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## LONG TERM CARE INSURANCE

One of the challenges for the Elder Law Attorney or other advisor in reviewing the assets and income of the client is to determine whether the assets are sufficient and whether the client intends for them to be used for the purpose of paying for long term care expenses. In certain cases, even if the individual has the resources to cover his or her long term care needs, whether at home or in an institutional setting, that individual may have other plans for the use of those assets and income. Therefore, it is incumbent on the professional to fully ascertain the needs and specific goals before making certain recommendations. One of those recommendations may be to purchase long term care insurance and to determine how much insurance is necessary.

If the client has the ability to pay for the cost of a nursing home or extended care workers at home, including 24/7 at home care from current income resources, then long term care insurance is not typically advisable. If the client will need additional income to cover those costs, then such insurance is advisable. The job for the advisor though, is to fully review the assets and income in order to determine how much insurance will be necessary, which may mean not insuring the full cost.

**Questions to consider and review with the client:**

1.) *Does the client want to insure against impoverishment?*
2.) *Does the client want to insure against spending assets?*
3.) *Does the client want to insure against the loss of a legacy?*
4.) *Does the client want to avoid nursing home placement and secure insurance to cover at home costs?*
5.) *Is the client averse to utilizing a state/federal Medicaid system to pay for long term care needs?*
6.) *Does the client have a spouse, significant other, disabled child or family member for which s/he assumes responsibility?*

The client review should consider all assets of the client including, but not limited to: cash, investment portfolio, business interests, personal real estate, life insurance, qualified plan benefits/cash accounts and IRA's, any deferred retirement program, annuities, any anticipated inheritance, etc. The income of the client should similarly be reviewed including social security, pension, investment income, business income, required minimum distributions from IRA's and/or qualified plans, etc. The client review should also consider all current and projected expenses for both the client and spouse and any other family member that is supported. By detailing both the income and expense side, as well as the goals and needs as discussed above, an advisor may be able to guide the client in the decision making process of whether it is necessary and important for the client to insure against the long term risk.

***EXAMPLE:*** *Carl and Sue have assets well in excess of $2.5 million, combined. Their home is worth $450,000, summer cottage worth $150,000, investments dropped to $125,000 and have been liquidated to cash, Sue's IRA has a value of $175,000 and Carl's 401(k) profit sharing plan has a value of $1.6 million. They are both in their early 70's and semi –retired. (Their wealth has decreased by $500,000 in the past 12 months) Their combined annual income is now $30,000 and they both collect social security benefits of $29,000 per year. They have no debt and modest life insurance. They were anticipating minimum required distributions of $40,000 a year thus living comfortably on just under $100,000. Their goal is to leave the summer cottage to their daughter and another $1 million to their three children. However, they are concerned about long term care needs and benefits in their future.*

*FACTORS TO CONSIDER: assets will be significantly depleted if one or both require long term assistance – are they willing to absorb the risk and cost? Or, how much of the risk and cost will they assume? How will it affect long term goals of leaving assets to children? How will it affect the healthy spouse if one becomes institutionalized? Finally….how much insurance do they need to cover that risk?*

**Tax Benefits of Long Term Care Insurance:**

Long term care insurance policies are "tax-qualified" if they meet the requirements of the Kassebaum-Kennedy Bill (HIPAA). (Policies sold before 1/1/97 by licensed insurance companies are grandfathered.) Long term care insurance premiums are deductible as a medical expense, but only to the extent they exceed 7 1/2% of adjusted gross income. Self employed can deduct the deductible portion of their long-term care insurance premiums as a business expense together with health insurance premiums. Long term care insurance premiums are 100% deductible to an employer under C Corporation status and are not treated as income to the employee and the employer can pick and choose the employees to be covered.

Benefits paid under a tax-qualified policy are not taxable unless paid under an indemnity policy. (An indemnity policy provides a fixed dollar amount regardless of actual cost of care.) For an indemnity policy, the only portion subject to income tax is the excess benefit paid above the actual cost or the amount paid over the adjusted dollar limit allowed by statute or regulation.

**Qualifications for payment under a long-term care policy**

In general, a tax-qualified long-term care policy will become accessible when the individual must (1) require "substantial supervision" because of a "severe cognitive impairment" and/or (2) need "substantial assistance" with at least two of the six activities of daily living.

A chronically ill person is an individual certified by a licensed health provider (which means a physician, registered professional nurse, licensed social worker, or other individual prescribed by the Secretary)

(i) to be unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity,

(ii) having a level of disability similar (as determined under regulations prescribed by the Secretary of Health and Human Services) to the level of disability described in clause (i), or

(iii) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

Such term shall not include any individual otherwise meeting the requirements for the preceding sentence unless within the preceding 12 month period a licensed health care practitioner has certified that such individual meets such requirements.

Activities of Daily Living include eating, toileting, transferring, bathing, dressing, continence. (At least 5 of these must be taken into account in a long-term care contract for it to be qualified.)

**Contract Terms to Consider**:

Care coverage including organically based mental conditions
Monthly benefit rate (consider family income and needs of community spouse or well spouse)
COLA protection (if not needed will significantly reduce premium cost)
Benefit Period (post DRA-5 years recommended)
Renewability
Home health and assisted living coverage
No applicable exclusions
Waiver of premium
Waiting period-30, 60, 90 days or longer
Spousal benefit (may provide a 50% reduced premium for spouse)

**EXAMPLES:**

**Age 55 - $3000 monthly benefit – 30 day wait, $137.70/ month; 90 day wait, $114.75/month**
**Age 65 - $3000 monthly benefit – 30 day wait, $258.88/month; 90 day wait, $215.73/month**
**Age 75 - $3000 monthly benefit – 30 day wait, $581.09/month; 90 day wait, $484.25/month**

The above figures are based on both nursing home and professional at home care, 5% COLA and a 15% preferred Risk Discount (no significant health issues)