



Scales Elder Law Newsletter

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



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Long-Term Care Planning for Married Couples

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I met with Fran** (age 81) shortly after her husband Stanley** (age 84) entered the nursing home. Diagnosed with Parkinson's disease several years ago, Stanley had become increasingly frail and required more care than he could safely receive at home. Moving Stanley into a long-term care facility was hard on Fran. They had been married for nearly sixty years and rarely spent a day apart. Fran wished she had been able to do more for him herself, and it was hard to finally admit that it had simply become too much.

Fran was also very concerned about what this move would mean for them financially. Their total income was \$1,877 a month -- Stan's Social Security of \$1,220 and Fran's of \$657. Besides their home, they owned approximately \$175,000 in cash, CDs and savings bonds, as well as a \$25,000 IRA for Stanley and a \$25,000 IRA for Fran. "When my brother went into a nursing home several years ago, the bills were so expensive, he lost everything!" she told me. "Even after he died the State came and took his house. Am I going to lose my home, too?"

I told Fran that there was some good news and some bad news.

The bad news is that Stanley's nursing home would indeed be very expensive. Like most people their age, Stanley and Fran did not have long-term care insurance. And so, without any planning, Stanley and Fran would have to pay

the nursing home out of their savings, at the rate of about \$80,000 a year, until they had spent down enough of their assets for Stan to be eligible for Medicaid (Medical Assistance) to cover the bills.

If Stanley's nursing home admission had followed a hospital stay of three overnights or more *and* if he required "skilled" nursing care, Medicare would have helped pay the cost for a limited period of time (the full cost for the first 20 days of such care, but only the amount above \$137.50 a day for up to an additional 80 days). In his case, however, Stanley had moved directly from home to the nursing home without spending any time in the hospital. And, in any event, he did not need "skilled" care at the nursing home but rather "custodial" care to help him with his activities of daily living, such as bathing, getting dressed, eating, toileting, etc. Thus Medicare would not pay anything toward the cost of his nursing-home care.

But now for the good news. The Medicaid laws offer some protection for the spouse remaining at home (the "community spouse"). So unlike Fran's brother (a widower) who had to spend all but \$2,400 of his life savings before he could receive Medicaid, Fran would be allowed to keep a significant portion of their assets and still have Stanley qualify for Medicaid. The general rule in Pennsylvania is that the community spouse is permitted to keep half of the couple's countable assets (with a minimum

of \$21,912 and a maximum of \$109,560 in 2010), plus his or her own IRA, to give some financial protection to the spouse at home. In Fran's case, because her and Stanley's total "countable assets" were \$200,000, she would be able to keep \$100,000 of those, as well as the home and her \$25,000 IRA. And because Stanley's monthly income was below \$2,022, he would be permitted to keep up to \$8,000 and still be eligible for Medicaid. This would leave approximately \$92,000 that would need to be spent on Stanley's nursing home care, if no additional planning were done.

However, with proper planning, nearly all of that \$92,000 could be protected as well. For example, Fran could purchase certain items that she might need but that would not count for Medicaid purposes. Because Stan is in the nursing home, the money for these purchases would come entirely out of Stan's \$92,000 that would otherwise have to be spent on the nursing home. These "no penalty spend-down" items could include a new car for Fran to replace the older one she has, household goods or appliances, home improvements, or prepaid funerals for both Fran and Stanley.

In addition, any part of the \$92,000 not used for the spend-downs could be used to purchase an immediate annuity for Fran's benefit. There are a number of conditions that have to be met for the annuity to be recognized for Medicaid purposes – most importantly, that the State be named as the beneficiary in first place if Fran died during the annuity pay-out term -- but if all these are met, Stanley could be almost immediately eligible for Medicaid to cover the cost of his nursing-home care. And Fran would have the security of additional monthly income for over the annuity term (which could, if she chose, be the rest of her life),

And finally, their home is also protected. Fran can rest assured that she can remain living in their home for as long as she is able. And if Stanley passes away before she does, there will be no estate recovery claim against the house.

I did suggest that she take several important steps now that her husband was in the nursing home and soon to be eligible for Medicaid: transfer the house into her name alone (to avoid it going into Stan's name if she predeceased

him, revise her Will to "disinherit" Stan (because if she passed away first and left everything to him, he would be ineligible for Medicaid until it was all spent, and the house could be lost to an "estate recovery" claim when he died), and remove Stan as the beneficiary on her IRA.

Once Fran understood how the Medicaid rules would apply to her situation, she felt as though a burden had been lifted from her shoulder. Rather than losing nearly everything, as she initially feared, with the right planning she would be able to keep nearly everything they had saved over their lifetimes and have Stan eligible for Medicaid almost immediately.

Kemp Scales, CELA,* is an Elder Law Attorney who serves clients throughout western Pennsylvania from his offices in Erie and Titusville. 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@ScalesLawOffices.com.

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

The Colonel's Corner



Items submitted by Attorney Scales' 93-year-old father, Col. J. Shelton Scales, USMCR-Retired, who lives in a senior retirement community in southern Virginia.

Three members of the local congregation were asked, "When you're in your casket, and friends and congregation members are mourning over you, what would you like them to say?"

Sam said: "I would like them to say I was a wonderful husband, a fine spiritual leader, and a great family man."

Mary said: "I would like them to say I was a wonderful teacher and servant of God who made a huge difference in people's lives."

Al said: "I'd like them to say, 'Look, he's moving!'"