Long-Term Care Insurance: Wellness Program Impacts on Claims and Health Outcomes

A Practical Guidance® Practice Note by
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This practice note discusses in the context of long-term care insurance how wellness programs can be used to potentially prevent, delay, or lower the severity of long-term care claims and improve health outcomes.

For additional guidance on long-term care insurance, see Long-Term Care Insurance Fundamentals, Long-Term Care Insurance Fundamentals Checklist, Long-Term Care Insurance Financing, Long-Term Care Insurance Financing Checklist, Long-Term Care Insurance: Filing a Claim, Long-Term Care Insurance: Filing a Claim Checklist, Long-Term Care Insurance Litigation, Long-Term Care Insurance: Litigation Checklist, and Long-term Care Insurance State Law Survey. See also The Law of Life and Health Insurance § 6.16 (Long-Term Care Insurance), New Appleman on Insurance Law Library Edition § 93A.01 (What is Long-Term Care Insurance?), New Appleman on Insurance Law Library Edition § 93A.02 (Regulation of LTCI), and Article: Hidden Trade-Offs in Insurance Wellness Programs, 2021 Mich. St. L. Rev. 341.

Overview

Developing wellness programs to provide to policyholders is gaining increasing traction in the long-term care insurance industry, as such programs seemingly benefit everyone. These programs are largely focused on pre-insurance-claim intervention, but services can be provided to the healthy population, at-risk population, and on-claim populations alike. Specifically, insureds gain access to programs that can improve health, delay the onset and lessen the severity of a long-term care episode, and allow them to receive care at home for longer; and insurers investing in the provision of such programs ultimately pay out less in long-term care claims when there are fewer of them, when the claims that do arise are lesser in severity, and when care is received at home versus in a facility.

Wellness Program Examples

There are multiple areas of focus for long-term care wellness initiatives, including consumer engagement, consumer support, consumer care, and analytics programs. These programs are adaptable to whichever group of consumers they are serving. For example, the most helpful interventions for the healthy population will look different from the interventions needed by the at-risk population or the on-claim population. The following provides just a sample of interventions that can be used to improve consumer wellness.

Engagement Initiatives

Engagement initiatives are products and services that engage the consumer in order to obtain data and provide relevant guidance and interventions. For the healthy population, some wellness engagement interventions include:

- Lifestyle apps to be used on personal technology
- Fitness wearables that can increase motivation to stay active and keep track of important measurables, such as how many steps are taken each day
- Periodic assessments of overall health and wellness
- Symptom detection services
- Cognitive exercises
- The recently launched Alexa Together service, which utilizes the popular Amazon feature to provide new offerings such as fall detection, emergency services, and remote assistance with various tasks -and-
- Tele-med platforms

For the at-risk population, engagement wellness programs can entail:

- More frequent assessments of a consumer's health
- Cognitive health tracking
- Fall prevention services
- Wearable alert systems
- Passive monitoring devices -and-
- Engagement of family and loved ones to ensure that the consumer's needs are being met and provide holistic assistance to the entire care team

When an individual does ultimately reach on-claim status, engagement wellness interventions include hospital discharge planning to facilitate appropriate care as needed upon their departure from the hospital, as well as claim eligibility assessment.

Support Wellness Interventions

Support wellness interventions are products and services that support aging in place, excluding long-term care services. Recent data shows the importance of these interventions, as 85% of respondents to the 10th Annual Nationwide Retirement Institute Long-term Care Survey agreed that it was more important than ever to stay in their home for long-term care. See Half of Americans Fear Falling More Than Cancer and Want to Age in Home Without Stairs, Nationwide (Nov. 17, 2021). Support interventions for the healthy population can include medication management. Such interventions for the at-risk population include:

- Cognitive care planning
- Transportation services
- A community services concierge -and-
- Home modifications to better accommodate aging in place, such as installing grab bars in bathrooms and stair lifts

There is a strong market for such services, as evidenced by the response of 47% of those not retired to the Nationwide survey expressing concern that their current home would not be a safe place to age in place. For those on-claim, support wellness initiatives include:

- Long-term care provider referrals
- Care provider matching
- Care concierge and support
- Caregiver support and training -and-
- Powered clothing

Care Wellness Programs

Care wellness programs seek to provide both informal and formal long-term care services, including cognitive therapy and informal community services to the at-risk population and hospital discharge services, home healthcare, and adult day care to the on-claim population. Moreover, analytics wellness services collect and analyze data to generate predictive risk and intervention effectiveness scores. Analytics for the healthy population can be obtained from "big data" collection, data collection from devices, risk scoring, and intervention scoring, and analytics can be used with the on-claim population to provide facility transfer risk scoring.

So, Do They Work? A Look at Successful Managed Long-Term Care Programs

A reason for encouragement about the potential outcomes of these wellness programs is that managed care programs existing outside of traditional long-term care insurance have been successful. For example, long-term care services have been provided in managed Medicaid programs. There, commercial managed care companies are paid capitation fees to manage Medicaid enrollees' benefits-with the level of monthly payment increased based on the disability of the enrollees-and are required to cover long-term care services.

There have been multiple key initiatives identified and successfully implemented by managed Medicaid long-term care service providers. First, the managed care companies seek to identify candidates for home care services. This is done through health screenings as part of the enrollment process, pre-screens prior to facility entry to assess if home care is a viable alternative, and identifying individuals in facilities who are good candidates for home care via resident data and referrals to case workers. For traditional long-term care insurers, such actions may prove transferable and beneficial to identify their own policyholders who might benefit from home care services. For example, insurers could engage in outreach to active policyholders using tiered risk scoring tools, and industry pilots show high response rates at key pre-claim ages. Additionally, third-party data, such as hospital discharge alerts and micro social determinants of health, can also be used to identify at-risk policyholders. Insurance carriers could add endorsements requiring pre-authorization to use of such data, perhaps as a partial offset to a rate increase.

Second, managed long-term care programs have also successfully informed candidates of home care services options. Specifically, they have developed awareness programs and ensured consistent messaging within state agencies about those options and implemented campaigns discussing home care service options prior to hospital discharge. Long-term care insurance can engage in similar information campaigns, such as by engaging in pre-claim outreach reminding policyholders that home care services are covered and providing concierge services to new claimants and at-risk policyholders upon hospital discharge. Managed long-term care programs have also provided personalized support to home care enrollees, including through providing one-on-one case workers to facilitate home care services and performing routine follow-ups to ensure that home care services are meeting needs. Similar support could be offered by long-term care insurance carriers, including by providing care concierge claimants with a focus on enabling and extending safe aging in place, as well as providing support services to family caregivers. Lastly, financial incentives for managed care organizations and providers have been created that design capitated rates rewarding home care services utilization in lieu of facility care and align state and provider goals through incentives and grants. A similar incentive could be utilized by long-term care insurers through experience sharing programs with third-party program partners.

A comparison of traditional long-term care insurance versus managed Medicaid long-term care programs shows that the latter has successfully shifted care away from facilities to home healthcare. See Medicaid Expenditures for Long-Term Services and Supports in FY 2016, (May 2018). For example, since 1981, home care spending has gone from nearly zero to being the majority (almost 60% of Medicaid long-term care expenditures). Yet, during that same time period, long-term care spending has been a decreasing portion of overall Medicaid expenditures, dropping from 47% in 1981 to 30% in 2016.

Another managed care program that has successfully existed outside of traditional long-term care insurance programs is the continuing care retirement community without walls, aka continuing care at home (CCaH) model. In that model, members join a CCaH while they are still healthy and pay a monthly fee that can increase each year in exchange for the CCaH managing and covering the costs of care if and when they need long-term care services. The objective is to enable and prolong aging in place prior to and during the long-term care episode. A comparison of traditional long-term care insurance versus managed long-term care in a CCaH setting shows improved experience by shifting the care setting. While CCaH incidence rates by calendar year and monthly claim termination rates by claim are similar to traditional long-term care insurance, CCaH daily benefit utilization rates are modestly lower due to negotiated discounts, and the percentage of claims where people receive their initial care at home versus an assisted living facility is substantially higher. Moreover, the average claim size in a CCaH is 25% lower, with an average claim cost of $77,000.00 compared to a $102,000.000 average claim cost in traditional long-term care insurance.

Ultimately, both the managed Medicaid and CCaH programs demonstrate significant benefits. Specifically, both programs regularly assess their members' health and risk of needing long-term care services prior to the point of needing long-term care and actively manage care once those services are needed. Both programs have also demonstrated an ability to intervene early, deliver high quality care at the level that is most appropriate for its members, and enable and prolong the delivery of care at home. Thus, while these are not traditional long-term care insurance products, they do demonstrate that early engagement with at-risk populations and active care management can be effective, evidencing the benefits that wellness programs offered by traditional long-term care insurers will seek to provide.

Current Challenges in Wellness Program Implementation and How the NAIC Is Confronting Them

Despite the aforementioned benefits of long-term care insurance wellness programs, the implementation of those programs is not without numerous challenges. These challenges were recently raised in a paper adopted at the National Association of Insurance Commissioners (NAIC) Fall 2021 national meeting. See Issues Related to LTC Wellness Benefits, Paper adopted by the NAIC LTCI Reduced Benefit Options (EX) Subgroup at Dec. 7, 2021, Meeting (NAIC Paper). , Paper adopted by the NAIC LTCI Reduced Benefit Options (EX) Subgroup at Dec. 7, 2021, Meeting (NAIC Paper).

Program Operation Challenges

First, consumer questions and confusion present a potential challenge to wellness program implementation. It is likely that consumer confusion about or buy-in into wellness programs will be largely variable depending on the program's objectives. For example, wellness initiatives with direct connections to preventing common medical issues (such as installing a grab bar) will be less confusing for consumers and should trigger fewer and less complex regulatory and statutory requirements related to privacy, consent, and disclosure compared to programs with newer technology that rely on data collection and monitoring of consumer activities. The Subgroup anticipated that effective communication regarding long-term care wellness programs will require in-depth engagement with consumers, policyholders, family members, eldercare subject matter experts, and NAIC consumer representatives, and noted plans to engage with Medicaid and PACE (Program of All-Inclusive Care for the Elderly) to ascertain best practices of communicating with consumers about these programs.

Moreover, as a critical overarching matter, it is difficult for long-term care insurance carriers to evaluate the programs' effectiveness. For example, given the lag time between early intervention long-term care wellness efforts and claim incidence, it is difficult for insurers to analyze the efficacy of such wellness programs in reducing claim costs. This leads to numerous questions, such as whether wellness efforts are just an additional cost with no guarantee of any returns and what are the criteria and benchmarks that can be used to assess program success. Early indicators about the effectiveness of interventions on policyholder health and claim costs from pilot programs are promising, but data development is slow. Thus, facilitation of data sharing between vendors and insurance companies, and even perhaps Medicaid, will be a key element to analyzing program efficacy. Additionally, because there are only a few companies remaining in the stand-alone long-term care insurance market, sharing of ideas between companies is plausible, as long as care is taken to avoid antitrust implications. The Subgroup has identified "next steps" in dealing with this challenge, including state regulator engagement with insurance companies to learn of recent developments in the wellness program arena, researching public program data on effectiveness of long-term care wellness programs, and determining an approach to gauge success of the programs and facilitate the sharing of general results among insurance companies within legal and regulatory boundaries.

The extent to which implementing wellness programs will influence actuarial issues, such as valuation, rate increase, reviews, and reasonable value of benefits, is also currently unclear. While wellness programs are expected to improve health outcomes, as referenced above with the difficulty of ascertaining program efficacy, it is difficult to predict how future claim costs will be affected in comparison to the investment insurance companies are putting into those programs. As data is obtained, companies will be able to better evaluate the impact of wellness benefits on future claim incidence and severity, which could also influence rate increases and reserves. With respect to valuation, future cash flows associated with long-term care wellness programs and resulting potential claim cost reductions may be incorporated into reserve adequacy testing under moderately adverse conditions. Regarding rates, long-term care wellness programs' future cash flows and potential claim cost reductions may also be incorporated into lifetime loss ratio projections associated with rate increase filings, and the Subgroup notes that consistency between rate increase assumptions and reserve adequacy assumptions may be expected by some regulators. Finally, the NAIC's Long-term Care Task Force has "tentatively established guidance that reduced benefit options in lieu of rate increases should provide reasonable value in comparison to the economic value of maintaining benefits and paying the increased premium," and "to the extent that long-term care wellness benefits are tied into reduced benefit options, the holistic concept of reasonable value will likely be a consideration."

Other potential program operation challenges are those associated with the implementation itself, such as how to involve third-party administrators and vendors, how to integrate the wellness programs into current policy administration, and how to integrate the wellness programs into new products.

Legal Challenges

Another challenge in implementing wellness programs are the legal concerns about unfair discrimination in the selection of policyholders for participation in a wellness pilot and in the pilot's operation. With respect to selection, the question is how insurers may offer a wellness initiative that is not unfairly discriminatory to discrete populations within a group of policyholders and ensure that the selection of policyholders chosen for a pilot is done equitably. This is an issue because state anti-discrimination concerns arise if certain policyholders are targeted to receive extra benefits, and the NAIC Model Unfair Trade Practices Act (#880) NAIC Model Laws, Regulations and Guidelines 880-1, §§ 1-15 and NAIC Model Laws, Regulations and Guidelines 880-1, State Adoption also notes that policyholders "of the same class and essentially the same hazard" must be treated equally. Thus, the selection of participants for pilots should consider, among other factors, a wide range of individuals from various geographic, economic, social, marital, age, racial, and ethnic populations.

But even when participants have been fairly chosen for a pilot and a wellness initiative is up and running, caution still must be exercised to ensure that its operation and results are not unfairly discriminatory. For example, whether the initiative requires (1) technology and internet access and/or a smart phone; (2) access to specific places, such as roads and sidewalks; and (3) insureds to have and use various communication methods, such as phone, text, email, or mail, could raise discrimination implications. There is also an issue surrounding how states would adopt wellness initiative guidance, especially if states have different standards for allowing wellness programs in long-term care insurance. Notably, unfair discrimination standards to be utilized in assessing wellness initiatives may vary by state and require insurers and regulators to be aware of each jurisdiction's requirements. In addressing these issues, the Subgroup intends to enlist regulators and interested parties to discuss the issue, including whether the use of Big Data to predict risks and offering benefits and services only to those targeted as high risk would cause discrimination concerns. The ultimate takeaway is that not all interventions will be right for all policyholders, and any differentiation between similarly situated policyholders should be based on sound insurance principles.

Additionally, legal concerns exist that extra-contractual pilot wellness services can be viewed as rebating. The NAIC Model Unfair Trade Practices Act (#880) NAIC Model Laws, Regulations and Guidelines 880-1, §§ 1-15 and NAIC Model Laws, Regulations and Guidelines 880-1, State Adoption explicitly exempted wellness initiatives from the prohibition on rebates as an unfair trade practice in its recent December 2020 amendment. Specifically, Section 4(H)(2)(e) excludes "the offer or provision of value-added products or services at no or reduced cost," even "when such products or services are not specified in the policy of insurance" from the definition of discrimination or rebates if the product or service (1) relates to the insurance coverage; (2) is "primarily designed to satisfy" one of nine functions, including loss mitigation, reducing claim costs, enhancing health, and incentivizing behavioral changes; and (3) costs a reasonable amount in comparison to premiums or coverage. But given the recency of this amendment, most states have yet to specifically address the update and still have a prior version of the Unfair Trade Practices Act, which includes less flexible language on this point and led to a number of states carving out exceptions by individual amendments, regulations, bulletins, or desk drawer rules. This makes it difficult to provide a uniform analysis on whether wellness initiatives constitute rebating, but there does appear to be general trend that "services are not prohibited if they are directly related to the insurance product sold, are intended to reduce claims, and are provided in a fair and nondiscriminatory manner." See Jamie Parson, David Marlett, and Stuart Powell, Time to Dust Off the Anti-Rebate Laws, 36 J. Ins. Reg. 7, at p. 8 (2017). Especially given that the Model Unfair Trade Practices Act is not the only model law with language prohibiting insurance rebates, the safest course of action for insurers is, absent adoption of the current version of that Act, to evaluate rebating laws on an individualized basis in the state prior to implementing a wellness program in that jurisdiction.

Another related legal issue is the tax status of long-term care insurance contracts. In order for long-term care insurance policies to be a "qualified long-term care insurance contract" as defined in 26 U.S.C. § 7702B of the Internal Revenue Code, it must satisfy a number of requirements, and there can be adverse tax consequences for consumers if a contract does not provide benefits consistent with those requirements. The NAIC is addressing adding wellness benefits to those contracts, and insurers would presumably only offer such benefits if the contract's tax-qualified status was maintained. The NAIC has further noted that federal guidance is likely needed regarding tax qualification of broad classes of qualified long-term care insurance that would include safe harbor wellness product features that could co-exist with the tax qualification

requirements for qualified long-term care insurance contracts.

Regulatory and Privacy Considerations

The NAIC has also particularly noted that it is grappling with the appropriate regulatory role in approving and evaluating long-term care insurance wellness initiatives, including whether such initiatives should require regulatory approval prior to implementation, or whether a post-implementation evaluation process is preferable. According to the NAIC's December 2021 white paper discussed above, the current idea is that companies implementing a wellness initiative should maintain certain information to be available upon request, such as documentation of their programs and proof that the company has considered and addressed certain key challenges, including accumulating program efficacy data, avoiding unfair discrimination, rebate compliance, consumer tax issues, and maintaining data privacy. The NAIC also intends to consider developing a template that a carrier could fill in explaining how they have considered these key issues in developing a long-term care wellness program, noting that it could be received from a single company filing perhaps through System for Electronic Rate and Form Filing (SERFF) or an NAIC portal. Under this model, each state would retain the right to conduct post-implementation reviews. But the NAIC does note that after pilot programs go into effect and actual problem areas are identified, it is possible that state regulators will want to pre-approve any wellness programs and require certain documentation up front prior to the program's implementation.

In determining the appropriate regulatory role for long-term care wellness programs, the NAIC has further noted numerous regulatory considerations, including:

- How to balance holding companies accountable without burdening so much as to prevent or hinder companies from pursuing programs that might be very beneficial to policyholders
- Creating an efficient filing process
- Alerting companies that they should be attempting to address each key challenge discussed here, such as unfair discrimination and rebating compliance, prior to program implementation -and-
- Determining the consequences for companies that fail to maintain the required documentation

The NAIC is also considering whether:

- States would want to be provided notice of the mere development of a new wellness program
- To what extent states should be notified of changes or additions to a program and how those notifications should occur -and-
- Whether states would have a right to object to a particular part of a wellness program

Another critical issue in the implementation of long-term care wellness programs is data privacy. The use of Big Data or artificial intelligence to identify the target demographic for new sales, to select existing policyholders for participation in wellness initiatives, and to evaluate wellness program results raises the question of insurers or third-party data vendors using the data in problematic ways. The Subgroup has noted various policyholder considerations that might arise if and when insurers attempt to use their data for wellness initiatives, such as the policyholders becoming confused or suspicious about why they are being selected for a wellness initiative and a general lack of understanding about how their data is used and collected. Moreover, will policyholders know what data is going to be used prior to participating and should they have the opportunity to opt in or out of their data being used, either for other insurer initiatives or for external sales? Assuming policyholders do opt in to their data being used, should they be able to control that data to some extent, such as to access and correct inaccuracies? The Subgroup has also noted that insurers have their own set of considerations when using data to identify participants in wellness initiatives. For example, insurers must evaluate whether their communications should include why a wellness program is being offered, including what data is being used, and how to notify policyholders notify about the collection, use, and disclosure of personal information. They also have to consider whether they should purchase data regarding their policyholders, how wellness initiatives should be marketed to their policyholders, and how to share opt in and opt out options with potential participants in such initiatives.

During the wellness program, insurers must ensure that the data is being used, stored, and shared ethically and that they are assessing and protecting against the risks of a data breach. And another host of considerations emerges once wellness results are obtained surrounding whether the results should be sold or shared, whether the policyholder should be notified and have the option to opt in or opt out of letting the insurer use the data, how long the data will be retained, and if it will ultimately be destroyed.

In an attempt to best navigate these data privacy concerns, the Subgroup plans to reach out to health insurance experts and those with experience in Medicare and Medicaid/PACE programs to determine if there are

any transferable protocols and best practices to data protection in the long-term wellness area. It will also be identifying applicable state privacy laws and Health Insurance Portability and Accountability Act of 1996 (HIPAA) anti-marketing restrictions and requiring insurance carriers to provide privacy protection information. Finally, the Subgroup will be assessing whether policyholders can approve of expanded data use at various points in time, such as electing increased use of data in lieu of rate increases, and whether new contracts can be written with evergreen access to some private data.

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