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Lowest Interest Rates Force Long-Term Care Insurance Prices Up

Prices for long-term care insurance policies jumped between 6 and 17 percent in the past year, according to an industry survey.

A 55-year-old couple purchasing long-term care insurance protection can expect to pay $2,700 a year (combined) for about $340,000 of current benefits, according to the 2012 Long-Term Care Insurance Price Index, an annual report from the American Association for Long-Term Care Insurance. The same coverage would have cost the couple $2,350 in 2011.

The steep price rise is primarily due to historic low interest rates and yields on fixed-income investments, explained Jesse Slome, the Association's executive director, in a press release. Between 40 and 60 percent of the dollars an insurer accumulates to pay future claims comes from investment returns, Slome said, noting that for every one-half percent drop in interest rates an insurer needs about a 15 percent premium increase to maintain the projected net profit.

The Association annually analyzes what consumers will pay for the most popular policies offered by ten leading long-term care insurance carriers. The study found that the average cost for a 55-year-old single individual who qualified for preferred health discounts is $1,720 for between $165,000 and $200,000 of current coverage. In 2011, the same coverage would have cost an average of $1,480 annually.

The policies the Association priced all include a 3 percent compound inflation growth factor, meaning that a 60-year-old couple buying $340,000 of current coverage today would see their benefit pool grow to $610,000 when they reach age 80. According to the report, the couple could expect to pay about $3,335 a year if both spouses qualified for preferred health discounts.

The study suggests that it's more important than ever to shop around for coverage because the range between the lowest-cost and the highest-cost policy has increased compared to the prior year. "For the 55-year-old single policy applicant the highest-priced policy cost almost 80 percent more than the lowest-priced policy," Slome noted. "For some categories, the difference was as much as 132 percent and no single company always had the lowest nor the highest rate, which is why we stress the importance of comparison shopping." Nearly three-quarters of buyers opt for a 3- to 5-year benefit period, the Associaton reports. Policyholders can experience rate rises after they purchase, although long-term care insurers are allowed to raise prices only on a class of policyholders, not on individuals ones, and they must receive state approval for the rate hike.

CzepigaDalyDillman Attorneys Win A Partial Victory Against Connecticut in Medicaid Annuity Case

A federal district court in Connecticut, in a lawsuit filed by CzepigaDalyDillman, grants a preliminary injunction prohibiting the Connecticut Departmant of Social Services (DSS) from treating a community spouse's income stream from a non-assignable annuity as an available resource, although the court stays execution of its decision pending the outcome of a similar case now before the Second Circuit. *Gale v. Bremby* (U.S. Dist. Ct., D. Conn., No. 3:11-CV-972-AVC, March 28, 2012).

When the plaintiffs applied for Medicaid nursing home benefits, their applications were (or would be) denied based on a DSS regulation that treats a community spouse's actuarially sound and non-assignable annuity income stream as an available resource. The plaintiffs filed a motion for preliminary injunction in federal district court seeking to stop DSS's practice. They argued that based on the doctrine of offensive collateral estoppel, the court's prior decision in another CzepigaDalyDillman case, *Lopes v. Starkowski*, (U.S. Dist. Ct., D. Conn., Aug. 11, 2010) -- holding that Connecticut could not treat income streams from annuities as available assets for the purposes of Medicaid eligibility -- was controlling and prevented re-litigation of the issue. DSS countered that Lopes was not binding, at least until the State's pending appeal of that decision is resolved.

Finding the issue in this case to be materially the same as that addressed in Lopes, the U.S. District Court for the District of Connecticut granted in part the motion for a preliminary injunction. The court concluded that the denial of Medicaid benefits constitutes irreparable harm and that, based on offensive collateral estoppel and the preclusive effect of the Lopes decision, at least one of the plaintiffs has established a likelihood of success on the merits. However, the court stays execution of the decision pending resolution of Connecticut's appeal of Lopes to the Federal Second Circuit Court of Appeals.

Attorneys Brendan Daly and Paul Czepiga, represented the plaintiffs in this case.

Nursing Home That Required Son to Sign as Responsible Party as Condition of Mother's Admission Cannot Enforce Agreement

An Alabama appeals court holds that a nursing home admission agreement that imposed liability on a son for his mother's nursing home costs after she failed to qualify for Medicaid violated federal law and was unenforceable because the facility required the son to sign the admission agreement as a condition of her admission. Knight v. John Knox Manor, Inc. (Ala. App. Ct., No. 2100782, March 16, 2012).

When Richard Knight admitted his mother to a nursing home, the facility required him to sign the admission agreement as a responsible party as a condition of his mother's admission. Mr. Knight applied twice for Medicaid for Mrs. Knight, but her application was denied on the grounds Mr. Knight did not present enough information.

The nursing home sued Mr. Knight for breach of contract, among other things, seeking the unpaid balance of Mrs. Knight's nursing home fees. Mr. Knight argued the admissions agreement was void because when the nursing home required Mr. Knight to sign the agreement before admitting his mother to the nursing home it violated federal and state law. The trial court ruled in favor of the nursing home, and Mr. Knight appealed.

The Alabama Court of Civil Appeals reverses, holding the admissions agreement was unenforceable. The court rules that because the nursing home required Mr. Knight to sign the agreement as a condition of his mother's admission and the language of the contract purported to impose personal liability on Mr. Knight, the language imposing personal liability violated federal law and was therefore unenforceable.

Editor's Note: Connecticut law is consistent with this case, but it is very easy for a child, who is a Responsible Party, to inadvertently say or do something that expands their liability to the nursing home. For example, a child can make an oral promise to the nursing, such as "I will keep my mother's assets below the $1600 Medicaid asset limit." Failure to then keep the mother's assets below the limit can result in a Medicaid denial and the nursing home could then sue the child and possibly win the lawsuit.

Major Long-Term Care Insurance Carrier Leaving Individual Market

Prudential Financial, Inc., says it will stop selling individual long-term care insurance policies and instead focus on the group sales market.

Prudential, which ranked fifth among individual long-term care insurance carriers in 2011 according to an industry survey, is just the latest major player to exit the market. Last month Unum Group announced it would discontinue sales of long-term care insurance to employees of corporations, and MetLife ended sales of long-term care insurance in late 2010. Other insurers have remained in the long-term care market but have hiked premiums considerably.

Sellers of this type of coverage, which pays for care in nursing homes and increasingly, at home as well, have been hit particularly hard by the climate of historically low interest rates. The companies' profits rely on returns from investing policyholder premiums. In addition, policyholders are living longer and fewer are dropping policies midstream than actuaries predicted.

"The decision to exit the individual long term care business reflects the challenging economics of the individual market and our desire to focus our resources and capital on the group market," Malcolm Cheung, a vice president in Prudential's group insurance unit, said in a statement.

According to the insurance consulting firm LIMRA, 10 out of the top 20 individual writers of long-term care insurance have since exited the market over the last five years. LIMRA says the top five individual carriers in sales for 2011 were Genworth Financial, John Hancock Financial, Mutual of Omaha, Northwestern Long Term Care and Prudential Long Term Care.

Prudential will stop taking applications for individual policies as of March 30, 2012, but said it will continue to honor its existing individual policies.

"As long as premiums are paid on time and benefits are not exhausted, coverage will remain in place, although premiums can be changed subject to regulatory approval," the company said in its announcement.

Editor's Note: No surprise here. The industry is undergoing a shakeout as actuarial estimates are overtaken by actual experience.

A Shot Over the Bow or a Portent of Things to Come

As States strive to reduce their nursing home costs, one of the thus far overlooked ways that they may do so is to seek more onerous recovery provisions against either or both of the estate of a deceased Medicaid recipient or the estate of a recipient's deceased spouse.

New York recently passed legislation last year allowing it to do so, but new legislation was passed on March 30, 2012 as part of New York's Health Budget Bill repealing the expanded definition of "estate" for Medicaid purposes. Although New York's expanded Medicaid recovery law took effect April 1, 2011, it was never fully implemented. It gave the state expanded powers to recover assets from the estate of a Medicaid recipient. It also broadened the definition of "estate" to include "any other property in which the individual has any legal title or interest at the time of death," including jointly held property, retained life estates and interests in trusts.

Editor's Note: Don't be surprised if Connecticut, too, attempts to expand recovery provisions against the estates of Medicaid recipients or against the estates of their spouses. If Connecticut attempts to do so, it will be up to all of us to rally to prevent such legislation from ever being passed in the first place.