Understanding Long-Term Health Care Insurance: Considerations for you and your clients

By Phyllis Horn Epstein

Should I or shouldn't I? This is the question I hear so often about Long-Term Health Care (LTHC) insurance from clients and from friends. Unlike life insurance, which provides a death benefit, LTHC insurance is intended to defray the cost of dependent care in one's lifetime. It is purchased with the hope and intent of protecting our nest egg from the enormous cost of nursing care so that our spouses and children will have something left to live on or something left to inherit. But the concerns are many: LTHC insurance is expensive, the costs continue to rise exponentially, it may not cover enough and you may not live long enough to recoup what you spend on premiums. The policies are also confusing. And yet, some view LTHC insurance as more valuable than life insurance. How do these plans work, who can get coverage and what are the benefits? How can we answer these questions for ourselves and for our clients?

What Does LTHC Cover?

Generally, LTHC insurance covers the cost of individual care assistance either at home, in assisted living, in a nursing home or in hospice. LTHC insurance covers the cost of hiring someone to help with daily living activities such as dressing, bathing and eating. Care that is medically necessary or hospice related can be covered as well, and insurance can also cover much more. A LTHC insurance policy may exclude coverage for a preexisting condition entirely or for an extended period of time, for example, the first 90-100 days after the purchase of that insurance policy. Not everyone is insurable due to their health status at the time of application.

Is It Expensive?

Generally, yes. LTHC insurance is costly, but the cost is dependent upon the age you apply, your general health and the quality and term of benefits. Obviously, insurance that covers your future health is a gamble. We don't know how long we will live, whether we will need assistance for a short term, for years or at all. Determining whether LTHC insurance is worth it must be based upon a set of assumptions and hypotheticals. Of course, you hope to recover more in benefits than you pay in premiums. Ideally, you hope to minimize future health care costs as much as possible to protect and preserve other savings.

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What Are the Average Costs of Care?

The annual cost of care in the Philadelphia region is approximately $65,436 for a home health aide; $88,000 for a one bedroom at an assisted living facility and $170,000 for a private room at a skilled nursing facility (source: NY Life Insurance Co. 2023). These figures will vary depending upon the facility or location.

Morbidity Improvement Effect on Costs

The Pennsylvania Insurance Department continues to approve rate increases to insurance companies providing LTHC insurance. The primary reason cited is “morbidity improvement.” Simply put, people are living longer. Policies sold in the last two decades of the 20th century often had lifetime benefits and 5% annual compound rates of inflation. These benefits have proved unsustainable. You should assume that the price of a policy will continue to rise. My current policy with Prudential just incurred a rate increase that is to remain the same for three years. Will it go up after that? I’m assuming it will.

Reducing the Cost

It may be possible to reduce the cost of coverage by reducing the benefits. This can be done by either reducing the term for which benefits will be provided, for example, from five to three years, or by reducing the amount of daily benefit paid under the plan. Some policies have inflation riders, meaning that the daily benefit amount increases with inflation. Eliminating an inflation rider could also stem the increase in premiums. The insurance company should provide you with facts and figures to help you understand any cost savings options. This information is critical to assess whether to continue your present policy or modify your coverage. As another way of minimizing cost, couples who apply at the same time for LTHC insurance policies usually get a price discount and often can purchase a “shared” plan so that one spouse can draw from the benefits of the other.

Hybrid Policies, Life Insurance and Annuity Plans

There is a legitimate concern that after paying years of premiums you won’t have

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the opportunity to recover some of that investment. Much like auto insurance or homeowner's insurance, traditional plans provide coverage so long as premiums are paid. When you stop paying, you no longer have coverage. Options to consider are hybrid-type policies that combine life insurance or annuities with LTHC insurance. These new plans contribute to the confusion. Some hybrid policies require a large up-front payment, while others are geared to accept periodic premiums. Usually there is some return on investment through life insurance or an annuity.

Nonforfeiture Riders

Nonforfeiture riders provide another potential solution to recovering some of the premiums paid for unused benefits. As of September 2002, Pennsylvanians have had the option to purchase a nonforfeiture rider to a LTHC plan that guarantees a return payment up to the amount of paid premiums (or 30 times the daily nursing home benefit at the time, whichever is greater) should the owner cancel or discontinue paying premiums. A similar contingent benefit is available within 120 days of a rate hike. The Internal Revenue Code requires that a nonforfeiture provision allow for at least one of the following benefits: reduced paid-up insurance, extended-term insurance, shortened benefit period or other similar, state authorized benefit.

LTHC and Taxes

Taxes may not be the primary motivation for purchasing LTHC insurance, but the tax impact on paying for a policy and recovering benefits can influence the decision to buy or not to buy. The premiums for LTHC insurance are generally tax deductible and the benefits are generally not taxable, provided the plan is a qualified plan and the expenses covered are qualified expenses. Qualified expenses are "necessary

diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative services, and maintenance and personal care services … that are required by a chronically ill individual, and provided pursuant to a plan of care prescribed by a licensed health care practitioner." (source: IRS Publication 502)

Are Premiums Deductible?

Premiums for qualified LTHC insurance are deductible as a medical expense limited to the extent those expenses exceed 7.5% of adjusted gross income. The amount of LTHC insurance premiums that can be considered for the medical expense deduction in 2024 are limited to the following amounts contingent upon age:

Age 40 or under	$470
Age 41 to 50	$880
Age 51 to 60	$1,760
Age 61 to 70	$4,710
Age 71 or over	$5,880

To be deductible, premiums must be paid with after-tax dollars. For example, if LTHC insurance premiums are paid from tax-free retirement distributions, then the medical deduction is not available. To comprehend the tax treatment of hybrid policies, it is important to know how a premium payment is allocated. Life insurance or annuities coupled with LTHC insurance are treated separately for tax purposes. If a payment is allocated to the cash value of an annuity or life insurance, then it is not deductible. If the LTHC insurance premium is paid out of the cash value of the life insurance policy, the individual does not get a medical expense deduction for the payment, but, at the same time, those premium payments are not included in taxable income.

Are Benefits Taxable?

Generally, the qualified benefits paid under a qualified LTHC insurance policy are not taxable income and are treated as nontaxable reimbursed medical expenses for injury or sickness. There are limits to the exclusion. Paid medical benefits that exceed a per diem limitation are included in income unless the person is terminally ill. In 2024, the per diem limitation is the greater of $410 per day or $150,600 for the year. Most policies have a much lower per diem benefit.

For hybrid policies, those that are partially an annuity or life insurance, there is added complexity because annuity payments are taxed as ordinary income to the extent that they do not represent a return on investment. It is necessary to identify whether a payment is for LTHC, as an annuity installment or as life insurance in order to know if it is taxable income.

Where the cash value of a life insurance contract or an annuity is applied to the premiums of the LTHC insurance portion of the policy, those applied amounts are not taxable income since they are used to pay for LTHC insurance. Instead, the value of the insurance or the annuity is reduced.

The Medicaid Intersection

There is much to know about Medicaid that won't be explored in this article, but know that to qualify for Medicaid, a person must have minimal assets and little income. Presently, the asset limitation in Pennsylvania is $2,000 for an individual, with some caveats and a few additions to this amount. If a person seeks Medicaid while also owning a LTHC insurance policy, Medicaid will consider all third-party resources including available independent insurance such as Blue Cross, Medicare, awards from litigation and LTHC insurance.

Since the enactment of the Deficit Reduction Act of 2005, states, including Pennsylvania, have engaged in a Long-Term Care Partnership program that encourages the purchase of LTHC insurance rather than foregoing insurance and relying solely upon Medicaid. To encourage the purchase of LTHC insurance, Medicaid will disregard for the asset limitation test the amount of benefit paid under the policy, which could be substantial.

Filial Laws in Pennsylvania

One final factor to consider: In Pennsylvania there is a "filial law" still on the books at 23 Pa.C.S.§ 4603 (c) that permits another person or entity caring for an indigent person (like a nursing home) to bring a filial support claim against financially secure children or parents for contribution. While not frequently sought or enforced, these kinds of laws have been upheld by our courts. The key case to consider in Pennsylvania is *Health Care & Retirement Corporation of America v. Pittas* 46 A.3d 719 (Pa. Super. 2012) wherein the Superior Court held that a son was financially liable for his mother's nursing home bill. Subsequent similar holdings can be found at *Melmark, Inc. v. Schutt*, 206 A.3d 1096 (Pa. 2019) and *Eori v. Eori* 131 A.3d 87 (Pa. Super. 2015). Clearly this is an area worthy of additional exploration and caution.

Conclusion

To answer the question of whether you should purchase LTHC insurance, you need to make a personal judgment about your own situation. As attorneys, we have to know the issues to raise with our clients as

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we help them navigate this area. There is always the chance that you will be hit by the proverbial bus and not require long-term care. These are the odds we play. On the other hand, consider these questions: Do you have longevity in your family? Do you have dependents who would be impoverished by your long-term illness? Do you have the income to pay for some level of LTHC insurance within your budget? Do you have family who will provide you with their time in place of paid providers? Can you afford to private pay the costs of extended care for several years? Might you be exposed to contribution under Pennsylvania's filial laws? Answering these questions might help answer the question of whether LTHC insurance is right for you or your clients.

As of January 2024, 18.7% of Pennsylvania's population is over age 65, approximately 2.5 million people, ranking fifth in the country (source: Pennsylvania Center for Workforce Information & Analysis). Caring for an aging population is everyone's concern. One day each of us will be (if not already) a caregiver or care receiver. According to the Centers for Disease Control and Prevention, for Pennsylvania, as of 2015, 1 in 5 adults were caregivers, of which 58% were women. The estimated cost of caregiving in lost wages is over $180,000 in two years' time, according to a University of Pennsylvania study (source: A Comprehensive Measure of the Costs of Caring for a Parent: Differences According to Functional Status by Norma B. Coe, Meghan M. Skira, Eric B. Larson, 2018). There is much to consider, and no single answer about the value of LTHC insurance policies. But the first step is to gain some understanding about what they cover, how they are taxed and what they cost.

Phyllis Horn Epstein is a partner with the Philadelphia law firm of Epstein, Shapiro & Epstein PC, with more than 30 years' experience in taxation, corporate transactions, and trusts and estates. She represents clients before the IRS and the Pennsylvania Department of Revenue and in the U.S. Tax Court and the Orphans' Courts of Pennsylvania. She is a fellow of the American College of Tax Counsel and a recipient of a PBA Special Achievement Award for her three years of service as treasurer of the PBA. Phyllis is tax counsel to the Huntingdon Valley law firm of Semanoff Ormsby Greenberg & Torchia LLC.

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