

Law Office of Eileen R. Fitzgerald

An Elder Law Newsletter

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NEWS FROM EILEEN

I am sometimes asked by clients if they can prepare their own estate planning documents. It's an interesting question. Can they? Sure, they can. . . . try. Should they? Probably not. I have reviewed documents prepared by clients, typically from forms they have seen or obtained on the internet. Most of the documents, if challenged, would not hold up in court. Many documents have legal requirements for signing, of which the typical person is not aware. Also, there are certain people who should not witness or notarize a legal document. For example, when you name someone as an executor, that person should not be a witness to the Will. Invariably, when I review documents clients prepared themselves, someone named in the document is a witness. Estate planning documents are important. It's not just a matter of filling out a document. There are consequences to those documents. It's wise to pay for a professional to prepare the documents correctly and to see that they are signed, notarized and witnessed correctly.

All of us wish you a **HAPPY HOLIDAY SEASON AND A HAPPY NEW YEAR!**

2009 PUBLIC AID LIMITS

The new Public Aid spousal asset allowance for 2009 is 109,560.00. This is the amount that can be transferred from the nursing home spouse's assets or from joint tenancy assets to the community spouse's name only. The new Public Aid community spouse income allowance for 2009 is \$2,739.00 per month. This is the amount of joint income the community spouse is allowed to keep. The community spouse is the spouse still living at home. The rules for spouses are complicated, and anyone doing any planning should speak with an elder law attorney.

The Public Aid recipient in a nursing home is allowed to keep \$2,000.00 in assets, as well as \$30.00 per month from his or her income. The prepaid burial limit has increased to \$5,376.00 for funeral home services for an irrevocable prepaid funeral, and remains at \$1,500.00 for funeral home services for a revocable prepaid funeral. There is no limit on amounts paid for burial merchandise including coffin, plot, vault, marker and grave opening.

Please call for an appointment if you would like to discuss Medicaid application or planning.

MEDICARE PREMIUMS

For the first time in eight years, Medicare's monthly premium will remain unchanged for most of the program's 44 million beneficiaries. The Centers for Medicare and Medicaid Services (CMS) announced that the Part B premium will remain at its 2008 level of \$96.40 for 2009 for individuals earning \$85,000 or less or couples earning \$170,000 or less. The premium will go up for higher earners. The Part B deductible will remain at its 2008 level as well. The monthly premium paid by beneficiaries enrolled in Medicare Part B covers a portion of the cost of physicians' services, outpatient hospital services, certain home health services, durable medical equipment, and other items.

This is only the sixth time since Medicare was created in 1965 that the Part B premium stayed the same for two consecutive years, said Richard Foster, Medicare's chief actuary. Anticipating concerns, Foster, who has worked for the agency since the early 1970s, said "There is no political manipulation." The premium will hold steady in part because Medicare's reserves have increased, according to a CMS statement. Foster said monthly rates are likely to go up in 2010 as health costs continue to rise.

AARP warned in a statement that "Lawmakers should not use today's announcement as an excuse to rest. The average 73-year-old in Medicare has seen his or her premium double since joining the program. Americans old and

young continue to struggle with skyrocketing health-care costs." While the Part B premium and deductible will not rise, other Medicare deductibles and co-payments will. Here are all the new Medicare figures for 2009:

Part B premium: \$96.40/month (unchanged)

Part B deductible: \$135 (unchanged)

Part A deductible: \$1,068 (was \$1,024)

Co-payment for hospital stay days 61-90: \$267/day (was \$256)

Co-payment for hospital stay days 91 and beyond: \$534/day (was \$512)

Skilled nursing facility co-payment, days 21-100: \$133.50/day (was \$128)

As directed by the 2003 Medicare law, higher-income beneficiaries will pay higher Part B premiums. About 5 percent of current Part B enrollees are expected to be subject to the higher premium amounts. Following are those amounts for 2009:

- Individuals with annual incomes between \$85,000 and \$107,000 and married couples with annual incomes between \$170,000 and \$214,000 in 2009 will pay a monthly premium of \$134.90.

- Individuals with annual incomes between \$107,000 and \$160,000 and married couples with annual incomes between \$214,000 and \$320,000 in 2009 will pay a monthly premium of \$192.70.

- Individuals with annual incomes between \$160,000 and \$213,000 and married couples with annual incomes between \$320,000 and \$426,000 in 2009 will pay a monthly premium of \$250.50.

Individuals with annual incomes of \$213,000 or more and married couples with annual incomes of \$426,000 or more in 2009 will pay a monthly

premium of \$308.30.

Rates differ for beneficiaries who are married but file a separate tax return from their spouse:

Those with incomes between \$85,000 and \$128,000 will pay a monthly premium of \$250.50.

Those with incomes greater than \$128,000 will pay a monthly premium of \$308.30.

SOCIAL SECURITY AND YOUR JOB

Many people continue to work beyond retirement age, either by choice or out of necessity. But if you are receiving Social Security benefits, you need to be aware of how working can affect your benefit payments. Earning income above Social Security thresholds can cause a reduction in benefits and means your benefits will be taxed.

Whether it makes sense to work and collect Social Security at the same time is a complicated assessment that depends on how much you earn and when you begin taking Social Security benefits.

If you work and are full retirement age or older, you can earn as much as you want and your benefits will not be reduced. However, individuals may begin taking Social Security retirement benefits early beginning at age 62. If you are younger than full retirement age, there is a limit to how much you can earn and still receive full benefits. If you earn more than \$13,560 (in 2008), Social Security will deduct \$1 from your benefits for each \$2 you earn over the threshold.

In the year you reach full retirement age, you can earn up to \$36,120 (in 2008) without having a reduction in benefits. However, if you exceed \$36,120 in earnings, Social Security will deduct \$1 from your benefits for each \$3 you earn until the month you reach full retirement age. Once you reach full retirement age, your benefits will no longer be reduced.

For example, if your monthly Social Security benefit is \$700 and you earn less than \$13,560, you will receive \$8,400 in benefits. However, if you earn \$15,000 (\$1,440 over the threshold), you will receive \$7,680 in benefits.

Note that if your benefits are withheld, at least some of those benefits will be returned to you in the form of higher monthly benefits once you reach full retirement age. When you reach full retirement age, Social Security will recalculate your benefits to take into account the months in which your benefits were withheld. In addition, if your latest year of earnings turns out to be one of your highest years, Social Security will refigure your benefit based on the higher earnings and pay you any increase due.

Another way that working can affect Social Security is with regard to taxes. If your combined income (Social Security calculates "combined income" by adding one-half of your Social Security benefits to your other income) is between \$25,000 and \$34,000 (or \$32,000 and \$44,000, if filing jointly), you may have to pay taxes on 50 percent of your benefits. If your income is more than \$34,000 (or \$44,000 if filing jointly), then you may have to pay taxes on up to 85 percent of your benefits.

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EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

On October 3, 2008 Congress passed and President Bush signed the Emergency Economic Stabilization Act of 2008. The Act is Congress' response to the recent financial troubles. The Act also contains other tax and financial provisions that will affect individuals and businesses at all income levels.

The Act grants increased FDIC insurance coverage. The insurance is increased from \$100,000.00 to \$250,000.00 per depositor. The increase is scheduled to expire on December 31, 2009.

The Act extends the expiration date to December 31, 2009 for the provision that allows individual taxpayers who itemize their deductions to claim state and local sales tax, instead of state and local income taxes.

Through 2009 individual taxpayers may deduct up to \$4,000 in qualified higher education expenses to arrive at adjusted gross income, subject to certain income limitations.

Individual taxpayers who do not itemize their deductions may claim an additional standard deduction up to \$500 (\$1,000 for married individuals filing jointly) for state and local property taxes paid during tax years beginning in 2008. The Act extends the additional standard deduction to include tax years beginning in 2009.

An individual age 70 1/2 or older may exclude up to \$100,000 from gross income, taxable IRA distributions that are distributed to qualified charities. Because the distribution is not included in income, the taxpayer may not claim a deduction for the distribution. The qualified charitable distributions are not subject to the charitable contribution percentage limits. A qualified charitable distribution is one that is made directly by the IRA trustee to a charitable organization, after the IRA owner turns 70 1/2. The Act extends this exclusion to December 31, 2009.

