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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 Top 7 Mistakes Seniors Make Concerning Medicaid Qualification for Long-term Nursing Care

### 1. Failure to Have a Properly Drafted Financial Power of Attorney in Place.

Without question the single most important legal document a client can have when it comes to long-term care planning is a properly drafted Financial Power of Attorney. Despite changes to the Medicaid laws, important opportunities remain for seniors to protect assets that are otherwise at risk of being spent on long-term nursing care – even in a crisis. However, if the senior becomes mentally incapacitated (for example, as the result of dementia or a stroke), unless he or she has executed a properly drafted financial Power of Attorney that authorizes the agent to make unlimited gifts, there may be little or nothing that can be done to take advantage of the opportunities that Congress has created.

### 2. Transferring the House Outright to the Children.

Nearly all seniors have heard horror stories of people losing everything they had, including their home, in order to pay for the cost of nursing-home care. While it is not true that “the nursing home will take your house,” it is certainly true that the house may have to be sold to pay for long-term nursing care. In my experience, many seniors make the mistake of trying to protect their home by deeding it over to their children (“for a dollar”). While this *can* work to protect the house, there are almost always much better ways to accomplish the same thing . . . ways that protect the house

without putting the seniors at risk of losing their home because of problems their children might encounter, and ways that avoid difficult Medicaid or tax problems down the road.

### 3. Thinking It's Too Late to Plan.

As noted above, despite the changes to the Medicaid law, there remain important opportunities for seniors to protect their assets even when they have moved into a nursing home. The fact is, as long as there are assets remaining to be protected, it's not too late to take steps to protect them. But it's important that seniors or their families act quickly; assets once spent can almost never be retrieved, and at the rate of \$220 a day, those assets can disappear quickly.

### 4. Ignoring Exempt Transfers in the Medicaid Laws.

Congress has created certain important “safe harbors” in the Medicaid law that permit seniors to transfer assets in certain situations and to certain individuals without creating any period of ineligibility for Medicaid. These include transfers to a child with disabilities; transfers to a “payback” trust for anyone who is disabled and under age 65; and transfer of the house to a “caretaker child” or to a sibling with an equity interest in the house. If done properly so as to comply with all of the Medicaid rules, the senior can be immediately eligible for Medicaid after making such a transfer.

## 5. Failing to Take Advantage of Protections for the Spouse.

Congress has also created special protections in the Medicaid law for the spouse of a nursing-home resident. These protections include petitioning the court for an increase in the spouse's resource allowance, the purchase of an immediate annuity for the benefit of the spouse, and – in the right circumstances – having the spouse refuse to cooperate with the nursing home spouse's Medicaid application. Again, there are a number of strict conditions that have to be met in order to get the benefit of these protections. And, following the recent changes in the law, greater advocacy on the part of the attorney is required to see that the State Medicaid agency gives the senior the benefits permitted by law.

## 6. Applying for Medicaid Too Late.

Timing is very important in Medicaid planning. 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. 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 a potential \$220 of irretrievable loss.

**7. Not Getting Qualified Help.** 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. Again, it is rarely too early and never too late to discuss the planning options available. (To be exact, it is would be too late after all of the money has been spent.) Whether you are 81 years old, healthy, and living in your own home, or have been in a nursing home for several months or several years – there may be steps you can be taking now to preserve as much of your remaining assets as the law will allow. The key is to talk to a qualified elder law attorney and find out what the options are.

*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.*

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](mailto:Info@ScalesElderLaw.com).

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

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## Upcoming Seminars

Want to learn more? Attorney Scales will be presenting seminars on Long-term Care Planning as follows:

July 25, 2007: Attorney Scales is hosting a noon tele-conference entitled "Paying for Long-Term Care without Losing Your Life Savings: The Laws have Changed – Learn the New Rules." For more information, or to register for this seminar, call Scales Elder Law toll-free at 888-827-2788.

August 23, 2007 at the Rouse Warren County Home in Youngsville, Pennsylvania. For more information, or to register for this seminar, call Andrea Wagner at (814) 563-7565.

September 27, 2007 at Niagara Village in Erie, Pennsylvania. For more information, or to register for this seminar, call Keith Galas at (814) 838-1699.

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## On the Lighter Side

You know you're getting older when you lean over to tie your shoes and think to yourself, "What else can I do while I'm down here?"

George Burns