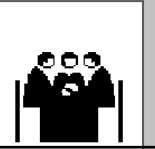


Elder Law Newsletter



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.

Elder Law Firm of Andrew Olsen
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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.

How Will the New Congress Affect Key Elder Law Issues?

The Democratic Party's takeover of both houses of Congress is likely to have financial implications for the elderly and their families, although how profound these changes will be remains to be seen. Of greatest interest to elder law attorneys and their clients is what the change in leadership on Capitol Hill will mean for the fate of the Deficit Reduction Act of 2005 (DRA). The DRA is particularly important to the elderly because it severely restricts their ability to transfer assets before qualifying for Medicaid coverage of nursing home care. Democrats in Congress maintain that the law is unconstitutional because the version passed by the Senate and signed by President Bush was different from the version passed by the House.

After President Bush signed the measure last February, Democrats in the House fought to have the DRA's two differing versions reconciled and voted on again, while Republican leaders said they were content to rely on the courts to straighten the matter out.

"We're going to keep pressing on this," Brendan Daly, a spokesman for Nancy Pelosi (D-CA), told ElderLawAnswers at the time. "It could be [resolved legislatively] if they wanted to do it. It wouldn't be that

difficult a thing; they could just fix it and then call for a revote, but they don't want to do that because it's a controversial bill."

When the Democrats got nowhere legislatively, eleven Democratic House members filed suit to have the law overturned.

Pelosi's office has not yet commented on whether the Democrats will force a revote on the DRA once the new Congress is in session. But The Hill quotes a spokesman for Pelosi that Democrats will be monitoring the administration's application of the DRA's Medicaid provisions.

"We are concerned about various regulations that the administration may issue and are concerned with the implementation of provisions in the Deficit Reduction Act," deputy press secretary Drew Hammill wrote in an e-mail.

Added incoming House Energy and Commerce Committee Chairman John Dingell (D-MI) in a written statement, "Democrats are concerned about the substantial changes in benefits and out-of-pocket costs that could be imposed on families under the new Deficit Reduction Act provisions. These matters will be explored in greater detail next Congress."

Other areas of interest to the elderly and their advocates include:

The estate tax: A Democratic Congress

spells the death of efforts to repeal the "death tax," as it is referred to by its critics. But while Democrats have opposed full repeal of the estate tax, many support increasing the exemption amount, which currently stands at \$2 million and will rise to \$3.5 million in 2009 before the current law expires.

Social Security privatization: The election means the final nail in the coffin for President Bush's efforts to allow Social Security beneficiaries to set up private accounts.

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</u>	<u>Maximum</u>
<u>close of the taxable year</u>	<u>deduction</u>
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.