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As the population ages, we must be concerned with the quality of long-term care as well as its financing. The quality of long-term care should embrace a continuum of care.

By Thomas D. Begley, Jr. and Jo-Anne Herina Jeffreys

The population of the United States is aging rapidly. The fastest-growing age group is over 85, which is projected to increase from 10 percent of the population in 1980 to 15 percent by the year 2000.[1] It is this age group that requires the most long-term care. From 1990 to 1995 the number of people receiving Medicare increased from 2.4 million to 3.3 million.[2] Total Medicaid expenditures increased from $21,605,000 in 1980 to $120,141,000 in 1995.[3]

The baby boomers, those born between 1946 and 1964, represent 76 million people or 31 percent of our total population.[4] Ninety percent of all baby boomers will be retired by the year 2030.[5] Considerable alarm has been expressed by people who feel that as baby boomers retire they will begin to require long-term care. Actually, this is not likely because although baby boomers will retire at around age 65, most will not require long-term care until about age 85. Because a gap exists from the baby boomers' retirement until they actually need long-term care, there is an opportunity to gradually change our long-term care system.

It is estimated that by the year 2040 fourteen million persons will require some form of long-term health care.[6] As the population ages, we need to be concerned about the quality of long-term care as well as its financing. The quality of long-term care should embrace a continuum of care, which would include adult day care, home care, assisted living, nursing homes, continuing care retirement communities, and hospices. The care should be designed to ensure that it is delivered in the least restrictive environment and at the level appropriate for the individual. The care system should be coordinated by geriatric care managers who would make an initial assessment of the patient's needs, develop a written plan of care,

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implement and coordinate the care plan, monitor services, make appropriate reassessments, and discharge the patient when appropriate. A by-product of the geriatric care manager's involvement would be a tendency to push care down to the lowest appropriate level. Currently, too much care is administered in nursing homes, which is the most expensive level.

The financing of long-term care is uniquely a middle-class problem. Poor people immediately qualify for Medicaid, and the wealthy are able to finance their own care out of current income. However, the middle class, and particularly the lower middle class, can ill afford to spend $5,000 to $10,000 per month for home care or nursing home care. The solution, in part, is to spread the risk over a large segment of the population. Private long-term care insurance is an effort to accomplish this objective. However, the Brookings Institution has estimated that only 4 to 5 percent of elderly people have private long-term care insurance.[7]

Generally, there are four reasons why people do not purchase long-term care insurance. The first is a lack of awareness. Insurance companies seldom advertise the availability of this product; it is largely marketed one-on-one. As more employers offer long-term care insurance as a benefit, its utilization may become more widespread. The second reason why long-term care insurance is not often purchased is cost. Private long-term care insurance will never be universal due to its lack of affordability. The Brookings Institution estimated that only between 10 and 20 percent of the elderly can afford such insurance.[8] The third factor limiting the sale of long-term care insurance is insurability. Agents estimate that approximately 25 percent of those who apply are rejected because they are not insurable. The final reason that long-term care insurance will never be widely purchased is denial. Seventy-seven percent of people expect to be healthy in retirement.[9] If people believe that they will not need the insurance, they will not purchase it. The public perception that people will remain healthy in retirement does not square with reality; but so long as that is what people believe, they will not act to cover the risk.

The solution to financing long-term care is to recognize that if the risk of needing long-term care is assumed by the entire population, then the risk of paying for the care should be spread over that same population. By making coverage mandatory and universal, the factors limiting the purchase of private long-term care insurance can be overcome. By making long-term care insurance a part of the Medicare program paid for by an employment tax, the factors limiting the spread of private long-term care insurance are eliminated. Lack of awareness and deniability become non-factors if coverage is mandatory. If the benefit is financed by a payroll tax beginning when a person enters the labor force, affordability is no longer an issue. By making coverage universal, insurability is no longer a negative factor.

A comparison between long-term care insurance and social insurance illustrates these points.[10] Under social insurance participation is mandatory as opposed to voluntary; therefore, 90 percent of the population is covered.[11] People also begin coverage at age 25, as opposed to age 68 when most people start thinking about long-term care.[12] Coverage is affordable by all; and everyone is insurable. Therefore, denial is a non-issue.

The American public believes that long-term care should be an entitlement. In fact, a large portion of the public believes that Medicare already covers the cost of long-term care. The anguished refrain heard over and over again by elder law attorneys is, "We did all the right things, we worked hard all of our lives, we lived frugally, we saved, and now we are going to lose everything."

This country has a strong public policy favoring legacy. Currently, Congress has exempted the first $675,000 of a person's estate from federal estate tax.[13] This exemption is scheduled to increase to $1,000,000 in 2006. Congress has twice passed legislation repealing the federal estate tax, only to have that legislation vetoed by President Clinton. Unfortunately, this policy of legacy affects only the relatively wealthy portion of our society. If a middle-class person requires long-term care, that person's assets must first be exhausted to pay for the care prior to Medicaid assuming responsibility. Therefore, there is no legacy for middle-class persons who contract the wrong disease, such as Alzheimer's disease. Public policy favoring legacy for the wealthy through a federal estate tax deduction should be extended to the middle class by providing a payment source for long-term care.

Finally, the current system of Medicaid financing of long-term care is an administrative nightmare. It consists of an uneasy partnership between the federal and state governments. Within certain limits, each state can, and does, adopt its own Medicaid law. Federal guidelines are replete with ambiguities,

and interpretations by states vary wildly. Within the states, interpretations vary from county to county, and from Medicaid worker to Medicaid worker. There is no uniformity in the administration of the Medicaid program or in the notices given to applicants regarding their rights and the denial of their applications.

In response to these problems, Rebecca C. Morgan, President of the National Academy of Elder Law Attorneys, appointed a task force in 1998 to study these issues, draft a report, and develop a white paper. This task force examined various areas of long-term care, including both public and private financing of long-term care, the administration of the long-term care system, and the continuum of long-term care. The task force also assessed the strengths and weaknesses of the existing system to determine whether the existing system could be reorganized or whether a complete reform was necessary. The white paper sets forth these findings and a proposed plan that meets the goal of affordable, quality health care for all Americans.

The white paper was adopted by the Board of Directors of the National Academy of Elder Law Attorneys in May 2000 and is currently being distributed to policymakers throughout the United States.

Endnotes

1. U.S. Bureau of Census, Current Population Reports, Tab. No. 47, P25-1095 and P25-1130 (1996); Population Paper Listing-57 (1996).
2. U.S. Health Care Financing Administration, Medicare Program Statistics, No. 162 (1996).
3. U.S. Health Care Financing Administration, Medicaid Program Statistics, No. 168 (1996).
4. Patty Berg & Art Collins, National Ass'n of Area Agencies on Aging, Baby Boomers: Issues and Trend Summary Analysis Including Opportunities for the Aging Network (n.d.).
5. *Id.*
6. *Id.* at 7.
7. Joshua Wiener et al., Sharing the Burden: Strategies for Public and Private Long-Term Care Insurance 6 (1994).
8. *Id.* at 14.
9. Am. Council of Life Ins., Longevity and Retirement Survey Fact Sheet (survey conducted between August 12 and September 10, 1997).
10. See comparison chart.
11. Wiener, *supra* note 7.
12. Health Insurance Association of America, Long Term Care Insurance in 1995.
13. I.R.C. § 2503(e).