

LTC Tax-Qualified Insurance Policies: Common Provisions

Federal Requirements

A policy must meet certain federally legislated requirements in order to be tax qualified. IRC Section 7702B(b) mandates the following provisions:

- The only insurance protection provided is coverage of qualified long-term care services. Qualified LTC services are defined as “necessary diagnostic, preventive, therapeutic, curing, treating, mitigating and rehabilitative services, and maintenance or personal care services, which...” are required by a “chronically ill individual and are provided under a plan of care set forth by a licensed health care practitioner.”
- A “chronically ill individual” is a person who has been certified by a licensed health care practitioner as either (a) unable to perform, without substantial assistance, at least two activities of daily living (ADLs) for a period lasting at least 90 days or (b) requiring substantial supervision to protect himself or herself from threats to health and safety due to severe cognitive impairment. Initial certification must be made within 12 months of the claim for benefits, and certification must be renewed every 12 months during receipt of benefits.
- The policy must include at least five of these six activities of daily living: (1) eating; (2) toileting; (3) transferring; (4) bathing; (5) dressing; and (6) continence. For purposes of meeting the ADL requirement, “substantial assistance” can mean actual hands-on assistance to perform the ADL or standby assistance while the disabled person performs to ADL. Notice 97-31, 1997-1CB417.
- A severe cognitive impairment is a loss or deterioration in intellectual capacity that is similar to Alzheimer’s disease and like forms of irreversible dementia. Diagnosis is supported by clinical evidence and standardized tests that reliably measure impairment in long-term or short-term memory, orientation to people, places or time and deductive or abstract reasoning. For purposes of meeting the cognitive impairment requirement, substantial supervision is defined as continual supervision by another person. Notice 97-31, 1997-1CB417.
- The policy does not pay for nor reimburse expenses incurred for services reimbursable under Title XVIII of the Social Security Act (Medicare).
- The policy is guaranteed renewable, e.g., the policy may not be cancelled by the insurer except for non-payment of premium, or until the maximum benefit limit is reached.
- The policy does not provide for a cash surrender value or other money that can be paid, assigned, or pledged as collateral for a loan or borrowed by the policyowner.
- All premium refunds and dividends under the policy must be applied either to reduce future premiums or to increase future benefits. (An exception to this point is made for a refund on the death of the insured or upon a complete surrender or cancellation of the policy; the amount refunded cannot exceed the aggregate premiums paid.)

Additionally, the policy must satisfy certain consumer protection provisions concerning model regulation and model act provisions, disclosure, and nonforfeitability provisions contained in IRC Section 7702B(g).

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IRC Sec 4980C(c) requires that a qualified long-term care insurance contract must be delivered to the policyholder within 30 days of the approval date, and further requires that if the carrier denies a claim under the policy, it must provide a written explanation of the reasons for the denial and make available all information relating to the denial within 60 days of a written request from the policyholder.

Generally Standardized Features

Many features are identical, or nearly identical, due to NAIC model regulations, State of Texas requirements, or common-sense practice. These features include the following:

- Use of a carrier-selected Care Coordinator is not required (Texas regulation.) The policy may provide incentives to encourage the insured to use a Coordinator, but the insured is free to choose who will write the Plan of Care.
- Benefits are paid for all levels of care, including skilled, custodial and intermediate services.
- Insurer has only a limited ability to increase premiums; any changes in premium rates must apply to all similar policies issued in Texas on the same policy Form. Individuals cannot be singled out for an increase because of change in age or health, or because of claims paid.
- Policy offers the insured a choice of benefit increase options (for inflation protection of benefits), which include 5% compound or 5% simple annual increases. The policyowner pays a premium for the benefit increase option selected, not an increased premium each time the benefit increases.
- No benefits in the policy contract can be changed without the consent of the policyowner.
- Minimum 30-day free look, providing the policyowner 30 days from the date of policy delivery to return the policy and receive a full refund of all premiums paid.
- If the policy has been in effect for two years, it is contestable due only to fraudulent misstatements made by the insured on his or her application.
- Contingent nonforfeiture benefit (Texas policy Forms approved in 2002 and later) providing certain protections available to the policyholder in the event the policy lapses due to a substantial premium rate increase.
- Policy may be reinstated for non-payment of premium if an unintentional lapse occurs because of cognitive impairment.
- To receive benefits, the long-term care or services must be consistent with the insured's care needs, must be specified in a Plan of Care, and must be in accordance with accepted medical and nursing standards of practice.

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- The policy will not duplicate payments made by any government program except Medicaid, or any state or federal workers' compensation, employer's liability or occupation disease law.

The policy does not provide benefits for care, treatment or charges:

- Resulting from intentionally self-inflicted injury or attempted suicide
- Provided in a government-paid facility
- Required as a result of alcoholism or drug addiction (unless drug addiction was a result of the administration of drugs as part of treatment by a physician)
- Due to war or acts of war whether declared or undeclared, or for service in any of the armed forces or auxiliary units
- Due to participation in a felony, riot or insurrection
- Normally not incurred in the absence of insurance

Beyond these required or commonly included provisions, long term care insurance policies can diverge widely in both costs and benefits.

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