



Special needs require special lawyers.



Scales Elder Law Newsletter

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



1001 STATE ST. SUITE 1400 ERIE, PA 16501 (814) 461-7820
115 S. WASHINGTON ST. POST OFFICE BOX 346 TITUSVILLE, PA 16354 (814) 827-2788
425 FIRST AVE. FIRST FLOOR PITTSBURGH, PA 15219 (888) 827-2788

TOLL FREE: (888) 827-2788
FAX: (814) 827-9521
INFO@SCALESELDERLAW.COM
WWW.SCALESELDERLAW.COM



May, 2009

Elder Law Questions and Answers: Part 1

There are certain questions I am frequently asked regarding long-term care planning and Medicaid. I will be sharing answers to some of these common questions as they come in, as these may be of interest to many of our readers.

"My friend told me that if I give any money away, I will not be eligible for Medicaid for nursing home care for five years. Is that true?"

Yes and no. Your friend was referring to the "look-back" period that Medicaid has regarding gifts. It is not an ineligibility period, but rather a requirement that you *disclose* any gifts you made during a period of time prior to the date of a Medicaid application for long-term care.

When you apply for Medicaid, you will be asked if you have given any assets away during the prior 60 months (five years). If the answer is yes, you will be ineligible for Medicaid for a certain period of time, depending on how much you gave away. Currently it is one day of Medicaid ineligibility for every \$237.89 you gave away. So, for example, suppose you gave \$20,000 to your daughter a year ago. A year later you have some serious health problems and need to go into a nursing home. The nursing home costs \$80,000 a year, and after one more year you have spent all your remaining money and you apply for Medicaid. Because the gift to your daughter three years ago was within the five-year look-back period, Medicaid will say that you are then ineligible for 84 days (\$20,000 divided by \$237.89). So after 84 days have passed, you will be eligible for Medicaid. You would not have to wait five years from the date you gave the money away.

However, the problem is that you have no money to pay the nursing home for those 84 days. It would not have helped if you had applied for Medicaid before all your money had been spent, because the period of ineligibility does not begin to run until you are both in a nursing home *and have spent down your assets to the Medicaid eligibility level*. For a single person, that means no more than \$2,400 or \$8,000 in "countable" assets, depending on your income. (Some things are not counted as assets for Medicaid purposes, including a home, a car, a pre-paid funeral, household goods and personal effects, etc. Everything else, such as your bank accounts, retirement accounts, stocks, bonds, mutual funds, etc. is counted.)

Would your daughter have to give the money back to pay for your care? Unfortunately the law does not provide a clear answer on how you are supposed to pay your nursing home bill during this ineligibility period. It is important to remember that gifts can have a serious effect on your future eligibility for Medicaid to pay for long-term care. This is also true if your spouse needs long-term care.

However, with proper advice and planning, it is often possible to protect a significant portion of your assets from the cost of long-term care, in a way that fully complies with the Medicaid rules. And this is true even if you are already in a nursing home. A qualified elder law attorney will be able to give you more information.

“I take care of my adult son, who has a developmental disability. Do I need power of attorney to make decisions for him?”

A durable power of attorney is a document in which you name someone to make financial or healthcare decisions for you if you are ever unable to make these decisions for yourself. When your son was still a minor, you did not need a power of attorney because, as his parent, you were his “natural guardian” with the full authority – as well as the responsibility – for making decisions for him. However, once your son turned eighteen, you lost your rights as parent to make decisions for him. Doctors, banks, schools, etc. may not be permitted to share information with you about your son, or allow you to make decisions on his behalf, unless your son has given you his permission to do that, by naming you as his agent under a durable power of attorney, or by some other means.

Sometimes parents can still take care of a lot of things for their adult child with special needs, even without a power of attorney. For example, Social Security allows someone to be named as “representative payee” to receive Social Security or Supplemental Security Income (SSI) payments. Sometimes doctors or financial institutions, especially if they have a long relationship with your family, are comfortable continuing to work with you on behalf of your son, even after he has turned eighteen. However, at other times it may be necessary to have that official document giving you permission to do this.

It is important to understand that, provided your son has sufficient cognitive capacity, it would be his decision whether or not to name you as his agent. He would need to understand the purpose of the document, and he would need to be comfortable with its terms. He could choose whomever he wants as his agent (it might not be you!) and he could revoke the power of attorney at any time.

When an adult child is not able to execute a power of attorney (due to a severe cognitive impairment, for instance) but needs someone to take care of things for him or her, a guardianship may be necessary. In that case, the Court has to decide who the guardian would be, would stay involved in overseeing what the guardian does, and would require that regular reports be filed with the court disclosing all financial transactions and services performed.

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. 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.

Attorney Scales will be speaking at St. Brigid Church, Meadville, Pennsylvania, on June 1, 2009, beginning at 7:00 p.m.



The Colonel's Corner

From Attorney Scales' 91-year old father, Col. J. Shelton Scales, USMCR-Retired, who lives in a senior retirement community in southern Virginia.

George Carlin's Rules for Staying Young

6. The tears happen. Endure, grieve, and move on. The only person who is with us our entire life is ourselves. Be ALIVE while you are alive.
7. Surround yourself with what you love, whether it's family, pets, keepsakes, music, plants, hobbies, whatever. Your home is your refuge.
8. Cherish your health: If it is good, preserve it. If it is unstable, improve it. If it is beyond what you can improve, get help.
9. Don't take guilt trips. Take a trip to the mall, even to the next county; to a foreign country but NOT to where the guilt is.
10. Tell the people you love that you love them, at every opportunity.

AND ALWAYS REMEMBER:

Life is not measured by the number of breaths we take, but by the moments that take our breath away.