

# BENEFIT

## Plan Developments

A monthly report covering plan design and legislative changes

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## LTCI Can Help Strengthen Workforce, Improve Productivity

An ever increasing number of employers are recognizing that **long-term care insurance (LTCI)** can help to build a strong and stable workforce and increase the quality of life for employees.

As proof, the Health Insurance Association of America (HIAA) has noted that the number of companies and organizations offering LTCI to employees increased to 3,200 in 1999 (the latest year available for data) from only 135 in 1990.

Prior to offering an LTCI plan, benefits consultants generally recommended that employers ask themselves plan design questions such as: Will an employee's spouse or parents be allowed to participate? Will the company make contributions to the plan? What will be the benefit period covered? Will there be a maximum dollar benefit? Will benefits be protected against inflation?

In addition, an insurer's financial stability and commitment to the LTCI market should be examined, along with group plan experience and underwriting restrictions.

If a decision is made to offer LTCI as a benefit, an employee

education program is generally viewed as important for overall success. Participation in long-term care coverage has traditionally tended to be low because younger employees generally have many competing priorities for their earnings, while older employees have often looked toward Medicaid or retiree medical insurance for protection.

Meanwhile, the American Association of Retired Persons (AARP) estimates that the absence of LTCI within the American economy contributes to \$29 billion in lost employee productivity each year due to demand placed on employees to provide caregiving.

Furthermore, statistics reveal that LTCI is not just for the elderly. More than 12 million Americans need assistance with everyday activities, according to a report in the *Employee Benefits Journal*. Of this number, the report states, approximately

### In This Issue

- Terminating LTD Benefits 'Capricious,' U.S. Court Rules
- Attendance Sheets Could Have Saved Company \$62,250
- Supplemental Insurance Provides "Win-Win" Result
- Legislative Action: Health Premiums



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seven million are over age 65; five million are working age adults under age 65; and 400,000 are children.

Companies interested in LTCI policies for their employees can select multiple ways to implement the program—ranging from a completely company-paid benefit to a voluntary benefit, or points in between. In addition, LTCI benefits can be “carved out” for key employees.

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## Terminating LTD Benefits ‘Capricious,’ U.S. Court Rules

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The decision of a plan administrator to terminate a beneficiary’s long-term disability benefits “was reached in an arbitrary and capricious manner,” according to a ruling by the Seventh Circuit U.S. Court of Appeals. As a result, the court ruled that steps should be taken to reinstate the beneficiary’s benefits.

Court of Appeals Case No. 01-4132 (*Hackett v. Xerox Corporation Long-Term Disability Income Plan*) involved James J. Hackett who began working for Xerox in 1985 and began to suffer from emotional problems the following year. Hackett’s problems were caused by a personality disorder that made it difficult for him to interact properly with others in the work environment. As the problems grew worse, Hackett was advised by a Xerox physician to seek disability benefits. In the process, Hackett was examined by a psychiatrist who gave a diagnosis in support of benefits. As a result, Hackett began receiving those benefits on March 2, 1987.

Hackett continued to be examined by experts over the next ten years. All of them supported the

initial diagnosis. Then, in 1998, Xerox asked Hackett to be examined by a doctor who said the employee had a personality disorder but—despite the condition—was able to return to work without restriction. Xerox then terminated Hackett’s benefits in January 1999, stating: “Continued disability not clinically supported.”

As a result of Xerox’s action, Hackett filed suit in the U.S. District Court for the Northern District of Illinois, seeking the reinstatement of his long-term disability benefits. The court ruled in favor of the plan and Hackett appealed to the Seventh Circuit which reversed the district court’s ruling.

In issuing its decision, the Seventh Circuit, in part, noted: “ERISA requires that specific reasons for denial be communicated to the claimant and that the claimant be afforded an opportunity for a ‘full and fair review’ by the administrator. . .the administrator must weigh the evidence for and against [termination of benefits] and within reasonable limits, the reasons for rejecting evidence must be articulated if there is to be meaningful appellate review.”

Applying that standard to the Hackett case “makes clear that the termination procedures were arbitrary and capricious,” the Seventh Circuit stated. “After 12 years of paying out disability benefits, Xerox terminated those benefits simply on the basis of an examination by [a single doctor], whose conclusion that Hackett was able to work was contrary to numerous prior opinions.” Furthermore, the Seventh Circuit noted that the doctor who provided the contrary diagnosis “provided no explanation for his departure from the opinions of the previous doctors.”

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## Attendance Sheets Could Have Saved Company \$62,250

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The failure of a company to ensure that all of its employees receive a **summary plan description (SPD)** has resulted in a \$62,250 judgment against the company.

In *Leyda v. AlliedSignal* (02-7408, -7496), the U.S. 2<sup>nd</sup> Circuit Court of Appeals affirmed a decision by a lower federal court, that said a widow was entitled to additional life insurance benefits because the plan administrator did not make reasonable efforts to ensure an SPD was distributed to each and every employee.

Charles Leyda worked for Textron Inc., from 1989 through September 1994 and participated in a **group life insurance** plan that provided coverage at a rate of three times his approximate \$40,000 salary. In 1994, Textron was acquired by AlliedSignal, which provided similar coverage, but at a rate of one and one-half times annual salary.

In anticipation of the shift in benefit plans, AlliedSignal held meetings on three consecutive days; four meetings per day. Those meetings focused on specific benefits available at AlliedSignal, including basic life insurance. No one, however, took attendance at those meetings.

Supervisors tracked employees on sick leave, traveling, or on extended leave during those four meeting days. Packages of materials were then sent first class to those employees' homes or work areas. Packages were also mailed to employees who had notified the human resources department of scheduling conflicts. In addition, AlliedSignal held make-up meetings for employees who requested them.

Leyda, the court decision states, never received an SPD, which would have informed him of the change in benefits. He enrolled in AlliedSignal's **group universal life insurance** program and opted for coverage equal to his \$40,000 salary, believing that this provided coverage in addition to the \$120,000 for which he had opted while employed by Textron.

During subsequent periods, Leyda had opportunities to obtain additional life insurance coverage, but declined them because he believed his coverage totaled \$160,000. Leyda died in 1997 and his widow received approximately \$40,000 in benefits from his group policy, plus \$60,000 from AlliedSignal's basic coverage, for a total of \$100,000. His widow had expected a total of \$160,000 and took legal action.

The district court found that AlliedSignal's method of distributing the notice of its scheduled meetings—using addresses in payroll records—made it likely that there would be full distribution of the meeting notices. However, the courts stated that it could not “infer that [Leyda] actually received the [required plan] documents because notice of availability does not equate to receipt.”

Furthermore, the court stated that because no one “took attendance at these meetings, AlliedSignal had no way of knowing how many employees, other than those who were on sick leave, on extended leave, or traveling, had failed to attend. . .the administrative burden imposed by requiring attendance sheets does not outweigh the reasonableness of such sheets for ensuring full distribution of the summary plan description.”

The court calculated that, in light of Leyda's final salary at AlliedSignal, the damages totaled \$62,250 plus interest.

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## Supplemental Insurance Provides “Win-Win” Result

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Employers looking to cut costs, while increasing employee satisfaction, should consider **supplemental insurance** as an optional benefit, according to a survey conducted by *INC.*, magazine and Allstate Corporation.

Supplemental insurance policies are paid for by employees, and complement primary health plans by providing cash benefits to fill any gaps in traditional health insurance coverage. These gaps can include deductibles, out-of-pocket expenses, and loss of earning power. Available as a group voluntary program, supplemental insurance products include coverage for: accident; cancer; short-term disability; and hospital indemnity.

The survey notes that small business owners familiar with supplemental insurance recognize its benefits. Seventy-one percent of respondents said supplemental insurance adds to their overall benefits package; 53% said they found it provides peace of mind for employees.

Lee Jones, publisher of *INC.*, noted the survey results showed that small business owners realize the importance of benefits, but they may have a limited understanding of how to use benefits as a recruitment tool. “To remain competitive, it’s critical for a small business owner to understand all facets of their business, and that includes employee benefits.”

Meanwhile, David Bird of Allstate noted: “Recruiting and retaining a quality employee boils down to what you can do for them. Savvy business people know that offering low- or no-cost perks can enhance the overall satisfaction of employees. There is little doubt that benefits such as offering a casual dress code may create a more comfortable work environment. Yet, offering supplemental insurance can enhance overall job satisfaction and productivity for employees in the long run, while keeping employer costs down.”

Toward that end, the survey found that 47% of small business owners agree they could use the help of an outside company with employee benefit matters.

## Legislative Action

### Limiting Price Swings

LANSING, MI—The amount insurers could raise or reduce small business health plan premiums would be limited under legislation introduced by Republican Rep. Stephen Ehardt and Democrat Rep. William O’Neil.

The bill, aimed at companies with fewer than 100 employees, would limit maximum price swings to 25%. Supporters of the legislation claim it would reduce small business’s health costs, while also preventing HMOs from “cherry picking” only the healthiest of members. Opponents argue the legislation would increase health costs for the sick and elderly because it would permit the use of age and health status to determine rates.

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Businesses need more knowledge in using benefits as a recruitment tool.

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