

## Dad is in the Nursing Home: Is It Too Late for Him to Protect any of His Life Savings?

Kemp Scales, CELA\*

The most common *misunderstanding* I find among people in the community concerning long-term care Medicaid is the belief that once they are in a nursing home it is too late to protect any assets.

THIS IS NOT CORRECT, not by a long shot.

About half the asset planning work we do in our office is for clients in a “crisis” situation – that is, with a loved one (typically a spouse or parent) who is in or about to enter a nursing home. For example, a typical first contact for us would be a daughter calling to say her father is in the hospital and will be going into a nursing home at the end of the week, and she knows there’s probably nothing that can be done, but someone told her to call us.

We are very happy to get those calls. Not that we’re happy to hear someone’s health has declined to the point that he or she needs a nursing-home level of care, but because we can almost always help families in these “crisis” situations. Indeed, we can typically help them get the care they need for their loved one while at the same time protecting 30% to 90% of the assets otherwise at risk of being spent down on their loved one’s nursing-home care. Again, this is almost always true even without advance planning – not five years, not five months, not even five days.

Unfortunately, there are many more folks in this situation we cannot help – not because of the law, or because of their particular situation, but simply because they do not call. And this is the frustrating part, that there are so many seniors out there who we (or, indeed, other experienced elder law attorneys) could help if they would only call, but they don’t, because they think it’s too late to do anything when it’s not.

Over the past fourteen years I’ve given scores of talks to various groups in half a dozen counties in northwest Pennsylvania and have written a monthly article in *The Tri-State Senior News*, and in every talk I give and every article I write I try to make it clear to my listeners or readers that there are options available to them under the law to protect a part – and usually a significant part – of their assets from the risk of having to be spent down on their long-term care, even in a crisis, with no advance planning. Indeed, at times it seems to me I must have reached nearly every person in northwest Pennsylvania with this message. But, in fact, I haven’t even come close, for nearly all of the people who come to see us today have the very same questions and very same misunderstandings about Medicaid and nursing homes that folks had fifteen years ago.

So, in this and the next few articles I will provide some stories based on the types of calls we get every week where Medicaid planning is an option *right now*.

\* \* \* \* \*

When Kathy called us about her mother, Ellen, her concern was immediately evident in her voice. Her mother, who was 79 years old, had tripped while going down her front steps and broken her hip. She had surgery followed by several weeks of rehabilitation in a nursing home, and while that cost had been covered by Medicare, the nursing home had just told Kathy that Medicare would no longer pay and her mother would have to start paying privately, at \$8,000 a month.

Kathy, who at age 54 is still young but no spring chicken, was her mother's only child and had been frantically trying to arrange to get the care her mother needed so that she could come back home and not remain in the nursing home. Although her mother had made much progress since her fall, she was still going to need a lot of help with tasks such as bathing and getting dressed, meal preparation, household chores, etc. Kathy wondered if her mother would ever be as independent as she had been before her fall.

Ellen had lived in the same house for over 40 years. Kathy thought it was worth \$150,000, and the mortgage had been paid off years ago. Her mother had monthly income of \$1,450 (\$950 Social Security plus a \$500 pension from her deceased husband), and her assets other than her house totaled \$125,000 (bank accounts, CDs, savings bonds, and the cash value of her life insurance). Although Kathy had talked with her mother about moving into an assisted living facility, the thought of leaving her home was very upsetting to Ellen. In addition, assisted living, while certainly less expensive than a nursing home, would still cost nearly \$4,000 a month, and at that rate all of Ellen's savings would be gone in just a few years.

When I visited Ellen to talk about some of her options for getting the care she needed, she was initially very discouraged. "I always wanted to leave Kathy the house and some inheritance after I'm gone, but now I'm afraid it is too late. Friends tell me I'd have to wait five years before I could qualify for Medicaid if I gave anything away, and I can't afford to pay for everything myself for that long!"

Ellen had every reason to be concerned. In this country (unlike just about every other industrialized country in the world) we do not have a universal health care system, and so Ellen, not having long-term care insurance (as is true of the great majority of seniors these days) and with her limited Medicare nursing home benefit having run out, would simply pay the nursing home each month until she was down to just a few thousand dollars (which in her case would take about 22 months) and she was certifiably "needy." At that point she would be eligible for Medicaid to pay all of her nursing home bill not covered by her income.<sup>1</sup> And for a single person like Ellen, her house would probably have to be sold after her death to

---

<sup>1</sup> Medicaid in Pennsylvania also has a "waiver" program that will pay for up to 30 to 40 hours a week of in-home care for impoverished seniors like Ellen whose monthly incomes are below a certain amount (currently, \$2,163). However, in Pennsylvania Medicaid does not currently pay anything for care in an assisted living facility or personal care home. (A future article will look at an important government benefit available to Ellen that could go a long way towards covering the cost of extra help at home or the cost of an assisted living facility.)

pay the “estate recovery claim” by the Department of Public Welfare for all the long-term care Medicaid she had received.<sup>2</sup>

However, even for someone like Ellen, there are ways to protect much of her life savings and even her house, and still qualify for Medicaid to cover the cost of her care. In a crisis situation for a single person, gifting is almost always going to be a necessary part of any asset protection plan. But first, it’s important to consider spend-down opportunities that can benefit Ellen beyond simply paying a third party for her care.

One thing I talked about with Ellen and Kathy was any needed improvements to the house to make it easier for Ellen to return home, such as grab-bars in the bathroom, or a ramp up to the front door. As a homeowner, she should also consider repairs and renovations to the house (such as a new roof, new windows, painting or siding).<sup>3</sup> This would also be a good time for paying off bills; replacing outdated household appliances; getting a prepaid funeral; perhaps getting a better car. Expenses like these can be paid for without resulting in any Medicaid ineligibility.

Another planning strategy I discussed with Ellen was to set up a care contract with her daughter, Kathy. While the Medicaid rules presume that any care supplied to a parent by a child is done for free, this presumption can be overcome by the use of a written care agreement. A properly drafted agreement will specify just what items and services the child agrees to provide for the parent, and how much the parent agrees to pay the child in return (which should be based on the actual cost of hiring such care in the community where the parent lives). So, for example, if Kathy was able to help Ellen in the mornings with getting up and dressed, doing the routine cleaning, and taking care of grocery shopping and other household chores, the money Kathy was paid for this assistance would not be treated by Medicaid as a gift to Kathy and so could accelerate Ellen’s eligibility for Medicaid.<sup>4</sup> Kathy said that she had already looked into rearranging her work schedule to give her time in the mornings to help her mother if necessary. (While Kathy at first felt strange in taking money from her mother, they were relieved that a care contract might be a good solution for them.)

In the right situations, looking for creative solutions within the family to provide care can be an ideal way for aging parents to get the care they need without having to go through an entire lifetime of savings. The key is to help the elderly clients use their resources for their greatest benefit during their lifetime, allowing them choices in the care they receive and

---

<sup>2</sup> If Ellen were to simply give away her home or her money to Kathy, there would be a significant period of ineligibility for Medicaid and she could end up needing care but not having any way to pay for it.

<sup>3</sup> For a single person such as Ellen, making improvements to the home needs to be part of an overall asset-protection plan that gets the house out of her name alone in order to protect it from a Medicaid “estate recovery claim” after Ellen’s death. This will be discussed in next month’s article.

<sup>4</sup> The payments Kathy received, however, would be taxable income to her.

keeping options open for the future. In addition, nearly all parents hope to pass some inheritance to their children, and this is another benefit of proper planning.

Next month's article will continue Ellen's story and discuss how she can make gifts without running afoul of the Medicaid law.

\* \* \* \* \*

*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, there remain opportunities for most to protect a significant portion of their life savings, even when facing an immediate crisis, with no advance planning. Whether you are 75 years old and living alone at home, or you are 85 and have a spouse in a nursing home – there are steps you can be taking now to preserve a significant portion of your assets otherwise at risk of being spent on your nursing care. But it is more true than ever that “time works against you,” so it is important to contact a knowledgeable and experienced elder law attorney for advice sooner rather than later.*

---

Kemp Scales is a Certified 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.