



# Scales Elder Law Newsletter

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



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## Family Care Agreements

### Kemp Scales, CELA\*

I write this bi-monthly Newsletter to provide helpful information to seniors and people with disabilities in northwest Pennsylvania, as well as their family members, friends, and advocates. Recently, one reader recommended I write an article regarding care agreements. I thought that was a great idea, as in my office we often are dealing with families where a child has been caring for an aging or ailing parent for a long time.

Indeed, this is true nationwide. In the United States more than 65 million people, 31% of all U.S. households, provided care for a chronically ill, disabled or aged family member or friend during any given year and spend an average of 20 hours per week providing care for their loved one.<sup>1</sup> In my experience the great majority of these people have been providing care without receiving regular compensation and, indeed, not expecting any.

However, depending on the circumstances, it may be beneficial for both parties to enter into a written care agreement wherein the caregiver accepts payment for the care being provided and also formally assumes responsibility for that care.

This is because in the United States the only government program that will pay for long-term

<sup>1</sup> *Caregiving in the United States; National Alliance for Caregiving in collaboration with AARP; October 2010.*

nursing care is Medicaid. But unlike the federal health care program Medicare, the applicant for Medicaid must not only be elderly, blind or disabled, but also poor. So in the context of a nursing-home stay, the Medicaid program will not provide any assistance with payment until the nursing-home resident has become impoverished. (In other words, in this country we view healthcare not as a right but as a commodity.)

This means that when parents or other elderly family members being cared for reach a point where a nursing home placement is the only option, much or all of their life savings will have to be spent for their care at the nursing home. (With the average cost of a nursing home in Pennsylvania in 2010 being over \$94,000 a year, for all but the wealthiest families such impoverishment can happen very quickly.)

Now certainly the care parents receive while remaining at home is just as valuable to them and worthy of payment as the care they will get in a nursing home. With a family care agreement in place, they can pay their caregiver, and – if the document is properly drafted and the care reasonably priced – every dollar spent will count towards their “Medicaid spend down” should they later apply for benefits.

Having a written care contract in place is important to ensure that the Medicaid office will recognize these payments for what they are – a legitimate and necessary expense of the elderly

person. Without a contract in place, the Medicaid office is likely to treat these payments as “gifts” and will impose penalties resulting in a period of ineligibility for Medicaid benefits.

In addition, written care agreements can help the caregivers. From their perspective, although they are willing to provide services for free, it can seem unfair when, at the parent’s death, the caregiver who has provided several years of care receives the same inheritance as other children who have not been involved in providing any care for the parent. On the other side, if a caregiver is receiving payment but there is no contract in place which defines the care they have been working hard at providing, other children may be troubled by the additional monies the caregiver received.

Also, if you are a child who has been caring for your parent in his or her home for over two years, there is another Medicaid planning technique that may be available which would allow your parent to transfer the home to you without incurring any Medicaid transfer penalties. This is not true in all cases, but if you and your parent meet certain criteria, the exemption known as the “Caregiver Child Exception” could be a great way to ensure your parent’s home stays in the family.

The bottom line: if you are caring for a loved one or receiving care from a loved one, a family care agreement is a good idea for both parties involved, for multiple reasons. Before entering into such an agreement, or signing a deed transferring your home, be sure to consult an elder law attorney experienced in drafting such contracts and deeds and knowledgeable with respect to their effect on Medicaid qualification.

*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.*

**Note:** *With the restrictions in the Medicaid Act, it is more true than ever that “time works against you” when planning for long-term care. Nevertheless, there remain opportunities for seniors to protect a significant portion of their life savings when facing an immediate crisis, even with no advance planning. But every day of delay represents a potential \$220 of irretrievable loss, so seek advice sooner rather than later.*

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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](mailto:Info@ScalesLawOffices.com).

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## 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.*

An elderly man in Phoenix calls his son, Bob, in New York and says, “I hate to ruin your day, but your mother and I are divorcing. Fifty-two years of misery is enough! We’re sick of each other and I’m sick of even talking about this, so call your sister in Boston and tell her,” and then hangs up.

The son frantically calls his sister, who is beside herself upon hearing the news.

She immediately calls her father and practically yells over the phone, “You are not getting a divorce! Bob and I will be there tomorrow. Until then, don’t do a single thing, do you hear me?”

The father hangs up the phone, turns to his wife and says, “It worked! The kids are coming for a visit and they’re paying their own way!”

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Wisdom my father passed along to me recently: “Son, when you start getting to be close to my age, you’ll find that three things happen. The first is your memory goes, and . . . I can’t remember the other two.”