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# Scales Elder Law Newsletter

“Caring for a loved one shouldn’t cost a lifetime of savings.”



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## When Is The Right Time To Do Medicaid Planning?

Our office receives many calls from family members and concerned loved ones wondering if or when they should start planning for long-term care. The answer is that it is never too early or too late to *discuss* the planning options available. As for taking action, some steps, such as getting Powers of Attorney in place or looking into the feasibility of purchasing long-term care insurance, should be done as soon as possible. Whether other steps need to be taken, such as spending down assets, setting up a trust, purchasing an annuity, or making gifts to children, depends upon the particular family situation. Below are just two examples of the many types of calls we get every week where we advised clients that Medicaid planning was an option for them *right now*.

\* \* \* \* \*

**Non-Crisis Situation:** Mrs. Brown\* was an 81-year-old widow experiencing short-term memory loss. She was still able to live alone in her own home. Her income was \$750 a month, her home was worth \$135,000, and she had other assets of approximately \$60,000. She heard from a friend that she should give away all her assets now to her kids to avoid losing everything in case she would ever need to go to a nursing home. Her friend told her that so long as she gave everything away more than three years before moving to nursing home, she would be able to qualify for Medicaid without having to spend-down any of her assets.

Unfortunately, even well-meaning friends can give bad advice, and there were many problems with the advice Mrs. Brown’s friend gave her. The look-back period is now five years, not

three years, and Mrs. Brown may need long-term nursing care in less than five years. If she made this large transfer and then required nursing care within the next five years, she would have no funds to pay for her own care, and she would be ineligible for Medicaid for more than two years. Once the money and house had been transferred to her children, those assets would actually belong to the children – with no strings attached. Even if the children were trustworthy, and would be willing to give the money back if Mrs. Brown needed long-term care, the assets being placed in their names would be subject to certain unavoidable risks. With the assets in the children’s names, a lawsuit, creditor problems (including such creditors as the I.R.S. or a divorcing spouse), or an unexpected death could easily wipe out much or all of mom’s life savings, as well as leave her without a home.

Also, it’s important to keep in mind that Mrs. Brown might never need nursing home care. For example, she might live out the rest of her life at home, as she certainly would like to do. Even if her health declined to the point that she could no longer live alone in her home, she would certainly prefer moving to an assisted living facility than a nursing home. However, in Pennsylvania, while Medicaid will cover the full cost of a nursing home, it will not cover any of the cost of care in an assisted living facility.

In this scenario, we would advise Mrs. Brown to get the proper estate planning documents in place (particularly a Financial Power of Attorney with adequate “gifting language”) so that if she later became incapacitated, her children (or whoever she names as her agents)

could act on her behalf and take the steps necessary to protect at least a portion of her assets if she later needed nursing-home care. We would advise her to retain sufficient assets to be able to enjoy her freedom and independence while she's still relatively healthy and to pay for the level of care she needs if and when her health were to decline. Depending on what Mrs. Brown wished to accomplish, her family dynamics and her health and prognosis, we might recommend that she undertake an asset protection plan.

\* \* \* \* \*

Crisis Situation: Mr. and Mrs. Green\* had assets of \$220,000 in addition to their small farm worth about \$120,000 when Mr. Green, who was 83 and suffered from Parkinson's disease, moved into a nursing home five months ago. Having been a farmer most of his life, his monthly income was only \$650. Mrs. Green, who was 78, had monthly income of only \$250.

Mrs. Green had been told she needed to spend down their assets to about \$100,000, not including their farmhouse, before her husband could qualify for Medicaid. With nursing home costs and other incidental expenses averaging nearly \$6,000 a month, they were down to about \$190,000 when Mrs. Green contacted our office. (Note: Mrs. Green thought for sure it was too late to protect any of their assets because her husband had already been in the nursing home for five months. But she had recently attended a Parkinson's support group meeting where someone told her that there might be a way to save more than \$100,000 of their assets and recommended she give us a call.)

Fortunately, she followed up on this advice and contacted our office. After meeting with her and learning about their situation, we told her not to make any further payments to the nursing home. We had her use about \$80,000 to purchase an annuity for herself plus pre-paid funerals for her and her husband. We then immediately filed a Medicaid application for Mr. Green. We got him qualified for Medicaid as of the month we filed the application.

In the end, Mrs. Green was able to keep nearly \$110,000 of their assets, plus the farm, get all of Mr. Green's income plus her own, and get an additional monthly income of about \$750 guaranteed for the rest of her life, while still getting her husband qualified for Medicaid.

Again, it is never too early or too late to discuss the planning options available. Whether you are 81 years old, healthy, and living in your own home, or have been in a nursing home for several months – there may be steps you can be taking now to preserve as much of your assets as the law will allow. The key is to talk to an elder law attorney and find out what the options are.

\* As always, names and specifics have been changed for client privacy.

The content herein is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified elder law attorney.

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

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### ***On the Lighter Side***

In his old age, Mark Twain observed to a friend about how his memory was failing. "When I was younger I could remember anything whether it happened or not. But my faculties are decaying now and soon I shall be so that I cannot remember anything but the things that never happened. It is sad to go to pieces like this, but we all have to do it."