BULLETIN 363

Inflation Protection Requirements for Long-Term Care Partnership Policies

(Superseded by Bulletin 369)

The federal Deficit Reduction Act of 2005 ("DRA") requires that a long-term care policy (including a certificate under a group long-term care contract) provide certain levels of inflation protection in order to qualify for a Long-Term Care Insurance Partnership Program. A Partnership Policy must provide "compound annual inflation protection" if sold to a person under the age of 61 and "some level of inflation protection" if sold to a person from 61 to 75 years old. A qualifying policy may provide inflation protection if sold to a person aged 76 or older, but is not required to do so.

Although the DRA does not set specific standards for "inflation protection" for purposes of the Partnership Program, the Superintendent interprets this provision to require a benefit growth rate sufficient to provide meaningful protection against the reasonably expected effects of inflation in the costs of long-term care services. Therefore, in reviewing whether Partnership Policy Forms are in compliance with this requirement, the Superintendent is guided by the national standards for inflation protection established by the National Association of Insurance Commissioners (NAIC) and prevailing industry standards.

Subsection 13(A) of the NAIC Long-Term Care Insurance Model Regulation (codified in Maine as Bureau of Insurance Rule 425, § 13(A)) provides guidance on minimum standards. Pursuant to Rule 425, an insurer must offer, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

1. The policy increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than 5%;
2. The policy guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and the benefit compounded annually at a rate of at least 5% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or
3. The policy covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

Consistent with these standards, the minimum interest rate for adequate "compound inflation protection" shall be 5%. For policies subject to the lesser requirement of "some level" of inflation protection, the same rate of simple interest is sufficient; this is consistent with products currently available in the market as an alternative to full compound inflation protection. Thus, the minimum levels of inflation protection for a policy to qualify under Maine's Long-Term Care Partnership Program are as follows:

- If the policy or certificate is sold to a person who is under the age of 61 as of the date of purchase, it must either provide automatic compound annual inflation protection of at least 5% or pay based on actual or reasonable charges with no dollar limit;
- if it is sold to a person aged 61 to 75 as of the date of purchase and does not provide automatic compound annual inflation protection of at least 5%, the policy must provide automatic annual inflation protection of at least 5% simple interest, or another method expressly approved by the Superintendent as providing an equal or better level of inflation protection; and
- if it is sold to a person aged 76 or older as of the date of purchase, inflation protection is permitted but not required.

If a policy already in force on the effective date of the Partnership Program is exchanged for a Partnership Policy, the level of inflation protection required is based on the insured individual's age on the date of the conversion request.

The minimum inflation protection levels are not optional, and must apply for the life of the contract. An offer to purchase inflation protection as an additional benefit does not satisfy the requirement, nor does an inflation protection benefit that terminates or reduces the level of protection after the insured reaches a certain age.

These are minimum requirements and do not prohibit insurers from offering a higher level of protection. An insurer may not, however, terminate an existing inflation protection benefit, without the insured's consent, if an in-force policy is exchanged for a Partnership Policy.

Furthermore, in addition to the federal inflation protection requirements under the Partnership Program, the policy must also comply with the requirements of state law applicable to long-term care policies generally. As noted above, Bureau of Insurance Rule 425 requires an offer at the point of sale of either 5% compound inflation protection or the specified alternatives.

Therefore, to summarize, the following minimum standards apply. Alternative methodologies providing equal or greater protection are permitted as set forth in Rule 425 or with the Superintendent's prior approval:

Age at time of sale or Partnership conversion request	**Minimum inflation protection**
under 61	5% compound interest.
61 through 75	5% simple interest. Offer of 5% compound interest or right to periodic upgrades without evidence of insurability.
76 and older	Offer of 5% compound interest or right to periodic upgrades without evidence of insurability.

November 17, 2009

Mila Kofman
Superintendent of Insurance

NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.