

## Good Tax News for Long Term Care Consumers

For people purchasing long term care (LTC) services or LTC insurance, the Health Insurance Portability and Accountability Act (Act) of 1996, commonly known as the Kennedy/Kassabaum bill, offers significant tax benefits. This legislation, which was effective January 1, 1997, is expected to reduce the incidence of affluent people transferring assets to qualify for medical assistance.

This legislation has created a major policy shift from government's previous denial of "custodial" services by allowing tax deductibility of non-skilled, long term care health expenses. The government now recognizes that "custodial" home health care consists of vital services which can maintain chronically ill individuals in the community rather than in more expensive institutions. Given Medicare's current fiscal liabilities, the Act does not mandate Medicare reimbursement of custodial care but rather allows consumers to deduct their unreimbursed expenses subject to the 7.5% floor of adjusted gross income for all health care expenses. The Act's treatment of qualified LTC insurance plans affords them the same credibility, and should advance the purchase of coverage for "custodial" conditions which most people have today only for acute conditions.

The Act defines a chronically ill individual and specifies which LTC expenditures qualify as tax-deductible expenses. Payment of these qualified, unreimbursed expenses by chronically ill persons are now allowable medical expenses. When individuals' LTC expenses are combined with their costs for other unreimbursed health services such as medications, vision and hearing care and equipment, health and LTC insurance premiums (up to age-related maximums), many more tax payers will exceed the 7.5% floor and have significant tax savings as a result. For those who have purchased qualified LTC insurance policies and receive benefits

(up to indexed daily maximums), benefits provided under contract for qualified LTC services are no longer considered income.

The Act defines qualified LTC services as necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services and maintenance or personal care services which:

- are required by a chronically ill individual; and
- are provided according to a Plan of Care; and
- are prescribed by a licensed health care practitioner.

According to the Act, a chronically ill individual must:

- be unable to perform (without substantial assistance of another person) at least 2 activities of daily living (ADL); and
- require this level of assistance for at least 90 days due to a loss of functional capacity; or
- have a level of disability similar to that described above; or
- require substantial supervision to ensure health and safety, due to severe cognitive impairment.

The 90 day period of disability required by the Act is to ensure that the individual has a long term need for assistance, and is not merely recuperating from surgery or a temporary condition. Certification of disability which has lasted or is project to last at least 90 days can be made by a doctor, registered professional nurse or licensed social worker.

Under Medicare, only acute care, or "skilled," medical and health services are reimbursed following very stringent guidelines for both in and outpatient care. For example, a partially paralyzed stroke patient admitted to a nursing home must demonstrate sufficient progress in physical therapy for the therapy to continue to be paid by Medicare. While this appears to be a reasonable expectation, Medicare guidelines often

don't allow elderly or mentally impaired patients sufficient time to make adequate progress before Medicare-paid services are terminated.

To obtain any Medicare-paid home health care, the patient first must be home-bound. This means that a patient who leaves his home for any reason other than a medical appointment cannot receive Medicare home services. Second, home-bound patients must have a "skilled" need, such as for nursing observation and treatment of a sufficiently deep wound. Nursing care to prevent such a wound is not considered a skilled service and thus is not covered.

Tax and financial professionals have new challenges in helping their clients utilize this legislation for greatest tax benefit. To have adequate file documentation to allow the deduction, the tax professional must:

- Determine which clients meet the definition of "chronically ill individual."
- Obtain the necessary written certification of at least 90 days qualified disability.
- Obtain a written Plan of Care:
  - which outlines the services provided to the client
  - which documents the rationale for providing the service
  - is signed by the client's licensed health care professional
- Obtain cost estimates and actual receipts for LTC services and other health care and insurance costs:
  - to ensure adequate liquid assets for payment of services
  - to project accurate medical tax credit data
  - to project accurate estimated tax payments

A geriatric care manager can greatly assist in this process by ensuring that clients receive appropriate services, and by providing the necessary financial information and documentation to the professionals handling these matters.

### How Matrix Can Help

Our goal is to help clients resolve health and social problems, including obtaining appropriate, cost-effective long term care services. Our registered nurse Care Managers are knowledgeable about the health needs and problems of older adults and people with disabilities. In addition, they have a wealth of information about many types of community services that provide varying levels of care.

By working with clients and families to identify needs, goals and objectives, Care Managers recommend health and social services which meet clients' needs and help them achieve their goals. When clients meet the legal definition of

"chronically ill individual," the Care Manager obtains all needed documentation to help the clients and responsible parties take advantage of the tax treatment of their qualified expenses.

Trustees, attorneys, clients and families have found that working with a Care Manager can result in a positive outcome even when there are extensive health and social needs. Matrix recognizes the importance of these issues, and can arrange for a Care Manager to visit within 24 hours when necessary. In the metro area, please call 612/560-1010 for more information; in greater Minnesota, please call 800/560-0961.