

Providing for a Child with a Disability when the Parent Needs Long-Term Care

By Kemp C. Scales, CELA[†] and Norma Scales Schmidt, Esq.

Ever since she was diagnosed with Alzheimer's disease, Nancy's* constant worry has been: "Who will take care of Jack* when I am no longer able?" For caregiver parents of an adult child with a disability, planning for the future has its own unique challenges. The story of Nancy and Jack illustrates some of these issues.

Nancy, of Pittsburgh, Pennsylvania, is 73-years-old and a retired schoolteacher. Widowed for nearly 10 years, she is fortunate to be able to live comfortably by supplementing her Social Security retirement income and pension with the close to \$200,000 she carefully saved over the years to finance her retirement. Nancy was recently diagnosed with early-stage Alzheimer's disease. Although she knows that this will mean a loss of independence for her at some point, she is most concerned about her son, Jack, who was in a car accident several years ago and was seriously injured. No longer able to work and having exhausted most of his savings on his medical bills, Jack survives on his monthly Social Security Disability check and the help he gets from his mother.

With nursing homes in Pennsylvania averaging over

\$80,000 a year, Nancy is very concerned that her entire life savings would soon be wiped out, with nothing left to support Jack, if her illness progressed to the point that she can no longer care for herself. Nancy made an appointment with an elder law/ disability law attorney to discuss what steps she could take to make sure that she would be able to get the care she needs without putting all of her life savings at risk. She explained that her other two children were financially secure, but they were all concerned about Jack's welfare. She had hoped to leave most of what she had to Jack after her death so that he could live more comfortably. But at \$80,000 a year or more, she would go through her entire lifetime of savings in just a few years if she needed nursing home care.

Nancy's attorney was able to put her mind at ease regarding paying for long-term care. If Nancy ever needed assisted living, her income, supplemented by her savings, would go a long way to pay for that care, which typically costs about half of what a nursing home cost. And if she later needed nursing home care, Nancy would be able to become eligible for Medicaid almost immediately. This is

because Medicaid – which is the only government program that pays for long-term nursing care – has special rules for transfers to people with disabilities.

Because Jack is receiving SSDI, he qualifies as a "disabled child" for Medicaid purposes, which means that transferring assets to him would not create any ineligibility period for Nancy, if she later needed to enter a nursing home and apply for Medicaid. And because Jack was mentally competent and able to manage his own money, Nancy could transfer assets directly to him.

"Nancy is very concerned that her entire life savings would soon be wiped out, with nothing left to support Jack, if she can no longer care for herself."

If Jack were not able to manage his own funds, or if he were eligible for needs-based government benefits with strict income and asset limits such as Supplemental Security Income (SSI) or Medicaid, there are also certain types of trusts that could be used to hold the funds for Jack's benefit. If the strict legal requirements were met, transferring money into such a trust would not cause Nancy to be ineligible for Medicaid to pay for her long-term care. It would also not interfere with Jack's eligibility for needs-based benefits.

It was certainly a relief to Nancy to learn that she could qualify for Medicaid immediately if she ever needed long-term care (either at home or in a nursing home) and the money transferred to Jack could be kept to help pay for anything else that Nancy might need as well as provide extra funds for Jack.

"You mean I wouldn't have to wait five years to become eligible for Medicaid?" asked Nancy. She had heard from friends that transferring

assets would result in a five-year period of ineligibility for Medicaid. However, although there have been some changes in the law that makes it more complicated for seniors needing nursing home care to qualify for Medicaid, the special rules regarding "disabled children" have not changed, and so Nancy would be able to qualify for Medicaid immediately with no penalty and no waiting period. **CG**

* This is a hypothetical scenario and any resemblance to actual people is coincidental. 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/ disability law attorney.

Kemp Scales, CELA,[†] and Norma Scales Schmidt, Esq., of The Elder Law Office of Kemp Scales, serve clients throughout western Pennsylvania from offices in Pittsburgh, Erie, and Titusville. They can be reached toll-free at (888) 827-2788 or through their website at www.ScalesElderLaw.com. Kemp Scales is the western Pennsylvania representative of the Special Needs Alliance, a national organization of leading disability attorneys. More information is available at www.specialneedsalliance.org.

[†] Certified as an Elder Law Attorney by the National Elder Law Foundation as authorized by the Pennsylvania Supreme Court.

www.specialneedsalliance.com



Make sure he's always protected.

Special Needs Alliance

Special needs require special lawyers.

He's out to slay dragons. So are you: You'll do everything possible to make sure he lives happily ever after.

Planning for the future care of a special needs child demands specialized legal and financial knowledge. You need the wizardry of a Special Needs Alliance lawyer – someone who will use Disability and Public Benefits Law resources and expertise to secure the best possible quality of life for your child.

The Special Needs Alliance connects you with a disability lawyer who can help you maintain public benefits for your child and tailor an estate plan that protects your life savings.

Together we'll secure his fortress. Contact us today.

The Elder Law Office of Kemp Scales
(888) 827-2788
www.scaleselderlaw.com
Representing the SNA in western Pennsylvania
Offices in Pittsburgh, Erie, and Titusville