A STEP AHEAD

THE FACTS ABOUT LONG-TERM CARE INSURANCE

With the rising costs of health care, the graying of America, and increasing longevity due to improvements in medical science, diet and exercise, the risk of needing long-term care, either at home or in a facility such as a nursing home, has never been of greater concern The real question is, "How will I pay for it?" Long-term care insurance is one alternative -- one which, with the changes in Medicaid, is becoming ever more important

Long-term care is the broad range of services that assist people who have an impaired ability to live independently for an extended period There are 3 levels of long-term care: (1) around-the-clock or skilled care, (2) occasional or intermediate care by a registered nurse or other licensed medical professional under a doctor's supervision, and (3) custodial care, the assistance with activities of daily living including eating, dressing, bathing, toileting, transferring and maintaining continence due to physical or cognitive limitations. Custodial care is usually provided by untrained medical personnel including family members

While many seniors mistakenly believe that Medicare will cover the cost of long-term care, Medicare usually provides only very limited coverage (up to 100 days of skilled, rehabilitative care). Medicare supplemental policies, also known as "Medigap" policies which are sold by private insurance companies to fill in the "gaps" in costs and services provided under Medicare coverage, will not pay for long-term care at all On the other hand, long-term care insurance pays for skilled, intermediate, or custodial care. Long-term care policies may pay benefits in several care settings including nursing homes, assisted living facilities, adult day care as well as in your home.

Long-term care insurance is not suitable for everyone. It is primarily designed for the middle class Affluent people, those who can afford to privately pay anywhere from $70,000 a year for home health care to more than $150,000 a year for nursing home care without affecting their family's finances, do not need this insurance On the other end of the spectrum, long-term care insurance is not necessarily appropriate for individuals of modest means who would qualify for Medicaid by spending down their assets quickly

The cost of long-term care insurance can be expensive and depends on your age and health as well as the type of policy purchased. The younger you are when you apply for coverage, the lower the premium. You must be also be healthy enough to pass a medical screening. You can usually choose from several options for coverage, such as the

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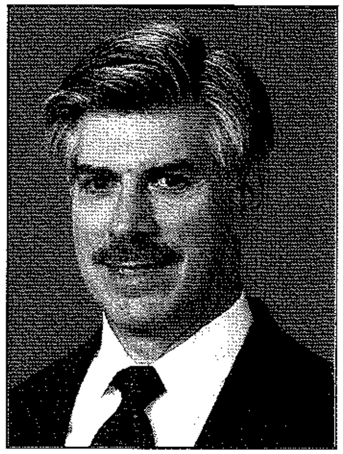

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size of the daily or monthly benefit, how long benefits will continue, and options designed to protect against inflation.

A common misconception is that once purchased, the premium can never be increased. Under the guaranteed renewability clause of the contracts, an insurance company can seek the State Insurance Department's permission to charge a uniform price increase for everyone who purchased a particular insurance contract at the same age and health classification. Accordingly, it is important to choose not only the right policy but the right insurance company as well.

Since most companies offer similar products today, one should check an insurer's track record. Factors to consider include the company's financial ratings for financial strength and stability, its experience in the marketplace and its claim paying history.

We advise our clients to consult with a knowledgeable insurance agent who specializes in this field. If you are considering the purchase of a policy, you should request a sample contract from the insurance company. You should also review the Outline of Coverage (which explains the policy) and the Shopper's Guide to Long-Term Care Insurance (published by the National Association of Insurance Commissioners) which must be provided to you, by state law, at the time of application. Most agents will be happy to supply this brochure when they meet with you.

Determining whether long-term care insurance is suitable for you can be a confusing and complex process. We are happy to speak with you if you are considering this insurance or if you have questions regarding any policies you may already own.

NEW YORK STATE REVERSES PORTIONS OF PATAKI'S BUDGET

In our last issue we addressed those portions of Governor Pataki's budget that had been enacted and which affect Medicaid eligibility. Just after that newsletter went to press, a new deal was struck between the Governor and the legislature with respect to the changes in Medicaid eligibility. As a result, some of the anticipated changes will not take effect.

Spousal Refusal Has Not Been Repealed. By invoking spousal refusal, a planning strategy by which the healthy spouse of an applicant for Medicaid benefits can refuse to use his or her income and resources to support the ill spouse, Medicaid is required to evaluate the application without consideration of the refusing spouse's assets or income. Under Pataki's budget, as initially adopted, this technique would no longer have been available for home care, and New York was to seek permission to disallow it for applications for nursing home care. Now, spousal refusal will remain a viable planning tool for both nursing home and home care applications.

Transfer of Assets Will Not Affect Home Care Services. Previously, Medicaid applicants seeking only home care services were not penalized for asset transfers. Under Pataki's original budget, a penalty would have been imposed for home care applicants who transferred assets. Under the new budget agreement, the transfer of assets will not create an ineligibility for home care services.

The reversal of the these portions of the Governor's budget is another reminder of the complexity of asset-protection planning. It reinforces the importance of subtilize the services of a qualified professional to ensure your needs and goals are met.

MISTAKES AND MISCONCEPTIONS

Estate planning, whether simple or complex, requires careful attention to details which, if overlooked or misunderstood, can undermine the plan's effectiveness We will devote space in each issue to highlight common estate planning mistakes and misconceptions.

Although gifting is an important estate planning tool, having utility for both reducing estate tax liability and protecting assets from the costs of long-term care, gifting highly appreciated assets can create problems. During your lifetime, if you sell an asset that has appreciated in value, you pay capital gains tax on the profit If you give the asset away during your lifetime, upon its sale the recipient pays the tax based upon your original cost. If, however, you give that same asset away after you die, through a will or trust, the recipient receives it at a higher cost basis equal to the fair market value as of the date of your death, a "step-up" in basis. It is, for this reason, important to understand the interplay between income, gift and estate taxation and to consider the entire financial and practical picture when gifting.

DIRECTING THE DISPOSITION OF YOUR REMAINS

On June 7, 2006, Governor Pataki signed into law a bill, which became effective on August 2, 2006, and provides an order of priority of the individuals who have authority and control over the disposition of the remains of one who has passed away, a *decedent*. Under this new law we now have a mechanism for designating a person to act as our agent for this purpose.

Interestingly, domestic partners are included among those who have control over the disposition of a decedent's remains. This is one of the few areas of New York law in which domestic partners are recognized.

If the disposition of your remains is an issue of concern to you, please call and ask us for assistance

RECORD RETENTION - A GOOD HABIT TO CULTIVATE

The implementation of the new Medicaid rules makes record retention and retrieval a major concern to Medicaid applicants. Under the prior rules, the vast majority of applications were supplemented with three years worth of financial records: monthly statements of all bank and brokerage accounts, cancelled checks and receipts for certain transactions, documentation reflecting income, tax returns and a whole host of other records Now, with the implementation in New York of the changes contained in the Deficit Reduction Act of 2005, the broadening of the disclosure period from three to five years under all circumstances will present significant challenges to the applicant and his or her family

The practical effect of this change is that it is now more important than ever to maintain financial records. The alternative is not pretty. Answer this question: If asked, could you provide your family with copies of all of your tax returns, passbooks and statements for your bank, brokerage, annuity and retirement accounts for the past five years? Even if your answer is yes, does your family know how to find these documents if you become incapacitated? If your answer is no, how much work will it be for your family to recreate those records?

Time after time, we are retained by families to prepare

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the Medicaid application for an incapacitated family member. All too often, not only don't they have the documentation necessary to support the application, they have no real knowledge or understanding of the finances or financial history. They do not know how many accounts exist, where they are maintained or the value of the accounts. Dealing with the issues that arise when a family member is ill is difficult enough. The pressure to locate all of the financial information which is required to support the Medicaid application can be completely overwhelming. And now that the look-back or disclosure period has been increased to five years, we anticipate that the problems will be compounded.

There is a simple solution which will minimize the burden on your family. We all hope that we will not become ill or require long-term care. **But organized record retention is a good habit to cultivate -- even for the young and healthy!** Purchase a three ring-binder, a three-hole punch and dividers. Create a separate section for each account that you own. Each month, punch holes in the statements you receive and store them in the binder in the section for that particular account. At the end of the year, store the binder, purchase a new one and repeat this process. Repeat this process each year. If Medicaid planning is the sole issue, after the sixth year, you can discard the contents of the oldest binder and reuse it. Most accountants, however, recommend that you retain your records for a period of seven years.

Organizing and storing your financial records as you receive them will take minimal time and effort. It will not only save countless hours and the expense of having to recreate the records in the event of incapacity, but it will also significantly reduce the stress on your family.

We Practice Preventative Law!™