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RESTRICTIONS ON ASSET PROTECTION PLANNING AT CCRCs UNDER THE NEW MEDICAID LAW

A "Continuing Care Retirement Community" (or "CCRC") is a community that provides a full continuum of care for its residents. It has flexible living accommodations designed to meet the resident's health and housing needs as these needs change over time, offering independent living, assisted living and nursing home care, usually all in one location. (Examples of CCRCs in northwest Pennsylvania include the Sarah A. Reed Retirement Center and Springhill Senior Living Community in Erie, and Wesbury United Methodist Retirement Community in Meadville.)

Prior to the new Medicaid law (the Deficit Reduction Act or "DRA"), CCRCs, like nursing homes, could not prohibit Medicaid or asset protection planning by their residents. However, in February of this last year, that all changed. Because of two provisions in the DRA – the treatment of CCRC admissions contracts and entrance fees – it is unlikely that residents at CCRCs will be able to transfer any portion of their assets and thereby accelerate their eligibility for Medicaid.

Admission Contracts: When an individual applies for admission to a CCRC, the application requests full disclosure of the individual's assets. Prior to the new law, regardless of the amount of assets an individual declared, the CCRC could not prohibit the individual from doing any long-term care planning or asset protection planning and then

applying for Medicaid. Now, however, CCRCs can contractually require a resident to spend on their care all of the assets declared at the time of admission before applying for Medicaid.

Entrance Fees. As a requirement for admission to most CCRCs, residents are required to pay a large entrance fee or a lump sum "buy-in." Provided the resident complies with other terms of the CCRC contract (such as paying a monthly service fee), this entrance fee typically guarantees the resident's right to live in the facility for the remainder of his or her lifetime.

The entrance fee is often, but not always, reimbursable (at least partially) if the individual moves from the facility, passes away while a resident at the facility, or otherwise terminates the contract. Many contracts also contain a provision permitting residents to use a portion of their entrance fee toward the monthly resident charges if they exhaust their resources and become otherwise unable to pay.

Prior to the new Medicaid law (the Deficit Reduction Act or "DRA"), the entrance fee was generally not considered an available asset for Medicaid eligibility purposes. Under the new DRA, an entrance fee is considered an available or "countable" asset if:

(1) the contract provides that the entrance fee may be used to pay for care should the resident run out of money and become unable to pay the monthly charge;

(2) the individual is eligible for a refund of any remaining entrance fee when the individual dies, or terminates the life care contract and leaves the community; and

(3) the entrance fee does not confer an ownership interest in the CCRC.

CCRCs can be a very attractive option for those seniors who can afford the entrance fee and monthly payments. But it is important to realize that with the enactment of the DRA, the Medicaid law now permits CCRCs to essentially disallow any Medicaid planning or asset protection by their residents once the contract is signed and they are admitted to the community.

It is a good idea to consult with an experienced elder law attorney prior to entering into a contract at a Continuing Care Retirement Community to ensure you are aware of the effects your entrance fee/"buy-in" agreement may have on your financial long term care plan.

Note: *With the new restrictions in the Deficit Reduction Act, it is more true than ever that "time works against you" when planning for long-term care. It is important that families who have a spouse, parent or other loved one needing long-term nursing care contact a knowledgeable and experienced elder law attorney for advice as soon as possible. While ideally this should be done when there is at least five years before such care will be needed, families need to realize that even with the new restrictions in the DRA, there remain planning opportunities for seniors facing an immediate crisis. Still, every day of delay represents an additional \$222.17 of irretrievable loss.*

Kemp Scales, CELA,* is an Elder Law Attorney who serves clients throughout western Pennsylvania from his offices in Erie, Titusville, and Pittsburgh. Attorney Scales frequently makes presentations to professional and civic groups, to senior centers, hospitals and long-term care facilities throughout western Pennsylvania. If you would be interested in having attorney Scales speak to your group, please contact us at toll free at (888) 827-2788 or by e-mail at Info@ScalesElderLaw.com.

* Certified as an Elder Law Attorney by the National Elder Law Foundation as authorized by the Pennsylvania Supreme Court.

Upcoming Seminars

Want to learn more? Attorney Scales will be presenting seminars on Long-term Care Planning at the following locations:

April 17, 2007 beginning at 7:30 p.m. at the Cambridge Springs Library, 158 McClellan Street, Cambridge Springs, PA.

May 22, 2007 beginning at 7:00 p.m. at Cross Creek Resort, Route 8 South, Titusville, PA. Joining Attorney Scales will be Kevin Bannon of HBK Sorce Financial Services.

On the Lighter Side

A quite elderly gentleman (mid nineties), very well dressed, hair well groomed, great looking suit, flower in his lapel smelling slightly of a good after shave, presenting a well looked-after image, walks into an upscale cocktail lounge. Seated at the bar is an elderly looking lady, (mid eighties).

The gentleman walks over, sits alongside of her, orders a drink, takes a sip, turns to her and says, "So tell me, do I come here often?"