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IN THIS ISSUE:

NUMBER OF BENEFICIARIES JUMPS BY 19%

SENATORS WANT \$250 SUBSIDY FOR SOCIAL SECURITY BENEFICIARIES

IRS ISSUES FURTHER GUIDANCE ON 2009 MINIMUM DISTRIBUTIONS

OHIO COURT FINES 2 COMPANIES. \$6.4 MILLION FOR UNAUTHORIZED LAW PRACTICE, BANS THEM FROM OHIO

ADVOCACY GROUP CHALLENGES MAJOR MEDICARE COVERAGE BARRIER

OH, WHAT A MESSY TALE WE WEAVE. RICHARD PRYOR'S WIFE IS ENTITLED TO GIFTS HE MADE TO HER.

Number of Social Security Beneficiaries jumps by 19%

The number of retired workers who began collecting Social Security benefits jumped by a record 19% in the 2009 fiscal year, as aging Baby Boomers and the unemployed chose to retire early. More than 2.6 million retired workers entered the Social Security system, up from 2.2 million in fiscal 2008. That's a much bigger increase than during past recessions. "There are just not enough jobs for older people," says Richard Johnson, senior fellow at the non-partisan Urban Institute. "They have no choice but to go on Social Security." The number of disabled workers receiving first-time benefits also soared to nearly 1 million, an increase of 100,000 over the previous year, according to Social Security Administration records. Those two factors are putting new pressure on Social Security's finances. The program paid out \$6 billion more in August than it took in. It's projected to run in the red for the next two years before returning to a surplus in 2012. "We have the combination of more people filing for early retirement and disability benefits at the same time that we have a reduction in the size of the workforce," said Stephen Goss, Social Security's chief actuary. The figures are affected both by the lengthy recession, which has sent unemployment to 9.7%, and by Baby Boomers who began reaching the early retirement age of 62 in 2008.

Senators want \$250 subsidy for Social Security Beneficiaries

Seniors collecting Social Security could get a \$250 check next year, in lieu of a cost of living increase, if Sen. Bob Casey, D-Pa., and congressional allies get their way. The Social Security Administration has indicated that it will not give recipients a cost-of-living

continued on page 3

IRS issues further guidance on 2009 minimum distributions

The Internal Revenue Service has released guidance for retirement plan administrators, plan participants and retirees regarding recent legislation affecting required minimum distributions. As you already know, the Worker, Retiree, and Employer Recovery Act of 2008 waives required minimum distributions for 2009 from certain retirement plans. Generally, a required minimum distribution is the smallest annual amount that must be withdrawn from an IRA or an employer's plan beginning with the year the account owner reaches age 70. The 2008 law waives required minimum distributions for 2009 for IRAs and defined contribution plans (such as 401(k)s) and allows certain amounts distributed as 2009 required minimum distributions to be rolled over into an IRA or another retirement plan. What is new is that IRS Notice 2009-82 provides relief for people who have already received a 2009 required minimum distribution this year. Individuals generally have until the later of Nov. 30, 2009,

or 60 days after the date the distribution was received, to roll over the distribution. The notice also provides guidance for retirement plan sponsors. It contains two sample plan amendments that plan sponsors may adopt or use to amend their plans to either stop or continue 2009 required minimum distributions. Both sample amendments provide that participants and beneficiaries can choose to receive or not to receive 2009 required minimum distributions. Also, both sample amendments allow the employer to offer direct roll-over options of certain 2009 required minimum distributions. Plan sponsors may need to tailor the sample amendment to their plan's particular terms and administration procedures and must adopt the amendment no later than the last day of the first plan year beginning on or after Jan. 1, 2011 (Jan. 1, 2012 for governmental plans).

Ohio Court Fines 2 Companies \$6.4 million for Unauthorized Law Practice, Bans Them From Ohio

The Ohio Supreme Court has fined two "trust mill" companies \$6.4 million for the unauthorized practice of law and banned them from doing business in the state.

Its ruling this morning imposed \$6,387,990 in penalties against American Family Prepaid Legal Corporation; Heritage Marketing and Insurance Services Inc.; and co-owners Jeffrey and Stanley Norman, this according to the Associated Press and the Columbus Dispatch.

The case, which was pursued by the Columbus Bar Association, concerned telemarketing and in-person sales calls that persuaded elderly residents of the state to obtain \$1,995 living trusts instead of preparing wills. Although the payment purportedly included an array of legal services, the court says in its written opinion, "almost exclusively ... the

only legal service that the plan members received was the preparation of a living-trust document and related estate-planning instruments such as powers of attorney and a living will."

In Connecticut I have not seen such predatory practices, although I have seen a lot of confusion in the general populace about what a living trust is, how it works, whether it protects assets from creditors (it does not), whether it saves estate taxes (it depends) and whether it is "better" than a Will. **For a more complete discussion about living trusts please visit our Website at www.ctseniorlaw.com and click on "Resources" and then click on "Articles".**



continued from page 1

adjustment next year – for the first time in 35 years – because there has been no inflation. But at a Capitol Hill news conference yesterday, lawmakers said seniors aren't buying electronics and other consumer goods, which have seen prices fall amid the recession, and are instead spending their money on prescription drugs and health care, whose costs have increased considerably. Sen. Bernie Sanders, I-Vt., and Rep. Pete DeFazio, D-Ore., introduced twin bills Sept. 17, and urged rapid action to give Social Security recipients some relief. Mr. Casey, a co-sponsor of the Emergency Senior Citizens Relief Act, spoke as well, as did Sen. Sheldon Whitehouse, D-R.I., and Rep. Maurice Hinchey, D-N.Y. “The least that we should do in the midst of a terrible recession – for older citizens and for families across the country – is to make sure that we can provide some measure of relief that this legislation provides,” Mr. Casey said. “It provides some light in that darkness.” Mr. Sanders said the \$14 billion cost will be paid for by imposing Social Security payroll taxes on earnings from \$250,000 to \$359,000 per year. Workers now pay Social Security taxes on only the first \$106,800 of their income.



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Advocacy Group Challenges Major Medicare Coverage Barrier

The Center for Medicare Advocacy is launching a new initiative to eliminate the Medicare “Improvement Standard,” which requires that Medicare beneficiaries be able to improve in order to qualify for coverage. For decades, Medicare beneficiaries, particularly those with long-term, debilitating conditions and those who need rehabilitation services, have been denied necessary medical and rehabilitative care based on this standard, which conflicts with federal law.

With support from The Atlantic Philanthropies, the Center for Medicare Advocacy will begin a focused effort to eliminate the Improvement Standard in Medicare policy and practice. The effort will include advocacy with the Obama administration, litigation if needed, and a multi-faceted education campaign.

“The insistence that people must be able to get better unfairly restricts access to Medicare coverage and necessary health care,” says the Center. “Although the Improvement Standard conflicts with the law, it has become deeply ingrained in the system and ardently followed by those who provide care and those who make coverage determinations throughout the health care continuum. Beneficiaries are told Medicare coverage is not available if their underlying condition will not improve, if they have ‘plateaued,’ are not likely to improve, or if they need ‘maintenance care only.’ As a result, it keeps people with debilitating, chronic conditions from receiving the care they need. This practice persists although the Medicare Act does not require improvement as a precondition to coverage for illness or injury. Further, the federal regulations state that ‘restoration is not to be the deciding factor’ in making Medicare coverage determinations.”

The Center notes that the people most affected by this barrier include people with Multiple Sclerosis, Alzheimer’s disease, ALS (Lou Gehrig’s disease), spinal cord injuries, diabetes, Parkinson’s disease, hypertension, arthritis, heart disease, and stroke.

Many of you may be familiar with this coverage condition in the context of nursing home care. Medicare benefits are available in a nursing home for up to 100 days provided certain conditions are met, one of which is that the nursing home resident must be “getting better” each day. If the nursing home says at any point during that 100 day period that the resident’s improvement has plateaued or that all the therapy in the world will not enable the resident to walk any further than they presently can, then Medicare benefits are cut off, even if therapy is necessary to prevent a decline in health or mobility. Hopefully, if this artificial “improvement” standard is lifted, more residents will get the full benefit of 100 days Medicare coverage in the nursing home.

Oh, What a Messy Tale We Weave. Richard Pryor's Wife Is Entitled to Gifts He Made to Her.

A California appeals court recently determined (Sept. 29, 2009) that Richard Pryor's wife is entitled to keep gifts he made to her even though she was his care giver before they were married and even if the marriage was obtained through fraud. Actor and comedian Richard Pryor suffered from multiple sclerosis. In 1994, his ex-wife Jennifer Pryor, became his care giver. In 2001, Mr. Pryor remarried Jennifer. He subsequently changed his estate plan to leave substantial assets to Mrs. Pryor rather than to his six children.

After Mr. Pryor died, his daughter, Elizabeth Pryor, challenged gifts made to Mrs. Pryor before Mr. Pryor died. Elizabeth argued the transfers were presumptively invalid under a state law that prohibits gifts to care givers. The trial court found that the transfers were valid because the law contains an exception for transfers to spouses. Elizabeth appealed,

arguing the exception should not apply because Mrs. Pryor was care giver before the marriage and the marriage was a product of undue influence and fraud.

The California Court of Appeals affirms, holding that the exception for spouses applies even if the marriage was obtained by fraud and undue influence. The court finds that the marriage erased Mrs. Pryor's past status as a care custodian and determines that the legislature intends to allow spouses to receive gifts without any exceptions.

In a companion case, Elizabeth argued Mr. and Mrs. Pryor's marriage should be annulled. The court found that Elizabeth lacks standing to petition for annulment.

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