Is LTC Insurance Important?

For many, the answer is YES.

- The government does not pay for long term care at home, in a nursing home, or in an assisted living center.

- Medicare only pays for skilled care. Even then, Medicare pays 100% of care for 20 days and all but $95.00 per day for the next 80 days -- after that nothing.

- Most long term care is not skilled care.
Is LTC Insurance Important? (cont’d)

- "Skilled" care is insurance language meaning services provided by a doctor or a nurse. Most "skilled" care is already covered by Medicare and most Medicare supplemental insurance, making policies covering only "skilled" coverage absolutely and totally worthless.

- Nearly 50% of people receiving nursing home services do not require “skilled” care.

- According to a Congressional study, "57% of all those who enter a nursing home were **not** hospitalized before their admittance."
By age 65, a woman has a 1 out of 2 chance, and a man has a 1 out of 3 chance of spending some time in a nursing home in their future.

The national average cost for nursing homes is approximately $105.00 per day. Assisted living ranges anywhere from $50 - $150 per day.

With average nursing home stay of 19 months, seniors living in major metropolitan areas will spend $100,000 on long-term care in addition to medical bills and prescriptions.
Good Companies  -- Bad Companies

- Deep Pockets
- Triple A Rated (AAA)
- Low Percentage of Consumer Complaints
  - Newspaper Archives (e.g. NY Times Article)
  - Department of Insurance
  - SEC
  - Report to Shareholders (e.g., CONSECO- Raise Rates, Pay fewer Claims
  - Not in Westlaw/Lexis (Bad cases settle fast)
- PENN Treaty seized by DOI Jan. ’09 - $300K limit
- CONSECO – 164,000 policyholders now must rely upon “independent trust”
Activities of Daily Living (ADLs): Commonly recognized as: bathing, dressing, toileting, transferring (getting in and out of a chair or bed), and eating.

Approximately 2.9 million U.S. citizens need assistance with only one or two ADLs.

LTC policies almost always require assistance with two or more ADLs as prerequisite for coverage. So value may be limited.
Policy Provisions to Consider

- COLA (Cost Of Living Adjustment)
- ADL’s (fewer the better)
- Length of Benefit/ Elimination Period
- Total Amount of Benefit
- Per Occurrence
- Skilled Nursing vs. Assisted Living
- In-facility vs. Home Health Care
  - Beware of Policies paying more for in-facility than home health care
    (Hidden reasons!)
- Alternative Plan of Care Provisions
- Waiver of Premium
- Rate Increases (Consider policies with rate locks)
  - E.g. – Universal Life w/ LTC provisions
Submitting a Claim

- What coverage does your client have?
- What evidence does your client need to submit?
- Who will communicate with the insurance company?
- How to communicate
What Does the Policy Cover?

Read the Plan or Policy Even Before Making Arrangements for Care

Without it, you don’t know what benefits are available or how to get them.

If you don’t have it, ask for it– IN WRITING – CERTIFIED MAIL, RETURN RECEIPT REQUESTED!
What evidence is required?

- Applicable Medical Records
- Attending Physician Certification of Necessity of Treatment or Care or an assessment by another professional.

Trap for the Unwary

- Home Health Care Provider “Daily Care” Notes/Diary
  - Policies may not require in writing, but carriers often will not pay w/o adequate documentation by care-givers
- Does the LTC Facility meet the definitions in the policy?
  - Skilled Nursing?
  - M.D. or R.N. on staff; 24 hrs?
  - Medicare Certified?
  - State Certified?
  - Other?
How to communicate with the Insurance Company?

- Try to avoid talking to anyone from the insurance company on the phone
  - (or make sure to follow up in writing)
- Send everything in writing, by certified mail
- Email is next best option, IF you can get an email address
- Keep a journal
- In some circumstances, beware of surveillance
WHY DON'T CLAIMS GET PAID?

Companies acting in good faith typically pay legitimate claims on a timely basis

However, as shown many companies are prone to stonewalling claimants in hope claimant either go away, or die

Remember nature of long term care claimant

- Elderly, infirm, cognitively impaired?

Companies:

- Interpret plan terms to advance their own interests
- Deny receipt of necessary documents
- Utilize biased doctors and nurses to justify denial of claims
- Ignore, or fail to advise insureds about benefits to which they are entitled

Post-Claim Underwriting
OLD vs. NEW Policies

- California enacted sweeping legislation to protect purchaser’s of LTC coverage in 1990 and 1993 (Cal. Ins. Code § 10232 et. seq.)
  - Some carriers incorporated into EXISTING policies the provisions of the new law, but others did not.
    - **OLD § 10232.6** - On or before March 1, 1990, every insurer shall notify, in writing, existing policyholders of long-term care insurance that the current provisions of their policy may be different than policies subject to this chapter . . .

- Some carriers continue to deny claims based on term provisions which are no longer legal and against public policy (but may still be enforceable)

- **GATEKEEPER PROVISIONS** (Cal. Ins. Code § 10232.5):
  (a) Preconditions the availability of benefits on prior hospitalization.
  (b) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care.
  (c) Preconditions the availability of benefits for community-based care, home health care, or home care on prior institutionalization.
  (d) Conditions eligibility for non-institutional benefits, other than those in subdivision (c), on a prior institutional stay of more than 30 days. 3-day hospital stay required

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An individual who purchases disability insurance is clearly looking for security against loss and attendant peace of mind. See Fletcher v. Western Nat. Life Ins. Co., 10 Cal.App.3d 376, 404 (1970). In order to protect these interests, “it is essential that an insurer fully inquire into possible bases that might support the insured’s claim.” Egan v. Mutual of Omaha Ins. Co., 24 Cal.3d 809, 819 (1979). The failure to do so is one of the ways in which an insurer may breach the duty of good faith and fair dealing, which in essence is a covenant not to unreasonably withhold the payment of policy benefits. Indeed, an insurer investigating a claim has a duty to diligently search for evidence which supports its insured’s claim; if it seeks to discover only the evidence tending to defeat the claim, or selectively evaluates the evidence in order to bring about such a result, it impermissibly elevates its own interests above those of the insured.
Long Term Care Insurance
Facts & Considerations
From a Legal Perspective

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