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A legacy of Terri Schiavo: More interest in living wills

By Pamela H. Woldow

It is common to parody accountants as tightly wrapped number-crunchers oriented more toward dollars than human emotions, religious beliefs, moral debates and political controversies.

Among the Babel of commentators seeking a pulpit during the recent national controversy surrounding the Terri Schiavo case, the voices of accountants were conspicuously absent. But there are ramifications from the intense public focus on the Schiavo story that provide a positive opportunity for accountants and financial experts to issue a powerful wake-up call to us all.

A fortunate consequence of the unfortunate court battles and death of Terri Schiavo is that living wills have gained at least a momentary spotlight in the public eye. A living will is a legally enforceable document that expresses the wishes of an individual in certain end-of-life situations, typically specifying how much and what kind of medical treatment is acceptable if he becomes incapacitated. But the public's interest is likely to abate as the Schiavo story fades, and we could revert to the regrettable situation where, as now, four out of five Americans do not have a living will, written health care provisions, a durable power of attorney or any other end-of-life directive.

Although living wills are legal documents, and accountants do not practice law, as financial experts, accountants are powerfully positioned to speak about the potentially catastrophic dollars-and-cents impact of a lack of end-of-life planning. It should be one of accountants' professional responsibilities to remind clients to take responsibility for planning ahead and making sure that their family, doctors, counsel, etc., are all aware of their wishes in writing - and thereby protect family members from embarking on costly medical support, or even litigation.

Without specific limits set out in a living will, care may well continue interminably for permanently incapacitated patients, as the Schiavo case so vividly showed. In the midst of the human drama, few commentators reflected on the almost unbearable cost of sustaining Terri's existence. A conservative estimate of the medical cost of maintaining her in her persistent vegetative state for 15 years is $1.5 million. Most American families could not sustain a financial blow that great or that long.

Insurance isn't enough

Acute health care in hospitals is breathtakingly expensive, but we don't really know the extent of the financial realities of care in skilled nursing or long-term care settings. According to the New York State Insurance Department, "Long-term care is very expensive, and most people cannot afford to pay privately for long-term care services for

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very long." They state that care in a skilled nursing facility presently costs from $220 to $270 per day, or up to $100,000 per year.

Experts at my firm, Smart and Associates, using valuation analysis based on 2005 costs, concluded that the actual costs may even be significantly higher. Increases in medical care costs and inflation will raise the total cost to maintain a person in a persistent vegetative state for the next five years to a minimum of approximately $540,000.

Michael Schiavo, Terri's ex-husband, won a malpractice settlement to help fund the steady, staggering costs of his wife's care. Families without such resources will be forced to dip into their own assets, draining their savings, dipping into their 401(k)s, taking loans on life insurance policies, drawing on the equity in their homes. For many, such costs will fundamentally impact their financial security and quality of life. For many others, they lead to bankruptcy.

In a survey by Professor Elizabeth Warren of Harvard Law School, half of a survey sample of 1,771 bankrupt people across America reported that illness or medical bills "drove them into bankruptcy."

The researchers were astonished to learn that three quarters of them carried medical insurance, but New Jersey attorney Lee Perlman said that high insurance deductibles and co-payments, exemptions in the policy language of insurance and insufficient coverage often leave patients' families facing financial burdens too big to carry.

Even families with "Cadillac coverage" are often bankrupted by medical costs. Medicare benefits also are limited when it comes to long-term care.

Living wills do work - even where there is family discord. In stark contrast to the Schiavo case, in a recent example in Pennsylvania, the court honored the written wishes of John King Jr., who had become permanently incapacitated with Alzheimer's disease. In spite of a living will that rejected prolonged life-support measures, his wife sought to have a feeding tube inserted. King's daughter filed an injunction against her mother and her father's doctor to prevent the insertion, and she prevailed when the court ruled that Mr. King's wishes were controlling.

Of course, for a living will to be effective, family members and caregivers must know that it exists.

Gerald Darling, of the law firm of Archer and Greiner, said that living wills generally work well and that the public never hears reports of all the living wills that are respected and followed. Yet recently Darling had to remind a hospital to treat one of his clients in strict accordance with a living will. Hospitals are learning the lesson that, without clear directives, they can be left footing the medical bills while families litigate and courts deliberate: Many now pre-empt the issue by requiring patients to execute a living will before undergoing anesthesia.

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Before the Schiavo controversy, Aging with Dignity, a national nonprofit, received about 100 daily orders for its inexpensive booklet, Five Wishes, which helps people express end-of-life preferences. In the 10 days following removal of Schiavo's feeding tube, orders skyrocketed to 3,000 per day. Five Wishes is a legally accepted document in 36 states, and since 1997, Aging with Dignity has distributed 4.5 million copies, one million in the last 18 months alone. The group can be reached at (888) 594-7437 or www.agingwithdignity.org.

In addition to a living will (or in lieu of one), many advisors recommend executing a durable power of attorney, appointing a specific person to make decisions about a person's health care treatment in the event that they are incapacitated, whether temporarily or long term. DPAs are simple and inexpensive, and they don't require the principal to speculate about events that might happen in the future. Forms are available for every state from such Web sites as www.formsguru. com, www.uslegalforms.com, and www.findlegalforms.com.

Another alternative to a living will is a "physician order for life-sustaining treatment," a specific instruction given to a physician and maintained in the patient's file. While useful where a patient is undergoing a long-term treatment regimen, these instruments may not be known to caregivers in other settings, particularly where incapacitation is due to an unexpected accident.

Whatever course one selects for end-of-life decisions, family and medical care providers must know about it. The U.S. Living Will Registry (www.uslivingwillregistry.com) provides free storage for all types of directives in a secure Internet form, and makes them available to any health care provider 24 hours a day, 365 days a year.