Will You Still Need Me, Will You Still Feed Me, When I’m 64

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Graying of America

- 40 million Americans over age 65
  - 13% of the population
  - 25% of these people will live past age 90
  - 10% will live past age 95
- By 2050, over 65 population expected to increase to 88.5 million
  - 20% of the population
  - Fastest growing segment is age 85 and older
- Quantity of years/quality of life
Alzheimer’s Disease

- Over 5 million Americans have Alzheimer’s disease
  - By 2050, this number will triple
  - 200,000 people under age 65
- Most expensive disease in the nation
  - Current annual cost of care is $259 billion
    - Cancer costs $66 billion annually
  - Cost projected to rise to $1.1 trillion by 2050
  - Government pays for about 68% of the cost
Estate Tax

- Raises about $20 billion annually
- .7% of all federal revenue
- Individual income and payroll taxes provide 81% of federal revenue
- 99.8% of all estates pay no federal estate tax
  - Fewer than 2 out of every 1,000 estates
- Approximately 5,000 estate tax returns filed reported a tax due
Elder Law Myth

- It won’t happen to me
- I’m never going into a nursing home
Elder Law Reality

- 70 percent of Americans will need some form of long-term care
- 50 percent will need long-term care in a nursing home
Elder Law Myth

- Medicare will pay for the cost of my care
Elder Law Reality

- Medicare does **not** pay for long-term care
  - Skilled nursing care v. custodial care
  - Acute v. chronic illness
  - No expectation of recovery
  - Alzheimer’s disease v. heart attack
  - Long term care
    - Help with activities of daily living, such as bathing, dressing, toileting, transferring, continence, eating
Elder Law Reality

The United States has no health insurance system for long-term care
Elder Law Myth

- Long-term care is not that expensive
Elder Law Reality

- Most Americans are in for sticker shock if they or a loved one ever requires long-term care
Elder Law Reality

- Long-term care *is* expensive
  - Average annual cost exceeds $100,000
  - Cost exceeds $200,000 in some areas
Elder Law Myth

- I am not responsible for my spouse’s care
Elder Law Reality

- You are responsible for cost of your spouse’s care
  - Spousal protections
  - Separate accounts
  - Pre-nuptial agreement
  - Long-term care insurance
  - Trust
  - Divorce
Elder Law Myth

- I can and will make my own decisions

I am very confident with myself, i can make my own decisions. Thank you for your opinion though.

- &lt;33 Miaaaa
Elder Law Reality

- You may *not* be able to make your own decisions
  - Financial
  - Health care
    - Where to receive care
    - Who pays for care
    - Who can visit you
  - Advance directives
  - Guardianship
Long-Term Care

- Home
- Assisted living facility
- Nursing home
- Continuing care retirement community
  - CCRC
Home Care

- Preference for most
- Unpaid caregivers provide 80% of care at home
- Caregiver agreement
- Increased risk of elder abuse
- Social isolation
Assisted Living

- Custodial care in apartment-like setting
- Not licensed to provide medical care
- No governing federal regulation
  - State laws, regulations, licensing standards
- Admission agreement
  - Often non-negotiable
  - Personal guaranty
  - Binding arbitration
- Private pay preferred
- Cost add-ons
- Discharge issues
- Medical expense deduction
Nursing Home

- Nursing Home Reform Act
- Third party guaranty
- Sponsor or responsible party
- Security deposit
- Mandatory pre-dispute binding arbitration
CCRC

- Entire continuum of care
  - Independent housing
  - Assisted living
  - Nursing home care
- Married couples
- Expensive
  - Entrance fee
  - Monthly fee
- Review financial information
- Tax issues
Paying for Long-Term Care

- Private pay
  - Income tax considerations
  - Reverse mortgage
  - Life insurance
    - Accelerated benefit rider
- Medicare
- Medicaid
- Long-term care insurance
- VA benefits
Medicare

“Every citizen will be able, in his productive years when he is earning, to insure himself against the ravages of illness in his old age. No longer will illness crush and destroy the savings that they have so carefully put away over a lifetime so that they might enjoy dignity in their later years” – LBJ - 1965
LBJ Video
Medicare

- Federal program
- Administered by CMS
- Short-term rehabilitation
- Prior hospital stay required
- Deductibles and co-pays
  - Medigap policies
- Does not cover custodial care
- Improvement standard
- Observation status
Medicaid

- Payer of last resort
- Federal/state program
- Administered through state and county agencies
- Federal minimum standards, but states allowed flexibility
- Spend-down state v. income-cap state
- Quality of care
- Access to desired facility
Medicaid

- Resource limits
  - Exempt assets
- Look back period
- Penalty period
  - Regional rates
  - Disclaimer
  - Joint account
  - Exempt transfers
  - Life estate
Exempt Assets and Transfers

- Retirement accounts
- Residence
  - Intent to return home
  - Home equity limit ($560,000 - $840,000)
- Transfer of residence to qualified persons
- Not for purpose of applying for Medicaid
  - Estate planning gifts
- Transfer to child with disabilities
- Transfer between spouses
Annuities

- DRA compliant
- Irrevocable
- Non-assignable
- Actuarially sound
- Equal payments
- No balloon payments
- State is remainder beneficiary to extent of Medicaid paid
Promissory Note

- DRA compliant
- Actuarially sound
- Reasonable interest rate
- Equal payments
- No balloon payments
- No cancelation on death
Life Estate

- Valuation of remainder interest
- Not considered a resource
- Rental income
- Sale during lifetime
- Estate recovery
- Purchase of life estate
- Comparison to Medicaid trust
Trusts

- Revocable trust
- Irrevocable trust
  - Medicaid applicant’s funds
  - Established, other than by will, by
    - The individual
    - The individual’s spouse
    - A person acting at the direction of individual or spouse
    - A court with legal authority to act on behalf of the individual or spouse
Trusts

- Exempt trusts
  - First party special needs trust
  - Pooled trust
  - Qualified income trust

- Third party trusts
  - Wholly discretionary
  - Ascertainable standard
  - Supplemental needs trust
    - Contingent SNT
  - Support trust
Married Persons

- Community Spouse Resource Allowance
- Right of election
  - Qualifying special needs trust
- Pre-nuptial agreement
- Divorce
- Disclaimer wills
- Portability
Estate Recovery

- Mandated by federal law
- Medicaid correctly paid v. incorrectly paid
- Sale of property or from estate
  - Surviving spouse
  - Minor, blind or disabled child
- Age 55 or over at time benefits received
- Liens
Estate Recovery

- Probate estate v. expanded estate
  - Interest at the time of death (to the extent of such interest)
  - Life estate
    - Actuarial value
    - Entire value
  - Medicaid trust
- Exceptions
  - Claim detail report
- Undue hardship
Long-Term Care Insurance

- Covers the cost of long-term care
  - Pays for custodial care
- Rigorous physical and cognitive exam
- Benefits based on daily rate
  - $300/day v. $9000/month
- Inflation rider
- Elimination period
- Assistance with activities of daily living
Long-Term Care Insurance

- Fewer choices
  - Fewer products
  - Fewer companies
- Only pays for 7% of all long-term care costs
- 7 million policy holders
  - Relatively flat past 10 years
  - New policy sales are way down from 2002
Long-Term Care Insurance

- Prices continue to rise
- Low interest rates
- Claims rose more than projected
- Lapse rate
- Life expectancies
- Health care costs
- High capital requirement
- Perfect storm
- Fewer companies to choose from
Long-Term Care Insurance

- More conservative underwriting
- Tougher approval process
- Higher costs for women
  - Responsible for 67% of all claims ($$)
  - Own 58% of all policies
- Hybrid products
  - Guaranteed premium and benefit
  - Easier to qualify for than LTCI
- Partnership policies
Deductibility of LTCI Premiums

- Age 40 or less  $420
- Over 40-50  $780
- Over 50-60  $1,560
- Over 60-70  $4,160
- Over age 70  $5,200
- State tax credit or deduction
- 10% medical expense threshold
Deductibility of LTCI Premiums

- C corporation
  - Executive benefit
  - Fully deductible as a business expense
  - Not imputed income
  - Not subject to ERISA
  - Receipt of LTCI benefits are tax-free to the executive
Tax Treatment of Benefits

- Benefits received under a qualified LTC policy are not considered taxable income
- Tax-free cap of $360/day applies to indemnity policies
Long-Term Care Insurance

- Ideal age to buy
  - More likely to be insurable at younger age
  - Pay premiums for a longer period of time
  - Inflation rider
    - Important for younger purchasers
- Insure part of the cost
  - Coordinate with Medicaid planning
- 10-pay policies
Long-Term Care Insurance

- Benefits
  - Financial decision
  - Avoid family disputes
  - Allows individual to stay at home
- Work with reputable agents
- Financial stability of insurance company

- Caveats
  - Third party lapse notification
  - Mistake on check
Long-Term Care Insurance

- Evaluate existing policies
  - Premiums can increase
- Suggest health clients/family consider
- Is LTCI really insurance?
  - Risk management strategy
- Short-term care insurance
  - Typically provides coverage for one year or less
  - No elimination period
Short-Term Care Insurance

- Declined for LTCI
- Less expensive than LTCI
- Easier underwriting than LTCI
- Over age 80
- Pricing is not gender-based
- You have LTCI and want to cover the elimination period
Thank You!

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