A MINNESOTA PROSPECTUS

for The Senior Financial Security Program

Presented

by

LTC, INCORPORATED

"The Long-Term Care Specialists"

December 8, 1992

Stephen A. Moses, Director of Research
LTC, Incorporated
5808 Lake Washington Blvd. N.E., Suite 410
Kirkland, Washington 98033
206-827-8626

A MINNESOTA PROSPECTUS

for The Senior Financial Security Program

Background

Congress originally intended the Medicaid program to assure access to mainstream health care for poor women and children. Gradually, however, Medicaid has become the predominant third party payor of long-term care for the middle-class elderly.

Although conventional wisdom holds that prosperous people must pay for their own care until they spend down to poverty levels, many recent studies indicate that asset spend-down is much smaller than previously thought. Methods of artificial impoverishment, which permit families to shelter or divest substantial resources while qualifying for Medicaid benefits, are flourishing across the country by wide report.

If one can ignore the risk of long-term care, avoid private insurance premiums, wait to see if chronic illness strikes, and shift financial liability to Medicaid when high-cost care becomes necessary, why would anyone plan ahead to pay privately? If these conditions pertain, we would expect (1) Medicaid costs to rise rapidly, (2) private-pay residents in nursing homes to decline while public-pay census increases, and (3) the private long-term care insurance market to languish. In fact, these were precisely the conditions that LTC, Inc. discovered in a recent study conducted for Governor Thompson in Wisconsin called *The Senior Financial Security Program: A Plan for Long-Term Care Reform in Wisconsin.*

The executive summary of that study explained that "Medicaid nursing home eligibility is so generous in Wisconsin that most seniors who need long-term care qualify financially even without sophisticated legal planning. Anyone else can qualify quickly, often overnight, by using techniques such as joint accounts, trusts, purchase of exempt assets, or multiple divestment." The report predicted that Wisconsin could reduce barriers to care for the genuinely needy while simultaneously saving the Medicaid program $106 million per year by closing divestiture loopholes, recovering from estates, and encouraging the purchase of high quality private long-term care insurance. On December 2, 1992, the Wisconsin Health Care Cost Containment Task Force adopted these recommendations in principal part in its report to the Governor and the state legislature.

Medicaid Mining in Minnesota

Publicity about Medicaid estate planning in general and the Wisconsin study in particular raised the question of whether similar problems (and potential solutions) might exist in Minnesota. On December 3 and 4, 1992, the Care Providers of Minnesota invited a wide range of individuals and organizations to a series of briefings on this subject. Steve Moses, author of the Wisconsin report, the Inspector General's studies, and many other analyses of Medicaid shelters and transfers, spoke at these sessions. Attendees included representatives of Governor Carlson and his executive departments; state Senators, Representatives, and staff; senior advocates, elder law attorneys, and academics; Medicaid long-term care eligibility workers, supervisors, and attorneys; representatives of long-term care providers and private insurance companies; as well as the press. Following a summary of problems in other states and presentation of a plan for corrective action, participants were asked to comment on the situation in Minnesota.

Observations by program participants were surprisingly consistent. They included the following:

(1) Large state revenue shortfalls are on the horizon and they threaten long-standing social programs.

(2) Medicaid costs in particular are skyrocketing both in absolute terms and as a percentage of the state budget.

(3) Long-term care expenditures continue to rise with institutional costs squeezing into scarce resources for home and community-based alternatives.

(4) Private pay census in Minnesota's nursing homes is declining while Medicaid census is on the upswing.

(5) Books and seminars on Medicaid estate planning, including courses sponsored by the State Bar Association, are commonplace already and increasing rapidly.

(6) Minnesota has taken some creative initiatives to restrict the use of trusts and annuities in artificial impoverishment.

(7) Nevertheless, angry and frustrated, county eligibility workers still say "The poor fall through the cracks, but the rich slip through the loopholes."

(8) The nursing home industry is perilously close to an economic grey area where financial solvency ends and quality of care problems begin.

(9) Minnesota has a nation-wide reputation for regulating private long-term care insurance

almost out of existence.

Given this wide agreement on diagnosis and prognosis, program participants came very near to consensus on the fundamental principles that should underlie a treatment and cure. To wit, unless and until a fully-funded, comprehensive, universal, national social health insurance plan encompasses long-term care: We have very limited dollars available for public assistance; we must take care of the truly poor and disadvantaged first; the middle class and well-to-do should pay privately for long-term care to the extent they are able without suffering financial devastation; prosperous people who rely on Medicaid for long-term care should reimburse the taxpayers before giving away their wealth to heirs; seniors and their heirs who wish to avoid such recovery from the estate should plan ahead and purchase private long-term care insurance.

At this stage of agreement, however, the volume and complexity of questions prevailed over the availability of answers. For example: Precisely how widespread is Medicaid estate planning in Minnesota? Which techniques are most prevalent here? Are the loopholes amenable to correction through changes in state law, regulation and policy or would federal rules have to change? Is a federal waiver feasible and, if so, what should it cover? How much money could the State of Minnesota save by diverting middle-class seniors toward private insurance and away from dependency on Medicaid? Would people buy private long-term care insurance if high-quality, affordable, state-endorsed products were available and Medicaid was less of a free ride? How much more effective could Minnesota's estate recovery program become? Is lien authority essential, or could the same objective be achieved by less politically sensitive means? These and many more questions must be addressed and answered before the State of Minnesota forges a public policy initiative to reform the long-term care financing system.

Recommendation

Minnesota is a consensus on long-term care financing just waiting to happen. These educational forums demonstrated that too many people agree on too much for a cost-effective plan to be out of reach. The secret is to examine the specifics and bring everyone together around an acceptable strategy. To this end, the quickest and most effective approach is to conduct a study like the one in Wisconsin which formed the basis of that state's Health Care Cost Containment Task Force proposals. Such a study has the multiple advantage of answering the questions raised above, sounding out the concerns of each key interest group, and illuminating a path to mutually beneficial compromise. With the cooperation of all interested parties, LTC, Inc. could conduct a study and present a report in 30 days for $20,000 plus expenses.