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# “Instant Replay” for Claims

by Bob Yee

**T**he *New York Times* article on claim practices of Long-Term Care Insurance (LTCI) insurers exposes the gap between the public perception and the industry’s perspective on the product offering. Those working in the industry see LTCI claim denials as so negligible as to be a non-issue, especially when compared to other lines of health business. Unfortunately, in this case, perception trumps reality because the customer is always right. So far, the industry has been countering with defensive rebuttals of the allegations as well as emotional testimonials regarding the insurance benefits. In spite of these efforts, the adverse publicity is like a hangover that is not going away. The article prompted further investigations both on the federal and state levels. A pragmatic response from the industry is needed to hold off the growing discontent.

One idea is to establish a review process for claim disputes. Review process is not a new concept. We have it in professional football, tennis and even in the actuarial profession. One application in particular, the Financial Ombudsman Service (FOS) in the United Kingdom, merits consideration. It provides an independent avenue to settle disputes between financial institutions (including insurers) and their customers. FOS was established by an act of Parliament and has been in operation since 2001. The service is free to the customers and is completely confidential.

A similar approach may work for LTCI here. A board of ombudsmen can be formed to offer impartial arbitration between insurers and claimants. Participation by the insurers is voluntary. Participating insurers would fund the board. The amount of contribution from each such insurer can be based on the number of new claims during the past year.

When a claim is denied, the participating insurer will inform the claimant about the availability of this service. If the claimant is not satisfied with the insurer’s final decision, he or she may seek the service of the ombudsman. After an initial evaluation, the ombudsman may

side with the insurer and decline to intervene. The claimant is then free to seek other legal recourse. If the ombudsman agrees to review the case further, his or her decision will be binding on both the insurer and the claimant. There will be no award above that provided by the provisions of the policy in question. Similar to the FOS, the aim of the ombudsman is to settle disputes fairly, quickly and informally.

Why would this approach be perceived as beneficial to consumers? The time between issue and claim for LTCI can be as long as 50 years. Policy provisions and definitions may not fully anticipate future changes in service environments. Examples include facility definition, facility licensing requirement, covered home care service, etc. Consumers have a legitimate concern that the insurer today has the sole discretion to interpret contractual obligations, short of any legal actions by the claimant. The typical claimant has far fewer legal resources than the insurer, especially when the claimant is likely to be elderly. The ombudsman concept puts the claimant on a more equal footing with the insurer.

Why would an insurer want to participate? A strong reason would be competition. The insurer could be at a competitive disadvantage if it chooses not to participate. Even if the insurer has ceased selling LTCI, sales in other lines of business may still suffer because non-participation raises questions of the insurer’s claim practices on all its business. From a cost standpoint, there are the potential savings from litigation, including savings from punitive judgments. Based on the industry’s assertion that claim disputes are uncommon, funding for the board may be quite reasonable. Yet, the potential goodwill for the industry can be tremendous.

Now is the right time for the industry to voluntarily offer a real solution to alleviate the public’s concern—before any onerous legislation is imposed on the industry. Starting the ball rolling is easy. The trade associations are the natural venue to make the first move. ✱



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