

# ELDER & DISABILITY LAW NEWS

LEGAL INFORMATION FOR OLDER AND DISABLED MAINERS AND THEIR ADVISORS

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## MISSION

The mission of Skelton Law Offices, LLC, is to provide legal services of the highest quality, professionally, efficiently and compassionately, with the goal of preserving the independence, the dignity, and the emotional and financial security of older and disabled Mainers.



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## MEDICARE PART D PRESCRIPTION DRUG COVERAGE

Beginning January 1, 2006, Medicare will help pay for certain prescription drugs under a new section of Medicare called Part D. Anyone who has Medicare Part A or Part B will be eligible for coverage.



The prescription drug coverage will be provided by a variety of private plans, not by the Medicare program itself. In Maine, sixteen companies will offer Medicare prescription drug coverage. Also, unlike Parts A and B, individuals will have to take action to enroll in Part D.

They can do so starting November 15, 2005.

### WHAT DOES MEDICARE PART D COVER AND AT WHAT COST?

The Part D drug benefit will cover some of the costs for certain drugs. There will be a monthly premium for all Part D plans, and the average national monthly premium for 2006 is \$32.20. Individuals have the option of having the premium taken from their Social Security check, paying the premium directly, or having the premium taken directly from a bank account.

Under the standard benefit, an individual will pay the first \$250 as a deductible each year. Medicare will pay 75% of the next \$2,000 worth of drugs on that individual’s plan’s formulary. (A formulary is a list of the plan’s covered drugs.) After this initial payment cap is reached, there will be a gap in coverage, known as the “doughnut hole.” During this coverage

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# “PROBATING” a Decedent’s Estate in Maine is *Efficient, Inexpensive and Uncomplicated*

At Skelton Law Offices, we often meet individuals who are concerned about “probate.” When asked to explain their understanding of the probate process and their concerns, many do not have an answer. They have just heard that probate – whatever it may be – is a terrible thing and should be avoided at all costs.

Technically, “probate” is simply the legal process of establishing the validity of a Will, but the term is often used interchangeably with the word “administer.” So when someone speaks of probating an estate, he or she often means the legal process by which a Personal Representative terminates the affairs of the decedent, gathers the probate assets, applies assets to expenses of administration, taxes, and debts, and then distributes assets.

It is true that in some states, this probate process is time-consuming, complex, and expensive. (Florida and California are two such states.) Fortunately, that is not the case in Maine. In 1981, Maine adopted the Uniform Probate Code. As a result, the process of administering most Maine decedents’ estates is generally inexpensive, efficient, and uncomplicated.

In Maine, the person who is responsible for administering the estate is called the Personal Representative. If the decedent left a Last Will and Testament, the Personal Representative typically will be the person nominated by the decedent in the Will. If the decedent died intestate (without a Will) or if the person the decedent nominated to serve is unable to do so, an individual will need to step forward to serve. In either case, the Probate Court must appoint the Personal Representative. The Personal Representative is authorized to act after the Probate Court issues Letters of Authority.

The process of administering an estate generally takes a minimum of nine months. There are prescribed periods within which creditors can bring claims against the estate, so the estate should be kept open for at least that long. But most debts and claims can be settled quickly, and, in some cases, partial distributions can be made before final settlement.

*The Personal Representative has these responsibilities:*

## **1. SEND NOTICES**

As required by the Probate Code, the Personal Representative notifies heirs and devisees of his or her appointment.

## **2. PREPARE INVENTORY**

The Personal Representative identifies and inventories the assets that belonged to the individual during life and which become part of the probate estate. Assets that the decedent owned upon death but which do not go through probate typically include:

- Assets owned by the decedent with another as joint tenants with right of survivorship;
- Payable on death (P.O.D.) accounts;
- Trust accounts;
- Life insurance and annuities with a named beneficiary; and
- Retirement assets including IRA accounts, other retirement accounts, and annuities with a named beneficiary.

*NOTE: Even though these assets may not be part of the probate estate, they would likely be included in the decedent’s taxable estate for estate tax purposes.*

Assets that are subject to the probate process may include:

- Most assets owned by the decedent in his or her own name;
- Assets owned by the decedent with another as tenants in common; and
- Life insurance, annuities, and retirement accounts, with no named beneficiary or which otherwise pass to the decedent’s estate.

The Personal Representative prepares and files an Inventory of probate assets within 90 days of being appointed.

## **3. OPEN AN ESTATE ACCOUNT**

The Personal Representative typically opens a bank account into which assets of the estate can be deposited and from which income and expenses of the estate can be managed. As explained in our article “Tax Compliance for a Decedent’s Estate”, the estate account needs its own identity for tax purposes. A tax identification number (EIN) for the estate must be obtained from the Internal Revenue Service.

#### **4. PAY ALLOWANCES, ADMINISTRATIVE EXPENSES, TAXES, CLAIMS AND DEBTS**

Before paying any debts of the estate, the Personal Representative should satisfy any relevant homestead allowance, exempt property, or family allowance. Then the Personal Representative should pay costs and expenses of administering the estate, including the Personal Representative's fees, if any, legal fees and accounting fees, rental and maintenance costs for estate-owned property, and court costs and filing fees. The Personal Representative can also pay funeral expenses from the estate.

The Personal Representative must pay, settle, or otherwise dispose of valid claims against the estate, including bills and debts the decedent incurred during life and any MaineCare claims.

The Personal Representative may need to file the decedent's final income tax return for the period from January 1st to the date of death. And if the estate earns income, the Personal Representative will need to file a fiduciary income tax return covering the period from the date of death to the date the estate is closed. Depending on the net value of the estate after expenses and other deductions, the estate could owe federal estate tax or Maine estate tax. Large estates may also be exposed to the generation-skipping tax. We recommend that all Personal Representatives consult with an accountant.

#### **5. KEEP GOOD RECORDS AND KEEP BENEFICIARIES ADVISED**

The Personal Representative must keep good records of the business of the estate. For estate tax purposes, it may be appropriate to get appraisals. The Personal Representative also should keep careful records of income and deductions for tax purposes.

Before distributing the estate, the Personal Representative will need to prepare an Accounting. The Accounting includes information about the assets, income and expenses of the estate and about the distribution and disposition of the assets and income.

The Personal Representative has a responsibility to provide information to beneficiaries of the estate. Most misunderstandings and unhappiness can be avoided if the Personal Representative keeps interested parties informed.

#### **6. FILE DISCHARGE OF ESTATE TAX LIEN ON REAL ESTATE**

There is a relatively new procedure in the State of Maine by which a lien is placed on real property that the decedent owned on the date of death. The purpose of the lien is to prevent the sale of property before any Maine estate tax is satisfied. However, very few Maine estates

owe either a federal or Maine estate tax, so usually the Personal Representative can file a form with the Maine Revenue Service and obtain a release of the lien.

#### **7. DISTRIBUTE TO HEIRS AND DEVISEES**

When the business of the estate is complete, the Personal Representative can finally distribute the assets. If the decedent died intestate or there are assets of the decedent not otherwise disposed of by a Will, the assets will be distributed to family members in an order prescribed by the intestacy rules. Skelton Law Offices recommends that the Personal Representative complete a detailed, written accounting and share it with beneficiaries of the estate.

#### **8. CLOSE THE ESTATE**

When the administration of a decedent's estate is complete, the Personal Representative can close the estate. This may be done informally by filing a sworn statement. If no proceedings involving the Personal Representative are pending one year after the closing statement is filed, the appointment of the Personal Representative terminates. Or the estate can be closed with a formal proceeding in which the Personal Representative is discharged from his or her duties by order of the Probate Court.

### *“Reason to Hope” Bracelets*

The mission of the Alzheimer's Association is to eliminate Alzheimer's disease through the advancement of research; to provide and enhance care and support for all affected; and to reduce the risk of dementia through the promotion of brain health.

In support of the Alzheimer's Association, Skelton Law Offices is offering the purple “Reason to Hope” bracelets. If you would like to join us by wearing a purple bracelet and bringing awareness to this disease, please contact Dale St. Louis. (Note: We also have a limited number of bracelets to raise awareness for ovarian cancer, for heart disease, and for ALS.)

The Alzheimer's Association has excellent resources, particularly for caregivers. The Website for the Maine Chapter is [www.mainealz.org](http://www.mainealz.org). The business phone number is 207-772-0115, and the number for the 24-hour Helpline is 800-660-2871.

**alzheimer's  association®**

( Medicare Part D, continued from page 1 )

gap, individuals will be responsible for all drug costs until they have paid another \$2,850 out-of-pocket. At that point, Medicare will begin paying about 95% of the cost of covered drugs until the end of the calendar year.

*NOTE: Each plan can set its own benefit as long as the overall value is the same as the standard benefit. For example, the plans can have different co-payments for different kinds of drugs, like a lower co-pay for generic drugs than for brand name drugs. The plans can also choose what drugs to include on the list of drugs for which they make payment.*

### **WHAT IF AN INDIVIDUAL CHOOSES NOT TO ENROLL?**

Medicare Part D is optional. There is no requirement that Medicare beneficiaries enroll in a prescription drug plan. They will still be able to participate in Medicare Parts A and B. But individuals who do not choose to enroll in Part D when they are first eligible will have to pay a higher premium if they join later. The penalty will be about 1% of the average national monthly premium for each month during which the individual could have been in Part D. The penalty in 2006 will be 32¢/month.

For Medicare beneficiaries who have prescription drug coverage through any of the following plans, different considerations will advise whether to continue the existing coverage or switch to a Part D plan: a Medicare HMO or other Medicare Advantage plan; a retiree health plan; a Medigap (Medicare supplemental) policy; the Veteran's Administration, TRICARE, Federal Health

Employee Benefit Plan, Railroad Retirement Board, Program for All-Inclusive Care for the Elderly (PACE), or Indian Health Services.

### **WHAT IS THE IMPACT ON MAINECARE RECIPIENTS?**

There are about 42,000 people in Maine who are "dual eligible" for both Medicare and MaineCare. MaineCare members with full benefits will be automatically enrolled in a randomly selected prescription plan. But an individual can change to a different plan. Each plan will have a list of drugs that it covers, so the individual will need to compare the plans available and select the one that best meets their needs.

In Medicare Part D, those who are in nursing homes or other institutions will have no premiums or co-payments. Those in the community and on MaineCare won't pay a premium, but will pay \$1 for generics and \$3 for brand-name drugs, with no co-payments after their total drug costs exceed \$5,100 for the year. Co-payments will increase over time with inflation.

For more information, consult the Web site of the Maine Health and Human Services's Office of Elder Services: <http://www.maine.gov/dhhs/beas/medicare>. Skelton Law Offices also recommends the information and services provided by the Center for Medicare Advocacy, Inc., a national non-partisan education and advocacy organization that identifies and promotes policy and advocacy solutions to ensure that elders and people with disabilities have access to Medicare and quality health care. Much of the information in this article came from one of the Center's recent newsletters. Read more at <http://www.medicareadvocacy.org/default.htm>.

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