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National Academy of
Elder Law Attorneys, Inc.

MEMBER

The articles in this newsletter are written by the attorneys of South County Senior Law & Estate Planning Center, LLC as an informational resource for our friends and clients. Nothing in this publication is intended as legal advice for anyone's particular legal situation. If you have a specific legal issue, please call our office for assistance.

Missouri Long Term Care Partnership Program

On June 13, 2008, the Missouri Department of Insurance issued a press release indicating that Governor Blunt announced the “launch” of Missouri’s Long-Term Care Partnership Program on August 1, 2008. The press release states, “Long-term care partnership plans allow Missourians to maintain some level of assets above the \$999.00 Medicaid asset limit currently in place because for every dollar that the partnership policy pays out in benefits, a dollar of personal assets can be protected when applying for MO HealthNet coverage.”

The Federal Deficit Reduction Act of 2005 (DRA), effective February 8, 2006, enacted provisions permitting states to authorize long-term care insurance products that

combine long-term care benefits with some level of asset protection under the state’s Medicaid program. Missouri is one of 21 states that had authorized legislation after the DRA was enacted for the “qualified long term care partnership program” as defined by DRA.

The DRA provisions impose three basic requirements on eligible long term care contracts. The contract must:

1. Contain consumer protection provisions;
2. Be income tax qualified;
3. Provide compound annual inflation protection, depending on the age of the insured.

U.S. Income Tax: A **medical** expense deduction is allowed for premiums paid for a

“qualified” long term care insurance contract, limited by the age of the individual. The limits are inflation adjusted each year. For 2008 those limits are:

Age:

40 or less—\$290

41-50—\$580

51-60—\$1,150

61-70—\$3,080

71 or above—\$3,850

To benefit from the deduction, the individual(s) must itemize deductions, and total medical expenses, including long term care insurance premiums must then exceed 7.5% of adjusted gross income for the year.

Missouri Income Tax: Missouri allows a deduction for the amount of any long term care insurance premiums, whether

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The choice of an attorney is an important decision and should not be based solely on advertising.

Financial Help for Veterans-Non-Service Related VA Pensions

Eligibility for Improved Pension and Aide and Attendance

Two little-known benefits available for veterans or their widows are the Improved Pension and the Aide and Attendance (A&A) program. The VA Improved Pension is purely an asset and income-based benefit, available to qualifying veterans or their widows whose assets and income are below a certain level. The A&A program provides additional benefits if the qualified veteran or widow is age 65 or older and “permanently and totally disabled.” Anyone requiring skilled nursing home care is automatically considered “permanently and totally disabled”, and thus may be entitled to the additional A&A

benefit.

To be eligible for either or both benefits, the veteran must have served 90 days or more of active military service, with at least one of those days during a period of war. (Veterans who entered active duty on or after September 8, 1980, or officers who entered active duty on or after October 16, 1981, may have to meet a longer minimum period of active duty). The veteran’s discharge must have been under conditions other than dishonorable and the disability must be for reasons other than the veteran’s own willful misconduct.

Improved Pension

If the veteran’s household income is below the maximum annual improved pension rate

established by Congress, and assets are also below a set level, the veteran is eligible for pension benefits to increase the veteran’s income to the set pension rate. (See 2008 Improved Pension Rate Chart). What is significant about the pension rate, however, is the treatment of unreimbursed medical expenses and assisted living or nursing home costs. These expenses are treated as a dollar-for-dollar reduction to the veteran’s income when calculating the available pension benefit.

Aide and Attendance

Aide and Attendance is an additional benefit available when the veteran (or the veteran’s widow) is “permanently and totally disabled,” or living in a skilled nursing home. The veteran (or widow) must still meet income and asset guidelines. However, 100% of the ongoing cost of the nursing home is subtracted from income when calculating the maximum A&A benefit. (See Chart).

If the veteran is receiving Medicaid or in a VA nursing home, the maximum VA pension is reduced to \$90 per month.

Additional information can be found in the Compensation and Pension Benefits section of VA’s Internet pages at <http://www.vba.va.gov/bln/21/index.htm>

2008 VA Improved Pension Veteran’s Family Situation and Caretaking Needs	Maximum Annual Rate
Veteran without dependants	\$11,181
Veteran with one dependant	\$14,643
Veteran permanently housebound, No dependants	\$13,644
Veteran permanently housebound, One dependant	\$17,126
Two veterans married to one another	\$14,543
Increase for each additional dependant child	\$ 1,909
	Maximum Annual Benefit (with A&A)
Veteran (or widow) needing regular aid and attendance, no dependents	\$18,654
Veteran (or widow) needing regular aid and attendance, one dependent	\$22,114

Missouri Long Term Care Partnership Program — Continued

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the taxpayer itemizes or not. If itemized, the amount of the long term premium that could not be deducted on the federal Schedule A because of the limitation and the 7.5% floor is allowed for Missouri. For Missouri income tax purposes, a “qualified policy is one that covers a person for at least 12 months for long term care expenses should such care be necessary due to chronic health conditions or physical disability, including cognitive impairment or the loss of functional capacity, causing the person to be unable to care for themselves without the help of another person. (See: Missouri instructions to Form MO-1040.) Generally, the Missouri income tax deduction results in a savings reduction of Missouri income tax of 6% of the total premium paid.

Missouri will provide “dollar for dollar” protection, i.e., for every dollar the quali-

fied LTCi pays, the person is able to retain that amount of assets in addition to the usual resource allowance of \$999.99.

The Missouri Department of Social Services issued its initial Memorandum about LTC on August 21, 2008. However, the Memorandum leaves many questions unanswered. For example, will the State pursue these ignored assets if they are in the Medicaid recipient’s estate at death? Can the recipient gift these assets during his or her lifetime without a loss of benefits, or at death through pay-on-death provisions without the State pursuing the asset?

If you have any questions concerning the Missouri Long Term Care Partnership provisions under DRA 2005 or with long term care insurance in general, please feel free to contact our office. We have a supply of *The Shopper’s Guide to Long Term Care Insurance* published by the National As-

sociation of Insurance Commissioners and the *2008 Long-Term Care Shopper’s Guide* published by the Kansas Insurance Department which shows a comparison of rates between insurance companies for both partnership plans and non-partnership plans. In addition, we have our own educational article entitled “Long-Term Care Insurance”.

Social Security Increase Could Exceed 6% for 2009

Retired citizens can look forward to a major increase in Social Security benefits starting January 2009. Unless there is a sudden rush of deflation in the current quarter, the increase will be the largest in 25 years. Last year, it was a very modest 2.3 percent. There hasn’t been an increase greater than 5 percent since 1990.

Just how big will the increase be? Approximately 6 percent. To be more precise, it will be 5.7 percent to 6.1 percent. The last time there was a larger increase was in 1982, at 7.4 percent. Future benefit increases can be predicted by understanding how they are calculated. The Social Security Administration uses the Consumer Price Index for Urban Wage Earners and Clerical Workers as its inflation benchmark. It averages the CPI-W index figures for the third quarter of the previous year and divides that figure into the corresponding figure for the current year.

Real Estate Tax Deduction

The Federal Housing Assistance Tax Act of 2008 has a provision allowing non-itemizers to deduct real estate property taxes for 2008 only. However, it is not unlimited. A person can deduct the LESSER of actual real estate taxes or \$1000 for married couples and \$500 for single individuals. Many senior homeowners who do not have enough itemized deductions and take the standard deduction instead, will now benefit from this additional tax relief.

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South County Senior Law & Estate Planning Center, LLC has been serving the needs of our senior clients for twenty years. The firm attorneys, Dennis B. Mertz, Mavis Kennedy, and Christine F. Hart are members of NAELA, Inc. (National Academy of Elder Law Attorneys), dedicated to meeting the legal needs of all persons of all ages, including seniors.

We concentrate our practices in the areas of estate planning, trusts and estates, powers of attorney, probate, asset preservation, including Medicaid planning and tax advice, Special Needs Trusts and trust administration, nursing home abuse, will contests and other contested estate matters, financial exploitation of the elderly, personal injury, and guardianships and conservatorships. The initial consultation with any of our senior law attorneys is always at no charge or obligation to employ our firm. Call us at (314) 845-0541 to schedule an appointment to discuss any of your legal questions.

SHARE YOUR NEWSLETTER

We encourage you to share this newsletter with anyone who is interested in issues pertaining to seniors. The information in this newsletter may be disseminated without charge or permission, but with appropriate citation to Senior Law Quarterly.

Anyone wishing to be added to our newsletter mailing list should contact our office at (314) 845-0541 with your request.

Missouri Legislature Passes Uniform Anatomical Gift Act

During this year's session, the Missouri legislature passed the Uniform Anatomical Gift Act, which became effective August 28, 2008. Important features of the Act include the following: (1) It authorizes a donor to consent to organ donation during his or her lifetime, and others cannot undo that authorization after the donor's death; and (2) It authorizes individuals to name someone to exercise exclusive control over their burial, cremation, or other final disposition, without the need for a waiver from the individual's closer next of kin.

Formerly, Missouri was an

"intent" state, whereby a donor indicated only his intent to make an organ gift, and others could consent or withhold consent after death. The new Act enables a person to give full legal consent to organ donation while alive, and others cannot undo that consent upon the person's death. During the donor's life, consent can be given by a adult, emancipated minor, parent of a minor, or legal guardian by authorizing statement on the donor's drivers license, in a will, by any communication before two adult witnesses (one disinterested) during a terminal illness, or by donor card or registry. After death, if

the donor has not consented or formally refused to make a gift in a health care power of attorney, the donor's agent in a health care durable power of attorney has first priority to make an organ gift.

The Act also amended the right of sepulcher (control over the body) to give first priority to the individual's agent in a health care durable power of attorney to control the individual's burial, cremation, or other final disposition, without requiring a waiver by the individual's closer family members.