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A Checklist for Long-Term Care Coverage



David M. English

Know the policy and know your client.

INSURANCE COVERAGE FOR long-term care will play an increasingly important role in a society where people are living longer and longer.

Long-term care insurance is widely available and fairly easy to obtain. But the the types of coverages vary widely. Although nearly all states

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have regulations governing minimum policy terms, the policies on the market offer very different services, levels of coverage, and conditions which must be met before benefits will be

paid. The following checklist will help you to decide whether long-term care insurance makes sense for your client and to choose the right kind of policy.

Checklist for Choosing a Long-Term Care Policy

Full Information

1. Before recommending that a client purchase a particular policy, be certain that both you and the client have complete information:

- The insurance agent may have little knowledge of the product which he or she is selling. Consequently, except for agents in whom you have full confidence, never rely on the oral statements of the agent alone, or even worse, the client's translation of the agent's statements.
- Sales literature distributed by the company may or may not be complete concerning some of the more critical policy terms. The best advice is to insist on a copy of a prototype policy.

Assessing the Client

1. Long-term care insurance isn't for everyone. Before recommending a long-term care policy, determine whether other planning devices can meet the client's long-term care needs:

- As a general rule, it is probably a mistake to recommend long-term care insurance to a client who can easily qualify for Medicaid.
- Furthermore, there is a high lapse rate on long-term care insurance policies. The client may otherwise be an excellent candidate for a long-term care policy, but not if the client lacks the commitment to continue premium payments.

2. Assess the downside risk of not purchasing a policy:

- What is the probability that the client will need nursing home care? There is a 43 per cent probability that a 65-year-old will at some time need nursing home care. But the rate is considerably higher for women than men, and the rate will be higher in some families than it will be in others.
- What is the probable stay in the nursing home? Over half of all stays are for four months or less but 10 per cent are for five years or longer.
- What level of financial resources must the client dissipate before qualifying for Medicaid? If relatively small, it may be cheaper to simply spend down these assets instead of paying premiums, possibly over many years.

3. Weigh the client's reasons for considering a long-term care policy:

- To protect an inheritance;
- To avoid a possible burden on the family;
- To enable the client to stay out of a nursing home. Some policies provide extensive home care benefits;
- To permit the client to enter a nursing home of choice. Medicaid beds are limited and nursing homes are generally more receptive to patients who can pay their own way;
- To provide peace of mind that the client's long-term care needs will be met.

Assessing the Policy

1. Long-term care policies vary widely in their provisions, and, of course, the better the coverage, the higher the premium. The following are some of the more important questions to ask:

- How are covered benefits defined? Levels of care covered by the policy may include some or all of homemaker services, home care, custodial care, intermediate care, and skilled care, each of which may have its own detailed definition. As a general rule, avoid policies which cover only skilled care.
- Is prior medical treatment required for coverage? Some policies require a period of hospitalization before nursing home admission or require nursing home care before qualification for home care benefits. Neither type of provision is desirable.
- What is the waiting period for benefits? Waiting periods may vary from zero to 365 days. A longer waiting period will result in a significant reduction of premiums. In assessing a waiting period, the client must determine her goals.
- What is the benefit level? The policy may pay either a fixed amount per day or may pay a percentage of the costs of care.
- Does the policy include an inflation adjustment? This provision is important, particularly for clients who may not need long-term care for many years. Also, does the provision adjust for inflation at a simple rate or does it more desirably adjust at a compound rate?
- Does the policy contain an exclusion for preexisting conditions? Obviously, if the client has the preexisting condition described, the policy should not be purchased.
- Does the policy waive premiums while benefits are being paid? Following admission to a nursing home, resources for the payment of premiums may quickly become exhausted, particularly if the policy doesn't cover the full costs of care.

- What is the duration of benefits — one year, two years, five years, or lifetime? As a general rule, it is probably better to opt for a longer period of benefits with a less favorable waiting period instead of electing a short waiting period and having benefits run out too soon.
- What is the benefit trigger? Does the policy require a cognitive impairment, or is the trigger instead phrased in terms of an inability to engage in one or more activities of daily living? Does the policy cover Alzheimer's?

The lawyer's function in estate planning is not limited to advice on points of law and the preparation of legal documents. He or she must coordinate all of the facts and factors present in the situation. The banker, the insurance agent, the accountant, the tax expert, and other advisors are all important in estate planning, and the receipt of their advice and suggestions should be encouraged by the lawyer. The lawyer, however, must chart the course and command the ship.

In working out an estate plan, a lawyer should not try to skate successfully over thin ice but should remain where the ice is abundantly thick. The cases in which the positive requirements of a client necessitate taking chances are rare, and in all other cases it is the duty of the lawyer to avoid uncertainties and to keep away from even the vicinity of thin ice.

The lawyer's function is not only to plan the disposition of the estate but also to review the plan continuously until the client dies or ceases to be a client. If a change occurs in the client's situation that is known to the lawyer or a change occurs in the law that makes a change in the existing estate plan advisable or necessary, the lawyer should not hesitate to call this to the client's attention. Indeed, the lawyer ought to do this promptly.

The lawyer may give a client advice of the sort that a parent might give a child. A real need exists for the young person with the promise of a prosperous future to look ahead, and it is part of the lawyer's duty to be well-qualified to advise on the various methods whereby a client may provide for himself or herself in later years and for his or her family when the client dies. Obviously, the lawyer's role is not limited to showing the client how to reduce income, gift, and estate taxes because in many cases concentration on that point leads to more trouble than tranquility.

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AND TESTAMENTARY ESTATE PLANNING 21-23
(ALI-ABA, Philadelphia, 10th ed. 1988)