Survival Guide for *Community Spouses*

I could tell that Jane was disturbed. She had just learned that her husband, Fred, was going to a nursing home. Although Fred was now 87, he had always been the more physically active of the two, and it was plain that this new disability was a shock to her.

"How am I going to manage?" she said, "I have always had Fred and I can't do everything by myself."

"And how are we going to pay for Fred at Myrtle Manor?" she continued, her voice rising as she went along. "I'm barely making ends meet now. How can we pay for that, too?"

As an elder law attorney, I frequently talk with the spouse of a new nursing home resident. The prospect of financial catastrophe, usually in the form of overwhelming nursing home bills month after month, is a common thread.

Jane went on to tell me about their financial situation, which was nothing unusual for a middle income couple: Fred receives Social Security of $1150 and a pension of $725 and Jane receives Social Security of $950. The couple has a house worth $100,000, a two year old car worth $15,000, and their life savings, consisting of $75,000 in the bank. Jane also has an IRA worth $50,000.

All of this provided them enough to live on, but not a lot of luxuries.

What was new was the nursing home expenses. Jane was convinced that paying for Fred at Myrtle Manor would mean that she would have to spend their life savings and deplete her IRA before he could qualify for Medicaid. By then, their finances would be so depleted, she would have trouble keeping their home.

In the early days of the Medicaid program, virtually no provision was made in the law for "community spouses" and sometimes the healthier spouse was forced to impoverish themselves in order to get needed care for the institutionalized spouse. Congress realized this, and in 1987, made provisions in the federal law to prevent "spousal impoverishment".

As a result, the "community spouse" has options, and indeed, options that Congress expects the "community spouse" will use.

All of this was news to Jane, and even more so when I explained that as a result of all of these measures, a "community spouse" often is better off financially after their spouse qualifies for Medicaid than before. Rather than financial devastation, these measures often result in at least a modest improvement, especially for a couple with limited means.

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Jane was quite surprised to learn that if Fred qualifies for Medicaid, she would be allowed to keep $2,232 per month from their joint income, most of their life savings (up to $66,479 in the bank), her house and her car. Best of all, her IRA would be exempt and wouldn't even count.

Planning for a "community spouse" and his or her financial future can be quite complex, but there are three simple ideas which underlie all of it.

1) Exempt property. Through the proper use of exempt property, a "community spouse" can often protect their most important assets and often assets with a considerable value.

2) Community Spouse Resource Allowance. Under federal law, a "community spouse" is entitled to retain a certain amount of assets and not disqualify their spouse for nursing home Medicaid. This amount varies from state to state and sometimes there is a sliding scale, but in South Carolina the amount has been fixed at a set amount of $66,480.00.

3) Monthly Maintenance Needs Allowance. The spouse of a nursing home resident is allowed to keep all of their own income, without disqualifying their spouse for nursing home Medicaid. Additionally, if the community spouse's income is less than $2,232.00 per month, they can also keep enough of their spouse's income to make up to this amount, again without disqualifying their spouse for nursing home Medicaid.

Using these rules, Jane's case would work out as follows:

1) The couple's total income is $2850 and Jane will be allowed to keep $2,232. $593 of their joint income, then, will be applied to Fred's nursing home bill and Medicaid will pay the rest.
2) Exempt assets are the house, the car, and Jane's IRA. The titles to the house and car will have to be transferred into Jane's name if she does not already own them. This can cause a problem, especially if Fred is not mentally competent.
3) The non-exempt $75,000 in the bank will have to be transferred into Jane's name and $8,581 will have to be spent. We'd prefer not to spend it on nursing home expenses, and Medicaid would allow Jane to purchase preneed funerals and burials for either Fred and/or Jane, and contract for needed repairs to the house and the car. Once this is done, Jane's non-exempt assets will be less than $66,480.

The danger, or more accurately, the likelihood of financial disaster suddenly seemed a lot further away.

"So what do you know about lawn services?" she said, ready now for the next challenge.

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The Dana Law Firm focuses its practice on elder law, concentrating on the legal needs of senior and disabled Americans, including Medicaid planning and applications, special needs trusts, guardianships and conservatorships, long-term care planning, planning for disability and incapacity, including powers of attorney and health care advance directives, estate administration, probate proceedings of all types, and wills and estate planning.

A native of Columbia, South Carolina, Frank J. Dana III graduated from Davidson College in 1972 and from Duke University Law School in 1975. He has been in private law practice in Greenville from 1975 - 1982 and 1986 - present, and was Vice President and Trust Officer in the C&S Bank Trust Department from 1982 - 1986. Mr. Dana is a member of the South Carolina Bar Association, National Academy of Elder Law Attorneys, American Bar Association, and Greenville Estate Planning Council. He and his wife Susan, have a daughter, Caroline.