



An Introduction to Long Term Care Insurance

25th Annual Western Claim Conference
Indian Wells, California ♦ June 15, 2009

PRESENTERS

Robert R. Pohls

Pohls & Associates

10940 Wilshire Boulevard, Suite 1600
Los Angeles, California 90024
Telephone: (310) 694-3092
Fax: (310) 694-3093
E-mail: rpohls@califehealth.com
www.califehealth.com

Lori M. Watson, CLTC, LTCP

**Claims Practices and Quality Assurance Leader
LTC Claims Services, Genworth Financial**

1650 Los Gamos Drive
San Rafael, California 94903
Phone: (415) 492-7916
Fax: (415) 492-7113
E-mail: lori.watson@genworth.com

**Judy Bass, LTCP, MHP, FLMI, ACS, ALHC, HIA
Senior Claims Analyst, Long-Term Care Claims
State Farm Mutual Automobile Insurance Company**

One State Farm Plaza
Bloomington, Illinois 61710
Phone: (309) 766-4542
Fax: (309) 735-6200
E-mail: judy.bass.a013@statefarm.com



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AGENDA

The Role of Long Term Care Insurance

The State of the Industry

Product Overview

Challenging Policy Provisions

- Restoration of Benefits
- Cont'd Care Retirement Communities
- Alternate Plan of Care
- Independent Care Providers
- Assisted Living Facilities
- Contestable Claims

Litigation Report

Questions



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THE ROLE OF LONG TERM CARE INSURANCE

Protects against a particular class of financial losses caused by chronic illness or disability

- home care
- nursing care
- other services

Most commonly provided to the elderly, but also provided to anyone who is seriously injured or suffers a debilitating illness

- over age 65: 40% risk of entering a nursing home
- over age 85: 22% live in nursing homes
45% need help with daily activities



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THE ROLE OF LONG TERM CARE INSURANCE

Financial obligations

- average nursing home stay: over 2 years
10-20% stay > 5 years
- annual cost of nursing home stay: approx. \$70,000

Few Americans are prepared

- over age 65: median net worth = \$86,300
median annual income = \$13,049
- Medicare: limited coverage for long term care
- Medicaid: only available when near poverty level



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THE STATE OF THE INDUSTRY

Market Penetration

- 35 million Americans over age 65
- 8 million policies in force (as of 12/2008)
- 77 million Americans will be over age 65 by 2011

Need for Long Term Care Assistance

- 2000: 5 million people
- 2020: 7.4 million people – a projected increase of 42%

Sales Trends

- 2002: \$1.2 billion in new premiums
- 2004: just \$700 million– a decrease of 42%



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THE STATE OF THE INDUSTRY

Public Perceptions -- *The Wall Street Journal* (12/27/2005)

- "...premiums can be unpredictable, rising indiscriminately because the insurer did a poor job of pricing the policy originally, or overestimated how many policyholders would drop coverage before filing for claims."
- "Some policyholders in recent years have seen their premiums surge, forcing them to drop their coverage and lose access to benefits as well as the premiums they'd already paid."
- "...widespread concern that coverage becomes worthless if it is never used."



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THE STATE OF THE INDUSTRY

Public Perceptions -- *The New York Times* (3/26/2007)

- Long term care insurance was one of the industry's fastest-growing products" until "[i]nsurance executives began warning they had underestimated how long policyholders would live after entering nursing homes."
- "...some long-term-care insurers have developed procedures that make it difficult – if not impossible – for policyholders to get paid."
- "The bottom line is that insurance companies make money when they don't pay claims,' said Mary Beth Senkewicz, who resigned last year as a senior executive at the National Association of Insurance Commissioners. 'They'll do anything to avoid paying, because if they wait long enough, they know the policyholders will die.'"



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THE STATE OF THE INDUSTRY

Industry Responses

- Federal Long Term Care Insurance Program
 - administered by *Long Term Care Partners, LLC*
 - 211,000 enrollees
- Employer-Sponsored Policies
 - 9000 employers
 - 2.1 million enrollees
- Partnership Programs (currently in 15 states)
 - marketing partnership between industry and states
 - part of effort to better educate public



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THE STATE OF THE INDUSTRY

Under the Microscope

- “Critics are sounding alarm bells. They argue that the financial benefits of LTC insurance for many target customers are negligible to nonexistent.”
- “... long-term care is among the most complex – and expensive – forms of coverage.”
- “These policies are very difficult to use, and the payouts and benefits are difficult to get.”

-- *The Wall Street Journal* (2/26/2008)



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THE STATE OF THE INDUSTRY

Under the Microscope

- “These companies have essentially turned their bureaucracies into profit centers.”

-- Glenn Kantor, as quoted in
The New York Times (3/26/2007)

- Conseco’s transfer of long-term-care policies to a trust is “unfounded, unfair and unprecedented. This company took the premiums and promised them independent living in their golden years, and they have kicked them to the curb.”

-- Frank Darras, as quoted in
The Wall Street Journal (12/3/2008)



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PRODUCT OVERVIEW

Eligibility Criteria

- Impairment of cognitive ability; or
- Impairment of activities of daily living (ADL's)

Tax-Qualified Policies and Non-Tax-Qualified Policies

- Tax-Qualified ADL's: eating; bathing; dressing; transferring; toileting; and continence
- Non-Tax-Qualified ADL's: include ambulating

Care Environments

- Nursing Facility only
- Home Care only
- Comprehensive Long-Term Care



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PRODUCT OVERVIEW

Consumer Protection Features

- Disclosure Requirements
- Suitability Standards
- Replacements: must “materially improve” the position of the insured
- Must be Guaranteed Renewable or Non-Cancellable
- Extension of Benefits
- Continuation and Conversion rights
- Inflation Protection
- Unintentional Lapse



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PRODUCT OVERVIEW

Consumer Protection Features

- Cannot exclude by type of illness, treatment, medical condition or accident, unless:
 - Pre-Existing Conditions;
 - Mental / Nervous Disorders;
 - Alcoholism / Drug Addiction;
 - War / Service in Armed Forces;
 - Felony;
 - Aviation; or
 - Intentionally Self-Inflicted Injuries



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PRODUCT OVERVIEW

Consumer Protection Features

- Pre-Existing Conditions
 - Must have been treated in prior 6 months
 - Loss must occur within first 6 months
- Mental/Nervous Disorders: Cannot exclude Alzheimer's
- Medical Necessity: Proof may be required
- Reasonable and Customary: Not permissible
- Post-Claim Underwriting is expressly prohibited
- Rescissions: May require loss-causation or fraud



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CHALLENGING POLICY PROVISIONS

Restoration of Benefits

- What triggers review?
 - Claim-free period?
 - Request for restoration?
- What information is collected?
- What are the eligibility criteria?
 - Cessation of care
 - Return to independence
- Who reviews?



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CHALLENGING POLICY PROVISIONS

Alternate Plan of Care Benefit

- Alternate plan of care must be a beneficial and cost-effective alternative that is not otherwise covered
 - Physician's recommendation?
 - Review by Medical Director?
- Mutual agreement usually required
- Impact on other policy provisions
 - Elimination periods
 - Benefit maximums
 - Care provided by family members



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CHALLENGING POLICY PROVISIONS

Assisted Living Facilities

- Usually meet broad definition of Assisted Care Living Facility
- Nursing Home Only policies
 - Facility must be licensed to engage primarily in providing (skilled) nursing care
 - Also must meet staffing and other requirements
- Claim investigation
 - Onsite assessments to determine benefit eligibility
 - Obtain care plan and notes
 - Get license and any marketing brochures



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CHALLENGING POLICY PROVISIONS

Continued Care Retirement Communities

- Entry fees may be significant, but often are not covered
- Carefully review resident agreements
- Consider policyholder expectations
 - Review marketing materials
 - Identify and explain what will (or will not) be covered at earliest opportunity
- Obtain detailed invoices to confirm services delivered



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CHALLENGING POLICY PROVISIONS

Independent Care Providers

- Often the providers “of choice”
 - Many policyholders prefer home health care to confinement in a nursing home
 - Possibly a cost-effective alternative
- Immediate family members often excluded
- Potential for abuse
 - Harder to document services provided
 - Proof of payment not always available



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CHALLENGING POLICY PROVISIONS

Contestable Claims

- No post-claim underwriting
 - must “resolve all reasonable questions arising from information submitted on or with the application before issuing the policy”
 - if not, rescission requires “clear and convincing evidence” of fraud or a misrepresentation that:
 - pertains to the condition for which benefits are sought; or
 - involves a chronic condition; or
 - involves dates of treatment before the application; or
 - is material to the acceptance of coverage.



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LITIGATION REPORT

Compliance

Continental Casualty Co. v. Lontz
No. 281183 (Mich.App. 3/26/2009)

- Insurer sold tax-qualified and non-tax-qualified policies
- Non-tax-qualified policies had “exchange privileges”
- Insurer stopped selling long term care insurance altogether
 - Initially concluded the “exchange privilege” need not be honored
 - After 6 weeks, concluded the “exchange privilege” had to be honored
- Held: Plaintiffs lacked standing to pursue claims for breach of contract and declaratory relief because they offered no evidence that they “suffered an injury in fact.”



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Compliance

Yoder v. American Travellers Life Insurance Co.
2002 Pa.Super. 398 (PAS, 2002)

- Policy provision requiring 3-day hospitalization was not affected by later changes in law
- Insurer had no duty to advise policyholder of changes in law

Haley v. AIG Life Insurance Co.
A2-01-49 (D.N.D. 1/24/2002)

- Same issue and holding
- Insurer was required to defend fraud claim based on alleged misrepresentations that were non-specific



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LITIGATION REPORT

Applicant's Duty to Disclose

Kirsh v. Unum Life Insurance Co. of America, Inc.
2002 CA 5412 (Cal.App. 2002)

- Applicant must disclose all material changes in his or her medical condition

Metropolitan Life Insurance Co. v. Conger
474 F.3d 258 (6th Cir. 2007)

- Contestable investigation revealed pre-application problems and treatment for undiagnosed progressive disorder
- Held: No duty to disclose undiagnosed symptoms or medical history not specifically requested in application



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LITIGATION REPORT

Applicant's Duty to Disclose

Derbridge v. Mutual Protective Insurance Co.
963 P.2d 788 (Utah App. 1998)

- Innocent misrepresentations do not justify rescission
- Utah statute contemplates at least some level of knowledge or awareness of the misstatement to make it a misrepresentation
- “. . . insurers can, to some degree, avoid being surprised by claims stemming from conditions that would have led to denial of an application in the first place. No law requires insurers to limit the source of their information to the insurance applicant. Specifically, insurers can require the applicant to release their medical records or have a physical examination.”



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LITIGATION REPORT

Pre-Existing Conditions

Wickland v. American Travellers Life Insurance Co.
513 S.E.2d 657 (W.Va. 1998)

- Periodic complaints of symptoms, without a health care provider's medical advice or recommended treatment for the underlying condition, do not establish a pre-existing condition
- Ruling otherwise could prompt insureds to "keep all of their complaints to themselves to prevent ... a denial of coverage."
- The result would be "the camouflaging of "the early signs of illnesses and diseases that otherwise might have been curable, preventable, or treatable."



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Post-Claim Underwriting

Smith v. AF & L Insurance Co.
No. ED-83685 (Mo. 8/24/2004)

- Rescission for undisclosed use of Aricept was held improper because was part of treatment for depression (not forgetfulness)
- Court noted that the “contrast between the post claims review process and all its rigidity with the looseness of the underwriting process ... when the application was reviewed is remarkable.”



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Nursing Homes

Gregg v. IDS Life Ins. Co., 592 NYS2d 182 (N.Y.A.D. 3 Dept. 1999)

- NY home care services agency is not a Nursing Home

Gillogly v. GE Capital Assurance Co., 430 F.3d 1284 (10th Cir. 2005)

- OK residential care facility is not a Nursing Home

Geary v. Life Investors Ins. Co., 508 F.Supp.2d 518 (N.D. Tex. 2007)

- TX assisted living facility is not a Nursing Home

Musick v. AF & L Ins. Co., No. 2007-CA-168-MR (Ky.App. 11/21/2007)

- KY assisted living facility is not a Nursing Home



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Institutional Claims

Rose v. United Equitable Insurance Co.
2001 N.D. 154 (ND, 2001)

- Policy allegedly priced and underwritten improperly
- Allegations of a “death spiral”
- Held: Trial court improperly denied class certification motion

Newman v. Dinallo
2009 NY Slip.Op. 50422(U) (N.Y.Sup.Ct. 2/10/2009)

- Consumers sought information offered to justify insurer’s premium increase
- Held: “The variables that factor into pricing premiums constitute trade secrets and need not be disclosed.”



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QUESTIONS?

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