# EXCERPTS FROM

# *Be Nice to Me—I Pick Your Nursing Home!*

## How to Provide for Your Parent's Care without Going to the Poorhouse or the Nuthouse

by

**Yale S. Hauptman, Esq.**

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# Preface

Facing the enormity of long-term care, whether it be the financial, health-care, emotional, or psychological issues, is so overwhelming. As an elder law attorney, when I sit down with seniors and their families to explain how we can help them and guide them through that journey, we cover a lot of ground. There are so many factors and scenarios to consider. Planning for long-term care sometimes feels like trying to hit a moving target. Families rarely process it all in one sitting. It usually takes time and repetition to really understand what steps you need to take and why.

I know because I was once in their shoes—in your shoes. Nearly twenty years ago, I was a young attorney representing clients involved in motor vehicle accidents, what is known as personal injury law. I was a novice when it comes to long-term care and what was then a very new field of law called elder law. I also had the good fortune to have wonderful parents who paid for my college and law school education. Of course, this made my parents my clients for life for all legal matters, and that is how I stumbled on long-term care and the legal issues it raises.

My parents were caring, at the time, for both my grandmothers, who lived with them. When my paternal grandmother could no longer live at home, my parents were forced to move her to a nursing home. They turned to me for help getting through the daunting Medicaid process. A few years later, my maternal grandmother entered an assisted living facility, and for the next six years bounced from assisted living to hospital to nursing home and back again as her health steadily declined, until finally she, too, remained in a nursing facility.

That is how my family became my first client. I experienced the same sense of confusion and frustration that an increasing number of families suffer through every year, that my law firm and I help our clients with each and every day.

Yet, there are so many more Americans who we never reach, who don't know that there is help out there and don't know where to turn. It is for those people that I wrote this book. Many of the essays in each chapter are short real-life stories—some are what I would call success stories, and some nightmare stories. My purpose in telling them is not to provoke discussion or thought about long-term care, but to motivate you, the reader, to take action now. Providing care for an aging loved one can be one of the most trying times in anyone's life, but it can be so much easier to get through if you are prepared for it and tackle it head on.

Finally, I want to acknowledge and thank all those who have opened up to me and shared their stories. It has been a privilege to work with so many who have allowed my law firm and me to be a resource for families facing an uncertain future due to long-term care needs.

*Yale S. Hauptman*
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# Chapter 1

# Introduction

## The Difference between Elder Law and Estate Planning

When a new client comes to see us, very often the focus of attention begins with the will and estate plan.

Our clients will frequently say, "I want to make sure my assets pass to my family the way I want and that it be done with a minimum of taxes and other expenses."

Sometimes, when I meet someone and tell them that I am an elder law attorney, they invariably reply, "Oh, you do wills and trusts, right?"

So I explain the difference between elder law and estate planning, as follows: An estate plan covers the scenario of, "What happens when I die?" In the case of your assets, how will they be distributed and to whom, and can we do it minimizing estate and inheritance taxes through the use of wills and trusts.

But in today's world, increasingly, the bigger, more difficult question is, "What happens if I live?" By that I mean, what happens if I live but am not healthy and have increased health-care costs and need to rely on others for assistance, either temporarily or on a permanent basis. The estate plan does not address this need. An estate plan can help you answer the first question, but a long-term care plan can help you answer both the first and second questions.

Let's put it another way. An estate plan insures that if you have assets when you die they will be passed in the manner you wish. The key word is "if." The plan will not, however, guarantee that there will be anything left at that time to pass. Your assets could be mostly or entirely wiped out by a lengthy illness, hospital, and/or nursing home stay, leaving your spouse and other heirs with nothing.

## Medicaid: The State's Bizarro World?

You may be a fan of Superman or, like me, Seinfeld, and in that case, are familiar with the term "bizarro" The term is part of popular culture. *Wikipedia's* definition of bizarro is *a weirdly mutilated version of anything*. I am fond of telling clients that entering the "Medicaid world" means one must throw out logic and lifelong habits, which can get you in trouble when attempting to obtain Medicaid benefits. I explain to our clients that much of what we tell them to do is necessarily counterintuitive to what they have done their whole lives because they are entering the bizarro world of Medicaid. Allow me to explain.

I had a conversation last week with a married couple for whom we are preparing a Medicaid application. John is in a nursing home, and Mary is healthy and living at home. I explained to them that Mary can keep half of their countable assets, in their case $75,000, but that they must spend down to below that dollar amount by the last day of the month directly preceding the month we want to qualify John for Medicaid.

I have had this conversation numerous times with clients in John and Mary's situation, and know all too well that this simple instruction is not always followed. The largest part of most spend downs typically goes to the nursing home. But, as most people do, myself included, we wait until we get a bill before we pay it. If I owe you money, I'm not going to chase after you for a bill. Whenever you get around to it and invoice me, then I'll pay it. The longer the money stays in my bank account, the happier I am.

However, this can get you into big trouble and cost you tens of thousands of dollars if you wait for the nursing home bill. If we want John to be eligible for Medicaid next month and we know that he owes the nursing home $20,000 for the past two months of care, but the nursing home hasn't yet presented Mary with a bill, it does not matter that Mary and John legitimately owe the facility the money. If that $20,000 is still sitting in their bank account next month, causing their account balance to exceed $75,000, John cannot qualify for Medicaid. Even worse than that, he can't even qualify for next month. He has to wait until the following month, which means they will owe the facility another $10,000, leaving Mary with $65,000 to live on.

That is why we are so focused on getting our clients to change their habits, which isn't easy to do. Their entire lives John and Mary have paid their bills—after the vendor presents them with an invoice. However, I tell them they must get the nursing home to bill them ASAP. Who chases after someone to whom they owe tens of thousands of dollars? However, that's the way it goes in the bizarro world of Medicaid—and why entering this strange land without a knowledgeable guide can literally cost you tens of thousands of dollars.

> ***Elder Care Point:*** *Entering the "Medicaid world" means one must throw out logic and lifelong habits, which can get you in trouble when attempting to obtain Medicaid benefits.*

## The Team Approach to Long-Term Care Planning

Navigating through the long-term care system usually requires a team of advisors. Although the elder law attorney is, no doubt, a pivotal person, the accountant, financial advisor, and insurance specialist are equally important. And when one piece isn't properly in place, it can be catastrophic. Betty's story is illustrative.

Betty and Tom decided to sell their home in which they raised their four children. They invested the majority of the proceeds in annuities and decided to rent and live on the income from their investments and Social Security. Tom, however, had already exhibited some signs of dementia.

After the sale of their home, Tom's condition deteriorated rapidly. He became restless and, at times, physical with Betty, who weighed a hundred pounds less than Tom. She could no longer keep him at home. Betty came to us for help, thinking she could get Tom on Medicaid in a nursing home. She didn't realize that the $300,000 she invested in annuities was now a countable asset and would have to be spent down to $109,560 before Tom could get Medicaid.

Betty was distraught. "I am only sixty-five. How can I live on $100,000?" she asked me.

I told her not to worry. She could cash in the annuities, buy another home with that money, and keep it, as an exempt asset. After Tom qualifies for Medicaid, she could then resell the home if she wanted, to reinvest for income again.

Then we examined the annuities. That's when I discovered the surrender charges of 7% that Betty would have to pay. Although there was a provision that waived the charges if the owner needed to cash them in for long-term care expenses, the problem was that Betty, and not Tom, was the owner. Betty told me that Tom had definitely been diagnosed with dementia at the time that these decisions were made, but couldn't recall any conversations about long-term care or how to provide for it. Big mistake!

We were able to help Betty get Tom into a quality nursing home. She privately paid for seven months, cashed in the annuities, paid a surrender charge, and bought a home. We helped Betty preserve the majority of their savings—money she will need to provide for her own care down the road. But, there are lessons to be learned here.

The result could have been so much better had Betty come to us *before* she sold her home and *before* she bought the annuities. We might have suggested that she wait until Tom entered the nursing home before selling her home. We also would have cautioned Betty about purchasing investments that could easily be liquidated if a large expense (i.e., nursing home care) became necessary. No one thought to ask what would happen if Tom needed care sooner rather than later. And that's why having a team of advisors working together is so important. All tax, financial, and legal aspects of any decision should be analyzed carefully, and that's more than any one advisor is capable of doing.

## How VA Benefits Could Have Saved One Family

Julius was a World War II veteran, who died in 1986. Julia lived independently until 2003 when, at age eighty-three, she moved to an assisted-living facility.

Julia lived in that facility for almost seven years actively participating in events and socializing with other residents. It was at that point, however, that her family moved Julia to a nursing home. They were worried that if she did not have the private funds to pay for her care in a nursing home of their choosing, but applied for Medicaid just before entering a facility, they could not be sure that she would be placed in a suitable nursing home. So, they moved her before she ran out of funds. She is now ninety-one and has not handled the move well. Her health is rapidly deteriorating. She no longer socializes with other residents and rarely speaks, even to family members who visit.

Julia's family was unaware of the VA's Aid and Attendance program, which Julia could have qualified for back in 2003 upon her move to the assisted-living facility. She has lost out on nearly $90,000 in benefits over that seven-year period. That money could have kept Julia in the place where she had thrived, for possibly two more years, before a move had to be made.

Who knows? Maybe her dementia would not have progressed as far if she stayed in the environment in which she had grown accustomed. It's also possible that she may pass away within those two years without ever having to move. Unfortunately, Julia's family didn't know about the VA benefit and they never thought to consult with an elder law attorney. By tapping into any and all possible sources of payment, we can often keep your loved ones in the safest and best environment for them, and reduce the likelihood that you are forced to make a decision purely because you are out of money. Julia's family learned this all too late.