



Richard A. Marchese, Esq.

An Elder Law Attorney's Perspective on Long Term Care Insurance

With the “silver tsunami” of aging baby boomers now upon us, it is a good time for all of us to re-evaluate the merits of long term care insurance (LTCI). According to Barron’s, less than 10% of Americans over the age of fifty have LTCI. Costs for nursing home care continue to escalate (KAFL Insurance Resources lists the average cost of a semi-private room in Rochester area nursing homes for the year 2014 at \$396 per day, or \$144,540 per year). Caring for parents at home is also increasingly very expensive. Family caregivers may not be available or exist at all. New York State has actively encouraged the purchase of LTCI by offering a 20% tax credit against the premiums paid (a fact of which a lot of clients are unaware), which certainly takes some of the sting out of the purchase of LTCI. Despite the tax credit and clear benefits of having such protection, encouraging clients to purchase LTCI remains a difficult task.

Affordability, of course, is a key factor in deciding whether or not to purchase LTCI. An industry upheaval in the last few years due to historically low interest rates, faulty actuarial assumptions, and high (98%) retention rates, have resulted in an increase in premiums for existing policy holders who thought that they had “locked in” their costs going forward (Insurance companies exercised their rights under the policies to raise rates for the class or group of policy holders insured.). Consequently, there is now much tighter underwriting for individuals wishing to purchase LTCI. Most LTCI takes the form of an indemnity policy that pays up to a certain daily maximum benefit once a triggering event is satisfied. That triggering event is usually an admission to a nursing home, or a certification from a physician that a client is unable to perform at least two out of six identified activities of daily living. I recently had a client who had purchased a policy fifteen years ago with lifetime benefits and a 5% compound inflation rider at a very affordable annual premium. Such a policy today may prove to be very difficult to obtain, and very expensive as well. Insurance companies are re-tooling their products in a number of ways to make

LTCI affordable and attractive, such as reducing the inflation protection to 3.0% simple interest, having a mandated “elimination period” before benefits kick in, or by offering lump sum “hybrid” policies that combine life insurance and LTCI. These hybrid policies are attractive to many clients because of the onetime upfront payment (which can be significant) and the knowledge that, even if the full LTCI benefit is not utilized (or partially utilized), there will be a significant death benefit for their designated beneficiaries.

One recent development to keep an eye on is that premiums for single women applying may soon go way up if gender based pricing is adopted in New York. According to a recent article in the New York Daily News, Genworth Financial has received approval from the New York Department of Financial Services to use gender based rates in New York, and other companies are soon expected to follow suit. Under gender based pricing, single women (who have longer life expectancies than single men), will pay significantly higher premiums for LTCI, a trend which has already



manifested itself nationwide. According to the American Association for Long Term Care Insurance, premiums for unmarried women increased 12% in 2013, while premiums for unmarried men declined by 14%.

The New York State Partnership for Long Term Care (Partnership Plan) has expanded their plan offerings to allow for greater flexibility and affordability. Clients may now choose a total asset protection plan (TAP) offering two years, rather than three years, of nursing home coverage (or four years rather than six years of coverage for care at home or in the community), and have options for reduced inflation protection as well. Of course the prime benefit of the Partnership Plan is the TAP policy, which allows a client who has exhausted policy coverage to obtain Medicaid eligibility, without any review of their assets, or any review of gifts made by the client or the client’s spouse. Furthermore, the Medicaid program may not exert any recovery rights against

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the estate of a TAP policy holder. Even a client with a million dollars remaining in reserved assets (after exhausting benefits), may thereby qualify for Medicaid coverage. Please remember that, even with the asset protection afforded by a TAP policy, a client will still have to pay their income to the nursing home as part of their cost share. In my mind, this is a very small price to pay for the insulation of a large amount of assets. As a side note, Monroe County actually leads the State in the percentage of seniors who have purchased Partnership Plan policies (6.3% of seniors over age 65 for year 2013). By comparison, only 2% of seniors in Nassau County have Partnership Plan policies.

Clients of means who fear the future of long term care and have not (or will not) purchase LTCI would be well counseled to seek the advice of an elder law attorney. The laws, regulations and policies governing the Medicare and Medicaid programs are ever changing and as perplexing as the tax code. Experienced attorneys can help devise asset protection plans well before the need for long term care for those without LTCI (such as the creation of irrevocable trusts), or design plans for strategic gifting and loaning of assets (so-called crisis planning), but it can be challenging planning for an uncertain future in a complex legal world. I have seen LTCI work out well for many of my clients who have been able to defray a significant cost of their care. Whether the insurance is provided privately or through the Partnership Plan, LTCI of any form will ultimately provide a clear financial benefit to a policy holder who needs long term care services.

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Jim McElheny and Jack Battaglia present a check to Julia Tedesco, Co-Executive Director of FoodLink.

FoodLink FoodLink is the Feeding America regional food bank, which rescues and redistributes more than 16 million pounds of food annually to a network of 450 member agencies in a 10-county service area: Allegany, Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, and Yates Counties. <http://foodlinkny.org/>



Jim Kiley and Gordon Dickens present a check to Sue Bezek, Director of Nursing at Golisano Children's Hospital.

Golisano Children's Hospital NICU Golisano Children's Hospital is committed to providing exceptional and compassionate care to children and their families at every step during their hospital stay. Their goal is to work with each family as a team, keep them involved and always be responsive to their child's healthcare needs. <http://www.urmc.rochester.edu/childrens-hospital.aspx>



Jim McElheny and Lou D'Amato present a check to Majors Douglas and Judy Hart of the Salvation Army.

Salvation Army The Salvation Army of Greater Rochester is dedicated to helping those in the most need without regard to age, religion, ethnicity or educational level. They operate four homeless shelters throughout the city providing almost 100 beds, some of which are designated for veterans. They also serve the community through their Emergency and Family Services Program in which they provide immediate emergency help such as food, clothing and prescription assistance to households in crisis. http://www.use.salvationarmy.org/USE/www_use_Empire_RochesterNY.nsf