

**Sattler & Company**  
John Sattler, CPA  
100 Crossways Park West  
Suite 100  
Woodbury, NY 11797  
516-364-9393  
Fax 516-677-9537  
john@jsatco.com  
www.jsatco.com

# Planning for Incapacity

## Facing the Possibility of Incapacity

Incapacity means that you are either mentally or physically unable to take care of yourself or your day-to-day affairs. Incapacity can result from serious physical injury, mental or physical illness, mental retardation, advancing age, and alcohol or drug abuse.

### Incapacity can strike anyone at anytime

Even with today's medical miracles, it's a real possibility that you or your spouse could become incapable of handling your own medical or financial affairs. A serious illness or accident can happen suddenly at any age. Advancing age can bring senility, Alzheimer's disease, or other ailments that affect your ability to make sound decisions about your health, or to pay your bills, write checks, make deposits, sell assets, or otherwise conduct your affairs.

### Planning ahead can ensure that your wishes are carried out

Designating one or more individuals to act on your behalf can help ensure that your wishes are carried out if you become incapacitated.

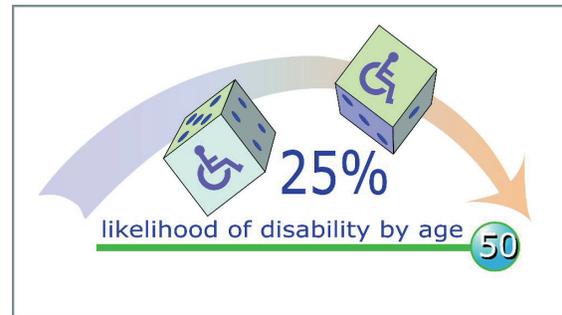
Otherwise, a relative or friend must ask the court to appoint a guardian for you, a public procedure that can be



emotionally draining, time consuming, and expensive. An attorney can help you prepare legal documents that will give individuals you trust the authority to manage your affairs.

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### Likelihood of Suffering a Disability by Age 50



Source: 1985 Commissioner's Individual Disability Table A (most recent data available)

### Managing medical decisions with a living will, durable power of attorney for health care, or Do Not Resuscitate order

If you do not authorize someone to make medical decisions for you, medical care providers must prolong your life using artificial means, if necessary. With today's modern technology, physicians can sustain you for days and weeks (if not months or even years). If you wish to avoid this, you must have an advanced medical directive. You may find that one, two, or all three types of advanced medical directives are necessary to carry out all of your wishes for medical treatment (make sure all documents are consistent).

A living will allows you to approve or decline certain types of medical care, even if you will die as a result of the choice. However, in most states, living wills take effect only under certain circumstances, such as terminal injury or illness. Generally, one can be used only to decline medical treatment that "serves only to postpone the moment of death." Even in states that do not allow living wills, you might want to have one anyway to serve as evidence of your wishes.

A durable power of attorney for health care (known as a health-care proxy in some states) allows you to appoint a representative to make medical decisions for you. You decide how much power your representative will have.

A Do Not Resuscitate order (DNR) is a doctor's order that tells all other medical personnel not to perform CPR if you go into cardiac arrest. There are two types of DNRs. One is effective only while you are hospitalized. The other is used while you are outside the hospital.

### **Managing your property with a living trust, durable power of attorney, or joint ownership**

If no one is ready to look after your financial affairs when you can't, your property may be wasted, abused, or lost. You'll need to put in place at least one of the following options to help protect your property in the event you become incapacitated.



You can transfer ownership of your property to a revocable living trust. You name yourself as trustee and retain complete control over your affairs as long as you retain capacity. If you become incapacitated, your successor trustee (the person you named to run the trust if you can't) automatically steps in and takes over the management of your property. A living trust can survive your death. There are, of course, costs associated with creating and maintaining a trust.

A durable power of attorney (DPOA) allows you to authorize someone else to act on your behalf. There are two types of DPOAs: a standby DPOA, which is effective immediately, and a springing DPOA, which is not effective until you have become incapacitated. A DPOA should be fairly simple and inexpensive to implement. It also ends at your death. A springing DPOA is not permitted in some states, so you'll want to check with an attorney.

Another option is to hold your property in concert with others. This arrangement may allow someone else to have immediate access to the property and to use it to meet your needs. Joint ownership is simple and inexpensive to implement. However, there are some disadvantages to the joint ownership arrangement. Some examples include (1) your co-owner has immediate access to your property, (2) you lack the ability to direct the co-owner to use the property for your benefit, (3) naming someone who is not your spouse as co-owner may trigger gift tax consequences, and (4) if you die before the other joint owner(s), your property interests will pass to the other owner(s) without regard to your own intentions, which may be different.

***If no one is ready to look after your financial affairs when you can't, your property may be wasted, abused, or lost.***



## Common Incapacity Documents

### Durable Power of Attorney for Health Care (DPAHC)/Health-Care Proxy

#### Advantages

- Is flexible--allows your representative to act on your behalf and make medical decisions based on current circumstances
- Generally, your representative can make any decision you would be allowed to make
- Generally can be used any time you become incompetent

#### Disadvantages

- Not practical in an emergency--your representative must be present to act on your behalf
- Not permitted in some states

### Living Will

#### Advantages

- Allows you to convey decisions regarding your medical care without relying on any one person to carry out your wishes

#### Disadvantages

- Generally can be used only if you are terminally ill or injured, or in a persistent vegetative state
- Generally used only to make decisions regarding life-sustaining treatments
- Emergency medical personnel generally cannot withhold emergency care based on a living will
- Not permitted in some states

### Do Not Resuscitate (DNR) Order

#### Advantages

- Allows you to decline CPR if your heart or breathing fails
- Effective in an emergency--your doctor should note an in-hospital DNR order on your chart. Out-of-hospital DNR orders take various forms, depending on the laws of your state. ID bracelets, MedicAlert<sup>®</sup> necklaces, and wallet cards are some methods of noting DNR status.

#### Disadvantages

- Some states allow DNR orders only for hospitalized patients--others do not restrict eligibility
- Only used to decline CPR in case of cardiac or respiratory arrest
- Not permitted in some states

### Durable Power of Attorney (DPOA)

#### Advantages

- You control who acts and what they can do with your property
- Low cost to implement
- Decreases the chance of court intervention

#### Disadvantages

- Some states do not permit a "springing" DPOA (i.e., a DPOA that is effective only after you have become incapacitated)

## The Fundamentals of Disability Insurance

Disability insurance pays benefits when you are unable to earn a living because you are sick or injured. Most disability policies pay you a benefit that replaces a percentage of your earned income when you can't work.

### Why would you need disability insurance?

Your chances of being disabled for longer than three months are much greater than your chances of dying prematurely, due in part to medicine that has made many fatal illnesses treatable. (Source: 1985 Commissioner's Individual Disability Table A--most recent data available.) Although this is good news, it increases your need to protect your income with disability insurance.

Consider what might happen if you suffered an injury or illness and couldn't work for days, months, or even years. If you're single, do you have other means of support? If you're married, you may be able to rely on your spouse for income, but you probably also have many financial obligations, such as supporting your children and paying your mortgage. Could your spouse's income support your whole family? In addition, remember that you don't have to be working in a hazardous position to need disability insurance. Accidents happen not only on the job but also at home, and illness can strike anyone.

If you own a business, disability insurance can help protect you in several ways. First, you can purchase an individual policy that will protect your own income. You can also purchase key person insurance designed to protect you from the impact that losing an important employee would have on your business. Finally, you can purchase a disability insurance policy that will enable you to buy your partner's business interest in the event that he or she becomes disabled.

### How Much Disability Insurance Can You Buy?



**Note:** If policy premiums are paid with after-tax dollars, the benefits will be received tax free. Premiums paid with pretax dollars, usually through your employer, may cause the benefits to be taxable when received.

### What do you need to know about disability insurance?

Once you become disabled and apply for benefits, you have to wait for a certain amount of time after the onset of your disability before you receive benefits. If you are applying for benefits under a private insurance policy, this amount of time (known as the elimination period) ranges from 30 to 365 days, although the most common period is 90 days. Group insurance policies through your employer will generally have a waiting period of no more than 8 days for short-term policies that pay benefits for up to six months, and 90 days for long-term policies that pay benefits up to age 65.

You can purchase private disability income insurance policies that offer lifetime coverage, but they are very expensive. Most people buy policies that pay benefits up until age 65; however, two- and five-year benefit periods are also available. Because many injuries or illnesses do not totally disable you, many policies will offer a rider that will pay you a partial benefit if you can work part time and earn some income.

## Where can you get disability insurance?

In general, disability insurance can be split into two types: private insurance (individual or group policies purchased from an insurance company), and government insurance (social insurance provided through state or federal governments).



Private disability insurance refers to disability insurance that you purchase through an insurance company. Many types of private disability insurance exist, including individual disability income policies, group policies, group association policies, and riders attached to life insurance policies. Depending on the type of policy chosen, private disability policies usually offer more comprehensive benefits to insured individuals than social insurance. Individually owned disability income policies may offer the most coverage (at a greater cost), followed

by group policies offered by an employer or association. Check with your employer or professional association to see if you are eligible to participate in a group plan. If not, contact your insurance broker to look into individual coverage.

Workers' compensation and Social Security are two well-known government disability insurance programs. In addition, five states (California, Hawaii, New Jersey, New York, and Rhode Island) have mandatory disability insurance programs that provide disability benefits to residents. If you are a civil service worker, a military servicemember, or other federal, state, or local government employee, many disability programs are set up to benefit you. In general, however, government disability insurance programs are designed to provide limited benefits under restrictive terms, and you should not rely on them (as many people mistakenly do) as your main source of income if you are disabled.

***In general, disability insurance can be split into two types: private insurance (individual or group policies purchased from an insurance company), and government insurance (social insurance provided through state or federal governments).***

## Individual/Group Disability Policy Alternatives

Policy type	Description	Conditions	Advantages	Disadvantages
<b>Individual policy</b>	A policy you buy through your insurance agent that pays you disability benefits when you are sick or injured	You must meet the underwriting criteria set by the insurance company for occupation, health, habits, avocations, etc.	<p>Benefits are tax free if premiums paid with after-tax dollars</p> <p>Flexible policy benefits and features such as lifetime benefits, cost-of-living increases, partial benefits, etc.</p> <p>Provides the most comprehensive coverage</p> <p>Premiums generally can't increase</p> <p>Generally, you can't lose coverage if you pay the premiums</p>	Most expensive type
<b>Group policy issued through an employer</b>	A disability benefit you receive through your employer. Your employer may or may not pay part of the premiums	You have to be a member of the group (in this case, a group of employees) that sponsors the insurance	<p>Low group premium</p> <p>Available as short- or long-term coverage (or both)</p> <p>Usually, you don't have to prove insurability</p>	<p>Less flexible benefit design than individual disability policies</p> <p>Will terminate when employment ends (non-portable)</p> <p>Premium will increase as you get older</p> <p>Definition of disability may be less liberal than individual coverage</p> <p>Benefits will be offset by Social Security, workers' compensation, and some other types of disability insurance</p>
<b>Group policy issued through an association or organization</b>	A disability policy purchased through an association or organization, such as the New Hampshire Realtors Association	You must be a member of the group that sponsors the insurance (in this case, a trade association or organization)	<p>Low group premium</p> <p>May have more liberal underwriting requirements, although not guaranteed acceptance as with employer groups</p>	<p>Less flexible benefit design than individual disability policies</p> <p>Definition of disability may be less liberal than individual coverage</p> <p>Contracts may be cancelable by insurance company or association</p> <p>Premium will increase as you get older</p>

## Social Security Disability Benefits

Like most people, you probably don't expect to become disabled. However, you are three times more likely to become disabled due to illness or injury than to die during your earning years. (Source: 1985 Commissioner's Individual Disability Table A.) That's why it's important to know what disability benefits you may be entitled to under Social Security.

The Social Security Administration (SSA) administers two programs that pay disability benefits. The Social Security Disability Insurance (SSDI) program pays benefits to qualified individuals who are under full retirement age, regardless of their income. The Supplemental Security Income (SSI) program pays benefits to qualified individuals with limited income. Only the SSDI program is discussed here.

### To qualify for benefits, you must meet a strict definition of disability

Because the definition of disability that the SSA uses is strict, it's hard to qualify for Social Security disability benefits. To receive benefits as an adult, you must have a physical or mental impairment that has lasted or is expected to last for at least 12 months or is expected to result in your death. Your impairment must also be severe enough to prevent you from performing any "substantial gainful activity" or, in other words, the work that you were doing when you became disabled or any other work.

The SSA has a list of impairments that are considered so severe that they automatically define you as disabled. If your condition is not on the list, the SSA must decide if it's severe enough.

When determining your ability to work, the SSA will consider your medical condition, age, education, past work experience, and transferable skills. If you're working, the amount of income that you are able to earn also plays a role. If your earnings from work average more than \$1,000 per month (in 2010), you generally won't be considered disabled for Social Security purposes. Special rules and income limits apply if you're blind.

***Like most people, you probably don't expect to become disabled. However, you are three times more likely to become disabled due to illness or injury than to die during your earning years. (Source: 1985 Commissioner's Individual Disability Table A.)***

### You'll also need sufficient work credits to qualify

When you work and pay Social Security taxes, you earn credits that enable you to qualify for Social Security benefits. You can earn up to 4 credits per year, depending on the amount of income that you earn. The number of credits that you need depends on how old you are when you become disabled. For instance, if you're age 31 to 42, you'll need to have earned 20 credits within the last 10 years, ending with the year in which you became disabled. If you're younger than 31, you'll need fewer credits; if you're older than 42, you'll need more.



### Your family members don't need work credits

If you qualify for disability benefits, certain family members can also collect monthly disability benefits based on your work record. Eligible family members may include:

- Your spouse age 62 or older, if married at least one year
- Your former spouse age 62 or older (if you were married at least 10 years)
- Your spouse or former spouse of any age, if caring for your child who is under age 16 or disabled
- Your children under age 18, if unmarried
- Your children under age 19, if full-time students (through grade 12) or disabled
- Your children older than 18, if severely disabled

Each eligible family member may receive a monthly check equal to as much as 50 percent of your basic benefit. This is in addition to your benefit--your check doesn't get reduced.

## The amount of money that you'll receive depends on your Social Security earnings record

The amount of your monthly disability check is based on your average lifetime earnings. Generally, you'll receive an amount equal to what you would receive were you to begin receiving Social Security retirement benefits at full retirement age. You can review your earnings record and get an estimate of the Social Security disability benefit that you might be eligible to receive by ordering a Social Security Statement from the SSA, either by phone at (800) 772-1213, in person, or on its website. Or, you can wait for it to come in the mail--you will automatically receive a Social Security Statement from the SSA annually about three months before your birthday if you are age 25 or older and not yet receiving Social Security benefits.



Eligibility for other state and federal benefits may affect the amount of your SSDI check. And because the SSA will periodically review your case and decide whether you are still disabled, your disability benefits may stop altogether. This will happen if your medical condition improves to the point that you're no longer considered disabled, or if you are able to earn a substantial amount of money. Finally, once you reach full retirement age, your disability benefits will automatically convert to Social Security retirement benefits (the amount is usually the same).

## You should apply for benefits as soon as possible

You should apply for benefits at a Social Security office as soon as you become disabled, and it appears that the disability will continue. That's because

there's a five-month waiting period before you'll get your first check. You can file for benefits in person, through the mail, online, or over the telephone. You'll be asked to provide the following information:

- An original or certified copy of your birth certificate (if you were born in another country, you'll need to provide proof of U.S. citizenship or legal residency)
- An original or certified copy of your military discharge papers (DD 214) if you were in the military
- A copy of your W-2 form (or, if self-employed, a copy of your federal tax return for the past year)
- Workers compensation information, including date of injury, claim number, and payment amount
- Social Security numbers of your spouse and children
- Your checking or savings account number
- Name, address, and phone number of a person who can get in touch with you if necessary
- Medical and job information, including information about physicians who have treated you, names of medicines you are taking, medical records you have, and jobs you worked in during the 15 years before your disability began

Once your application is complete and has been reviewed by your local Social Security office, it will be sent to the Disability Determination Services (DDS) office in your state. There, the DDS will determine whether you are disabled under Social Security rules. If your claim is approved, you'll receive a letter showing the amount of benefit that you'll receive and when your benefits will begin. If your claim is denied, you'll receive a letter explaining the decision and telling you how to appeal if you don't agree with it.

For more information on Social Security disability benefits, visit your local Social Security office, look at publications available on the SSA website, or call the SSA at (800) 772-1213.

***You should apply for benefits at a Social Security office as soon as you become disabled, and it appears that the disability will continue.***

## Understanding Long-term Care Insurance

It's a fact: People today are living longer. Although that's good news, the odds of requiring some sort of long-term care increase as you get older. And as the costs of home care, nursing homes, and assisted living escalate, you probably wonder how you're ever going to be able to afford long-term care. One solution that is gaining in popularity is long-term care insurance (LTCI).

### What is long-term care?

Most people associate long-term care with the elderly. But it applies to the ongoing care of individuals of all ages who can no longer independently perform basic activities of daily living (ADLs)--such as bathing, dressing, or eating--due to an illness, injury, or cognitive disorder. This care can be provided in a number of settings, including private homes, assisted-living facilities, adult day-care centers, hospices, and nursing homes.

### Why you need long-term care insurance (LTCI)

Even though you may never need long-term care, you'll want to be prepared in case you ever do, because long-term care is often very expensive. Although Medicaid does cover some of the costs of long-term care, it has strict financial eligibility requirements--you would have to exhaust a large portion of your life savings to become eligible for it. And since HMOs, Medicare, and Medigap don't pay for most long-term care expenses, you're going to need to find alternative ways to pay for long-term care. One option you have is to purchase an LTCI policy.



However, LTCI is not for everyone. Whether or not you should buy it depends on a number of factors, such as your age and financial circumstances. Consider purchasing an LTCI policy if some or all of the following apply:

- You are between the ages of 40 and 84
- You have significant assets that you would like to protect
- You can afford to pay the premiums now and in the future
- You are in good health and are insurable

### How does LTCI work?

Typically, an LTCI policy works like this: You pay a premium, and when benefits are triggered, the policy pays a selected dollar amount per day (for a set period of time) for the type of long-term care outlined in the policy.

Most policies provide that certain physical and/or mental impairments trigger benefits. The most common method for determining when benefits are payable is based on your inability to perform certain activities of daily living (ADLs), such as eating, bathing, dressing, continence, toileting (moving on and off the toilet), and transferring (moving in and out of bed). Typically, benefits are payable when you're unable to perform a certain number of ADLs (e.g., two or three).

Some policies, however, will begin paying benefits only if your doctor certifies that the care is medically necessary. Others will also offer benefits for cognitive or mental incapacity, demonstrated by your inability to pass certain tests.

### Comparing LTCI policies

Before you buy LTCI, it's important to shop around and compare several policies. Read the Outline of Coverage portion of each policy carefully, and make sure you understand all of the benefits, exclusions, and provisions. Once you find a policy you like, be sure to check insurance company ratings from services such as A. M. Best, Moody's, and Standard & Poor's to make sure that the company is financially stable.



When comparing policies, you'll want to pay close attention to these common features and provisions:

- **Elimination period:** The period of time before the insurance policy will begin paying benefits (typical options range from 20 to 100 days). Also known as the waiting period.
- **Duration of benefits:** The limitations placed on the benefits you can receive (e.g., a dollar amount such as \$150,000, or a time limit such as two years).
- **Daily benefit:** The amount of coverage you select as your daily benefit (typical options range from \$50 to \$350).
- **Optional inflation rider:** Protection against inflation.

- Range of care: Coverage for different levels of care (skilled, intermediate, and/or custodial) in care settings specified in policy (e.g., nursing home, assisted living facility, at home).
- Pre-existing conditions: The waiting period (e.g., six months) imposed before coverage will go into effect regarding treatment for pre-existing conditions.
- Other exclusions: Whether or not certain conditions are covered (e.g., Alzheimer's or Parkinson's disease).
- Premium increases: Whether or not your premiums will increase during the policy period.
- Guaranteed renewability: The opportunity for you to renew the policy and maintain your coverage despite any changes in your health.
- Grace period for late payment: The period during which the policy will remain in effect if you are late paying the premium.
- Return of premium: Return of premium or nonforfeiture benefits if you cancel your policy after paying premiums for a number of years.
- Prior hospitalization: Whether or not a hospital stay is required before you can qualify for LTCI benefits.

When comparing LTCI policies, you may wish to seek assistance. Consult a financial professional, attorney, or accountant for more information.

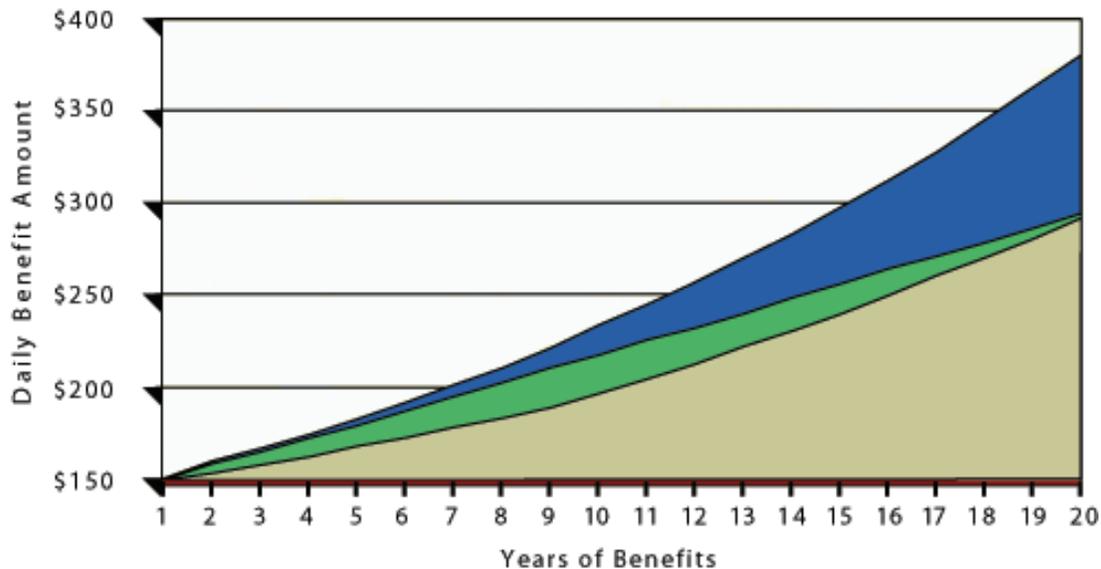
### What's it going to cost?

There's no doubt about it: LTCI is often expensive. Still, the cost of LTCI depends on many factors, including the type of policy that you purchase (e.g., size of benefit, length of benefit period, care options, optional riders). Premium cost is also based in large part on your age at the time you purchase the policy. The younger you are when you purchase a policy, the lower your premiums will be.

## What to Avoid When Buying a Long-Term Care Insurance Policy

Avoid these	Here's why
<b>Non-tax-qualified policies</b>	Tax-qualified policies provide tax benefits. Moreover, certain minimum standards are required of tax-qualified policies.
<b>Gatekeepers (e.g., a hospital admission) prior to a claim for benefits</b>	Gatekeepers make it more difficult to claim benefits.
<b>Claims-made policies</b>	A policy is issued now, but your application is evaluated at claim time—when you can be denied coverage.
<b>Care facility restrictions</b>	These provisions limit care to home care or nursing home care, rather than including all types of facilities.
<b>Pre-existing condition exclusions</b>	These exclusions limit care for a specified period of time for medical conditions that exist before the purchase of the policy.
<b>Mental or emotional disorder exclusions</b>	These exclusions deny claims for illness without an organic disease, except for Alzheimer's disease.
<b>Requirement that more than two activities of daily living (ADLs) can't be performed before you qualify for benefits</b>	Inability to perform just two ADLs means that benefits from the policy are probably needed.
<b>Insurance companies that are poorly rated, or companies that generate excessive consumer complaints.</b>	When the benefits of the policy are needed, you want to make sure that they are available. Research ratings services and call your state's insurance division before you buy your policy.

## Inflation Protection Options



When you buy a long-term care insurance policy, you choose a daily benefit level (the amount that the policy will pay for your daily care if you need it), but it's hard to know today what the future cost of care will be. Although the national average daily cost of a semi-private room in a nursing home is approximately \$187, the cost may be much higher in your area, and may rise substantially in the future.\*

An inflation rider automatically increases your benefit amount by a specific percentage each year, by either simple interest or compound interest. Cost-of-living inflation protection, usually pegged to the Consumer Price Index, is also available. Five percent is a typical inflation factor. The chart above shows the effect of several different types of inflation riders:

### ■ No Inflation Option

The straight red line illustrates a policy with no inflation protection. The daily benefit will never exceed the original amount, which is \$150 per day in this illustration.

### ■ 5 Percent Simple

The green area shows the effect of 5 percent simple interest inflation protection. With this option, the daily benefit amount increases 5 percent per year.

### ■ 5 Percent Compound

The blue area illustrates the daily benefit of a policy with a 5 percent compound inflation rider, which in later years will provide a significantly higher daily benefit than the percent simple option.

### ■ Cost of Living

Finally, the tan area shows the effect of a cost-of-living rider. For this illustration, it is assumed that the daily benefit amount increases at an annual rate of 3 percent for the first 10 years and 4 percent during years 11 through 20.

\*The National Clearinghouse for Long-Term Care Information, 2008

**Sattler & Company**  
John Sattler, CPA  
100 Crossways Park West  
Suite 100  
Woodbury, NY 11797  
516-364-9393  
Fax 516-677-9537  
john@jsatco.com  
www.jsatco.com

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