Provisions within the recently passed Health Insurance Act make it more difficult to transfer assets to qualify for Medicaid, creating an even greater need for planning.

Insurance Covering Long-Term Care: Even More Important Now

By Michael E. Leonetti

The year is 2002. Rose, who is spending her final days in a nursing home, is shocked to learn that her daughter and grandchildren are being tried as conspirators under a 1996 law for attempting to defraud the government. Their crime: transferring Rose's savings and ownership of her house to them so she could qualify for Medicaid coverage of her $40,000-a-year nursing home.

Although this Orwellian nightmare may seem improbable, occurrences of this kind are entirely possible under a little noticed section of the Health Insurance Portability and Accountability Act (HIPAA) recently signed by President Clinton, according to Mr. Seymour LaRock writing for Aging Today Magazine, the bimonthly newspaper of the American Society on Aging.

Most proponents of this popular measure felt that, although it fell short of the optimum health reform measure, it served as a big, if incremental, step in the right direction.

That opinion was based on the provisions of the statute's Title I. This part of the new law eliminates the exclusion of coverage for pre-existing conditions; creates tax advantages and consumer protections for long-term care insurance, accelerates death benefits and liberalizes the continuation of coverage for workers who leave their jobs.

With so many positive changes to digest, few individuals look carefully at Title II of the act, which deals with fraud and abuse. Title II defines health insurance to include not only Medicare and Medicaid, but every healthcare program, such as private insurance, companies that self-fund their health coverage, or managed care organizations.

With this act, certain government agencies are empowered to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for healthcare in the United States.

Three Key Provisions

Among other things, Title II does the following:

- It establishes a national health databank, with subpoena power given to certain government agencies should any providers be reluctant to furnish information they demand. Although provisions within Title I are intended to improve the nation's healthcare system, the sole function of provisions in Title II, such as the databank, is to ferret out "fraud and abuse" and impose civil or criminal penalties where it is found.
- Title II imposes criminal penalties of up to five years in prison and/or fines of up to $25,000 "where a person knowingly and willfully disposes of assets by transferring assets in order to become eligible for benefits under the Medicaid program." In order to control abuse and prevent individuals from transferring or "spending down" their assets to qualify for Medicaid, the state has established a three-year "presumption" period. That is, assets transferred within three years of admittance to a Medicaid facility are presumed to have been transferred for the purpose of qualifying for Medicaid and eligibility will be denied.
- Civil confiscation of the property of physicians and other healthcare providers charged with abuse, similar to reprisals against drug dealers and others under the Racketeer Influence and Corrupt Organizations Act, may not be unthinkable. Regarding the levying of civil penalties, Title II states that no proof of specific intent to defraud is required.

This is a tricky area, yet the conduct of healthcare providers regarding cost and access to care raises concerns about how the new law may be used. In order to mitigate the impact of these provisions, the Department of Health and Human Services is charged with setting standards that will distinguish legitimate practices from abuses of the law. Such standards would provide practitioners what is known in judicial parlance as "safe harbors" from regulatory sanctions where there might otherwise be confusion. Note, however, that there is no requirement in Title II for the imposition of government penalties—civil or criminal—when a pro-

Michael Leonetti, CFP, is the president of Leonetti & Associates (708/520-0999), a fee-for-service financial planning firm based in Buffalo Grove, Ill.

Long-Term Care Insurance Policy Comparison Worksheet

	Policy A	Policy B	Policy C
• **Company Name & Policy Number**			
• **Deductible or Elimination Period—No. of Days** (USHC recommends no more than 90 days)			
• **Benefit Daily Amount Paid**			
Skilled			
Intermediate			
Custodial			
Home care			
• **Inflation Adjustment**			
Inflation rate (%)			
How often applied? (years)			
For how long?			
If not included in premium, price for option			
• **Maximum Amount of Benefits** (Indicate in years, days, or $ amount)			
• **Restrictions**			
Prior hospitalization (yes/no) (USHC recommends no prior hospitalization)			
Pre-existing condition			
Definition			
Waiting period			
Level of care (USHC recommends no prior level of care required)			
Skilled only (yes/no)			
Intermediate			
How many days of skilled care required?			
Custodial			
How many days of skilled care required?			
How many days of intermediate care required?			
Home care			
How many days in nursing home required?			
• **What Is not Covered?**			
• **Coverage for Alzheimer's Disease (yes/no)?** (USHC recommends written statement)			
• **Guarantee Renewable (yes/no)** (USHC recommends guarantee, not conditional)			
• **Premiums Increase (yes/no)?** Conditions for increase			
• **Company Rating by A.M. Best** (USHC recommends A or A+ companies)			
• **Premium**			
Monthly			
Annually			

Source: United Seniors Health Cooperative vider denies needed care to add to its profitability.

In terms of lengthy nursing home stays, our system currently provides no alternative to Medicaid, a program intended for the poor, except for a small and still uncertain private long-term care market. Yet, should middle-class Americans require extended long-term care and attempt to secure this care without long-term care insurance, Title II gives them the stark choice of impoverishment or imprisonment if careful planning well in advance has not taken place. Thus, the Health Insurance Portability and Accountability Act has created an even greater need for careful advanced planning and, quite possibly, long-term care insurance for many individuals.

Availability & Research

Availability of consumer-friendly private long-term care insurance will be determined by three key issues: consumer awareness, financial barriers to expansion of the market, and product quality, according to a report released earlier this year by Lewin-VHI, a healthcare consulting firm, and the Brookings Institution.

The researchers state that consumers need to realize that they must protect themselves against the costs associated with long-term care. They stress that the public must understand that Medicare will not pay for this care and that, unless they wish to risk impoverishment spending down to Medicaid eligibility, long-term care is their responsibility.

The healthcare financing administration recently commissioned an examination into the current long-term care insurance market. The research scene began with the assumption that there will not be other types of social insurance to pay for continuing care besides Medicaid and very limited Medicare coverage. Additionally, the way things stand now, and given the proposed cuts in Medicaid, things aren't likely to improve.

In order for long-term care insurance to be widely available to the American public, it must become less expensive. Research concludes that the products currently on the market are expensive for the average consumer. The main way to bring down costs is to lower premiums by enlarging the market. One vehicle for this is group insurance through employers and organizations. Right now, most people with some assets might want to consider long-term care insurance while people with a lot of assets are likely to self-insure (although this may not be the best choice), and those with very few assets can qualify for Medicaid.

The issue of adequacy of long-term care insurance has also become a hot topic. The National Association of Insurance Commissioners has put out model guidelines for long-term care insurance but, according to them, many insurers have adopted only the least-controversial measures. Their report states that approximately 16% of people who enter nursing homes would remain in these institutions longer than the coverage provided by their policy. This is not to say that companies are not offering policies that would give better protection. Rather, many individuals may be purchasing a policy, in the interest of cost savings, that does not adequately cover all of the areas that need to be addressed and considered relative to long-term care. Consumers must have protection against inflation of long-term care costs, now offered by a number of insurers as an option, and stabilization of premium rates.

More Important Than Ever

As you can now surmise, the long-term care issue and the need for quality long-term care insurance is growing in importance dramatically. As life expectancies continue to gradually increase, the quality of life for the elderly becomes more and more important. Attempting to "hide" assets in order to qualify for Medicaid is becoming increasingly difficult and now dangerous. Additionally, the question of the quality of care under a Medicaid-financed program, along with the cost-impact such a program has on the Medicaid system, has increasingly and swiftly pointed the way toward a need for a wider market of quality long-term care insurance.

The frightening prospect that many face today is that nursing home care is expensive and can easily drain financial resources. Because of this, the decision to buy long-term care insurance has become an important financial planning issue. Your personal philosophy, your desires for your dependents and heirs, and other personal considerations play an important role in deciding whether or not you wish to purchase long-term care insurance. However, the current political climate, the changing condition of healthcare, and the changing demographics of our society indicate that it is more and more likely that long-term care insurance will become a fixture in more individual's insurance portfolios much as other insurance coverages are today.

It would be wise to look closely at this coverage and consider adding it to your portfolio.

Because long-term care policies are very different from one another in the benefits they offer and their premium cost, it is important to evaluate these policies carefully. The comparison worksheet on page 28 will assist you in comparing policies. It is provided by the United Seniors Health Cooperative, a non-profit organization that focuses on healthcare issues for seniors, and includes recommendations by the USHC for certain policy features. (Their address: 1331 H St. NW, Washington, DC 20005; 202/393-6222.)

However, I strongly recommend securing help from a qualified adviser, as these policies are continually evolving.