

In Sickness and in Health

Long-term Care Costs Force Tough Choices

BY JOSEPH BEDNAR **Hyman G. Darling weighs in below**

Roberta and Alex had been married almost 40 years and looked forward to retiring — he was a college professor; she worked in communications — when Alex was diagnosed with early-stage dementia, and their plans suddenly changed.

Alex took early retirement, and Roberta started caring for him at home, spending about \$1,000 a month on a variety of people to help him with various tasks. But as his dementia worsened, Alex soon needed full-time adult day care while Roberta worked. Eighteen months later, following a medical emergency, Alex required skilled nursing care.

The Western Mass. couple found a nursing home without a waiting list, but Medicare covered only the first 100 days, and after that, Roberta began drawing on their savings at a clip of \$7,500 per month. About \$75,000 later, the stock market collapsed, and their retirement savings were cut in half.

Now, with Alex's condition worsening and their savings disappearing, Roberta began to wonder what would happen if something happened to her, too. **When she talked about the situation with Hyman Darling, an elder-law attorney with Bacon Wilson, P.C. in Springfield, he offered her a suggestion that would allow her to care for Alex while pro-**

every day, but divorce was still an emotional blow. It's not the most common solution to long-term care expenses, but it's not unheard of, either.

"I asked a lot of colleagues at a conference about this, and they do it, too," Darling said of his seemingly unorthodox advice. "It's got to be the right person, the right situation. In this case, divorce really was her best option."

The case illustrates two harsh realities: the often-crippling cost of long-term care, and a system that forces individuals to drain their savings before qualifying for public aid.

"Long-term care insurance is the answer," said James Gelin, an attorney with Gelin & Lefebvre in Chicopee who specializes in estate planning. "It allows you flexibility and freedom. The question is, can you afford it? Many people in this area can't."

In this issue, *BusinessWest* examines the difficult choices that long-term care poses for many Americans, and why it's a good idea to start discussing them well before the retirement years begin.

For Richer, for Poorer

Darling said the divorce solution is more common in second marriages, when prenuptial agreements are more prevalent and there's a clearer division between what's his and what's hers, so to speak.

"In a first-marriage situation, it doesn't happen too often," Darling said. "It took her months to make the decision to go ahead and do it. She didn't want to, but she had spent \$75,000, and she saw that the rest of the money was probably going to go, so she bit the bullet and took that option."

Other experts in elder-care law are sympathetic to the couple's plight.

"These aren't people who were trying to beat the system. These are people the system



Staff Photo

Hyman Darling says individuals should do plenty of soul-searching before gifting away their assets.

has beaten down to the point where they're having to go to these desperate measures," said Ken Budd, features editor of *AARP the Magazine*, discussing the issue earlier this month on the *Today* show. "Intellectually, they knew they had to do it, but emotionally, it was devastating; it was gutwrenching. This was very much a last resort."

Purchasing long-term care insurance can avert such a last-resort scenario, but not everyone can afford the premiums, which can run between \$3,000 and \$5,000 per year for a couple, Gelin said.

"A lot of people don't know that they can get long-term care insurance through their companies," Darling said, conceding that the percentage of employers offering the benefit isn't high, but it's worth checking into. "It's affordable, and when they retire, they can take it with them. It's less expensive than buying it on their own."

Many people tap Medicaid to pay for nursing-home care, but the government requires the individual to spend down all their assets,

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tecting what savings they had left.

That suggestion was divorce.

In short, once they were no longer married, Alex would be considered indigent and qualify for Medicaid. So despite feeling depressed and guilty about it, Roberta officially severed the marriage in 2008, the day before the couple's 44th anniversary.

Roberta, who still considers herself married in every way but legally, still visits Alex

typically to around \$2,000, to qualify. They may gift assets to children, but Medicaid enforces a five-year lookback period, and benefits gifted during this window may cause benefits to be delayed.

In any case, many people struggle with the idea of impoverishing themselves to that degree to assure their care, Darling said, noting that “the rules wouldn’t be so bad if they gave you a higher allowance.” Meanwhile, gifting assets poses other risks.

“It’s not so easy to give assets away,” he said. “When you give your assets to your children, and the child gets divorced or gets sued, they can lose those assets. People have to do a lot of soul-searching before giving assets away. In addition to what’s right or wrong for the family, there are a lot of tax issues to consider.”

For those reasons, “we never let a client make a decision in the first meeting,” he continued. “We want them to think about it, go over it, and make sure they talk to their children. They make sure the children don’t have any major problems before they put the child’s name on a deed. There’s a lot of homework to be done before someone can proceed with whatever decision is right for them.”

Another option is a Medicaid trust, Gelinas said, citing a vehicle in which someone can ‘store’ assets for their beneficiaries, making them uncountable by Medicaid. But aside from interest earned, those assets essentially remain out of reach for the remainder of the person’s life.

“That makes sense if you have real estate,” he noted. “But one problem I have with it is it doesn’t allow you to reach in and grab the principal if you need it. You’ve worked your entire life to get all these assets for yourself and your children, but once it’s in there, it’s tough to get out. Those are the rules they play by.”

Given such unattractive options, the system needs to change, said James Firman, president and CEO of the National Council on Aging. “Requiring people who have worked hard and saved all their lives to become impoverished before they qualify for long-term care through Medicaid is draconian,

demeaning, and disempowering,” he told *AARP the Magazine*. “It is also terrible social policy and can’t be sustained.”

As Long as We Both Shall Live

It’s also an issue pressing further to the forefront as the massive Baby Boomer generation heads into their retirement years. The AARP reports that Americans who live to age 65 have a 40% chance of entering a nursing home during their lifetime. The average stay

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lasts 2.5 years and costs about \$175,000.

In 2008, the organization reported, 9 million senior citizens required long-term care, and that number is expected to reach 12 million by 2020. Yet, only about 8 million Americans have private long-term-care insurance, meaning the government might face its own financial crisis in funding the future needs of Medicaid.

The health-reform bill recently signed into law by President Obama contains a bit of relief in the form of the Community Living Assistance Services and Support (CLASS) Act, which will make limited long-term care insurance available to all Americans, who will be automatically enrolled with the choice to opt out.

Individuals will begin paying a premium immediately, and, after five years, those with functional limitations will have the option of receiving a cash benefit of around \$50 a day

that can be used to offset the cost of long-term care. For most, of course, that won’t be nearly enough.

“A lot of people think Medicare’s going to cover everything, but that’s not the case,” Budd told *Today*, referring to the fact that most people don’t realize that program isn’t intended for long-term care. He said people need to educate themselves on the limits of the program and look into ways to fill in the gaps.

At the same time, he argued that government should provide more benefits for community-based care and home care. “Nine out of 10 Americans want to age in place at home.”

As for cases like that of Roberta and Alex, “it’s extreme, but it’s becoming a lot less extreme,” Budd said.

“You’ve got a couple different forces coming together: Medicare is only going to pay for 100 days of nursing-home care, and Medicaid is designed for people in poverty. Then you’ve got the economy hitting people hard and people getting catastrophic health care costs. That all comes together, and it’s a very tough situation.”

Darling argued that the best thing anyone can do is plan early. That’s especially true if they’re interested in long-term care, which gets more expensive to buy into as the person gets older, and may be completely out of reach if they develop a chronic medical condition. “That can prevent them from getting insurance,” he said.

And, as Gelinas noted, the options beyond long-term care insurance get less and less attractive.

“If you give assets to a child and they file bankruptcy, they can lose that,” Gelinas said. “If you put it into a trust, you won’t be able to benefit from the principal that you worked your entire life for. You’re damned if you do, damned if you don’t.”

And sometimes, you’re divorced — even if you don’t want to be. ■

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