page 2
New technique to qualify for Medicaid more quickly

Long-term care insurance deductions increased for 2016

page 3
Retiring abroad? Check your long-term care policy

page 4
Veterans face new limits on long-term care help

Legal Matters®

Elder Law
winter 2016

Major changes to Social Security might require taking action now

Two Social Security strategies that many married couples have been using to maximize their benefits are being eliminated, as a result of the federal budget deal that President Obama signed into law in November.

In the past, these strategies could be worth tens of thousands of dollars over a lifetime for some couples. The fact that they are being phased out means that many seniors should take action now, before the changes take effect, to reduce the impact. Other seniors may need to reconsider their long-term retirement plans.

The strategies that are being eliminated are:

#1. File and Suspend.

Generally, seniors who wait to claim Social Security benefits get a larger benefit when they eventually do file. So in many cases, it makes sense to wait. A problem, though, is that even if a senior waits to file, his or her spouse may want to apply for spousal benefits right away – and a spouse can't apply for spousal benefits unless the senior has already applied for his or her own benefits.

In the past, there was a way around this, called "file and suspend." The senior would file for benefits at full retirement age (currently 66 in most cases), but immediately "suspend" them. This allowed the senior to delay his or her own benefits up to age 70, and get a larger check at that time, while enabling the senior's spouse to apply for spousal benefits right away.

This "file and suspend" technique will be outlawed as of April 30, 2016.

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Under the new law, a senior's spouse cannot begin receiving benefits until the senior is actually receiving benefits, too. Workers can still file and suspend, but spouses (or other dependents, including minor and disabled children) cannot receive benefits during the suspension.

Importantly, the new law doesn't affect workers who have already filed and suspended benefits – so if you've already used this technique, you won't be affected.

And even more importantly, seniors who are at least 66 – or who will turn 66 before April

continued on page 3

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New technique to qualify for Medicaid more quickly

A recent court decision may make it easier for seniors to use short-term, immediate annuities to qualify for Medicaid more quickly.

In general, people who go to a nursing home must spend down their resources before becoming eligible for Medicaid. If you transfer your assets rather than spending them down (such as by making gifts to family members), that triggers a penalty period during which you're ineligible for Medicaid benefits, even if you would otherwise qualify.

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If one spouse goes into a nursing home, the other spouse is generally allowed to keep a certain amount of assets to live on. However, if a couple owns more than this "asset allowance," they must spend down any additional assets before applying.

Here's where annuities come in: The idea is that a couple could take any assets they have above the asset allowance, and use them to purchase a short-term immediate annuity. This would allow the couple to qualify for Medicaid right away, but still provide a regular source of income to the spouse who is not in a nursing home in addition to the standard allowance.

In cases where seniors have made a large family gift, and thus are facing a period of ineligibility, buying an annuity could also effectively "spend down" their assets right away, allowing them to benefit from Medicaid more quickly while also receiving annuity income to tide them over during the penalty period.

In the recent court case, a woman named Donna Claypoole spent about $84,000 to buy a short-term annuity, planning to use the proceeds to help pay for her nursing home care during a 14-month ineligibility period caused by an earlier family gift.

The state of Pennsylvania objected, and claimed the annuity was a further transfer of Donna's assets that should trigger an additional penalty period during which she was ineligible for benefits.

But a federal appeals court sided with Donna, and said the annuity was okay.

Pennsylvania's argument was that annuities like Donna's – for a term much shorter than the owner's life expectancy – are a sham transaction designed simply to skirt the rules.

But the court said the exact opposite was true: Annuities that are much *longer* than a person's life expectancy should trigger a penalty, because they're a disguised way of trying to leave assets to one's heirs. According to the court, though, there's nothing in the Medicaid laws that prohibits using short-term annuities in the way Donna did.

The ruling is technically binding only in Pennsylvania and a few other states, but it's a very important test case nationally, and it suggests that this technique might become widely available to help many seniors.

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Long-term care insurance deductions increased for 2016

The amount you can deduct on your taxes as a result of buying long-term care insurance has been increased by the IRS for 2016.

If you itemize your deductions, you can generally claim a deduction if your premiums, together with your other unreimbursed medical expenses, amount to more than 10% of your adjusted gross income (or 7.5% if you're 65 or older).

The maximum amount of the premiums you can deduct each year depends on your age at the end of the year.

Age	Maximum deduction
40 or younger	$390
41-50	$730
51-60	$1,460
61-70	$3,900
70 or older	$4,870

For policies issued in 1997 or later, the premiums are deductible so long as the policies meet certain requirements, such as that they offer "inflation protection" and "non-forfeiture protection." (You don't have to actually choose these options, but the policy has to offer them.)

For policies issued before 1997, the premiums are deductible if the policies were approved by the state insurance commissioner.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

Major changes to Social Security may require action now

continued from page 1

30, 2016 – may still use the technique, as long as they do so before April 30. So if you're in that situation, you should contact a lawyer right away, to see if you can take advantage of this strategy while there's still time.

#2. Claim Now, Claim More Later.

A second strategy was available in the past for seniors who wanted to claim benefits at their full retirement age. Under this strategy, a higher-earning senior could file and claim only spousal benefits, while delaying claiming benefits based on his or her own work record. Then at age 70, the senior could switch, discontinuing the spousal benefits and claiming benefits on his or her own record – which would be larger because the senior waited to claim them.

This technique was known as "claim now, claim more later." It is also being eliminated by the new law.

However, if you were at least 62 years old at the end of 2015, the good news is that you will not be affected and you'll still be able to use the technique.

As for individuals who were 61 or younger at the end of 2015, when they apply for spousal benefits, Social Security will assume that they are also applying for benefits based on their own work record. These workers will be eligible for whichever benefit is larger, but they will not be able to just take the smaller spousal benefit and allow their own benefits to keep increasing until age 70.

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Importantly, this change does not apply to survivor's benefits. A surviving spouse will still be able to choose to take survivor's benefits first, and then switch to retirement benefits later if the retirement benefit is larger.

Again, this could be a very good time to contact your lawyer to see if your retirement strategy needs to change as a result of the new rules.

Retiring abroad? Check your long-term care policy

If you're thinking of retiring abroad, and you want to purchase (or have already purchased) long-term care insurance, be sure to read the fine print on your policy.

Not all policies cover care in other countries, and even if they do, the benefits are often reduced. For example, one large insurer pays only 50 percent of the nursing home benefit if your care is received outside the U.S.

Other companies provide full benefits, but for a limited time (such as one year). Once you reach the limit, you'll have to move back to the U.S. if you want to continue your remaining coverage.

Still other companies will cover you only if you move to an English-speaking country.

To check your policy, go to the section for exclusions, and look carefully for "international benefits" or "out-of-country coverage."

Veterans face new limits on long-term care help

continued from page 4

easily be tripped up by this requirement.)

The regulations also establish a three-year look-back provision. Applicants who transfer assets within three years of applying for benefits will be subject to a period of ineligibility, and this period can last as long as 10 years. To avoid the penalty, applicants will have to present clear and convincing evidence that the transfer was not made in order to qualify for benefits.

Under the new rules, the government will determine the penalty period by dividing the amount transferred by the applicable maximum annual pension rate. Because this rate is much lower for surviving spouses than it is for veterans, the penalty period for a surviving spouse could be almost twice as long as for a veteran for the same asset transfer.

It's not clear yet when the new regulations will officially take effect, but it appears that some Veterans Affairs offices are already processing applications under the new rules. If you're considering applying for Aid and Attendance benefits, you should act quickly and contact an attorney for help.

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Veterans face new limits on long-term care help

The U.S. Department of Veterans Affairs offers a pension benefit to low-income veterans (and their spouses) who are in a nursing home or who need help at home with everyday tasks such as dressing or bathing. The program is called "Aid and Attendance."

Unfortunately for many veterans, the government recently proposed new regulations that will tighten the qualification rules and impose a look-back period and transfer penalties similar to those under Medicaid. As a result of these changes, anyone who might be eligible for Aid and Attendance should probably talk to a lawyer about how to proceed.

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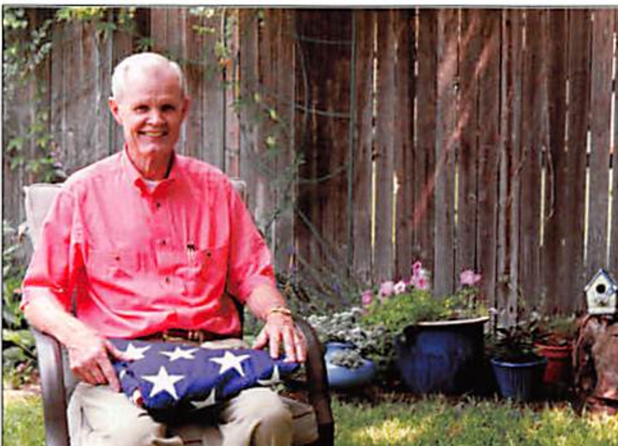

In the past, veterans or surviving spouses applying for Aid and Attendance had to meet certain asset limits. Different offices used different limits, but $80,000 worth of assets was a common ceiling above which benefits could be denied. However, a veteran or spouse could give away assets to family members in order to qualify, without penalty.

The government now says it will soon adopt a uniform limit of $119,220, which is the current amount of assets that a Medicaid applicant's spouse is allowed to retain. However, the government will now add together both a veteran's assets *and* his or her annual income in determining whether he or she meets the $119,220 test.

The $119,220 figure will be indexed for inflation. An applicant's house will not count toward the $119,220, as long as the lot size is two acres or less. If you sell your house, though, the proceeds will count toward the limit unless you use the funds to buy another house in the same calendar year. (Veterans who sell their house in November or December could

continued on page 3