INVESTMENTS & WEALTH MONITOR

A reprinted article from May/June 2020

The Three Biggest Risks to Retirement Planning and How to Avoid Them

By Harry S. Margolis, JD

INVESTMENTS & WEALTH INSTITUTE®

The Three Biggest Risks to Retirement Planning and How to Avoid Them

By Harry S. Margolis, JD

Your retirement planning for your clients can be superb. They can have more than enough resources and income for whatever their needs and lifestyle desires may be. But it may not work out. They could fall victim to one of the three risks that can derail any retirement plan: need for long-term care, scams, and remarriage (or even a new intimate relationship without marriage).

Fortunately, you and they can plan to prevent or at least diminish the likelihood of any of these risks derailing a plan. (A fourth risk that can be difficult to plan for is over-generosity, providing more support to children and grandchildren than your client can really afford.)

LongTermCare.gov estimates that 69 percent of seniors will need some sort of long-term care, and the average length of care is three years.

LONG-TERM CARE COSTS

The need for long-term care, the type of care provided, and the cost of that care are incredibly variable. Long-term care may consist of a few hours a week from a home health worker, daily visits to a relatively low-cost adult day health center, or around-the-clock skilled nursing care costing hundreds of thousands a year. It may be provided at home, in assisted living, or in a nursing home. It may last a few months or many years. And it may be provided primarily by family members or entirely by paid assistance.

What any individual will need and what the costs will be are hard to predict. It's even difficult to find up-to-date statistics on the likelihood of needing care for the U.S. population as a whole. One long-term care insurance association site predicts that 35 percent of policyholders will need at least 90 days of long-term care. It cites a 2008 study that found that about a quarter of patients spent more than three years in a nursing home, 30 percent from one to three years, and 44 percent less than a year.[1] On the other hand, these statistics do not count the amount of care provided at home or in assisted living prior to moving to a nursing home.

LongTermCare.gov estimates that 69 percent of seniors will need some sort of long-term care, and the average length of care is three years. Almost all of these seniors will need care at home averaging two years before about 37 percent move to assisted living or nursing home facilities.[2]

Given the unpredictability of care needs and their cost, they are difficult to plan for. But it is possible to get a general idea of the risk to particular clients by asking a few questions. How likely is it that family members would be able to provide care? How healthy is the client today? What is the family history in terms of illness, life expectancy, and dementia? How comfortable is the client with the idea of moving to assisted living or to a continuing care retirement community?

Most care is provided at no cost, but often at extreme sacrifice, by family members. Having resources to pay for care can help alleviate the burden and stress on family caregivers. Payment for services can come from savings, long-term care insurance, or Medicaid. The unfortunate reality is that most baby boomers have inadequate savings and very little cushion to pay for their long-term care needs.

On the other hand, most financial planning clients who can afford a comfortable retirement can afford to pay for care out-of-pocket for a period of time, but they may pinch pennies due to concern that the need for care may drag on, that the healthy spouse may not have enough to live on, and that they're digging into inheritance they had hoped to leave to their children. Financial planners often can provide some reality testing to show that a year or so of costs will have little effect on their plans.

The real risk is that the need for expensive care will last three or more years. Although the risk is relatively small, the depletion of savings could be significant. The solutions are long-term care insurance (LTCI) or Medicaid planning. The drawback of LTCI is its high cost.

Those who can afford these solutions probably also can pay for their care out-of-pocket even if such care lasts more than three years. But it can still make sense for such clients to purchase policies. They permit better planning because the risk is significantly reduced. They also provide greater flexibility in terms of care because they reduce the incentive to seek lower-cost alternatives. This can be especially important in terms of family sacrifice. Family members are more likely to hire paid help if the cost is being borne by insurance rather than coming from savings.

Advance Medicaid planning is more difficult because it involves a trade-off between one's own needs and providing an inheritance to others. Medicaid will pay for nursing home care and, depending on the state, for some assisted living and home care when the person needing care has spent down assets (other than a home) to $2,000. If this person is married, the spouse also must spend down assets to about $129,000. That leaves little for the surviving spouse to live on and not much for children and grandchildren. Assets can be protected by transferring them outright or into a properly drafted irrevocable trust at least five years before applying for Medicaid. The problem with taking this step is that the transferred assets no longer will be available to the person making the transfer or to that person's spouse. In other words, it involves a decision to give up access to assets in order to protect them—the trade-off mentioned above.

Advance Medicaid planning often involves giving assets away, but last-minute planning often is also available to protect some assets even after a client has fallen ill. Some especially good planning techniques are available to protect the spouse of an individual applying for Medicaid. These techniques often involve transferring assets between spouses. As a result, the most important estate planning instrument for long-term care planning is the durable power of attorney. It is important for all clients to have one in place and for it to permit the making of gifts without limit, even to the agent under the durable power of attorney.

PROTECTION FROM SCAMS

Bank robbers target banks, as the famous bank robber Willie Sutton allegedly said, "Because that's where the money is." Scam artists target seniors for the same reason. Seniors are also targets because they're often more susceptible to scams due to cognitive decline and isolation.

We're all getting telephone calls supposedly from the Social Security Administration or Internal Revenue Service or emails from African or Eastern European countries telling us we are about to be arrested if we don't take immediate action or that we have the opportunity for a big financial deal. Seniors are even getting calls on behalf of their grandchildren, claiming that they're stranded in foreign countries and need immediate money. I recently received an authentic-looking email from Amazon confirming a delivery of an iPad to someone I had never heard of in Austin, Texas. These calls and emails can seem legitimate because criminal networks are able to gather significant amounts of information from the internet.

Nevertheless, few of these millions of robocalls and emails are successful. Unfortunately, enough are successful to keep the scam artists in business and many of those target seniors. In addition, seniors also can become the victims of financial exploitation by those close to them, whether neighbors, caregivers, or family members. And just like long-term care costs, loss of money to fraud or exploitation also can derail any financial plan.

The main ways to protect seniors from all types of financial exploitation involve efforts to counter isolation and increase transparency and oversight. Having other trusted people assist with financial matters, whether family members, professionals, or volunteers, can help on all three fronts.

Family members are likely to become involved when a senior begins to suffer some cognitive decline, but this often happens too late partly because everyone is busy and partly because relatives find it uncomfortable to bring up these issues with a parent, aunt, uncle, or grandparent. People don't want to insult their family members or look like they're trying to take their money or even just take control of it.

It can help if seniors take steps for their own protection before any cognitive impairment occurs. Yet, few people can anticipate their future cognitive or physical decline. We often feel that we will maintain our current status indefinitely. This is where financial advisors can play an important role in urging clients to take protective action, including one or more of the following steps:

- Execute a durable power of attorney to permit a trusted family member or friend to step in when and if necessary. It can be important to have someone in place ahead of time in case of financial exploitation or simply financial neglect. We often have seen seniors simply stop paying bills. In addition to a general durable power of attorney, things run much more smoothly if clients also execute specific documents for any financial institutions where they have accounts that require their own forms.
- Set up one or more joint accounts with a trusted family member or friend who can easily pay bills when and if necessary and monitor activity in the account to be aware of any unusual activity. Some clients, of course, will see this as an invasion of privacy.
- Give one or more trusted family members or friends online access to accounts. Some financial institutions provide limited access, for instance allowing the payment of bills but not trading in investments. In other cases,

seniors might give other individuals their own credentials for online access. Again, the client may see this monitoring as belittling and as an invasion of privacy.

- Create and fund a revocable trust, naming one or more people as successors or co-trustees. Trusts are often the most efficient way to share and pass on authority over accounts. Unlike with joint accounts, there is no risk that successors or co-trustees will see the funds as their own. A co-trustee can step in whenever necessary, whether temporarily or permanently, to pay bills and reallocate investments as appropriate. It's a bit more difficult for successor trustees to step in because they would have to satisfy the requirement of the trust instrument that permits them to fill the role, perhaps by getting a doctor's letter attesting to the grantor incapacity.

All of these measures provide some oversight to prevent or minimize any financial exploitation that may take place. Financial advisors are well-positioned to encourage their clients to take these steps.

REMARRIAGE

New relationships in later life may or may not be as exciting as when people are younger, but they're certainly different from a financial point of view. Rather than starting out with little or no financial resources or family commitments, the two new partners may bring with them savings and investments accumulated over many decades as well as children and grandchildren. We urge older couples to enter into a prenuptial agreement if getting married or a living arrangement agreement if they plan to live together.

Although both types of agreement are legally enforceable, their more important purpose is to clarify expectations and to prompt discussion of issues that otherwise may not be brought forward. The new partners need to discuss the following issues:

- Where will they live? If they live in a house or condominium owned by one spouse or partner, what will happen after one's death in terms of the other person being able to stay? If they buy a place together, what will happen to it after the first one passes away?
- Will they mingle their assets or keep them separate? Again, where do the assets go after the death of the first spouse or partner to pass away?
- How will they share living expenses?
- What happens when and if one spouse or partner begins needing care? Who will provide the care? Who will pay for it?
- What happens if they decide it's not working and they split up?

In my practice, I've seen a lot of bad results when these issues have not been discussed ahead of time. One spouse or partner may take care of the other at great sacrifice, and then when the ill spouse dies be thrown out of the couple's home by the deceased's children. Or, on the other hand, we've also seen spouses pretty much dump ill partners on their children. More often, we've seen the assets of both spouses passing to the surviving spouse and then ultimately to the surviving spouse's children.

Any of these results might be fine if they are what the new couple had in mind, but more often these issues are not fully discussed and the results are unintended. Written agreements serve two further functions. They serve as a record in case either party forgets what they agreed to in the first place. And they provide transparency.

The latter benefit can be very important with respect to children, who often have a difficult relationship with the new spouse. The presence of the new spouse might alter a child's relationship with the parent, be seen as a threat to inheritance, and complicate planning for care. Making everyone's intentions clear and public can help allay suspicions and clarify the parent's intentions. It's one thing for money or housing to go to a surviving spouse who seems like a usurper or thief. It's another if it's clear that that's the parent's choice.

Having a clear plan on remarriage or entering into a new committed relationship can avoid unintended financial results.

HOW FINANCIAL ADVISORS CAN HELP PROTECT CLIENTS

The risk that any of these potential potholes—long-term care costs, scams, and remarriage—derails the best-laid financial plan can be diminished through proper planning, whether long-term care, estate, or premarital planning. Financial advisors are extremely well-positioned to convince clients to take these prudent steps to protect themselves and their families. Here are a few topics they can discuss with clients:

Long-term care insurance. Many clients can't afford long-term care insurance and many others can self-insure, but it's an important discussion to have with all baby boomer clients. This may not be on the horizon yet for younger clients and it's too late to buy the insurance for older ones.

Aging plans. Do clients intend to "age in place" by staying in their own homes or do they plan to move, whether to another part of the country or downsize to a house or apartment that's easier to maintain? Seniors really fall into two groups, the young old and the old old. The young old may be active and able to live on their own as they choose. The old old generally are more limited in their energy and abilities. A plan for the first stage of retirement may not work well in the second stage. It's important for retirees to discuss their wishes and plans for both stages and, if possible, to bring the next generation into the conversation.

Financial management. As with the question of how and where clients will live as they age, they need to consider

Continued on page 20 →

THREE BIGGEST RISKS . . .

Continued from page 14

how they will manage their finances. Again, while they're healthy and cognitively strong, they probably don't need outside help. But when that's no longer the case, they will need assistance and it's much better to put the structure in place while they're still capable of making their own decisions. As discussed above, a funded revocable trust with a co-trustee in place is the best mechanism for financial management and protection.

Prenuptial or cohabitation agreement. If clients are in a new relationship and considering marriage or living together while remaining unmarried, it's vital that they discuss their expectations, make sure they're on the same page, and put their understanding in writing. As their relationship develops, they can always change their agreement—what made sense for a new relationship no longer may feel right for a longer-term one. But without an agreement in writing, unintended results are almost a certainty.

Financial advisors are in an ideal position to encourage their clients to take action in all these areas in large part because it's a value-added service. These issues are not within a narrow description of a financial advisor's role, but they can have a large impact on the success of any financial plan. Bringing them up with clients and keeping after clients to take action will be seen by the client as a reflection of the advisor's responsibility and care and will help cement the advisor's relationship with the client as well as with future generations.

Finally, it's always useful to develop one's referral network. Even with the best-laid plan, surprises happen. When a long-term care need or crisis arises, it's important to be able to refer clients to qualified elder law attorneys and geriatric care managers. They can answer a lot of questions families may have and they have their own networks of services clients may well need.

Harry S. Margolis, JD, has been practicing elder law, special needs, and estate planning in Boston for more than 30 years. He is a fellow of both the American College of Trust and Estate Counsel and the National Academy of Elder Law Attorneys and founder of the Academy of Special Needs Planners and ElderLawAnswers.com. He is most recently the author of Get Your Ducks in a Row: The Baby Boomers Guide to Estate Planning.

ENDNOTES

1. "What Is the Probability You'll Need Long-Term Care? Is Long-Term Care Insurance A Smart Financial Move?" American Association for Long-Term Care Insurance, https://www.aaltci.org/long-term-care-insurance/learning-center/probability-long-term-care.php.
2. "How Much Care Will You Need?" LongTermCare.gov, https://longtermcare.acl.gov/the-basics/how-much-care-will-you-need.html.

CONTINUING EDUCATION

To take the CE quiz online, go to www.investmentsandwealth.org/IWMquiz

INVESTMENTS & WEALTH INSTITUTE®

5619 DTC Parkway, Suite 500
Greenwood Village, CO 80111
Phone: +1 303-770-3377
Fax: +1 303-770-1812
www.investmentsandwealth.org