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ESTATE & ELDER LAW NEWSLETTER SPRING 2011

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FEDERAL ESTATE TAX LAW CHANGES

As you probably know by now, significant changes to the federal estate tax laws were made as a result of the Tax Relief, Unemployment insurance Reauthorization, and Job Creation Act of 2010. The changes present new and exciting opportunities for estate planning. The changes will also require clients to review their existing estate plans and documents. Here are a few of the many areas you should consider, which we can help you evaluate.

1. The gift, estate, and generation-skipping transfer (GST) exclusion will be \$5 million starting in 2011. The gift and estate tax rate has been reduced to 35 percent. This does not mean that those with under \$5 million in assets can ignore planning.
2. Please keeping mind these generous changes are still only temporary. They end in 2012 and in 2013, a \$1 million exclusion and 55 percent rate return. We can guide you in planning for this continued estate rollercoaster.
3. Should you make large gifts now?
4. We can help you evaluate what, if anything, can be done with existing trusts, insurance plans, and so forth. Many of your existing planning steps may be able to be used to accomplish other important goals (income tax planning, asset protection, and so forth).
5. Your existing estate planning documents should be reviewed now that the law is clear to deter-

mine what might be worth revising. The manner in which distributions and bequests under your documents were written may need to be updated to reflect the new law and other changes.

6. Your powers of attorney may have been written with different tax and legal objectives than now apply to your situation. Should you revise the gift provisions in your powers of attorney? Depending on your situation these rights might warrant expanding considerably or restricting. We can help you decide.
7. Should your will or trust include a bypass trust, and how is the best way to have it work? We can explain why the new estate tax portability provisions are beneficial, but they do have traps for the unwary.

Estate planning was never just about estate taxes. We have always helped our clients evaluate retirement planning, gift planning, business succession planning, and a wide range of other issues. Let us help you address this dramatic change in the law in the same comprehensive and holistic manner.

Stevens & Brand, L.L.P. is a comprehensive service law firm serving clients from two offices located in Lawrence and Topeka, Kansas. Both offices of Stevens & Brand can assist clients with all aspects of estate planning and administration issues including: wills, trusts, powers of attorney, living wills, probate and trust administration, estate and gift taxation, guardianship and conservatorship, and long-term care/Medicaid planning issues.

HEALTH CARE REFORM & THE ELDERLY

INTRODUCTION

The Patient Protection and Affordable Care Act (ACA) signed into law in March 2010 provides for multiple changes to the current healthcare delivery system, some of which will not be implemented for a few more years. Elderly and disabled people who are by and large Medicare enrollees are the beneficiaries of many of the enhancements that have already been implemented or will be implemented in 2011. The following is a very brief survey of those changes:

- There are almost 350 nursing homes in Kansas housing approximately 28,000 residents. Nationwide, there are about 16,000 nursing homes. One provision of the ACA is to require transparency regarding ownership of these institutions. (If a nursing home is not owned locally, sometimes it's hard to get in contact with someone in authority at the facility who can be accountable to the client and his or her family.) The ACA also includes beefed up training requirements for nursing home staff – the people who will be providing hands-on care to your client or your family member.
- Enhanced coverage of preventive health services: The ACA creates a new Medicare-covered service, an annual wellness visit, for which beneficiaries pay no deductible or co-insurance. Cost-sharing for most preventive services, for example, mammography and colonoscopies, covered by Medicare is also eliminated.
- ACA assistance to states includes funds for additional training on identifying the signs of abuse and neglect of frail, elderly adults would also be required for the state and regional Long-Term Care Ombudsmen and Kansas Department of Health and Environment and Kansas Department on Aging inspectors.
- Provisions intended to protect the safety of seniors and to prevent elder abuse include the requirement of a background check on workers before they are hired and are caring for our loved ones in nursing homes, assisted living facilities or through home health agencies. This has long been standard practice in child welfare and should be standard in long-term care for elders. It would protect vulnerable adults from people who commit criminal acts in one state and flee to work in another state and whose records of misdeeds are not available to the hiring entity in the state to which they fled.
- Closing the Part D coverage gap or "donut hole": In 2010, beneficiaries who fell into the donut hole received a one-time payment of \$250. This year, beneficiaries who enter the coverage gap will pay 50 % of the cost of covered brand name drugs, plus a dispensing fee. They will pay 93% of the cost of generic drugs. The coverage gap will be phased down and completely eliminated by 2020.
- Changes to Part C Medicare Advantage (MA) programs, including a phase-in of payment reductions and a prohibition on cost-sharing for chemotherapy administration services, renal dialysis services, and skilled nursing facility services that exceed the cost-sharing for those services under original Medicare.
- The ACA froze, at 2010 levels, the threshold for income-related Medicare Part B premiums for 2011 through 2019. Starting in 2011, these higher income-earning individuals will also pay an additional amount for their Part D premiums. Medicare medical insurance – Part B -- premiums for most beneficiaries will remain unchanged from 2010 at \$96.40/month. For higher income beneficiaries, Part B premiums range from \$154.70 to \$353.60 per month. Beneficiaries with lower incomes (and this includes the great majority of Medicare beneficiaries) will pay the same Part B premium that they paid in 2008, 2009, and 2010, (\$96.40), but people who first become eligible for Medicare on or after January 1, 2010 will pay a minimum Part B premium of \$110.50/mo. There may be a late-enrollment penalty.
- The Fiscal Services Administration of the Internal Revenue Service published an interim final rule on December 22, 2010, concerning distribution of Social Security, Supplemental Security Income (SSI), Railroad Retirement, Veterans, and other federal government checks. As of May 1, 2011, all checks must be received

through direct deposit. Individuals who do not have a bank account or who would rather use a credit card account may sign up for Direct Express Debit MasterCard. Individuals who currently do not use direct deposit must change how they receive their check by March 1, 2011. They can go to www.GoDirect.org, or they can call 1-800-333-1795. People who apply for federal benefits after May 1, 2011, will automatically get their benefits electronically.

CONCLUSION

Other than the changes to the income-related Part B and Part D premiums, most Medicare beneficiaries can expect to see savings in their out-of-pocket costs as a result of the changes described above. The new focus on prevention eliminates cost-sharing for important services and allows beneficiaries to meet yearly with their medical providers to establish or update a screening schedule. MA plans have new restrictions on the cost-sharing they may impose. Beneficiaries who enter the donut hole will pay less for their medications. All in all, the changes to Medicare that go into effect in 2011 will bring improvements to the lives of thousands of older Kansans and people with disabilities.

PLANNING FOR SPECIAL NEEDS AND CHRONIC ILLNESS

Not only was estate planning never just about estate taxes, it is more commonly about planning in the midst of chronic illness and debilitating medical crises. It is estimated more than 20 million Americans are living with some form of chronic illness. More than five million Americans are living with Alzheimer's disease, which accounts for approximately 70 percent of dementias in those 70 and over. However, chronic illness does not restrict its impact to seniors. At least a quarter of chronic illness diagnoses are made prior to the age of sixty and approximately 500,000 of those with Alzheimers are considered early onset cases.

These types of illnesses create extraordinary physical, mental and financial strain on individuals and their families. The Alzheimer's Association estimates 14.9 million unpaid caregivers assist afflicted family members in managing their disease and its impact on activities of daily living.

Many family members provide this care out of love and affection, and do not expect compensation; however, financial stresses can make this impossible in many circumstances, thus leaving the family with fewer options.

Caregiver contracts can be specifically tailored to the needs of the afflicted family member and the caregiver, to assure a mutually satisfying arrangement can be maintained. In addition, planning for special needs can include use of supplemental needs trusts to ensure the afflicted family member has resources set aside to improve his or her quality of living beyond basic necessities. However, in order to avoid possible application of a penalty period of Medicaid ineligibility, the contract and the supplemental needs trust must meet certain requirements.

Traversing this terrain requires specialized understanding of public benefits available to an afflicted person, as well as the law and regulations governing the same. Our experienced attorneys can guide you through this maze of issues, with the care and understanding needed in the midst of a medical crisis.

DISCLAIMER: This material has been prepared by Stevens & Brand, LLP., for informational purposes only. This information should not be construed as legal advice and is not necessarily current or complete. Receipt of this information does not create an attorney-client relationship. We urge you to consult a lawyer concerning your particular fact situation and any specific legal questions you may have.

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