The Wealth Advisor

From Michael Wittick

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My practice is people oriented and exclusively devoted to estate planning, estate and trust administration, estate and trust litigation, asset protection and business planning. My newsletter highlights wealth planning issues designed as helpful insights to your practice

Planning for Disability

No one likes to think about the possibility of their own disability or the disability of a loved one. However, as we'll see below, the statistics are clear that we should all plan for at least a temporary disability. This issue of The Wealth Advisor examines the eye-opening statistics surrounding disability and some of the common disability planning options.

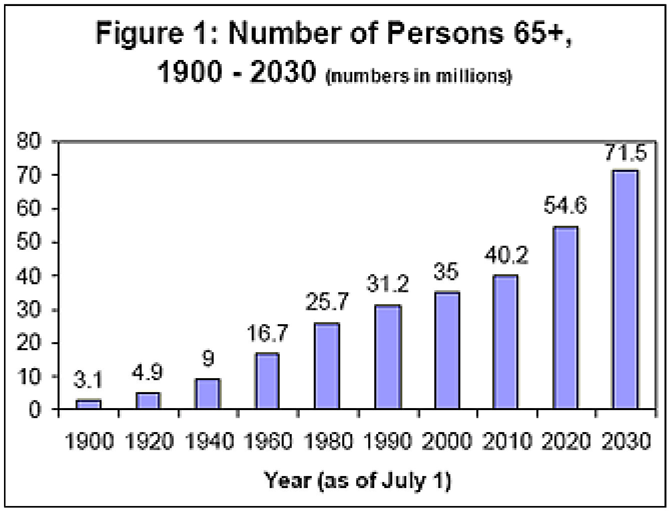
Most Americans Will Face At Least a Temporary Disability
Study after study confirms that nearly everyone will face at least a temporary disability sometime during their lifetime. More specifically, one in three Americans will face at least a 90-day disability before reaching age 65 and, as the following graph depicts, depending upon their ages, up to 44% of Americans will face a disability of 2.4 to 4.7 years. On the whole, Americans are up to 3.5 times more likely to become disabled than die in any given year.

Age	% Disabled	Average duration
25	44%	2.4 years
30	42%	3.2 years
35	40%	3.4 years
40	37%	3.9 years
45	33%	4.2 years
50	28%	4.7 years

Source:1985 Commisioner's Disability Table A (CIDA) blended 50/50 Male/Female and 50/50 Accident/Sickness

Many Americans Will Face a Long-Term Disability
Unfortunately, for many of us the disability will not be short-lived. According to the 2000 National Home and Hospice Care Survey, conducted by the Centers for Disease Controls National Center for Health Statistics, over 1.3 million Americans received long-term home health care services during 2000 (the most recent year this information is available). Three-fourths of these patients received skilled care, the highest level of in-home care, and 51% percent needed help with at least one "activity of daily living" (such as eating, bathing, getting dressed, or the kind of care needed for a severe cognitive impairment like Alzheimer's disease).

The average length of service was 312 days, and 70% of in-home patients were 65 years of age or older. Patient age is particularly important as more Americans live past age 65. The U.S. Department of Health and Human Services Administration on Aging tells us that Americans over 65 are increasing at an impressive rate:



Nursing home statistics are equally alarming. According to the 1999 National Nursing Home Survey, the national average length of stay for nursing home residents is 892 days, with over 50% of nursing home residents staying at least one year. Significantly, only 18% are discharged in less than three months.

While a relatively small number (1.56 million) and percentage (4.5%) of the 65+ population lived in nursing homes in 2000, the percentage increased dramatically with age, ranging from 1.1% for persons 65-74 years to 4.7% for persons 75-84 years and 18.2% for persons 85+.

> **Planning Tip:** Many Americans will require significant in-home care lasting, on average, close to a year. For those requiring nursing home care, that care lasts, on average, nearly 2 years! Not surprisingly, the older we get, the more likely we will need long-term care which is significant given that Americans are living much longer.

Long-Term Care Costs Can be Staggering
Not only will many of us face prolonged long-term care, in-home care and nursing home costs continue to rise. According to the 2006 Study of the MetLife Mature Market Institute, national averages for long-term care costs are as follows:

- Hourly rate for home health aides is $19, higher than in 2004.

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- Hourly rate for homemakers/companions is $17, higher than in 2004.
- Daily rate for a private room in a nursing home is $206, or $75,190 annually, a 1.5% increase over the 2005 rate.
- Daily rate for a semi-private room in a nursing home is $183, or $66,795 annually, a 3.9% increase over the 2005 rate.

These costs vary significantly by region, and thus it is critical that we know the costs where the patient will receive care. For example, the average cost for a private room in a nursing home is much higher in the Northeast ($346 per day, or $126,290 annually, in New York City) than in the Midwest (only $143 per day, or $52,195 annually, in Chicago) or the West ($199 per day, or $72,635 annually, in Los Angeles).

> **Planning Tip:** Nursing home costs will consume many Americans' assets. A recent Harvard University study indicates that 69% of single people and 34% of married couples would exhaust their assets after 13 weeks (i.e., 91 days) in a nursing home!

Consider Long-Term Care Insurance to Cover these Costs
As the Harvard University study demonstrates, if you or a family member needs long-term care, the cost could easily deplete and/or extinguish your family's hard-earned assets. Alternatively, you (or your family) can pay for long-term care completely or in part through long-term care insurance.

Most long-term care insurance plans let you choose the amount of the coverage you want, as well as how and where you can use your benefits. A comprehensive plan includes benefits for all levels of care, custodial to skilled, and you can receive care in a variety of settings, including your home, assisted living facilities, adult day care centers or hospice facilities.

> **Planning Tip:** Absent financial insolvency, government benefits for long-term costs are extremely limited typically only for skilled care and only for a short duration. Given the costs of long-term care, discuss with your financial advisor how a long-term care insurance policy can meet your unique planning objectives.

> **Planning Tip:** While long-term care insurance will cover in-home or nursing home costs, it will not replace the income lost due to the inability to work. Therefore, income earners should also discuss with their financial advisor how a disability insurance policy can replace lost income if you become disabled.

Your Estate Planning Should Thoroughly Address Disability
When a person becomes disabled, he or she is often unable to make personal and/or financial decisions. If you cannot make these decisions, someone must have the legal authority to do so for you. Otherwise, your family must apply to the court for appointment of a guardian for either your person or your property, or both. If you remember the public guardianship proceedings for Groucho Marx, you likely recognize the need to avoid a guardianship proceeding if at all possible.

At a minimum, you need broad powers of attorney that will allow agents to handle all of your property if you become disabled, as well as the appointment of a decision-maker for health care decisions. Alternatively, a fully funded revocable trust can ensure that you and your property will be cared for as you desire, pursuant to the highest duty under the law - that of a trustee.

> **Planning Tip:** Your estate planning should include properly drafted and well thought-out estate planning documents that address both your property and your person in the event you become disabled. Be sure to discuss this aspect of your planning with your estate planning attorney.

> **Planning Tip:** An estate plan that utilizes a revocable trust as its foundation not only helps ensure that you will be cared for as you desire, but it can ensure consistent asset management through the continued use of your existing financial advisors.

Consider Adding HIPAA Language and Authorizations
Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), absent a written authorization from the patient, a health care provider or health care clearinghouse cannot disclose medical information to anyone other than the patient or the person appointed under state law to make health care decisions for the patient. The penalty for failure to comply with these rules is severe: civil penalties plus a criminal fine of $50,000 and up to one year of imprisonment per occurrence, and worse if the disclosure involves the intent to use the information for commercial advantage, personal gain, or malicious harm.

These HIPAA rules became effective only recently. As a result, doctors, hospitals and other health care providers now refuse to release any information absent a release from the patient. For example, hospital staff will go so far as to refuse to disclose whether one's spouse or parent has been admitted to the hospital. The inability to receive information about a loved one could become very troubling when the information concerns treatment as part of long-term care.

> **Planning Tip:** Your personal representative for health care decisions has the same rights to receive information as you do. While it is arguably unnecessary, the safest approach to ensure release of information to a personal representative is to modify the document appointing him or her so that it expressly authorizes the release of HIPAA-protected information on your behalf.

The Regulations promulgated under HIPAA specifically authorize a HIPAA Authorization for release of this information to persons other than you or your personal representative. Thus, you should consider creating such an Authorization so that loved ones and others can access this information in addition to your personal representative.

> **Planning Tip:** Consider preparing a HIPAA Authorization for loved ones and others who potentially need access to your medical information if you become disabled. Your estate planning attorney can create such a HIPAA Authorization for you.

Conclusion

The above discussion outlines the minimum planning you should consider in preparation for a possible disability. As the Planning Tips demonstrate, it is imperative that work with your team of professional advisors to ensure that, in light of your unique goals and objectives, your planning fully addresses all aspects of a potential disability.

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You have received this newsletter because I believe you will find its content valuable. Please feel free to contact me if you have any questions about this or any matters relating to estate planning.

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