

# Estate and Financial Planning For Clients Living With Chronic Illness



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# Estate and Financial Planning For Chronic Illness

**A Few  
Preliminary  
Thoughts**

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# Aging Population

- Incidence of chronic illness increases with age.
- Aging clients face many similar issues to those living with chronic illness so this is vital information for all practitioners.
- By 2030 it is estimated that 1/5th of all Americans will be age 65 or older.
- Elder financial abuse is abuse not only of the elderly
- The number of clients requiring the planning to be discussed is significant and growing.
- These are issues every practitioner must deal with in order to address ill and aging clients.

## Consider...

- When someone is sick, you buy them a Hallmark “get well” card – but unless a cure is found, no one “gets well” from chronic illness, they get worse.
- Helen Keller was a prolific author, political activist, and lecturer. She was the first deaf blind person to earn a Bachelor of Arts degree – was she disabled or should we focus on her abilities instead of her disabilities?
- Diversity is a goal of every firm and many client mandate diverse staffing – but most disabilities are not visual – yet most people tend to focus on visual disabilities.
- The international symbol of disability is a gross mischaracterization of reality since only about 7% of those with disabilities are wheelchair bound.

# **Estate and Financial Planning For Chronic Illness**

## **Introduction and Overview**



# Many Clients are Affected by Chronic Illness

- 130 million Americans are living with chronic illness or disability.
- By 2020, about 157 million Americans will be living with chronic illnesses.
- 26% of those ages 65-74 have had their lives significantly impacted by chronic illness.
- 50% of those age 85 and older have had some cognitive impairment.
- 9 million people are cancer survivors with various side effects from treatment.
- Issues affecting those living with chronic illness are important to your practice.

# Planning for Chronic Illness is not Only About the Elderly

- 60% of those living with chronic illness are between the ages of 18 and 64.
- Studies suggest 2 to 5% of all people with MS have a history of symptom onset before age 18; 8,000-10,000 children have multiple sclerosis in the United States, and another 10,000-15,000 experience disorders that may be related to multiple sclerosis.
- 5-10% of people with Parkinson's disease are under the age of 45 (Young Onset Parkinson's disease, or "YOPD").
- 70% of suicide may be in part motivated by physical illness or uncontrollable physical pain and more than 50% of these suicidal patients were under 35 years of age.

# Why does it appear that so few clients are living with chronic illness

- 96% of your clients who are living with a chronic illness live with one that is largely invisible. These clients do not use any assistive device and may “look” “fine” to the untrained eye.
- Many neurologic symptoms are hard to see: fatigue, pain, cognitive problems like memory loss or trouble solving problems, weakness, blurred vision, numbness, prickly or tingling sensations, heat sensitivity, dizziness, and bladder problems.
- Those living with chronic illness get tired of explaining their symptoms, or of justifying why they cannot do certain things. Some feel that they have to defend that they may “look good” even though they have a significant chronic illness. Empathy will create an environment conducive to communication.
- Most clients living with chronic illness assume that there is nothing you can do to help. Every practitioner can help. Communicate your skills and ability to help.
- Many fear “coming out of the closet” for fear of negative reactions, loss of job, or worse.

# Serving Clients with Chronic Illness

- Many of your clients are touched by chronic illness (they are living with chronic illness, have a love one affected, or they are a caregiver)
- It is the compassionate thing to help.
- Its good for your business! With \$5M permanent inflation adjusted exemption and permanent portability only about 4,000 estates per year, or .2% of decedents will file federal estate tax returns owning a tax. The “tax driver” can no longer be relied upon as the sole, or even primary, generator of business
- Helping clients affected by chronic illness, and growing your practice by better serving the many potential clients affected by chronic illness, is good business – the aging population raises many of the same issues.
- This program will hopefully help you identify clients affected by chronic illness, understand more planning opportunities, and advise them and their families accordingly.

# Serving Clients with Chronic Illness

- Special (Supplemental) Needs Trusts (SNTs) may be vital for those of more limited means. But many people living with chronic illness or disability have high net worth, and require specialized investment, estate, and other planning.
- SNT planning often leaves wide gaps in planning for adult children with special needs. Aging parent's disability planning must address care for the parent and the adult child.
- People living with chronic illness and disabilities have a wide range of planning issues – no aspect of planning is untouched by their challenges.
- Living wills, health proxies, HIPAA releases, revocable trusts, and more, need to be tailored to each person's situation, but this is just the beginning.

# Estate and Financial Planning For Chronic Illness

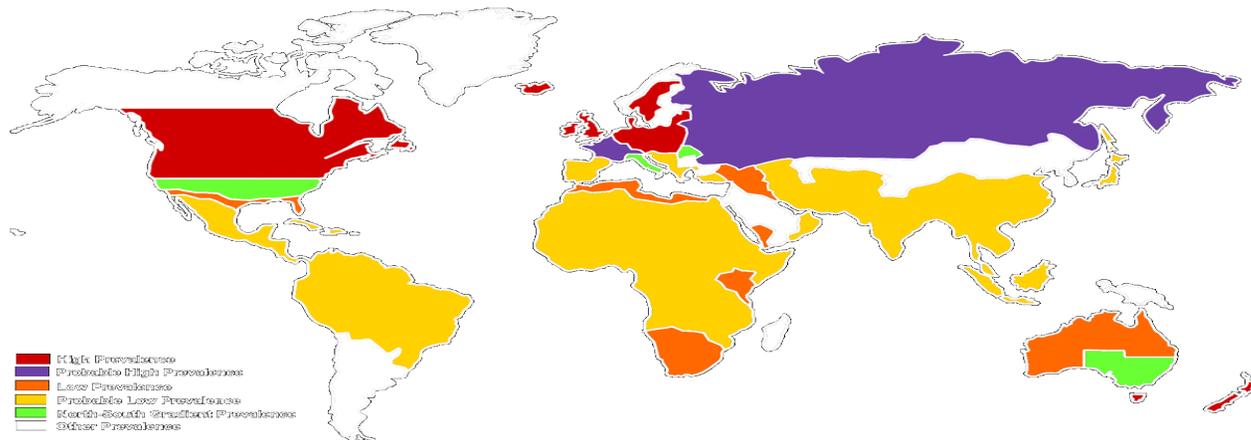
**Illustration of 2  
Specific  
Diseases**

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# Incidence of Multiple Sclerosis

- Average age of diagnosis is 30, although range is from childhood to over 50.
- Female predominant disease: 4:1.



## Illustration of Chronic Illness: Multiple Sclerosis

- Fatigue can be mental and/or physical.
- It is the number one reason people with Multiple Sclerosis disease leave the work force.
- It fluctuates during the day.



# Multiple Sclerosis – Detailed Illustration

- Someone diagnosed in their early 30s might have a 15 year estimated remaining work career. A more aggressive savings and investment plan may be warranted to create a retirement nest egg in time for an early retirement.
- Significant cognitive impact is unlikely for many years, if ever.
- Sporadic exacerbations (attacks) may warrant special powers of attorney and other planning.
- The client living with MS, because they are likely to have graduated college and begun a career may have disability insurance, but is often too young to have addressed long term care coverage.
- 4/5ths of those diagnosed with MS are women, 70% are single.

# COPD

- COPD may appear in various forms: Chronic bronchitis, Refractory asthma, Emphysema, Bronchiectasis.
- 12 million Americans living with COPD.
- Another 12 million are estimated to be living with COPD that has not been diagnosed.
- Others estimate the number of Americans living with COPD at 35 million.
- COPD is the third leading cause of death in the US and the 2<sup>nd</sup> or 3<sup>rd</sup> leading cause of disability in the US.
- Many assume COPD is a disease of elderly male smokers. The most common diagnosis today is a female in her 40s.

# COPD

- With COPD breathing difficulties occur and other physical symptoms may include: fatigue, frequent respiratory infections, and wheezing
- Complications of COPD are a significant issue for many. Oxygen deprivation resulting from COPD can lead to organ damage - Heart function and circulation can be impaired
- COPD is progressive and is marked by acute respiratory flare-ups (attacks) which may require hospitalization so clients should have in place emergency plans to address a crisis.
- Take Away: Every disease has its unique nuances and planning must be tailored.

# Estate and Financial Planning For Chronic Illness



**Client  
Interactions:  
Meetings, Phone  
Calls, Memoranda**

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# Meetings

- It is OK to ask the client “what are your challenges so I can tailor my work to meet your individual needs?”
- Plan short, separate meetings rather than one long meeting. Be aware of fatigue issues.
- Have an agenda and bullet list for the meeting.
- Use a smart board or flip chart with outlines of the meeting agenda and topics.
- Ensure that a bathroom is available and allow extra time for breaks.

# Meetings

- When explaining concepts, be certain to inquire at frequent points along the way whether the client understands, or has any questions. Client intelligence may be intact, but they may process information more slowly.
- It may be beneficial for some clients to tape record the conversation so they can replay it many times to assure they understand all the key points.
- Have someone such as a friend, family member, or other adviser, accompany the person with chronic illness to the meeting to provide a second pair of ears.
- At the end of the meeting, provide a bullet list of important conclusions.

# Meetings

- Because of tremors, hand weakness or other symptoms, some people with chronic illness might not be able to take notes. Many may have difficulty multi-tasking so taking notes while listening might be difficult. It might be more productive for someone else to take notes and let the client simply listen.
- If the client has “to – do” items, a succinct list should be written down.

## Example: Impact of COPD on Meeting

- Many living with COPD are self conscious about using supplemental oxygen with the exposed cannula (the tube from the oxygen canister to the client's nose).
- Alert staff in advance to this possibility in advance.
- Inquire as to how long the particular oxygen will last -  
- This might impact meeting time.
- If the client has traveled to and attended the meeting for more than three hours it may have to be plugged in. Offer an extension cord if necessary.

# **Estate and Financial Planning For Chronic Illness**

## **Income Tax Planning**

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# Income Tax: Insurance

- **Disability** insurance payments are income tax free if paid personally – did client pay premiums from business.
- **Long term care** insurance payments are generally treated as payments from accident and health insurance and are tax free (except for dividends).
- **Life Insurance** accelerated death benefits under a life insurance contract, or viatical settlement before the insured's death, are generally tax free if client is terminally or chronically ill. Definition of “chronically ill” is so extreme as to exclude most people: (1) Unable to perform (without substantial help) at least 2 activities of daily living (eating, toileting, transferring, bathing, dressing, and continence) for a period of 90 days or more due to loss of functional capacity; or requires substantial supervision to protect from threats to health and safety due to severe cognitive impairment.

# Income Tax: Settlements

- Chronically ill clients may require legal action to enforce employment, disability income, and other rights.
- Proper characterization of an award may depend on the remedies available, and causes of action asserted in the claim.
- If the settlement agreement contains specific allocations to the amounts claimed as taxable and non-taxable and the parties are adverse, the IRS will more likely respect the allocation. Robinson, (1994) 102 TC 116, aff'd (1995, CA5) 70 F3d 34 , 95-2 USTC ¶50644.
- If agreement silent as to allocation, recovery from a suit against an employer or partners for discrimination, damages, back wages, etc. must be allocated to each tax category -- use relative values of the claims asserted in complaint.
- Recovery allocated to punitive damages is not attributable to personal injuries and is taxable. Pauline Barnes, (1997) TC Memo 1997-25
- Characterization of the payments by employer and employee not binding on IRS. PLR 200303003.

# Income Tax: Legal Fees

- Legal fees may not provide a deduction because of the 2% floor on itemized deductions or the AMT trap.
- IRC Sec. 62(a)(20) may provide a mechanism to obtain a full deduction as an offset to AGI instead of as a miscellaneous itemized deduction.
- Costs involving discrimination suits, etc. may be deducted from gross income to arrive at AGI. Caution: no line exists on Form 1040.
- *“Any deduction allowable...for attorney fees...paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination...”*
- Deductibility could have significant impact on net of tax assets client realizes thus affecting all planning.

# Income Tax: Home Modifications

- Medical expense deduction may be allowed for special equipment and home improvements if the main purpose is medical care: adding an accessible ramp, installing a lift, widening doorways, building handrails, modifying cabinets, etc.
- Cannot deduct your expenditures to the extent of any increase in the value of your home. Have house appraised before and after the improvements.
- Law is sparse and there are many unknowns – can you deduct expenses today for future anticipated health care needs? There seems to be no indication that this cannot be done.
- Consider impact on provisions in power, living trust, etc.
- It is not uncommon for the deductions to be in the hundreds of thousands of dollars.

# Income Tax: Work Related Expenses

- Extra business expenses (“impairment related expenses”) to do work satisfactorily are deducted as business expenses instead of as medical expenses under IRC Sec. 67(b)(6).
- This can avoid the 10% limitation on medical expenses that might prevent a deduction and the phase out of itemized deductions.
- Self employed deducts these on Schedule C; Employee completes Form 2106 “Unreimbursed Employee Business Expenses.”
- While most employee business expenses are reduced by 2% of adjusted gross income impairment related expenses are not.

# Income Tax: Medical Expenses

- Take affirmative steps to enhance the likelihood that certain expenditures will qualify as deductible medical expenses.
- How can the client corroborate that an otherwise personal expense is for medical care.
- What is motive and purpose for incurring the expense.
- Has a physician recommended the item or expense to treat a diagnosed medical condition -- Has this been confirmed in writing.
- Can the taxpayer establish that the item would not have been bought but for the disease or illness? IRC Sec. 213(d); INFO 2009-0209.

# Income Tax: Examples of Medical Expenses

- **Car**: A car specifically designed to compensate for disabilities, the portion of the price attributable to its special design is a medical expense. Rev Rul 76-80, 1976-1 CB 71.
- **School**: Cost of a special school for a handicapped dependent may be deductible as a medical expense if principal reason for attendance is special resources for alleviating the handicap. Room and board are included. Reg. § 1.213-1(e)(1)(v)(a).
- **Home Sale Exclusion**: Taxpayer becomes physically or mentally incapable of self-care the taxpayer is treated as using such property as his principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any licensed facility (including a nursing home) to care for an individual in the taxpayer's condition. IRC Sec. 121(d)(7).

# **Estate and Financial Planning For Chronic Illness**

## **Investment and Financial Planning**



## Investment and Financial Information is Critical to Organize

- What is the current and likely future cognitive impact of the client's illness.
- Practitioners want to balance maintaining a client's independence versus protecting the client.
- Some chronic illness, like Alzheimer's disease assuredly result in cognitive impairment, others like COPD generally do not – in these instances the focus should be on creating substitute decision making.
- Some chronic illnesses impede physical ability to manage finances, others do not -- In these instances the focus should be on minimizing effort, not decision making, e.g. psoriatic arthritis.
- Some do both – so the focus may need to address both issues
- Key Concept: Chronic illness dis-empowers the client – planning should empower the client.

# Investment and Financial Information is Critical to Organize

- Title (ownership) of Accounts:
  - Revocable trust.
  - Joint.
  - Other.
- Account Management
  - Duplicate statements.
  - Consolidation and simplification.
  - Geographic proximity.
  - Access to safe deposit box.
- Automation
  - Organizing records.
  - On line payments.
  - Set up on computer so can enlarge visually/auto-read.
  - Automatic deposits/payments.

# Cash Flow and Budgeting

- Budget is the core of every financial plan, and a financial plan is the core of every estate plan.
- Standard assumptions may not suffice (e.g. inflation of medical costs, expense patterns may differ; etc.).
- May need to target cash flow for specific milestones that differ from others: ceasing work, modifying home, etc.
- Cash sources:
  - Distributions from retirement accounts
  - Borrowing from retirement or other accounts
  - Disability Insurance
  - Settlements
  - Home equity
- Expenditures:
  - Home accessibility
  - Aides
  - Medication/therapies
  - Other

# Investment Planning for Client with Chronic Illness

- Tailor an investment plan in light of the client's specific circumstances, not generalizations or assumptions.
- Understand disease trajectory and its impact on expenditures, life expectancy and other factors
- Each chronic illness differs from other chronic illnesses.
- Each client's experience is unique to that client.

# Time Horizon

- Short vs. long term vs. anticipated disease milestones.
- Depending on illness long term planning may be essential.
- Don't focus only on short term unless anticipated disease course requires it.
- Time horizon can vary – new drug therapies can lengthen.

# Risk Tolerance

- Risk Tolerance may not be the same as for other clients with similar wealth and age.
- Risk tolerance may be affected by fear, medical costs, or other concerns.
- Regardless of the client's feelings about investment risk, the need to retire early, may alone warrant a more aggressive risk profile.

# Other Investment Considerations

- **Liquidity:** Investors with chronic illness might generally prefer more liquidity. Expenses might be higher, so might the “rainy day fund”. Others, may not.
  - Barbell asset allocation concept?
- **Retirement:** Target retirement age and impact on risk and asset allocation.
  - Example: May need more aggressive allocation to equities and alternatives to create sufficient wealth by an early retirement age.
- **Needs Analysis:** Consider an independent evaluation that addresses medical and care costs, disease projection, etc.
  - Care manager report.
- **Meetings:** Annual meetings are vital to document a pattern of investment planning and keep abreast of health and other developments.
- **IPS:** Power of attorney and/or revocable trust – who will be signing the IPS? Create a history of IPSs so that if capacity wanes records will exist.

# **Estate and Financial Planning For Chronic Illness**



## **Insurance Planning**

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# Life Expectancy and Clients with Chronic Illness

- Life, disability and other insurance planning and options affected by anticipated life expectancy – e.g. life expectancy as a factor in evaluating retention or sale of policies, insurability, etc.
- Parkinson's Disease
  - Among people who have lived with PD for 15-20 years, the survival rate was only slightly lower than the population.
  - Heart disease is the leading cause of death.
- Multiple Sclerosis
  - Average life expectancy for people with MS is only slightly shortened- average of 6-7 years – but study subjects had no drug therapies.
  - In people with advanced MS, Medical complications of the disease process may be etiology for death: aspiration, pneumonia, urosepsis.
- COPD
  - most people living with COPD live relatively normal life spans, into their 70s and 80s unless comorbidity changes that.

# Life Insurance Considerations

- Exercise conversion options in term policy to convert to permanent policy.
  - Too often discovered after option expires.
- Accelerated death benefit option.
- Borrowing against cash value to meet urgent needs.
- Viatical Settlements.
- Sale of policy versus surrender for cash surrender value. A tremendous number of policies are surrendered or cancelled instead of being sold into the secondary market.

# Property and Casualty Insurance

- Does coverage have to be updated to protect home health aides, costly equipment, and other changes?
- Which property is covered? (changes, e.g. sell vacation home, buy weekend home).
- Increase liability coverage in light of how an accident might be viewed.
- Automatic payment (e.g. debit to checking account to avoid lapses) and value increase provisions.

# Long Term Care Insurance

- Is it still feasible to obtain coverage?
- What does existing coverage provide?
- How does coverage affect budgeting and other planning?
- Post diagnosis
  - Review of policy reporting and other requirements.
  - Ascertaining benefits that will be obtained and revising the financial plan to reflect them.
- Evaluate long term care for care giver spouse/partner.
  - 40 to 70% of caregivers have clinically significant symptoms of depression,
  - one in ten (11%) caregivers report that care giving has caused their physical health to get worse
  - [http://www.caregiver.org/caregiver/jsp/content\\_node.jsp?nodeid=1822](http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=1822)

# Estate and Financial Planning For Chronic Illness



## Disability Planning

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# Disability Income Replacement Insurance

Disability planning is almost always considered from the perspective of planning for the risk of a future disability. This is planning once a disability occurs. The steps/approach is different.

- Address existing policies and claims, generally not purchase of new policies.
- Reviewing disability policy calculations. They are complex and insurance expert, CPA and perhaps lawyer involvement is often essential: CPI inflators, allocations of income and expenses, etc.
- Proving disability with “invisible” chronic illness raises issues.
- Residual disability – may depend on % reductions that CPA should confirm.
- Issues of undefined terms – many track tax terminology, policy definitions, state law definitions or perhaps no formal definition.
- Income and other calculations impacting policy payment.
- Dealing with disability insurance company abuse especially orphan policies.
- Communications and actions to intimidate and stress claimant.

# Business Buy Sell and Disability

- Shareholder/Partnership/Operating Agreements.
- Buyout and other business arrangements.
- Temporary versus permanent disability definitions and consequences.
- Health status and timing of sale of equity interests – will disabled equity holder have ability to negotiate terms?
- Definitions may differ under: ▶ business continuation insurance ▶ employment agreement ▶ shareholders' agreement ▶ disability income replacement ▶ disability buyout. Set up an Excel spreadsheet.
- Disability buy out insurance (contrast with disability income replacement insurance) – does it exist? What does it provide for?

# **Estate and Financial Planning For Chronic Illness**

## **Competency and Cognitive Issues**



# Cognitive Impairment

- Don't make assumptions about cognitive impairment.
- There may be no impact on cognition, there may be some impact, or there may be a significant impact.
- Parkinsonian masked faces does not mean incompetence.
- Neurological diseases have different impact on different people and even impact the same person differently at different times.
- Alzheimer's disease will assuredly result in dementia, but Multiple Sclerosis does not result in significant competency issue for most living with MS.
- May impact differently at different times during the day or medication cycle. Cognitive fatigue may just flip on.
- May affect different "spheres" but not others: executive functioning (balancing a bank statement) may be impacted but not memory.

# Parkinsonian Masked Faces



# Capacity

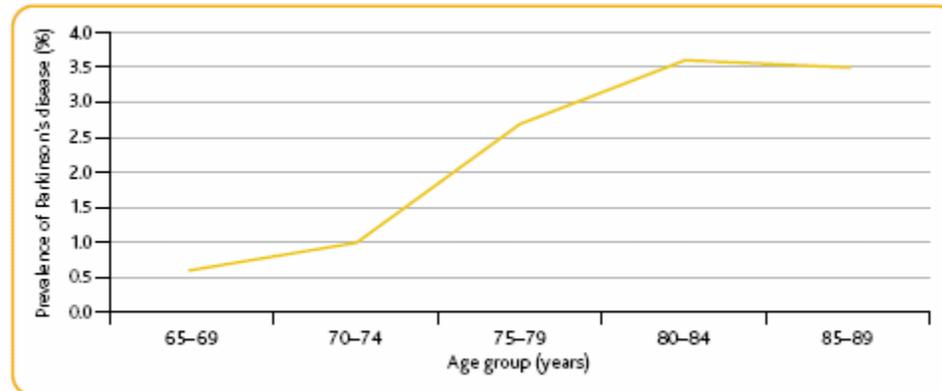
- What is current status of client.
- Getting someone to open up is often a large part of the challenge.
- Getting the professionals comfortable / knowledgeable enough to ask pertinent questions.
- Use of a care manager can facilitate the process.
  - An intermediary between the general estate planning team and medical team.
- Counsel's determination is key – it is a legal not a medical decision.
- Capacity is situational: capacity to sign a simple will leaving assets equally to 2 children is less than the capacity required for a complex note sale transaction.

# Capacity

- Documenting Competency – what evidence should be assembled to corroborate counsel’s conclusions.
  - Medical letters.
  - Conference calls to inform and advise planner.
  - Physician letter as to general health consideration.
  - Neurologist or psychiatrist letter.
  - Are letters really adequate
- Client statements as to capacity, issues, etc. may be very helpful. But ask the client to perform the task. E.g., “I don’t need help dressing.” But the client cannot don a coat after the meeting.
- Potential for overall harm to client from matter – the more the potential harm, the greater the level of competency that should be necessary.

# One Example: Cognitive Impact of Parkinson's disease

- Incidence of cognitive impairment increases with age.
- The importance of annual meetings increases with age.
- For the 20% of people with Parkinson's Disease who go on to develop dementia, there is an average of a 10-15 year delay from time of diagnosis of PD.



# Estate and Financial Planning For Chronic Illness



**HIPAA  
Releases**

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# HIPAA Releases Generally

- HIPAA = acronym for the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)); 45 C.F.R. Sec. 164 (2002). HIPAA, as amended (GINA too).
- Maintaining the confidentiality of PHI means protecting info from being made available or being disclosed to unauthorized persons.
- If you're ill, can your daughter-in-law the doctor get to see your patient chart to monitor your care.
- If you're a successor trustee, and the current trustee is forgetting to pay insurance premiums and respond to correspondence, can you replace her.
- Your partner is disabled and you need to take over your professional practice, how can you obtain the requisite physician letter mandated in your shareholders' agreement to demonstrate his incompetence to be able to trigger the replacement provision.
- Be cautious of the "standard" form.

# Release Contents

- Writing: Authorization should be in writing and should acknowledge that its being made voluntarily.
- What: Describe the health information to be disclosed. This could be the entire medical record, or only specified components. Could specify that only medical records between certain dates be released. The HIPAA paradigm is that only as much info should be disclosed as necessary.
- Who: Which medical provider should make the disclosure? This could be a specific physician or hospital or a list of providers. A broader approach could be used to indicate a category of providers. For example, “any physicians, hospitals or other medical providers who have provided treatment, other medical services or payment for same, from June 1, 2004 through and including the date of this Authorization.”

# Release Contents

- Term: When does the authorization to disclose PHI expire? This could be: “upon a child attaining age 21.” It could be “2 years from the signing of this authorization.” “Upon the conclusion of my court case” may suffice for a litigation matter, although issues of appeals, etc. might warrant consideration in setting the parameters. “One year from death.”
- Revocation: A statement that you retain the right to revoke any authorization to disclose your PHI. Any revocation, however, is not binding on a medical provider until they receive it. This minimizes the issue of their liability for disclosing information based on an authorization they held prior to the revocation.
- Re-Disclosure: The release may state that certain information, such as HIV testing results, cannot be disclosed by the person receiving it. However, the release should also acknowledge that once other information is disclosed, it may thereafter be re-disclosed by the person receiving it without the HIPAA safeguards.

# Release Contents

- Purpose: The purpose for the disclosure should be explained. This might be limited to the minimum information to determine whether you have the ability to function as a trustee or should be replaced, or only that information necessary to underwrite you for life insurance.
- Signer: If you are signing the authorization, the signature line should merely state that you are the patient. If, however, another person is signing for you, the authorization should state that that person qualifies as your personal representative under and that they have authority to make health care decisions for you.

# Estate and Financial Planning For Chronic Illness



**Estate  
Planning**

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# Chronic Illness: General Estate Planning Impact

- Disease Disempowers/Planning Should Empower: Given the uncertainty many chronic illnesses create, planning should provide the client maximum control over her financial and legal affairs, while creating an appropriate safety net in the event cognitive or other impairment becomes significant.
- Client as Co-Trustee: Even when assistance with daily activities is required, the impact of chronic illness on some clients living with disease is such that the client may be able to, and want to, serve as a co-fiduciary. Administrative burdens can be shared while keeping the client involved and in control. This is preferable when feasible, rather than eliminating the client's involvement as may be the case with, for example, a more advanced stage of Alzheimer's disease.

# Powers of Attorney for a Client with Chronic Illness

- How much control should be given up now?
- Springing vs. not; General vs. Special -- when to use which approach?
- The problems of triggering a springing power are common to all clients. If a client is insistent on a springing power, even a client with a chronic illness, the power may only have to be triggered once, when the level of incapacity reaches a point where an agent has to permanently take over. What about a client with relapses?
- Compensation of agent – most powers ignore but agent may act for years or decades so compensation may be more important. Consider quick action for short duration during an attack. How should that be compensated for?
- COPD – stress can trigger an attack and hospitalization resulting in permanent damage. Coordinating finances and arranging for appropriate assistance can mitigate stress and perhaps even lower the risk of an attack.
- For vulnerable/isolated clients consider a fully funded revocable trust to minimize the use and importance of the power of attorney.

# Powers of Attorney for a Client with Chronic Illness

- Many clients with multiple sclerosis may have long periods when they are capable of handling all financial matters.
- These may be interrupted by brief periods of exacerbations lasting days or weeks when it is difficult or impossible to cope without an agent's assistance. These exacerbations are unpredictable, and even the causes that trigger them are uncertain
- If the appointment of the agent is effective immediately upon execution, unencumbered by the springing mechanism, the agent will be able to help during a short term exacerbation or relapse, and then can cede control back to the client as soon as feasible
- With a springing power, by the time the agent can legally demonstrate the principal's disability, the attack may have resolved
- Consider a limited power that is effective immediately and a springing power that is effective in the case of more permanent disability.
- A better approach for many clients facing challenges will be to use a fully funded revocable trust with an institutional trustee, co-trustee or successor trustee (depending on the client's capabilities).

# Living Wills and Chronic Illness

- Disease Modifications: Modifying documents to address specific health issues – what disease does the client have, at what stage and with what anticipated disease course – how if at all should these matters be reflected.
- Experimental Treatment: Specification to provide non-proven experimental treatment is a common modification. Address whether the agent under the financial power of attorney must fund this.
- Tissue Donations: Since AD can only be confirmed 100% through a brain autopsy, many suffering with AD will wish to include a specific consent in their living will directing that a brain autopsy be permitted and their brain be donated to promote scientific research into AD. Religious issues should be addressed.

# Health Proxies and Chronic Illness

- Agent Selection: Ability to handle, understanding of disease course, etc.
- Residence: Powers to grant to move to new state for different laws. Will this suffice? Some cases say POA cannot change domicile as it is a personal decision. Does that apply to HCP? Some courts have said intent is key and agent cannot modify. Is that a reasonable interpretation?
- Guardianship: Alzheimer's disease: Given the progressive nature of AD and the certainty of cognitive issues, a guardianship designation should be included in the health care proxy (or a separate guardian designation prepared). Some state laws expressly permit this.
- POLST: For clients with no family to name a POLST may offer somewhat of a solution.

# Revocable Trust and Chronic Illness

- What provisions should the trust contain to address the client's health status?
- Who should be the trustee? With advanced Alzheimer's disease or Bipolar disorder, the client perhaps should not be a trustee at all. With earlier stages of Parkinson's the client may be trustee.
- Some clients may best be served by a hybrid approach.
  - Naming a client living with MS as a sole trustee may prove problematic during an exacerbation, the severity of which can't be predicted. Not naming the client as trustee cedes control from a client who generally has the capacity to make decisions.
- Consider having the MS/COPD client and another person as co-trustees from inception, with either being granted authority to act independently to take the actions that might be required during periods of an MS exacerbation, or a 30 day disability period for removal. Consider benefits of an institutional trustee.
- Care manager and CPA as monitor to add more protection.
- Add a trust protector for protection and accountability.

# **Estate and Financial Planning For Chronic Illness**



## **Charitable Planning**

# Charitable Planning and Chronic Illness

- Tailor charitable planning to coordinate with the needs and personal objectives of the chronically ill client or the client's chronically ill loved one.
- CGAs – Charitable Gift Annuities.
  - Watch % of assets committed.
  - Weigh charitable help (50% backend) versus financial needs.
  - Need express authorization in POA and Revocable trust to purchase.
- Creative uses of CRTs to address chronic illness
  - Charitable bail out of closely held business which will have to be sold as disease progresses.
  - Management, certainty, cash flow.
  - Increased use as a result of ATRA higher tax rates.
- CLTs – time not just to zero out but to end when the chronically ill child will be in financial need, e.g. at the anticipated age of early retirement.

# Estate and Financial Planning For Chronic Illness



## Conclusion

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# Conclusion

- This affects many of your clients, so addressing the implications of chronic illness is not only the compassionate thing to do, it's good business.
- Estate planning is evolving from the adviser being an “estate tax planner” to the adviser being an “estate counselor.” The subject of this presentation is squarely within the expanding and evolving definition of what the profession is becoming.
- Don't make assumptions, you don't have to be an expert – Ask questions.
- Understand the specific impact on the specific person and what it means to their planning and to the planning of their loved ones.

# Conclusion

- Don't be uncomfortable to ask – not addressing these issues is far more difficult for the client than addressing them.
- Be creative, often a little “tweak” to a standard planning technique can work wonderfully to help.
- Empathy [understanding, being aware of, being sensitive to, and vicariously experiencing the feelings, thoughts, and experience of another], not sympathy is the attitude that will facilitate planning.