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Who Cares? You Should

The Status of State Long-Term Care

Situation: Public policy makers face a problem – how to pay for the cost of long-term care for people who are no longer able to take care of themselves.[1] With the chances of needing long-term care services exceeding fifty percent for individuals turning 65 today, the rapid growth of the aging population, and the number of younger family members who can help financially or with unpaid care declining, policy makers are being tasked with developing a system to help people pay for the costs of long-term care.[2]

Most Americans understate the risk of needing long-term services and support. Most prefer not to think about their need for assistance or who will provide it. They underestimate the likelihood that they will need help and how much it will cost. Even if they recognize the possibility of needing daily help, many Americans mistakenly assume that health insurance will cover these costs.[3] Medicare, the major public health insurance program for older Americans, does not cover most long-term care expenses. Medicaid is the single largest source of public funding for long-term care; however, it is available only for individuals who meet income and other eligibility requirements.

A private market for long-term care insurance exists, but a traditional stand-alone long-term care policy has issues. Despite a growing need, stand-alone individual LTCI policies have fallen from 372,000 in 2004 to just over 67,000 in 2020. This dynamic shift translates into fewer new policies supporting an increasing cost of care from existing policies. Additionally, for the new stand-alone policies being issued, there is upward pressure to increase premiums, which of course further constricts the demand. Likewise, the number of insurers offering the coverage has diminished from slightly over 100 to about a dozen today.

Due to the challenges facing the traditional LTCI industry, an innovative transformation is taking place. This includes the development of new products that are more affordable and flexible to meet the coverage needs of consumers. Today, the vast majority of long-term care products sold are hybrid products (combining life insurance or annuity with a long-term care element), with carriers entering the market instead of leaving it. Despite the improvement of long-term care insurance coverage options in recent years, according to a 2019 study by the National Association of Insurance Commissioners only about 6.58 million people--less than 6% of the population age 50 and older--had a long-term care policy.

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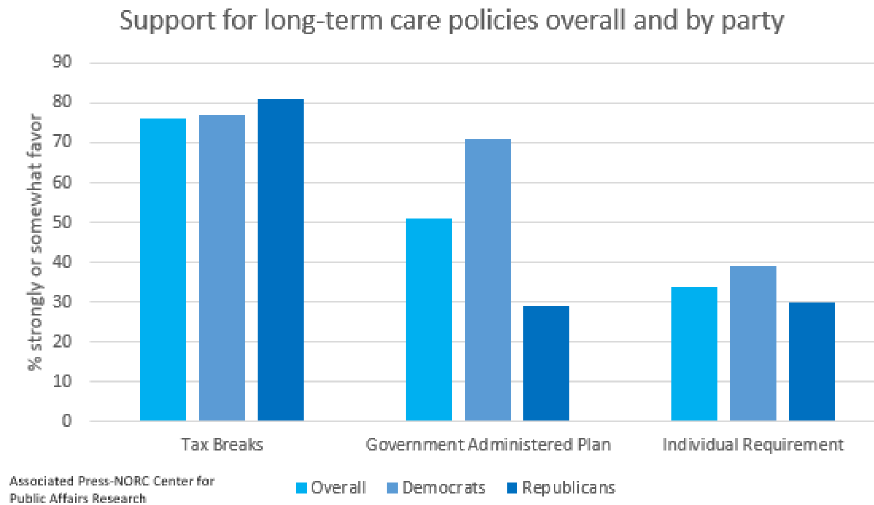
Even though most individuals are not doing much to prepare for their own long-term care, according to a 2022 study by the Associated Press-NORC Center for Public Affairs Research the vast majority of Americans are supportive of a program that would help them to do so. Roughly 77% of individuals 50 and older support tax breaks to encourage savings. Half favor a government-administered long-term care insurance program. About a third support a requirement that individuals purchase long-term care insurance.[4]



How much of this problem should be taken care of by family members and personal savings, how much by private insurance, and how much should be addressed by public programs is a challenging question which states are attempting to address as the amount needed to pay for long-term care expenses is expected to increase much faster than the federal and state budgets established to pay for the services. This Counselor's Corner will discuss a couple of state long-term care developments.

Solution: Long-term care policies and programs are determined in the United States by 50 separate state governments, each with different demographics, economies, and political philosophies. State officials face several major challenges as they try to slow rising Medicaid costs.

Against this backdrop, states are increasingly enforcing laws that provide responsibility for the payment of elderly care from sources other than the government. One such law, the filial responsibility statutes, exist in 30 states and Puerto Rico.[5]

The filial support laws are not new. In fact, origins trace them back to antiquity and the moral precepts of Judaism, Christianity and Islam. The current laws date back to colonial times and were derived from the 1601 Elizabethan Poor Relief Act. During the 1950s forty-five states had filial support legislation, and prior to the passage of Medicaid in the 1960s federal legislation recognized the obligation as well. However, with the passage of Medicaid several states repealed their statutes and the federal obligation was repealed with the passage of the Medicare legislation. The states that still have filial responsibility statutes have rarely enforced the laws, but times are changing and recently there has been increased enforcement of the laws to force children to pay their parents' care bills.

Filial responsibility laws can be very different from state to state. In general, the filial support or responsibility laws state that an adult child of an impoverished parent has the legal obligation to pay for the necessities of the parent who cannot do so for themselves.[6] Each state determines the support that must be provided, but it is clear that an individual does not need to be completely without resources to be covered by the filial laws.

For example, in a 1994 Pennsylvania case a court held relatives of an elderly woman responsible for her care because her Social Security income was not sufficient to cover her reasonable care and maintenance. Generally, the filial laws provide that the support obligation is imposed on adult children; however, many of the laws do not provide direction concerning how or whether the liability for support should be apportioned among multiple children. Some courts have ruled that it's appropriate to target one adult child, and it is the child's responsibility to sue his siblings.

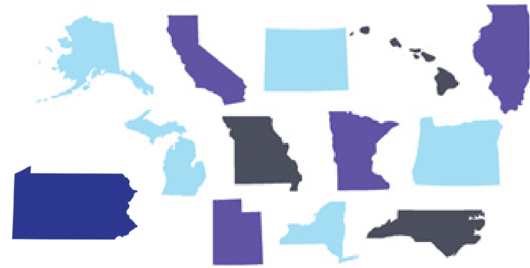
There are exceptions/ limitations to finding an adult liable for the support of an indigent parent. First, the party

seeking enforcement of the law must establish that the child is financially able to cover the parent's expenses. Clearly, if forcing the adult child to pay for the care of the parent would render him/her destitute a court would not enforce.

The filial support laws only apply in situations where an impoverished parent for some reason does not qualify for Medicaid and does not pay their bill. If the parent is eligible for Medicaid, then the government is paying the bill and the state filial law is not relevant. Instead, the state will try to recover care costs though the recipient's estate once they pass away. This process is known as the Medicaid Estate Recovery Program (MERP). Since passage of the Omnibus Budget Reconciliation Act of 1993(OBRA '93), Congress has required states to try to recover the cost of Medicaid benefits from the estates of certain nursing home residents and older persons receiving home- and community-based services. This law applies to individuals who were age 55 or older when they received Medicaid. There are some exceptions such as not collecting during the life of a surviving spouse or disabled child.

In addition to the enforcement of state filial responsibility statutes, several states have recently begun to explore

States Considering Publicly-financed LTC Programs:
AK, CA, CO, HI, IL, MN, MO, MN, OR, PA, NC, NY, UT



the feasibility of providing a publicly financed long-term care option to help reduce pressure on the Medicaid system.[7] In 2019, Washington state established the first publicly financed long-term care program known as Washington Cares Fund. The program was enacted with the strong endorsement of the local Democratic Party and over the strong objection of the local Republican Party. Of the 13 states looking at a state financed long-term care option, six will be trifecta states in 2023 where the local Democratic party controls the Governor and both legislative chambers, making it more likely to see passage of legislation.

The Washington Long-Term Care Trust Act requires individuals to have a long-term care insurance policy in place in one of two ways:

- **Automatic enrollment through the State of Washington** with a new payroll tax of $5.80 per $1,000 of earnings, paid by the employee with at least 500 hours of work in a year.[8] Deductions were to begin with the first paycheck of 2022, but amendments to the legislation pushed the date on which taxes would take effect to July 1, 2023.
- **Enrollment in a privately purchased qualified long-term care policy**, with benefits comparable to the public benefits, before November 1, 2021, and attestation filed with the State of Washington to opt-out of the program by December 31, 2022. Individuals who filed the exemption are permanently barred from the program.[9] Attestation does not require state verification and responsibility for tracking of exemption status falls on employers and employees.

Benefits are paid to Washington residents who are at least 18 years old, who have vested, and are determined by the state to need assistance with at least three activities of daily living. Benefits are not portable. So, it only covers individuals who continue to reside in Washington. Upon becoming eligible, a person would receive coverage of services of up to $36,500 over the course of person's lifetime.

As soon as the legislation was enacted it came under attack. Subsequent amendments addressed some of the concerns, but problems persist. Clearly, the benefit amount will only be sufficient for a short institutional stay or about a year of in-home assistance. Also, individuals have expressed concerns over the lack of portability. Finally, even the Washington state legislature recognized potential adverse selection problems caused by the lack of state verification and ongoing recertification of exemption status.

Carriers also experienced problems with the Washington Cares program. First, long-term care policies take many forms, and the legislation did not clearly define what forms of coverage qualified for the exemption status. The one-time deadline for exemption qualification coupled with the small coverage amount created hardships for many carriers, resulting in many withdrawing from the Washington market. Finally, carriers have expressed concerns that the lack of a state ongoing recertification of exemption status may result in individuals lapsing their policies.

While the Washington legislature is in process of dealing with some of the shortcomings of the legislation, the California Long-Term Care Insurance Task Force, one of the Democratic trifecta states, has been meeting this year to sketch out a program without duplicating the problems that hampered the Washington state program launch. Task force members hope to deliver a proposal by January 1, 2023.

Unlike the limited benefit provided by the Washington Cares legislation, California task force members have been discussing the possibility of creating a more robust program that would provide $3,000 to $6,000 per month in benefits for eligible participants for a period of up to two years. Task force members are still making many decisions about matters such as how long the vesting period might last, whether vested enrollees could file claims if they needed long-term care before age 65, opt-out provisions, whether vested enrollees could use their benefits for care outside California, and whether the additional tax will be paid solely by the employee or a combination of employer and employee.

One aspect of potential concern for the California task force is the projected tax cost of the robust proposals. Most of the task force members favor the most robust proposal with an estimated additional tax of almost 3%. It is one thing to adopt a .58% tax in a state without a personal income tax, such as Washington, and another to add 3% on top of what are already high personal income tax rates in California. It will be reality check time when the proposals get to the California state legislature.

As the California task force is coming to its conclusion another Democratic trifecta state, New York, appears to have a draft plan in the Senate. The New York proposal is similar to the Washington plan, with a tax on earned income, giving the taxpayer $36,500 to pay for care and available five years after the plan becomes law. It's difficult to know how the proposal will shape up since it is still in the initial phase. In the draft plan there is a proposed exemption if an employee owns long-term care insurance prior to January 1st of the year in which the law is enacted.

One hopes that New York learns from the Washington Cares problems prior to enacting any legislation. In addition to the Washington Cares problems, the January 1st retroactive deadline established in the New York proposal creates a problem for individuals who want to opt out by purchasing coverage. Time may be running out for individuals who want to opt out by purchasing coverage. The limited number of approved long-term care products available in New York may compound the problem especially if carriers drop out of the New York market as they did in Washington.

A new Democratic trifecta state, Minnesota, also has a draft of a bill that is similar to the Washington Cares legislation. There has been no known update since it was introduced in 2021, during a time when Minnesota had a divided government. Once Minnesota has Democratic control in 2023, we might see movement of some legislation. As drafted, the Minnesota bill provides 365 benefit units of $100 each to eligible beneficiaries payable to qualified providers. This benefit is funded by

a long-term care state payroll tax and there is no known exemption. There was some recent momentum on legislation allowing for certain hybrids that combine term life insurance and long-term care insurance as a lifestyle plan, so it seems that many things are still on the table. Known for its pioneering healthcare, we could see some new variations from the Minnesota legislature.

Finally, on August 22, 2022, a bill like the Washington Cares Act was introduced in Pennsylvania. There has been no known update since it was introduced. With the local Republican Party controlling both chambers of legislature, little movement is expected on the bill.

In Summary. Several states are considering a public financing option to address the high cost of long-term care - with two of the most populated and highest taxed states, California and New York, among them. Both states appear to have an exemption to any payroll tax if a resident owns qualified long-term care insurance; however, given the limited number of carriers providing coverage in both states clients of financial advisors are urged to apply for coverage NOW especially in the states considering a public option.

[1]*The Congressional Budget Office projects that if the share of adults ages 65 and older with functional limitations remains constant long-term care services and support expenses (including all paid care financed by Medicaid and other private and public sources, including Medicare payments for post-acute services) could more than double between 2010 and 2050 as the elderly population grows. In 2019, an estimated $426.1 billion was spent on long-term care services and support. Kirsten J. Colello, "Who Pays for Long-Term Services and Support?" In Focus Congressional Research Service (August 5, 2021), https://crsreports. congress.gov.*

[2]*Many individuals will need assistance for less than three years. However, about one in five of all adults (22%), will need support for more than five years. On average, an American turning 65 today will incur $120,900 in future long-term services and support costs, measured in today's dollars. Families will pay more than one-third (37%) of the costs themselves out of pocket. But these paid services do not cover all care people need, family caregivers provide substantial unpaid care. Valuing unpaid care contributions at the wage of a paid caregiver, it's estimated that unpaid family care for older adults is worth $204,000 on average. The balance is paid by public programs and private insurance.*

[3]*Kane J (2013). PBS Newshour: Americans Seriously Unprepared for Long-Term Care, Survey Finds. http://www.pbs.org/newshour/rundown/as-boomers-age-most-woefully-unprepared-for-long-term-care.*

[4]*The AP-NORC Center for Public Affairs Research. (September, 2022). "Support for Greater Government Role in Health Care for Older Adults" [https://apnorc.org/projects/support-for-greater-government-role-in-helath-care-for-older-adults/].*

[5]*The 30 states that have filial statutes are: AK, AR, CA, CT, DE, GA, ID, IN, IA, KY, LA, MD, MA, MS, MT, NV, NH, NJ, NC, ND, OH, OR, PA, RI, SD, TN, UT, VT, VA and WV.*

[6]*It's possible that a state statue may impose financial responsibility on other relatives such as siblings.*

[7]*In addition to Washington, thirteen states are considering public financed long-term care coverage: Arkansas, California, Colorado, Hawaii, Illinois, Michigan, Missouri, Minnesota, Oregon, Pennsylvania, North Carolina, New York, and Utah.*

[8]*The plan did not cover self-employed individuals unless they opt-in within the first three years of the program or on becoming self employed for the first time. The election to pay taxes and become eligible for benefits is permanent until the individual retires or is no longer self-employed.*

[9]*2022 amendments to the legislation broadened the population able to voluntarily opt-out of the tax/program. These individuals are given a longer deadline to opt-out of the program.*

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