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LTCI Partnership Legislation:

What To Expect And What National Expansion Will Mean

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TWO aspects of the new Deficit Reduction Act of 2005 bode well for the LTC insurance industry. The first is the closing of Medicaid loopholes, which makes it tougher for people of means to use Medicaid to cover their long term care needs. The second is the expansion of state LTC partnerships, and the focus of this article.

While the new law runs over 700 pages, the section dealing with partnerships is mercifully shorter—only 14 pages. It is noteworthy that, even though support for the law overall was quite divided along party lines, support for state partnership expansion was very bipartisan. The partnership provisions also were widely supported by the states and the insurance industry.

Now, the implementation process begins. Heath and Human Services will play the lead role at the federal level. Among the first tasks HHS is expected to tackle will be providing some initial or interim guidance to the states and a template for states to follow to opt into the partnership program. States may elect to participate by filing a Medicaid plan amendment with HHS.

What's the potential? In addition to expanding partnership programs, other positive results of the newly enacted law include:

1. Reiterating to the consumer the importance of proper planning for future LTC needs, including protecting savings.

2. Recognizing the importance of increasing public awareness regarding LTC insurance. In fact, the legislation requires establishment of a National Clearinghouse for Long Term Care Information. Essentially, this is a consumer awareness campaign funded by the federal government to educate consumers about the partnerships and the need for LTC insurance. The appropriation is $3 million for each of fiscal years 2006 through 2010.

3. Increasing LTC insurance sales. Enactment is a very important step in recognizing private industry solutions to the growing LTC financial issues the United States is facing; and it provides a reason to talk about this insurance.

4. Helping to jump start momentum for wider acceptance of LTC insurance products and possibly further enabling legislation, such as pre-tax treatment in employer cafeteria plans and flexible spending accounts.

Here are some details about the partnership section of the new law:

The law allows for the expansion and availability of partnership plans nationally. This repeals what has commonly been referred to as the "Waxman Amendment," which in 1993 had effectively closed the door on implementing new LTC partnerships programs. States which had approved partnership plans prior to the passage of OBRA 93 were grandfathered and the new law continues to grandfather the four existing partnership programs in California, Connecticut, Indiana, and New York.

Now, each individual state will have the opportunity to implement a partnership program. Partnership policies help to protect state Medicaid budgets as they require that the benefits of qualifying LTC insurance policies be paid before Medicaid can be accessed.

Under the expansion of state partnerships, states must have the same requirements for partnership and non-partnership LTC insurance policies. This is a very important provision since it avoids the imposition of another layer of regulation which would be confusing to consumers, limit product flexibility and innovation, and add unnecessary administrative expense at both the state insurance department and carrier level. As states elect to participate, the objective is to have uniform requirements.

While the partnership bill does not require reciprocity—meaning that asset protection would still apply if a person moves to another state that participates in the partnership—the bill does require HHS to prepare guidance on reciprocity. The partnership bill also includes a provision dealing with exchanges—moving from a non-partnership policy to a partnership policy.

What is required to be considered a partnership policy? Essentially, any tax-qualified LTC insurance policy approved by a state insurance department, that meets the requirements of the federal partnership bill, would qualify for asset protection, on a dollar-for-dollar basis, up to the policy maximum.

The effective date for qualification as a partnership policy will be explained in each state's Medicaid plan amendment. Partnership policies are required to meet the key consumer protection provisions found in the current Long-Term Care Insurance Model Act and Regulation, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000).

In addition, a partnership policy must provide some amount of compound inflation protection for individuals age 60 and younger. It is important to note that the legislation did not set a minimum amount. Some level of inflation protection must be provided to individuals age 61-75. No inflation is required for individuals age 76 and older.

HIPAA Flashback? How long will this take you ask? Won't this stall the market's momentum? You may feel a HIPAA (Health Insurance Portability and Accountability Act of 1996) flashback coming on, but don't worry, it's not quite the same.

As state Medicaid agencies are searching for relief to their over-burdened budgets, many states are likely eager to get these partnership programs implemented quickly. However, what is quick in government terms may not seem quite as quick to consumers and insurers. In reality, participation by some states may start emerging later this year, depending on how quickly HHS and the states act. The hope is, most states will have their partnership programs in place within the next year or so.

How is the insurance industry responding?

The key implementers in the expansion of the partnership program are HHS and the states. But the insurance industry, including state and national trade associations such as American Council of Life Insurers and America's Health Insurance Plans, is doing all it can to serve as a resource to the states and HHS so that partnership programs can be implemented efficiently, effectively and successfully.

Insurance carriers are helping to facilitate this process as well, by serving as a sounding board for some of the concerns expressed by producers. For example, carriers and some of the industry's leading LTCI distributors recently met at the 2006 Intercompany Long Term Care Insurance Conference in Anaheim, Calif., to talk about the legislation. Some of the discussion touched on:

1. The fact that reciprocity was not mandated by this legislation because of the fear it would block passage altogether. Instead, the legislation requires that HHS provide recommendations on this aspect of the law by January 1, 2007. Carriers and producers alike should continue to push for reciprocity. Ultimately, it is the consumer who will benefit from reciprocity.

2. Whether anything was done about policy exchanges in the legislation. Language enabling policy exchanges is important, so that consumers will not postpone buying coverage until their states opt into the partnership. While there may be guidance from HHS on policy exchanges, carriers will likely need to develop their own internal policies on exchanges.

3. Training — State Medicaid agencies are charged with providing information and technical assistance to state insurance departments regarding agent training for partnership policies. It is important that this training be uniform and include instruction on LTC insurance generally, state Medicaid requirements, and partnership and non-partnership policies. Also, to prevent any disruption in the marketplace and improve record maintenance, training should be available to producers on a web-basis.

It is critical that passage of partnership legislation not stall producer sales of LTC insurance. While expansion of the partnership program should boost LTC insurance sales, the protection that today's LTC policies offer isn't changing. Producers can use enactment of the new law is a reason to talk to clients about their LTC needs. Given that there is already more media focus on LTC needs than ever before, the new law has the potential to jump-start the business and promote private LTC insurance as part of the solution to solving the nation's LTC dilemma.

The best thing all LTC industry professionals can do is to continue to talking with clients about the benefits of LTC insurance and how it helps protect their independence and retirement. Take advantage of the immediate change in Medicaid laws to inform clients of the need to plan for LtC insurance now.

This legislation in time will help to emphasize that need, and if implemented correctly, it will create a wave of demand for LTC insurance such as the industry has never seen before.

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