Suitability

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The great majority of agents selling long-term care insurance strive to always conduct themselves with honesty, integrity, fairness, and professionalism, and with a sense of duty to those they serve. In doing so they are guided by their own sense of right and wrong. An LTCI professional has the obligation to recommend a product that is suitable for his client. Suitability means that the policy design, benefit amounts, selected options, and costs match the circumstances, needs, goals, and financial resources of the purchaser.

To ensure that a policy is suitable, a salesperson must exercise diligence and competence. He must make a systematic effort to obtain all pertinent information about a client's personal and financial situation and his concerns and goals. He must then use her knowledge of LTCI products and other approaches to find the best solution for the client. A salesperson must not simply get a general sense of a client's situation and recommend a product that "seems about right."

And of course, a salesperson must not knowingly and deliberately recommend a product that does not meet a client's needs. He must not sell long-term care insurance to a person for whom it is not appropriate, and he must not recommend a policy with more or fewer benefits than the purchaser needs.

He must also not engage in churning or twisting. Churning and twisting occur when a salesperson, simply to earn a commission, sells a new policy to someone who already has perfectly suitable coverage.

State Requirements

The laws and regulations that govern the sale of insurance in general, and long-term care insurance in particular, vary from state to state. But as we've learned, the NAIC Long-Term Care Insurance Model Law and Model Regulation have been adopted, in whole or in part, by most states, so the market conduct provisions of these models provide a good sense of the rules that generally apply. Some of these provisions have been mentioned above, but we will summarize the main ones here:

• A salesperson must give a prospect an outline of coverage and a shopper's guide to long-term care insurance, either the one developed by the NAIC or one issued by the state.
• The application for insurance must be clear and understandable by the consumer.
• The application must disclose the insurer's right to contest the policy if the applicant makes false

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statements on the application. (The DRA imposes incontestability requirements for PQ policies.)
• The policy must include a 30-day free look provision.
• The insurer must have procedures that ensure fair and accurate policy comparisons (to prevent churning and twisting) and prohibit the sale of excessive coverage.

In addition, many states have regulations intended to prevent the use of misleading advertising in the sale of LTCI. Some states require that certain guidelines be followed in the design of advertising materials, and many require that such materials be reviewed and approved by the state insurance department before use.

Some states also require all salespeople to complete training in ethical market conduct.

Suitability of LTC Insurance

In this course we have studied long-term care and the ways people expect to pay for it, and we have learned why, for many, long-term care insurance is the best funding method. Let us review here why buying an LTCI policy is usually a better approach than planning to pay for care out of one's savings and assets or relying on Medicaid.

• The individual has greater assurance that there will be sufficient funds to pay for needed care. Although most LTCI policies do not pay unlimited benefits, a purchaser can select benefit amounts that will cover most of the services he is likely to require.
• The individual can be certain that there will be funds to pay for care when it is needed. Because he is not relying on his own financial resources to pay for care, he does not have to worry about needing care at a time when he does not have sufficient assets (such as when he is still young and has not saved enough or during a period when his finances are at a low point because of some unforeseen event).
• The individual reduces financial uncertainty. Instead of bearing the risk of long-term care costs, the amount and timing of which are unpredictable, he regularly makes premium payments of a preset amount.
• The individual can protect against inflation. He can choose an optional provision that increases benefit amounts over time, so that inflation in the cost of long-term care services does not render the benefits inadequate in the future.
• The individual greatly reduces the risk of depleting assets.

Receiving insurance benefits to help pay for care makes it much less likely that savings and assets will be spent to cover costs. Instead, those assets can be used to maintain a comfortable standard of living during retirement, and when the insured dies, he will be able to leave his spouse well provided for and pass assets on to heirs.

• The insured can maintain financial independence and will not become dependent on relatives or the government.
• When the individual needs long-term care services, he can receive high-quality care, choose among many care providers, and have a range of care options so that he can receive the type of care that best meets his needs. The choices will not be limited, like those of Medicaid recipients or indi-

viduals relying on limited personal funds.
• The individual will not be a burden on his spouse, children, other family members, or friends. Insurance benefits will help pay for needed services, and family members will not have to sacrifice to provide care themselves, nor will they have to jeopardize their own financial security by paying for his care.
• The individual can provide for long-term care in a way that takes into account his particular needs, goals, circumstances, and financial status. An LTCI policy can be tailored to the situation of each individual insured.
• By purchasing a partnership LTCI policy, an individual can protect some of his assets in the event he needs care for a very long time, exhausts his insurance benefits, and is forced to apply for Medicaid.

However, long-term care insurance is not right for everybody. If a person has limited income such that paying premiums will be difficult, LTCI coverage is not normally the best approach. Nor should those with few assets buy an LTCI policy; such people will often have to rely on Medicaid, despite its drawbacks. But every situation is different, and each person must consider his own circumstances, take into account his own concerns and preferences, and weigh the costs and benefits of an LTCI policy.

Determining the Suitability of LTCI

All states require insurance companies and agents to make a reasonable effort to determine the suitability of the sale of an LTCI product or the replacement of one policy by another. Specifically, an agent must:

• make reasonable efforts to obtain information that is relevant to determining whether a policy is suitable for an individual,
• comply with the insurer's suitability standards,
• comply with any specific state requirements, such as using a personal worksheet or educational materials issued by the state, and
• maintain in client files written information demonstrating compliance with these standards.

These obligations are discussed below.

Who Should Not Buy Long-Term Care Insurance?

A suitability determination based solely on an income or asset threshold does not always provide a good indication of who should or should not buy. Sometimes people of very modest means have a strong motivation to buy insurance to protect their small but important assets or to avoid relying on Medicaid. But looking at a person's financial situation is a good place to begin the discussion. Here are some general rules:

• If a person cannot afford to pay the premium now or continue to do so in the future, she should not buy LTCI -- (although it should be kept in mind that one does not usually pay premiums while receiving benefits). One rule of thumb is that a person may not be able to afford coverage if the pre-

mium would be more than 7 percent of her income.
• If a person's assets are less than $30,000, it may be appropriate to consider other options for financing long-term care.
• If a person is now eligible for Medicaid, she probably should not buy LTCI.

Company Market and Suitability Standards

Each insurance company must establish its own procedures and market and suitability standards that agents must follow to help their clients determine whether buying LTCI is appropriate for them, based on financial and other considerations. These standards vary by company. As an example, one company considers a sale not suitable if any of the following conditions apply:

• The applicant has an annual income under $20,000.
• The applicant will fund premiums solely from his income, and premiums will amount to more than 10 percent of that income.
• Premiums will be paid solely out of income, the applicant expects his income to decrease as he gets older, and the premium today represents more than 7 percent of income.
• The applicant's assets (savings and investments other than a home) total less than $30,000.

Such standards are not the only important considerations. If an applicant has a terminal illness, it may not be wise for him to invest in long-term care insurance that he may never use, even if he meets the standards. And as mentioned, if someone is already eligible for or could easily become eligible for Medicaid, buying insurance is probably not appropriate.

Some people do not meet a company's market and suitability standards but nevertheless feel strongly that insurance would help them meet their goals. In other cases, an applicant does not meet the standards because of limited income or assets, but family members intend to pay some or the entire premium. An insurer is not required to prohibit such a person from applying for coverage, and most do not. A company has the obligation to establish standards, make agents and clients aware of them, report annually the percentage of the sales made by its agents that do not meet the standards, and ensure that agents educate clients about when a purchase might not be suitable, but a company is not required to prohibit a sale if the standards are not met. Whatever the circumstances, as long as the agent has clearly discussed the suitability issues described above with her client, and the client indicates he is making the decision to buy in full consideration of these issues, the client will not be denied the opportunity to apply for coverage.

Determining Suitability

The agent interviews the client and learns about his needs and reasons for wanting coverage. This can help the agent determine whether insurance can reasonably address these needs and, if so, to tailor a policy to them. While the agent has an obligation to help her clients think through whether buying coverage is appropriate, she cannot make this decision for them. Her responsibility is to review the company's market and suitability standards with clients and discuss with them whether or not they meet these standards. If they do not, the agent should discuss whether they feel strongly that long-term care insurance will have important benefits for them or whether family will

be helping them pay for the coverage.

Agents are required to provide documentation showing that suitability considerations have been addressed. This is done in different ways, depending on the state. Many states require agents to give their clients a form called "Things You Should Know Before You Buy Long-Term Care Insurance" and have them complete an LTCI personal worksheet and submit it along with the application. There is a specific personal worksheet for each state and different versions of the "Things You Should Know" form.

In the states that use them, prospective buyers must review the" Things You Should Know" form and then fill out the personal worksheet. The worksheet asks them to specify the monthly and annual premium for the coverage they are considering. It then asks a series of questions about how they will pay for premiums (income, savings, or family members) and about their current and future income and assets.

The applicant and the agent must then complete the disclosure statement at the bottom of the personal worksheet. The applicant has the right not to complete the worksheet, but he must indicate this choice and sign the worksheet. The agent must also indicate that she has explained to the applicant the importance of completing the worksheet and provide a signature. Finally, if the client's responses on the worksheet do not satisfy the company's market and suitability standards, but he still wants to obtain insurance, he must check the last box on the worksheet that says "My agent has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application." The client must sign this as well.

Is LTCI Suitable for the Wealthy?

A few people are wealthy enough to payout of their own pockets for all the long-term care they are likely to need and still have plenty of money left. Is LTCI suitable for them? Every situation is different, but there are good reasons for wealthy persons to buy an LTCI policy.

• When a person decides to pay for his own care, he is taking on an uncapped liability. That is, the amount he may have to pay is unpredictable and potentially very large, making financial planning difficult. By buying insurance coverage, he can convert that unpredictable expense into a regular, budgetable premium payment.
• A wealthy person may be able to pay a very large amount for long-term care and still have substantial financial resources. But he nevertheless will have spent assets that could have been left to others. When insurance is paying for most of a person's care, he does not have to worry that he is steadily depleting assets he might have passed on to heirs or charities. Also, family members are not frustrated by seeing expected inheritances dwindle, and family harmony is better maintained.
• In some cases, long-term care providers prefer insured patients to those who self-finance. Providers prefer the certainty of payment that insurance represents – and those with a LTCI policy may gain easier access to highly-desired nursing homes or other care facilities.

Of course, a person can compromise on the question of long-term care insurance -- that is, she can purchase a policy designed to cover a significant portion, but not all, of her potential long-term care expenses and plan to pay the rest out of her income and assets.

The Suitability of Replacing an LTCI Policy

There has been concern in the industry that agents might inappropriately encourage individuals who already have long-term care coverage to drop an existing policy and replace it with one that the agent is selling. While a new policy can be an improvement over a client's existing coverage, there are important considerations that the agent and the client need to take into account. It may not be in the client's best interests to replace his existing coverage with another product, even if that product offers important advantages and attractive features. And it is seldom appropriate for an agent to sell a policy with fewer benefits than a client's current coverage. Some states significantly limit the amount of commissions that can be paid on a replacement sale in an effort to discourage agents from selling replacement coverage.

Here are some questions consumers should consider before replacing coverage:

• How long ago did you buy the policy you now have? LTCI policies have improved a great deal in recent years, so as a general rule, a relatively new policy is more likely than an older policy to provide good coverage. Older policies often have numerous exclusions and restrictions that seriously limit the coverage and protection they provide. An old policy with limiting provisions like prior hospitalization requirements, conditional renewability, or exclusions for Alzheimer's disease provides little protection to the insured. On the other hand, while some existing policies might not be the best, they offer reasonable and fair protection for the premium. It may not make sense to replace such coverage even if the new policy being considered offers some additional advantages.
• How much older are you today than when you bought your existing policy? Since premium rates are based on the insured's age when he buys the coverage, there is an advantage to buying LTCI while young-one can "lock in" a low premium based on a young issue age. This advantage would be lost if the insured replaced coverage with another policy when he was much older, as his new premium would be based on a much older issue age. The consumer needs to consider the value of the existing coverage relative to the premium. Is the better coverage of a new policy worth the higher premium?
• Are you still insurable? A client who may not be insurable based on his current health should certainly retain his existing coverage, even if another policy offers improvements. If he would not be approved for the new coverage, he obviously will gain nothing in switching, and he stands to lose quite a lot.

If a consumer decides that it is in his best interests to replace his existing coverage, he should be aware of the following:

• An insured should never drop his existing coverage until he is notified that his application for the replacement policy is approved.
• The agent will need to complete a state-required replacement form and turn it in along with the application.
• The client also receives a replacement notice that he completes and retains.

In the application for a federally tax-qualified LTCI policy, the insurer is required to obtain information about an applicant's existing coverage and his plans to replace it with new coverage. If the client checks "Yes" to the question "Do you intend to replace the above or any other long-term care, medical, or health insurance with this coverage," he is provided with a replacement notice.

The Suitability of a Partnership LTCI Policy

The ethical considerations that apply to long-term care insurance in general of course also apply to partnership LTCI coverage, but in addition there are some suitability issues that are specific to partnership policies, and we will discuss these here.

In regard to the suitability of a partnership LTCI policy, we can divide consumers into three categories:

• Some people strongly wish to avoid relying on Medicaid and have the financial means to buy coverage that makes it extremely unlikely they will ever have to do so. They can purchase a policy with a very high or even unlimited lifetime maximum, a daily or monthly benefit sufficient to cover the cost of any care they are likely to need, and automatic compound inflation protection. For these people partnership coverage is unnecessary.
• Other people have low incomes but assets they wish to preserve. It may be advantageous for them to purchase a partnership policy with a modest lifetime maximum and a low premium. But they must realize that even though they are paying for insurance, their benefits will not last long, and it is very possible that they will have to rely on Medicaid at some point. Furthermore, if the individual will find it difficult to pay the premium, now or in the future, coverage is not suitable, however much she may want to protect assets. And if her assets are not large enough for her to benefit significantly from Medicaid asset protection, there is no reason to buy a partnership policy.
• Most consumers fall between these two extremes. They can afford enough LTCI coverage to make a need for Medicaid very unlikely, but still possible, and they have assets they want to preserve. For them, a PQ policy offers some assurance that in the event they do have to apply for Medicaid, some of their assets will be protected.

However, those considering a partnership policy should be aware of a number of important limitations and drawbacks:

• Medicaid benefits for home and community-based long-term care are unavailable or restricted in some states, assisted living is not generally covered, and the choice of facilities may be limited. Consequently, a person who goes on Medicaid when her LTCI benefits end may have to move out of her home and into a nursing home. Or she may have to move from one facility to another, and the new facility could be far from home or less desirable for some other reason.
• There is no automatic roll-over to Medicaid coverage after one's partnership LTCI benefits are exhausted. A person who uses up her insurance benefits must apply for Medicaid like anyone else, and acceptance is not guaranteed. Such a person must meet Medicaid criteria for general eligibility and functional eligibility (need for care) as well as asset and income eligibility limits. In the four original partnership states, it is not uncommon for an individual to exhaust her insurance benefits but not qualify for Medicaid.
• Partnership programs affect only assets, not income. A person who has exhausted his insurance benefits might not qualify for Medicaid because his income exceeds eligibility limits. And if he does qualify, he will generally have to spend almost all his income on care.
• Buying a partnership policy does not protect all of a person's assets, only an amount equal to the LTCI benefits received. If a person exhausts his insurance benefits and applies for Medicaid, he will still have to spend down any assets above this amount. (The Indiana and New York programs do offer total asset protection, but these are exceptions, and the DRA does not allow this for new programs in other states.)
• If a person's home is deemed a countable asset by Medicaid and subject to spend-down require-

ments, a partnership policy protects it only if the amount of home equity is less that the amount of protected assets (that is, the amount of insurance benefits the person has received). Likewise, if a home is subject to estate recovery, partnership coverage protects it only if the equity is less than the LTCI benefits received.
• Given the financial strains on the system, Medicaid asset and income eligibility limits could be considerably stricter in the future, making it more difficult to qualify, and benefits could become less generous.
• There is no guarantee that any assets will be preserved, even if one qualifies for Medicaid. If the daily or monthly benefit of a partnership policy is insufficient to cover the cost of care, a person could spend his assets before he uses up his insurance benefits and applies for Medicaid.
• If an insured moves to another state, Medicaid asset protection may not be available there. The new state might not have a partnership program, or it might not have reciprocity with the old state. A person in this situation would have to either forgo asset protection, or move back to the old state when he needs to apply for Medicaid, or move to another state that has a partnership program with reciprocity with his original state. And consumers should also be aware that even in cases where the new state does extend reciprocity, the benefits and eligibility of its Medicaid program might be different from the old state's.
• Partnership programs are subject to change. The federal government or state governments could substantially modify or discontinue partnership programs in the future, possibly affecting the asset protection provided by a PQ policy.

These are important concerns, and a person thinking of buying a partnership policy should give them serious consideration. But it should also be pointed out that most LTCI policies sold today meet the DRA requirements for PQ status, except in some cases for inflation protection. So if a person is planning in any case to buy an LTCI policy with the inflation protection required for his age by the DRA, there is no reason not to buy a PQ policy rather than a non-PQ policy, assuming the price is the same or very close. In such cases, the fact that a policy happens to have PQ status and entitles the insured to Medicaid asset protection in the event he ever needs it is simply an extra.

Suitability Questions

In summary, an agent trying to determine if a PQ policy is suitable for a client should ask me following questions:

• Is the client's income too low? If he is unable to afford the premium, or will likely be unable to in the future, the policy is not suitable (unless family members will contribute).
• Are the client's assets too small? If his assets are not substantial enough for him to benefit significantly from Medicaid asset protection, the partnership policy is not suitable.
• Is the client's income too high? He may be unlikely to qualify for Medicaid.
• Does the client want a very large amount of LTCI coverage? If he wants and can afford a policy with a very large or unlimited lifetime maximum, it is extremely unlikely he will ever apply for Medicaid and need the asset protection afforded by a PQ policy.
• Does the client want to buy limited coverage, in the expectation of eventually applying for Medicaid, in order to protect assets? He must understand the drawbacks of being a Medicaid recipient and the uncertainty of qualifying for Medicaid. Also, it may be advisable to tailor the amount of coverage to the amount of benefits to be protected.
• Is the client attracted by the asset protection a PQ policy affords in the unlikely event he must apply for Medicaid? He must be aware that not all assets are protected, including possibly his

home. He should also select a daily or monthly benefit amount sufficient to cover at least most of his likely long-term care needs so that his assets are not depleted before his insurance benefits run out. He should also be warned about the uncertainty of Medicaid eligibility.

- How likely is the client to move to another state? Some people are very well established in a locality, and for them reciprocity may not be a serious concern. Others must be made aware that the Medicaid asset protection that a PQ policy provides may not be available in other states.
- What is the price difference, if any, between a PQ policy and a comparable non-PQ policy? There may be no difference or only a very small one, in which case it may make sense to have the asset protection of a PQ policy just in case.

In short, partnership LTCI policies have their limitations, and an agent must make sure clients understand these and must not over-promise. But in our discussion, we should not lose sight of the fact that partnership policies are an innovative product that offer a valuable advantage to many people -- the protection of some of their assets should they ever need to apply for Medicaid.