Social Security recipients will get a raise next year

By Tim Hilger, CPA
Editor

Social Security recipients will see a 3.6% increase in benefits starting in 2012, and most Medicare enrollees will pay only $3.50 more in Part B premiums. These changes are the first changes since 2009 for most beneficiaries and enrollees.

The actual Part B premium amounts are dropping in 2012 (despite the fact that most enrollees see an increase). Most enrollees were held at the same $96.40 rate for three years by the “hold harmless” provisions even though the true underlying rates had increased. However, with an increase in the Social Security benefits in 2012, the hold harmless provision is inapplicable. Therefore, enrollees who were not protected by the hold harmless provision will see their rates drop from $115.40 to $99.90.

The drop in Medicare rates is also good news for high-income enrollees because the Medicare premium surcharge rates are dropping as well. In 2011 the top rate was $369.10; in 2012 it drops to $319.70.

On the flip side, the news isn’t so good for employees and employers paying into the Social Security system. The FICA threshold increases from $106,800 to $110,100.

IRA announces index changes
In addition to the numbers announced by the Social Security Administration, the IRS has provided key index numbers for a host of non-retirement items and a separate pronouncement for pension plan limitations, including IRAs.

See Social Security, page 2

Inequities and waste in current treatment of Social Security benefits in divorce settlements

By Thea Glazer, CFP®, CDFA™, MS Accounting, and Adryenn Cantor, Esq, CFLS
Guest Contributors

EDITOR’S NOTE: This article originally appeared in Family Law News volume 31, number 3.

The current Social Security system as it applies to divorce is both wasteful and unfair. It is wasteful because multiple former spouses can collect benefits on the same worker’s history. It is unfair because Social Security benefits are considered separate property, while all other retirement plans are considered part of the marital estate. This particularly harms government employees who do not contribute to Social Security. This article discusses current law, economic waste, inequities, and a proposed solution.

Background
The Social Security Act of 1935 originally covered only certain job categories and reinforced traditional views of family life. Women generally qualified for insurance only through their husband or their children. In the 1939 amendments to the Act, women were included and were able to collect on their own record or 50% of their husband’s. In 1950, Social Security benefits were extended to former spouses with children. In 1965, they were extended to former spouses without children who were married for at least 20 years. In 1977, the required length of marriage was reduced to 10 years, where it remains.

Deducting the cost of long-term care for chronically ill
The annual certification requirements must be met in order to claim the deduction for qualified long-term care services.

Article on page 4

2011/2012 index numbers
Chart on page 6

Taxpayer Advocate’s help will be more limited
Limited funding requires the Taxpayer Advocate Service to refer cases rather than accept them.

Article on page 8

Proposed regulations cover bundled fiduciary fees
Long-awaited regulations have come under heavy fire and may never become permanent.

Article on page 9

Taxpayer was not a trader despite his training

Article on page 10

IRS warns of Social Security scams

Article on page 10

Taxpayer hit with 10% additional tax for failing age 55 exception
Box on page 10

News Briefs
Article on page 11

July-Dec. Cumulative Index Supplement

E-mail us:
ecplanner@spidell.com

See Divorce, page 2
Deducting the cost of long-term care for chronically ill

TAX: The annual certification requirements must be met in order to claim the deduction for qualified long-term care services.

By Richard B. Malamud, CPA, J.D., LL.M
Guest Contributor

Prior to 1997, deductions for nursing homes and other costs for the chronically ill were governed by the general rules under IRC §213 applicable to medical expense deductions. Generally, medical care means amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease or for the purpose of affecting any structure or function of the body.1

IRC §213(d) was amended for tax years after 1996 to explicitly include as medical expense deductions amounts paid for “qualified long-term care services” (as defined in IRC §7702B(c)). IRC §7702B(c)(1) defines deductible “qualified long-term care services” as necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services that are required by a “chronically ill individual” and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.2

Obviously, there is considerable overlap between the general definition of medical expenses and the long-term care definition. The principal difference pertains to “maintenance or personal care services,” which can be deductible only if they qualify as long-term care services.

Who qualifies as a ‘chronically ill individual’?

IRC §7702B(c)(2)(A) defines a “chronically ill individual” as any individual who has been certified by a licensed health care practitioner as either one of the following:

1. Being unable to perform without the services of a licensed health care practitioner due to a chronic illness.
2. The individual has a “chronically ill individual” and is provided with necessary products or services due to the illness.
Illness. continued from page 4

substantial assistance from another individual at least two out of six specific activities of daily living (ADLs)3 for a period of at least 90 days due to a loss of functional capacity. Notice 97-31; states that the 90-day period does not establish a waiting period before which services qualify as deductible amounts. It is just the testing period. The six listed ADLs are:

a. Eating;
b. Toileting;
c. Transferring;
d. Bathing;
e. Dressing; and
f. Continence.

Notice 97-31 defines “substantial assistance” to mean hands-on assistance and standby assistance. “Hands-on assistance” means the physical assistance of another person without which the individual would be unable to perform the ADL. “Standby assistance” means the presence of another person within arm’s reach of the individual that is necessary to prevent, by physical intervention, injury to the individual.

2. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment. Notice 97-31 provides that:

a. “Severe cognitive impairment” means a loss or deterioration in intellectual capacity that is (a) comparable to (and includes) Alzheimer’s disease and similar forms of irreversible dementia, and (b) measured by clinical evidence and standardized tests that reliably measure impairment in the individual’s (i) short-term or long-term memory, (ii) orientation as to people, places, or time, and (iii) deductive or abstract reasoning; and

b. “Substantial supervision” means continual supervision (which may include cuing by verbal prompting, gestures, or other demonstrations) by another person that is necessary to protect the severely cognitively impaired individual from threats to his or her health or safety (such as may result from wandering).

As if this isn’t complicated enough, amounts paid for a “qualified long-term care service” are not deductible if provided by a spouse or a relative as defined in IRC §152(d)(2)(a)–(g) unless they are a licensed professional. This only applies to chronically ill taxpayers, so it appears you can pay a relative for short term care and get a deduction.4

Certification required

Here’s the catch: Even if someone is a chronically ill individual, no deduction is allowed unless within the “preceding 12-month period” a licensed health care practitioner has certified that such individual meets the requirements of being chronically ill. A licensed health care professional includes any physician4 and any registered professional nurse, licensed social worker, or other individual who meets the IRS requirements (which have not yet been published).

Many taxpayers, medical professionals, and even tax advisors are unaware of this annual certification requirement. That is the major point of this article — get one annually. There does not appear to be any guidance as to how that 12-month period is calculated or what must be included in the certification. In a recent case, it appears that the court accepted the patient’s medical records as the certification.5

What if the IRS challenges clearly deductible medical costs for chronic long-term care because the taxpayer did not obtain a certification? There are several options. In Baral, the court states that medical records can be used as a “certification” of the condition. Alternatively, nursing home records may be sufficient certification if signed by a registered nurse.6

Another alternative may be to claim the deductions under IRC §213 as medical costs, but not claim the IRC §7702B expenses. It is not clear if this new provision prohibits the use of the old law. It would apply to any short-term conditions which don’t require a certificate.

There does not appear to be any guidance as to when the certification should be obtained, just that it must be obtained in the preceding 12-month period. How can that be done if someone is admitted to a long-term care facility or hires in-home assistance? A doctor’s advice is often given prior to the changed circumstances. If that advice is in written form that should qualify as a certificate. It wouldn’t hurt to have that doctor sign a certification listing when the advice was given.

Conclusion

Following the enactment of HIPAA, chronically ill patients represent a separate category of medical expense that applies to two types of long-term conditions. Either someone lacks the ability to perform two of the six ADL functions or the person is a risk to themselves, as is the case with dementia or Alzheimer’s disease.

“There is considerable overlap between the general definition of medical expenses and the long-term care definition. The principal difference pertains to “maintenance or personal care services,” which can be deductible only if they qualify as long-term care services.”

If either condition exists, the deductible medical expenses require that for each “preceding 12-month period,” the taxpayer obtains a certification of the chronic illness by a qualified medical professional. 5

A client letter and a certification form can be found at www.elderclientplanner.com

About the author

Richard Malamud is a professor in the Department of Accounting and Finance at California State University Dominguez Hills, where he teaches federal income tax law. You may reach him at: (310) 243-2239 or rmalamud@csudh.edu.

---

1. IRC §213(d)(1)(A)
2. IRS Publication 502, Medical and Dental Expenses
3. IRC §7702B(c)(2)(B)
4. IRC §213(d)(11)
5. Physician as defined in §1861(r)(1) of the Social Security Act