

Tax Qualified vs. Non-Tax-Qualified Long Term Care Policies

Legislative Background:

The Health Insurance Portability and Accountability Act of 1996, also known as Kassebaum-Kennedy Act took effect in 1997. Part of this law set forth some rules for income taxation of long-term care policies.

The Internal Revenue Code Section 7702B spells out the requirements that a long-term care policy must meet in order to be considered “tax-qualified”.

Premium deductibility for individuals

Tax Qualified: Premiums for individuals can be included with other annual medical expenses (including premiums) and are deductible if these medical expenses exceed 7.5% of adjusted gross income. In addition, the maximum annual deduction in 2009 is as follows:

Age 40 or under	\$ 320
Age 41 to 50	\$ 600
Age 51 to 60	\$1,190
Age 61 to 69	\$3,180
Age 70 or older	\$3,980

Non-Tax Qualified: Individuals cannot deduct any part of their annual premium.

Are Benefits Taxable?

Tax Qualified: Benefits received under a tax-qualified reimbursement policy are not taxed. Indemnity benefits are tax free up to \$280 per day.

Non-Tax Qualified: Benefits received under a non-tax-qualified plan may or may not be taxed. There has been no ruling one way or another.

Qualification for Benefits

Tax-Qualified: A physician must certify that he/she expects that An individual will need substantial assistance with 2 of 6 activities of daily living and that they expect that they will need this assistance for at least 90 days. These include bathing, eating, continence, transferring, toileting and dressing. Or, a physician must certify that there is severe cognitive impairment.

Non-Tax Qualified: There is no requirement of the 90-day physician certification. There is an additional trigger of medical necessity, which means that a physician must certify that care is essential to the individual's health, safety and welfare.

Consumer Protection Provisions

Tax-Qualified: Tax qualified plans must include the following consumer protection provisions:

- Guaranteed renewable
- Inflation protection must be offered
- Protection against post-claims underwriting
- Protection against unintentional lapse
- Standard for home/community care
- Benefits extended if lapse while in nursing home
- Prior hospitalization requirement prohibited.

Non-Tax Qualified: There are no required consumer protection provisions.