

Flurry of activity includes new ED and program implementation

by Ernest Almonte, CPA

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Medicaid: Asset Transfers and Long-Term Planning for Boomers

As the nation's 76 million baby boomers start to approach their senior years and the U.S. population ages, an increase in demand for long-term care is on the horizon. As a result, more people have turned to Medicaid for health care assistance, as a strategy for long-term planning, than ever before. While Medicaid was established to provide health care for the poor, many retirees wishing to protect their assets, and provide their children with an inheritance, either transfer or gift those resources to qualify for the aid based on low income and no assets.

The economic implications of an aging America, along with the growing practice of transferring or gifting assets in order to qualify for Medicaid instead of using those assets to pay for care, led President Bush to sign The Deficit Reduction Act of 2005 (DRA) on February 8th of this year. This budget-savings law significantly changes Medicaid eligibility rules, and has therefore changed long-term planning for retiring boomers. These are the most significant changes in federal eligibility rules since 1993. Among other changes, the new law affects the way ownership of annuities, promissory notes and home equity are evaluated in determining assets and transfers of assets.

"The DRA's most significant change, however, is in the way transfers of assets for less than fair market value are penalized," says James Hardy, a partner at Pawtucket law firm Hardy, Tabor & Chudacuff, who concentrates on long-term care issues – primarily Medicaid eligibility – and estate planning. When an individual applies for Medicaid, the state has the right to review, or look back, at his finances (and those of



Special Needs Trusts Protect Important Benefits

Establishing a clear future for your child

Writing a will is often the furthest thing from your mind. It's not a pleasant thought and with people living busy lifestyles, and longer, healthier lives, death is often inconceivable – especially to younger couples. But what if you and your spouse die, suddenly, and don't have a will? It can happen: 57 percent of American adults don't have a will.

If at death you have no will, your property and assets will be dispersed according to state law. It's not an optimal situation for your family, and gets more complex if you have a child with special needs. Financial and future planning for children with special needs is critical to ensure stability and the high quality of life parents want

RISCPA Welcomes its New Executive Director; Begins to Meet Goals

It is my pleasure to give an update for the RISCPA. It has been five months already as president and I'm truly enjoying my presidency. We have accomplished a lot already and I want to share some of these points. Some of these items will be discussed in more detail in this publication.



Ernest A. Almonte, CPA
RISCPA President

It is with great pleasure to announce that the RISCPA Board has appointed Robert A. Mancini as its executive director. He has more than two decades of exceptional experience in the banking and financial services profession. He has been extremely active in the community and has also served as a Commissioner of the Rhode Island Lottery Commission. Bob will start on October 1st and we fully expect him to lead our Society to a world-class organization. Look for the next publication of What Counts to read about his career and also his vision for the RISCPA. Please call or stop by the

office to welcome him.

My overall goals this year are to increase the value of the Society to our members and raise the level of financial literacy for Rhode Islanders.

To that end, we held town hall meetings with members of our society to showcase the services that we offer and services provided by the AICPA.

Our Tax Committee and our board met separately with our new RI Tax Administrator, David Sullivan, to raise issues of concern of our members. This relationship will provide opportunities for collaboration on a host of areas including advocacy, participation on our committees, the annual tax show, and CPE issues (refer to page 7).

We were pleased to hold sessions with the gubernatorial candidates at the Society offices in September, importantly hearing their views and having an intimate platform to express ours.

Our Continuing Education Program remains a great success and we will always strive to make this an elite program.

We continually search for ways to add value to your membership. Email me if you have any areas that we can research to help increase your success in this great profession.

RISCPA has been busy with our second initiative, "Financial Literacy." We conducted events at

local schools to teach finance topics to students. A financial literacy event for women was held at the Warwick Mall. We put together a television show to cover military-related finance issues. We're working on a project to provide financial education to National Guard and Reserve members, their families and commanders. Please email me if you'd like to provide support in this area.

There is great enthusiasm for the financial literacy program. I welcome your advice on initiatives to embrace and motivate the general public to increase their knowledge of finances. This topic provides the RISCPA the opportunity to be proactive and increase the value of our society to the general public. Let's seize this chance to help the citizens of our state to become more aware of their ability to control their finances throughout all areas of their lives.

Sincerely,

Ernest A. Almonte
RISCPA president

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Finance for Life: A guide to financial literacy.

Reaching out to teens

This summer, Rhode Island Society of CPAs' members provided a financial literacy lesson to 15-year-old students participating in the Community Action Agency Summer Jobs Program in Johnston, Wakefield and Westerly. The presentation included the basic issues of managing money, distinguishing between wants and needs, and the importance of setting financial goals as they start in the workforce while attending school. The lecture also included working a budget for the first year of owning and maintaining a car. The program will be offered to area high schools this fall.

Being financially literate will help you relax

RISCPA members offered the community financial advice on parenthood, college planning and retirement planning at Warwick Mall on August 25, 2006. This event was geared towards parents doing "back to school" shopping and gave answers to basic questions and information packets in these three important stages of life. If having nagging financial questions answered didn't relax attendees, free neck and shoulder massages were offered from a recent graduate of the Community College of RI (CCRI) Therapeutic Massage Program.

Government Affairs

Election 2006 Highlights: The Gubernatorial Race

Steps in the right direction

by Governor Donald L. Carcieri

Incumbent Republican Candidate for Governor

Ever since day one of my administration, I knew that the economic climate within Rhode Island needed a major change. Citizens and businesses alike are faced with one of the highest tax burdens in the country. Without making changes to the tax structure, the bright economic future that the state



experiences today would not have been possible. My administration has worked hard to save money for taxpay-

ers so that we could reduce spending growth and lay the foundation for tax cuts.

Let's take a look at the business climate.

Business, small and large alike, are able to benefit from a tax climate that supports growth. The 2006 legislative session ended on a high note, adopting one of the most sweeping pro-growth tax reform packages seen in any state in recent years. The *Wall Street Journal* praised the bipartisan package in a July 5th editorial, highlighting the collaboration between the General Assembly and my office and heralding our ability to improve Rhode Island's tax competitiveness so swiftly.

The plan provided for a reduction in income tax, cuts property taxes, offers entrepreneurs a tax credit for investments made in Rhode Island-based science and technology companies and provides a mechanism for small businesses to purchase less expensive insurance. In one step, the *Journal* wrote, "Rhode Island has gone from the state with the third highest income tax rate in the nation to the 27th."

I promised during my campaign for Governor that I would work to find a way to fix the inefficiencies of state government. The answer to this problem has been the highly successful Fiscal Fitness/Big Audit program. Through better business practices, a reduction of redundancies and better negotiating, executive branch savings through fiscal year 2005 have been \$40.2 million. I expect this number to more than triple to \$140 million in the 2006 fiscal year. Fiscal Fitness, coupled with last year's \$44 million savings from the state pension plan, are both major steps in the right direction to control government spending.

For Rhode Island to continue to move forward there also must be an investment in the future. Two years ago with this objective in mind, I created the Science and Technology Council. This step will help to cement our position within the biotechnology industry and continue our innovative economy. The results are already paying off as we are able to provide qualified workers to fuel both new startups and current Rhode Island businesses.

The bottom line is that Rhode Island businesses and families cannot afford to pay higher taxes as a result of wasteful government spending. In order to keep Rhode Island attractive to businesses, we must continue to create an economically friendly environment. The burden of property taxes, sales taxes and income taxes are already too high. My goal is to set our state on a long term path to sustainable, balanced budgets which will allow us to continue to decrease taxes.

The four-point plan proposal

by Lieutenant Governor Charles Fogarty

Democratic Candidate for Governor

Over the last four years job growth in Rhode Island has been anemic. In fact, job growth has not been so poor since the early 1990s when we were attempting to recover from the RISDIC banking crisis.

The largest factors preventing real economic

growth are the aura of corruption that surrounds the state, that lack of a competitive tax policy and an economic development plan that leaves small and homegrown businesses behind.

Confidence in government has been shattered because our state faces continuous problems due to individuals who put their interests before the public's interests and because of the incestuous entanglement between government and business.

Corruption is not just doing things that are illegal. It is more often pursuing a personal agenda at the expense of the public good – whether it is in business or government.

I have proposed a four-point plan to ensure that Rhode Island is the nation's leader in clean, honest, and ethical government.

My plan includes term limits for members of the General Assembly and disclosure of every meeting between public officials and lobbyists. It requires that candidates, elected officials and key staff disclose their personal assets and any outside sources of income.

I have also proposed stronger revolving door statutes so public officials do not profit from any business that they have regulated, funded or controlled.



These proposals have received resistance from the Governor, the General Assembly and others who do business on Smith Hill. Bold change is never easy, but we must show to our citizens and to businesses looking to move into the state that the era of insider deals and special interest networks is over.

One-on-One with Virginia O'Shan

Virginia (Ginger) O'Shan is a born and bred Rhode Islander. Living today in Greenville, O'Shan is the recently retired chief of Taxpayer Assistance for Rhode Island. In her 35 years with the tax division, she's filled many roles, has had vast rich experiences, and has witnessed plenty of change in our state.

O'Shan received her undergraduate degree from Bryant College in 1968 returning for her MBA in 1989. Over the years she's taught various tax classes at our state's colleges, as well as the history of Biblical wealth and taxation in her Baptist denomination. She is a past president of RISCPA and has served on the tax committee for more than 30 years. A survivor of cancer, O'Shan's focus has always been on the "heart side" of the job. She enjoys helping people see the light through gray areas, and is filled with optimism and new ventures for her retirement.

What Counts: How did you become the chief of taxpayer assistance in Rhode Island?

Ginger O'Shan: I started out as tax examiner in 1970, although the titles were different then. I soon became a revenue agent and then principal revenue agent. In 1988, I took on the role of chief of taxpayer assistance and research.

WC: What were some of your early responsibilities?

GO: When I was a revenue agent, I worked first in the corporation tax section. As the first CPA in the Division's history, I was fortunate to be assigned to many areas by the Tax Administrator. I was also part of the management team assigned to work in conjunction with the IRS to streamline the Division's Collections section. I also was assigned to prepare fiscal notes on pending legislation. Because of my credentials and audit experience, I prepared the Division's Tax Expenditures Budgets and many of the Division's regulations, and was assigned to some unique, extended projects.

WC: What projects stick out in your mind?

GO: I was on the management team that devel-

oped a "multi-state" audit crew. We audited the first- and second- ranked Fortune 500 Companies to determine how many corporations reported properly to the Tax Division. This function is now a part of the Division's Field Audit. When I was a principal revenue agent in the Field Audit Section, I served as an assistant chief of field audit and, in that capacity, my work focused on the corporate tax audits.

WC: When you became chief of taxpayer assistance, what was your main focus?

GO: In 1988 and 1989, it was an era of development for the us. We were putting the public face on the Tax Division. This was a new concept and so very important. It would be our "customer service" arm and would include constituent response answers and help for personal tax questions.

To us, constituent services wasn't limited to just answering questions. Our mission was to mirror the IRS' problem resolution unit. We would be the help desk equivalent of an IT operation. It was a "find it, fix it, next" situation. We also put into place a phone tree system that enabled us to employ the new technology that was available back then. We really helped people deal with and get through government structure that's often difficult for folks to navigate.

WC: What were some of the main issues you were faced with once the customer service arm was developed?

GO: The folks who qualified for the property relief program – mainly the lower income and elderly – had a lot of questions about how this worked. For some, this check provides the means to have enough to eat or have heat. The program changed from including just the over-65 population to a low income component as well. This change caused an increase from 5,000 to 30,000 filers. This type of program change drives the need to answer taxpayer questions such as "how do I do this form?"

WC: How did you implement the customer service function?

GO: There are two areas of customer service. The



Virginia O'Shan, CPA

email response unit/phone service is one. We bring in seasonal people for the tax filing months. During that time, they can field about 600 to 700 questions per day. The second way we serve the public is through walk-in taxpayer assistance. Rhode Island is one of only a few states that will help prepare an individual's state return. People filing the Rhode Island property tax relief form have the most questions. If you come to our offices during the months of March and April, the line can be backed out into the lobby. Each year Rhode Island has about half a million filers in various types of income tax forms.

WC: What are some of the most popular questions you get during busy season?

GO: The most frequently asked question from February 1st on is "where is my refund?" The online tool that offers refund status provides a certain amount of retrieval information, but you've got to consider the folks who call. The "digital divide" is very apparent in our state. We have a high senior population and many are not very comfortable with getting this type of information from a computer.

Ironically, common errors on a tax return haven't changed in 30 years. In fact, each year we publish a top ten list of errors to remind people not to overlook the obvious and that small errors can set them back. Some errors include wrong (or omitted) social security number, incorrect computation, unsigned returns and missing documentation.

WC: *How do you feel your role as chief of Taxpayer Assistance fit into the state's overall tax system?*

GO: There's always been a taxation system in place. Every government in history has revenue generation of some type. *Our* role is to help people know what's expected of them, how to collect their refunds and give them guidance on what to do.

Someone once said, "People will abide by a law they understand." And it's so true. If you can make the law understandable, people will follow it. As part of understanding it, you will need to provide a means – like taxpayer assistance – to answer their questions.

WC: *How do you feel that CPAs can work together with the Division of Taxation?*

GO: It's critical to maintain good communication with Rhode Islanders. As laws change, CPAs need to be informed of the changes, the tax forms, web-site and programs available to help people and

help explain the changes to people. We're out for the same goal; just a little different mission. When changes in Rhode Island tax law happen, communication is key. The ideal situation is that the tax laws and procedure are so well understood, that the Division wouldn't get a high volume of calls and walk-ins during the filing season.

WC: *Are there any cases – good or bad – that stick out in your mind?*

GO: We deal with a lot of folks in the military. No matter where you're stationed, if you're from Rhode Island, you file here. We offer people in the military – and their families – quite a bit of assistance. In fact, we get calls from around the world, including the Middle East, from men and women who are away from home but need to check in on their filing status. Once I received a call from a man who was worried about his return and you could hear the conflict going on in the background.

It raised the hair on the back of my neck. Then I felt that I had accomplished the mission of what the unit was really here for. It was closure from a psychological standpoint. In a culture that's disconnected with our own fellow citizens, I think we are a positive connection.

WC: *What are your plans for retirement?*

GO: I'm entering a new calling. I'm pursuing my master's degree in Divinity from Andover-Newton Theological School in Newton Centre, Mass. The church at which I am the student pastor is Meshanticut Park Baptist Church in Cranston. Having done the things I've done at the Division of Taxation, I'll be taking the same approach in ministry to help others. Things like this come together in strange ways.

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Sarbanes-Oxley Takes Financial Toll on Small Companies

The first years of the millennium were marked with the notorious bankruptcies of Enron and WorldCom, exposing high-level corruption, accounting errors and insider trading among publicly-owned companies. The Sarbanes-Oxley Act of 2002 has since served to tighten reporting requirements for publicly-owned companies. While it intends to enhance corporate integrity in the public eye, the congressional reform also has imposed significant financial strain on small companies and changes the role of tax departments in corporate accounting.

"Sarbanes-Oxley has enforced rigorous requirements on large publicly-held companies in the U.S.," says Henry Silva a partner at Kahn, Litwin, Renza & Co., Ltd. (KLR). "Smaller public companies will need to be compliant with the requirements, for which guidance is still being developed, beginning in their first fiscal year ending July 15, 2007 or after."

According to Silva, these requirements may change the way that companies are managed, including their accounting, internal auditing, tax and IT documentation procedures and controls. Tax departments now must be subject to extensive senior management review and auditor scrutiny. "It's a significant cost to be compliant with Sarbanes-Oxley," says Silva.

A recent NASDAQ stock market study confirms Silva's sentiments, concluding that companies with an annual revenue of less than \$100 million face average compliance costs of \$535,380. As a percentage of revenue, that's 11 times more than large companies face, according to the study.

Sarbanes-Oxley also has significantly affected CPA firms. "CPA firms can no longer provide certain ancillary services to audit clients," says Silva. "We can no longer do things like help clients with tax provisions. They must prepare it themselves or go to another CPA firm, which ends up creating

additional costs for the company."

This financial burden may be leading smaller companies to go private. The propensity for small public companies to be purchased by private firms, which are not subject to Sarbanes-Oxley at this time, increased by 53 percent during the first year that the law was enforced, according to a RAND Report released in June. The study compared the experiences of U.S.-based companies with businesses in nations without such accounting reforms.

"Sarbanes-Oxley could certainly cause small, public companies to go private because they cannot afford to be compliant, while larger companies can," says Silva. This could likewise impede private companies from going public.

"There is no question about it – Sarbanes-Oxley was a necessary step and a fair reaction to accounting scandals like Enron's," says Silva. Yet there is also no question, that the law has taken a financial toll on small, public companies.

Striving to Better Serve Our Members

RISCPA President Ernest A. Almonte held Town Hall Meetings for members who are managing partners of public accounting firms and CFO/controllers of corporations on August 16th. The meetings addressed how RISCPA and AICPA could help make business operations – and lives – easier, more productive and more prosperous. The advantage of memberships, committee involvement and services that the RISCPA offers, such as the new internship program, were discussed.

Erik Asgeirsson, CEO and Michael Cerami, of CPA2Biz explained the background, online services and business solutions that CPA2Biz offers. And Mary Beth Maher from AICPA Business Learning Institute uncovered one of the AICPA best kept secrets – the Competency Assessment Tool (CAT) – available to all AICPA members and firms. CAT is a computerized process that guides the user through an assessment of proficiency levels in competencies that are relevant to the position profile selected. For more information, visit <http://www.aicpalearning.org/profdevcat.asp>.

On-Site or In-House Training, which is available to larger firms and companies, and its advantages were also highlighted. RISCPA provides this service to member firms yet many aren't aware that the training can be customized, offered in a confidential learning environment and tends to be more cost effective. To learn more, or to schedule training, contact Kris Moretti at the RISCPA office.

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Division of Taxation Welcomes New Administrator

David Sullivan recently came to Rhode Island as our state's new tax administrator. On the job here for just one and a half months, Sullivan has been in the tax business for about 15 years, spending his last 10 at the state of Delaware Department of Revenue in a variety of roles.

On a day-to-day basis, Sullivan's job is to oversee the administration of all taxes for the state including sales, income, corporate, unemployment and insurance. He works on different initiatives including constituent relations, dealing with legislators and helping to make policy decisions for the future of our state. "There's not a day that's the same as the last," said Sullivan.

The agency has about 230 employees. Sullivan notes that they face issues similar to those in Delaware: many are approaching retirement. Now they're planning for, and implementing, succession-training programs so that the agency as a whole doesn't lose their knowledge. "It's an important challenge," Sullivan said.

In his initial assessment of the state's tax climate, Sullivan likes a lot of what's been done in Rhode Island by way of tax credits, such as the Historic Preservation Investment Tax Credit, Film Production Tax Credit and Enterprise Zone Business Tax Credit, that serve to enhance the state's business climate. The Enterprise Zone Credit entices businesses to relocate to distressed areas of the state targeted for growth and expansion – called enterprise zones – and offers them tax incentives for growing their business with Rhode Island employees, and even more so with employees that live in the enterprise zone.

When it comes to administering a new tax law, Sullivan and his team are fully involved. They design the terms of the law, issue regulations, meet with different interest groups around the state to discuss the change and then begin collecting returns and auditing for the new law. Most of the time, the work starts long before tax legislation is passed. Sullivan and colleagues will

be asked to testify before the General Assembly as to how feasible it is to administer a proposed bill.

"We consider the legality of the issue as well as what it would take to administer the new law if passed," said Sullivan. "On any given year, we can weigh in on five to 20 different pieces of legislation." This time of year is relatively quiet on the legislative front, with an occasional meeting taking place to lay the groundwork for January. "That's when things start to really pick up," said Sullivan.

As expected, March through June is the busiest time of year for the Department of Tax Administration. With half a million returns filed in all, 150,000 of them are received in a two-week period. "It's a fun and exciting time of year for us," said Sullivan.

The Department works closely with a wide range of other divisions and agencies such as RIPEC, the Office of the Treasurer and the Department of Revenue (formerly called the Tax Policy and Research Division). Sullivan looks forward to working with RISCPA, acknowledging that the missions of the two groups share some commonalities. Communication and education are top of his list for keeping dialogue ongoing.

"We're always looking to improve our services. Tell us where we could do a better job and where things are working well," said Sullivan. "The better we know each other's issues, and the more familiar we are with the people working on them, the more likely we are to pick up the phone to get results."

Sullivan believes that serving on committees, attending joint meetings, helping with educational programming and employing speaking opportunities are just some of the ways to keep the lines of communication open. He also welcomes suggestions and comments and can be reached by email at dsullivan@tax.state.ri.us.

E v e n t s

JANUARY 30, 2007

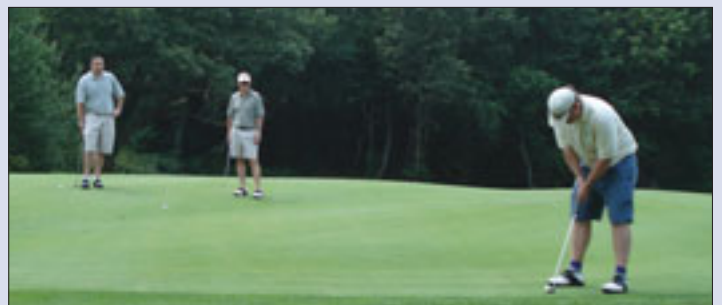
Networking Reception

Members of RISCPA, the R.I. Bankers Association and R.I. Bar Association can mix and mingle at the Providence Marriott on Orms Street.

APRIL 24, 2007

Annual Dinner

The event held at the Providence Marriott will allow members to greet newly certified CPAs, congratulate winners of the Carl W. Christiansen and Cheryl Ruggerio Scholarships and hear Leslie Murphy, chair of the AICPA, as the guest speaker.



The Rhode Island Society of CPAs' annual golf tournament took place on July 11 and this year benefited Sojourner House with a donation of \$4,287. Lorraine Pelaquin of Sojourner House happily accepted the contribution at a check presentation ceremony.

Academics

Computer-Based CPA Exam: Two Year Review

The accounting profession has recently seen a decline in new CPA candidates over the past year. After the launch of the new computer-based test (CBT) in April 2004, replacing the traditional paper-pencil format, the number of candidates taking the exam decreased by almost 37 percent. Rhode Island is no exception. Since 2004, the number of new CPAs has been cut in half from 43 to 21 just last year.

Recognizing the drop, the American Institute of CPAs (AICPA), National Association of State Boards of Accountancy (NASBA) and Prometric, established a joint CBT Volume Task Force to address the issue. Questions began to arise about the new structure of the exam. Was the CBT affecting when and how candidates took the exam? And were candidates still committed to and aware of the importance of this credential?

The Task Force set out to determine the cause for the lower volume of new CPAs to find ways to reverse the trend. Focus groups consisted of employers, employees in accounting firms, students and review course providers. The research showed that candidates were aware of the CPA credential and viewed it as a valuable and important part of their career. But procrastination and lack of encouragement from employers and peers impacted their actions and led to the decrease in taking the exam. Despite the reports of low employer encouragement, the employer group overwhelmingly (90 percent) stated

that it was “very important” for employees to take and pass the exam.

Michael DeCataldo of Sansiveri, Kimball & McNamee, LLP says that two things appear to be causing the decline: the new format and an extremely heavy workload for young professionals. Previously, the pencil-paper format was offered just twice a year, at the same time each year. Candidates would take the time to study for the sections they were focusing on, knowing that they could not sit for the exam again for at least six months. Now that it's self-regulated, there's no real deadline. Other personal and work related matters take priority and the urgency to take the exam diminishes.

Also larger firms that often employ new grads are bogged down in Sarbanes Oxley work and are so busy that they are not pushing the exam as strongly as they once did.

“It will flip at some point,” said DeCataldo. “When the Sarbanes Oxley work slows down, and people get used to the flexibility of the new test format, the number of new CPAs should rise again.”

Mark Higgins is Dean of the College of Business and The Alfred J. Verrechia - Hasbro Inc. Leadership Chair in Business at the University of Rhode Island (URI), and sees things from a different perspective. Previously, graduates would only be able to sit for the exam in the months of May and November – a huge gap in time. Now with the continuous offerings, they can strategize on how they'll take the different sections and plan accordingly for different months. While the rate of new CPAs is lower, Higgins notes that the pass rate for test takers has increased. “We're just beginning to collect data on it,” said Higgins. “We're polling graduates of our program to see what they're experience and success has been.”

According to Higgins, the success of the new exam varies by student. “Some students may not have the stamina to sit for all four parts at once, but taking one at a time is feasible,” he said. “Students think it's a less stressful process, a better process. The pressure is relieved for them, but self motivation is certainly a factor.”

URI is doing its part to prepare students for the exam that's essential to their professional success. They offer similar exams with comparable problems and questions. And they simulate the mode in which students will need to operate with web-based classwork and online quizzes.

Employers can also utilize several strategies for encouraging new graduates to take the exam. Sansiveri, Kimball & McNamee gives paid time off to take the test, covers the filing fee and offers cash bonuses when the exam is passed. In other firms, some positions aren't attainable unless you're a CPA.

The Task Force recommends these types of employer development programs to support employees taking the exam. Their recommendations also included working with review course providers to include the CBT as part of the course content, and encouraging state societies to offer candidates access to sample tests and tutoring. They hope that the recommendations will help increase the volume of new CPAs by about 30 percent.



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MEDICAID ASSET TRANSFERS *from page 1*

the spouse) for a period of months before the date applied for assistance. The look-back period for transfers of assets prior to February 8, 2006 was three years from the date of a Medicaid application. The look-back period for transfers made after that date is now five years. Regardless of when a transfer was made (pre- or post-DRA, but within the look-back period), the penalty period is determined by dividing the amount of the transfer by the state's average private rate for nursing homes. Currently in Rhode Island, the average rate is about \$6,826 per month, or \$225 per day. The amount transferred is divided by that amount to determine the number of months or days of ineligibility. Thus, a gift of \$12,568 creates a period of absolute Medicaid ineligibility of two months.

The question, however, is when does the two month penalty begin? The most significant DRA change is the date the penalty begins, according to Hardy. For transfers prior to February 8, 2006, the penalty begins on the first day of the month of the transfer. Thus a \$12,568 gift in November of 2005, with an application for Medicaid filed in December 2006, creates a period of ineligibility of two months beginning in November 2005, and has no effect on eligibility in December 2006 (more than two months after that transfer).

A gift of the same amount in November of 2006 has a completely different effect, says Hardy. The period of ineligibility is still two months. However, according to the DRA and Rhode Island's recently adopted rules to conform to the DRA, since the transfer is after February 8, 2006, the penalty does not begin until the applicant for Medicaid is institutionalized, has filed a Medicaid application and is "otherwise eligible," i.e. has countable assets within the Medicaid limits and meets other eligibility criteria. If the individual making that gift in November of 2006 applies for Medicaid in December of 2007, and is "otherwise eligible," the penalty of two months begins in December of 2007, not November of 2006. Thus, even rel-

atively small or innocent transfers (e.g. helping a grandchild pay for college), can have significant negative consequences if the transfer was made after February 8, 2006.

What does this mean for the millions of baby boomers reaching retirement? Retiring boomers will either need to make sure they engage in asset-protection planning at least five years before they need nursing home care to avoid spending their assets on the cost of that care, or should consider buying long-term care insurance.

If retiring boomers wish to leave their children with an inheritance, they may want to consider transferring funds into an irrevocable asset protection. Though they will have no access to, or control over, the assets in the trust during their lifetime, it will automatically be given to children or other beneficiaries when they die. It will also be protected from Medicaid claims after five years.

However, warns Hardy, retiring baby boomers



completing their estate planning need to be increasingly astute. Exceptions to the DRA rules remain. Significant protections for spouses when one is institutionalized also exist. Moreover, each individual or couple's situation differs, therefore, consultation with someone well-versed in Medicaid planning and eligibility is strongly advised.

GUBERNATORIAL RACE *from page 3*

Along with a fundamental change in the way our state does business we must also work to create a more competitive tax policy.

Property taxes are my number one priority. They continue to be well above the national average in Rhode Island and are severely overburdening homeowners and small businesses.

We must reform the way we fund education and we must have better information before we make decisions on tax policy. That is why I have proposed an Office of Tax Policy that would provide us with detailed data to help us make informed and educated decisions on tax policy.

Lower property taxes will help bring businesses into Rhode Island. More importantly, they will help the businesses already here to

stay, grow and prosper.

While we need to court larger out of state businesses, we cannot leave behind the ones that already make our state great.

Rhode Island small business owners want to know why they do not see any types of tax credits and incentives for creating job growth or expanding. Large corporations receive these incentives and so should they.

Once we root out corruption, develop bold economic initiatives, lower property taxes and ensure more Rhode Islanders have access to quality health care and higher education we will see real job creation and a strong economy in Rhode Island.

for them. Yet a report by MetDESK (MetLife Division of Estate Planning for Special Kids) found that even though parents realized that their children with special needs would never be financially independent, and that they were likely to die before their child, 68 percent didn't have a will and a third hadn't planned for their child's financial future at all.

Examining Special Needs Trusts

A Special Needs Trust (SNT) should be one part of a parent's estate plan to provide benefits for their child after they've died. The trust is designed to supplement day-to-day expenses for a person with special needs so that she can have her own financial resources after her parents have died, yet still receive government benefits. Arranging this type of trust can serve to relieve other family members of being financially responsible for that child, while at the same time ensuring the child's financial well-being.

The SNT is meant to complement, not replace, the governmental benefits provided to special needs individuals at the federal and state level including Supplemental Security Income (SSI), Social Security Disability Income (SSDI) and Medicaid and Medicare. Benefits from an SNT should not technically replace food, clothing or shelter, which Medicaid benefits cover.

Rhode Island sets the pace

The landmark case that validated this type of estate planning, and made it so popular today, happened right here in Rhode Island. *Chenot v. Bordeleau* was decided by the Rhode Island Supreme Court in 1989. The *Chenot* type trust, as it's called by the Department of Health and Human Services (DHS) in Rhode Island, was a landmark case because it established that a beneficiary of a discretionary fund, that has special needs, will not be disqualified from his government benefits for receiving the fund benefits.

Attorney Anthony R. Mignanelli, of Mignanelli & Associates, Ltd. was lead counsel for Edward Chenot and asserted that the fund – left to Edward by his father – was a discretionary trust, not a support trust whereby the beneficiary could compel

the trustee to make decisions about funds. In a discretionary trust, the beneficiary has no control as to how or when funds are given. If the court found that Edward Chenot's fund was a discretionary fund, then he had no legal right to determine how the funds were disseminated, and Mignanelli argued that neither did the state.

"The problem was that we were working with a document that was outdated," said Mignanelli. "The courts didn't know what type of trust this was. Applying Special Needs Trust benefits to a discretionary trust was never done before."

According to Mignanelli, prior to the *Chenot* case, Special Needs Trusts weren't an area of practice. It was the age of "deinstitutionalization" and parents were beginning to plan for their child's future and subsequently practice policy was being established. The initial trend was to disinherit the child so that they could maintain their benefits. But it wasn't an optimal situation for anyone.

Public policy also played a role in the case. Was it in the best interest of the courts – and state – to rule against the plaintiff, in which case the remaining trust funds would go to the state? Mignanelli's argument was that if the public coffers needed protecting, it should be done via legislation. Ultimately the decision was rendered for the plaintiff. At about the same time, legislation was being changed pertaining to Medicare under Social Security, which further made it easier for people with special needs to hold onto money.

Fund management is key to its success

According to Mignanelli there are two key strategies to managing a Special Needs Trust. One is how the fund is invested. The best strategy is to engage the services of a money manager. It's important to encourage the individual establishing a trust to visit with a money manager (or several) to gain confidence and compare investing strategies before making a decision whom to work with.

"Special Needs Trusts can be funded with a variety of assets including cash, investments, and life insurance. Supplemental Security Income (SSI) and Medicaid are often the primary sources of funds for individuals with special needs," said

Richard Carriere, CFP®, Vice President of Wealth Management for Smith Barney. "Children with special needs qualify for government benefits based on their parents' income and assets.

However, when these children reach a certain age (usually 18), their eligibility is based primarily on their own income and assets, rather than their parents'. Thus, it is critical to begin planning before the individual receives assets in his or her own name. With proper planning, even adults with special needs from affluent families may qualify for these important government benefits."

Secondly, Mignanelli says the fund needs to be carefully monitored for the way money leaves the trust. "Too much money being distributed could end up in disqualification of Medicaid benefits," he said. "Distributions need to be received in the form of benefits for a certain item, and need to be coordinated with a third party rather than with the person with special needs.

Within the last two years new regulations were put in place that state when trusts are created, the state must receive the accountings from the trustee if it's a mandatory distribution fund. If it's a discretionary fund – where the money goes to another beneficiary– the process is self-regulated.

Given the benefits of an SNT, why wouldn't most people establish this type of fund? Most likely would, but as mentioned earlier, if parents die without a will, decisions are made by the state. In the case of someone with special needs, DHS will agree upon the trustee and the money goes to the special needs child. But it will likely be a sum that's too much for them to continue qualifying for their Medicaid benefit. Upon the death of the child, the remaining money gets paid back to the state under the Medicaid program. Through use of a benefits card, the state tracks how much in



Richard Carriere



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TOPIC: Asset Protection in Estate Planning

You're beginning to accumulate substantial wealth, but you worry about protecting it from future potential creditors. Whether your concern is for your personal assets or your business, various tools exist to keep your property safe from tax collectors, accident victims, health-care providers, credit card issuers, business creditors, and creditors of others.

To insulate your property from such claims, you'll have to evaluate each tool. You may decide that insurance and a Declaration of Homestead may be sufficient protection for your home because your exposure to a claim is low. For high exposure, you may want to create a business entity or an offshore trust to shield your assets. Remember, no asset protection tool is guaranteed to work, and you may have to adjust your asset protection strategies as your situation or the laws change.

LIABILITY INSURANCE IS YOUR FIRST AND BEST LINE OF DEFENSE

Liability insurance is at the top of any plan for asset protection. You should consider purchasing or increasing umbrella coverage on your homeowners policy. For business-related liability, purchase or increase your liability coverage under your business insurance policy. Generally, the cost of the premiums for this type of coverage is minimal compared to what you might be required to pay under a court judgment should you ever be sued.

A DECLARATION OF HOMESTEAD PROTECTS THE FAMILY RESIDENCE

Your primary residence may be your most significant asset. State law determines the creditor and judgment protection afforded a residence by way of a Declaration of Homestead, which varies greatly from state to state. For example, a state may provide a complete exemption for a residence (i.e., its entire value), a limited exemption (e.g., up to \$100,000), or an exemption under certain circumstances (e.g., a judgment for medical bills). A Declaration of Homestead is easy to file. You pay a small fee, fill out a simple form, and file it at the

registry where your deed is recorded.

DIVIDING ASSETS BETWEEN SPOUSES CAN LIMIT EXPOSURE TO POTENTIAL LIABILITY

Perhaps you work in an occupation or business that exposes you to greater potential liability than your spouse's job does. If so, it may be a good idea to divide assets between you so that you keep only the income and assets from your job, while your spouse takes sole ownership of your investments and other valuable assets. Generally, your creditors can reach only those assets that are in your name.

Business entities can provide two types of protection – shielding your personal assets from your business creditors and shielding business assets from your personal creditors

Consider using a corporation, limited partnership, or limited liability company (LLC) to operate the business. Such business entities shield the personal assets of the shareholders, limited partners, or LLC members from liabilities that arise from the business. The liability of these owners will be limited to the assets of the business.

Conversely, corporations, limited partnerships, and LLCs provide some protection from the personal creditors of a shareholder, limited partner, or member. In a corporation, a creditor of an individual owner is able to place a lien on, and eventually acquire, the shares of the debtor/shareholder, but would not have any rights greater than the rights conferred by the shares. In limited partnerships or LLCs, under most state laws, a creditor of a partner or member is entitled to obtain only a charging order with respect to the partner or member's interest. The charging order gives the creditor the right to receive any distributions with respect to the interest. In all respects, the creditor is treated as a mere assignee and is not entitled to exercise any voting rights or other rights that the partner or member possessed.

CERTAIN TRUSTS CAN PRESERVE TRUST ASSETS FROM CLAIMS

People have used trusts to protect their assets

for generations. The key to using a trust as an asset protection tool is that the trust must be irrevocable and become the owner of your property. Once given away, these assets are no longer yours and are not available to satisfy claims against you. To properly establish an asset protection trust, you must not keep any interest in the trust assets or control over the trust.

Trusts can also protect trust assets from potential creditors of the beneficiaries. The extent to which a beneficiary's creditors can reach trust property depends on how much access the beneficiary has to the trust property. The more access the beneficiary has to the trust property, the more access the beneficiary's creditors will have. The terms of the trust are critical.

There are many types of asset protection trusts including spendthrift trusts, discretionary trusts, support trusts, blend trusts, personal trusts and self-settled trusts.

Since certain claims can pierce domestic protective trusts (e.g., claims by a spouse or child for support and state or federal claims), you can bolster your protection by placing the trust in a foreign jurisdiction. Offshore or foreign trusts are established under, or made subject to, the laws of another country (e.g., the Bahamas, the Cayman Islands, Bermuda or the Cook Islands) that does not generally honor judgments made in the U.S.

A WORD ABOUT FRAUDULENT TRANSFERS

The court will ignore transfers to an asset protection trust if a creditor's claim arose before you made the transfer, you made the transfer with the intent to defraud a creditor, or you incurred debts without a reasonable expectation of paying them.

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Of Note in R.I.: Declaration of Homestead

Homeowners can acquire an estate of homestead with exemption up to \$300,000. It's automatic, requires no filing, and excludes certain debts. Visit www.rilin.state.ri.us/Statutes/TITLE9/9-26/9-26-4.1.HTM.

services that the person has used, and will collect the money from the remaining funds in the trust to defray the cost of care.

Choosing the right trustee

Much mention has been made of the trustee – the person or organization that manages and distributes assets from the trust. It's a crucial role and the trustee must be able to perform all necessary functions needed to operate a trust fund, both financial and personal.

Trustees can be banks, corporate trust departments or individuals. If it's in the person's best interest to have a professional trustee to handle financial matters, and family member to handle personal matters and day-to-day care, a co-trustee situation can be arranged.

"It can be beneficial when there's not enough family harmony to manage money issues," said Mignanelli. "It removes the financials from the equation and allows for focus on quality of life for the person with special needs."

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