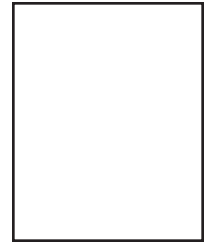




Law Offices of  
**Nay & Friedenberg**

6500 SW Macadam Ave., Suite 300  
Portland, OR  
97239-3565



## CALENDAR OF EVENTS

### SPRING 2009

**APRIL 14TH**      *PRESENTATION*  
LEGACY MERIDIAN PARK HOSPITAL

Tim Nay will be presenting "Legal/Financial Planning for Mid-Life and Beyond" from 6pm to 8pm. Meridian Park Hospital is located at 19300 SW 65th Ave., Tualatin, OR 97062. To register, please contact Legacy at (503) 335-3500.

**MAY 9TH**      *PRESENTATION*  
NW PORTLAND PARKINSON'S SUPPORT GROUP AT  
GOOD SAMARITAN HOSPITAL

Amy Davidson will be presenting "Elder Law and Estate Planning Issues" from 10am to 11:30am. Good Samaritan Hospital is located at 1015 NW 22nd Ave., Portland, OR 97210. Please contact Chad at (503) 245-0894 for more information.

**MAY 12TH**      *PRESENTATION*  
GOOD SAMARITAN HOSPITAL

Tim Nay will be presenting "Legal/Financial Planning for Mid-Life and Beyond" from 6pm to 8pm. Good Samaritan Hospital is located at 1015 NW 22nd Ave., Portland, OR 97210. To register, please contact Legacy at (503) 335-3500.

## *Our Services*

*Elder Law*

*Medicaid Planning*

*Estate Planning*

*Probate*

*Guardianships*

*Conservatorships*

*Living Trusts*

*Special Needs Trusts*



SPRING 2009

Elder Law &  
Estate Planning

# Newsletter

## Our Newsletter

Nay & Friedenberg has designed this newsletter for people who have an interest in elder law and estate planning. We hope that it educates and becomes a resource for our friends, clients and partners in this area.

In each issue we will have an article that will stand alone as a self-contained primer on a specific subject. In this issue we report on Long Term Care Insurance. It is written for the non-specialist but hopefully will be of some benefit to many members of our community. We hope that you will copy it and distribute it to your community. Please feel free to do so without concern as to authorship.

Each issue will also contain a second article or two on an interesting subject. This issue we have what is new in 2009.

Our Newsletter can also be found on our website, [www.naylaw.com](http://www.naylaw.com) in the event you wish to print additional copies. Feel free to contact us if you have any thoughts or suggestions to [chad@naylaw.com](mailto:chad@naylaw.com). Thank you. Nay & Friedenberg.

## What's New In 2009?

With every new year, we can expect changes in the law. The year 2009 is no different. This is the summary of changes affecting seniors and people with disabilities in 2009.

### **MEDICAID CHANGES**

Every year, Medicaid updates the figures it uses to calculate eligibility for the program. Since Medicaid is a needs-based program, an individual must demonstrate a financial need as well as a medical need in order to qualify. A single individual must have no more than \$2000 in certain assets to be eligible for Medicaid. The number has remained the same for many years. However, this year, Medicaid increased the "community spouse resource allowance." This is the amount a healthy spouse can retain of a married couple's savings (beyond the primary residence and a car) and allow the impaired spouse to qualify for Medicaid benefits. In 2009, a community spouse can hold onto a minimum of \$21,912 and a maximum of \$109,560. The exact amount depends on how much the couple owned at the time the impaired spouse started receiving care and other factors.

Medicaid recipients who have a certain amount of income are required to have an "income cap trust." This is an additional requirement for Medicaid eligibility. Every year the threshold for requiring an income cap trust goes up. In 2009, income cap trusts are required for individuals with gross incomes of \$2,022 or greater.

Every Medicaid recipient must contribute towards the cost of care. After certain expenses are paid, the remainder must go to the care provider. The rules allow for

the individual to retain a small amount of money for personal spending. This is called the "personal needs allowance." The amount depends on the kind of facility where the individual resides. This amount increases annually for those individuals in a community-based facility. An individual in a community-based care facility (such as an assisted living facility) may keep up to \$152 of income every month. Conversely, someone in a nursing home may keep \$30 per month as a personal needs allowance. That number has not changed.

### **MEDICARE**

The premium for Medicare Part B did not change in 2009 and remains at \$96.40 per month for those Medicare recipients earning less than \$85,000 per year (for singles) or \$170,000 per year (for married couples). The Part B deductible also stayed the same at \$135.

### **SOCIAL SECURITY**

Benefits increased by 5.8 percent to account for the increase in the cost of living.

### **ESTATE RECOVERY**

The Department of Human Services (DHS) of the State of Oregon has expanded its ability to seek repayment for its services. DHS has always had the right to seek repayment for services once the individual received benefits passed away. Any DHS claim is limited to the amount of money provided by DHS during that person's life. In the past, that right to make a claim was limited to only the estate of the Medicaid recipient and no one else in that individual's

*Continued on next page*

*What's new in 2009?*

*continued from page 1*

family. The rule has been expanded to give DHS the right to seek repayment at the death of the healthy surviving spouse. The claim may be made against those assets that the Medicaid recipient had transferred to the spouse during his life. For example, an impaired spouse must transfer his one-half ownership in his house in order to remain eligible for Medicaid benefits. That half-interest in the house is now subject to a claim by DHS when the healthy spouse passes away. DHS has no rights to seek repayment during the lives of the impaired spouse and healthy spouse.

#### **MEASURE 57**

In November 2008, the voters of the State of Oregon passed Measure 57, which increased the penalties for certain crimes and imposed minimum sentences for those crimes. Measure 57 included minimum sentences for those convicted of theft of an elderly person, defined as someone 65 or older. The punishment for theft of \$10,000 or more from an elderly person is subject to a minimum prison sentence of 16 months and a maximum of 45 months, depending on the person's criminal history.

#### **ESTATE AND GIFT TAXES**

The amount of money that an individual can transfer free of federal estate tax has now increased. For decedents dying in 2009, they can leave up to \$3.5 million in assets to their heirs free of federal estate tax.

Individuals making gifts greater than \$13,000 per year to any individual must report the gift to the IRS by filing a gift tax return. Gifts of \$13,000 or less in a year to any individual do not need to be reported. This threshold for gift tax reporting is an increase from the amount in 2008. The lifetime gift tax credit remains at \$1 million, as it was in 2008.

Oregon imposes an inheritance for estates worth \$1 million or greater. That amount did not change in 2009. Oregon does not have a gift tax. ■

# Long Term Care Insurance. Do You Need It?

Fewer insurance policies are as confusing as long term care insurance. It is complex, expensive and ... very good.

#### **WHAT IS IT?**

Long term care insurance (LTC insurance) covers the cost of care, companionship and supervision for persons who need help with their activities of daily living due to physical or cognitive problems. Typically these issues arise with Alzheimer's, Parkinson's, multiple sclerosis, etc. It helps people live as they are without trying to cure the condition. It covers care in the home or in a facility such as an assisted living facility, adult foster home or nursing home.

#### **WHY?**

Because LTC is very expensive! The State of Oregon states that the average cost of one month in a nursing home is \$6,494, or \$77,928 per year. Actual facilities vary and the typical cost can be from \$2,500 in a foster home to \$10,000 per month for care in one's home.

#### **HOW IT WORKS.**

The insured will buy a policy and commit him or her self to a premium, say \$2,500 per year. That premium will guarantee an insurance payment, say \$4,500 per month, for some years, say 3 or 5, if the insured needs care. Premiums stay the same over a life unless the company has to raise all buyer's premiums. It is interesting to note that some companies have a history of not raising premiums.

The most common confusion arises from when the policy begins and ends. Coverage begins at purchase. Premium payments to the company can be made monthly, quarterly or annually. However, the policy only begins paying when care begins, which is typically years later. The policy then begins paying on

the claim for the contracted period of time, usually three years, five years or for life.

#### **IT'S NOT DUPLICATE COVERAGE.**

LTC insurance is not to be confused with, or avoided because of, other health insurance coverage.

Medicare covers medical care in hospitals, doctors and other pure medical treatments. Medicare coverage for LTC is very limited and only after a serious hospitalization.

A Medicare Supplement policy covers co-pays and deductibles for Medicare coverage, generally the 20% portion. Again, coverage for LTC is so nominal that it affords essentially no assistance.

Medicaid does cover LTC but it only applies after rigorous asset and income rules have been met. Some people coordinate LTC insurance with future Medicaid coverage.

#### **YES, ITS GOOD COVERAGE.**

In Oregon, due to stepped up legislation and enforcement, only good LTC policies can be sold. Previously policies excluded mental health problems and Alzheimer's disease, unnecessarily duplicated existing Medicare benefits, did not cover certain facilities or required prior-hospitalization. Since 1991, that is no longer the case. The State has required terms in the policy that make it a good investment. However, it is still important to tailor the specific policy to one's situation. Otherwise the buyer may buy too much or too little coverage. Of course these choices affect the amount of the premium.

#### **WHAT TO LOOK FOR.**

Policies are structured many ways and the industry is always adding bells and whistles. The buyer needs to focus on the most important issues:





#### 1. BENEFIT PERIOD.

This is the period of time during which the company will pay for care once a claim has been made. At the short end is 3 years. For greater comfort, 5 years is the better option. Some clients will buy lifetime coverage. This decision is a matter of budget, gender, family history and personal feelings.

#### 2. DAILY BENEFIT.

This is the amount of money that the company will contribute to your care. Typically it was \$100 per day, but now we see \$150 and even \$200. The biggest factor here is how much outside income one has. The higher the income, the less needed from the policy.

#### 3. INFLATION RIDER.

One can buy an increase in the daily benefit to account for inflation. Typically this is a 5% annual increase of the original daily benefit. Sometimes it is compounded but that makes it far more expensive. Any “younger” person (in their 60s!) should purchase an inflation rider.

#### 4. ELIMINATION PERIOD.

This is the period of time after a claim during which the company does not have to pay. Think of it as a “deductible.” It can be used to bring down the cost of the policy and 90 days is not uncommon.

#### 5. HOME CARE.

Oregon policies must cover care in the home but not at the same rate as care in a facility. Most policies include a home care benefit that is one-half of the facility daily benefit, say \$75/day vs. \$150/day. This is because most care in the home is provided by loved ones and the idea is that paid care will supplement that care. The lower benefit will suffice. However, note that if the care is so overwhelming that only a facility or very expensive 24 hour care will suffice, the lower home care benefit will not suffice. If home care is the preference, there will have to be an increase in the home care benefit. This will raise the premium significantly.

#### INSURABILITY/UNDERWRITING.

Like any policy that turns on the purchaser’s health, the buyer must meet certain health criteria. Unfortunately, a person

already diagnosed with a disabling illness will not be insurable. Further, it may not be possible to purchase a policy after age 80 because the premium cost skyrockets. It is important to note that if the buyer is of questionable health, it is worth having the company undertake a medical exam at the time of purchase.

#### DEDUCT THOSE PREMIUMS!

Premiums paid for LTC insurance are IRS tax deductible medical expenses. However, there are requirements. First, the policy must meet certain criteria which much be discussed with your insurance agent. These are deemed “qualified” policies. Second, there is an annual limit to how much premium can be deducted. For example, for 2009 if the owner is over 70, the sum that can be deducted is up to \$3,980. Third, like all Schedule A medical expenses, the deduction is only for the amount that exceeds 7.5% of the taxpayer’s adjusted gross income.

Oregon also has a tax break in the form of a tax credit. It applies to policies purchased on or after 2000. It is for 15% of the annual premium up to \$500. It also can be taken by employers who pay for the premiums for their employees.

#### PARTNERING WITH THE STATE FOR MEDICAID.

Certain policies have an additional advantage. To the extent that policy pays for long term care costs, the State will give the owner a financial credit for Medicaid eligibility. For example, if a person in care used a \$150,000 benefit provided by his or her LTC insurance, that amount would not have to spent down to qualify for Medicaid. They could literally keep that sum while on Medicaid and when they died the State could not file a claim (lien) against it. This is a tremendous advantage and it too must be discussed with your agent as not all policies comply with the State rules.

Further Information. Your insurance broker or agent is your best resource. He or she will be familiar with your specific situation and will make your most tailored

recommendation. If you wish to coordinate your insurance with your estate plan, taxes or Medicaid, then consult with your lawyer or accountant. Though this seems a good deal of effort, you are making a big investment. Finally, consider the National Association of Insurance Commissioners at [www.naic.org](http://www.naic.org) or 1-816-842-3600, the organization of insurance regulators, and the Oregon Senior Health Insurance Benefits Assistance Program (SHIBA), 1-800-722-4134, a department of Oregon’s Insurance Division. ■



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