Mantissa

Summary

The origins of the modern Long-Term Care industry in the United States dates back to 1974. With the average life span increasing in large part due to advancements in medicine, many people were living longer than expected, requiring unique and specialized health care needs. Early policies were designed to protect people in the event they were no longer able to perform basic daily activities and functions.

Additional options for Long-Term Care insurance (LTCi) started to emerge during the 1980s with more sophisticated benefits. These early LTCi products had very little regulatory guidance or consumer protections in place, which led to the potential for predatory practices that impacted its perception in the market. In addition, Long-Term Care insurance quickly become an important need for estate and tax planning purposes for individuals.

Given the social need that has emerged, federal and state governments have recently begun putting in place a social safety net for those who do not have Long-Term Care Insurance, nor the means to pay for the high expenses related to Long-Term care needs.

The Intersection - Public Policy & Long-Term Care Insurance

This report will take a multi-dimensional look at the Long-Term Care industry for those seeking an understanding of this unique insurance industry segment. This is the first in a multi-part series covering various topics.

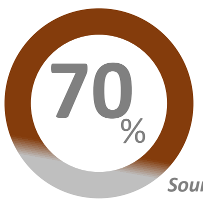
Author

Kevin Kelly
Senior Vice President Client Relations
k.kelly@mantissagroup.com

Contents

Long-Term Care History

To fully appreciate and understand Long-Term Care insurance (LTCi), it's important to understand its history and evolution. LTC insurance was first offered in the United States in 1974. With longevity rates increasing in large part due to advancements in medicine, many people were living longer than expected. Additional options for LTCi started to emerge during the 1980s. These early LTCi products had very little regulatory guidance or consumer protections in place, which led to the potential for predatory practices that impacted its perception in the market.



life insurance companies are recognizing the need for Long Term Care insurance as a social need and financial planning

Of the population will need some LTC after reaching age 65

Sources: Kiplinger, Society of Actuaries

Early LTCi policies served the same basic purpose they do today; to protect people in the event they are no longer able to perform basic daily activities and functions or activities of daily living. To address these concerns, the National Association of Insurance Commissioners (NAIC) released the **Long-Term Care Insurance Model Act** (1987) and **Long-Term Care Insurance Model Regulation** (1988). These regulations were enacted to provide state regulators with minimum standards and practices for insurance companies to abide by. The **Health Insurance Portability and Accountability Act** (HIPAA) and subsequent updates also provided provisions that established tax-qualified status to policies that comply with certain criteria, such as inflation protection and utilizing disability status as a benefit trigger.

It should be noted that state regulation governs LTCi, although these federal regulations had a strong influence on the product structure and state adoption of NAIC standards. We will dive further into government involvement in LTCi later in this report.

Assisted living communities became more popular during this time of early LTCi offerings, which led to long waiting lists due to an insufficient supply of facilities to meet the increasing demand. This highlights the importance in having Long-Term Care insurance in place for protection when this type of care is needed.

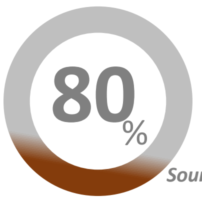
We often associate purchasing LTCi with the need to stay in a Long-Term Care facility, however there are other important factors to consider.

Why People Buy Long-Term Care

70 percent of people will need some type of long-term care after reaching age 65, with the level of care ranging from basic in-home assistance to nursing home care. Additionally, on average, people will need long-term care for three years, and one in five people will need care for five years or longer.

One significant reason that many will purchase LTC insurance is to **avoid becoming a burden to family.** Currently 80 percent of in-home care is provided by unpaid caregivers, and this primarily falls on family. It's estimated that caregivers lose an average of over $300,000 in wages and benefits over their lifetime due to providing care to family members. Unfortunately, this also has the potential for unintended family rifts. Receiving care from family in lieu of another form of care is typical, however the impact to individual circumstances, as well as other personal considerations are regularly weighed to determine whether this option is truly viable.

As patients need more help with activities of daily living, or ADLs (e.g. dressing, bathing, eating, toileting, transferring, continence), there is often a concern by the patient with a family member providing this care. The concern also shifts to whether a family member has the time and skill required to take on this responsibility. This is important to consider periodically, as situations can change and evolve.



Families normally bear the brunt of long-term care, creating a significant financial burden on the caregivers

Of in-home care is provided by unpaid caregivers, normally family

Source: Kiplinger

Another factor leading to the purchase of LTC insurance is the desire to protect **assets and retirement savings.** Long-term care can be very expensive. Consider that the median *annual* cost for assisted living care is just under $50,000. When planning for retirement, most retirees are calculating whether their retirement savings in conjunction with Social Security benefits will be enough to live on while still maintaining a similar living standard. But what if the need for long-term care arises? Do financial resources to carry this expense exist in the portfolio?

Even when factoring in the extent to which these costs can be covered through Medicaid and Medicare (if any), many will find that the answer is no. Medicare will help with long-term care such as rehabilitation after an injury or illness, but this only lasts for up to 100 days.

Medicaid will pay for long-term care provided that certain criteria is met:

1. The first criteria are **functional**, meaning one must require the level of care provided in a nursing home or intermediate care facility.
2. Second, meeting state **income guidelines**. This oftentimes requires depleting personal assets and savings significantly.

Having LTC insurance can help create a plan in the event there is the need for assisted living. This is designed to preserve savings and assets for other retirement and income needs.

The final reason leading to the purchase of LTCi is the desire to **ensure there are choices when it comes to care.** We previously mentioned that Medicare and Medicaid provide limited assistance when it comes to long-term care. For example, Medicaid primarily focuses on nursing home care. Some states will not even cover home-based care or assisted living. In addition, while close to 90 percent of nursing homes accept Medicaid, many will limit the number of Medicaid residents in the facility.

LTCi is clearly a very personal decision based on both **financial** and **emotional** considerations. For those who decide LTC insurance fits their needs, the next step will involve determining the type and amount of coverage needed to fit a budget and ensure the flexibility to choose the level of care needed.

Government Involvement

The passage of the Social Security Act in 1935 marked the beginning of government involvement in helping provide funding for Long-Term Care facilities. The Social Security Act established federal-state public assistance for the elderly called Old Age Assistance (OAA). In 1950 an amendment to the Act was passed that, among other things, required that participating states establish programs for licensing nursing homes, but did not specify what the standards or enforcement procedures should be. This marked the beginning of increased federal involvement in nursing homes.

In 1965, **Medicare** and **Medicaid** were first enacted. These programs expanded federal funding of nursing home services. These Acts also provided the United States Department of Health, Education, and Welfare (HEW) the authority to set standards for nursing homes that participated. Medicare was intending to provide funding the beneficiaries who needed post-hospital convalescence in extended care facilities, while Medicaid paid for skilled nursing services.

Initially few nursing homes could meet the health and safety standards set forth through Medicare, nor could they provide the level of service that was intended under the program. Medicaid had initially hoped to use the same extended care facility standards used by Medicare for its skilled nursing facilities, but given the difficulty in meeting these standards, the result was to leave the standards for skilled nursing facilities up to the states.

An additional amendment to Medicaid in 1967 provided standards and regulations to be uniformly applied by all states. This included a formal definition of skilled nursing facilities and standards for participating homes, and the authority for HEW to withhold federal funds from nursing homes failing to meet the standards.

Future amendments over the 1970s - 1980s have primarily focused on nursing home conditions and standardizing level of care. There are also some LTC Partnership Programs, which are a blend of private LTCi and a state's Medicaid program. This partnership was intended to encourage purchasing LTC insurance to help cover costs of LTC and alleviate the need for the state's Medicaid program to pay. Having private LTCi also helped protect some of a person's assets where they would otherwise need to spend those down to qualify for Medicaid.

While this private insurance partnership with state Medicaid certainly provides an added benefit, some states are now establishing new mandatory LTCi programs.

Next, we will dive into one recent example.

WA Cares Act

To further address the need for Long-Term Care insurance at the state level, Washington State recently passed the **Washington Cares Act**, also known as the **WA Cares Fund**. The Act is intended to provide a source of Long-Term Care insurance for all Washington state workers. The WA Cares Act will mandate that starting in January 2022, Washington state workers will pay a payroll tax equal to $.58 per $100 of earnings. Every employee is required to contribute; however, employers do not contribute. Those who are self-employed can also elect to opt in. To qualify for benefits from the WA Cares Fund, there are a few requirements. Qualified employees must have worked and contributed to the fund for:

- At least ten years at any point in one's life without a break of five or more years within those ten years, **or**
- Three of the last six years at the time one applies for the benefit, **and**
- At least 500 hours per year during those years.

While participation is mandatory of all employees, there was an exemption for those who have purchased a qualifying private LTC insurance plan prior to November 1, 2021.

Regarding what constitutes a qualifying policy, the WA Cares Fund states the following:

"…a qualifying policy is an insurance policy, contract or rider that provides coverage for at least 12 consecutive months to an insured person if they experience a debilitating prolonged illness or disability…"

More information on qualifying plans can be found at WA Long Term Care Qualifying Plans

In addition to having purchased a qualifying plan prior to November 1, 2021, employees must be at least 18 years of age and submit an exemption application to the Employment Security Department (ESD). Exemption applications were only accepted through 12/31/2021.

Per the WA Cares Act website, beginning in 2025 each person who is eligible to receive the benefit can access services and supports costing up to $36,500, although the nominal value of this benefit will change over time.

The benefits can be used for a range of services and supports, which the Act defines as:

- Professional personal care in your home, an assisted living facility, an adult family home or a nursing home
- Adaptive equipment and technology like hearing devices and medication reminder devices
- Home safety evaluations
- Training and support for paid and unpaid family members who provide care
- Home-delivered meals
- Care transition coordination
- Memory Care

- Environmental modifications like wheelchair ramps
- Personal emergency response system
- Respite for family caregivers
- Transportation
- Dementia supports
- Education and consultation

WA Cares Act – Legal Challenges

This pending legislation is not without legal challenges. Most prominently, a group of employers and workers has recently sued the State of Washington, with the hopes of overturning the law. This lawsuit is arguing that the program violates multiple federal and state laws, including **ERISA**, the **US Constitution**, and **state insurance regulation**.

One of the primary arguments referenced in this lawsuit has to do with ERISA's guaranties against non-forfeiture, which states that workers can't be denied benefits after paying into a benefit program. As mentioned previously in this report, the **WA Cares Act** requires that employees pay $.58 per $100 of earnings over ten years (without a break of five or more years) to be eligible to receive benefits **or** three of the last six years at the time of applying for the benefit **and** at least 500 hours per year during those years.

The Act also would only pay benefits to residents of Washington state. The lawsuit argues that the Act prevents older workers who pay premiums for a shorter period than the law requires to receive benefits, despite their contributions. Also, employees who work in Washington but live across state lines or retire to different states would be ineligible for benefits.

Another argument cited in this lawsuit is the fact that the program charges high-income workers higher premiums, stating that "there is no compelling state interest for the difference in rate." The concern being that older workers tend to earn more on average than younger workers, which violates laws aimed at protecting older workers from discrimination. It is also alleged that these same limitations violate the Equal Protection clause of the Fourteenth Amendment to the US Constitution.

There are additional issues with the **WA Cares Act** cited in the lawsuit, but it is highly unlikely that the district court will block the law before its January 2022 implementation. However, the lawsuit asks the court to order the state to return any premiums that workers do pay before the litigation is resolved.

This lawsuit is certain to garner much interest from onlookers. There are other states considering similar legislation, and the outcome in Washington State will likely determine the viability and direction of future proposed legislation in other states.

Impacts Due to Government Involvement

While Washington state is the first state to pass regulation in the form of the Washington Cares Act, it is not expected to be the last. It is not uncommon to see broader adoption of social initiatives once one state takes up a cause. For example, consider California privacy laws where we are seeing propagation of similar regulations rollout across the country. While federal intervention at this point does not seem imminent, we fully expect to see other states take up this issue to help bolster the social safety net that they provide which can otherwise be a significant economic cost to the state. Accordingly, insurance carriers should expect to see similar initiatives launched in other states in the coming years and be prepared to adapt.

The overall impact to new regulations like Washington Cares Act, should they stand, is not yet fully known, but is likely to be mixed overall. On one hand, regulations such as this will raise overall awareness in the marketplace and may drive consumers to consider private LTCi policies with more robust and full-featured benefits. On the other hand, the perceived value of stand-alone LTCi policies may decline for some consumers, with the government being now able to offset Long-Term Care expenses. Ultimately, both may occur and may lead to some market segmentation with higher-end earners opting out of state-run funds and relying on private LTC insurance and lower-end earners relying more heavily on the state for their Long-Term Care needs.

Regardless of the ultimate outcome, carriers will likely need to consider regulations like this in future product design and pricing. Product features and coverages are likely to adapt to accommodate coverage already provided by state-run funds like Washington Cares. Similarly, pricing, and actuarial considerations are likely to evolve, as the risk model in these cases will shift more towards individual states. This will be a developing situation that we will be watching closely.

Upcoming Topic: LTCi Operations and Technology

The topic of our next industry report will be focused on operations and technology.

While we do not foresee immediate impact to LTCi administration systems because of government involvement, systems and future product design will ultimately need to adapt to support this new model of a state-run insurance market.

In more recent years, there have been several companies that have entered the market providing systems and supporting services for LTCi, which has enabled significant maturation and growth in the space, with SaaS and BPO-style providers gaining in the overall market. As providers (SaaS or BPO) adapt to these new regulations, their insurance carrier customers will be able to benefit from that to keep abreast of a constantly changing regulatory landscape.

More to come on this topic.

Concluding Thoughts

The insurance industry is complex in many ways, each of which serve as influencers on how the industry evolves. Insurance products are driven by **type** (e.g. permanent life products, term life, annuities, LTC), the **distributors** who sell them, the **consumers** who buy them, and the **government** who regulates them. Insurance also provides an important social need, as the products provide protection for assets and a critical component of any financial plan.

As our reports explains, the Long Term Care insurance business is evolving, driven by all the factors previously mentioned. The impacts due to government involvement and the WA Cares Act are significant. The legislation will heighten consumer awareness about long term care, as they will see new deductions from their wages. Insurance companies will also need to evolve their product suite knowing that state governments are providing basic coverage for those who do not have individual policies. Finally, distributors will need to understand state legislation as they build financial plans for their clients.

Our upcoming report will focus on operations and technology for insurance companies who offer Long Term Care insurance. There are significant considerations, and most life insurance companies are dealing with older, legacy based technologies while trying to launch their digital presence. Unlike the individual life insurance and annuities businesses, there are fewer options to choose from for those wanting modern technology or outsourcing of services for LTCi. This is likely due to the size of the overall market.

Sources and Related Content

This document contains information obtained or derived from a variety of publicly available sources, as well as Mantissa Group industry and practical expertise. Following is related content of potential interest to the reader of this report:

1. Medicaid Planning Assistance.org: Link: Medicaid Planning Assistance
2. WA Cares Overview: Link. WA Cares Fund
3. Society of Actuaries: Link: Society of Actuaries LTC Industry
4. Kiplinger: Link: Why Buy LTC Insurance
5. NCBI: Link: History of Federal Nursing Home Regulation
6. Forbes: Link: Lawsuit to overturn WA State LTC Program

About the Author

Kevin Kelly is a former Fortune 100 Executive and Client Services and Delivery executive for Mantissa Group LLC, a strategy consulting firm serving the CIO executive and their extended leadership teams. Kevin is an industry leading expert on a wide variety of strategic matters affecting the CIO, operations leaders, and their leadership teams. He provides technology and management consultancy and advisory services including organizational & technology transformation efforts, large program management, product development, and solution delivery & organizational assessments.

About Mantissa

Mantissa Group provides business and technology strategic consulting services. We support executives with a broad range of knowledge across industries as well as with our vendor partners. The mission of Mantissa is to serve business and technology executives and their leadership teams. Mantissa's highly integrated services leverage targeted **research**, **strategic consulting**, enhanced by **global delivery**, and **executive and leadership coaching**