

WHAT YOU NEED TO KNOW ABOUT THE NEW MEDICARE PRESCRIPTION DRUG PLAN.

The new Medicare Prescription Drug Plan takes effect January 1, 2006. The new drug benefit is available to Medicare eligible individuals from insurers that contract with Medicare. You must choose a plan between November 15, 2005, and May 15, 2006 to avoid paying a penalty.

Premium costs and benefits.

Beginning in 2006, you will pay a prescription drug premium in addition to your Medicare Part B premium. It is anticipated that the average prescription plan premium will be \$32.20 a month. Your premium may be higher or lower depending on the plan you select.

Most plans will have a \$250 deductible. After meeting the deductible, you will pay 25% of drug costs up to \$2,250 in one year. Medicare pays for the other 75%. After this amount, drug coverage will stop completely until your payments for covered drugs reach \$5,100. (This is sometimes called the "doughnut hole.") In other words, after you reach the \$2,250 limit, you pay for the next \$2,850 in drug costs. Once your costs exceed \$5,100, coverage will start again with Medicare paying about 95% of the costs above \$5,100 ("catastrophic coverage").

If you have high drug costs and no drug coverage now, or if you qualify for a low-income subsidy, Medicare Part D should be a huge help.

that are covered under a plan count toward your out-of-pocket amount. Drugs purchased abroad (such as from Canada) will not be covered and will not count toward your deductible or doughnut hole.

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PERSONAL NOTE FROM BRADLEY FRIGON

Welcome to the first edition of my newsletter, LegalView. I created this newsletter to provide you with current information on estate, tax and long-term care planning matters. All the articles in the newsletter are written by me on topics that will impact how you plan your estate, manage your investments, pay for long-term care and determine the amount of taxes you pay. Please feel free to drop me a note or an email if you have any comments about the newsletter or if you would like to see an article on a specific topic.

I plan to use this column as a forum to express my opinion on matters in which I have a particular concern. Examples of some of the topics include new and pending laws, recent court cases, investment choices, our health care system, family matters, and the exploitation of the elderly and disabled. I encourage you to participate in this forum and let me know if you agree or disagree with my opinions.

Finally, I want to say thank you for the trust and confidence you have placed in my office. I truly appreciate your business and the number of referrals I receive from each of you. It is very gratifying to know that you appreciate my services enough to recommend me to a friend or family member. Thank you.

THOUGHT FOR THE DAY

If you have friends or family where one spouse is about to enter a nursing home or is already living in a nursing home, and the only advice they are receiving is to “*spend down*” or “*give away their property*” to qualify for Medicaid, then your family members or friends are not getting the comprehensive advice they need.

The primary purpose of Medicaid planning is to preserve assets for the well spouse. Spending down assets, giving away money, or investing money in a child's home is not the way to protect the future financial security of the well spouse. Your family and friends need to know **all** their options before they give up control of their money. Most married couples can keep all their property and qualify for Medicaid. At the Law Offices of Bradley J. Frigon, we consider all options, and implement the best option for the client based upon his or her situation.

If you know somebody in this situation, contact my office and we will design and implement a plan that will protect the financial security of the well spouse. Let us give them a second opinion if they being told to spend down or give away their property. There is no charge for a second opinion if we cannot come up with a better alternative.



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How do you know if your drugs will be covered?

In Colorado, 17 different insurance companies are offering 42 different drug plans. With certain restrictions, the insurance companies are free to determine which medicines, both brand-name and generic, they will include under their plan. The roster of drugs each plan covers is called the “formulary.”

Each drug plan has a different formulary, and the cost of the same drug may vary from plan to plan. Your most important job is to determine whether the prescription drugs you currently take or anticipate taking are covered under a particular plan and what they will cost.

The government agency that administers Medicare now has an online comparison tool that allows you to compare costs, drugs covered under each plan, and pharmacy networks where you must buy the drugs. See www.medicare.gov. The information is also available by calling 1-800-MEDICARE.

Keep in mind, the plan you select may discontinue coverage or increase the cost of any particular drug. Unfortunately, you are locked into your plan for the entire year. A plan may grant you an “exception” to its formulary if you are using a drug that is removed from the plan and your doctor believes the drugs on the plan's formulary will not work for you.

When should you enroll?

You can enroll in the Medicare drug benefit (Part D) during your Initial Enrollment Period (IEP). If you currently have Medicare or will be eligible for Medicare in January 2006, your IEP is between November 15, 2005, and May 15, 2006. If you want your coverage to begin January 2006, you must enroll by the end of 2005.

If you become eligible for Medicare during or after March 2006, your IEP for Part D will be the same as for Part B. It will be a seven-month period that includes the month you are eligible and the three months both before and after you are eligible

How do you sign-up?

Once you have chosen the Medicare drug plan you want to enroll in, you should contact the company offering the plan and ask for a paper application, or complete an online application on the company's website, if allowed. The application also may be available online at www.medicare.gov.

If you cannot enroll yourself, your legal representative, such as a health care proxy, or an agent acting under a power of attorney, can enroll for you.



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Penalties for not enrolling

For every month you delay enrollment past your IEP, your premium will increase at least 1%. For example, if the average national premium in 2007 is \$35 a month, and you delay enrollment for 12 months, your premium penalty is \$4 ($1\% \times 12 \times \$35 = \4), meaning you will pay \$39 a month for that year and an extra \$4 a month each succeeding year.



You are exempt from the penalties if you did not enroll because you had drug coverage at least as good as Medicare's from a private insurer, called "creditable coverage." Private insurers are required to notify you if their coverage is considered creditable.

Should you sign up?

If you have high drug costs and no drug coverage, or if you qualify for a low-income subsidy, Medicare Part D should be a huge help. Otherwise, it can be a tough call if it will be difficult for you to pay the premium, and you do not have high drug costs. If you can afford to pay the premium, it might be safer to sign up with a high deductible, low premium plan now to insure against runaway costs later. If you already have drug coverage through a private plan that provides creditable coverage, you should be very cautious about switching to a Medicare plan.

Keep in mind, unless you are disabled or have low income, the new drug plan is not designed to pay for all of your drug costs. It is estimated most people will pay at least 44% of their own drug costs.

What should you do?

If you feel confused about the new drug plan, you are not alone. To complicate matters more, con artists are already using the new drug benefit to convince unsuspecting seniors to part with personal information. Drug plan representatives are not allowed to request personal information such as your Social Security Number, bank account numbers, or credit card numbers. If you are unsure about a contact, you should call Medicare at 1-800-MEDICARE.

Be prepared for the deluge of advertisements from the insurance companies and HMOs offering drug plans. While competition among plans is good, they are not offering unbiased information. I can't imagine that a plan representative will tell you that you will be better off signing up with drug plan X down the street. To give you unbiased information, I will provide a free prescription drug plan analysis for you or a family member with a paid office conference for any other legal matter. Contact my office for details.

I have posted a list of useful links on the new drug plan on my website at bjflaw.com.

IN THE NEWS

Recently, Mr. Frigon was elected to the Board of Directors of the National Academy of Elder Law Attorneys (NAELA). NAELA is a 5,000 plus national attorney organization dedicated to serving seniors, individuals with a disability and their families, and promoting issues important to seniors. Visit NAELA.com to find out more information. Mr. Frigon is the only attorney in Colorado that serves on the NAELA board.

Mr. Frigon had two articles published in the following national publications: *Understanding the New Tax Rules That Apply to Capital Gains and Qualifying Dividends*, NAELA Quarterly, Fall 2004, and *Amendments to Medicare Secondary Payer Statute Broader Authority for Government Recovery*, Colorado Lawyer, March 2005. Each of these articles may be accessed at bjflaw.com.



Does your organization need a

speaker? If you would like Mr. Frigon to speak to your organization on such topics as financial planning for seniors, tax, estate planning, elder law, end of life decisions, Medicaid and Medicare, please contact the Law Offices of Bradley J. Frigon.

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If you have changed your name or address, or if you are receiving more than one copy of LEGALVIEW, please contact us by phone, fax or email so we may correct our records.

The Law Offices of Bradley J. Frigon encourages you to share this newsletter with anyone interested in estate planning, tax planning, probate, Medicaid and Medicare matters. The information in this newsletter may be copied without charge provided you request permission and make appropriate citation to the Law Offices of Bradley J. Frigon. If you are interested in a free subscription to this Newsletter, then please email us at info@bjflaw.com, call us at 720-200-4025 or fax us at 720-200-4026.

Please visit us on the Internet at www.bjflaw.com. Our website contains information about the Law Offices of Bradley J. Frigon, and an archive of past Newsletters and other estate planning, estate administration, and Elder Law articles.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

Have you wondered why you were required to sign all those extra forms the last time you visited your doctor's office? A new law called the Health Insurance Portability and Accountability Act (HIPAA for short) went into effect in 2004. Under HIPAA, doctors are not allowed to discuss a patient's medical condition without specific authority from the patient. The doctor can be fined, or even jailed for passing along private health information without the patient's consent.

The new HIPAA rules that prohibit doctors from discussing your medical condition can create problems with your estate planning documents. For example, it is often necessary for your agent under your medical power of attorney to access your medical records. If you cannot provide your personal consent, your doctor will not accept a request from your agent to release medical records unless your medical durable power of attorney contains a specific HIPAA authorization release clause.

A bigger problem with the new HIPAA law will occur in power of attorney documents that authorize the agent to act only when the creator of the power of attorney becomes incapacitated. This type of durable power of attorney is often referred to as a "springing power of attorney." In other words, the agent's authority "springs" into existence only when the creator or principal of the power of attorney is found to be "incapacitated." This is where the problem can get tricky under the new HIPAA rules. The person designated as the agent under a "springing power of attorney" must prove the principal is incapacitated before the agent can act on the principal's behalf. Since the agent must prove the principal is "incapacitated," before they can act, the agent must access the principal's medical records, or discuss the principal's condition with the doctor. Under HIPAA, the doctor cannot release the principal's medical records to the agent to prove the principal is incapacitated. This is your classic catch-22 situation.

What you should do. If your medical and financial durable power of attorney documents do not contain a HIPAA release clause or contains a "springing" clause, you should contact this office to get your documents updated.

The Law Offices of Bradley J. Frigon is the only law firm in Colorado that is a member of the Special Needs Alliance, a national network of attorneys that practice disability law. As a member of the Special Needs Alliance, we help preserve Medicaid, Medicare and SSI eligibility for people receiving personal injury damage awards, workers' compensation settlements, inheritances, or their own personal assets. This assistance includes the creation of special needs trusts, Medicare set aside arrangements, qualified settlement trusts, and tax planning. Visit the Special Needs Alliance website at www.specialneedsalliance.com.

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