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What the recession will mean for long-term care

The current economic downturn isn't going to change the needs of seniors for help with the activities of daily living. However, it could have a big effect on how and where that help is provided – at home, in an assisted living facility, or in a nursing home. And it could affect who provides the care – family members or hired staff.

Here are a few likely trends:

- Most nursing home care – and increasingly, care provided by hired staff in seniors' homes – is covered by Medicaid. This is a joint state-federal health care program for people who qualify under its complicated rules. Even before the current recession, Medicaid was growing and straining the ability of states to pay the cost. With the downturn, states are likely to restrict eligibility for benefits.
- At the same time, with money becoming scarcer for just about everyone, families may be more reluctant to pay for nurs-



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ing home, assisted living or home care. More people may start to look after senior family members themselves – especially because, with higher unemployment, more people will be available to care for family members at home.

- We're likely to see bankruptcies of nursing homes and assisted living facilities, if they can't fill their beds because people are caring for seniors at home and if Medicaid and Medicare

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What happens if you die without a will?

We all know we're supposed to do estate planning, but not all of us get around to it. So what happens if you don't have a will when you die? Your estate will be distributed according to state laws, which may or may not conform to the way you want your assets and possessions to be distributed.

Each state has laws that determine what will happen if a person dies without a will. If you're married, most states award one-third to one-half of your estate to your spouse, with the rest divided among your children or, if you have no children, to other relatives such as your parents or siblings. If you're single, most states provide that your estate will go to your children, or to other relatives if you don't have children. If you have no living relatives, then your property will go to the state.

However, jointly held assets, such as bank accounts

or houses, will go directly to the co-owner. In addition, life insurance policies or retirement accounts will go to the beneficiary designated on the account. And if you have a trust, the assets in the trust will go to the beneficiary designated in the trust.

One important purpose of a will is to name a guardian for your young children. If you don't have a will, a court will determine who will act as their guardian. In the absence of a will, the court will also appoint the person who will administer your estate.

Importantly, if you're unmarried but have a partner, your partner will not inherit anything from your estate without a will naming him or her as a beneficiary.

The best way to ensure your estate will be distributed in the way you want it is to plan your estate with a will and/or a trust.

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Uncertain market boosts appeal of prepaid 529s

With the stock market down significantly, some parents are looking at safer ways to save for a child's college education. Prepaid 529 plans offer parents (and other family members) the opportunity to lock in tuition at today's rates.

Up until now, traditional 529 savings plans have been more popular. These traditional plans allow parents or other family members to invest money for a child's education tax-free, usually in mutual funds. But prepaid plans are gaining ground now that the market has dramatically reduced the value of many investment-based savings plans.

A prepaid 529 plan is usually operated by the state government, although some colleges and universities offer their own plans. Plans come in two basic flavors: unit or contract. Unit plans sell units that are a fixed percentage of tuition (e.g., one unit is one percent of tuition costs). Family members can buy as many units as they want each year. Contract plans allow family members to purchase a specified number of years of tuition. While the plans won't increase in value as a traditional 529 plan might, the tuition rates are guaranteed.

A downside of prepaid plans is that they are usually tied to the state's in-state tuition. If a child chooses a more expensive school, the family will have to pay the difference in tuition.

Retirement home changes resident's level of care

A retirement community can force one of its residents to move from a private apartment to a smaller assisted-living unit, a federal court has ruled.

Sally Herriot, 90, is a resident of Channing House, a continuing care retirement community in Palo Alto, California. Like many such communities, Channing House provides three levels of care – independent living, assisted living, and skilled nursing. After moving to the facility with her now-deceased husband in 1991, Ms. Herriot lived in a spacious independent living apartment.

But after she returned from a hospital stay in 2006, Channing House determined that it was necessary to transfer her from her apartment to a much smaller, hospital-like assisted-living unit where she could be served by a trained nursing staff. Ms. Herriot, her family and her doctor objected to the transfer, arguing that she was able to remain in her apartment with the help of private aides she had hired.

Ms. Herriot sued in federal court, claiming that Channing House had discriminated against her based on her disabilities.

But the court ruled that Channing House has a duty to provide Ms. Herriot with medical care based on her level of need, and it can't hand over that duty to private help – even private help hired by Ms. Herriot. The court found that Channing House would be violating its legal obligations by accepting Ms. Herriot's plan to allow her to remain in her apartment.

Providing for your pet with a trust

A dog or a cat can be a member of the family, but what happens to this family member after you're gone? How can you ensure that your dog, cat or other pet will be cared for?

You can give directions in your will to leave your pet to a caretaker. But there is no guarantee that the caretaker will continue to care for the pet.

Today, a small but growing number of people are creating a "pet trust." Such a trust can provide a little more security for your pet because a third party – the trustee – is legally obligated to ensure that the pet is cared for.

A trust is a legal arrangement in which a trustee holds legal title to property for the benefit of someone else, called a beneficiary. A trustee can be a person, but it can also be an institution such as a bank or a law firm. With a pet trust, the trustee makes payments on a regular basis to your pet's caregiver and pays for your pet's needs as they arise.

Most states now have laws that allow trusts for the benefit of pets. New York has a law that allows people in states that do *not* allow pet trusts to set one up in New York, as long as they choose a trustee located in New York.

Pet trusts can be very detailed. Some people include

specific instructions on all aspects of the pet's care, including the brand of food, activities the pet enjoys, and the preferred veterinarian.

The amount of money necessary to fund the trust depends on the individual animal – obviously, a horse costs more to care for than a cat. You can leave the money to the trust in your will.

Most states have laws that say



the amount of money in a pet trust can't be more than is reasonably necessary to care for the pet. This issue made the news a while ago when hotelier and real estate magnate Leona Helmsley left \$12 million in a pet trust for her nine-year-old Maltese, and a judge reduced that amount to \$2 million.

What the recession will mean for long-term care

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reimbursement rates are reduced and are no longer sufficient to cover their expenses. These facility shutdowns will be very disruptive to residents as well as to their families.

- On the other hand, for families that can afford long-term care, it might become more affordable. That's because more people being cared for by family members at home will mean less demand for these services. In fact, according to the 2008 *MetLife Market Survey of Nursing Home & Assisted Living Costs*, over the past year the cost of semi-private rooms in nursing homes increased just 1.1 percent, and the cost of private rooms didn't change at all. That's a big change from past years in which the increase in the cost of long-term care substantially exceeded the inflation rate.

- Another reason long-term care may become more affordable is that it will be easier for facilities to hire staff. With alternative jobs less plentiful, the supply of qualified care providers should grow.
- Even prior to the recession, many new alternatives to nursing home care were being developed, including assisted living, new home-care models, and community partnership programs. These are likely to increase. As a result, people who are concerned about providing care for a senior should do research about all the alternatives available.
- Planning ahead will be even more important, whether purchasing long-term care insurance, protecting assets to qualify for Medicaid, or simply making one's wishes known ahead of time.

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One advantage of a power of attorney is that you can name a person who will serve as your guardian in case you ever need one.

How a guardian is appointed

Many older people who are concerned that they will someday be incapacitated protect themselves with a power of attorney. This document gives someone else the right to make decisions for you if you can't make them yourself.

But what if a person who can no longer make decisions doesn't have a power of attorney – or the power of attorney isn't enough to protect them for some reason?

If this happens, a court may appoint a substitute decisionmaker. This decisionmaker is usually called a "guardian" or a "conservator." The person under guardianship is usually called a "ward."

In most states, anyone interested in a proposed ward's well-being can request a guardianship. An attorney is usually retained to file a petition for a hearing in the probate court in the county where the ward lives. Protections for the proposed ward vary greatly from state to state, with some simply requiring that the ward receive notice of the hearing, and others requiring that the ward actually be present. The ward is usually entitled to legal representation at the hearing, and the court will appoint an attorney if the ward can't afford one.

At the hearing, the court determines if the proposed ward is incapacitated and, if so, to what extent he or she requires assistance. If the court determines that the ward is incapacitated, it then decides if the person seeking to be the guardian will be responsible in that role.

A guardian can be any competent adult – a spouse, another family member, a friend, a neighbor, or a professional guardian (an unrelated person who has received special training). One advantage of a power of attorney is that you can name a person who will serve as your guardian in case you ever need one.

The guardian doesn't even have to be a person – it can be a non-profit agency or a public or private corporation. If a person is found to be incapacitated and a suitable guardian can't be found, courts in many states can appoint a publicly financed agency that serves this purpose.

In naming someone as a guardian, courts give first consideration to those who play a significant role in the ward's life – people who are aware of and sensitive to the ward's needs and preferences. If two individuals want to share guardianship duties, then a court can name them as co-guardians.

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