



## NAHU POSITION ON LONG TERM CARE INSURANCE

NAHU believes that consumers should be encouraged to purchase the long-term care policy of their choice, and should be provided incentives for purchase and complete information on the types of coverage available and any potential tax consequences. Insurance carriers should be allowed to market both tax-qualified and non tax-qualified plans, without concern that their policyholders will be subject to income taxation when they become eligible for benefits. Federal barriers to state long-term care partnerships should be removed to provide strong incentives for the purchase of a basic and affordable level of long-term care coverage without fear of being forced to “spend down” all assets if long-term care needs ultimately require a longer period of long-term care than provided under the basic policy. With advances in medicine and the aging of the baby-boomer generation, an increasing number of individuals will need long-term care. These individuals will be best served and the burden on the government minimized if the purchase of private long-term care insurance policies is encouraged by public policy and encouraged by tax policy.

**NAHU Position #1 – Premiums paid for tax-qualified long-term care insurance policies should be deductible directly from gross income.**

**NAHU Position #2 – Premiums paid for tax-qualified long-term care insurance offered through employer-sponsored plans should be available through Section 125 Cafeteria plans.**

**NAHU Position #3 – Federal barriers to the establishment of state long-term care partnerships should be removed to provide strong incentives for the purchase of a basic and affordable level of long-term care insurance for individuals of moderate income.**

**NAHU Position #4 – Long-term care insurance benefits from either tax-qualified or non tax-qualified policies should be received by the insured without income tax liability.**

**NAHU Position #5 – The 90-day certification requirement should be eliminated from the requirements of tax-qualified long-term care insurance.**

**NAHU Position #6 – The States, State Departments of Insurance and the private sector should undertake, in cooperation with the Federal government, a program of education, to inform the public about the risks of catastrophic long-term care costs, and the limited availability of government resources to pay for these costs.**

**NAHU Position #1:  
Improved Access to Long Term Care Financing**

The new deductibility provided for tax-qualified long-term care insurance policies under HIPAA represents an excellent start toward encouraging American consumers to plan for long-term care expenses, instead of relying on public dollars for their long-term care needs. Unfortunately, the deductibility of premiums is limited to:

- A maximum premium amount that may be deducted according to a schedule that increases with age and is indexed annually; and,
- The purchaser must be able to itemize deductions on Schedule A; and,
- Unreimbursed medical expenses must exceed 7.5% of adjusted gross income.

Because of these restrictions, the new deductibility does not provide a deduction for most people, and therefore delivers little incentive. The major value of HIPAA has been the increased awareness of the need to purchase insurance to protect against the high potential costs of long-term care. Consumers should be provided with a meaningful incentive to purchase long-term care insurance. Tax deductibility should be provided at a level that is likely to affect most persons rather than a limited few.

**Therefore, we recommend the following changes:**

- **Change the current deduction to an “above the line” deduction (meaning that people can take the deduction without itemizing) with no age and no premium limitations. This will encourage the purchase of long-term care insurance by everyone, including younger Americans who will benefit by making their initial purchase when premiums are most affordable. Over the future lifetimes of those individuals purchasing coverage, this will save the Medicaid system more expense than it currently costs the tax system in lost revenues.**
- **The current tax deduction caps based upon age should be removed since they unintentionally discourage purchases at lower ages, where the purchase of long-term care insurance is most affordable.**

**NAHU Position #2 – Make Long-term care Insurance Available Through Section 125 Cafeteria Plans**

The majority of Americans enjoy the benefits of employer-sponsored health insurance. Many employers also provide or offer other benefits for employees, such as disability insurance, life insurance, dental insurance, retirement plans, employee assistance programs, and a variety of voluntary benefits. In some instances, employees share in the benefit cost. For most such benefits, an employee can reduce the cost of the benefit by paying his or her share of premiums

through a Section 125 Cafeteria plan. Section 125 plans allow employees to pay for benefits on a pre-tax basis by allowing employees to reduce their salary by the amount of the premium for the benefit. Since federal income and FICA taxes are calculated on salary, the employee's taxes are reduced and the net cost of the benefit is lower. Since employers match employee FICA contributions, Section 125 plans also reduce an employer's outlay for FICA. These strong incentives for employers and employees alike have inspired many employers to offer additional benefits, have encouraged greater participation in employee plans, and have made benefits much more accessible and affordable for employees and their families. One benefit that currently cannot be purchased through Section 125 Cafeteria plans is long-term care insurance.

- Making long-term care insurance available through employer-sponsored Section 125 plans would make the purchase much more attractive for all employees, including younger employees who will benefit by making their initial purchase when premiums are most affordable.
- Making this change would also help save federal and state Medicaid dollars, since many people who don't purchase private insurance eventually spend down their assets or transfer them in order to qualify for public long term care assistance.
- Providing employees with the opportunity to purchase group long-term care insurance policies through Section 125 plans with pre-tax dollars will allow many more moderate and middle class families to better plan for their financial future.

**Therefore, we recommend that Congress pass legislation to allow long-term care insurance to be included in employer-sponsored Section 125 cafeteria plans. Long-term care is a product consistent with those insurance products that are currently acceptable in a Section 125 Plan. Through educational efforts by employers and the government, this provision will go a long way to dispel the myth that long-term care insurance policies are only for the wealthy.**

### **NAHU Position #3 – Allow Full Development of State Long-term Care Partnership Programs**

Long-term care Partnership programs allow people owning state-approved LTC partnership policies to qualify for Medicaid without “spending down” their life savings. In a partnership policy, if a policyholder exhausts the benefits provided by their long-term care insurance partnership policy, Medicaid will become the payer for their long-term care expenses, but rather than being required to spend down all assets to qualify for Medicaid, the policyholder is able to keep personal assets approximately equal to the benefits paid by the policy. States that utilize this concept are projected to realize savings since their treasury is the last payer, not the first.

The partnership concept originated with a grant funded by the Robert Wood Johnson Foundation. As a result, programs began in California, Connecticut, New York and Indiana. (Iowa recently implemented their program that was based on a Medicaid State Plan amendment that the state legislature rushed through prior to 5/14/93.) However, the Tax Act of 1993 known as the Omnibus Budget Reconciliation Act contains a provision that prevents further expansion of these programs. NAHU believes that the "Waxman Amendment" contained in OBRA '93 discriminates against the residents in the other 45 states that cannot provide asset protection to residents through Long-Term Care Partnerships.

NAHU believes that the current Waxman amendment language should be repealed for the following reasons:

- It would save Medicaid dollars because long-term care needs will be met by the private sector rather than through public expenditure
- It would promote greater self-reliance in people meeting their own care needs rather than relying on a government entitlement
- It would assist in the expansion of the long-term care insurance market, something badly needed in anticipation of a dramatic increase in the numbers of elderly requiring such care

**Therefore, we urge Congress to amend the current language on Long Term Care partnerships included in OBRA '93 to allow partnership programs to be offered in all states**

### **NAHU Position #3: No income tax liability on benefits**

Long-term care insurance provisions in the Health Insurance Portability and Accountability act of 1996 (HIPAA) law were intended by Congress to provide favorable tax treatment for long-term care insurance policies that meet specified requirements. One obvious purpose of this favorable tax treatment was to encourage people to buy private long-term care policies, with the ultimate goal of reducing the government's Medicaid expenditures for long-term care. In establishing the parameters for tax-qualified long-term care plans, however, HIPAA created confusion over a potential new tax burden associated with the purchase of non-qualified policies. Such confusion may very well lead consumers to make uninformed long-term care purchasing decisions.

Prior to the passage of HIPAA, there had been no guidance regarding taxability of long-term care insurance benefits received. The lack of any IRS reporting requirements for these benefits in the past has generally resulted in no income tax liability for benefits from long-term care insurance. The IRS, as required by the HIPAA law, now requires insurance companies to report benefit payments from all long-term care policies to both the recipient and the IRS. However, this reporting requirement does not require any indication of whether the benefits are from a tax-qualified policy or non-qualified policy. HIPAA is clear that qualified long-term care insurance benefits are not taxable but silent on the tax treatment of non-qualified long-term care insurance benefits. Without any guidance from the IRS, consumers are left to speculate on the taxability of such benefits. ***This potential taxation***

*of health insurance benefits is unprecedented in tax law.* In fact, individuals have never been taxed on any type of insurance benefits that compensate for a loss when premiums have been paid with after-tax dollars.

- In addition, the states have made significant efforts to recognize the differing needs of consumers by offering them choice and encouraging the purchase of private long-term care insurance by approving both qualified and non-qualified policy forms. These efforts will be negated if the benefits under non-qualified policies are subject to taxation. One example of this type of consumer need would be a person who requires a plan with a benefit triggered based on medical necessity, rather than loss of certain activities of daily living. Because the financial impact to a consumer of potential income taxation is so significant, ultimately, non-qualified long-term care insurance plans could cease to exist, taking away the consumer's ability to select the plan of his/her choice. Essentially, this results in the federal government mandating the types of long-term care policies that may be sold in individual states – a role that has previously always been reserved for the states.
- Insureds purchasing non tax-qualified long-term care policies have no clear guidelines as to what the tax status of their benefits may be. This may cause consumers to delay purchase until this is clarified. Purchasing delays or even worse, the purchasing of a policy under an incorrect assumption about the taxability of its benefits, can be an irreversible error. While waiting for tax clarification, the premium increases significantly as consumers age, and some will develop illnesses that render them uninsurable. However, the worst impact of the current situation is that many consumers are purchasing qualified plans assuming a negative tax consequence potential for non-qualified plans, while others are purchasing non-qualified plans assuming that benefits will not be taxed. Therefore, it is essential and only fair to the many consumers making these tough decisions that the tax position be clarified so at least those purchasing long-term care insurance will be able to make a more informed decision.

**Therefore, Congress should pass legislation on the issue of taxation of non-qualified plans, making it clear that regardless of whether or not a state approved long-term care policy is a tax-qualified plan, the intent of the new law is not to subject any long-term care benefits to taxation.**

#### **NAHU Position #4: Eliminate the 90-day Certification requirement**

HIPAA provides that qualified long-term care plan benefits cannot be provided unless the patient is certified by a licensed health care practitioner as having a chronic illness requiring long-term care that is expected to last at least 90 days. Many people need rehabilitative care after an accident or illness outside of the hospital setting for periods of time shorter than 90 days, and some seniors with a chronic illness have multiple periods of such care in any given year. Such care may cost thousands of dollars each time it is required, and some consumers may prefer to purchase a long-term care plan which provides payment for these types of

services. HIPAA also added requirements that private long-term care insurance, except in certain group settings, can not pay for expenses to the extent they are covered under Medicare or other health insurance. Therefore, these benefits will only be paid, for most claimants, in those instances where other coverage for these expenses does not exist.

**American consumers are free in every other insurance market to select the level of coverage that is appropriate for their individual situations. It should not be the position of the federal government to determine the level of coverage purchased by consumers. The 90-day certification requirement does little to reduce costs to the government, and much to add confusion and unnecessary purchasing restrictions. The HIPAA law should be amended to remove the unnecessary 90-day duration requirement on qualified plans.**

### **NAHU Position #5: Consumer Education**

Education of the public on the risks of long-term care is one of the most important tasks that the government can undertake in the 21<sup>st</sup> century. Consumers should be educated on their potential need for long-term care services, as well as the differences in types of long-term care insurance coverage, including differences between tax-qualified and non tax-qualified plans. The public needs to clearly understand that Medicare covers only a very small percentage of long-term care costs, and will probably cover even less in the future. The public also needs to realize that they must essentially impoverish themselves by spending down all of their assets in order to qualify for Medicaid. Finally, the public must be made to realize that obtaining long-term care insurance is dependent upon buying a policy while still in good health, and that the younger the age when it is initially purchased, the lower the lifetime costs of the coverage will be. NAHU members are committed to helping educate American consumers about these issues, but we cannot do it alone.

**Therefore, NAHU urges Congress to work with the states and the private sector using all resources at their disposal, to educate Americans on the importance of planning for their future long-term care needs.**

NAHU believes that consumers should be provided meaningful incentives to plan early in their lives for their own future well being and care, including their future needs for long-term care. NAHU believes the best way to fund for these future needs is through the purchase of private long-term care insurance. We urge Congress to recognize the diverse needs and circumstances of different individuals, including the need of some individuals for long-term care benefits different from those currently included in a tax-qualified plan. The purchase of a long-term care policy decreases a person's reliance on the government for these expenses, and we look forward to working with Congress and the states to develop incentives that encourage

personal responsibility for long-term care expenses while allowing the maximum amount of choice for the consumer.