

# Texas Elder Law FaxLetter

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A FREE BUSINESS AND LEGAL UPDATE OF CURRENT EVENTS AFFECTING THE ELDERLY ♦ DECEMBER 2003 EDITION

## MEDI-MINUTES

### Income Cap to Rise Slightly

As many of you know, Texas is an income cap state in connection with long-term care Medicaid eligibility. Presently, if an applicant for Medicaid has "countable" income (certain income is exempt or excluded) over \$1656 per month, then he or she is ineligible for long-term care Medicaid. The income cap rises every January 1 with inflation. Since inflation is low this year, it is anticipated that the income cap for 2004 will rise to \$1692 per month.

An applicant for long-term care Medicaid can achieve eligibility even if his or her income is over the cap either by creating a qualified income trust (commonly known as a "Miller Trust" or a "QIT") or by getting a court order to shift the income to the community spouse (if the applicant is married and the spouse lives in the "community" - i.e., at home) assuming all other Medicaid eligibility requirements have been met.

The QIT or Miller Trust is the most common tool used to overcome the income cap. An income only trust is established, and the income of the applicant alone is placed monthly into the trust. Some or all of the income may be paid to the community spouse (if applicable) depending on the monthly income of the community spouse (if the community spouse's income is below the minimum monthly maintenance needs allowance, which is presently \$2266.50 per month and is scheduled to rise January 1 to \$2319 as noted in the last month's issue of the *Texas Elder Law FaxLetter*).

However, if the community spouse's income combined with the pension income of the institutionalized spouse is greater than the minimum monthly maintenance needs allowance (presently \$2266.50), then it is often better to get a court order (qualified domestic relations order without a divorce) to shift more income to the community spouse.

If the applicant is single, the majority of the income from a QIT will be applied to the nursing home and the government will subsidize the balance of the cost of care plus medication.

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## NATIONAL NOTES

### Medicare Overhaul Approved

The U.S. Congress has approved the most sweeping changes to Medicare since the program's creation in 1965. On Tuesday, the Senate passed the \$395 billion measure with a 54-44 vote that fell largely along party lines, though eleven Democrats voted for it while nine Republicans opposed it. President Bush hailed its passage and indicated he was eager to sign it. "For the sake of our seniors, we got something done," the President said.

Among other changes, the bill creates a Medicare drug benefit that has been the center of furious debate. While many seniors groups, including AARP, have endorsed the bill, others have denounced it as a "giveaway to insurers and drug companies." The benefit itself would not begin until 2006.

Once it does take effect, seniors will be able to purchase coverage for prescription drugs for about \$35 per month. The program would have a \$250 deductible and would then cover 75% of further costs up to \$2,250. It would then offer no coverage until the recipient's out-of-pocket expenses reached \$3,600 (at about \$5,100 in total drug costs). Once that level is reached, the program would pick up 95% of further expenses.

The bill also includes a Medicare-backed prescription drug discount card that will be available next year. It will cost about \$30 per year and will give an estimated 15% to 25% discount off retail prices. However, the bill's critics contend those numbers are exaggerated.

Source: *Associated Press* 11-25-03

## HEALTH HAPPENINGS

### Unexpressed Negative Feelings Increase Death Risk

A new study from Rush-Presbyterian-St. Luke's Medical Center in Chicago

suggests that elderly adults experiencing negative emotions that are kept "inside" may be at a greater risk of dying. Of 851 subjects with an average age of 75, those with high scores on a test to measure "internally experienced" negative feelings were nearly twice as likely to die during the study as those with low scores. Interestingly, those perceived as having generally angry dispositions or high levels of expressed anger showed no increase to their risk of death.

The researchers speculate that the body's hormonal response to the chronic stress of internalized emotions could be a factor. Also, individuals with depression or harbored anger might be less likely to live healthy lifestyles, follow medical advice, and stick to prescribed treatments.

Reuters, 11-18-03

## LEGAL LINES

### Computer-Generated Signature on Will Is Valid



Tennessee resident Steve Godfrey prepared his will on his computer and affixed his computer-generated signature at the end. The will left everything Steve owned to his girlfriend, Doris Holt, identified only as "Doris" in the document. He had two neighbors witness and sign the will, then died a week later.

Doris submitted the will for probate, but Steve's sister, Donna Godfrey Taylor, filed a complaint alleging that the will was not signed and claiming that Steve had died intestate. The trial court granted Doris summary judgment, holding there were no undisputed material facts and that all legal requirements concerning the execution and witnessing of a will had been met.

The Tennessee Court of Appeals at Knoxville affirmed the lower court's ruling.

*Taylor v. Holt* (TN Ct. App., No. E2003-00901-COA-R3-CV, 10-31-03), [www.tse.state.tn.us/opinions/tca/PDF/034/taylorde.pdf](http://www.tse.state.tn.us/opinions/tca/PDF/034/taylorde.pdf)

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