Putting All the Hype About Long-Term Care in Perspective

By Frederick M. Misilo, Jr., Esq.

We've all heard or read the daunting statistics of our aging population and the pending crisis in long-term care. For example, every day 10,000 baby boomers (those born from 1945 to 1965) turn 65 years old. A 2005 study estimated that 58% of men and 79% of women will need long-term care at some point in their lives. This same study reported that the average stay in long-term care is 2.2 years for men and 3.7 years for women. The average annual cost of assisted living in the U.S. is reported to be $43,200, with the average private pay rate for nursing facilities being $91,250.

These statistics are often used by agents selling long-term care insurance or by attorneys who tout the absolute necessity of putting your home and other assets in an irrevocable trust. Both strategies may be helpful. But before these and other options are undertaken, it is important to put planning for long-term care in perspective.

Where one can receive long-term care has undergone a massive evolution over the last several years. Many people can now receive some form of long-term care without having to move to a skilled nursing facility. Home care services, community support services and family care providers make staying at home longer a real possibility. Under the Program of All-Inclusive Care for the Elderly (PACE), eligible seniors can receive community-based Mass Health-funded services while remaining at home. PACE can help pay for some long-term care services in an assisted living facility rather than in a medical-oriented skilled nursing facility. There are also loans available for eligible seniors for modifications to the home to accommodate diminished physical capacity. Rapid technological advances in remote medical monitoring, virtual care management and on-call response systems will likely provide seniors with greater capacity to remain home longer in the relatively near future.

The development of continuing care retirement communities and assisted living facilities has provided seniors with the opportunity to make a thoughtful transition from their home to a community with a robust set of opportunities for personal enjoyment and comfort. While these settings do have up-front costs and on-going fees, it has been my observation that such environments optimize the possibility of having long-term care services provided to the senior in her or his living unit rather than having the person move to a more restrictive skilled nursing setting. There is a big difference between a continuing care retirement community and a stand-alone assisted living facility. A continuing care retirement community provides a continuum of services and supports from independent living to assisted living to skilled nursing care. Many assisted living facilities do not provide this type of continuum. Transfer to a more restrictive setting is required if the assisted living facility is unable to provide the necessary services and supports to a senior who loses physical and/or mental capacity.

Planning for long-term care should be done in conjunction with other family members, financial advisors and a competent elder law attorney. This type of planning should not be undertaken lightly. A transfer of a home to an irrevocable trust has consequences. It is important to fully appreciate these consequences in light of your lifestyle, the amount of savings you have and your willingness to give up control over an important asset. This area of the law is constantly changing, and given the anticipated increase in the number of Americans needing long-term care, current federal and state laws regarding financial eligibility, asset transfers and trusts will likely be further changed in order to lower the cost to government of long-term care. So there are no guarantees that what works today will be viable in the future.

A long-term care insurance policy should be purchased only after consultation with an experienced elder law attorney as well as other trusted advisors. There are myriad options to consider when selecting the long-term care policy that may be right for you. These considerations include, but are not limited to, the availability of existing funds or future income to pay for a portion of anticipated long-term care costs, careful scrutiny of what is and what is not covered under the long-term care contract, the length of the elimination period, your ability to maintain your lifestyle while paying for the premiums, the likelihood of being able to afford the premiums with retirement income, whether there is a death benefit associated with the policy and, of course, the length of coverage. There is no one-size-fits-all long-term care policy for everyone. Of course, you should never feel pressured to purchase a long-term care insurance policy.

Planning for possible long-term care is one part of a comprehensive estate plan. In addition to evaluating your options for long-term care, you should be planning to avoid probate with appropriate legal documents, minimizing your exposure to estate taxes, and ensuring that you have named the appropriate persons to make important financial, personal and health care decisions for you in the event of your incapacity.

The sheer abundance of information and the complexities in this area require careful analysis to determine what is right for you and for your family. As with any important decision we make in our lives, it is important to gather the right information with a set of trusted and competent advisors and evaluate your options. The often-used quote from Benjamin Franklin, "Failing to plan is planning to fail," is an apt way to close this discussion. With the right set of advisors and with careful planning, you can have peace of mind knowing that you've made important decisions in an informed fashion for you and your family. **FT**

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