



Henry Montag CFP, CLTC

516 695-4662

[henry@thetolicentereast.com](mailto:henry@thetolicentereast.com)

[www.thetolicentereast.com](http://www.thetolicentereast.com)

Dear NYCLA Elder Law Attendee

Aug 11, 2022

I hope you found our session this afternoon useful and of interest. Please let me know if I can be of assistance to yourself, or a client. I'd be delighted to share my 37 years' experience as an independent CFP, CLTC, and act as a resource for you in this ever-changing world of providing information regarding the subject of life Insurance, and the traditional LTCL, or the new linked/combo life and long-term care insurance combination strategies.

*The points to keep in mind are as follows.*

*One must always compare the cost of one strategy against the cost of another.*

*Other than Medicaid, long term care costs are paid with life savings, or family involvement.*

*Long term care coverage should be obtained prior to age 66 as costs increase dramatically.*

*Either coverage can only be obtained by individuals that are relatively healthy.*

*Coverage provides privacy & dignity to the insured & peace of mind to their family members*

Call or email if I can answer any general questions or if you'd like to discuss an evaluation including a personal proposal with specific features, benefits & costs.

Best Regards

Henry Montag, CFP, CLTC.

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## **Voices: Protecting clients' personal and retirement assets from long-term care impairment**

By Henry Montag October 4, 2021

Any type of unreimbursed long-term care expense, be it for a mental or physical impairment, can completely ruin a client's personal and retirement plans.

The arrangements that clients have made beforehand will determine the quality of their and their family's life going forward. While no one wants to think about or make arrangements for these types of unfortunate situations, the fact remains that a growing percentage of our population is affected by some sort of impairment. Approximately 10 million Americans have some form of dementia, while another 2 million new cases are reported annually. A majority of individuals over the age of 80 are diagnosed with some form of dementia. This is in addition to the countless individuals who just face old age and have serious medical conditions. The question becomes to what extent, and to what degree, will their personal and retirement funds have to be used to care for them?

The next question is where will the money come from to pay for the needed care? What assets will be protected and what assets need to be liquidated? This problem is compounded by the fact that their retirement assets will need to be drained but further exacerbated by the fact that it may have to be done at the worst time when the market is in a down cycle. Privacy issues can also be a problem for the entire family in the event of a single spouse who is not able to make proper financial decisions if advanced planning directives (i.e., updated power of attorney documents) were not properly addressed prior to an individual beginning to cognitively slip. In addition, there can be delays and unnecessary expenses if the courts have to get involved in a guardianship. Guardianships are not only costly but oftentimes bring with them a great deal



of additional stress, unwanted publicity and time delays if proper arrangements were not planned for in advance.

Someone or some entity will always have to pay for your client's care. Whether it's the family and friends providing the care, or whether the funds to pay for the professional care come from their own investment portfolio, the best alternative would be payments from a traditional tax-qualified long-term care insurance product. My 35-plus years of experience as a CFP and CLTC has shown that an ill spouse will receive a better quality of care when the funds come from an insurance company, rather than from their own funds previously allocated for their retirement. Many individuals erroneously feel that their spouses or children will be able to provide the care they'll need. But unfortunately, nothing may be further from the truth, as the family members may be physically and emotionally incapable of providing the necessary care, or the children are too busy and involved in their own lives.

All too often, individuals wait too long to consider taking advantage of the long-term care insurance option to pay for these expenses, and when they're ready to apply for the coverage, either their health or age or excessive costs prevent them from obtaining such protection. A long-term insurance contract can be purchased to provide a set dollar amount of \$100 to \$500 on a daily basis, indexed for inflation. The coverage can pay a benefit for a minimum of two years to a maximum of six years, after a waiting period. Most contracts are of a comprehensive nature, meaning they will pay for care in an insured person's home, an assisted living community or a skilled nursing facility. They will pay for all levels of care, including custodial care when an individual needs help with the activities of daily living (i.e., eating, bathing, dressing, transferring or continence), or just cooking and shopping, which can be provided by a home health aide or homemaker. Policy coverage will also pay for skilled care provided by a nurse or occupational therapist, as well as intermediate care, which is any combination of the above. One of the most important benefits of the coverage is to provide for the services of a "care coordinator," whose function is to set up many of the support services, such as arranging to transfer a person from a hospital to a rehab center, to one's home, to provide for aides, or to go to an assisted living community or a skilled nursing facility.

The reason many individuals are reluctant to purchase such a contract is they worry they might pay for a policy and then never need to collect the benefits.

As a result of the Pension Protection Act, an option called a “linked” or “combination” life and long-term care insurance product is available and allows an individual to access tax-free distributions from the death benefit of a life insurance contract to pay for any qualifying long-term care expense. The benefits from either plan can be accessed in case an individual is unable to perform two of the activities of daily living, or in the event of any type of a cognitive impairment, as diagnosed by their physician.

Also available under the Pension Protection Act is the ability to avoid tax on the gains of an annuity contract if it is used to purchase a long-term care contract.

A long-term care insurance contract is one of the best ways to provide a client the peace of mind that is so important, as well as protect an individual's independence, dignity and retirement lifestyle for them or their spouse. A family is better off caring about their loved one, rather than caring for their loved one. To do this, a client should consult with an elder law attorney and explore the need to do pre-crisis planning while they are physically and mentally healthy. They should also consult with a CLTC One who is certified to discuss the various types of protection in the event of long-term care impairment prior to age 75, as they are not available after that age. A linked or combination benefit can be purchased beyond age 75 but can only be obtained while an individual is still healthy and can qualify for such coverage.

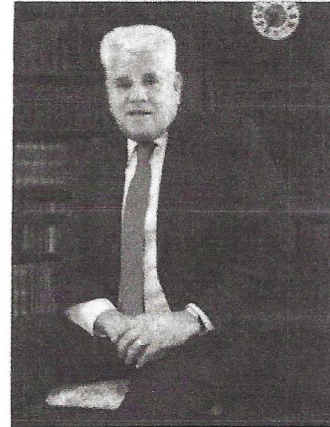
Henry Montag Principal, The TOLI Center East





NEW YORK STATE  
BAR ASSOCIATION

**Henry Montag, CFP, CLTC**  
The TOLI Center East  
henry@thetolicentereast.com  
(516) 695-4662



Henry Montag CFP, Managing Director of The TOLI Center East in practice since 1976 with offices in L.I N.Y, has authored articles and acted as a source for NYSBA Senior Lawyer, NYSSCPA Tax Stringer, Tax Facts, Bloomberg's Estates Gift & Trust Journal, Trusts & Estate Magazine, Accounting Today, Long Island Business News, Financial Planning, & The Wall Street Journal.

He has appeared as a guest on Wall Street Week, Fox Business News & News 12. He's provided CPE & CLE continuing education credits to NYSBA, ABA, AICPA, NYSSCPA, & the estate Planning Council. He co-authored an American Bar Association Flagship publication, Jan 2017, titled; "The Advisors' & Trustees' Guide to Managing Risk" The Jan 2019 issue of Commerce Clearing House, referred to him as; "One of today's best brains in life Insurance.



**SUFFOLK COUNTY**  
WOMEN'S BAR ASSOCIATION  
of the STATE OF NEW YORK

732 Smithtown Bypass, Suite A-53  
Smithtown, New York 11787  
Phone (631)-9600 | Fax (631) 361-9601

# Protecting Retirement Assets and Lifestyle From Cognitive Impairment

Posted by **SCWBA** on June 2nd, 2015  
by Henry Montag, CFP

You've worked hard and saved your entire life to be able to enjoy the lifestyle. However any type of an unreimbursed long term care expense, be it for a mental or physical impairment can of course completely ruin your and your spouse's retirement plans. After the well spouse and their family gets over the mental shock, and the adjustment to what must now become the new normal, the reality of the situation begins to kick in.

Depending on the arrangements the family was able to make beforehand will determine the quality of their and the afflicted spouses life going forward. The question as to whether your client's family will have to care for, or merely be able to care about the afflicted spouse will of course depend on what types of arrangements were made while everyone was healthy. While no one wants to think of or make arrangements for these types of unfortunate situations the fact remains that a growing percentage of our population is affected. Approximately 10 million Americans have some form of dementia while another 2 million new cases are reported annually. Almost 70% of those individuals over the age of 80 are diagnosed with some form of dementia. The question of course becomes to what extent, and to what degree will the couples retirement funds have to be used to care for the ill spouse, and what affect will that have on the lifestyle of the well spouse and his or her family. Depending on the advanced directives made prior to the illness, they will determine the extent that the well spouse will be able to make estate planning decisions for the afflicted spouse.

The next question of course becomes, where will the money come from to pay for the needed care? What assets will be protected and what assets will need to be liquidated. This problem is of course compounded by the fact that those assets may need to be liquidated at perhaps the absolute worst time, to pay for these expenses. Privacy issues can also be a huge problem for the entire family in the event of a single spouse who is on the verge of not being able to make proper financial decisions if advanced planning directives, i.e. power of attorney were not properly addressed prior to an individual beginning to cognitively slip. In addition there can be delays and unnecessary expenses if the courts through a guardianship have to get involved. Guardianships are not only costly but often times bring with them a great deal of additional stress and time delays, if not properly planned ahead.

Someone or some entity will always have to pay for the care. Whether it's the family providing for the care on their own, or whether the funds come from Medicaid, or from their own Investment portfolio. The best alternative would of course be from a tax qualified long term care Insurance product. My 33 years of experience has shown that an ill spouse will receive a better level of care when the funds come from an outside source, rather than from their own funds or from the efforts of a family member providing the care on their own. Many individuals/parents erroneously feel that their spouses or children will be able to provide the care they'll need. But unfortunately nothing may be further from the truth. Many times the spouse is physically incapable of providing the necessary physical care needed. Often times the children are involved in their own lives and careers, and cannot provide the necessary care, nor can they in many situations provide the financial management necessary due to their own limitations.





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Unfortunately all too often, individuals wait too long to consider taking advantage of the best alternative to pay for these expenses, a traditional standalone long term care Insurance contract. Either the costs become too high to consider due to their advanced age, or worse the Individual becomes uninsurable and is unable to medically qualify for the coverage. A long term Insurance contract can be purchased to provide a set dollar amount \$100 -\$500 on a daily basis. The coverage can pay a benefit for a minimum of 2 years to a maximum of 6 years after a 90 day waiting period. Most contracts are of a comprehensive nature meaning that they will pay for care in an Insured's home, an assisted living facility, or in a skilled nursing facility. They will pay for all 3 levels of care Custodial Care meaning an individual may merely need help with the activities of daily living, i.e. eating bathing dressing transferring or continence, which can be provided by a home health aide, or shopping and housecleaning services provided by a homemaker. On the other end of the spectrum a contract will pay for skilled care provided by a nurse or occupational therapist, as well as any combination of the above called intermediate care. If a couple purchases a contract at the same time a 25% husband wife discount will apply.

The reason many individuals are reluctant to purchase such a contract is because they feel what if I pay for a contract and then never need to collect the benefits? As a result of the recently enacted Pension Protection Act, a new option called a linked benefit life and long term care Insurance product became available Jan 2011, which now allows an individual to access up to \$120,000 annually adjusted for inflation, on a tax free basis from the death benefit of a life Insurance contract to pay for a qualifying long term care expense. The benefits from any traditional standalone long term care contract can be accessed in the event that an individual is unable to do 2 of the activities of daily living, or in the event of any type of a cognitive impairment as diagnosed by their physician. Also available as of Jan 1 2011 is the ability to shield the gains of an annuity if it is used to purchase a long term care contract.

Don't have your clients wait any longer to consider the purchase of such a contract as it is one of the best ways to protect their independence, dignity, as well as the retirement lifestyle they and their spouse worked and saved for. A client's entire family will be far better off "Caring about their loved one, rather than having to "Care for their loved one." Keep in mind the best advice you can give your clients is to have them consider the purchase of a traditional standalone or linked benefit long term care Insurance contract while they are young, healthy and able to take advantage of the significant husband wife discount as the cost will be significantly less now, than if they waited until they neared their retirement.

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*Henry Montag, in practice since 1976, is a Principal of the TOLI Center East & provides CPE& CLE credits to organizations such as NYS Bar Association, Nassau and Suffolk State Society of CPAs. His articles on TOLI have appeared in publications such as The NYS Bar Association's Law Journal, The Suffolk County Women's Bar and various CPA Organizations, NCCPA, NYSSCPA. He's been a source for W.S.J, Investor's Business Daily, Newsday, LIBN and has appeared as a guest on Fox News, News 12. For more information contact: Henry Montag, CFP, CLTC, The TOLI Center East (516)695-4662  
email: [henry@thetolicentereast.com](mailto:henry@thetolicentereast.com)  
web: [www.thetolicentereast.com](http://www.thetolicentereast.com)*

## Safeguarding Clients from Long-Term Care Costs

July 8, 2015

BY HENRY MONTAG, CFP, CLTC



As your clients' most trusted adviser, how can you protect them from the financial threat and high costs of long-term care?

You basically have two initial choices. Let's assume your client is under age 75, relatively healthy and understands that an unexpected, unreimbursed long-term care expense is a real threat that can unravel their and their spouse's retirement plans and lifestyle. You can talk about "what if" scenarios, including the purchase of a long-term care insurance policy. Or you can avoid the fact that costs for care at home or in an assisted living community are in the \$60,000 to \$75,000 range, and that costs in a skilled nursing facility are in the \$125,000 to \$175,000 range

and are both increasing by 4 percent annually.

Should you have this unpleasant, difficult conversation with your clients? Since the odds of this problem affecting a client over age 80 is approximately 70 percent, it could make a great deal of sense to get your clients thinking about a solution to a problem they may one day likely face.

Where will the necessary funds come from to pay for these costs? Is there a readily accessible source of sufficient funds that will not trigger a large unnecessary taxable event when liquidated? Should the client self-insure against this threat or would it make more economic sense to purchase a long-term care insurance contract from one of the major insurers?

Having a long-term care insurance contract will not only provide your client with the dollars necessary to pay for some or all of the expenses associated with their care, but will provide them with independence and peace of mind, knowing they'll never be a burden to their kids or spouse. But will the costs be justified if they never need the coverage?

For clients who own businesses, depending on your client's particular corporate structure and age, they may be able to deduct the entire premium or a part of it. At a minimum most states have a 20 percent state tax credit for any individual. This is also one of the few times that an insurance benefit can be paid for on a totally discriminatory basis, i.e., for all officers and spouses, and then be taken as a 100 percent deduction in various corporate settings.

The second question becomes should I consider keeping all or a part of the exposure to a long-term care expense? Should I self-insure or share the risk with an insurer? Is it less costly to self-insure? Is this the best



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use of my assets? What type of an investment of my asset is this? Keep in mind, the premiums paid for this coverage isn't an investment at all, Instead it's a cost of protecting assets against a likely loss.

A long-term insurance contract can be purchased to provide a set dollar amount of \$100 to \$500 on a daily basis. The coverage can pay a benefit for a minimum of two years, up to a maximum of six years, after a 90- to 100-day waiting period. Most contracts are of a comprehensive nature, meaning they will pay for care in an insured's home, an assisted living facility, or in a skilled nursing facility. They will pay for all three levels of care, custodial care, as well as skilled care and anything in between.

The primary reason why many individuals are reluctant to purchase such a contract is because they're concerned about the waste of annual premium dollars if they pay a premium and then never need to collect the benefits. Many others are under the impression that they'll be better off if they merely self-insure.

In an effort to encourage private individuals to purchase a long-term care contract, and overcome the preceding two concerns, the insurance industry, in conjunction with the federal government, recently enacted legislation effective Jan, 2011, as part of the 2006 Pension Protection Act. This act allows an individual to access up to \$120,000 in 2015, annually adjusted for inflation, on a tax-free basis from the death benefit of a life insurance contract, if it's used to pay for a qualifying long-term care expense.

If your clients are healthy enough to purchase a long-term care insurance contract, they now have three choices:

1. They can purchase a stand-alone traditional long-term care contract ideally suited for the younger client aged 45 to 60.
2. They can choose one of the newer hybrid/combo policies combining a life insurance contract with a long-term care rider or a chronic care rider.

Although each option allows for a tax-free distribution of death benefits for a qualified long term care expense, there are significant differences between the two options. The long-term care rider has an upfront charge, but no additional cost when the benefit is used. In contrast, the chronic care rider has no upfront charge, but an interest charge is imposed if and when the benefit is actually used. Clients should not inadvertently confuse these two cost structures, as that would be like comparing apples and oranges. They're ideally suited for clients aged 60+ who have an existing need for permanent insurance and secondarily a desire to have access to a tax-free withdrawal to pay for long-term care expenses if needed.

3. Also available as of Jan, 1 2011 is the ability to avoid tax on the gains of an annuity contract if it is used to purchase a long-term care contract.

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For example if an individual started with a \$50,000 single premium deferred annuity and it grew to \$100,000, previously an individual would first have to pay the tax on the \$50,000 gain. If, however, that same individual placed the same single premium annuity into a linked/combo annuity, he or she would have the full \$100,000 available as there would be no tax due. Plus they would have the leverage of a long-term care insurance policy, which for a 65 year old would bring the net amount available to pay for long-term care expenses up to approximately \$350,000 to \$400,000.

Lastly the adviser should be aware that as a result of many insurers having priced their long-term care contracts incorrectly over the last 20+ years, primarily due to erroneous assumptions regarding earnings, drop rates and utilization rates, many of these companies are now attempting to raise rates. One such company is in the process of obtaining a historic 50 to 60 percent rate hike. My concern is they will use that significant increase as a bargaining chip to encourage older existing policyholders to give up and scale back various benefits they previously have purchased, i.e., a larger daily dollar benefit, a longer benefit period, a 5 percent annual compound inflation rate. In any event it will cast a further negative and worrisome message to those currently considering purchasing a long-term care insurance policy.

If at all possible, a client should not give up these valuable benefits on a wholesale basis and should carefully consider which if any benefits to drop, and pay the higher cost. Once they give up these higher benefits, they will never again be able to replace them, which is exactly what the insurers are hoping to accomplish with these significant rate hikes.

In my opinion a client should consider purchasing a long-term care insurance contract in their mid to late 50s, when their youth and good health will allow them to purchase this valuable protection at a lesser cost. One way to offset the fear of increasing future rate hikes is to purchase an individual or second to die combo/hybrid policy, or a traditional policy that pays a future dividend to offset future increases.

*Henry Montag is an independent Certified Financial Planner in practice since 1976. He is a principal of the **TOLI Center East**, which provides independent fee-based performance evaluation for trust owned life insurance for private trustees and their advisers. He has had articles published by the New York State Bar Association and the New York State Society of CPAs. He has lectured extensively on the proper utilization of financial products to protect and preserve assets to the NYSBA, the NYSSCPA, the American Institute of CPAs and the National Conference of CPA Practitioners. He has been a source for The Wall Street Journal, Investor's Business Daily, Investment News, and Newsday, and has recently co-authored a book for the American Bar Association, "The Life Insurance Policy Crisis," to be released later this year.*