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Avoiding the Pitfalls of Selling Long Term Care Insurance

No doubt about it – Americans are getting older. More than 34 million people are over the age of 65. By the year 2010, this number will grow to 40 million. By 2020, it will exceed 53 million. And by 2030, one in every five people – almost 70 million – will be over the age of sixty-five. With our population's increasing longevity, it is no surprise that the largest growing segment of the population are individuals over age 85. In 1996, there was an estimated 3.8 million people age 85 or older. This number is projected to reach 6 million by the year 2010 and will grow to more than 8 million by the year 2030.

Along with the aging of Americans, comes an increasing awareness of the need for long-term care insurance. Statistics show that the risk of having a fire that will cause major damage to a person's home is one in 1200, the risk of having an accident that will totally destroy a car is one in 240, and the risk that a person will spend 2.5 years in a nursing home is one in three. In addition, forty percent of working age adults will require long-term care services in their lifetimes. And for most elderly people, a nursing home stay of more than one year represents a catastrophic expense, with the cost ranging from $35,000 to $75,000 annually.

Long-term care insurance is relatively new and has evolved to provide benefits for skilled, intermediate and/or custodial care. Generally, skilled care must be prescribed by a doctor, given by a registered nurse and available 24 hours a day. Intermediate care refers to occasional nursing and rehabilitative care under the supervision of skilled medical personnel. Custodial care involves assistance with activities of daily living (ADLs), such as bathing or eating that can be provided by someone without medical skills. It is usually provided in residential care homes or to individuals in their own homes. The best policies pay for all three kinds of care, including care by non-professionals, such as family members or friends.

Benefits are paid on either an "indemnity" or "reimbursement" basis. A typical reimbursement policy will not pay more than the actual charge, regardless of the maximum daily benefit amount. However, any unused portion may be carried over from one period to the next. Whereas, under an indemnity policy, the insured is paid the daily or monthly benefit regardless of the actual charges.

Benefits are generally triggered by the loss of two ADLs or a cognitive impairment. However, the definition of ADLs used in the particular long-term care policy can make an enormous difference in whether or not benefits will be paid. For example, some policies count bathing and dressing as two separate ADLs, while other policies combine bathing and dressing into a single ADL. Since most insureds tend to lose bathing and dressing first, the effect of combining bathing and dressing into one ADL is significant – no benefits will be paid until the ability to perform a third ADL is lost, something which may or may not occur.

Important features to look for in long-term care policies include:
• Coverage for skilled, intermediate and custodial care;
• Home care in same policy;
• Low ADL requirements to qualify for benefits;
• No prior hospitalization requirement;
• Inflation protection features;
• Waiver of premium;
• Guaranteed renewability; and

• Coverage for Alzheimer’s and other cognitive impairments.

Sounds simple, right? Not so fast. Before you jump on the long-term care bandwagon, you must be prepared. Long-term care insurance is heavily regulated. Agents have a special duty of care when selling long-term care insurance and should be aware of the special needs of the elderly.

Recognizing the potential for fraud, the National Association of Insurance Commissioners (NAIC) set forth Model Acts and Model Regulations to help standardize long-term care insurance. Most states have enacted similar statutes which regulate the sale and substance of long-term care insurance policies. Understanding these statutes is essential to any agent who sells (or is contemplating selling) long-term care insurance.

For example, agents must provide an Outline of Coverage to all prospective applicants at the time of the initial solicitation. This outline must include (among other things) a brief description of benefits, including any limitations or exclusions, the terms under which the policy may be returned and the premium refunded, the relationship of the cost of care and the benefits, and the terms under which the policy may be continued, including any waiver of premium provisions.

In addition, insurers must “develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant.” These standards must take into consideration the applicant’s ability to pay for the proposed coverage, the applicant’s goals with respect to long-term care, and the value, benefits, and costs of the applicant’s existing insurance (if any) as compared to the value, benefits, and costs of the proposed coverage. In this regard, agents must make “reasonable efforts to obtain the [necessary] information” in order to determine if the applicant meets the suitability standards by asking applicants to complete a “Long Term Care Personal Worksheet.”

Agents also owe a statutory duty of honesty, and good faith and fair dealing. Specifically, with “regard to long-term care insurance, all insurers, brokers, agents, and others engaged in the business of insurance owe a policyholder or a prospective policyholder a duty of honesty, and a duty of good faith and fair dealing.” Significantly, the statute separately provides that the conduct of an agent “during the offer and sale of a policy previous to the purchase is relevant to any action alleging a breach of the duty of honesty, and a duty of good faith and fair dealing.” Thus, the statutory duty of honesty and good faith and fair dealing is owed to both insureds and applicants and, unlike the common law duty of good faith and fair dealing implied in every insurance contract, is NOT dependent on the issuance of a policy.

Clearly, there is the potential for lots of premium dollars in the long-term care market. However, before you jump in with both feet, you must commit the time and effort necessary to learn the intricacies of the product, including the statutes which regulate the sale and substance of long-term care insurance.