Selling Long-Term Care Insurance in Ohio (2012)

Overview
This section of the course is the opportunity to learn about the consumer suitability standards and guidelines for selling long-term care insurance in Ohio.

You will learn about LTC consumer suitability standards for Ohio. Additionally you will learn about the sections of the Ohio Revised Code (ORC) and the Ohio Administrative Code (OAC) which regulate long-term care insurance in the state of Ohio.

Lastly, you will learn about Ohio’s Long-Term Care Partnership Program.

New Regulatory Provisions

ORC 3923.41–.48 (Ohio’s Long-Term Care Insurance Act) and the OAC 3901-4-02

Ohio's Long-Term Care Partnership Program

In Ohio, no LTCI policy may:

- be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured;
- establish a new waiting period if existing coverage is converted to or replaced by a new form within the same company (except with respect to an increase in benefits voluntarily selected by the insured);
- provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care;
- contain a preexisting condition exclusion of more than six months; or
- condition eligibility for institutional benefits on a requirement of prior hospitalization; on the receipt of a higher level of institutional care; or on a requirement of prior institutionalization.

The act also establishes a free-look period of 30 days and a notice of the policyholder’s rights to be printed prominently on the first page of the policy or attached to the policy. A standard format outline of coverage and a notice that consumer information is available from the Ohio Department of Insurance (DOI) must be delivered to prospective applicants before an application or enrollment form is presented.

Standards for Marketing
Every insurer, health-care service plan, and other entity marketing long-term care insurance coverage in Ohio must:

- establish marketing procedures and agent training requirements to ensure that....
  1. any marketing activities, including any comparison of policies by its agents or other producers will be fair and accurate; and
  2. excessive insurance is not sold or issued.
display prominently on the first page of the outline of coverage and policy the following: “Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.”

provide copies to the applicant of the appropriate disclosure forms required;
make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee has accident and sickness insurance is not required;
establish auditable procedures for verifying compliance with these marketing standards;
provide at the time of solicitation written notice the prospective policyholder—if the state in which the policy is to be delivered has a senior insurance counseling program approved by the superintendent—that the program is available and the name, address, and telephone number of the program; and
provide an explanation of “contingent benefit upon lapse,” where the contingent benefit on lapse will be triggered if the individual’s rates increase by a certain accumulative percentage from the time the policy was purchased.

Outline of Coverage
The Long-Term Care Insurance Act requires that an outline of coverage and a notice that consumer information is available from the department of insurance be delivered to a prospective applicant for LTCI before an application or enrollment form is presented. The outline of coverage must include all of the following:

- a description of the principal benefits and coverage provided in the policy;
- a statement of the principal exclusions and limitations contained in the policy;
- a statement of the terms under which the policy may be renewed and the terms under which cancellation is permitted;
- a description of the terms under which the policy or certificate may be returned and the premium refunded;
- a brief description of the relationship of the cost of care and benefits;
- a statement that the outline of coverage is merely a summary and that the policy should be consulted to determine governing contractual provisions; and
- a statement that discloses whether the policy is intended to be a federally tax-qualified long-term care insurance contract.

Unfair and Deceptive Practices
ORC Chapters 3901.19 – 3901.21 define and prohibit unfair or deceptive trade practices and acts. These rules apply regardless of whether violators are licensed or required to be licensed by the DOI. Unfair and deceptive acts or practices in the business of insurance include, but are not limited to the following:

- misrepresentation;
- untrue, deceptive, or misleading statements;
- making false statements as to the financial condition of an insurer that are calculated to injure any person engaged in the business of insurance;
- discrimination in rates charged among individuals of the same class and equal expectation of life;
- offering rebates or special favors or anything of value not specified in the contract;
- making statements to induce a customer to purchase, amend, lapse, forfeit, change, or surrender a contract of insurance;
- refusing coverage or canceling or declining to renew coverage based on sex or marital status;
- refusing coverage because an insured or applicant for insurance is or has been a victim of domestic violence; and
- aiding another to violate this part of the Code.

In addition to the practices just described, the following acts and practices are also prohibited:
• twisting—knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers to inducing, or tend to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer;
• high pressure tactics—using any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance;
• cold lead advertising—making use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is to solicit insurance and that contact will be made by an insurance agent or insurance company; and
• misrepresentation—misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

Marketing to Associations
The OAC sets forth special rules when marketing long-term care insurance to associations. An association is any professional, trade, or occupational association for its active members, or former or retired members, if the association has been maintained in good faith for purposes other than obtaining insurance.

The primary responsibility of an association when endorsing or selling long-term care insurance is to educate its members concerning LTC issues in general so that members can make informed decisions.

Associations must provide objective information regarding LTCI policies or certificates to ensure that members receive a complete explanation of policy features.

With respect to nonqualified policies at the time of the association’s decision to endorse, the association must engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates. The association must actively monitor the marketing efforts of the insurer and its agents and review and approve all marketing materials used to promote sales.

Shopper’s Guide to Buying Long-Term Care
Ohio producers offering LTCI must offer to applicants the NAIC’s Shopper’s Guide to Buying Long-Term Care Insurance, a publication to help them understand LTCI options.

Consumer Suitability Standards

Standards and Training
Insurers are responsible for developing and using suitability standards to determine whether the purchase or replacement of long-term care insurance is “appropriate for the needs of the applicant.” This is achieved through defining suitability standards and proper supervision. Insurers are also responsible for training their producers in the use of their suitability standards and are required to maintain a copy of their suitability standards and make them available for inspection upon request by the insurance commissioner.

Personal Worksheet
As discussed in the previous chapter, to maintain suitability standards, the Personal Worksheet is submitted with the completed application. The worksheet asks the applicant to identify the source of the premium payments to be made and to consider whether the policy is affordable. It asks applicants to disclose their income and savings and investments. This information is reviewed by the insurer as part of the underwriting and issue process.

Suitability Letter
If a review of the facts indicates that the policy being applied for is not suited for the applicant’s needs or goals, the insurer must send a Suitability Letter to the applicant explaining its findings and stating that the review indicates the policy applied for is not suitable. The letter asks the applicant to further consider the purchase. If the applicant still wants the policy, the insurer will continue the review.

**Ohio’s LTC Partnership Program**

**Implementation of Ohio’s LTC Partnership Program**

Policymakers have recognized the need for solutions for long-term care, and they are encouraging consumers to take personal responsibility for organizing and financing their own long-term care. An increasingly acceptable means of accomplishing this is through long-term care insurance. Another option is the expansion of a public-private model for long-term care partnerships.

The Long-Term Care Partnership Expansion project provided ten states, Ohio among them, with extensive technical assistance and funding of up to $50,000 to participate in an 18-month initiative focused on helping states to develop partnership programs.

In 2007, the Ohio General Assembly adopted provisions facilitating the implementation of Ohio’s Long-Term Care Partnership Program. The program encourages individuals to purchase long-term care insurance by allowing them to become Medicaid-eligible without requiring spenddown of all personal assets as long as a qualified long-term care partnership policy is in place.

**Agent Training**

The Deficit Reduction Act of 2005 mandates that all insurance producers representing long-term care partnership policies complete initial and ongoing training. The DRA and the State Medicaid Director's Letter, dated July 27, 2006 and issued by the CMS, require the Ohio Department of Insurance (DOI) to provide assurance that any producer who sells, solicits, or negotiates a partnership policy receives training and demonstrates an understanding of partnership policies and their relationship to public and private coverage of long-term care.

Ohio formalized its Long-Term Care Partnership Program, including mandatory training requirements, on September 10, 2007. Effective on this date, the ORC Section 3923.443 prohibits an individual from selling, soliciting, or negotiating long-term care insurance on or after September 1, 2008, unless he or she is authorized as an insurance agent for accident and health or life and has completed a one-time, eight-hour training course. A four-hour course must be completed every two years thereafter. The ORC requires that the training consist of combined topics related to long-term care insurance, long-term care services, and qualified state long-term care insurance partnership programs.

A resident agent may complete these training requirements in any state, provided that the Ohio Superintendent of Insurance has approved the course for LTC continuing education credits. Satisfying the training requirements in any state is deemed as satisfying the training requirements for Ohio nonresidents.

Agents who meet the initial and ongoing training requirements will be considered “qualified” to sell LTC policies and LTC partnership policies. Completion of this course meets the state’s eight-hour initial training requirement.

**Offers of Policy Exchanges**

**Policies Issued on or after August 12, 2002**

Within 180 days of an insurer beginning to market or issue policies that qualify under the long-term care partnership program, the insurer must offer on a one time basis and in writing to all existing policyholders that were issued long-term care coverage on or after August 12, 2002, the option to exchange their existing coverage for coverage that qualifies under the partnership program. In the
event of an exchange, the insured may not lose any rights, benefits, or built-up value accrued under the original policy.

In making an offer to exchange, an insurer must comply with the following requirements:

- The offer must be made on a nondiscriminatory basis, without regard to the age or health status of the insured.
- The offer must remain open for a minimum of 90 days.
- The insurer must provide the insured with a copy of the Long-Term Care Partnership Exchange Notification Form.

The Long-Term Care Partnership Exchange Notification Form advises insureds that with a partnership policy, they may be able to protect a portion of their assets from Medicaid’s spenddown requirements, that partnership policies may allow them to keep one dollar of assets for every dollar of benefits paid by the policy, and that they may be able to exchange their current policy for a new policy that qualifies under the partnership program.

**Actuarial Value**

If the new policy has an actuarial value of benefits equal to or lesser than the actuarial value of benefits of the existing policy, the new policy may not be underwritten, and the rate charged for the new policy is determined using the original issue age and risk class of the insured.

If the new policy has an actuarial value of benefits exceeding the actuarial value of the benefits of the existing policy, then the insurer must apply its new business underwriting guidelines to the increased benefits only.

**Policies Issued before August 12, 2002**

For those insureds with long-term care policies issued before August 12, 2002, an insurer may offer insureds the option to exchange an existing policy for a policy that qualifies as a long-term care partnership plan. If the insurer chooses to make this offer, the preceding rules apply.

**Filing Requirements, Certification Form and Disclosure Form**

**Filing Requirements**

Any policy that is intended to qualify as a partnership plan must be filed with the superintendent of insurance before use.

**Certification Form**

This certification confirms that the suitability standards of the NAIC’s Long-Term Care Insurance Model Act, which have been incorporated into Ohio’s Long-Term Care Insurance Act, have been met. The form must be completed and submitted with each long-term care policy that is intended to qualify under the partnership program. The certification must be signed by an officer of the company. A separate certification must be completed for each policy form. A long-term care policy may not be issued in Ohio as a partnership program policy unless and until this certification has been submitted to the department of insurance.

**Disclosure Form**

This disclosure form is modeled after the NIAC’s “Things You Should Know Before You Buy Long-Term Care Insurance” and must be provided to applicants at the same time as the Personal Worksheet.

**The Role of the Ohio Department of Jobs and Family Services**

Although the DOI regulates the business of long-term care insurance, ORC 5111.18 provides that the Director of Job and Family Services is responsible for establishing a qualified state long-term care
insurance partnership program consistent with the definition found in DRA 2005.

ORC 5111.11 provides that the Director of Job and Family Services is responsible for adopting rules in accordance with Chapter 119 of the ORC regarding the Medicaid estate recovery program, including rules that:

- are consistent with the DRA, reducing or adjusting for recovery in the case of a participant of Ohio’s qualified long-term care insurance partnership program; and
- establish procedures and criteria for waiving adjustment or recovery due to an undue hardship.

**Summary**
The sale of long-term care insurance contracts is strictly regulated by the Ohio Revised Code and the Ohio Administrative Code. Every insurer, health care service plan, and other entity marketing long-term care insurance coverage in Ohio must adhere to the regulations set forth in these codes. Ohio law establishes agent training requirements for the sale of LTCI, institutes suitability standards for product placement, and defines and prohibits unfair or deceptive trade practices and acts.

Ohio’s Long-Term Care Insurance Act is based on the NAIC’s model regulation. Insurers are responsible for establishing suitability standards to determine whether the purchase of long-term care insurance is appropriate for the needs of a particular applicant, and this is accomplished through proper supervision.