

Continuing Legal Education Course Outline:
Is Long Term Care Insurance the Wave of the Future?

**A Comparison of Connecticut and Massachusetts
Long Term Care Insurance Plans**



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Connecticut has set up a long term care “partnership” program that is patterned on the Federal government’s new rules for Medicaid eligibility. A Connecticut partnership LTC insurance policy will allow an insured elder to qualify for Medicaid, and shelter assets according to a “dollar-for-dollar” formula.

Massachusetts has a LTC insurance incentive program that exempts an elder’s home from Medicaid liens. Discussing the differences between Long Term Care insurance in the two states can help you understand whether long term care insurance will work for a client.

Massachusetts is Unique in the Nation

The Massachusetts LTC exemption¹ protecting the home from estate recovery exists in no other state in the union. Insurance companies are required to notify and inform consumers about this incentive.

The exemption saves an elder’s home from Medicaid nursing home liens, if the elder has two years of LTC coverage on the date they were admitted to a nursing home.

There is a potential problem lurking in this two-year requirement.² If the LTC policy covers at-home care and nursing home care, and the nursing home benefit is reduced by the amount that the insurance company has already paid for at-home care, the elder may not have the required two years of LTC

benefits remaining on the day she enters the nursing home.³

To solve this problem, the Massachusetts Legislature is considering a new law that would allow seniors who buy long term care insurance to use that insurance to pay for community-based care before they enter a nursing home without disqualifying them from the MassHealth estate recovery exemption.

Allowing seniors to use their long term care insurance for community-based care enables

³ [130 CMR 515.014\(A\)\(3\)](#). On the date of admission, you must have the full 730 days minimum coverage, paying benefits of at least \$125/day when “you enter a nursing home” to qualify for the estate recovery exemption. So, if the LTC policy has paid for home care or other services and there are less than 730 days of LTC coverage remaining, the policy will not exempt the former home from estate recovery.

For policies issued before March 15, 1999 the minimum daily benefit amount is \$50.

¹ [130 CMR 515.011\(B\)](#) and M.G.L. c. 118E, §33

² See: [Division of Insurance warning notice](#).

more elders to remain in their homes, rather than forcing them into institutional care. The proposed law, ***An Act Relative to Nursing Facility Long Term Care Claims*** is sponsored by Senator O'Leary, Senator Chandler and Representative Fallon. To show your support, please call your state representative and state senator and ask them to support Senate bill 1069 and House bill 572. A hearing on the bill was held by the Joint Committee on Health Care Financing on June 3, 2009.

Another potential problem hidden in some Massachusetts LTC policies is called the "over – under problem." In this situation, a long term care insurance policy is paying for some of the daily costs of nursing home care, but not quite enough to cover the nursing home's private daily rate.

The elder is eligible for MassHealth/ Medicaid to cover her care, but only at a reimbursement rate that is lower than the private pay rate. Because Medicaid's reimbursement rate is lower than nursing home's private pay rate, the elder is stuck with the difference. MassHealth does not make it easy for elders to solve this problem. Reapplications and extra payments are required.

These problems show how important it is to understand all the provisions of a LTC policy. We'll look at some policy provisions to consider in this article.

Connecticut's Partnership Policies

The incentive to buy a Connecticut Partnership LTC policy is the idea that policy holders can become eligible for Medicaid sooner, and still be allowed to keep or transfer some of their assets.

Connecticut's Partnership for Long Term Care policies use a dollar-for-dollar formula.

For every dollar that the Partnership policy pays out in benefits, a dollar of assets can be protected from Medicaid's spend down rules.

So, when the policy holder applies for Medicaid, any assets they have, up to the amount that their Partnership insurance policy has paid in benefits, are disregarded and won't be subject to estate recovery.

In other words, if you receive \$200,000 in benefits from the LTC policy, you may then apply to Connecticut's Medicaid program for assistance and still keep \$200,000 in assets (in addition to any other asset allowances under Medicaid, including any assets your spouse may be allowed to keep).

To qualify for the asset protection, the policy holder must be a Connecticut resident when he or she buys the policy and when Medicaid is needed to pay for the long term care. Connecticut may also have reciprocal agreements with other states to provide "a Medicaid resource exclusion or asset disregard substantially similar to the Medicaid resource exclusion included in" the CT LTC Partnership policy.⁴

Elder care case management (with an individualized assessment and development of a plan of care, coordination of service providers and monitoring the quality of services provided) is a required benefit for Connecticut LTC policies.

Other required benefits are:

- ▶ option to purchase a wide array of home and community-based services

⁴ [Conn. Gen. State §17b-253\(b\)](#) Indiana and CT have made the reciprocal agreement, and CT is negotiating with NY. The Federal Defecit Reduction Act (DRA) encourages coordination of LTC policies with Medicaid. Only 6 states (CT, NY, Ind, IL, IO, CA) have done so.

- ▶ annual automatic inflation protection.
- ▶ minimum daily rates established for Nursing Facility and Home and Community-Based benefits, which increase 5% annually.
- ▶ must offer the policyholder, in the event they are about to drop their policy, the option to switch their coverage to a shorter benefit period than originally purchased, thereby reducing their premium.

Partnership policyholders are guaranteed a 5% discount on private pay nursing facility rates in Connecticut.

Payments to a policyholder's family members are limited by the partnership policy, unless the family member works for an organization providing services. Uniform Policy Manual 4022.10B.

Which Plan Works Better for Consumers? Massachusetts or Connecticut.

Connecticut and Massachusetts have set standards for Long Term Care Insurance that produce different results for consumers.

Massachusetts has the exemption for the elder's home.

The Connecticut LTC partnership program allows a person who applies for Medicaid to keep assets or resources in an amount equal to the insurance benefit payments that are paid for the person's care by the LTC insurance policy.

If the elder owns a home that has equity worth more than the LTC insurance benefits, the current Massachusetts exemption would be a better deal.

The "asset disregard" for the person who applies for Medicaid after using up their Long Term Care Insurance benefits under a

"partnership" LTC plan is called a "dollar - for - dollar incentive program."

If a nursing home resident has a partnership LTC policy with \$200,000 of coverage, they could qualify for Medicaid and keep or give away \$200,000 in countable assets, as opposed to the normal limit of \$2,000 for a single person. But if the home is worth *more than \$200,000*, the existing Massachusetts exemption provides more protection than a partnership LTC policy.

Understanding Long Term Care Insurance Policy Features

The National Association of Insurance Commissioners publishes a Shopper's Guide⁵ that outlines what to look for in a LTC policy. Using the Guide, analyze whether a policy will work for your client:

▶ **How many months or days of care will the policy pay for?** p. 17 Shopper's Guide. Special review is needed for MA clients. Does the policy satisfy the MassHealth Medicaid Regulation 130 CMR 515.011(B) exception to the estate recovery discussed on page 1 of this Article? Subsection (B)(3) says the LTC policy must meet the requirements of 130 CMR 51 5.014. The daily benefit rate must be \$125.

▶ **Will the policy pay enough to cover the private pay nursing home?** Will the policy pay enough to avoid the over – under problem discussed on page 1 of this article? What is the daily benefit amount paid for care?

▶ **How is the daily benefit amount figured?** Expenses Incurred? Indemnity Method? (a set dollar amount)

⁵http://www.ltcfeds.com/documents/files/NAIC_Shoppers_Guide.pdf

Disability Method (a full daily benefit even if you are not receiving any services)

- ▶ **What is the elimination period?** p. 19 Shopper's Guide.
- ▶ **What are the policy's limitations on home care?** Does the policy pay family members for care giving?
- ▶ **Does the policy pay for 24 hour a day at - home care?** (most do not)
- ▶ **Are Home Care Costs Covered at all?** How may days per week?
- ▶ **What Services are Covered?** p. 15 - 16 Shopper's Guide
- ▶ **What does it take to get the policy to pay benefits?** p. 18 Shopper's Guide. Eligibility for coverage is based on whether or not a person can perform Activities of Daily Living. Make sure you understand the policy's definition of ADL's. People who are unable to perform these Activities of Daily Living, and who can't obtain adequate nutrition, usually require a caregiver to support them from 12 to 24 hours each day.

ADLs	IADLs
Dressing	Grocery shopping & meal preparation
Bathing	Driving
Toileting	Housework
Eating	Managing money
Walking	Managing medication
Transferring between bed and chair	Using telephone & mail

Independent ADLs are the activities that enable a person to live independently in a house or apartment, such as: preparing meals, performing housework, taking medication, going on errands, managing finances, and using a telephone. Tests for measuring a person's ability to perform ADLs include the Katz ADL Scale.

▶ **Is there a waiver of premium**, when the client is receiving benefit payments from the insurance company? When does the premium waiver begin?

The "Qualified" vs. "Non Qualified" Income Tax Deduction Enigma

A Federal law (HIPAA) allows taxpayers to deduct a fraction of their LTC premiums along with other medical expenses exceeding 7.5% of gross income.⁶ But few policyholders will get any benefit from the income tax deduction on LTC premiums. For most clients it adds up to less than the standard deduction.

Policies that are "Qualified" for this income tax deduction are stingier than most "non Qualified" policies.⁷ Qualified policies recognize only 5 - 6 ADLs,⁸ while non-Qualified policies recognize many more, like cooking, shopping, cleaning, bill paying. "Qualified" policies require "severe cognitive impairment" to trigger coverage by the LTC policy. Non qualified may only require "presence of cognitive impairment" to trigger coverage.

For most clients, the income tax deduction for premiums may not be a significant factor to consider.

Conclusion

For each client, the threshold questions are

- 1) insurability and
- 2) affordability.

⁶ [IRS 2008 Update; IRS Rev Procedures 2005-70](#)

⁷ See page 13 of the National Association of Insurance Commissioners Shopper's Guide.

⁸ [26 USC §7702B](#)

If the client has a pre-existing condition or does not meet "medical underwriting" standards because they already have health problems (e.g., Alzheimer's disease, Parkinson's disease or other conditions), insurers may decline to issue a long-term care insurance policy.

For those clients who are eligible for Long Term Care Insurance, the cost - benefit analysis directs you to consider whether:

- The client has significant assets and income
- The client wants to protect assets and income
- The client wants to pay for their own care and be able to choose the services they prefer, decide on the quality of services they want, and stay independent of the support of others.
- The client wants to avoid having to sell assets such as a family business, retirement assets, real estate, vacation home
- The client does not want their children deciding how much to spend on long term care and how much of their assets to save.

A client should NOT consider buying Long Term Care Insurance If:

- They can't afford the premiums
- They have limited assets
- Their only source of income is a Social Security benefit or SSI
- They often have trouble paying for utilities, food, medicine or other important needs.⁹

After answering the threshold questions, look at the available policies, and compare

⁹ Source: [Massachusetts Office of Consumer Affairs buying guide for long term care insurance](#)

costs and benefits to complete the client's long term care planning.

This outline was originally prepared for a Continuing Education Course presented to the National Academy of Elder Law Attorneys at Northampton, Massachusetts on February 27, 2007.

The outline is updated on May 19, 2009, and is useful for information and educational purposes only.

It is not legal advice or opinion. Legal advice can only be provided to you by a competent professional who understands your unique circumstances.¹⁰

¹⁰ Return to [Long Term Care Insurance page](#), or more online Resources at

MassHealthHELP.com

Or

EstatePlansPLUS.com