Chapter 9 Long-Term Care Ethics

Long-Term Care Ethics

The concept of ethics and ethical sales practices applies to any insurance product, but it is especially important when the issue is long-term care. Ethical practices can be defined by laws and regulations in terms of required and prohibited activities, and they can be set forth in a company or professional association's code of conduct. However, perhaps the most compelling force that guides ethical conduct comes from the standards that individuals set for themselves as a reflection of their desire to do good. Insurance producers who serve the senior market and represent late-life products such as long-term care insurance have the capacity to help citizens manage a very specific and very critical risk; however, they must act at all times in accordance with what is best for their prospects and clients.

Is Long-Term Care Insurance Right for Everyone?

Long-term care insurance presents a viable option to the risk of long-term care by ensuring that an individual retains control over where care is received and that funds will be available to cover the costs of care if and when it is needed. However, despite its many benefits, long-term care insurance is not right for everyone. Producers must consider carefully their clients' needs, objectives, and financial limitations when presenting these policies. Long-term care insurance is best for those who need the coverage and can afford the premium without sacrificing current standards of living.

Producers must keep in mind the long-term nature of LTCI and the ongoing premium commitment the product entails. Whereas an individual's income level may be adequate today, it could decline once he or she reaches retirement, or it may not keep pace with the cost of living over time. Clients must at all times be able to afford their premiums and still have a cushion for unexpected expenses or possible premium increases in the future.

Producers should also understand the significant role of Medicaid in meeting the long-term care need. The fact is Medicaid pays most LTC costs. People with low or moderately low incomes may not have much in the way of assets that need protection. They may already qualify for Medicaid LTC services. In addition, these people may not be able to afford LTCI premiums. For these reasons, long-term care insurance is probably not right for people with fixed or low incomes and may not be right for people with moderate incomes who could, without hardship to themselves or any dependents, spend down their assets to meet Medicaid eligibility.

At the other end of the spectrum are those who may not need an LTCI policy because they have significant assets and income and could afford to pay for a nursing home stay. Granted, assets would have to be considerable to meet the projected future costs of long-term care, but some fortunate people do fit into this category. Those with significant assets may be better off self-insuring or using a combination of funding strategies that includes self-insuring and private insurance.

Somewhere in the maze of people who are not appropriate candidates for LTCI is a viable market of those who need and can benefit from long-term care insurance. Generally speaking, these are individuals who:

-Have a fair amount of assets to protect
-Do not want (or cannot afford to) use savings or retirement income to pay for long-term care
-Are concerned about preserving assets for a spouse or heirs
-Have reason to believe they may require LTC because of a health factor or family history but who do not yet have a specific diagnosed condition that would later prevent them from obtaining insurance
-Want to retain control over how and where they will receive future care
-Prefer to spare their family the responsibility for care
-Have the financial resources to pay for the coverage without difficulty

Fortunately, producers have the benefit of specific standards and tools to guide their efforts when determining who is an appropriate candidate for long-term care insurance. These standards and tools are found in state laws and regulations, in company policy and procedure guidelines, and in the principles that define needs-based selling and suitable product placements.

Consumer Standards and Guidelines
The long-term care partnership provisions of the DRA cite certain consumer protection requirements of the NAIC LTC Model Act and Regulations that must be followed to market and sell partnership policies. As discussed in the previous unit, these include:

-establishing and implementing marketing procedures and producer training requirements to ensure that products are appropriately placed, policy comparisons are fair and accurate, and that excessive insurance is not sold or issued;

-providing copies of all required informational and disclosure documents to applicants, including shopper’s guides and coverage outlines;

-reviewing and monitoring producer activity, including lapse and replacement rates;

-conforming to the prescribed language and format for outlines of coverage and policy forms, including a statement that informs the buyer that the policy may not cover all of the costs associated with long-term care during the period of coverage;

-making reasonable effort to identify whether prospective LTCI applicants already have accident and sickness or LTCI and the types and amounts of any such insurance; and

-establishing auditable procedures for verifying compliance with these rules.

In addition to these requirements—which many states impose on the sale of any long-term care insurance policy, regardless of whether it is used in conjunction with a partnership program—insurers and producers must comply with the provisions of a state's fair practices laws and regulations.

Unfair and Deceptive Trade Practices and Acts
Drafted in 1964, the Uniform Deceptive Trade Practices Act was designed to bring state law up to date by removing undue restrictions on common law action for deceptive trade practices. Every state has codified some form of consumer protection legislation modeled after the act. Although these statutes vary from state to state, they all target a common element—fraudulent and deceptive acts by businesses.

Most state deceptive trade practices statutes include broad restrictions of the terms "deceptive" or "unfair" trade practices. They often include prohibitions against fraudulent practices and unconscionable acts as well. Some examples of deceptive trade practices or acts are:

-disparaging the goods or services or business of another by a false or misleading representation of a material fact

-representing that consumer goods or services have a sponsorship, approval, use, or benefit that they do not have

-deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on it;

-the use of any plan or scheme in soliciting sales or services over the telephone that misrepresents the solicitor's true status or mission

-the use of a contract related to a consumer transaction containing a confessed judgment clause that waives the consumer's right to assert a legal defense to an action

To further citizen protection, states typically incorporate some form of deceptive trade practice legislation into their insurance codes. The prohibited acts just listed are insurance industry-specific and usually relate to the sale of policies and the payment of claims.

The NAIC's LTC model specifically addresses deceptive trade practices. In addition to the practices prohibited in a state's unfair trade practices act, the following acts and practices are also prohibited:

-**Twisting**
Twisting is knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policy or of any insurer to induce someone to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert a policy or to take out a policy with another insurer.

-**High-Pressure Tactics**
A high-pressure tactic is defined as using any method of marketing with the effect of inducing the purchase of insurance through force, fright, threat, or undue pressure. This applies whether the marketing method in question is explicit or merely implied.

-**Cold Lead Advertising**
Cold lead advertising is using, directly or indirectly, any method of marketing that fails to conspicuously disclose that a purpose of the marketing is to solicit insurance and that contact will be made by an insurance producer or insurance company.

-**Misrepresentation**
Misrepresentation involves misrepresenting a material fact in selling or offering to sell a long-term care insurance policy. A material fact is a fact that would be important to a reasonable person in deciding whether to engage in a particular transaction. It is an important fact as distinguished from a trivial one.

Suitability
In the context of long-term care and long-term care insurance, the term "suitability" refers to the determination of whether a policy is appropriate for a particular consumer. As noted at the beginning of this unit, LTC insurance is not right for everyone. Some questions to be answered when determining suitability include:

-Does the policy address the applicant's need for LTC services?

-Does the recommendation to purchase a policy take into account the applicant's ability to pay?

-Does the recommended policy provide adequate, but not excessive, coverage?

-Does the applicant fully understand the policy offered and its benefit provisions?

-If the policy is a partnership policy, is the recommended amount of coverage in line with the value of the assets the applicant wants to protect—neither too much nor too little?

-What other resources may be available to the applicant that would cover his or her need for long-term care?

NAIC Suitability Standards
To promote suitable recommendations and sales of long-term care policies, the NAIC model imposes certain requirements on insurers. According to the model, all insurers marketing LTC policies must:

-develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

-train its agents in applying its suitability standards; and

-maintain a copy of its suitability standards and make them available for inspection upon request by the state's insurance commissioner.

To determine whether an applicant meets the standards developed by the issuer, the procedures must address the following:

-the applicant's ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage, such as the applicant's current income, any expected changes to income, and the amount of assets at risk;

-the applicant's goals or needs with respect to long-term care, such as to remain independent as long as possible, to preserve assets for heirs or charities, to have more control over the LTC services delivered, and the advantages and disadvantages of using insurance to meet these objectives; and

-the values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

Determining suitability for LTCI should also consider the applicant's age and the appropriateness of inflation protection, the local cost of services, and diagnosed medical conditions, if any.

Personal Worksheet

Insurers and producers must make "reasonable efforts" to obtain the information necessary for a suitability analysis. Certainly, such efforts should be based on the principles prescribed by a needs-based sales model, where the focus is on determining the client's needs, goals, and objectives in light of his or her financial resources. Needs-based selling includes a thorough discovery or "fact-find" and an analysis of the information revealed in the fact-find. Then, only if a need is determined that can be met by an insurance policy, may a product recommendation be made. In this way, needs-based selling is distinct from product-based selling, which focuses on a product's features and benefits.

Supporting the principles of needs-based selling is the NAIC's model, which stipulates that "reasonable efforts" to information-gathering include having all potential LTCI buyers complete a "Long-Term Care Insurance Personal Worksheet" before application. The worksheet assists the insurer in assessing the suitability of a proposed policy and issuing long-term care insurance only to those who need the coverage and who can afford it. (A sample personal worksheet developed by the NAIC for this purpose is included at the end of the printable version of the course curriculum. Insurers may adopt this sample or develop a similar version of their own.)

The completed personal worksheet must be returned to the issuer and must be reviewed by the insurer before a policy is issued. (The worksheet does not have to be returned for sales of employer group LTCI to employees and their spouses.) The sale or dissemination outside the company of information obtained through the personal worksheet is prohibited.

Suitability Letter
Upon receipt of a worksheet in conjunction with an LTCI application, the insurer will assess the information in light of its established suitability standards to determine whether issuing a long-term care policy to the applicant is appropriate and can be supported by the facts and data. If the issuer determines that the applicant does not meet its financial suitability standards or if the applicant has declined to provide the information, the issuer may reject the application.

Alternatively, the issuer may send the applicant a suitability letter. A suitability letter is sent if a review of the facts suggests that the policy being applied for is not suited for the applicant's needs or goals. It also explains the insurer's finding. It reads, in part, as follows:

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

The suitability letter includes a section for the insurer to briefly explain the reason for its determination and provides the applicant the choice of checking "yes" or "no" to proceed with the underwriting process. (A sample suitability letter, developed by the NAIC, is included at the end of the printable version of the course curriculum.)

If the applicant declines to provide financial information, the issuer may use some other method to verify the applicant's intent for purchasing LTC insurance. Either the suitability letter, signed and returned by the applicant, or a record of the alternative method of verification must be made part of the applicant's file.

Suitability Reporting Requirements
Insurers must report annually to their states' commissioners the following:

-the total number of long-term care applications received from residents of their states;
-the number of those who declined to provide information on the personal worksheet;
-the number of applicants who did not meet the suitability standards; and
-the number of those who chose to confirm their intent to purchase LTCI after receiving a suitability letter.

Policy Replacement
A problem that has surfaced with the growth of the LTCI industry is replacements. In many cases, new policies that are recommended and purchased are not significantly different from the coverage they replace. Unfortunately, some producers are encouraged to recommend inappropriate replacements, because commissions paid during the first year of a policy are often much higher than the commission for renewal years. Another factor motivating replacements by less-than-ethical producers is the fact that LTCI premiums are based on the purchaser's age at the time the policy is issued, and a buyer who replaces an older policy with a similar new policy will

pay more for the same or similar benefits because of his or her current age. Thus, the producer's commission will be higher.

Industry regulators recognize that long-term care insurance is in an evolutionary stage. Product designs need to change to be responsive to the needs of citizens. For example, newer LTCI policies may have more favorable provisions than older policies or provide coverage for expanded care options. Also, newer policies generally do not require prior hospital stays or certain levels of care before benefits begin. Because long-term care insurance and long-term care insurance regulations are continually changing, it is important to keep in mind that not all replacements are improper. Replacement does serve a purpose when it is in the best interest of the citizen. The defining element is the consumer's interest—not that of the producer or company.

Nearly all states have adopted rules to discourage unjustified replacement of existing policies. Insurers or producers must identify applicants who are replacing an existing policy and notify the applicant of the implications of buying replacement coverage. LTCI application forms include questions designed to elicit information as to whether, as of the date of the application, the applicant has other long-term care insurance coverage in force or whether the policy applied for is intended to replace any other accident and sickness or LTCI policy presently in force. A supplementary application or other form to be signed by the applicant and the producer containing the questions may be used.

The questions designed to solicit this information are as follows:

-Do you have another long-term care insurance policy or certificate in force, including a health care service contract or a health maintenance organization contract?

-Did you have another long-term care insurance policy or certificate in force during the last 12 months?

-If so, with which company?

-What is the expiration or paid-to-date of that policy?

-If that policy lapsed, when did it lapse?

-Are you covered by Medicaid?

-Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?

If the applicant chooses to move forward with the replacement, the existing insurer must be notified. In all cases, producers should counsel their clients to make sure that the replacing insurer accepts the application and issues the new policy before the original policy is cancelled.

The Producer's Role

The realities of today's market and the growing need for long-term care offer the insurance producer many opportunities. As more and more consumers recognize long-term care as a true risk, producers are well positioned to expand and enhance the real "product" they represent: financial security. Those who educate and prepare themselves to provide sound, objective, and informed advice on the need for long-term care and the options that are available to meet this need will find that they can, at once, deliver a valuable consumer service, further client trust, and build new client relationships

Summary

Ethical standards are found in statutory regulations, professional codes of ethics, company policies, and personal behavior. Producers with the highest standards will call upon all of these for guidance when selling long-term care insurance. Long-term care insurance is not right for everyone, so producers must carefully consider client needs, objectives, and ability to pay when recommending policies. The NAIC's standards and guidelines set forth many consumer protection requirements aimed at saving insurance buyers from harm in the way of unfair or deceptive trade practices and acts. Following these guidelines and the NAIC's suitability measures will help producers achieve high standards of ethical fitness.