


**Long-Term Care (LTC)
Insurance Litigation**


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Introduction to Chronic Illness


- What qualifies someone as chronically ill?
 - Inability to perform 2 or 3 our of 6 ADLs for 90+ Days
 - Claimant needs “substantial assistance” with ADLs
 - “Substantial Assistance” is either Hands-On or Stand-By Assistance



Eating


Bathing


Dressing


Transferring



Toileting


Walking or moving around

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Introduction to Chronic Illness

- Risk of harm from severe cognitive impairment.
 - Deterioration in mental capacity necessitating supervision.
 - Memory loss, confusion, impaired judgment



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Why is this Important?

Average annual cost of:
 *Private room in assisted living= \$53,000
 *Nursing home= \$100,380
 -and-
 *\$32-38 per hour for licensed home-health care aide
 -Genworth 2018 Cost of Care Survey

Average Annual Cost

Policy holders should receive the benefits they are due

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With 7.3 Million policyholders nationwide, they live where YOU live.

Source: American Association of Long Term Care Insurance, 2015 Sourcebook

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Wave of LTCI Policies: It's Coming...

Total Policies Outstanding: **7,319,162**
 Currently On Claim: **280,000**

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Legacy Business for Many Insurers

TABLE 6. Distribution of Sample by Year of Market Exit

Year of Market Exit	Sample
1996	- Principal Financial Group
2001	- Nationwide
2002	- American Fidelity Assurance Company - Standard Life & Accident Insurance Company
2003	- American Family Mutual Insurance Company - CNA - Conseco - RiverSource Life Insurance Company - Union Labor Life Insurance Company
2004	- Medico - Teachers Protective Mutual Life
2005	- Humana Insurance/Kanawha - Transamerica (re-entry 2010)
2006	- Aetna - Southern Farm Bureau Life
2008	- Penn Treaty
2009	- UNUM Individual
2010	- Allianz - CUNA Mutual - Equitable - Great America Financial - John Hancock (group market) - MetLife
2011	- Guardian-Berkshire
2012	- Prudential-UNUM Group

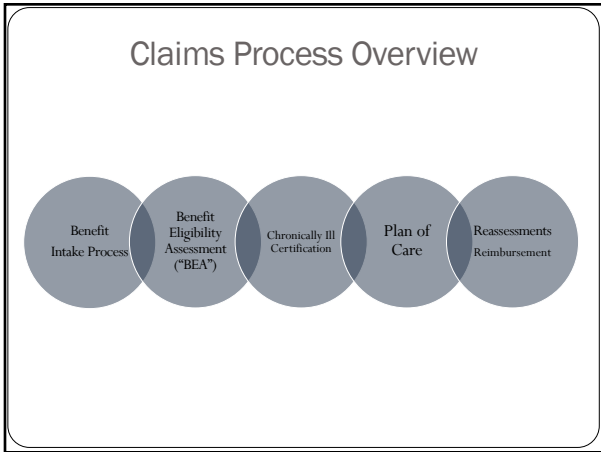
SOURCE: Survey of executives from 26 LTC carriers who exited the market or exited segment of the market and analysis of NAIC Experience Exhibit Reports from 2000, 2009, 2010 and 2011

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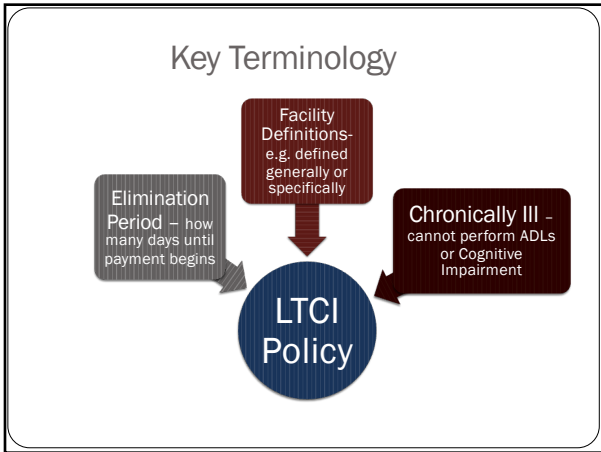
Third Party Claims Administrators

- Many insurance companies have moved their claims handling to third parties.
- Insurers often still put correspondence on their letterhead and obscure the third party administrator's involvement, which can frustrate the process.
- Some examples of TPAs:
 - LifePlans
 - LTCG (Ilumifin)
 - CHCS (Prudential)

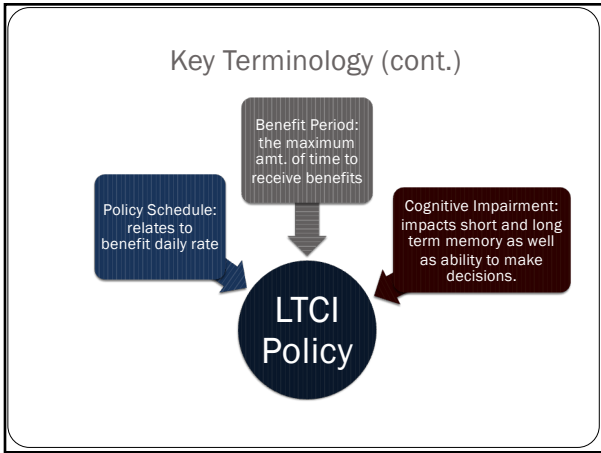
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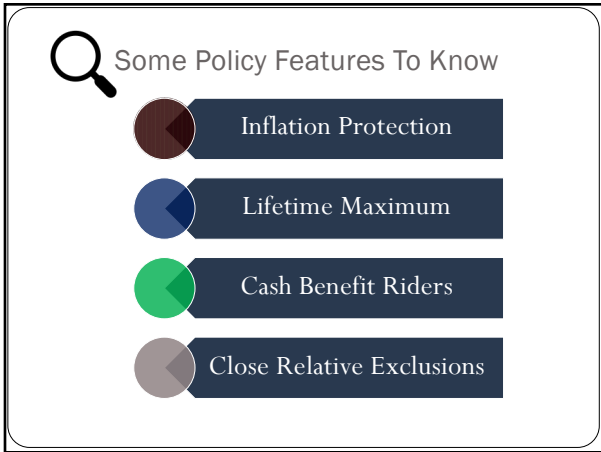
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LTC AND HIPAA Section 7702B

- Benefit Triggers (ADLs or Cognitive Impairment)
- 90-day Requirement
- Licensed Healthcare Practitioner
- Plan of Care
- Compound Inflation
- and much more...

HIPAA Section 7702B defines many LTC provisions for tax purposes, but they are still fraught with ambiguity.

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Policy Ambiguity: “Substantial Assistance”

“Interviews with long-term care insurance company claims experts showed a great deal of variation across the industry in terms of how HIPAA triggers are actually applied and administered in practice – specifically the way that insurance companies define and measure the performance of each ADL and the existence of cognitive impairment.”

FIGURE 2 How Frequency is Accounted for in ADL Evaluation

Frequency of assistance required by insured is NOT a factor in determining “substantial assistance”	Insured must require assistance 76% - 100% of the time in order to be considered dependent	Insured must require assistance 51% - 100% of the time in order to be considered dependent
38%	31%	31%

Scan Foundation Spring 2011, No. 3

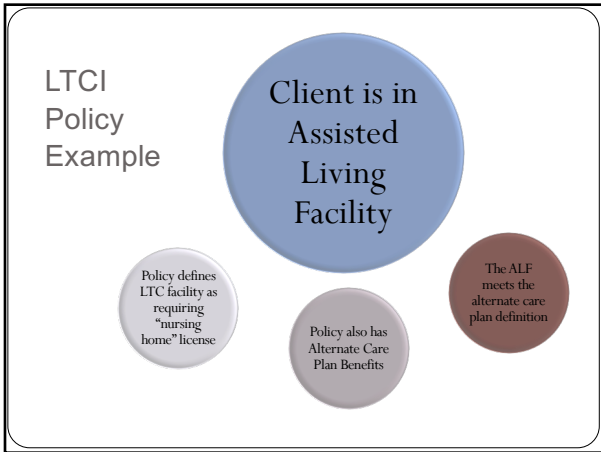
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Ambiguous Activities of Daily Living (“ADLs”) Bathing Example

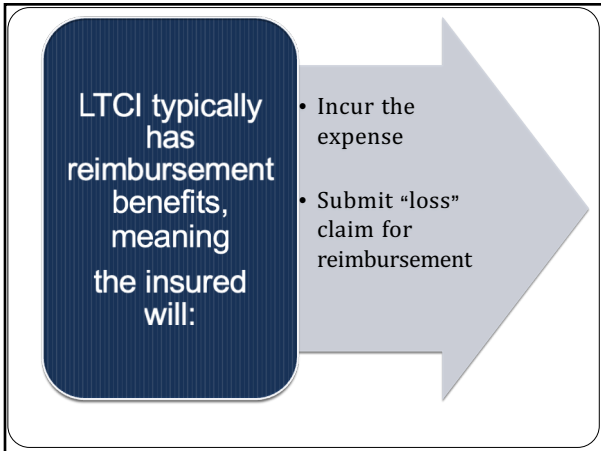
Components of Definition	Included in Definition of Independence	Not included in Definition
Washing oneself by sponge bath; or in either a tub or shower	100%	0%
The task of getting to or from the tub, shower or sink	23%	77%
Getting into or out of the tub or shower	100%	0%
Obtaining/dispersing of water for sponge bath	38%	62%
Turning on/off water or controlling water temperature	54%	46%
Washing the body	100%	0%
Towel/drying all parts of the body	77%	23%
Washing the back	58%	42%
Washing the hair	58%	42%
Washing the feet	58%	42%
Additional items considered	8%	92%

Scan Foundation Spring 2011, No. 3

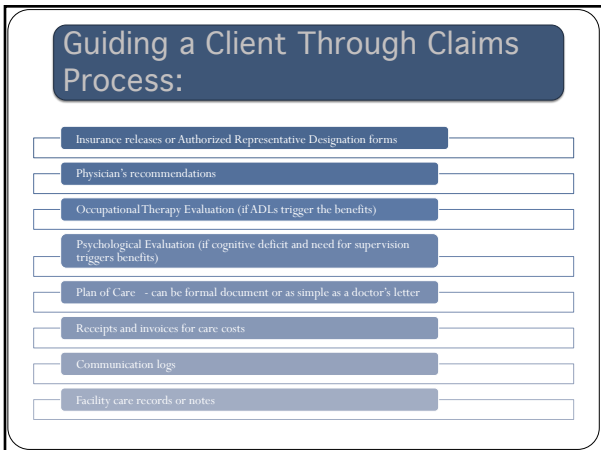
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Typical Denials

- Benefit Eligibility Assessment does not show "cognitive impairment"
- Benefit Eligibility Assessment does not show need for assistance with Activities of Daily Living
- Change in care needs (less care needed)
- Not medically necessary to receive care in a nursing home or assisted living facility
- Facility does not meet policy definition or is not properly licensed
- No benefits for personal care by family member

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"Red Flags"

A list of "factors" that, if the claimant has 2 or more of them, the Insurer will conduct a deeper dive on claim to try and deny claim.

- "Low Severity" medical conditions
- "Subjective" medical conditions
- Being under the age of 65
- Having a "cash claim" policy
- Whether claimant is institutionalized
- Whether the insurance agent has the same last name as the claimant
- Does the claimant have multiple policies with insurer?

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WAYS TO IMPROPERLY DENY AN LTC CLAIM

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Insurer Schemes

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Litigation Insights - TPAs

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Prudential California Market Conduct Examination

LONG TERM CARE PICA 2019 Written Premium: \$144,870,575 PICA 2020 Written Premium: \$144,756,927 (Includes Written Premium for Disability Income)		NUMBER OF ALLEGED VIOLATIONS
AMOUNT OF RECOVERIES	\$44,962.28	
CCR §2695.7(d) [CIC §790.03(h)(3)] Investigation		34
CCR §2695.5(b) [CIC §790.03(h)(2)]		17
CIC §790.03(h)(5)		16
CCR §2695.4(a) [CIC §790.03(h)(1)]		16
CIC §790.03(h)(3)		10
CIC §10225.95(b) [CIC §790.03(h)(5)]		9
CIC §10225.9(e) [CIC §790.03(h)(13)]		8

The June 2022 Market Conduct Exam indicates there were 34, 9 and 8 violations of the following claims handling standards:

- The Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.
- The Company failed to effectuate prompt, fair, and equitable settlements of claims in which liability had become reasonably clear.
- The Company failed to provide promptly a reasonable explanation of the bases relied upon in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

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Recap: Understanding the LTC Industry

Profit

- Most insurers have exited the market.
- Most insurers are losing money in droves.

Policy

- Ambiguous Policy terms abound.
- Point: Get the Policy and riders!

Claims

- Projected growth in retirees -- 27 million by 2050
- California Prudential Market Conduct Examination

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Q & A

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