

Long-Term Care Insurance Denials

When your claim is handled unfairly, you can fight back and win!

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INTRODUCTION

Have you been denied by your long-term care insurance (LTCI) provider? You are not alone. And you don't have to fight them alone.

For many Texans, long-term care insurance (LTCI) is an important part of retirement planning. Unfortunately, many LTCI claims are wrongfully denied, leaving frail and vulnerable insureds and their families in the disastrous position of paying huge expenses out-of-pocket—payments that should have been honored by the insurance carrier.

Hello and welcome, I'm Marc Whitehead, a long-term care insurance claims attorney based in Houston. While we all face the normal frailties of aging, many of us will need help with the things we've always done for ourselves, activities like bathing, walking around, eating a meal, or getting in and out of bed.

A long-term care insurance policy helps pay for these times. LTCI is especially important if you experience a chronic medical condition or a disorder such as Alzheimer's disease. Basic health insurance, long-term disability insurance, Social Security Disability benefits, and Medicare are not designed to cover long-term care costs.

You or your loved one bought a policy in good faith, paying premiums over many years. If your doctor finds that you need admittance to a skilled nursing facility, an assisted living facility, or you need home health care services, you trust your LTCI policy will be there for you.

The hard truth is that many LTCI providers resort to "risk management" tactics to avoid paying valid claims. And the tragedy of these rejected claims, if not rectified, cannot be overstated.

Long Term Care Insurance's Messy History

Your loved one's policy may be one of thousands purchased as far back as the 1990s when the long-term care insurance industry was very different. The nursing home market was just starting to flourish. Rules were lenient, and policies were loosely written. Insurers enjoyed huge profits through sales and premiums.

But companies misjudged price issues and inflation factors. Policies were seriously underpriced, while insurers overvalued their profitability rate, and underestimated how long people would live. The long-term care insurance industry soon fell into financial turmoil. Some companies faced bankruptcy, and many of those companies have left the market completely.

As claims were filed on these policies years later, these issues all began to surface, as evidenced by insurers unwilling or unable to pay. To compensate, carriers raised rates on existing long-

term care insurance (some as much as 60%), or simply began charging much higher prices on new LTCI sales.

I should emphasize here that, when the LTCI market was new, it was referred to as “nursing home insurance.” Coverage for “assisted living” or “in-home care” did not exist in these older policies. Over the past thirty years, an entire assisted living and home health care industry, separate and distinct from nursing home care, has bloomed.

What does this mean for claimants needing assisted living level of care? Many seniors who bought policies years ago find out that they’re not independent enough to live at home anymore, but they are denied coverage for nursing home care because they don’t require that level of care. They learn that all those years of premiums paid will not even cover the assisted living care they require, because the insurance policy’s language is just enough to contend that the policy will not cover assisted living.

Are they out of luck? What can they do? And now that companies have decades of claims data on which to base their underwriting, you would think claims would become less volatile.

But claimants must stay proactive. Not all companies act in bad faith. But all insurance companies have a financial incentive to take in premiums and to pay out less in benefits. Insurers use many tactics to wrongfully deny long-term care insurance claims, as this paper will explain. You must understand your policy and be wary of traps that could undermine an award of benefits.

If an insurer refuses to pay, do not give up!

There are powerful legal actions you can take to fight back and win your benefits, and you should never have to face the insurance company alone. The best thing you can do is contact an LTCI claims lawyer to see if you have a legal case against the insurance company.

At Marc Whitehead & Associates, we want you to have the facts you need. Our law firm advocates for individuals and their families whose long-term care insurance providers have acted in bad faith and will not honor their contractual obligations.

The following pages focus on individual LTCI claims filed in Texas under Texas law. I share my perspective as an attorney who represents those who have to fight the very companies that sold them their policies in the first place. Stick with me and read every page. My hope is that you hold your insurance company accountable and legally obtain the benefits you or your loved one deserve as a policyholder.

To your success,

Marc Whitehead, Esq.

I. YOUR LONG TERM CARE INSURANCE (LTCI) POLICY

In Texas, long-term care can be very expensive, thousands of dollars per month. Cost depends on the kind of care, where it's provided, and the type of care provider. Long term care insurance policies will all differ and can cover your care needs given in a variety of facilities or locations, such as:

- Skilled nursing home (SNH)
- Assisted living facility (ALF)
- Adult daycare facility
- Hospice facility
- Your home

How LTCI Works

LTCI coverage is underwritten to consider various situations. Premiums are based on age, health, where you live, amount and duration of benefits, and optional benefits you add through riders. Insurers can raise the premiums on policies that don't have fixed rates, as long as they raise rates for everyone in your rate class.

LTCI policies are designed to help cover the cost of the care insureds receive. The policy will dictate how much of the costs are covered and how long the coverage lasts. Generally speaking, the policy will contain a maximum monthly benefit which can vary depending on the type of care received. It will also likely contain a maximum benefit period which can cap the amount of time you can collect on the policy, or a maximum lifetime benefit amount which can cap the total amount of benefits you can receive from the policy in your lifetime. Important policy clauses are discussed in for detail later.

After application, if you are approved, the insurance company will pay benefits according to the policy which allows you to recoup some of the costs expended for the care received.

Different Types of Long-Term Care Insurance Policies

Individual policies - Most long-term care insurance policies are individual policies, where you buy a policy for yourself directly from an insurance company. Claim disputes are governed under Texas contract laws, insurance laws, and consumer protection laws.

Group policies – Group LTCI coverage may be offered through your employer. Group policies rarely require a medical exam. Insurance companies must let you keep your coverage after you leave the group or until they cancel the group plan. You can continue your coverage or change it to another long-term care insurance policy. Claim disputes are generally governed under Federal law called the Employee Retirement Income Security Act (ERISA). Additionally, some group policies will allow you to purchase coverage for qualifying family members at your own cost.

Government policies – Federal and U.S. Postal Service employees and retirees as well as qualified family members may buy LTCI at lower premiums through the Federal Long-Term Care Insurance Program (FLTCIP). Active and retired members of the uniformed services and their qualified relatives may also be eligible to apply for FLTCIP coverage. Policies available under the FLTCIP are subject to underwriting standards established by the Long-Term Care Security act passed in 2000 and are subject to the jurisdiction of Federal Courts.

Association Policies –If you're a member of an association (like AMA, ABA, NEA) you may be able to purchase policies at a discount on certain long-term care insurance plans through the association's benefits program.

Texas Long-Term Care Partnership policies – The Long-Term Care Partnership is a collaboration between private insurance companies, their authorized agents, and the state of Texas government agencies including the Texas Department of Insurance, the Texas Health and Human Services Commission, and the Texas Department of Aging and Disability Services. The LTC Partnership helps Texans financially meet their long-term care needs. Policies offer benefits, features, and consumer protections that aren't available with other long-term care policies.

Know Your LTCI "Benefit Triggers"

"Benefit triggers" are the criteria insurance carriers use to determine when you're eligible for benefits. This is an important part of your policy. Insurance companies write their own policy terms, therefore benefit triggers vary from contract to contract. Look for the section of your policy called "Eligibility for the Payment of Benefits" or "Eligibility for Benefits" to know exactly what is required for you to begin receiving monthly benefits.

Types of Benefit Triggers:

1) *Activities of Daily Living (ADLs)*

Also referred to as *Loss of Functional Capacity*: You generally need active personal assistance to perform at least two of the six Activities of Daily Living (ADL) as follows:

- Bathing
- Continence
- Dressing
- Eating
- Using the Toilet
- Transferring/Ambulation

If you have difficulty performing an activity without someone's help or special equipment or cannot do the activity at all due to health problems, you would be deemed to have a limitation in that activity. Read your policy carefully, as definitions will vary. For example, some policies

require that you need hands-on assistance, while another policy might require only having someone nearby.

2) Cognitive Impairment.

Another benefit trigger is if you now require supervision and direction because of cognitive (mental) impairment. In Texas, long-term care insurance policies must cover schizophrenia, major depressive disorders, Alzheimer's disease, and other age-related disorders. However, be aware that LTCI is not required to cover some other mental and nervous disorders.

3) Doctor Certification of Medical Necessity

A third benefit trigger may be that you need covered care due to sickness or injury, as ordered by your doctor. The care prescribed must be consistent with accepted medical standards for treating the diagnosed condition and could not have been omitted without adversely affecting your condition.

The three foregoing triggers are by no means an exhaustive list. Again, it is crucial to read the "Eligibility" section of your policy to ensure you understand what must happen in order for you to be receiving benefits. An experienced long-term care insurance attorney can help you with this.

Who Are the Long Term Care Insurance Providers in Texas?

The following insurance companies offer long term care insurance to Texas consumers: ⁱ

- Bankers Life and Casualty Company
- Genworth Life Insurance Company
- Knights of Columbus
- Lifesecure Insurance Company
- Massachusetts Mutual Life Insurance Company
- Mutual of Omaha Insurance Company
- National Guardian Life Insurance Company
- New York Life Insurance Company
- Northwestern Long Term Care Insurance Company
- Thrivent Financial for Lutherans
- Transamerica Life Insurance Company
- United Security Assurance Company of Pennsylvania

LTCI Policy Requirements to be Aware Of!

The Elimination Period (Waiting Period)

Long-term-care policies have a waiting period ranging from 0, 20, 30, 60, 90, or even 100 days. During this period, you have to pay for care yourself before the policy will payout. The definition of this “elimination period” can differ from policy to policy. For example, some LTCI policies have a zero-day waiting period for home care and a 90-day waiting period for skilled nursing homes and assisted living facilities. Your policy may refer to this period as the Elimination Period, Waiting Period, or Deductible.

To meet the Elimination Period (before benefits will be paid) most policies now require that you **submit proof of services provided** such as copies of invoices, state licensing information, a copy of the Plan of Care, and dates and times services were received. Also, in the case of in-home care, “days counted” to meet elimination periods are only the days when the home care service was provided and proof of service should be submitted for those days.

Duration of Your Condition - Long Term vs. Short Term

Most LTCI policies have specific definitions requiring certification by a doctor that your condition is for the long-term as opposed to the short-term. The insurance carrier will assess your condition as to whether you qualify for long term care as defined in your policy:

- Meeting the ADL Requirement: You cannot perform a certain number of ADLs without substantial help; or
- You have a mental condition that could cause harm to you or someone else if you are left unsupervised

If the insurer finds that your need for skilled care is short-term, they can withhold long-term care benefits on the basis that your medical insurance provider will pay for these services.

Deadlines You Must Not Miss

Your LTCI policy will specify the duration of time by which you should file your claim, such as within 30 days of the date on which you became disabled. If you do not meet these strict deadlines, the insurer will be quick to deny benefits.

If you missed a deadline, there may be a valid reason for doing so. It is often possible to achieve reconsideration of the denial on appeal if you have a sound and verifiable reason why the deadline was missed. One such reason might be physical or mental incapacitation keeping you from meeting such deadlines. An experienced attorney can help with this exacting process.

Plan of Care and Physicians Statement

Most policies require that long-term care services be provided through a "plan of care" (or treatment plan) prescribed by a licensed health care practitioner at the LTC facility, after an evaluation and before your admission. This plan includes your diagnosis and expected care required for your health condition.

When filing an insurance claim, an acceptable Plan of Care must be included. If not, or if the insurance company finds the Plan of Care to be insufficient, you will likely get a denial.

Approved Facility/Vendors for Care

The settings in which long-term care services are delivered are also defined within a long-term care insurance policy. These provisions define *where* the insured may receive this care.

Your LTCI policy may reimburse you for benefits such as home health aide care, adult daycare, as well as care at a nursing home, assisted living, or an alternative care facility. To be certain that the vendors or facility you use will be covered by your policy, you need to review your policy and even check with your insurer before incurring these expenses.

To the untrained eye, these facilities may all look very similar. However, there are crucial differences which may affect your coverage. Additionally, a facility may *advertise* itself as a nursing home but if that facility is not *licensed* as a nursing facility with the state of Texas, policies, and indeed Courts, may classify the facility as something else. This is where having a trained attorney in your corner can be of great help.

Is Your Policy Tax-Qualified?

Work with your accountant, tax advisor, or tax attorney to know how your LTCI benefits will affect your taxes.

Premiums for **tax-qualified** LTCI benefits may be tax-deductible as a medical expense. You generally would not need to claim qualified policy benefits as taxable income. If your policy is tax-qualified, it will be stated in your policy.

Premiums for non-tax-qualified long-term care policies are not tax-deductible. You might also have to pay taxes on any benefits the policy pays that don't pay for care.

Continuing Coverage Means Ongoing Paperwork

Long-term care insurance benefits can be terminated at any time at the discretion of the insurance company. Just as with initial claim denials, insurers seek opportunities—valid or not—to withhold or cancel benefits on approved claims after monthly payments begin.

For your benefits to continue, your LTCI policy will require ongoing verification of continuing care. This requires working with the home care services or nursing home or assisted living facility to make sure that any invoices submitted include all the information needed, such as the type of care provided, dates of service, and clearly state the ADLs involved in caregiving.

Lifetime Maximum Benefits

Most policies will have a limit to the benefits available in your lifetime. Thus, once you have received the maximum benefits available, you are no longer eligible for any more benefits in the future. You can purchase policy riders that increase the cap on lifetime benefits or even remove the cap altogether.

What Conditions Are Not Covered?

Long-term care policies generally exclude some conditions, either completely or for a stated period. Exclusions and limitations include:

- **Preexisting conditions.** A preexisting condition is an illness you were medically advised or treated for, usually in the six months before the date of coverage. Long-term care policies may delay coverage of a preexisting condition for up to six months after the policy's effective date.
- **Mental and nervous disorders.** Long-term care policies don't cover some mental and nervous disorders, but as previously mentioned, they must cover schizophrenia, major depressive disorders, Alzheimer's disease, and other age-related disorders. However, a company is not required to sell you a policy of these conditions are already pre-existing.
- **Care by family members.** Most policies won't pay your immediate family to take care of you. A few policies will pay to train them to be caregivers.ⁱⁱ Some policies may pay for Respite care to give the family acting as a care giver some time away from caretaker duties. However, these respite care days will count against your lifetime maximum benefits.

Waiver of Premium?

Many policies will include a Waiver of Premium clause. This allows you to stop paying premiums on the insurance policy for a period of time while still remaining covered. Generally, there is a

separate elimination period for this clause and the waiver will end as soon as you are no longer disabled. At that point, you must resume premium payments in order to remain covered under the policy.

II. WHAT TO EXPECT WHEN YOU FILE A LONG-TERM CARE INSURANCE CLAIM

With good reason, claimants and family members expect long-term care claims to be honored. When buying the policy, you dealt with positive terms like “benefits,” and “protection.” You’ve chosen a company that was “financially strong.” After years of paying premiums for a carefully considered policy based on these concepts, you are understandably shocked when your claim is denied.

Expectations vs. Reality

Many don’t realize that insurance companies routinely deny legitimate claims. An insurer’s financial objectives are to protect its investments and keep claim

Our law firm helps policyholders avoid mistakes that could lead to insurance denial. We can help you complete the application process swiftly and build your original claim to have the best possible chance of approval for the maximum benefits you deserve.

Your initial LTCI claim prompts the insurer to open a claim investigation.

The insurance carrier will ask for documentation proving the claim is legitimate. The insurer wants records and evidence of a medical need for long-term care and proof that the long-term care facility, assisted living facility, or home health caregiver meets the terms of the policy. A portion of the application will require statements by the attending physician.

Be prepared for the initial claim to activate new requests by the insurance company back to you for information including:

- doctor's

Once again, it is up to family or guardians to take up the mantle of handling all continuing proof of service and proof of the need for those services. The best solution is to retain the help of a law firm that provides ongoing benefit protection services, where your LTCI claim is continually updated and fortified to keep benefits in place. As part of our representation, we offer Benefit Protection Services™ to clients in all aspects of continuing claims handling. We become the sole point of contact between the insurance company and our clients. We make sure our clients who are receiving benefits remain eligible for those benefits and that the insurance company honors their duty to pay. When claimants come to us because benefits were terminated, we get them back on monthly benefits and keep them on it.

If Your LTCI Claim Is Denied:

With every denial, the insurance carrier is obligated by law to state the exact reasons for denying benefits. This is generally done in the denial letter, or notice of denial, via mail. If the insurer does not send this information, it is imperative to contact the company immediately and seek its

Cases often require working with medical, psychology, and other experts to fully understand the evidence needed to support your case.

If litigation is necessary, Texas has multiple remedies available.

That is good news. Because most long-term care insurance policies are governed by state law, you have far more legal recourse than you would fighting an employer-sponsored claim denial, which is subject to strict ERISA law.

State insurance and contract laws provide strong consumer protections and remedies, much like you would have under a privately purchased homeowner's or life insurance policies.

Texas statutes require that you put your grievances in writing and establish a certain amount of time that must be given for the insurance company to

Whether claim denial means appealing the denial, negotiating a settlement, or litigating the matter in court, you need attorneys on your side experienced in Texas insurance and contract laws, tort law, and consumer protection laws.

How Do Insurers Deny Valid LTCI Claims?

Insurance companies have a playbook of denial tactics, and below are some common examples:

- Licensure – the insurance company says your caregiver or long term care facility is not properly licensed under the policy;
- Policy definitions are vague or misleading. For example, your loved one's old policy covered and defined "convalescent care" — on that basis, the insurance company has an opening to deny any claim that is not based on convalescent care. Skilled care, nursing care, custodial care, convalescent care, chronic care —all these terms are used in ways that confuse and exploit consumers.
- Some policies require prior hospital

- For claims due to cognitive impairment, insurers may have the claim reviewed by a third-party clinician who may never examine the claimant, yet finds there is not enough evidence to support the level of care required;
- The insurance carrier gives an unreasonable interpretation of ambiguous policy terms in their favor;
- Insurers use their own hired doctors to deny legitimate claims.

What Will a Long-Term Care Insurance Claims Attorney Do for Me?

The appeals process is complex and requires a knowledgeable attorney. Experienced legal counsel can help you successfully file an appeal and hold your insurance company accountable. Here is what we do for our clients:

- Aid you in filling out all insurance company forms
- Evaluate your insurance claim and advise you on long term care insurance statutes and your options
- Review your medical records and make suggestions for any additional testing or treatment that might be required to prove your case
- Supplement your claim file with additional medical records
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- Act as a barrier between you and your family and the insurance company, providing you insulation from their constant barrage of requests thereby giving you time to focus on your health

If you have been denied LTCI benefits, you should not sign anything from the insurance company without first consulting with us.

III. Summary

The scenario is all too common: An insurer denies your or your loved one's claim for LTCI benefits and then makes you fight them at every turn. If you believe that your claim has been unfairly denied, you may be the victim of a breach of contract and perhaps a bad faith denial.

When it's time to file a claim, your policy wording and the insurer's approach to claims handling can have drastic consequences. Your insurer is not always looking out for you. You begin to understand the possible conflict of interest because the insurer that sold you the policy will decide whether you are disabled or not.

The burden of proof for claim eligibility lies with the claimant. If they deny the claim, that same insurer will decide your appeal and is always prepared for litigation with its own team of attorneys. But the insurance company does not hold all the cards.

Remember: When your claim is handled unfairly, you *can* fight back and win! And if you have not yet filed your claim, you should submit the strongest case possible from the start.

Let the insurance carrier know they cannot run over you. Representation by a lawyer immersed in insurance law and who deals routinely with the major insurance companies is critical to not only obtaining benefits initially but keeping benefits into the future.

We welcome your phone call or the opportunity to speak with you in person to answer any questions you may have about your LTCI coverage or case, no matter where you are in the process, or where you reside in Texas. The sooner you contact us the faster we can get to work on your behalf.

Remember – the initial consultation is FREE. Whether you have questions about your policy, you were denied benefits, or you're just now filing a claim – the right legal guidance can make the difference in your case.

About the Author

Marc Whitehead is the founding partner of Marc Whitehead & Associates, which he established in 1992 in Houston, Texas. Born on November 24, 1966, in Memphis, Tennessee, Marc was raised in Normangee, Texas, and graduated in 1985 from Normangee High School as class valedictorian.

Marc attended Texas A&M University where he graduated in 1989 with a Bachelor of Business Administration in Finance. Marc attended the University of Houston Law Center and received his law degree (J.D.) in 1992, graduating in the top quarter of his class. He was admitted to the State Bar of Texas in 1992 and is admitted to practice before all U.S. District Courts in Texas, the United States Court of Appeals for Veterans Claims, and the United States Court of Appeals-Fifth Circuit.

Marc Whitehead served as President of the Houston Trial Lawyers Association (2009-2010), is a member of the Board of Directors of the Texas Trial Lawyers Association, and a member of the American Association of Justice.

Marc is also a member of the Texas Aggie Bar Association, the Texas Association of Civil Trial and Appellate Specialists, and the Houston Volunteer Lawyers Association. Marc Whitehead is a Past Chairman of the Houston Bar Association Social Security Section and is a frequent lecturer on the topic of Social Security and Disability Law.

About the Author

Madison was born and raised in Houston, Texas. In 2013 she graduated from Texas A&M University with a Bachelor of Business Administration in Marketing and minors in Sociology and Economics. She then attended South Texas College of Law where, in 2017, she graduated with honors in the top 10% of her class. While in law school Madison was involved with the Phi Delta Phi International Honors Society and was Associate Editor for the Corporate Counsel Review Journal.

Madison began working for Marc Whitehead & Associates as a law clerk while still in law school. She also gained invaluable experience by clerking at the legal aid clinic, Beacon Law, The First Court of Appeals with Justice Rebecca Huddle, and The Office of the Attorney General Consumer Protection Division in Houston.

Madison was admitted to the State Bar of Texas in 2017 and is admitted to practice before all U.S. District Courts in Texas, the United States Court of Appeals for Veterans Claims, and the United States Court of Appeals-Fifth Circuit.

White Paper: Long Term Care Insurance (LTCI) Claims

Madison is a member of the Texas Aggie Bar Association, the Houston Trial Lawyers Association, the Texas Trial Lawyers Association, and the American Association of Justice. She is currently serving as the Online Content Editor for the Insurance Law Section of AAJ.

In her free time, Madison enjoys running marathons with her father, is an avid reader of all genres except romance, and loves a cold glass of wine on a patio.

Any questions about your Long-Term Care Insurance claim? Feel free to give our office a call at 713-228-8888 or email Madison at Madison@marcwhitehead.com. Please visit our website at DisabilityDenials.com.

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