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Scales Elder Law Newsletter

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



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Providing for a Child with a Disability When the Parent Needs Long-Term Nursing-Home Care

Last month's newsletter explained how Helen, a woman in her 70s who had recently been diagnosed with Alzheimer's, could protect all of her life savings for the benefit of her disabled son Jack and qualify immediately for Medicaid if she later needed nursing home care.

Her friend Joan was very interested in what Helen and I discussed in the meeting, and she asked about what steps she might be able to take to prepare for her own future, should her health start to decline. "What will happen if I later need nursing-home care?" asked Joan. "You said that Medicaid has special rules for 'disabled children,' but I don't have any children. Lucy, who has Down's Syndrome, cannot manage by herself and will always need someone to care for her, but she is my niece, not my daughter. At the rate of \$70,000 or more a year, everything I have would be gone in just a few years, and then what would be left for Lucy?"

"I know you have a lot to be concerned about right now," I tell Joan, "but, just as I told Helen, paying for long-term care does not have to be one of them."¹ Because her niece, Lucy, meets the legal definition of "disabled," if Joan ever needs long-term care in a nursing home,

she can transfer her assets into a special type of a trust (called a "c2B4" Trust) which will allow her to qualify for Medicaid immediately to pay for her nursing-home care. Unlike outright gifts to persons with disabilities, which will only avoid creating any period of ineligibility if made to a disabled "child," gifts to a c2B4 trust can be made to any individual under age 65 with a disability.

What is more, the money in the trust will not affect Lucy's own eligibility for such public benefits as Medicaid and SSI. This means that Medicaid can continue to be available to pay for Lucy's medical care, and the trust can then be used to supplement this basic care to enhance Lucy's quality of life. Transfers of money into a trust which meets the specific c2B4 requirements can be done with no "transfer penalty" for Medicaid. As a result, Joan will be able to get the care she needs without first having to spend all of her life savings. At the same time, the assets Joan put into the trust for Lucy's benefit will not affect Lucy's Medicaid eligibility, and therefore will be available for Lucy's benefit for many, many years to come.

Joan was very relieved to hear that she could now just focus on getting care, both for herself and for Lucy, without having to worry about how to pay for it.

It would also be possible for Helen and Joan to transfer an interest in their homes to

¹ Indeed, for people in Joan's situation, trying to navigate the Medicaid system can seem like Ulysses trying to sail between the sea monster, Sylla, and the maelstrom, Charybdis.

their son or trust for their niece in order to avoid “any estate recovery” claim after their deaths. While this would have to be done carefully to make sure that all the legal requirements are met, with the assistance of a qualified elder law attorney both Joan and Helen should be able to protect their homes and their entire life savings from the cost of long-term care, provide for their disabled loved ones far into the future, and get the healthcare they themselves need.

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. Still, every day of delay represents a potential \$220 of irretrievable loss.*

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.

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

Upcoming Seminars

Want to learn more? Attorney Scales will be presenting seminars on Long-term Care Planning as follows:

September 27, 2007 at Niagara Village in Erie, Pennsylvania. For more information, or to register for this seminar, call Keith Galas at (814) 838-1699.

On the Lighter Side

An elderly couple had dinner at another couple’s house, and after eating the wives left the table and went into the kitchen. The two gentlemen were talking, and one said, “Last night we went out to a new restaurant and the food was really great. I’d recommend it very highly.”

The other asked, “What’s the name of it?”

The first man thought and thought and finally said in frustration, “What’s the name of that flower you give to someone you love? You know... the one that’s red and has thorns.”

“You mean a rose?”

“Yes, that’s it!” replied the man. He then turned towards the kitchen and yelled, “Rose, what the heck’s the name of that restaurant we went to last night?”