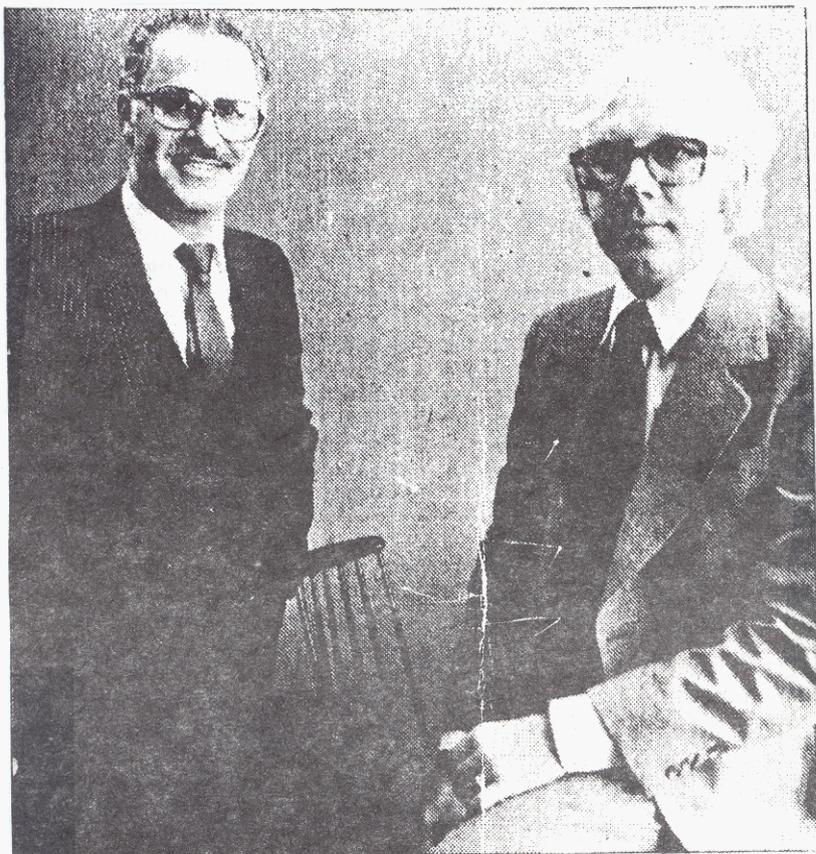


New Law Gives Some Help to Alzheimer Victims' Kin

By TIA GINDICK, Times Staff Writer



JOSE GALVEZ / Los Angeles Times

Marc Hankin, left, and Dan Brzovic share legal concerns for Alzheimer's disease victims and their families. Hankin sponsored recently passed legislation suggested by his parents' experience.

Marc Hankin still simmers when he talks about it. Bad enough that his father had been diagnosed as having Alzheimer's disease; but then, he said, his mother was advised by the California Department of Health Services to divorce her husband of 45 years, a man she'd known since she was 16.

It was either that or see everything they owned wiped out in health-care costs. Faced with that choice, said Hankin, his mother took the health department's advice.

Statement of Rights

Cases like that shouldn't happen again, if a bill signed by Gov. George Deukmejian last weekend has the desired effect. The bill, which was authored by Assemblywoman Jean M. Moorhead (D-Sacramento) and sponsored by Hankin, now an attorney in Westwood, will require the health department's Medi-Cal Administration to furnish applicants with a written statement of their rights under the existing law. Passed unanimously in the Assembly and Senate, it was prompted by Hankin's experience.

For as Hankin—who was only beginning law school when all this was happening with his parents—learned too late, his mother was misled when told her only option was divorce if she wanted her husband to qualify for Medi-Cal's custodial coverage.

Instead, she could have filed for conservatorship, a court-appointed position that would have made her, in effect, her husband's guardian, taking complete control of his assets.

The advantage of this over divorce, Hankin said, is that "many people don't want to divorce just because their spouse is sick. Often they feel that this really is the time to stick with their spouse rather than cast them adrift."

Put aside the horrors of the disease itself: How it creeps up on its victims—who can be male or female, any race, generally over 40—causing their brain to deteriorate while their bodies remain healthy; how simple forgetfulness becomes total inability to hold a thought, communicate, take care of themselves; how some victims become violent; and all must be

watched constantly for, like a 2-year-old child, Alzheimer's victims tend to wander, get lost, and can't even remember their names or addresses. What's more, the cause of Alzheimer's disease is not yet known, nor is there a cure.

Just consider the effect on the victim's close relatives, who not only are seeing this happen to someone they love, but must find a way of caring for them. Custodial care or nursing homes may seem the obvious solutions.

Alzheimer's Not Covered

However—and here's the pinch—neither Medicare nor private insurance companies (with a few expensive exceptions) cover the type of care required for Alzheimer's patients. It's basic custodial care, the same care needed by sufferers of Parkinson's and a number of other diseases which leave their victims unable to care for themselves. Only Medi-Cal provides for custodial care. But eligibility is limited to the aged, blind and disabled who also are impoverished—which means no more than \$3,000 in assets.

The slew of legal and financial problems that hit families of Alzheimer's disease victims, and the number of families so affected—one in four, according to many studies—has given rise to what seems to be a quiet, but urgent, push for change. In the last California legislative session, so many bills directly related to Alzheimer's disease were introduced that some legislators wryly referred to AD as this year's "sexy disease."

Said Moorhead, a registered nurse who is chairwoman of the Assembly Committee on Aging and Long Term Care, "a year ago when I asked to have an interim hearing on Alzheimer's disease, the Rules Committee—which is the committee which makes such decisions—didn't even know what it was. This year, six or seven bills were introduced, indicating that people were turning to the Legislature with this concern."

Among the bills signed by Deukmejian over the weekend were Moorhead's bill creating an AD study group of health care professionals to provide input on what

legislation is needed and authorizing a statewide AD conference. He also approved her bill allowing nursing homes to set aside specific areas for Alzheimer's patients. He vetoed Moorhead's bill creating an AD Registry for doctors.

In addition, he signed Assemblyman Gerald N. Felando's (R-San Pedro) bill authorizing \$1 million for AD treatment and research and Sen. Henry J. Mello's (D-Monterey) bill authorizing \$450,000 for pilot projects for AD victims.

The Moorhead bill requiring dissemination of information was probably the most pragmatic of the AD-related bills on Deukmejian's desk and, said Hankin, is only the beginning of legislation to alter prospects for AD-victimized families.

Impractical Advice

The notion of pushing divorce over other legal alternatives, something that was done with regularity, rankles Hankin no end, not only because of the ethical and moral aspects, but also because he doesn't consider it sound as practical advice. Financially, he said, the conservatorship is more feasible for the couple than divorce.

"With a conservatorship, the healthy spouse is able to keep the home or sell and keep the proceeds. By contrast, if a couple gets a divorce, the home normally must be split. Since we're usually dealing with people who don't have great accumulations of assets, the surviving spouse isn't able to give an offsetting amount of assets to keep the home. So the surviving spouse ends up homeless.

"If it's exceedingly early in the game—that is, the ill spouse still has his mental capacity—you may be able to make a gift of the home and agree to divide the remainder of the community property. This is particularly useful for families stricken by related disorders like Parkinson's or Multiple Sclerosis that do not rob the victim of his capacity so quickly. But the important thing is for the healthy spouse to have separate property which will not interfere with the victim's eligibility for Medi-Cal in a nursing home."

Alzheimer's disease-related legislation is obviously a mission with Hankin, a field of expertise developed more out of personal necessity than professional interest. But it's brought him in contact with other attorneys who are finding an increasing number of their clients have AD-related problems.

Dan Brzovic, supervising attorney for the County LAWS project with Bet Tzedek Legal Services in Los Angeles, said the people he typically sees "have a house, a certain amount of savings, Social Security or a private pension.

They are people who grew up during the Depression and accumulated for their old age. Now they think, they're moderately comfortable. They don't have to worry.

"But then, say, the husband gets Alzheimer's disease. At first the wife does her best. She copes. Until, that is, he has to go into a nursing home. Assuming she finds one, now she's got to pay for it. Medi-Cal is the only possibility. But with Medi-Cal, all they get to keep is the home. The savings goes. All but \$3,000 between them.

"Now remember, the wife is old. Say she can't manage the home by herself. It needs repairs which she can't afford. She says, 'I'll sell the home, invest what I get in the money market and live off the interest.' But if she sells the home, Medi-Cal comes in again.

"Medi-Cal's interpretation is that they get half of all community property. Logically, it should be just the patient's half so that the spouse can continue to live on the full amount of her half. But the way the law is interpreted, it's half of all community property again. It's a comedy of the absurd.

"A lady told me just the other day that she's terrified she'll become a bag lady."

'A Courageous Guy'

It wasn't the first time Brzovic had heard that fear. Nor Hankin, who said: "I had one client who came in and said I don't want my wife to be poor. He had been told he had Alzheimer's disease, early stages still, and he wanted to make sure his wife was taken care of while he still had some capacity. Really a courageous guy. He told me, 'I didn't work all my life for my wife to be a pauper.'"

Hankin also said he'd also recently heard of two AD victims, both still in the early stage where they apparently knew what was happening to them, who committed suicide. "They both left notes saying they didn't want their wives to be pauperized. And when this happened, both men had some quality of life going. They were at day-care centers, doing things. This didn't have to happen."

Brzovic and Hankin have

worked together on such immediate solutions as a durable power of attorney, a legal device created in 1981 whereby the patient—who must still have a great deal of mental capacity—signs a document giving power of attorney to someone he trusts, and allows that person to make decisions regarding the patient's medical care, financial, living and funeral arrangements; a living trust, where the patient signs a more lengthy document than the durable power of attorney, and transfers the trustee title to the patient's assets;

or conservatorship which is created in court and is particularly useful in protecting both the AD victim and the spouse from losing everything they've saved.

Hankin also sees a larger solution: legislation to establish tax incentives to insurance companies to establish custodial-care policies.

For now, however, a diagnosis of Alzheimer's disease seems to put the entire family in a trap. Both financial and ethical. It usually isn't an ethical dilemma of whether the AD-victim really needs a conservator, said attorney Richard D.K. Josslin of the Westwood firm of Webster, Jeppson, Jones & Agran. "When I get them, the person's behavior is usually so far removed that it's very easy to get a declaration from a doctor, a few neighbors."

What's more, added Hankin, Los Angeles' courts have been particularly understanding of the situation.

' But it occasionally produces what Josslin calls a crisis of conscience, at least if a victim is wealthy and the children have certain expectations of an inheritance which they know will be

gobbled up if their parent or grandparent is put in a custodial facility.

"Sometimes I get the family coming in saying, 'We can qualify grandma for Medi-Cal if we can reduce her savings to \$3,000. How do we pauperize her? Can we backdate some deeds or something?'"

Not easily, it seems. Even if Grandma were into estate planning, giving away her property and land while she was alive so her children wouldn't have to pay estate tax upon her death—the Medi-Cal people are still suspicious, said Josslin. All gifts from a minimum of the last two years are considered invalid.

Possible solutions? Legislation to make Medicare insurance provide custodial coverage, said Hankin.

He also said there are both state and national moves under way to establish income tax deductions for relatives who contribute to another relative's custodial care.

"We're also working on some tax incentives to create day-care centers as enterprises. Many patients are shunted prematurely into nursing homes because families just can't continue these 36-hour days," he said, referring to the book by Drs. Nancy L. Mace and Peter V. Rabins, which has become a virtual bible for families of AD-victims.