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Long Term Care Insurance—Issues You Should Consider

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This memorandum is based in part on information in "Basics of Log-Term Care Insurance" by Barbara M. Kislak, Esq. contained in the 18th Annual Elder Law Institute published by the Practicing Law Institute.

Changes in Medicaid eligibility rules, particularly the transfer penalties applicable to nursing homes, increase the possibility that individuals will be required to pay for a portion of their nursing home fees. Insurance companies have been actively selling long-term care insurance to address this need. **Long term care insurance is not right for everyone.**

Long term care insurance is not for individuals who will likely be able to qualify for Medicaid nursing home benefits because of limited resources and income and because they are not subject to transfer penalties.

Individuals with substantial resources may decide to self-insure. Long term care insurance policies generally have maximum benefits. More affluent individuals may conclude that it doesn't make sense to purchase insurance for something that they can afford to pay for out of pocket if the need arises. Since some people who buy the insurance never use it – they may die without needing long term care or live a healthy long life and never need it -- affluent people may choose to set the money aside in case it is needed, but have the money to pass to their heirs if it is not needed.

Let's assume that you are not in either of these categories – very rich or very poor -- and believe that long-term care insurance may make sense for you. Here are some factors to consider when you compare policies.

1. HEALTH

Medical Underwriting -- If you have certain "pre-existing" medical conditions, insurance companies may not agree to insure you or may charge you more than other people your age. Some policies have blanket exclusions for particular conditions, such as alcoholism or mental illness. If you have questions about this, you may want to speak to insurance companies to find out whether they consider you insurable. You should not waste time considering all the complicated financial factors below if you can't get the insurance.

If you believe long term care insurance is for you, applying sooner rather than later will increase the likelihood that you will qualify.

2. COST OF PREMIUM

In addition to the obvious factor of the amount of the premium, you should consider:

- Under what circumstances may premiums be increased?
- What is the insurance company's history regarding raising premiums?
- If you enter a nursing home would you still be required to pay the premium?
- Is there a discount for paying the annual premium all at once?
- Has the company applied to raise premiums?

3. ELIMINATION PERIOD

"Elimination period" is the jargon for what is called a deductible in other types of insurance. Generally, it is the period of time you must wait before coverage starts. For example, a policy may not pay for the first 30 days you would be in a nursing home. The obvious factor is the number of days.

You should also consider how many times you may have to satisfy the elimination period. For example, if one satisfies the elimination period once, does this mean there will never be another elimination period for the life of the policy? Or do you have to start over for each incident, so that an individual who has a series of nursing home admissions or episodes of home care must repeatedly pay for the first 30 or more days of care? Generally, the longer the elimination period, the lower the premium will be, all other things being equal.

4. SERVICES

Policies vary on what they cover. You should check whether they only cover services in nursing homes or also cover any of the following: home care, assisted living facilities, and/or adult day care. Likewise, you should also consider whether the policy covers custodial care and homemaker services as well as skilled nursing.

If the policy covers home care, ask whether the services must be provided by a licensed home care services agency (LHCSA) or certified home health agency (CHHA), or whether the policy permits payment to unlicensed aides, friends, or even family members.

5. TRIGGERS OF COVERAGE

Many policies require that you need assistance with a specified number of Activities of Daily Living (“ADLs”), such as mobility, transfer, toileting, bathing, dressing, and grooming. You should check how many ADLs are required. You should also check the list to determine the range of ADLs that may trigger eligibility. For example, if the list includes 5 or 6 different ADLs that may be covered, coverage is more likely to be approved than if the list is more limited. For example, some policies do not include “bathing.”

Policies also vary in the *level of assistance* required to qualify for coverage. Criteria may include: substantial assistance, hands on assistance, stand-by assistance, and cueing/monitoring. Generally, if there is cognitive impairment this would be an alternative method to qualify for coverage from the ADL test discussed above.

These triggers may also vary depending on where one wants to receive care – in a nursing home, assisted living, or at home.

6. AMOUNT OF BENEFIT

What is the **Daily Benefit Amount** of the policy? Since private nursing home rates are approaching $500/day in New York City, if the policy has a benefit rate of $250/day, one needs to have a plan for how the balance will be paid. Perhaps the individual's own income and/or assets are sufficient to cover this cost – but remember that income may diminish in the later retirement years. If the income or assets are needed to support a spouse or dependent relative, however, a higher daily benefit would be needed – but may not be affordable.

The **maximum amount** covered by a policy may be stated by a time period, e.g., 3 years or may be stated by an aggregate dollar amount. There may be different maximum amounts for different levels of care; for example the amount may be less for home care than for a nursing home.

You should also consider whether the amount of coverage has **inflation protection**, that is will increase each year by a fixed percentage amount. If so, is it compounded annually or is the percentage applied to the original amount of coverage? Compound inflation protection is the most desirable—and you will have to pay for it.

7. Policy Renewable

You should confirm that you may renew your policy so long as you pay required premiums.

8. New York State Partnership Policies

If you buy New York State Partnership for Long-Term Care insurance and use the benefits according to the conditions of the program, you may apply for New York State Medicaid Extended Coverage which may assist in paying for your on-going care. Unlike regular Medicaid, Medicaid Extended Coverage allows you to protect some or all of your assets. However, Medicaid Extended Coverage does require that you contribute from your income to the cost of your care according to Medicaid income rules.

All Partnership policies have the following basic benefits:

- Nursing home care, home care and assisted living care services.

• 5% annual compound inflation protection required at purchase ages 79 and younger.
• 2 days of care management services per year.
• 14 days of respite care per year.
• Nursing home bed reservation, 20 days per year.
• Hospice care.
• 30 extra grace days to ensure the premium is paid if you have designated someone to be notified when you fail to pay your premium on time.
- Coverage of alternate level of care status in a hospital while awaiting nursing home placement or at-home services.

• Review of certain denied benefit authorization requests.
• Guaranteed renewable.

In the past, a Partnership policy would allow a purchaser to become eligible for Medicaid, regardless of the amount of his/her assets, if s/he purchased three years worth of nursing home (six years of home care) coverage. Recently, a new "Dollar for Dollar" policy has become available, which are policies that offer less than three years of nursing home coverage – as little as 1.5 years of coverage. This means that if an individual does not have three years of assets to protect (multiply the Daily Benefit Amount of the policy x 365 days x 3 years), then s/he can buy a less costly policy that provides only 1,5 or 2 years worth of nursing home care.

9. Tax Savings

In 1996, the Federal government amended the Internal Revenue Code to allow favorable tax treatment of long term care policies which qualify under the law. Generally, benefits you receive from tax-qualified policies will not be considered as taxable income under either federal or state law. The premiums charged for tax-qualified policies are treated as medical expenses for purposes of itemized deductions up to certain dollar limits that are indexed annually. For a list of insurers selling tax-qualified policies, see http://www.ins.state.ny.us/acrobat/companie.pdf.

In 1997 New York State passed legislation that allows favorable state tax treatment of premiums paid for policies which qualify under the federal law and meet New York minimum standards. Long term care premium tax credit legislation was passed in 2000 and took effect in taxable years beginning in 2002. In 2004, additional legislation was passed increasing the tax credit for long term care insurance premiums from 10% to 20% for taxable years beginning in 2004.

Any policy covering long term care services that was approved in New York and issued before January 1, 1997, also qualifies for favorable tax treatment with certain limited exceptions.

You should consult with an attorney, accountant or tax advisor regarding the tax implications of purchasing a tax-qualified policy.

Remember, not all long term care policies qualify for favorable tax treatment. See link above for list of companies currently marketing insurance policies covering long term care services. Insurers who market tax-qualified policies may also market non-tax-qualified policies. This information can be obtained by contacting the insurance carrier.

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If you have Internet access you can get more information from the New York State Insurance Department's web site: http://www.ins.state.ny.us/lntmcare.htm#lntm1