THE PRACTICAL ESTATE PLANNER

In practice since 1987, Certified Elder Law Attorney **EVAN FARR** is widely recognized as one of the leading Elder Law, Estate Planning, and Specials Needs attorneys in Virginia, Maryland, and the District of Columbia, and one of foremost experts in the country in the field of Medicaid asset protection and related trusts. He has been quoted or cited as an expert by numerous sources, including: the Washington Post, Newsweek Magazine, Northern Virginia Magazine, Trusts & Estates Magazine, The American Institute of Certified Public Accountants, and The American Bar Association.

Evan has also been featured as a guest speaker on numerous radio shows, including WTOP and Washington Post Radio. Evan has been named by SuperLawyers.com as one of the top five percent of Elder Law and Estate Planning attorneys in Virginia every year since 2007, and in the Washington, D.C. Metro Area every year since 2008. In 2011, Evan was named by Washingtonian Magazine as one of the top attorneys in the DC Metropolitan area, by Northern Virginia Magazine as one of the top attorneys in the Northern Virginia area, and by Newsweek Magazine as one of the top attorneys in the country. Evan is a nationally renowned author and frequent educator of attorneys across the U.S. As an expert to the experts, Evan has educated tens of thousands of attorneys across the country through speaking and writing for numerous national legal organizations such as the National Academy of Elder Law Attorneys, ALI CLE, the National Constitution Center, myLaw CLE, the National Business Institute, the Virginia Academy of Elder Law Attorneys, the Virginia Bar Association, Virginia Continuing Legal Education, and the District of Columbia Bar Association.

YOU AND YOUR CLIENTS NEED TO UNDERSTAND THE RISKS AND MYTHS OF LONG-TERM CARE

The best estate plan is useless if your clients wind up dying broke because they spent all of their money paying for long-term care. Accordingly, it is vital for estate planning and general practice attorneys who do estate planning to understand the risks and myths of long-term care. Long gone are the days when an estate planner can hide his or her head in the sand and avoid discussing the risks and realities of long-term care with his clients. To properly serve your estate planning clients, you must discuss how they plan to pay for long-term care, and you must have a basic understanding of the significant risk that the need for long-term care can have in the lives of your clients and their estates.

What is Long-Term Care?

Long-term care differs from health care in that the goal of long-term care is not to cure an illness, but to allow an individual to attain and maintain an optimal level of functioning. Long-term care encompasses a wide array of medical, social, personal, and supportive and specialized housing services needed by individuals who have lost some capacity for self-care because of a chronic illness or disabling condition.[1]

Long-term care encompasses a broad continuum of care:

- May involve medical care or skilled nursing care.
- Most often involves “intermediate care” or “custodial care”—assistance with “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs).
    - ADLs: Toileting; Bathing; Dressing; Eating; Continence; Transferring
    - IADLs: Shopping; Cooking; Household Chores; Care of pets; Financial Management
- Often involves supervision due to dementia.

Where is Long-Term Care Provided?

At Home

Home health care is provided in an individual’s home (by family members or paid staff) and aims to keep the individual functioning at the highest possible level. Services range from basic assistance with household chores to skilled nursing services.

In Assisted Living Facilities

An Assisted Living Facility (ALF) typically provides apartment-style accommodations where services focus on providing assistance with ADLs and IADLs, including meals, housekeeping, medication assistance, laundry, and regular check-ins. Designed to bridge the gap between independent living and nursing home care.

In Nursing Homes

A nursing home (also called a "skilled nursing facility" or SNF) is a medical facility that provides 24-hour nursing care for people with serious illnesses or disabilities. SNFs must be state-licensed and care is provided by registered nurses, licensed practical nurses, and certified nurse aids. The vast majority of all nursing homes are for-profit entities, and many of these are large corporations with nursing facilities in multiple states. Nursing homes generally provide three levels of service:

- rehabilitation for people who are injured, sick, or disabled;
- skilled nursing and medical care;
- custodial care (help with eating, dressing, bathing, toileting, and moving about).

According to the U.S. Department of Health and Human Services, National Center for Health Statistics,[2] as of its latest study in 2013-14, there were 15,600 nursing homes in the country providing a total of 1,663,300 certified beds.

Alternative LTC Arrangements: Adult Day Care and Life Care Communities

Adult day care programs provide meals and care services in a community setting during the day while a caregiver needs time off or must work. Life Care Communities (LCC), also called Continuing Care Retirement Communities (CCRC), provide a continuum of care from independent living through skilled nursing. The facilities allow individuals to live within the same community as their needs progress through the spectrum of care.

SIX WAYS TO PAY FOR LONG-TERM CARE

1. Private Pay

This means paying for the cost of a nursing home out of your own pocket – from income and, if necessary, from assets. Unfortunately, with nursing home bills averaging over $100,000 per year in the United States, few people can afford to pay on their own for a long-term stay in a nursing home. Even those who can afford to do so often desire to explore other options—options that allow them to retain some or all of their assets for other important needs, while still permitting them to pay for nursing home care.

2. Traditional Long-term Care Insurance

It is estimated that only about 10 percent of the American population owns traditional Long-term Care Insurance (LTCI).[3] Most people facing a nursing home stay do not have this type of coverage in place. Many people who would like to purchase this type of coverage find that they cannot afford it and are unable to qualify medically. Many people who do purchase it eventually give it up because of huge premium increases. Many people who do purchase it also don't purchase enough coverage, or in some cases purchase too much coverage, because they fail to take Medicaid into account when determining how much insurance to purchase.

3. Hybrid Long-Term Care Insurance

Many clients who are rightly wary of traditional long-term-care insurance are increasingly purchase "hybrid" policies combining life insurance or an annuity product with long-term care benefits. For many, these products are a better way to manage the risk of catastrophic long-term-care costs. Many elder law attorneys, including your author, are licensed to sell long-term care insurance (including hybrid policies) and other insurance and annuity products. If you have a client who might benefit from LTCI, then a referral to one of these elder law attorneys is a better referral because a full-service elder law attorney can discuss the pros and cons of funding long-term care with insurance versus using trusts versus using other Medicaid asset protection strategies.

Hybrid policies come in many flavors. Some hybrid policies attach a long-term care rider to a whole or universal life insurance policy. Consumers can either pay a single up-front premium or periodic premiums, and if they never need long-term care, their heirs get the death benefit. The premiums for traditional long-term care insurance have increased since 2012, thus stagnating the sales of stand-alone long-term care insurance policies. Meanwhile, sales of hybrid combination products such as life insurance/LTC policies or annuity/LTC policies have soared with more than $4 billion in sales in 2017. By paying a single premium or series of set premiums, your client avoids the risk of future premium increases – an issue that has plagued traditional long-term-care policies. Also, many clients hate the idea of the "use it or lose it" nature of traditional long-term care policies; the hybrid's death benefit eliminates that concern. Also, hybrid policies are much easier to qualify for, from a health standpoint, than traditional long-term care policies, and many can be purchased up to age 80.

Long-term care life insurance policies or annuities will help clients leverage their assets into 3X, 4X or 5X their principal investment should they need care. This retirement strategy can help clients protect their retirement income stream from significant long-term care costs. Let's take a look at an example of how a long-term care annuity works.

4. Leveraging Retirement Accounts to Pay for Hybrid Long-Term Care Insurance

One great way to leverage a retirement account to use tax-deferred money (money in your client's IRA, 401(k), 403(b), or Thrift Savings Plan) is to use this tax-deferred money to help pay for long-term care coverage. One of the main ways to do this is through a patented type of policy that combines a qualified annuity with life insurance and long-term care coverage. State Life Insurance Company Group is part of OneAmerica, an A.M. Best A+ rated, 140-year-old company. The State Life Asset Care III is a Combination Life and Long-Term Care Insurance policy funded with mostly pre-tax and some after-tax dollars. State Life Asset-Care III is unique because it can be paid with retirement account funds and can be designed to provide lifetime benefits. For many savers, their largest asset is their retirement account. State Life Asset Care III allows your client to rollover a portion of your retirement account, such as an IRA or 401(k), to an IRA deferred annuity. Then, from that qualified plan, a withdrawal is taken annually to fund a 20-pay Combination Life and Long-term Care policy. These annual withdrawals defer taxes and meet your client's Required Minimum Distribution (RMD) requirements. Asset Care III can insure a married couple using just one of their retirement accounts.

5. Veterans Aid and Attendance

The Veterans Administration (VA) pays for long-term care primarily through its "Aid and Attendance" payments, which is actually a veteran's Special Pension with an add-on for Aid and Attendance. Aid and Attendance qualification and eligibility will be discussed in greater detail later in these materials.

6. Medicaid

This is a combined federally-funded and state-funded benefit program, administered by each state. Medicaid can pay for the cost of a nursing home if certain asset and income tests are met. According to AARP, about 70 percent of nursing home residents are supported, at least in part, by Medicaid.

MYTHS ABOUT LONG-TERM CARE

Now to dispel some of the main myths about long-term care.

MYTH 1: I won't need long-term care

While this may be true for some, according to Longtermcare.gov, if you were to turn 65 today, you would have almost a 70% chance of needing some form of long-term care service during your remaining years. The generation currently facing the greatest growing need for long-term care services are the

Baby Boomers. Born between 1946 and 1964, the Baby Boomer generation accounts for roughly 78 million Americans, and according to Medicare.gov, it is estimated that 12 million of them will require long-term care services this year.

MYTH 2: My health insurance will cover long-term care expenses

Health insurance doesn't generally cover long-term care to any meaningful degree. Some plans provide minimal home care and skilled nursing benefits, but these are short-term in nature and designed around your recovery and rehabilitation. But, most long-term care received is custodial in nature, for the safety, maintenance and well-being of those with chronic conditions. If you'll look close enough at your plan, you'll likely find language that plainly states: "This plan does not cover long-term care."

MYTH 3: Medicare will pay for long-term care

According to a recent survey, approximately half of baby boomers erroneously expect to rely on Medicare to pay for their long-term care needs. The reality is that Medicare will not pay for your long-term care needs. While Medicare is designed to help those over the age of 65 keep on top of their healthcare needs, long-term care is not one of them according to the federal government. And while Medicare Supplemental plans are often touted to cover things that Medicare leaves behind, long-term care is still not one of them.

MYTH 4: I'm too young to need long-term care

Even if you're under age 65, you may require long-term in-home or residential care services. On average, around eight percent of people between ages 40 and 50 have a disability that could require long-term care services, according to the HHS. While the majority of people who require long term care are older, younger people can require it anytime due to severe unexpected illnesses, diseases, injuries, or accidents. Because the need for long term care can arise at any time in a person's life, it is wise to plan in advance.

MYTH 5: My spouse or kids will take care of me

According to the National Academy of Social Insurance, it is estimated that 25% to 30% of the baby boomer generation "will become divorced or widowed by the time they reach ages 55 to 64," increasing the likelihood of needing to depend on one's children to provide care. However, studies have shown that rates of childlessness continue to rise. According to the Center for Disease Control, new data has shown that the birthrate has hit an all-time low. This statistic may not have as large of an impact on older generations who have more children than it will eventually for younger generations that do not.

MYTH 6: I can save enough on my own

Personally paying for long-term care expenses is one option. However, you should consider the type of long-term care services you would like and the cost of that care before relying on this method. In 2020, the national average cost of a nursing home exceeds $10,000 a month, and 24-7 home care is even more expensive, often double the cost of nursing home care. The duration and level of long-term care will vary from person to person and often change over time. Here are some statistics (all are "on average") you should consider:

- Someone turning age 65 today has almost a 70 percent chance of needing some type of long-term care services and supports in their remaining years.
- Women need care longer (3.7 years) than men (2.2 years). One-third of today's 65-year-olds may never need long-term care support, but 20 percent will need it for longer than five years.
- Imagine paying for two years, three years, or even five or more years of nursing home care at $10,000 – $14,000 a month! Paying for long-term care out of pocket may be an option if your clients can afford it, but most cannot.

MYTH 7: Long-term care insurance covers all your needs

Sometimes it does, but it's more realistic to expect that a LTCI policy will cover about 60 percent to 70 percent of your expenses. Also, traditional LTCI can be quite costly and the amount your clients have contributed may not justify the benefits they'll receive. Please keep in mind that sales of traditional LTCI policies have been declining, but consumers are becoming much more interested in hybrid policies that add long-term care benefits to annuities or life insurance. Issuers sold more than 250,000 such hybrid policies in 2018, according to the data firm LIMRA.

MYTH 8: It's always better to age in place

Surveys show that the majority of Americans ages 50 and older want to stay in their own homes as they age. But aging at home is not always the best option. It requires a strong support network, including active and informed family caregivers or a highly engaged community. Living alone at home can also be isolating, which is itself a serious health risk. Some older adults now living in facilities could have theoretically remained at home. But for others, safe and fully supportive aging in place is unrealistic.

MYTH 9: You'll need to parent your parents as they age

Older adults may need support from their children, but they don't want to be controlled by them. Seniors don't want to lose their autonomy, and many of them resist allowing their children to take over their lives. This is why adult children should think of themselves as care partners, not caregivers. A 2018 study by Northwestern University geriatrics professor Lee Lindquist found that older people were more likely to accept support if they felt that, contrary to being parented, "by accepting help, they were in turn helping the person providing the help."

CONCLUSION

All of the above risks and myths are reasons why you and your clients need to consider doing Medicaid Asset Protection planning, whether pre-planning using Medicaid asset protection trusts or crisis planning using over two dozen different Medicaid asset protection strategies. If you don't offer this type of planning yourself, you need to at least be able to spot the need and identify the issues and know when to make a referral to an attorney who can help clients protect their assets and get them qualified for long-term care Medicaid when needed.

Notes

1 Special Committee on Aging. Developments in Aging: 1997 and 1998, Volume 1, Report 106-229. Washington, DC: United States Senate, 2000.

2 Long-Term Care Providers and Services Users in the United States: Data From the National Study of Long-Term Care Providers, 2013–2014 (Chapter 3. National Profile of Long-Term Care Services Users). The document can be found online at https://www.cdc.gov/nchs/data/series/sr_03/sr03_038.pdf.

3 Fewer than 10 percent of Americans 65 and over carry long-term care insurance (http://www.uscare.com/whyltc.html, quoting Wall St. Journal, 3/31/99), last visited 2-13-2011.