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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 2**

As soon as I heard Helen's voice on the phone, I knew it hadn't been easy for her to make the call. "It's John," she said. "He's been getting worse." Helen and John,\* both in their late seventies, were long-time clients of mine. I remembered them well, and knew that John had been diagnosed with Parkinson's disease several years ago. As we talked, it soon became clear that John needed more care than Helen was able to provide for him on her own. And without help, John would need to go into a nursing home. "Helen, I know you've been doing as much as you possibly can for John, but it may be time to get you some assistance so that both you and John are getting the help that you need. Please come down to my office right away and we'll talk more about your options."

When I met with Helen we reviewed their finances and considered what public programs might give them some assistance. Together they had about \$150,000 in investment resources (savings, CDs, and bonds) plus their modest home and Helen's \$15,000 IRA. Their only income was Social Security, John's being about \$900 a month and Helen's \$450. I told Helen that I thought John would be an ideal candidate for the "PDA Waiver program," which provides seniors who would otherwise need nursing-home care with up to 40 hours a week of care in the home paid for by Medicaid. And although they had too much money to qualify right now, I told Helen that I thought we could

get John eligible almost immediately, with their savings used to provide for Helen's security rather than much of it going to pay for John's care.

I explained that the passage of the Deficit Reduction Act (DRA) last year had created some additional obstacles for couples such as Helen and John to qualify for Medicaid, but that I thought it was still possible for them to get the care John needed without having to spend a large part of their hard-earned savings. I pointed out that some of their assets were considered exempt by Medicaid and therefore did not have to be counted. These included their house, their car, and Helen's IRA. In addition, Helen – as the "community spouse" – would be allowed to keep half of their remaining assets (up to a maximum of about \$100,000), which in their case would be about \$75,000. But most of the remaining \$75,000 would have to be paid for John's care unless we took steps to protect it.

The first step would be to consider if there were any exempt assets they needed, or would likely need in the next few years. These would include a new car, new appliances for their home, as well as any home improvements (new roof? new heater? wheelchair ramp and grab-bars?) that would help them both remain at home safely and comfortably for as long as possible. And they could also purchase pre-paid funerals for both of them. If done now, this

would all be paid for with money that would otherwise have to be spent on John's care. But I told Helen that it would be important to wait and only purchase these things AFTER John received his health assessment for the PDA Waiver Services, because spending that money sooner could reduce the amount Helen was allowed to keep for herself.

In their case, they needed a new car, and this along with some new appliances and home improvements came to about \$35,000, leaving about \$40,000 of excess resources. Because of his limited income, John could keep \$8,000 in his name. I explained that given their limited income, combined with high "shelter expenses" (primarily electric and gas), the remaining funds could be used to purchase an annuity for Helen, which would pay her about \$250 a month for the rest of her life. With these planning techniques, rather than having to spend \$70,000 for John's care, we could get John eligible for home care under the PDA Waiver program so that he could remain at home while still getting the care he needed, while Helen would have additional income guaranteed for the rest of her life.

At the end of our meeting, we made some calls to arrange for the local Area Agency on Aging to start the application process for the PDA waiver program and got the paperwork ready for purchasing the annuity. I explained to Helen that she'd need an advocate to help her through the Medicaid eligibility process, but that we'd be right there by her side and would take care of filing the application, resolve any questions or concerns with the County Assistance Office, and make sure that John received the care he needed. (And our work would also qualify John for Medicaid coverage in a nursing home should he later need 24-hour a day care.) Helen was visibly relieved to know that they would be getting the support they needed, without impoverishing themselves, in order to live at home safely, hopefully for many more years to come.

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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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### On the Lighter Side

A Bob Hope tribute.

On turning 70: "You still chase women, but only downhill."

On turning 80: "That's the time of your life when even your birthday suit needs pressing."

On turning 90: "You know you're getting old when the candles cost more than the cake."

On turning 100: "I don't feel old. In fact I don't feel anything until noon. Then it's time for my nap."