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The Office of the Long-Term Care Ombudsman advocates for elders

By Fred Steele, Director, Office of the Long-Term Care Ombudsman

A brief history

In the early 1970s, the Nixon administration initiated a nursing home ombudsman program that would focus exclusively on resident needs and preferences in response to growing concerns about the quality of care in nursing facilities and the government's ability to enforce regulations in these facilities. After several demonstration projects, the 1978 amendments to the federal Older Americans Act required each state to establish an ombudsman program.

The Oregon long term care ombudsman program was formally initiated in 1981, the same year that the U.S. Congress expanded the program's mandate to board and care homes. The Office of the Long-Term Care Ombudsman spent its early years in the Governor's office, but legislative action in 1985 made it an independent state agency.

In 2014, the Oregon legislature expanded the ombudsman program mandate to include a residential facilities ombudsman program that

would provide the same ombudsman services to residents of care facilities for individuals with an intellectual/developmental disability and for residents in mental-health licensed homes. The ombudsman office began providing services to those residents this year.

The mission

The mission of the long term care ombudsman program is to enhance the quality of life, improve the level of care, protect the individual rights, and promote the dignity of each Oregon citizen residing in a nursing facility, adult foster care home, residential care, and assisted living facility. A team of trained volunteers works throughout Oregon to accomplish these goals. The volunteers are supported by a paid staff that serves under the statutorily appointed long term care ombudsman.

The office engages in both individual and system advocacy with the following primary responsibilities:

- Investigate and resolve complaints made by or on behalf of Oregon's care facility residents
- Monitor the implementation of all federal, state, and local laws, rules, and policies that affect care facility residents
- Participate in educational efforts to promote quality care and ensure residents' rights as citizens
- Train and appoint volunteer ombudsmen to become Certified Ombudsmen and serve as local representatives of the Office throughout the state. The volunteers are provided technical assistance, supervision, and continuing education

In this issue

Focus on long term care

LTC Ombudsman	1
Notice of placement or move	3
ADRC.....	4
Tax tips	5
LTC insurance options	7
LTC insurance claims.....	9

Plus

Oregon-specific fiduciary guides.....	10
Elder Law Section unCLE recap	10
Resources for elder law attorneys.....	11
Important elder law numbers.....	12

Continued on page 2

LTC Ombudsman

Continued from page 1



Fred Steele was appointed by Governor Kate Brown in September 2015 to be Oregon's long term care ombudsman and Agency Director of the Office of the Long-Term Care Ombudsman. Fred has focused his career on advocating for older adults and individuals with disabilities, with particular focus on enhancing infrastructure to maximize independence of Oregonians. He holds a J.D. from Willamette University College of Law and an M.P.H. from Portland State University.

How the Oregon program works

The ombudsman program creates a community presence in long term care and residential care facilities. The ombudsman concept is based on the premise that facility care would improve just by increasing the traffic of caring and conscientious citizens through long term care facilities. The ombudsman volunteers, who undergo a five-day training to become certified, are responsible for the proactive, routine, on-site presence that is essential to the ombudsman service.

Each certified ombudsman has legislative authority to enter a long term care facility and talk with facility residents to determine whether they have concerns they would like the ombudsman to address. Whenever possible, the certified ombudsman resolves concerns and complaints within the facility, by working with staff and management. There are many reasons for this, the most important being that the resident is best served by resolving problems quickly, before they spin out of control and regulators must be involved. Ombudsmen resolve everyday problems, such as a resident's bathing schedule, and far more serious issues, such as involuntary transfer and eviction.

Because the ombudsman is resident-centered, ombudsman advocacy represents the expressed concerns of residents and other community members (when their concerns reflect the wishes of the residents). Ombudsmen strive to become the eyes, ears, and voices for the residents in our care facilities. The ombudsman is there to empower, directly or indirectly, those who are without relative power or influence. Because the ombudsman directly represents the resident, the ombudsman's position frequently differs from that of other professionals involved with the resident, particularly those who must routinely craft a best-interest solution to resident health care and behavioral and social problems.

The training and supervision of its volunteer labor force is an ongoing challenge for the Office of the Long-Term Care Ombudsman. To assist in that effort, a professional staff person is on duty each day to provide technical assistance to the volunteers throughout the state. In many counties, the ombudsmen participate in a monthly support meeting with a professional staff person to discuss the issues that emerge in their work.

Interaction with the legal community

The ombudsman program and its designees occasionally interact with active members of the Oregon Bar, typically in situations involving a protective proceeding or existing guardianship/conservatorship. As many members of the elder law community know, this generally involves notice to the Office of the Long-Term Care Ombudsman when a resident of a long term care facility is the subject of a protective proceeding or related motion.

What may be new to many attorneys, however, is with the establishment of the residential facilities ombudsman program, the same notice applies if it involves a resident of a care home or facility for individuals with an intellectual/developmental disability or mental illness.

In situations where a resident of a care facility experiences a level of incapacity that requires guardianship, the ombudsman program generally communicates with the guardian to ensure the resident's rights in a care facility. Ultimately though, ombudsmen will start their advocacy for an incapacitated resident by ensuring that all rules and regulations are being followed by a care facility.

The ombudsman program has also historically had the opportunity to interact with retired members of the Bar who have joined our volunteer base. If you or any retired colleagues have an interest in advocating in this way for fellow community members who are residents of care facilities, do not hesitate to contact our office. ■

Office of Long-Term Care Ombudsman

www.oregon.gov/LTCO

Mailing Address:
Long-Term Care Ombudsman
3855 Wolverine NE, Suite 6
Salem OR 97305

800.522.2602
503.378.6533

Notice requirements related to placement or movement of a protected person

By Leslie Kay, Attorney at Law, and Bob Joondeph, Attorney at Law



Leslie Kay is the former Regional Director of the Multnomah County Office of Legal Aid Services of Oregon from 2002-2014. She is currently in private practice.



Bob Joondeph is the Executive Director of Disability Rights Oregon.

Appointments of guardians for incapacitated persons raise constitutional due-process rights. When a person is placed in a long term care facility, a mental health treatment facility, or a facility for people with developmental disabilities, at stake are liberty interests that heighten constitutional protections. Absent exigent circumstances, when a guardian places an incapacitated person in a facility without providing statutorily mandated prior notification these due-process rights are violated.

Statements of future intent to place or move

ORS 125.055(2)(h) requires that a statement be included in a petition in a protective proceeding “that indicates whether the nominated person intends to place the respondent in a mental health treatment facility, a nursing home or other residential facility.”

In addition, ORS 125.320 sets out limitations on the powers of an appointed guardian, which include requiring a guardian to file a “statement of intent” with the court when the guardian intends to place or move either an adult protected person or proposed protected person in a mental health treatment facility, a nursing home, or other residential facility. Notice of the statement of intent must be given in the manner prescribed in ORS 125.065 to the persons specified in ORS 125.060(7). Generally these notice provisions for adult protected people call for a 15-day notice period. ORS 125.065(3).

There may be additional issues to be addressed if the placement is outside Oregon. For example, Marion County Circuit Court judgments that appoint guardians require a provision that the protected person cannot be moved out of state without an order of the court. Familiarize yourself with local court rules and practice.

If a guardianship petitioner intends to place a person in a facility, or an appointed guardian intends to move or place a protected person, notice of the filing must be given to among others, the organizations listed below.

Notice to the Long-Term Care Ombudsman and Disability Rights Oregon

If the protected person or respondent is a resident of a nursing home or residential

facility, or if the notice states the intention to move a proposed protected person to a nursing home or residential facility, notice of a change of residence is provided to the Office of the Long-Term Care Ombudsman (LTCO). The mission of the ombudsman program is to protect individual rights and to enhance quality of residents living in Oregon’s licensed long term care facilities.

If the protected person or respondent is a resident of a mental-health treatment facility or a residential facility for individuals with developmental disability, or if the notice states the intention to place or move the protected person in such a facility, ORS 125.320 (3)(c) (C) requires notice to the state protection and advocacy system. The currently designated protection and advocacy system in Oregon is Disability Rights Oregon (DRO), a non-profit organization. DRO promotes opportunity, access, and choice for Oregonians with disabilities. DRO helps its clients seek remedies to violations of civil and legal rights, remedies to prevent or address abuse or neglect, or help in obtaining needed services and supports. DRO monitors guardianship notices and pleadings to assure that the legal rights of a respondent/protected person are upheld in guardianship proceedings. If DRO’s monitoring finds concerns or problems, its staff follows up to investigate. Likewise, the LTCO monitors guardianship notices and pleadings.

After the requisite notice to move or place is provided, the guardian may place an adult protected person without further notice of the court. ORS 125.320(3)(e). The court is only obligated to hold a hearing on the placement if an objection is filed. If a guardian fails to provide pre-notification, counsel for an incapacitated person should write a letter to the guardian or his or her counsel stating that the guardian has not fulfilled the statutory requirement for pre-notification. The Long-Term Care Ombudsman or Disability Rights Oregon may also bring this issue to the attention of the court.

Temporary fiduciaries

The temporary fiduciary provision, ORS 125.600 et. seq., by referencing ORS 125.055,

Continued on page 4

Notice requirements

Continued from page 3

Disability Rights Oregon

<https://droregon.org>

Mailing Address:
Disability Rights
Oregon
610 SW Broadway
Suite 200
Portland, OR 97205

503.243.2081 or
800.452.1694
TTY users: dial 711
Fax: 503.243.1738

requires a petitioner to notify the court whether the nominated person intends to place the respondent in a mental-health treatment facility, a nursing home, or other residential facility. ORS 125.055(2)(h). The temporary fiduciary statute, however, permits the court to appoint a temporary fiduciary prior to notice to the proposed protected person and other persons or organizations set out in ORS 125.060(3) if the requisite “immediate or serious danger to the life or health” of a respondent requires an immediate appointment.

ORS 125.605(2) is silent whether a placement into a facility can similarly occur prior to notice of the appointment of a temporary guardian. The temporary guardianship provision, however, is arguably not intended to work around the more robust due-process requirements of ORS 125.060. The court will need to

make a finding of immediate danger to appoint a temporary guardian without pre-deprivation notice. An eventual objection to the temporary guardianship or placement in a facility prior to notice could trigger a hearing on this finding and the need to reverse a move or placement decision by the temporary guardian. The constitutional limits of a former version of the statute [ORS 126.133 (1973) (amended 1991)] that allowed placement in a mental-health facility without notice or hearing were outlined by an Oregon federal court in *Grant v. Johnson*, 757 F. Supp 1127(D.OR 1991). Best practice would dictate that, to the extent possible, the 15-day notice period of ORS 125.065(3) be provided to the proposed protected person and persons designated in ORS 125.060 before placement in such a facility is contemplated by a temporary as well as a full guardian. ■

The Aging and Disability Resource Connection of Oregon

By Kristi M. Murphy, Program Analyst, State Unit on Aging

The Aging and Disability Resource Connection of Oregon (ADRC) is the first contact to make regarding aging or living with a disability. The ADRC is available to all Oregonians, regardless of income, and provides information and services available for long term care and supports. In addition to information and referral, options counselors are also available to meet one on one with people to discuss personal situations and direct them to the resources they need.

The service is free, available statewide, and can be accessed by calling 855.673.2372 or by visiting the website at www.adrcforegon.org/consite/index.php. The website has a searchable database for services available statewide and can also be localized to find those that are closest to an individual’s home. It can be read in many different languages.

The ADRC of Oregon provides an overview of various living facilities to assist people in understanding the differences between the services and supports offered. In addition, checklists of questions to ask when visiting facilities and links to important information are also provided to help consumers know their rights and help them make the most informed decision possible.

Community-based services and supports can help people who live either alone or with others. Services include meals, transportation, and help managing chronic conditions. They can be in settings such as adult day centers and senior centers. People often combine community-based services and in-home supports to stay independent. More detailed information on each of these community-based services can be found on the ADRC website.

Home-based services and supports help individuals stay independent and safe in their own homes. Services vary based on one’s level and type of need. Services can be short term while recovering from an injury or illness or long term for many years. Services range from simple checks to make sure one is all right to more in-depth services.

The website also contains a section dedicated to legal services available to elders with the greatest economic need through Area Agencies on Aging (AAA). It also provides many important links, including the *Elder Law Handbook* that outlines legal rights and public benefits.

The ADRC is designed to provide unbiased helpful information to Oregonians in many different ways to ensure they are getting the most up-to-date, accurate information possible to help them make informed decisions about their long term care.

For more information about the ADRC of Oregon, contact the Oregon State Unit on Aging at 503.945.6181 or suaemail@state.or.us. ■

Tax tips for long term care

By Erin Evers, Attorney at Law



Erin Evers is an attorney who practices in Hillsboro.

It pays to be efficient. That includes being tax-efficient. Here are five tips to consider for tax efficiency when incurring long term care.

When are long term care costs deductible?

Long term care costs are deductible when the costs qualify as a medical expense, even if the services provided are paid to non-medical caregivers. Medical expenses include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, and amounts paid for qualified long term care services, as defined in section 7702B(c)¹. The IRS code defines qualified long term care services as those “necessary diagnostic, preventative, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services, which (A) are required by a chronically ill individual, and (B) are provided pursuant to a plan of care prescribed by a licensed health care practitioner.” A “chronically ill individual” is one “who has been certified by a licensed health care practitioner as (i) being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to loss of functional capacity, (ii) having a level of disability similar ... to the level of disability described [above], or (iii) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.”

To qualify for the deduction, however, the code does require that a licensed health care practitioner certify that the individual meets the requirements. Such certificate (letter) should be signed within the preceding 12-month period. Also, to qualify for deduction, the expense must not have been reimbursed or paid for by insurance or otherwise.

So, when a fiduciary pays for in-home care (for example) for 24-hour-a-day live-in companion-type caregivers, that expense may be deductible if the elder’s physician writes a letter that states the elder is a chronically ill individual in need of substantial supervision. See *Estate of Lillian Baral v. Commissioner* for an in-depth study. U.S. Tax Ct, No. 3618-10, July 5, 2011.

How much of the elder’s long term care costs are deductible?

The deduction for the long term care expenses is claimed as a medical expense for those individuals who itemize deductions. Even if expenses qualify, there won’t be any benefit to the deduction unless the total medical expenses exceed 7.5% (for those 65 years and over) or 10% (for those under 65 years) of the individual’s adjusted gross income.

And, as mentioned above, no deduction is available if the long term care expenses were reimbursed by insurance or otherwise.

Another tax benefit occurs when the elder buys into a continuing care retirement community (CCRC). CCRC residents can deduct a portion of their non-refundable entrance fee and also a portion of the monthly resident fees as prepaid medical expenses.² To qualify for the medical deduction, residents must sign a lifelong care contract with the CCRC. There are three different kinds of CCRCs, and the tax advantages differ, depending on the type of CCRC contract.

Type A is a life care contract and requires a substantial entrance fee along with monthly fees in exchange for guaranteed lifetime housing and needed care. If the elder needs a higher level of care, she or he can move into the higher level of care (assisted living or perhaps skilled nursing care) without any increase in the monthly fee charged. In these types of contracts, the CCRC will provide the resident with its auditor’s assessment of the percentage of the fees that it considers medically related. Because the entrance fees are generally quite hefty (I’ve seen \$250,000 and up for entrance fees), the elder may be able to benefit from a significant deduction in the year of move-in and also from a continuing medical deduction in future years.

Type B is a modified life care contract where the resident pays a fully refundable fee up front along with monthly fees in exchange for guaranteed lifetime housing and needed care. In this scenario, the monthly fee can increase after the elder transfers to a higher level of care. In these types of contracts, none

Continued on page 6

Tax tips

Continued from page 5



of the entrance fee is deductible. Rather, the entrance fee is treated as a below-market rate loan. A portion of the monthly fees may still be deductible as a medical expense. Again, the facility will provide its assessment of the deductible portion to the residents each year.

Type C is a fee for service contract. These sometimes require an entrance fee, but sometimes do not. In this type of contract, monthly fees increase with the level of care provided. A portion of any entrance fee may still be deductible and the portion of the monthly fee that relates to medical expenses provided is also deductible.

In any instance where the elder has paid a refundable entrance fee and also claimed a medical deduction for part, the elder will need to include the same amount in income in the year the entrance fee is reimbursed.

Who can deduct the elder's long term care costs?

If the elder files a tax return and claims himself as a dependent, then the elder claims the deduction for the qualified long term care costs incurred.

Sometimes, however, the elder doesn't pay for his or her long term care costs. Instead, a family member or other person pays the costs on the elder's behalf. This person can only deduct the expense if the person paying the bills can either claim the elder as a dependent or would have been able to claim the elder as a dependent except that the elder had \$4,000 or more in income.

When is it possible to claim an elder as a dependent?

A taxpayer can claim a qualifying relative as a dependent if these criteria are met:

- The taxpayer is not already someone else's dependent
- The relative is a US citizen or resident
- The relative is not married, filing a joint tax return

- The person is a qualifying relative (parents, grandparents, child, in-laws, and steps; see IRS Publ. 501 more the complete list of 30 different relationship types)
- The relative's gross income for the year is less than \$4,000³
- The taxpayer provided more than half of the relative's total support for the year

If the person is not a qualifying relative but meets all of the other tests, then the elder may still be your dependent if he or she lived with the taxpayer all year as a member of the household.

What is the tax treatment of payments received from a long term care insurance policy?

The answer is: "it depends." It depends on what type of insurance policy the payments derive from. Ask the insurance company if the policy is a tax-qualified long term care policy or a non-tax-qualified policy. If the long term care contract is a tax-qualified policy, the payments received under the policy are generally excluded from income. These types of policies will only pay benefits to reimburse for qualified long term care expenses that were paid. As such, no tax is due on the reimbursement.

If, however, the policy is non-tax-qualified, then some or all of the benefits may be taxable. To the extent the payments reimburse qualified long term care expenses, the payments will not be taxed. The excess in payments, however, will be income subject to tax. ■

Footnotes

1. IRC 213(d)(1)(A)
2. See IRS Rev. Rul. 67-185, 75-302 and 76-481
3. 2015 number; 2016 numbers not yet published

The long term care insurance dilemma: Is it worth it?

By Julia C. Rice, Attorney at Law



Julia Rice practices at the estate planning and elder law firm Rice|Kueny LLC. She focuses on comprehensive planning with an emphasis on taxable estates.

According to the U.S. Department of Health and Human Services, 70 percent of Americans 65 or older will need some form of long term care. Long term care insurance (LTCI) policies reimburse individuals for services that assist with activities of daily living such as bathing, dressing, or eating. These policies provide up to a certain pre-determined limit, based on the plan options selected.

Clients frequently question whether they should purchase LTCI. The question arises for clients of varying socioeconomic statuses, and the answer depends on numerous factors, including the client's personal comfort level, ability to pay the premiums, and the type of care they want to receive should the need arise. With life expectancies continuing to rise, clients face an increased risk of becoming incapacitated before they pass away. Planning for that contingency is crucial.

Of course, the appropriate plan depends on the client's current level of functioning and ultimate preferences. Does Alzheimer's run in the family? How well does the client perform activities of daily living? Would the client prefer in-home care? Is the client hoping that family will provide care if needed? Of course, the latter question raises a host of questions in itself. What is the client's relationship like with those family members? Does the client have family living nearby? What is the likelihood family members can simply drop everything and take on the responsibility?

Exorbitant costs of long term care

High net-worth clients generally have far more options available since they can pay for private care at facilities, such as Mirabella in Portland, and still have money left for their children or favorite charities. Low net-worth clients typically plan to stay in Medicaid-funded facilities and are much less concerned about leaving an inheritance. Thus, the group who tends to be most concerned about LTCI are the individuals in the middle range.

Long term care costs can quickly deplete a family's life savings. According to the 2015 Genworth Cost of Care Survey for Oregon, the median cost of staying in an assisted-living facility in Oregon was \$46,560 per year. The median annual cost of care for staying in a

nursing home was \$95,904 for a semi-private room and \$102,018 for a private room. Unfortunately, Medicare and other forms of health insurance do not pay long term care expenses, because long term care is not considered a medical expense. Further, Medicare generally only covers skilled nursing care and therapy services following a hospital stay. Although spouses may plan to care for each other, they both may reach a point of needing long term care, or the needs of one spouse may become too great for the other spouse to handle without greater assistance.

Selecting a long term care insurance policy

Despite these issues, many families do not purchase LTCI due to the substantial cost of premiums, which can skyrocket without warning. LTCI still may make economic sense, particularly if clients purchase their plans early (mid-50s), and they properly research their options. Savvy clients quickly realize that companies charge substantially different rates for virtually identical plans. Given the wide discrepancy in cost, clients should obtain at least three different quotes before purchasing LTCI. Also, some companies have a tendency to raise premiums at a higher rate than other companies.

It is also wise to research the financial health of the insurance company and the rate history. Numerous companies underestimated the cost of care and went under. The website for Oregon's Division of Financial Regulation provides a list of authorized insurers in Oregon along with their financial health. Clients can also view a list of companies with strong credit ratings at the website for the American Association for LTCI. Further, clients can access a company's history with LTCI from Moody's Investors Service, Standard and Poor's, and A.M. Best.

Other worthwhile options for clients to explore are whether their employers offer group LTCI, which is often more affordable, and whether they want to purchase a joint policy with a spouse. The latter option allows spouses to split the benefit depending on who needs it. This eliminates some of the risk should one spouse need long term care while the other does not. The benefit can also be apportioned

Continued on page 8

LTC insurance

Continued from page 7



between the clients based on their needs at the time. However, there remains the possibility that one spouse uses all of the benefit during his or her lifetime, which leaves no benefit for the other.

Methods to reduce long term care insurance premiums

Several strategies help reduce the cost of LTCI premiums. The average American typically spends less than three years in a nursing home, so clients are well-advised to purchase terms within that range. Clients who purchase joint policies might consider five-year terms so that they each receive two years along with an extra year to allocate as desired. LTCI policies also allow consumers to add inflation protection. This may add to the cost of premiums, but could prove quite beneficial over time. According to the AARP, experts recommend five-percent compounded inflation protection.

Clients might also consider pooled benefits, which allow them to use a total-dollar amount of benefits for different services, such as in-home care and nursing home care. With this coverage option, clients can combine services that meet their personal needs. Another method clients may use to reduce premiums is to purchase a plan that may not cover 100% of the daily care needed. This option allows clients to slow down the depletion of their assets while still ensuring they can pay for the long term care services they may need.

Hybrid policies

Unfortunately, most LTCI policies are “use it or lose it” policies. This feature deters many individuals from purchasing the policies because they believe they will not need the coverage and, even if they do, that they will have amassed enough wealth to pay for their care. Whether this makes economic sense depends in large part on whether the clients will actually invest funds that would otherwise have been used to pay the premiums. This can be a risky assumption, particularly if care is needed earlier in an individual’s life. On the other hand, family genetics may indicate that the need for long term care is highly unlikely. These are questions that clients must analyze when deciding the right course of action for their individual circumstances.

Fortunately, the insurance market has developed more flexible LTCI options. Hybrid plans allow clients to combine life insurance

with long term care benefits, typically by adding a long term care rider to a life insurance policy. This means that the policy will pay a death benefit regardless of whether the long-term benefits are used during the client’s lifetime. Other insurance plans offer an accelerated death benefit, which allows clients to receive an advance on their death benefit while they are still alive. These options may address some of the concerns clients have with the “use it or lose it” feature of traditional LTCI policies.

Qualified Partnership Policies

Clients who have too many assets to qualify for Medicaid, but who cannot afford LTCI premiums, may consider Qualified Partnership Policies (QPP). Section 6021 of the Deficit Reduction Act created the Qualified State Long-Term Care Partnership program. This program offers special long term care policies that allow consumers to protect their assets and still qualify for Medicaid when their long term care policy runs out.

States are authorized to offer special Medicaid asset disregards for individuals who purchase and use qualified private LTCI policies. Most partnership programs offer dollar-for-dollar asset protection. This means that for every dollar of coverage the long term care policy provides, the consumer can keep a dollar in assets that normally would have been spent down to qualify for Medicaid.

An LTCI policy must meet general requirements to constitute a QPP. The consumer must be a resident of the state that sponsors the partnership program when coverage first becomes effective. Further, Medicaid asset protection only works if consumers receive long term care in the state where they bought the policy, or in a partnership state with a reciprocal agreement. The policy must be a federally tax-qualified LTCI policy, which means that it must adhere to the HIPAA requirements. QPPs must also contain specific consumer protections, including age-based requirements for inflation protection.

Summary

Whether clients should purchase LTCI depends on their personal circumstances and priorities. Attorneys can guide clients in this analysis while ensuring they understand the pros and cons of obtaining LTCI. With proper planning, clients can implement a workable strategy to afford long term care later in life. ■

Helpful hints to avoid denial of a long term care insurance claim

By Mary M. Osborn, CLTC



Mary Osborn began her career in the financial services and insurance industry in 1986 with a focus on financial and insurance planning, including long term care insurance, disability and life insurance, employee benefits, and retirement planning.

After an extended caregiving experience with her mother, Mary directed her business focus to specializing in long term care planning and long term care insurance.

According to the Association for Long Term Care Insurance (ALTCI), in 2013, 273,000 American received \$7.5 billion in long term care insurance benefit payments. However, not all long term care insurance policies are equal. Below are a few steps your client can take before filing a claim to minimize denial.

Designate a family coordinator

A family coordinator is exceedingly helpful when filing a long term care insurance claim. The person asked to step into this role should be highly organized and capable of paying close attention to details. He or she must be available to make phone calls to physicians and the insurance company. The family coordinator must document all conversations, including the name of the person spoken to, and the day and time of each call. He or she must track all correspondence and keep a record of it. It's essential that this person can remain focused and not be overcome by emotion. This person may also want to rely on the insurance agent who sold the policy for guidance.

Read the entire policy

Before beginning the process and before calling the insurance company, read the entire policy. A copy of the policy can be requested from the carrier if one is not able to locate the original. When requesting a duplicate policy, be sure the insurance company has the correct address on file.

Understand the benefit triggers

How the benefits are triggered is vital. Some older policies written prior to the 1990s typically focus on "medical necessity" and may require a prior hospital stay, and cover only nursing homes. Newer policies are triggered once the insured needs help with two out of six activities of daily living (ADLs): bathing, dressing, transferring from bed to chair, toileting, dressing, and eating. Another trigger is cognitive impairment, which the Centers for Disease Control defines as "when a person has trouble remembering, learning new things, concentrating, or making decisions that affect their daily life."

Understand the Policy Benefits

The terms defined in one policy may differ from another. Is the benefit available for different care settings (i.e., assisted living, home care, nursing home)? Are there separate benefit amounts for different care settings? What is the benefit duration? What is the total benefit pool? How long is the elimination period? Is the elimination period "calendar day" or "service day?" What is the difference between "hands on" and "stand-by" assistance? Most policies exclude care provided by a family member or friend. If the policy does cover home care, make sure the aide keeps "daily care notes."

Accompany the insured person

Some insurance companies require a face-to-face assessment. It's important to have a family or friend present with the insured during the assessment because he or she may be too proud to admit to the interviewer an inability to dress, bathe, or use the toilet.

Follow up

- Some carriers require a written statement from the insured that another person is authorized to handle insurance matters.
- Start a log. Keep a record of doctors, any care received, and medications. Contact the insurance company to notify it that you want to start a claim. The claim papers should arrive within 30 days. Fill out every line. Using "not applicable" is important.
- If you fax something to the insurance company, call to be sure the document was received.
- Follow up with doctors or facilities on all records requested in order to provide the insurance company with that information.

Filing a long term care insurance claim can be cumbersome. Having a thorough understanding of the policy triggers and benefits before filing a claim is essential for a positive outcome. ■

New CFPB Oregon-specific financial fiduciary guides available

The Consumer Financial Protection Bureau (CFPB) released Oregon-specific guides for financial fiduciaries in April 2016, which were developed to provide key expectations and resources for financial fiduciaries in Oregon. The guides are intended not only to educate agents with financial fiduciary requirements, but focus on prevention of financial exploitation. All four guides come with the title *Managing Someone Else's Money*.

Four separate guides—all available free through CFPB—were developed for conservators, trustees, representative payees/VA fiduciaries, and agents under a power of attorney.

Original national templates of these guides were developed through coordination between CFPB and the American Bar Association Commission on Law and Aging (ABA-COLA). The national templates were released by CFPB in fall 2014. A year before that, six states were selected to produce state-specific versions of these guides. Oregon was one of those states. The others were Florida, Virginia, Georgia, Arizona, and Illinois.

To assist in adaptation of their national templates into Oregon-specific guides, the ABA-COLA contacted the then-chair of Oregon's Elder Law Section, Whitney Yazzolino, and the state's Older Americans Act Legal Services Developer housed at the Department of Human Services, Fred Steele. Ms. Yazzolino provided the Oregon-specific law the ABA-COLA needed to fit their templates. Mr. Steele primarily provided the information for a number of the Oregon-specific resources provided in the guides. Nancy MacDonald, who was the president of the Guardian/Conservator Association of Oregon at the time, assisted on the project and provided the perspective of an agent, particularly with the guide for conservators.

After many layers and months of review at the ABA-COLA and at CFPB, the guides were released this past April. A launch event was held at the Willamette View Continuing Care Retirement Community, with speakers that included Oregon Attorney General Ellen Rosenblum and Nora Dowd Eisenhower, CFPB's Assistant Director for the Office of Older Americans. ■

The Elder Law Section held its annual UnCLE program on May 6, 2016, in Eugene at the Valley River Inn.

We maxed out our registration at 80 several weeks prior to the session. (It happens earlier every year.)

Those in attendance consistently give the program the highest possible ratings and highly recommend it to others as a unique opportunity for elder law practitioners to get together for a day-long session of brainstorming, networking, and the exchange of ideas and forms on topics ranging from estate planning to guardianship to Medicaid to office practice management.

Despite its title, the Oregon State Bar has granted five general CLE credits for the program.

Next year's UnCLE is already set for May 5, 2017, so mark your calendars now. ■



Resources for elder law attorneys

Events

Elder Law Discussion Group

Legal Aid Services; 520 SW Sixth Ave,
Portland

Coffee will be provided.

- September 21, 2016
EPPDAPA Restraining Orders
LASO attorney Andrea Ogston
- October 13, 2016
Landlord/Tenant & the Eviction Process
LASO attorney Ron Rubino

Role of Public Benefits in Estate Planning

OSB Audio Seminar

Wednesday, August 10, 2016/10–11 a.m.

[Oregon State Bar](#)

Grey Zone: Decision Making Challenges in the Aging Population

Friday, August 19, 2016/Noon to 1:00 p.m.

Davis Wright Tremaine LLP; Portland

Free; Limited to first 40 who register

RSVP to Madeline Kane: madeline.kane@

lewisbrisbois.com

Annual Elder Law Section CLE Program

Friday, October 7, 2016

Oregon Convention Center, Portland

Seminars and annual meeting

Details TBA

National Aging and Law Conference

October 27-28, 2016

Alexandria, Virginia

[American Bar Association](#) ■

Websites

Elder Law Section website

[OSB Elder Law Section](#)

The website provides useful links for elder law practitioners, past issues of Elder Law Newsletter, and current elder law numbers.

National Academy of Elder Law Attorneys (NAELA)

[www.naela.org](#)

A professional association of attorneys dedicated to improving the quality of legal services provided to elders and people with special needs.

OregonLawHelp

[www.oregonlawhelp.org](#)

Helpful information for low-income Oregonians and their lawyers.

Administration on Aging

[www.aoa.gov](#)

This website provides information about resources that connect older persons, caregivers, and professionals to important federal, national, and local programs.

Aging and Disability Resource Connection of Oregon

[www.ADRCoforegon.org](#)

Includes downloadable Family Caregiver Handbook, available in English and Spanish versions.

Big Charts

<http://bigcharts.marketwatch.com>

Provides the price of a stock on a specific date.

American Bar Association Elder Law Section

[www.americanbar.org/groups/senior_lawyers/elder_law.html](#)

National Elder Law Foundation

<http://www.nelf.org>

Certifying program for elder law and special-needs attorneys ■

Publication

The American Bar Association's ***PRACTICAL Tool for Lawyers*** is a new resource to help lawyers identify and implement decision-making options for persons with disabilities that are less restrictive than guardianship.

PRACTICAL is an acronym for nine steps lawyers can use to identify legal and practical approaches to heighten self-determination before moving ahead with guardianship:

Presume guardianship is not needed.

Reason: Identify reasons for concern.

Ask if a triggering concern may be caused by temporary or reversible conditions.

Community. Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations.

Team. Ask the person whether he or she already has developed a decision-making team.

Identify areas of strengths and limitations in decision-making.

Challenges: screen for and address any potential challenges presented.

Appoint legal supporter or surrogate

Limit any necessary guardianship petition and order.

A lawyer can use the PRACTICAL checklist of steps during the client interview and immediately after to assist in case analysis. The steps blend in naturally with the case interview process.

A 22-page *Resource Guide* expands on the steps and includes links to key resources.

PDF and Word versions of both publications are available for no-cost download at <http://www.ambar.org/practicaltool> ■

Important elder law numbers as of July 1, 2016	Supplemental Security Income (SSI) Benefit Standards	Eligible individual \$733/month Eligible couple \$1,100/month
	Medicaid (Oregon)	Asset limit for Medicaid recipient.....\$2,000/month Long term care income cap.....\$2,199/month Community spouse minimum resource standard \$23,844 Community spouse maximum resource standard \$119,220 Community spouse minimum and maximum monthly allowance standards.....\$2,003/month; \$2,980.50/month Excess shelter allowance Amount above \$601/month SNAP (food stamp) utility allowance used to figure excess shelter allowance\$445/month Personal needs allowance in nursing home.....\$60/month Personal needs allowance in community-based care\$163/month Room & board rate for community-based care facilities..... \$570/month OSIP maintenance standard for person receiving in-home services.....\$1,233 Average private pay rate for calculating ineligibility for applications made on or after October 1, 2010\$7,663/month
	Medicare	Part B premium \$104.90/month* Part B premium for those new to Medicare in 2016\$112.80/month* Part D premiumVaries according to plan chosen Part B deductible \$166/year Part A hospital deductible per spell of illness\$1,288 Skilled nursing facility co-insurance for days 21–100.....\$161/day * Premiums are higher if annual income is more than \$85,000 (single filer) or \$170,000 (married couple filing jointly).



Elder Law Section

Newsletter Committee

The Elder Law Newsletter is published quarterly by the Oregon State Bar's Elder Law Section, Kay Hyde-Patton, Chair. Statements of fact are the responsibility of the authors, and the opinions expressed do not imply endorsement by the Section.

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