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# Scales Elder Law Newsletter

*“Caring for a loved one shouldn’t cost a lifetime of savings.”*



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## Nursing Home Care for Accident Injuries – What to do with the Settlement Money?

One year ago Ralph’s life changed forever. Driving home from his weekly trip to the grocery store in Erie, Pennsylvania, Ralph, age 75, was seriously injured when his car was blindsided by another driver who ran a red light. The accident left Ralph paralyzed from the waist down and with only limited use of his arms. He was hospitalized for over a month and then moved to a local nursing home and rehabilitation center. Confined to a wheelchair, Ralph needs assistance with most of his activities of daily living, such as getting dressed, bathing, and using the toilet. Ralph and his wife Susan, age 74, would like Ralph to move back home, but their house would require major renovations to make it accessible for Ralph. It is also impossible for Susan to lift her husband by herself, and they would need to arrange for someone to help them each day with Ralph’s care.

At the time of Ralph’s accident, he and Susan owned, in addition to their house, about \$100,000 in investments, and they each had an IRA of approximately \$25,000. Ralph receives a monthly Social Security check of \$900 and Susan’s Social Security check is \$600. Ralph’s surgeries and hospital stay were paid for in full by Medicare. And although Medicare paid for the first few weeks of Ralph’s nursing home stay, it will not cover extended nursing home care. The only government benefit designed to pay for *long-term* nursing home care is

Medicaid, the combined federal and state healthcare program for those who meet strict financial eligibility requirements.

In Ralph and Susan’s case, however, we were able to get Ralph eligible for Medicaid as soon as his Medicare coverage ended. As the spouse remaining at home (the “community spouse”), Susan was permitted to keep her entire IRA, and also could keep half of their combined assets as her “Community Spouse Resource Allowance” (CSRA).<sup>1</sup> And because Susan’s monthly income was so low, we were able to use the remaining portion of their assets to purchase an annuity for Susan’s benefit, generating about \$400 a month of additional income to her over the rest of her life.<sup>2</sup> As a result, we were able to help Ralph and Susan protect not just half but all of their combined assets as well as get Susan about \$700 each month of Ralph’s income.

Ralph now expects to recover close to \$200,000 in his personal injury settlement

<sup>1</sup> There is both a minimum and maximum for the CSRA, currently \$20,880 and \$104,400 respectively. This means that if a couple’s combined countable resources are less than \$41,760 (twice the minimum), the CSRA will be more than half, and if more than \$208,800 (twice the maximum), it will be less than half.

<sup>2</sup> Note: After the recent change in the federal Medicaid law, there are special conditions on such annuities that must be strictly followed if they are to pass muster with the Pennsylvania Department of Public Welfare.

resulting from his car accident. If he receives the money outright, he will immediately become ineligible for Medicaid because of excess resources and will have to spend much, if not all, of that money for his nursing home care before Medicaid will again pick up the tab. "It sure doesn't seem fair," says Ralph, "After everything we've been through, to finally get a settlement and have to just spend it all on my nursing home bill! Isn't there anything we can do?"

There are options for retaining Medicaid, I explained to Ralph and Susan, but for people over the age of 65 it can be somewhat complicated. For people under the age of 65, federal law specifically permits personal injury settlements to be placed in a special type of trust, either a "d4A payback" or a "d4C pooled" special needs trust, to be used for the benefit of the person with disabilities without losing his or her Medicaid coverage. Such trusts can be an excellent way for an individual with disabilities to get the maximum long-term benefit from a personal injury settlement.

However, this is not an option for Ralph due to his age. For someone like Ralph, putting money into a trust for his own benefit, or giving the money to his family, would make him ineligible for Medicaid for a certain period of time (based on the amount of money he transferred and whether or not he was in a nursing home during any part of that five-year period). Ralph's personal injury attorney also talked with him about the possibility of a "structured settlement," a form of annuity which would provide him with a certain amount of income each month for the rest of his life, as opposed to taking it as a lump sum. However, this would not be of much value to Ralph because all of his income would have to go toward the cost of his nursing-home care, with Medicaid only making up the difference.

In Ralph's case his best option regarding his settlement may be the simplest option – just spend the money. In fact, in Ralph's case, his \$200,000 settlement proceeds could make it possible to do the necessary home renovations so that he could return home safely. He and

Susan could build a first-floor bedroom and bathroom, and also install a wheelchair ramp or a chairlift for a safe way for Ralph to enter and exit their house. The rest of his settlement could be used to purchase a wheelchair accessible van and anything else that Ralph might need to make his life at home as comfortable as possible. As soon as Ralph's money has been spent, he would then be an excellent candidate for the Pennsylvania Department of Aging's Waiver Program, through which Medicaid provides healthcare assistance in the home.

When someone eligible for Medicaid comes into money, whether it's from a litigation settlement, an inheritance, or other means, prompt planning is critical to ensure that his or her Medicaid eligibility is protected. By doing this, the settlement money can be used to supplement that person's basic medical care and so obtain the maximum long-term value from those funds. The individual's age, marital status, and family situation are all factors in determining what options are available and appropriate. A qualified elder law attorney will be able to explain what those choices are in any particular situation.

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**Mark your calendars.** Attorney Scales will be speaking at the Caregiver Workshop sponsored by Corry Hospice & Home Health on May 31, 2008 at the Bracken Room, Corry Higher Ed Counsel building, Corry, Pennsylvania. This is an all-day event, with Attorney Scales' presentation scheduled for 1:30 p.m.

Kemp Scales will be presenting a seminar at the Gertrude Barber Center in Erie on June 4, 2008 beginning at 6:30 pm. The event is open to the public but is geared specifically to seniors who are caring for an adult child with special needs. *To reserve a seat please call our office at **888-827-2788**.*

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Kemp Scales, CELA,\* is an Elder Law Attorney who serves clients throughout western Pennsylvania from his offices in Erie, Titusville, and Pittsburgh. He frequently makes presentations to professional and civic groups. If you would be interested in having attorney Scales speak to your group, please contact us at toll free at (888) 827-2788

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