership Programs

Partnership programs are partnerships between a state and one or more companies offering long-term care insurance. These programs were designed to encourage the purchase of long-term care insurance by allowing those who purchase partnership policies to keep some of their assets while still being eligible for Medicaid. Forty-three states, including Nebraska, have partnership programs. (Because Nebraska's partnership program was outside the scope of this audit, our examination was confined to generalized research on these programs).

In 2007, the Government Accountability Office (GAO) analyzed data from four states with partnership programs and found that not only are the programs unlikely to result in Medicaid savings, they may in fact result in a small increase in Medicaid spending. Because partnership policies protect assets, policyholders spend down fewer assets than they would have were they covered by a traditional insurance policy. As a result, they become Medicaid eligible sooner than they would have without the policy. On the other hand, because partnership policyholders tend to have more assets and relatively few of them actually access Medicaid, the overall impact on Medicaid spending is probably small. The report also noted that partnership policies, like long-term care insurance in general, benefit only those with higher incomes, as premiums for both partnership and traditional policies are generally not affordable for those with moderate incomes.

Most other research confirms the GAO's conclusions. For example, a study of Connecticut's partnership program found that nearly 50% of participants had assets over $350,000, while those with assets less than $100,000 accounted for only 17%.

Research also suggests that partnership policies do not incent new participants to enter the long-term care insurance market. In the GAO study, survey data from two states showed that the majority of partnership policyholders would have purchased long-term care insurance even without the incentive. A study from the University of Hawaii (Hawaii study) concluded that "a state long term care partnership program would not induce a single new person to purchase long term care insurance."[7]

Finding #8: Studies have shown that partnership programs are unlikely to result in Medicaid savings.

State Tax Incentives

Several states offer tax incentives as either credits or deductions for long-term care insurance premiums. A handful of studies have examined these incentives and found that they have little effect on the purchase of long-term care insurance. One study found that, on average, state tax incentives reduce the after-tax cost of long-term care insurance by 5%, which in turn increases the purchasing of long-term care insurance by 2.7%. But because the initial rate of purchase was so low, the tax incentives did not appear to make a substantial difference in the portion of the population covered by long-term care insurance.

The Hawaii study also looked at 16 states' tax incentives for long-term care policyholders and concluded that if any other state enacted a similar law, the impact on the rate of policy purchase would be "nil".[8] Another study found that for both federal and state policies, tax incentives alone are not likely to have a significant impact on the number of long-term care

[7] David C. Nixon, "State Programs to Encourage Long Term Care Insurance," http://www.publicpolicycenter.hawaii.edu/projects-programs/_long-term-care/Long-Term-Care-Insurance.pdf (accessed August 11, 2015).
[8] Ibid.

insurance purchasers. Perhaps most significantly, research also shows that most of the impact of increased coverage is concentrated among higher income and asset-rich individuals who are not likely to rely on Medicaid. This means that "tax incentives are unlikely to substantially reduce net government expenditures for long-term care."[9]

Finding #9: Research has found that state tax incentives for long-term care insurance are unlikely to make a significant impact on the number of long-term care insurance policies purchased.

[9] Gopi Shah Goda, "The Impact of State Tax Subsidies for Private Long-Term Care Insurance on Coverage and Medicaid Expenditures," http://www.nber.org/papers/w16406 (accessed September 16, 2015).

III. Fiscal Analyst's Opinion

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LEGISLATIVE AUDIT

State of Nebraska

LEGISLATIVE COUNCIL

www.nebraskalegislature.gov

Legislative Fiscal Office
PO Box 94604, State Capitol
Lincoln, NE 68509-4604

October 9, 2015

Martha Carter
Legislative Auditor
11th Floor – State Capitol
Lincoln, NE 68509

Dear Martha:

This letter is in response to the Legislative Performance Audit Committee's draft report regarding the Long-Term Care Savings Plan.

The report offers two recommendations: elimination of the program and updating processes in the Treasurer's Office to have participants sign a form stating that withdrawals will occur only for purposes allowed by the Act.

There may be costs associated with eliminating the program, such as programming changes for the Department of Revenue, printing and mailing costs associated with communicating changes to plan participants and providers, and legal fees. These costs would be of a one-time nature and are likely to be minimal.

If the Plan is to remain intact, having the Treasurer's Office implement a policy requiring "participants (to) sign a form, under penalty of perjury, that their withdrawals are for purposes allowed by the Act" should have minimal fiscal impact. These costs should be able to be absorbed within the current budgetary resources.

If you have further questions, please contact me.

Sincerely,

Scott Danigole
Program Analyst – Legislative Fiscal Office

Cc: Mike Calvert, Fiscal Analyst

IV. Background Materials

BACKGROUND MATERIALS

The “background materials” provided here are materials (in addition to the Office’s report) that were available to the Committee when it issued the findings and recommendations contained in Part I of this report. They include:

- The agency’s response to a draft of the Office’s report; and
- The Legislative Auditor’s summary of the agency’s response.

STATE OF NEBRASKA

Don Stenberg, State Treasurer

State Capitol, Suite 2005 | P.O. Box 94788 | Lincoln, NE 68509 | 402-471-2455 | www.treasurer.org

November 3, 2015

Martha Carter
Legislative Auditor
P.O. Box 94604, State Capitol
Lincoln, NE 68509

RE: Legislative Audit of Long-Term Care Savings Plan

Dear Ms. Carter:

I agree with the recommendation that legislation be introduced to eliminate the Long-Term Care Savings Plan. As noted in the Audit Report, in 2010 the Government Committee recommended that the Plan be eliminated. In 2011, LB400 was introduced for that purpose, and I testified in support of that legislation.

As I stated at that time, the small participation in the Plan does not justify the expense of administering it. That continues to be the case today.

It has been said that the closest thing to eternal life on this earth is a government program. No matter how ineffective it is, it is nearly impossible to kill.

Despite the clear ineffectiveness of this Plan, there was strong opposition to eliminating it in 2011. There likely will be again. Therefore, the Audit Committee will need to give careful consideration to whether it is prepared to join me in the fight to eliminate this well intentioned, but ineffective government program.

Below are responses to specific audit findings and recommendations in the draft report of the Nebraska State Treasurer: Utility and Effectiveness of the Long-Term Care Savings Plan.

Specific Audit Findings, Section I: Program Participation and Administration

Finding #4: Because the Treasurer's Office does not know if withdrawals are used only for approved purposes, the Office cannot collect penalties as required by statute and there is a higher risk that program participants could receive the tax benefit for withdrawals that are not authorized under the Act.

Response to Finding #4:
Under their agreements with the State Treasurer's Office, Participating Financial Institutions are to report to the State Treasurer's Office any non-qualified withdrawals from a participant's long-term care savings account. Any non-qualified withdrawals reported would be included in the account data the Treasurer's Office provides to the Department of Revenue for tax reporting.

Finding #5: The lack of data review by the Treasurer's Office reduces the reliability of the data, which may have tax implications for participants and limits the usefulness of the data for program analysis by the Treasurer's Office or policymakers.

Response to Finding #5:
Participating Financial Institutions report their long-term savings account data to the Treasurer's Office each calendar year. The report provides account data including, the participant's name, social security number, contributions, interest earned, and account balance. The only way to confirm the accuracy of the data received from the Participating Financial Institution would be to audit them, which is a function of the State Auditor's Office, not the State Treasurer's Office.

Finding #6: Marketing that is targeted to nursing homes and assisted living facilities may increase the number of participants who claim the tax benefits, but it is not likely to increase the number of participants who were not otherwise interested in saving for long-term care.

Response to Finding #6:
This finding is a misunderstanding of the reason for marketing the plan in nursing homes and assisted living facilities. In most cases, residents of those facilities do not have any tax liability because they have very limited income and would not benefit from the Plan. Therefore, the Plan is targeted to visitors to these facilities.

The Treasurer's Office has received inquiries from nursing homes and assisted living facilities requesting information on the Long-Term Care Savings Plan. We have sent brochures to provide information on the plan for visitors to the facility. Visitors, such as adult children, grandchildren, and friends of the residents may benefit from learning more about saving for their long-term care needs, as well as staff working at the facility.

Draft Recommendations:

The Treasurer's Office should institute a process for having participants sign a form, under penalty of perjury, that their withdrawals are for purposes allowed by the Act.

Our second conclusion is that there are weaknesses in the Treasurer's Office's management of the Long-Term Care Savings Plan that should be addressed. At a minimum, the Office should institute a process for this program similar to the one it uses for the College Savings Plan, which requires participants to sign a form, under penalty of perjury, that their withdrawals are for purposes allowed by the Act. The Office should also consider reviewing the deposit information it receives from financial institutions for obvious errors and better targeting its marketing efforts. We note, however, that even if these weaknesses are fully resolved, there will not be a meaningful increase in the program's overall effectiveness.

Response to comment:
Under their agreements with the State Treasurer's Office, for each Account established by the Participating Financial Institution, the Participating Financial Institution must require that the Participant sign an Account Agreement. The Account Agreement designates the Account as a Nebraska Long-Term Care Savings Plan Account, and must include all information as is otherwise reasonably required by the Participating Financial Institution to establish a deposit account and must include the following information regarding the Participant: name, address, phone number, date of birth, and social security number. Further, at the time an account is established, the Participating Financial Institution must provide information to the participant indicating when money can be withdrawn from a long-term care savings plan account. The participant is to be instructed that funds may be withdrawn by the account owner for long-term care expenses, but a 10% penalty is imposed on the amount of a non-qualified withdrawal.

At the time a participant opens a Long-Term Care Savings Plan account, the Participating Financial Institution is required to have the account owner sign a Deposit Account Agreement. In addition to signing the Account Agreement, the account owner receives a copy of "Frequently Asked Questions" outlining a participant's rights exercisable during the participant's lifetime. The document provides the following information addressing withdrawals from a long-term care savings plan account:

> "When can money be withdrawn from a long-term care savings plan account?
> Funds can be withdrawn without penalty from a long-term care savings plan account under the following circumstances:
>
> > (a) if the Account owner during the year of the withdrawal, incurred a long-term expenses for themselves or a spouse during the taxable year; or
> > (b) if the Account owner turns 50 during the year of the withdrawal and uses the funds during the taxable year of the withdrawal to pay or reimburse long-term care insurance premiums. Funds may be withdrawn by the Account owner for any other purposes, BUT a 10% penalty is imposed on the amount withdrawn;

(c) If the Account owner uses the funds during the taxable year of withdrawal to pay or reimburse long-term care insurance premiums for a person to whom they have an insurable interest."

Requiring Participating Financial Institutions to, in addition to all of the above, obtain a sworn statement from their customers each time a withdrawal is made likely will result in many of the remaining 16 Participating Financial Institutions discontinuing their participation in the Plan.

Thank you for the opportunity to provide responses to your draft report. If legislation is introduced to eliminate the Plan, it will have my support.

Sincerely,

Don Stenberg
State Treasurer

DS/rb

Legislative Auditor's Summary of Agency Response

This summary meets the requirement of Neb. Rev. Stat. § 50-1210 that the Legislative Auditor briefly summarize the agency's response to the draft performance audit report and describe any significant disagreements the agency has with the report or recommendations.

In his response, the State Treasure agrees with the audit report recommendation that the Legislative Performance Audit Committee consider introducing a bill to eliminate the Long-Term Care Savings Plan. However, he disagrees with findings and recommendations relating to problems identified in the report relating to administrative practices by the Treasurer's Office. Following are the report's two conclusions and recommendations, the Treasure's comments related to each, and the Audit Office response.

First Audit Conclusion

> Our first conclusion is that, based on the findings relating to the Long-Term Care Savings Plan as well as similar results in most research on other long-term care incentives, the LTC Savings Plan and policy options like it do not change the behavior of enough people to have a noticeable impact on Medicaid costs for long-term care services. Consequently, unless the Legislative Performance Audit Committee believes there are policy goals being met by this program that were not identified in this report, we recommend it consider eliminating the program.
>
> **Recommendation:** The Legislative Performance Audit Committee should consider introducing legislation to eliminate the Long-Term Care Savings Plan.

Treasurer's Comments: The State Treasurer agrees with this recommendation.

Audit Office Response: None.

Second Audit Conclusion

> Our second conclusion is that there are weaknesses in the Treasurer's Office's administration of the Long-Term Care Savings Plan that should be addressed. At a minimum, the Office should institute a process for this program similar to the one it uses for the College Savings Plan, which requires participants to sign a form, under penalty of perjury, that their withdrawals are for purposes allowed by the Act. The Office should also consider reviewing the deposit information it receives from financial institutions for obvious errors and better targeting its marketing efforts. We note, however, that even if these weaknesses are fully resolved, there will not be a meaningful increase in the program's overall effectiveness.

Draft Recommendation: The Treasurer's Office should institute a process for having participants sign a form, under penalty of perjury, that their withdrawals are for purposes allowed by the Act.

Treasurer's Comments: The Treasurer disagrees with the recommendation that program participants be required to sign such a form based on four points. His response states that:

1) Participating Financial Institutions are to report to the State Treasurer's Office any non-qualified withdrawals from a participant's long-term care savings account;
2) When an account is created, the financial institutions must tell the participant that a 10% penalty will be imposed on withdrawals that are not for long-term care expenses;
3) Participants must sign a participation agreement at which time they receive a "Frequently Asked Questions" document that explains the penalty for non-qualifying withdrawals; and
4) Requiring financial institutions to obtain a sworn statement from program participants likely will result in many of the remaining 16 Participating Financial Institutions discontinuing their participation in the Plan.

Audit Office Response: We do not find these arguments sufficient to change our findings and recommendations. Regarding the first point, the agreements between the institutions and the program participants do not require financial institutions to report non-qualified withdrawals—a point confirmed by the Treasurer's Office at our exit conference for the audit. Institutions may or may not believe it is their responsibility, but the there is no legal or contractual obligation that they do so.

Regarding points two and three, there is no requirement in the LTC Saving Plan Act or the agreement that requires the institution tell participants that a penalty will be imposed for non-qualified withdrawals. More importantly, even if the institutions do inform participants of the potential penalty, verbally and in a Frequently Asked Questions document, alerting a participant at the time they sign up for the program, while a good idea, is not enough of a protection. We continue to recommend that the Treasurer's Office require participants to confirm *at the time they make a withdrawal* that the funds will be used for the intended purposes.

The Treasurer's fourth point is that requiring financial institutions to obtain such a confirmation from participants will reduce the already small number of institutions participating in the program. We believe that the need to have some level of assurance that funds withdrawn from LTC Savings Plan accounts are used for statutorily authorized purposes outweighs the Treasurer's concern. This is especially true given the evidence presented in the audit report that the program is not fulfilling the Legislature's intended goals. If it is also true that a minimal level of accountability causes institutions to choose not to participate, it is one more piece of evidence that the program is unworkable.

Treasurer's Comments: The Treasurer also disagrees with the report's findings relating to the need to review data for obvious errors and the need to better target its marketing efforts.

Audit Office Response: Regarding the data review, the Treasurer argues that to verify the reliability of the data the Treasurer's Office would have to conduct audits, which are the purview of the State Auditor's Office. However, our finding targeted obvious errors in the data that were evident to our auditors and would also be evident to the Treasurer's staff.

For example, for three years, one bank incorrectly reported nearly all of its participants' deposit amounts because it included the interest earned on the deposit in the deposit amount. The problem stood out because the cents in the deposit amount were exactly the same as interest reported. For example, a participant with a deposit amount of $1,500.57 had earned $0.57 of interest, a participant with a deposit amount of $1,800.09 earned $0.09 of interest, and so on.

We believe that the Treasurer's Office should provide a minimal level of scrutiny regarding the data it receives by identifying and correcting such obvious errors.

The Treasurer also states that we misunderstood the purpose of marketing the LTC Savings Plan at nursing homes, stating that the target audience is not the residents of such facilities but the staff, family members, and visitors. We have changed the text of the report to reflect this clarification but believe the finding remains appropriate because the staff, family members, and visitors at those facilities are, like the residents, more likely to understand the need to prepare for long-term care expenses than the general population.