page 2

The federal estate tax is back

Return of estate tax creates a danger for life insurance policies...

... and a problem for unmarried couples

page 3

Average cost of a nursing home tops $83,000 a year

page 4

Larger tax deductions for long-term care insurance

Legal Matters®

Elder Law
winter 2011

New problem for seniors when moving from a hospital to a nursing home

A growing number of Medicare beneficiaries who are transferred from a hospital to a nursing home are discovering that Medicare won't pay for the first 20 days of their nursing home stay.

Ordinarily, Medicare covers nursing home stays entirely for the first 20 days as long as the patient was first admitted to a hospital as an inpatient for at least three days. But here's the problem: A lot of people are discovering that there were never actually "admitted" to the hospital for three days, but rather were in the hospital only under "observation."

Often, hospital patients have no idea that they haven't actually been "admitted" to the hospital. They are given a bed and a wristband, nurses and doctors come to see them, they get treatment and tests, and they fill out a meal chart just as if they had been formally admitted.

©istockphoto.com/Sean Warren

Increasingly, hospitals are choosing not to admit patients but rather to place them under observation to determine whether they should be admitted. This is in part due to pressure from Medicare to reduce costly inpatient stays.

Medicare guidelines say that it should take no more than 24 to 48 hours of obser-

continued on page 3

BELIVEAU LAW GROUP, LLC

Massachusetts offices: Waltham, MA; Danvers, MA; and Quincy, MA
New Hampshire offices: Manchester, NH and Salem, NH
Florida offices: Fort Lauderdale, FL and Naples, FL
Main Telephone Number: (781) 890-8600 • Email: firm@beliveaulaw.com • Website: www.beliveaulaw.com

The federal estate tax is back in 2011

The federal estate tax is back in effect as of January 1, 2011.

Originally, the tax was to apply to all estates over $1 million, at a rate of 55%.

As a result of a last-minute compromise in Congress, the estate tax will be temporarily reduced for two years. In 2011 and 2012, the tax will apply to estates over $5 million, at a rate of 35%. However, unless Congress changes the law again, after 2012 the tax will apply to any estate over $1 million, at a rate of 55%.

And this means that it's important for many people to begin to plan for the estate tax now, if they haven't already done so.

©istockphoto.com

The estate tax has always been a problem for the rich, but today a huge swath of the middle class may be affected if the value of their house, their business interests, their retirement savings and the face value of their life insurance policies tops $1 million.

On the positive side, the current economic environment – with ultra-low interest rates and depressed valuations of real estate and many businesses – is a great time to plan to transfer assets to the next generation.

That's because it's often possible to give away partial interests in assets and "lock in" today's low valuations, so that any future appreciation in their value will escape tax.

Also, there are many techniques for avoiding tax that work best when interest rates are low – and interest rates have almost never been lower than they are today.

Return of estate tax creates a danger for life insurance policies...

With the federal estate tax back in effect in 2011, many people need to take a second look at their life insurance policies.

Life insurance proceeds are not subject to income tax. But what many people don't realize is that if you own your life insurance policy, then the proceeds will be considered part of your estate when you die. If those proceeds – combined with all your other assets – amount to more the estate tax exemption amount, then your estate may be subject to estate taxes.

That exemption amount could well be as low as $1 million at some points during the next few years.

If the beneficiary of your policy is your spouse (and your spouse is a U.S. citizen), then no estate tax will be due at the time of your death. However, the proceeds will become part of your spouse's estate when he or she dies, and will be subject to estate taxes then.

A good solution is to transfer ownership of the policy. You could transfer ownership to your children, but it's usually better to put the policy into a trust. The advantage of a trust is that, when you die, the proceeds in the trust can be used to benefit your spouse during his or her lifetime if necessary, and when your spouse dies, the remaining proceeds can pass tax-free to your children or other heirs. In this way the bulk of the proceeds can go to your heirs without being taxed either as part of your estate or as part of your spouse's estate.

There are some complexities to life insurance trusts. For instance, if you transfer a policy to a trust and you die within three years, the tax benefits will be lost. (You can avoid this problem if you set up the trust first and have the trust buy the policy.)

Also, there are some notice and paperwork requirements each year in order to properly pay the premiums without jeopardizing the tax advantages. But for many people, the huge tax savings and added control provided by a trust are worth it – especially with the uncertainty in the estate tax rules.

... and a problem for unmarried couples

Seniors who are living together but are not married may be facing a significant problem now that the federal estate tax is back in effect.

Under federal law, a person who dies can leave an unlimited amount of money or property to a spouse without any of it being subject to the estate tax.

But if you leave money or property to someone you live with but aren't married to, the same rules don't apply. If the total value of all your assets when you die (including the face value of any life insurance policies) is more than estate tax exemption amount, your estate may be subject to tax.

For this reason, many seniors who are living together face much more difficult tax issues than married couples, and should speak to an attorney soon about estate planning under the new rules, if they haven't already done so.

This is also true for gay couples. Some states now allow gay people to marry – or to have "civil unions" in which they are treated the same as married couples for tax purposes – but that only applies to state taxes. The federal government doesn't accept gay marriages or civil unions for purposes of federal taxes, so gay couples need to take extra care now that the federal estate tax is back in effect.

Average cost of a nursing home tops $83,000 a year

Nursing home and assisted living costs increased much faster than the rate of inflation from 2009 to 2010, according to a survey by MetLife.

The average cost of a private room in a nursing home rose 4.6 percent to $83,585 a year – or $229 a day. The average cost of an assisted living facility climbed 5.2 percent, to $39,516 a year or $3,293 a month.

The average charges for home health care aides and adult day care were unchanged, after both jumped about 5 percent the year before. Home care aides average $21 per hour and adult day care services average $67 per day.

The cost of a semi-private room in a nursing home increased 3.5 percent to $205 a day, or $74,825 a year.

The rates for a private nursing home room ranged from a low of $138 a day in rural Louisiana to a high of $687 a day in Alaska. Assisted living rates ranged from $2,073 a month in rural Arkansas to $5,231 a month in Washington, D.C.

The cost of home health care aide services was lowest in Shreveport, Louisiana, where it averaged $14 an hour, and highest in Rochester, Minnesota, where the average hourly rate was $30.

The rates for adult day care services ranged from $31 a day in Montgomery, Alabama to $140 a day in Vermont.

©istockphoto.com

We welcome your referrals. We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

New problem for seniors when moving from a hospital to a nursing home

continued from page 1

vation to decide whether a patient should be admitted, but in reality hospitals can keep patients under observation for much longer.

The consequence is that if a patient moves to a nursing home, and later discovers that he or she wasn't formally admitted to the hospital for three days, the patient must pick up the tab for the entire nursing home stay.

Medicare doesn't require that patients be notified as to whether and when they have officially been admitted – so it's a very good idea to ask. If you haven't been admitted, and if a nursing home stay is likely, you should discuss this with your doctor.

The statistics are telling. Medicare claims for "observation" care in hospitals increased by more than a third between 2006 and 2009. Over the same period, Medicare claims for observation care that lasted more than 48 hours *tripled* to 83,183.

Patients who discover after the fact that they have been denied Medicare because of this problem usually have little recourse. As long as Medicare pays for the hospital stay – which it usually does on an outpatient basis because the patient hasn't been admitted – there is no way to appeal because there has been no denial of coverage. And the denial of coverage for the nursing home stay is technically proper if the patient wasn't admitted to the hospital for three days.

A bill that was recently introduced in Congress, H.R. 5950, would fix this problem by allowing the time that patients spend in a hospital under "observation status" to count toward the three-day hospital stay for Medicare nursing home coverage. But it's not clear what will happen to the bill.

Medicare doesn't require that patients be notified as to whether and when they have officially been admitted – so it's a very good idea to ask.

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.

Larger tax deductions for long-term care insurance

©istockphoto.com

The amount you can deduct on your taxes as a result of buying long-term care insurance has been increased by the IRS for 2011.

Generally, you can deduct part of your premiums if the premiums, together with your other unreimbursed medical expenses, amount to more than 7.5 percent of your adjusted gross income.

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

Age	Maximum deduction
40 or less	$340
41-50	$640
51-60	$1,270
61-70	$3,390
Over 70	$4,240

For policies issued in 1997 or later, the premiums are deductible so long as the policies meet certain requirements. For instance, they must give you the option of "inflation protection" and "non-forfeiture protection." (You don't have to 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.

The rules for deductibility are different if you're self-employed. In that case, you can generally take the deduction as long as you made a net profit, even if your medical expenses don't exceed 7.5 percent of your income.

Beliveau Law Group, LLC

Massachusetts offices: Waltham, MA; Danvers, MA; and Quincy, MA
New Hampshire offices: Manchester, NH and Salem, NH
Florida offices: Fort Lauderdale, FL and Naples, FL
Main Telephone Number: (781) 890-8600
Email: firm@beliveaulaw.com • Website: www.beliveaulaw.com