

New Medicare law could spark client-adviser talks

End-of-life planning seen raising awareness of issue; living will crucial

By Darla Mercado

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A new Medicare rule encouraging patients and doctors to discuss end-of-life planning could prompt those patients to bring up the subject with their family, financial adviser and attorney.

“When you talk about end-of-life planning, it brings about awareness,” said Ben A. Neiburger, an elder law attorney with Neiburger Law Ltd. “The issue is whether the doctor can talk about it in more than a medical sense; financial planners know more about the client’s finances than the client’s friends or family.”

On Dec. 3, President Barack Obama enacted new regulations that cover the advanced-care planning conversation that physicians and patients could have as part of a Medicare annual wellness visit. The regulation is effective Jan. 1.

Advanced-care planning is voluntary, and doctors can share information with patients on preparing an advance directive, which allows patients to dictate ahead of time how they should be treated if unable to make decisions due to illness or incapacity.

Currently under Medicare, the end-of-life discussion is a one-time event that takes place during a new beneficiary’s “Welcome to Medicare” visit to a physician.

Proponents of the new regulation say it will provide more opportunities to discuss what may be an uncomfortable topic and raise awareness about how planning ahead can be an effective way to deal with a possible medical crisis.

Since the discussion between the patient and doctor is confidential, the Medicare beneficiary’s adviser and family members may not be aware of the individual’s end-of-life preferences. For that reason, attorneys are hopeful that if clients become comfortable talking about their preferences, they may be more inclined to apprise their adviser of how they wish to approach their advance directives — saving everyone the unpleasantness of possible family strife in the event of a medical crisis.

“The financial planner is going to be taking the calls if the client’s bills need to be paid, so their understanding of those end-of-life issues will help if there’s a toxic family situation,” Mr. Neiburger said. Advisers can use the advance directive information to help honor and facilitate

their clients' wishes.

“People don't talk to their kids about what they want: If they were sick, would they want to stay around or pull the plug? Hopefully, this will lead them to talk with their kids and avoid fights,” he said.

“The patient needs to bring it up with the financial adviser,” said Bernard A. Krooks, a founding partner of Littman Krooks LLP. “Assuming the adviser gets the info — and that's a big if — at least they're talking about it.”

Once advisers are aware of the client's end-of-life desires, they can better draft the client's financial plan to accommodate those wishes, Mr. Krooks said.

“There's too little discussion about the various options available,” he added. “You need a living will or a health care proxy, and there are lots of ways for this to be tailored to the unique needs of the clients. It'll put the adviser in a better place to explain the choices that are available to the patients.”

Mr. Neiburger suggests that advisers approach the topic as they perform annual reviews with investors to ensure they are on the same wavelength.

“I always ask my clients, ‘Are your end-of-life planning preferences known by everyone?’” he said. “Doctors and financial planners are part of the team, but not all team members work together or talk to each other.”

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