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# Scales Elder Law Newsletter

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



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## **"Keeping it in the Family" Long-Term Care Family Strategies – Part 3**

"I thought we'd have to spend almost all of our money before Medicaid would pay Harold's\* nursing home bills...you mean that isn't true?" Maude\* asked. Maude's husband, Harold, had suffered a stroke three weeks ago and was about to be transferred from the hospital to a local nursing home for rehabilitation, and might not be able to return home again. Maude knew that this was the best thing for Harold, although after 55 years of marriage she could hardly imagine the two of them not being together any more.

Not only was Maude trying hard to make this a smooth transition for Harold, but she was feeling overwhelmed by how they were going to pay for Harold's care. She was shocked when she heard from the hospital discharge planner that once Medicare stopped paying for Harold's care (whenever Harold no longer required "skilled nursing care" but in any event no more than 100 days) they would have to pay the nursing home close to \$6,500 a month. And they would continue paying until she and Harold had spent enough of their hard-earned savings to qualify for Medical Assistance (Medicaid).

Maude and Harold had worked hard to save about \$200,000, plus their home in Erie, Pennsylvania, worth about \$125,000, and their IRAs (Harold's \$75,000, and Maude's \$40,000). The rest of their savings was in cash, CDs, mutual funds and savings bonds. Harold

receives a monthly pension of \$1,500 from his former job as an electrical engineer, plus Social Security payments of \$1,100 a month. Maude, who had never worked outside of the home, received only \$500 a month in Social Security.

Fortunately the hospital discharge planner had suggested to Maude that she contact an elder law attorney to see if there was anything that could be done to help them, and Maude called my office. When we met with her I explained that under the new Medicaid laws in Pennsylvania, it has become more complicated for people in their situation to protect their life-savings from the cost of long-term care, but with the right assistance and some creative strategies, a lot could still be done.

I explained that for a married couple, Maude's IRA is considered an "exempt asset" by Medicaid and so was not at risk to pay for Harold's long-term care. In addition, Maude could keep approximately \$100,000 of their other assets, which the Medicaid rules permit the "community spouse" (the spouse remaining at home) to retain to live on. Their house, which was in both their names, was at risk if Maude died first, but we would put the house into Maude's name alone and make changes to her Will to disinherit Harold and so protect the house even if that happened. This still left about \$160,000 (Harold's \$75,000 IRA and approximately \$85,000 of their other assets) that would have to be spent down on Harold's

care before he would be eligible for Medicaid. However, I told Maude in her situation I thought we could help her protect all of the remaining \$160,000 and get Harold eligible for Medicaid almost immediately.

We would first have Maude trade in her older car and purchase a new one (good enough to last the rest of her life), as well as some household items she needed (including a new washer and dryer to replace the ones she had that were about to give out).

The remaining funds, approximately \$120,000, would be used to purchase an immediate annuity that would pay Maude, who was 75, nearly \$1,000 a month for the rest of her life. Such annuities are permitted in Pennsylvania as long as very specific requirements are met. This annuity income, added to her Social Security and the income she would be “deemed” to receive each month from her \$100,000 “resource allowance,” would bring her monthly income up to the minimum income permitted the community spouse under the Medicaid laws

By using these techniques, Harold would immediately become Medicaid eligible and Maude would have a much higher monthly income, which she could save or use for whatever they needed, for instance to make some improvements around their home (such as making their bathroom wheelchair and walker accessible) in the event Harold was able to return home.

These are new strategies and not without risks, but I assured Maude that not only would we make sure that all the Medicaid requirements are met, but that we would act as her advocate and stay with her until the Medicaid application received final approval, answering any questions that the County Assistance Office might have and appealing any potential initial denial of eligibility.

Maude was also very happy to learn that if Harold’s condition improved enough so that he did not need 24 hour care, he would probably qualify for the Medicaid Waiver

program to provide supplemental healthcare in their own home until Harold had fully recovered. The steps Maude and Harold will take to qualify Harold for Medicaid in the nursing home would also qualify him for Medicaid for “in home” care.

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\*As always, names and details have been changed to protect client confidentiality.

**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.*

We hope you find this newsletter useful and informative, but it is not the same as legal counsel. A free newsletter is ultimately worth everything it costs you; you rely on it at your own risk. Good legal advice includes a review of all of the facts of your situation, including many that may at first blush seem to you not to matter. The plan it generates is sensitive to your goals and wishes while taking into account a whole panoply of laws, rules and practices, many not published. *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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**Happy New Year from all of us at  
Scales Elder Law**