

Ask the ElderCare Lawyer

**By Sanford J. Mall,
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Mall, Hamilton and Associates, P.C.

Ask the ElderCare Lawyer will address your questions in areas relating to estate, probate, elder law, Medicaid, Medicare, and ElderCare legal advocacy and counseling. If you wish to have your questions answered, please send them to Sanford J. Mall, 31000 Northwestern Highway, Suite 220, Farmington Hills, MI 48334.

This month I start out with a strong word of caution. If you or someone you know is in need of ElderCare Legal planning, Medicaid asset protection planning, or estate planning – BE CAREFUL! In the past few months people have reported sad stories of being hurt by following bad information. First, these areas of law can be complicated. Second, the rules often change – in fact; the Medicaid rules are changing as I am writing this column! Finally, when seeking the advice and counsel of a professional, how do you know that he or she is really qualified to effectively serve your needs?

Some of the biggest problems we have seen in our office recently include improper sales of so-called “Medicaid-Friendly” annuities, legal documents sold by trust mills (sometimes without the aid of an attorney), and estate plans that do not work because funding was not done properly. It is very important to do your planning. As the Terry Schiavo case in Florida has reminded us – doing proper planning can help avoid a world of trouble and heartache.

Please, make sure the advisors you choose to work with truly have your best interests in mind. Make sure they are willing to work with your other trusted advisors and family members. Do not allow yourself to be intimidated. When in doubt – check them out! It does not take a great deal of extra effort to help protect yourself and make sure you do not become a victim.

QUESTION – *My aunt is 99 years old. I am her Conservator. She is in a nursing home paying privately and has approximately \$150,000 in an annu-*

ity and another \$100,000 in stocks and mutual funds. An attorney told me I should cash out my aunt's stocks and mutual funds and have him help me buy another annuity. That lawyer told me that his plan would allow my aunt to receive Medicaid the same month. Is he right? Is this really legal?

ANSWER – There are many reasons that I can think of for this plan not to work. First, the income stream alone is enough to disqualify your aunt from Medicaid. Even if that lawyer is thinking of a type of annuity that pays out minimal monthly payments, under new proposed rules, some or all of the balance left in the annuity at your aunt's passing may need to be used to reimburse the State. As your aunt's Conservator, your actions are under the supervision of the Probate Court. If you are considering the annuity, I suggest you get the Probate Court's approval first.

I also suggest you figure out the tax consequences of selling the stocks and mutual funds. Further, ask whether you can get your aunt's money back if the plan does not work as you were told. Finally, find out how much commission is being paid to the person recommending this plan.

QUESTION – *My grandmother owns a home and has lived in a nursing home for four years. She is presently on Medicaid. She would now like to sell her home but is afraid of losing her Medicaid. Is there a way to use a trust to do this?*

ANSWER – Yes. There is a special trust that may allow the proceeds to be protected. This specific trust is authorized under federal law and allows a person over age 65 to transfer otherwise countable assets into a pooled-accounts trust. In Michigan, the pooled accounts trusts are all connected with charities, generally to benefit individuals with disabilities. One feature of such a trust is the provision that the charity keeps any funds remaining in the trust when the beneficiary dies. This trust may meet your grandmother's needs. However, there are other planning options your grandmother may consider.

In your grandmother's case there may be a better alternative. If, for example, you have also lived in her home and cared for her (even though she has now

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been out of the home for the last four years) your grandmother may be able to transfer ownership of the home to you without causing a Medicaid penalty. If you then sell the house, the sale proceeds would not effect your grandmother's Medicaid eligibility. Even if you do not qualify for such a transfer of ownership, there may be other asset protection methods that may work better in this case.

Your question raises some additional questions:

- Does your grandmother have a

Guardian or Conservator?

- Do you or someone else have authority to act on her behalf under power of attorney?
- Are there other family members (i.e., do you have siblings) to consider?



Remember, taking any action based on the above information is at your own risk. The Medicaid rules are complicated and changeable and without qualified legal counsel any action taken can easily create more problems than it solves.

55+ Community Activities

Wayne County

■ Dearborn

Recreation – Senior Services 15801 Michigan Ave./Dearborn, MI/48126 For complete event information call 313-943-2412 unless otherwise noted.

- **Thursday Blood Pressure Checks** – 8:30-11:30.
- **DTE Storm Safety** – Apr., 27th, 10:30. Register in advance.
- **Alzheimer Support Group** – May 3rd, 1pm. Register in advance.
- **Prescription Relief** – May 4th, 10:30. Register in advance.
- **Massages** – May 10th and 19th. \$10/pp. Register in advance.
- **Sleep Disorders Speaker** – May 11th, 10. Register in advance.
- **Hearing Loss Clinic** – May 12th. Hearing Aids checked; cleaned. Register in advance.
- **Penny Bingo** – May 17th, 10:30. Register in advance.
- **Blue Pigs** – May 27th, 11. Limit 200 people. Register in advance.
- **Diabetes Support Group** – May 31st. Register in advance.

■ Inkster

2000 Inkster Road/Inkster, MI/48141 For complete event information call 313-561-2382 unless otherwise noted. For trip information please call June Patterson at 313-561-2654.

- **Shopping** – Tues., May 3rd, Cherry Hill Plaza; Thurs., May 5th, Meijer/Randazzo; Tues., May 10th, Target/Farmer Jack; Thurs., May 17th, Cherry Hill Plaza; Tues., May 24th, Westborn Plaza; Thurs., May 26th, Basic Market; Tues., May 31st, Wal Mart. Transportation: 313-561-2650.
- **Focus: HOPE Distribution** – Thurs., May 12th. Call for details.
- **Commodities Distribution** – Thurs., May 19th. Call for details.

■ Southgate

Southgate Senior Center/14700 Reaume Parkway/Southgate, MI/48195 For complete event information call 734 246-1337 unless otherwise noted.

- **Pancake Breakfast** - May 1st, 9-1. \$3/pp. Call for details.
- **Mondays** – Lunch, 11:15; Euchre, Noon.
- **Tuesdays** – Lunch, 11:15; Pinochle, Noon; Arts/Crafts, 10-3.
- **Wednesdays** – Lunch, 11:15; Bingo, Noon.