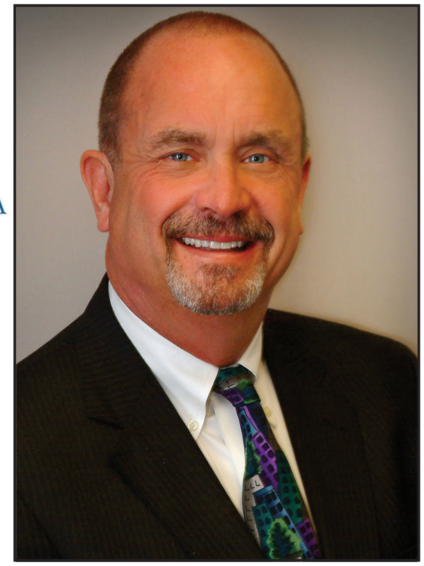
Browning & Meyer Co., LPA
Serving the Elderly and Special Needs Population

www.elderlaw.us
300 W. Wilson Bridge Road
Suite 250
Worthington, Ohio 43085
Toll Free: 866-88-ELDER
Phone: 614-471-0085
Fax: 614-430-8132



2016 ANNUAL NEWSLETTER

Dear Clients and Friends,

Welcome to our annual newsletter. Like many of our continuing communication efforts, the annual newsletter aims to keep our clients informed of recent news and updates affecting elder law, estate planning, probate law and special-needs trusts.

This year, **Browning & Meyer Co., LPA** proudly marked its 20th anniversary. We are more committed than ever to serving your estate planning needs in all stages of life, and providing certified expertise in elder law, probate and special needs planning and administration.

Please share this newsletter with any friends or relatives who may appreciate it, or direct them to our website, **ElderLaw.US**, where the newsletter already has been posted. On the site you'll also find access to our regular blog on legal topics of interest and links to our active Facebook page, **facebook.com/ElderLawUS.**

Browning & Meyer also now issues a digital monthly newsletter. If you're not already receiving it and would like to, please request a free subscription by sending an email to Info@ElderLaw.US.

You also can contact our receptionist Jayne Weddington at jweddington@elderlaw.us or 614-471-0085 for assistance in subscribing to the e-newsletter.

Following is a rundown on recent news and legal updates we believe you will find noteworthy as we end 2016 and start into a new year.

TRUMP EFFECT

Election impact unknown

There are very few details outlined by way of actual administrative or planning goals for the incoming administration. Those goals will be somewhat limited by the Federal budget and the disdain for increasing taxes. As the incoming President is neither a classical Democrat or Republican, any of the normal assumptions are likely invalid. We expect the following items to be focused in the first year:

Obamacare

Based upon our review and the President Elect's initial comments, whether the changes to Obamacare are called "repeal and replace" or "retain and repair," they are likely the same. The underlying economics to the Obamacare program are deficient and whoever won the election, changes were going to be required. The guaranteed availability, the restrictions on prohibiting insurance for preexisting condi-tions, and allowing individuals to stay on their parents' insurance until age 26 are all popular items that the President Elect has indicated will be retained.

Income Taxes

It seems likely that the income tax rate will be reduced, as has been discussed by both Democrats and Republicans over the past four years, and it also seems likely that some of the tax breaks for corporations may be closed. Should the President Elect be intent on encouraging or punishing traditional heavy industries, it would be a combination of tariffs and/or tax credits in order to create an equal playing field with the competition from China, Mexico and other countries who subsidize manufacturing. One approach effectively provides government subsidies which will eventually cost the taxpay-ers, while the other is likely to increase prices.

Immigration Policy

The President Elect has softened his stance toward illegal immigrants already in the Unit-ed States, but does not seem to have changed his underlying theory regarding reducing or prohibiting further illegal immigration. Allowing the current illegal immigrants to become quasi-legal and paying taxes such as Social Security and Medicare tax may actually be of benefit to those programs, but again, will result in price increases.

Medicaid

During the campaign, the President Elect indicated that he would favor block grants, but there is no indication that the Republican Governor's Association is keen on accepting block grants for an unlimited liability.

Federal Estate Tax

The President Elect has not mentioned nor discussed the probability of reducing the $5 million per person credit nor increasing the tax brackets for the death tax.

MEDICAID CHANGES

SSI Rules Effective in Ohio

Ohio is implementing a change whereby Ohio will now become an "SSI state" whereby many of the SSI rules will apply for purposes of the Medicaid program. Most of the rule changes are of questionable value and will in the short term make the administration of the program even less efficient. Some of the changes will have a negative impact on the disabled pop-ulation but in the long term may make the administration of the program easier for the Ohio Department of Medicaid. The changes as we interpret them are as follows:

■ **Qualified Income Trust (hereafter "QIT"):** This new rule affects anyone on Medicaid or applying for Medicaid with a gross income that exceeds $2,199 per month. Thus, for a single individual with nursing home costs of $8,000 per month and with an income of $2,400 per month, under the old rules, this person would have qualified under the old income test for Med-icaid eligibility. Under the SSI test, this person does not qualify and as such, a trust must be put in place. The income, when received each month in the Medicaid recipient's checking account, must be diverted in part to this QIT . The QIT will then receive the money and distribute the money soon thereafter to the nursing home. This adds inconvenience for the family and inconvenience for the caseworker, but otherwise, has no affect and the person will still be eligible. If the Trust is not put in place, the person will not be eligible and even if they were previously determined to be eligible, Medicaid eligibility will be terminated due to the income level. Both the Huntington and Park National Banks will allow for the setup of these trusts and will handle the funds on your behalf. If you are already on Medicaid or will soon require Medicaid, please contact our office to create the QIT. As might be expected from these government programs, we are "pole vaulting over ant hills."

■ **Asset Limit:** The asset limit under the old Ohio Medicaid rules was $1,500. Based upon the SSI rules, that amount has now changed so that it will be $2,000. Thus, for individuals on Medicaid (except for husband and wife circumstances), the Medicaid applicant is permitted to retain up to $2,000 of assets including their checking, savings, IRAs, and life insurance cash values.

■ **Disability Determinations:** This change is at the core of the program change. There are complicated rules under the Ohio Medicaid program which will allow for individuals who might not be eligible for SSI as being disabled to become eligible under a disability procedure under the Medicaid code. Under this new rule, if you are not determined to be disabled through the Social Security Administration or through State Teachers Retirement System or Public Employees Retirement System, you are not disabled and there is no separate procedure to follow.

■ **Inadvertent Changes:** There are likely to be a number of inadvertent policy changes which have neither been contemplated nor intended by the State agency. Rules relating to IRAs, 401k, and 403b accounts and other retirement accounts may be somewhat different based upon the interpretation of the SSI rules. Thus, an SSI interpretation in Pennsylvania may now apply as it relates to such an asset in Ohio. There are many such considerations, many of which will require litigation in the future.

Medicaid/Special Needs Trusts

As reported last year, the *Cook* Decision by the Franklin County Probate Court continues to cause concern as it relates to eligibility for Medicaid for beneficiaries of such trusts. The Ohio Department of Medicaid is taking an extreme position relating to these trusts and is attempting to take jurisdiction over administration of such trusts. There is no such provision in Ohio law, but effectively, the agency would like to see all disabled individuals who are on Medicaid, be impoverished. Unfortunately, some courts have agreed with this position. While this position is not supported by statutory law or by supreme court decisions, it is effectively being implemented by administrative fiat. All of those individuals with disabled children should be concerned.

Managed Care Misstatement

The State has recently been sending statements to spouses of nursing home residents, suggesting that they are required to sign up for a "Medicaid managed care program." As the community spouse is not eligible for Medicaid and is not in the Medicaid program, this is simply a misstatement and a mistake of the Ohio Department of Medicaid. No action is required in response to these memorandums.

Wrongful Terminations

Due to a change in the computer programming in the state of Ohio, the State cannot simply transfer Medicaid cases from the old system to the new system. Particularly for those who are over the age of 65 who are on Medicaid either under PASSPORT or under a Medicaid nursing home vendor program, many terminations will issue. Should you receive a notice indicating that the agency will be reopening your case under the new computer program, you do not need to take action. If you do not receive such a notification but instead a termination only, you should request a hearing. If you actually get a Notice of Hearing, you should contact our office and schedule to have one of our lawyers represent you at the hearing. We do not believe that the hearings will actually occur, but the hearing request will require the caseworkers to actually reprocess the cases in a timely fashion.

Small Business Issues

For those who own a small business with a spouse who may become ill and require nursing home care or in those circumstances where the business owner becomes ill and requires nursing home care, Medicaid issues relating to the ownership of a business or business assets have always been a difficult planning scenario. In attempting to protect the business, and thus the income of the family, is very difficult in Ohio. The change into the SSI eligibility rules may affect this eligibility determination. Careful planning in advance would be helpful and certainly planning upon any sort of diagnosis as to Alzheimer's, Parkinson's, or other debilitating illnesses is essential.

The expert Elder Law, Estate Planning and Special Needs Trust attorneys at ***Browning & Meyer Co., LPA,*** *stand ready to help you today. Contact us through our website, ElderLaw.US, or by calling 614-471-0085.*

WILLIAM J. BROWNING IS A NATIONAL ELDER LAW FOUNDATION-CERTIFIED ELDER LAW ATTORNEY.

RICHARD F. MEYER IS AN OHIO STATE BAR ASSOCIATION-CERTIFIED SPECIALIST IN ESTATE PLANNING, TRUSTS AND PROBATE LAW.

LAURIE E. OHALL – OF COUNSEL – IS LICENSED IN OHIO AND FLORIDA AND IS A FLORIDA BOARD-CERTIFIED ELDER LAW ATTORNEY.

BROWNING & MEYER Co. is a Legal Professional Association
operating from offices at
300 W. Wilson Bridge Rd., Suite 250, Worthington, OH 43085

Browning & Meyer Co., LPA

Presort Std
US Postage
PAID
Columbus, OH
Permit No. 7636