Surviving the Washington State Fire Sale

And how Washington could determine California's LTCi fate

BY MARC GLICKMAN

California is just one of the more than a dozen states considering ways to manage long-term care costs. How this all shakes out remains to be seen, but we're fortunate to have already had experience in Washington State. What follows is my first-hand account of the 2021 Washington Cares Fund initial rollout and my reflections on the impact of the law as it may pertain to California. With over 16.5 million employees in California's workforce, this is already creating an enormous market for LTCi employer benefit and individual solutions.

The Cares Fund provides a modest long-term care benefit that is funded by a new payroll tax. As employees in Washington learned about the possibility of qualifying for an exemption to the payroll tax if they had private long-term care insurance, the process took a chaotic turn in the industry.

I hope this story can benefit consumers and insurance specialists in California who may face similar decisions from actions that the state may take to address long-term care expenses.

While the traditional advice for life insurance has its place, with shifting realities of society, many younger people are now seeing value in a financial product more traditionally associated with older buyers — life insurance.

Student loans aren't the only place where parents are stepping in to support their adult children. According to the Census Bureau, parents make about $17 billion in payments to support their children who are 21 or older each year. And that support isn't just in the form of cash payments.

Parents are also backstopping their adult children's mortgages and car loans, and even just floating personal loans to help their children launch into adulthood.

If that aid was given with the expectation of repayment, or in the case of a co-signed loan where the parent would be on the hook if the child were no longer able to make payments, this is another good case for a term life insurance policy to help families protect themselves from the worst outcomes.

And that support often goes both ways, too.

While the stereotype is for parents to support their adult children, the Census Bureau found that 4.3 million U.S. adults give their parents voluntary support each year.

And just like if someone's young family were to rely on their income, if a parent is relying on their adult children for support, a life insurance policy is another good potential hedge in case that young adult were to die prematurely, leaving those parents without that financial lifeline.

One traditional rule of thumb that does tend to still apply is that term life insurance policies do still tend to be the best options for young buyers in most cases.

Term policies have a fixed amount of time where they protect their policyholder. So, say a young adult bought a 20-year term policy when they graduated college, they would have that protection until their early 40s, at which time they would either have to buy a new policy if they wanted to retain coverage or reevaluate the risks they and their family are facing.

The main advantage of term policies is their lower lifetime cost. Because of their expiration date, they cost only a fraction of what a permanent life insurance policy, such as whole life or universal life would cost, because those permanent policies are guaranteed to pay out when the policyholder dies.

Early in a young adult's financial life, it often makes the most sense to maximize that coverage for the minimal costs, and at the same time, take the savings over what they would have paid for a permanent policy and use it to fund things like retirement accounts.

Later in life, after tax advantaged retirement plans are funded and things like family homes have been purchased, the general rule is that then permanent policies may have a role to play for things like retirement and tax planning.

The disadvantage of that term-early strategy is that life insurance policies cost less the younger the policyholder is, so if they would have purchased a permanent policy at a younger age instead of the term policy, they could have locked in those lower rates while they were younger and generally considered to be healthier, even if it means their monthly premium is much higher than term would have cost.

No financial plan makes sense for every situation, so each policyholder needs to consider all the savings and time-value of money considerations with their financial planner and tax adviser before settling on a strategy.

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March 2019 — A New LTC Payroll Tax Passes in Washington

The Washington Trust Act was first passed in 2019. This law seemed different than the Federal Class Act program a decade earlier that was part of the Affordable Care Act. The Class Act failed after it was deemed not to be actuarially sustainable. The Trust Act was different in the fact that it required mandatory participation for every W-2 employee and that it would be funded through a payroll tax. It was originally scheduled to begin in 2022 but was delayed to July 1, 2023.

In 2019, the insurance companies took a wait-and-see approach as the state had not engaged much with the private insurance community as the law was being developed. That would later turn out to have a negative impact on the amount of new business that the carriers could absorb.

February/March 2021 — Awareness of the Law Expands

Something changed in early 2021. The Washington legislature worked feverishly to amend the law that was about to be implemented. The biggest issues in the legislative negotiations seemed to revolve around the private insurance opt out and deadlines. Questions included:

- What types of insurance products qualified for the payroll tax exemption?
- When must an employee purchase a policy to opt out of the tax?

The law was amended for the private insurance opt out. It required purchase prior to Nov. 1, 2021. Suddenly, there was much less time to plan for private insurance as an alternative to the payroll tax. This got the attention of many employers.

We hope that California's current bill and final legislation takes a less rocky path to its final implementation, but there is little doubt that those employees who seek private insurance sooner may have the most options.

April 2021 — Employers and Carriers React

In a matter of weeks, we received requests from over 200 Washington employers to begin immediate LTCi enrollments. We realized we were going to need a bigger boat with more carriers.

The worksite and standalone carriers experienced the heaviest inquiries. There was an even greater rush since the largest standalone worksite company had already announced their exit from the entire LTCi market. The other worksite and standalone LTCi carriers began to ration the availability of their products in Washington. Adding more uncertainty, it was not entirely clear whether the Life / LTC hybrid worksite products would qualify for the exemption because Washington State's definition of LTC insurance was broad. Our hope is that California learned a valuable lesson on this issue.

May 2021 — Warning Signs Ahead

In late April, the amended law passed as expected, but notably without a formal definition of the products that qualified for exemption, aside from the general Washington definition. One Friday in mid-May, an update appeared on the state's website to include new language defining qualifying LTC insurance in a stricter fashion (see my article titled "Is It or Isn't It Long-Term Care Insurance?" in the June 2023 CalBroker issue **- www.calbrokermag.com/more/is-it-or-isnt-it-long-term-care-insurance/**). This could potentially disqualify many products including options for employer enrollments beginning the following week.

Just as concerning, we started to notice a consistent theme in our conversations with employers and employees. These questions included:

- How long do our employees need to keep the policies?
- When can we terminate the payroll deduction?
- Will the state check each year to make sure that everyone still has their policy?

Unfortunately, there did not seem to be a mechanism in the law for recertifying coverage. Nor was it clear that the state had been provided resources for ongoing review of the payroll tax exemptions after the initial opt out period. We had to manage expectations so that employees were not purchasing insurance just to qualify for the payroll tax exemption. They had to understand the implications of lapsing coverage.

June 2021 — Growing to Meet Demand

LTC planning is a consultative process that typically takes months. This was the most difficult transition the team had to embrace. How do we abbreviate the process to meet the state deadlines? We developed an approach to offer at least minimum, meaningful coverage for clients who intended to keep the policy for LTC planning purposes. Additional coverage as a supplement could be offered once the clients had more time to plan beyond the Nov. 1, 2021 deadline.

July 2021 — Carrier Changes Ahead

Once we substituted most of the worksite enrollments for individual custom consultations, we were off and running. As you might expect, the most challenging conversation was with a typically younger employee just looking to opt out and with no particular interest in learning about the coverage or LTC planning. While we firmly believed it was in everyone's best interest to offer the products the way they were designed, there was still significant pushback from employers, employees and consultants. Their frustration was not directed towards us, but rather at Washington for having mandated such a short time period to make this important planning decision.

Of course, many LTCi agencies and agents in the market were taking different approaches. Some agents were getting licensed for LTCi in Washington for the very first time and many were succumbing to the temptation to figure out how to sell the lowest priced product possible to "beat the tax."

If you're planning to offer LTCi in California, do not take this approach, and here's why. As a result of some agents just selling for the opt-out, one of the largest standalone carriers in the market announced they were exiting in Washington.

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This put pressure and greater demand on the other carriers. Soon carriers began imposing minimum coverage requirements. Behind the scenes, carriers began to contemplate their exit from Washington as it was clear they could not satisfy the demand in such a short time frame.

August 2021 — Supply Leaves the Market

Early August represented a collapse in the supply of individual LTCi and hybrid products in Washington. As the carriers announced major product changes weekly, it only served to stimulate more demand. The carriers had no choice but to shut down as they simply could not keep up with the demand. One of the largest carriers in the market shared with us that at the peak, they were receiving about 1,000 individual applications an hour, which might normally be the number of applications they received in a month, across the entire country. They simply did not have the systems or employees to satisfy the demand.

By the end of August, the only products that remained had limited distribution and therefore more supply constraints. We continued to offer clients excellent options for those interested in meaningful LTC benefits, but for younger clients looking for individual solutions, there simply were not many options available.

The worksite options continued to be offered in the market despite the challenges of not knowing for sure whether the products would qualify for opt out and if clients would keep the coverage. And time was running out.

September 2021 — Reflections on the Washington Fire Sale

Washington became the first state in the country to move toward a path of providing a minimum level of LTC coverage funded by their workers. This is the litmus test in a social experiment whose implications we do not yet fully understand.

There are elements of the Washington program that were well designed, like requiring the program to be actuarially sound, which meant mandatory participation. The state was tasked with creating an LTC planning education and awareness campaign that has the potential to help families in a variety of ways. The state also emphasized providing more home health care benefits, which will take some of the burden off the WA Medicaid program, which had begun to absorb much of these costs.

The State of LTCi in California and Beyond

My hope is that California uses the Washington experience as a guide to create better outcomes and coordination.

A feasibility report, commissioned by the California legislature, was released in its final draft form on Dec. 14, 2022. An actuarial report with additional specifics on cost and financial viability will be released in 2023.

KEY POINTS FOR CALIFORNIA ADVISORS

The California task force has recommended a payroll tax similar to Washington but may be more comprehensive.

The task force has recommended a private insurance opt-out.

It's prudent to offer a group or individual solution that is either traditional or hybrid with an LTC rider.

As we experienced with Washington, carrier capacity may be limited, so best to enroll sooner instead of waiting if planning to offer LTC, regardless of whether the payroll tax is implemented.

Now that the ability to purchase private insurance to qualify for an opt out may be over, Washington is embracing the private market to supplement the $36,500 (plus nominal increases) their program provides, and carriers are listening. We expect California to do the same. That means more client questions about LTCi.

Are you ready?

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If you would like to collaborate on LTCi, you can find help through the online portal listed below. Try the portal and see how you can get LTCi case design help, make referrals to LTCi specialists who will collaborate with you and help you help your client. You will share in the success of a LTCi sale from your referrals.

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