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Scales Elder Law Newsletter

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



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Providing for a Child with a Disability When the Parent Needs Long-Term Nursing-Home Care

Helen and Joan, both of Erie, Pennsylvania, have been neighbors and close friends for over 40 years. Both are widowed and in their mid-seventies, so they have much in common. They are fortunate to be able to live comfortably by supplementing their Social Security retirement income and pensions with what they have carefully saved over the years, and each has about \$300,000 in retirement savings.

Helen confided in Joan that she was recently diagnosed with early-stage Alzheimer's disease. Although she knows that this will mean a loss of independence for her at some point, she is most concerned about her son, Jack, who lost his wife in a car accident several years ago caused by a drunk driver, and was himself seriously injured. No longer able to work and having exhausted most of his savings on his medical bills, Jack survives on his monthly Social Security Disability check and the help he gets from his mother.

Joan can easily understand Helen's concerns. Joan is childless but has a niece, Lucy, age 45, who has Down's Syndrome. Having been orphaned at age 6, Lucy has lived with Joan nearly her entire life.

Helen asked Joan to accompany her to an appointment at my office to discuss what steps Helen could take to make sure that she is able to get the care she needs, as her

Alzheimer's progresses, without putting all of her life savings at risk. In talking with them, I learned that both Helen and Joan had friends their age who were struggling financially because of the cost of long-term care. But they were both shocked when I told them that nursing homes in northwest Pennsylvania can cost about \$70,000 a year, or even more.

Helen explained that her other two children were financially secure, but they were all concerned about Jack's welfare. She had hoped to leave most of what she had to Jack after her death so that he could live more comfortably. But at \$70,000 a year or more, she would go through her entire lifetime of savings in just a few years if she needed nursing-home care. And this was likely, given her diagnosis. So she risked losing everything!.

"I know you have a lot to be concerned about right now," I tell Helen, "but paying for long-term nursing-home care does not have to be one of them." Her income, supplemented by her savings, would go a long way to pay for care in an assisted living facility, which typically cost about half of what a nursing home cost. And, as I explained to her, if she later needed nursing-home care, we could get her eligible for Medicaid immediately. This is because Medicaid – which is the only government program that pays for long-term nursing care – has special rules for transfers to people with disabilities.

Because Jack was receiving SSDI, he qualified as a “disabled child” for Medicaid purposes, which meant that transferring assets to him would not create any ineligibility period for Helen if she later needed to enter a nursing home and apply for Medicaid. And because Jack was mentally competent and able to manage his own money, Helen could transfer assets directly to him rather than putting the money into a trust for his benefit.

So I explained to Helen that she could qualify for Medicaid immediately if she ever needed long-term care (either at home or in a nursing home) and the money transferred to Jack could be kept to help pay for anything else that Helen might need as well as provide extra funds for Jack.

“You mean I wouldn’t have to wait five years to become eligible for Medicaid?” asked Helen. “I thought you couldn’t do that anymore.” I explained that while there have been some changes in the law that makes it more complicated for seniors needing nursing-home care to qualify for Medicaid, the special rules regarding “disabled children” had not changed, and so Helen would be able to qualify for Medicaid immediately with no penalty and no waiting period.

(Next month’s article will examine whether Joan, who does not have a “disabled child,” can also take advantage of Medicaid’s special rules.)

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 a potential \$220 of irretrievable loss.*

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. * 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 as follows:

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.

On the Lighter Side

An elderly gentleman was driving home when his wife called him on his cell phone.

“Honey, be careful driving home. The television says that there’s some nut driving the wrong way on the freeway!”

The man replies, “Tell me about it! There’s hundreds of them!”