

## HEALTH INSURANCE

# Protect Yourself Legally

Reduce the risk of lawsuits and litigation when selling long-term care insurance.

Preeti Vasishtha


**L**ong-term care insurance (LTCI) advisors face a risk of lawsuits and litigation in this highly litigious society. Two factors that contribute to these risks are the complexity of the products advisors sell and consumers' perceptions about insurance companies, said Margie Barrie, LTCP, CSA, national marketing coordinator of the Long-Term Care Professional Designation, developed by AHIP and AALTCI. Barrie spoke at NAIFA-Florida's 76th Career Advancement Conference & Expo held recently in Orlando, Fla.

LTCI products are complex. Even if an agent is selling only a few policies every year, he has to relearn each product, which requires a sharp learning curve, Barrie said. The other problem is that people, in general, have complaints about insurance companies and claims. If a lawsuit involves an old, frail grandmother who is suing a younger, well-groomed agent, chances are that the jury will be biased toward the grandmother, and the agent may just lose the case even though he did whatever he was required to do, she said.

In such an environment, it's imperative that LTCI agents take steps to protect themselves. Here's how:

- **Recommend LTCI.** Even though you may only be offering financial-planning services to your client, you have to raise the issue of LTCI with him and know how much LTCI to recommend.

- **Understand information privacy.** You need to understand how HIPAA and



**IF YOU'RE ADOPTING A ONE-SIZE-FITS-ALL APPROACH WITH YOUR CLIENTS, IT WILL CREATE TROUBLE.**

the Gramm-Leach-Bliley Financial Modernization Act (GLB) of 1999 impact you. Find out if you need to use HIPAA-compliant authorization when you're selling LTCI. Another HIPAA area relates to the rules that govern how your agency can share information. Essentially, you can share information only as necessary to place or service the policy. The GLB Act requires companies to give consumers privacy notices that explain the institutions' information-sharing practices. In turn, consumers have the right to limit some—but not all—sharing of their information.

- **Suitability.** If you're adopting a one-size-fits-all approach with your clients, it will create trouble. You have to know and understand each client's needs and then create LTCI policies based on those needs.

- **Premium increases.** This is a tricky issue and many advisors are unsure if and when they should bring it up with their clients. It's also the major reason for class-action suits in LTCI, Barrie said. You need to address the issue upfront. But first un-

derstand the product you are offering to your client and know when to recommend protection against inflation.

- **Documentation.** The risk of the issues discussed above is magnified or eliminated depending on how you document your notes. Your notes can be a huge asset if you use them as reminders, check lists and confirmation letters detailing what you discussed with the client, Barrie said. But again, reread whatever you send to your clients—whether they are rapidly typed short replies from your Blackberry or longer letters.

- **Communication.** To avoid lawsuits, you need to get the fundamentals right. Good communications is the first fundamental, Barrie said. Make sure that the communication is timely. Delays in responding to clients are among the top three reasons they file LTCI complaints.

- **Client's refusal.** Make your client sign a long-term care refusal form if he refuses LTCI. The form should read: "After review of the LTC presentation, I/We elect NOT to purchase the coverage explained to me/us. I/We realize the possibility that my/our LTC needs in the future may be paid with personal funds." This should be followed by the client's name and signature, advisor's name and signature, and date.

- **Check list.** To make sure that you cover all areas in your initial presentation to the client, keep a check list handy, Barrie said. The check list should include: An outline of coverage for each company presented, policy options with nonforfeiture values, a discussion of the circumstances under which premiums can increase, *A Shopper's Guide to Long Term Care Insurance* brochure from NAIC and a *Guide to Health Insurance for People with Medicare* from NAIC and the Centers for Medicare & Medicaid Services. **■**