

## **“Estate Planning for Parents of a Child with Special Needs”**

**Kemp Scales, CELA\***

There are certain questions I am frequently asked regarding long-term care planning and Medicaid. I will be sharing answers to some of these common questions, as these may be of interest to many of our readers.

**Q: “I have two adult children – a son and a daughter. My Will leaves everything equally to both of my children. However, my daughter has a developmental disability. She lives in a group home and works in a sheltered workshop. She receives both Supplemental Security Income (SSI) and Medicaid. I recently learned that any inheritance she received could cause her to lose her benefits. For that reason, I am considering changing my Will to leave everything to my son. I trust my son completely and he knows that he will be responsible for taking care of his sister and making sure that she has everything she needs. Is this change a good idea?”**

**A:** It is good that you recognize the importance of protecting your daughter’s eligibility for important government benefits like SSI and Medicaid. And it is true that both of these benefits have strict income and asset limits, and any inheritance would likely cause your daughter to become ineligible, at least for a while.

Supplemental Security Income (SSI) provides monthly payments for individuals who are aged, blind, or disabled and who meet the financial eligibility criteria. SSI is intended to cover basic food and shelter expenses. The amount a person receives in SSI depends on his or her other income. The maximum SSI payment in 2014 is \$743.10 a month. SSI has a resource limit of \$2,000 for a single person and \$3,000 for a couple. Some assets are exempt, including a house, one car, a pre-paid burial fund, and basic household goods and personal items. However, any cash, bonds, stocks, CDs, etc., will count. If your daughter receives money that puts her over the \$2,000 limit, she will be ineligible for SSI until the money is gone and she is below the limit again.

Medicaid provides healthcare coverage to people who are aged, blind, or disabled. Medicaid also has strict asset and income limits. There are several ways to qualify for Medicaid, but in Pennsylvania, anyone who receives SSI benefits (even if just one dollar a month) is automatically eligible for full Medicaid benefits. And because healthcare can be so expensive, often the Medicaid healthcare benefit is more important than the monthly SSI check. So it is critically important that your daughter will not accidentally lose these benefits.

As you correctly point out, if you leave anything more than a nominal inheritance directly to your daughter, it would put her over the \$2,000 asset limit for SSI, causing her to lose those benefits and very possibly her Medicaid benefits as well. Depending on her needs, an inheritance might quickly be exhausted if it has to be used to pay for medical care as well as food and shelter expenses. However, rather than leaving everything to your son, it may make more sense to leave your daughter’s share to a “special needs trust.”

A special needs trust is a trust set up to hold funds for the benefit of a person with disabilities. The money in the trust does not count towards the resource limit for SSI or Medicaid purposes. A knowledgeable and experienced trustee manages the trust and makes sure it is used for things your daughter needs. The trustee also makes sure that distributions from the trust will not cause your daughter to lose SSI or Medicaid. This provides much greater protection for your daughter than simply leaving everything to your son. Even with the best of intentions, something could happen to your son (bankruptcy, death, divorce, medical expenses, etc.) and your daughter's entire inheritance could be at risk. With a trust, the funds are completely protected from anything that might happen to either of your children.

If you want your son to remain closely involved in your daughter's care, you could consider naming him as trustee or co-trustee of the trust. However, administering a special needs trust correctly requires a good understanding of government benefit laws and trust laws, so your son would likely need some professional assistance with this. An alternative would be for your son to work with a professional trustee in an "advisor" role. There are a number of different ways to set up a special needs trust.

After you set up a special needs trust, you will also need to change your Will to leave your daughter's share to her trust, rather than to her directly. The same goes for any life insurance policies, retirement accounts, or anything else that has a beneficiary designation. Beneficiary designations are not controlled by the terms of your Will, so these need to be updated separately.

A special needs trust is one example of how proper planning can make a big difference for your loved ones down the road. A qualified elder law / disability law attorney can best advise you on what steps make most sense in a particular situation.

*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:** Working with the long-term care system we have in this country, seniors and their families need to understand that despite the restrictions in the Medicaid law, it is almost never too late to protect part or your remaining assets, even when facing an immediate crisis and with no advance planning. Whether you are 75 years old and living in your own home, or have an 85-year-old spouse in a nursing home, there are steps you can be taking now to preserve part – and often a very significant part – of your life savings otherwise at risk of being spent on your nursing care. But it is more true than ever that "time works against you." *Every day of delay in a crisis can result in \$275 or more of irretrievable loss*, so it is important to contact a knowledgeable and experienced elder law attorney for advice sooner rather than later.

~~~~~  
*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 offices in Erie and Titusville. He can be reached toll-free at (888) 827-

2788 or by e-mail at [Info@ScalesLawOffices.com](mailto:Info@ScalesLawOffices.com). Scales Law Offices, LLC has an Internet presence at [www.ScalesLawOffices.com](http://www.ScalesLawOffices.com).

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