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Scales Elder Law Newsletter

"Caring for a loved one shouldn't cost a lifetime of savings."



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The New Frontier in Long-Term Care Planning

Should you be concerned about paying for nursing home care? The answer to that question depends on a number of factors such as your age, health, and income. A study recently published by AARP provides some interesting statistics.¹ Of Americans aged 65 in 2005:

- Nearly one in five (20%) will live in a nursing home for at least a year.
- One in twenty (5%) will be in a nursing home for five years or longer.

For a couple, the chances that one of them will need nursing home care are, of course, much higher. And "women, with a longer life expectancy and higher rates of disability and widowhood, are more likely than men to need nursing home care, and especially likely to need lengthy stays."²

According to the Department of Public Welfare, the average monthly cost of nursing home care in Pennsylvania is \$6,923.14 a month (as of January 1, 2008). That comes out to \$83,077.68 a year. Add to the mix the fact that in the United States – unlike virtually every other developed nation in the world – we do not have universal healthcare to spread the cost of such long-term care among the population as a whole, but instead allow it to fall catastrophically on those unfortunate enough to get old and sick.

Medicare. Medicare, if it pays at all, will pay for only a limited period of long-term nursing care (a maximum of 100 days, and usually much less) – and it pays nothing unless the senior:

- came to the nursing home following a stay in a hospital of at least three days; and
- requires "skilled care" (that is, care requiring the daily oversight of a doctor, RN, physical therapist, or other licensed professional, so the typical dementia resident – whose needs can be met with "custodial care" – would not be eligible for Medicare at all).

Long-term Care Insurance. It's certainly true that for those who need long-term nursing care, having long-term care insurance is a good thing. However, the fact is that the great majority of seniors do not have long-term care insurance – either because they cannot afford it or would not qualify. "In 2005, only about 7% of nursing-home care was paid for by private insurance."³

And so you have a situation where many seniors are paying huge nursing home bills out of their own pockets, until they have "spent down" their assets to the point that they qualify for Medicaid – that is, until they have impoverished themselves.⁴

¹Article available at http://www.aarp.org/research/longtermcare/nursinghomes/fs10r_homes.html

² *Id.*

³ Georgetown University Long-Term Care Financing Project, February, 2007.

⁴ The asset limit for long-term care Medicaid in Pennsylvania is either \$2,400 or \$8,000, depending on monthly income.

“Wow, that’s pretty serious,” you might say, “but what can we do about it?” To that I’d say: “**A lot more than most people think.**” In fact, in my experience over the last nine years, there is almost always something that can be done to protect some part of one’s lifetime of savings from having to be completely spent on paying for long-term care – in many cases, between 40% and 100% of what would otherwise have to be spent on the cost of care. Even though Congress passed the Deficit Reduction Act in 2005 which changed the Medicaid eligibility rules and added new obstacles for seniors to the more “traditional” ways to protect assets, there are still MANY opportunities for most seniors to protect a significant portion of their life savings and qualify for Medicaid to pay for the cost of nursing home care.

This is true even if the person is already in the nursing home. In fact, the changes in the law have actually strengthened some planning opportunities that were previously in a “gray” area but now are clearly permissible. For example, a parent who is living with a child can purchase a “life estate” in the child’s home and, provided the parent continues to live in the home for at least one year, the money paid to the child will not be treated as a disqualifying gift. Unfortunately, the opportunities available under the new law are still largely unknown, and many people believe – mistakenly – that, short of making gifts at least five years before needing nursing-home care, nothing can be done.

Another big difference is that there is now a much greater need for advocacy in long-term care planning. Because the law is still relatively new, we are largely sailing in “uncharted waters” with many of these new techniques. A few years ago, it was almost unheard of for me to have to appeal a Medicaid denial and attend a hearing to explain to an administrative law judge why Medicaid eligibility for my client should be granted. However, as we “blaze the trail” using the new Medicaid laws, such appeals and hearings are to be expected, even welcomed. As advocates for our clients, elder law attorneys have a unique opportunity to help set good precedents and get good law on the books to benefit not only our own clients but the many seniors who will need to use the Medicaid laws in the future to help pay for long-term care for themselves or a spouse, without losing all of their life savings.

Note: 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.

Mark your calendars. Kemp Scales will be presenting a seminar at the Gertrude Barber Center in Erie on June 4, 2008 beginning at 6:30 pm. The event is open to the public but is geared specifically to seniors who are caring for an adult child with special needs. *To reserve a seat please call our office at **888-827-2788**.*

Kemp Scales, CELA,* is an Elder Law Attorney who serves clients throughout western Pennsylvania from his offices in Erie, Titusville, and Pittsburgh. He frequently makes presentations to professional and civic groups. If you would be interested in having attorney Scales speak to your group, please contact us toll free at (888) 827-2788

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



The Last Laugh . . .

Attorney Scales’ 91-year old father, Col. J. Shelton Scales, USMC Ret., who lives in a retirement community in southern Virginia, recommends the following “Senior Exercise Program.”

While standing up, with your feet comfortably apart, get a good grip on a 5-pound potato sack in each hand. While clutching the sacks, and taking care not to strain yourself, slowly raise your arms as far as you can, and then let them fall. Keep practicing until you can raise your arms to a horizontal position and hold that position for 5 seconds.

When you have reached the point that you can do this three times in a row without strain, you are ready to graduate to a 10-pound potato sack for each hand. Go through the same procedure explained above, and then move on to 15-pound sacks. (This is the stage Shelton Scales has reached!)

Finally, when you have trained to the point that you can raise your arms to a horizontal position three times in a row while grasping 15-pound potato sacks in each hand, and holding that position for 5 seconds, you are ready for the final stage. Repeat the entire process, but this time with a potato in each sack.