

ELDER LAW NEWSLETTER



ELDER LAW FIRM OF ANDREW OLSEN

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Andrew Olsen practices in the areas of elder law, estate planning, probate, guardianship, alternative dispute resolution, and estate and trust litigation. He also serves as New Hanover County Hearing Officer and as counsel to the Cape Fear Public Transportation Authority. He is a Superior Court Certified Mediator, a certified mediator in special proceedings before the clerk of court, and a member of the Board of the Elder Law Section of NC Bar Association. He received his B.A. in Economics from Pomona College in Claremont, California and his J.D. from Georgetown University Law Center.

Lisa Salines-Mondello is of counsel to the Elder Law Firm of Andrew Olsen. She practices in the areas of elder law, estate planning, probate, guardianship and tax planning. She received her B.S. in Political Science from Salem State College in Salem, Massachusetts, her J.D. from Southern New England School of Law in Dartmouth, Massachusetts and her LL.M. in taxation from Boston University School of Law in Boston, Massachusetts. Mrs. Salines-Mondello is a member of the North Carolina Bar Association.

Tasha McKinney is the paralegal for the firm. She works primarily in the areas of probate and guardianships proceedings.

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Please call our office for an individual consultation if you have attended, or have been tempted to attend, a “free” estate planning or asset protection seminar. We will be happy to discuss an estate planning strategy based on your specific circumstances, rather than an attempt to sell you a pre-packaged product.

Free In-Service Training Available:

The Elder Law Firm of Andrew Olsen offers free in-service training on topics related to:

Medicaid Planning Trusts & Wills
Guardianship Powers of Attorney
Other Elder Law Issues

This information is for general informational purposes only and does not constitute legal advice.

Estate Plan for the Disabled or Handicapped Adult Child

Advances in medical, health care and support services have resulted in individual life spans exceeding the body or mind’s ability for self-care. Concurrently, the cost of health care and support services for the disabled has increased, consuming tens of thousands of dollars per year. This article will introduce some of the issues relating to the benefits of life and estate planning for the handicapped or disabled adult child (“child” being one who is unable to live independent of assistance.

An individual is considered to be disabled if “he/she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” Examples of disabilities that can prevent a child from being self-sufficient include: developmental disabilities; mood disorders (e.g. depression); psychotic disorders (e.g. schizophrenia); substance abuse; and physical handicaps.

Generally, the purpose of the parental estate plan for the disabled child is to preserve

assets and provide financial support and personal assistance as necessary. Every well-drafted estate plan should address the following concerns: designation of a guardian for minor children; providing for the management of inherited assets; protecting inherited assets from claims of creditors; and providing incentives to children and other descendants to lead productive lives. Plan considerations for a special needs child add additional concerns, including: setting up a support system for the disabled child after the death of the parents; assuring that the disabled child remains eligible for government benefits; and insuring that that child has adequate resources to lead a life that is as safe and productive as possible.

It is necessary to consider the nature and severity of a child’s disability when designing a parental estate plan. The estate plan is to provide for the life of the disabled child. Since each child’s unique needs, desires, and opinions will impact the assistance throughout their lifetime, the child’s physical, cognitive, environmental, and social needs must be taken into account when planning for their future. A caregiver will fill many roles for the child, which may include championing on behalf of the child’s health, welfare, education, employment, and social interaction. Therefore, a well-drafted life plan discusses the child’s individual needs and considers the use of institutional care,

alternatives to institutional care, group homes, and/or independent care management plans.

The estate plan is the practical place for the designation of fiduciaries, agencies, or both which will provide the care and services that the child will need. The parents' written instructions should accompany the estate plan and set forth their objectives, expectations, and preferences for the child and trust property.

Medicare Preventive Services: What is Covered?

As the saying goes "an ounce of prevention is worth a pound of cure," and as you get older, taking preventative measures can keep you healthy. And if you are a Medicare beneficiary, there are a number of preventive services available to you. Anyone with Medicare Part B has access to the following preventive services:

- **Initial physical exam.** If your Medicare Part B coverage begins on or after January 1, 2005, Medicare will cover a one-time "Welcome to Medicare" preventive physical exam within the first six months that you have Part B. Additionally, those at risk for abdominal aortic aneurysms may be referred for a one-time ultrasound at their initial exam.
- **Cardiovascular screening.** Medicare covers one test every five years to check your cholesterol and other blood fat levels.
- **Cancer tests.** Medicare covers breast cancer screening

(mammograms) once a year for women over age 40; cervical and vaginal cancer screening (pap test and pelvic exam) once every two years for all women; colon cancer screening (colorectal) every year to every four years, depending on the test; and prostate cancer screening (PSA) every year for men.

- **Shots.** Medicare covers flu, pneumococcal, and Hepatitis B immunizations.
- **Bone mass measurements.** For women, Medicare covers bone mass measurements to check if you are at risk for fracture due to osteoporosis. The test is covered once every 24 months.
- **Diabetes.** Medicare covers up to two diabetes screenings per year. In addition, it covers glucose monitors, test strips, and lancets for individuals with diabetes and offers self-management training.
- **Glaucoma tests.** One glaucoma test is covered each year for people at high risk for glaucoma.

For some of these tests, beneficiaries in regular Medicare pay nothing; for other tests, Part B's 20 percent copayment applies.

IRS Issues Long-Term Care Premium Deductibility Limits for 2007

The Internal Revenue Service has announced the 2007 limitations on the deductibility of long-term care insurance premiums from taxes.

Premiums for "qualified" (see explanation below) long-term care policies are treated as an unreimbursed medical expense. These premiums – what the policyholder pays the insurance company to keep the policy in force – are deductible to the extent that they, along with other unreimbursed medical expenses (including "Medigap" insurance premiums), exceed 7.5 percent of the insured's adjusted gross income. Long-term care insurance premiums are deductible for the taxpayer, his or her spouse and other dependents. If you are self-employed, the rules are a little different. You can take the amount of the premium as a deduction as long as you made a net profit – your medical expenses do not have to exceed 7.5 percent of your income.

However, there is a limit on how large a premium can be deducted, depending on the age of the taxpayer at the end of the year. Following are the deductibility limits for 2007. Any premium amounts above these limits are not considered to be a medical expense.

<u>Attained age before the close of the taxable year</u>	<u>Maximum deduction</u>
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40 or less	\$290
More than 40 but not more than 50	\$550
More than 50 but not more than 60	\$1,110
More than 60 but not more than 70	\$2,950
More than 70	\$3,680

What Is a "Qualified" Policy?

To be "qualified," policies issued on or after January 1, 1997, must adhere to regulations established by the National Association of Insurance Commissioners. Among the requirements are that the policy must offer the consumer the options of "inflation" and "nonforfeiture" protection, although the consumer can choose not to purchase these features. Policies purchased before January 1, 1997, will be grandfathered and treated as "qualified" as long as they have been approved by the insurance commissioner of the state in which they are sold. For more on the "qualified" definition, click here and scroll down to "The tax deductibility of long-term care insurance premiums".

The Taxation of Benefits

Benefits from reimbursement policies, which pay for the actual services a beneficiary receives, are not included in income. Benefits from per diem or indemnity policies, which pay a predetermined amount each day, are not included in income except amounts that exceed the beneficiary's total qualified long-term care expenses or \$260 per day (for 2007), whichever is greater.