OAST & HOOK

ELDER LAW NEWS

Legal power for seniors.

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REPORT ON THE SEPTEMBER MEETING OF THE VIRGINIA CHAPTER OF THE NATIONAL ACADEMY OF ELDER LAW ATTORNEYS

Last week, Oast & Hook attended the September meeting of the Virginia Chapter of the National Academy of Elder Law Attorneys in Richmond, Virginia. Steve Ford, Director of Policy and Research of the Virginia Department of Medical Assistance Services ("DMAS"), presented on Virginia's implementation of the Medicaid long-term care eligibility provisions of the Deficit Reduction Act ("DRA"). Mr. Ford reported that Medicaid expenditures in Virginia had increased from $1.5 billion in 1992 to $4.4 billion in 2005. Seventy percent of the current expenditures are for the aged, blind and disabled citizens of the Commonwealth of Virginia.

Why has Virginia had this growth despite attempts in 1993, 1996, and 1997 by the federal and state governments to slow this growth? Virginia has an aging population that is confronting the financially crippling expenses of long-term care, and middle income Virginians have turned to the Medicaid program for help. The DRA failed to address the crisis that this middle income segment of the population is facing to pay for long-term care for chronic illnesses. Therefore, it is likely that the DRA will not slow the growth in Medicaid expenditures.

Mr. Ford reported that Virginia has implemented the mandatory provisions of the DRA by amending its Medicaid Manual. Optional provisions are now under consideration. The following is a summary of the points that Mr. Ford made:

- The annuity provisions require that an annuity purchased by either the community spouse or the institutionalized spouse must designate the state as the beneficiary for Medicaid assistance provided to either of them.

- DMAS is reviewing all requests for hardship waivers in order to provide a uniform approach throughout Virginia.

- Virginia intends to implement the long-term care insurance partnership provisions in the spring of 2007. The DRA requires that only policies bought after implementation using a dollar-for-dollar model will qualify.

- The annuity provisions in the Medicaid Manual contain an error and will have to be corrected.

Oast & Hook attorney Andrew Hook presented on new planning techniques used by elder law attorneys to assist their clients with the payment of large long-term care expenses. These techniques include:

- Small businesses providing their employees with long-term care insurance. These plans can be tax deductible to the employer and a tax free fringe benefit to the employee.

- Using fee-based financial planning, modern portfolio theory, and investment policy statements to assist with the payment of long-term care.

- Using the five year look-back period and a child(ren)'s trust to qualify for Medicaid long-term care assistance while preserving favorable tax treatment for assets given to the client's children.

- Using annuities and promissory notes for clients in nursing homes in order to qualify for Medicaid long-term care assistance to pay for these clients' nursing home care.

While DRA has made planning more complex, Mr. Hook explained that it is never too late to begin planning to address the cost of long-term care, but prior legal, tax, insurance and financial planning with an experienced elder law attorney is necessary and will improve the results of these plans.

Ask the Expert

Mark your calendar to listen to the "Ask the Expert" show on WTAR radio (850 AM) from 5:00 p.m. to 6:00 p.m., Tuesday, October 10th. The guest speakers will be Oast & Hook attorney William Oast III and Gino Colombara, Executor Director of the Southeastern Virginia Chapter of the Alzheimer's Association.

Announcement

The Hampton Roads Caregivers' Coalition's 13th Annual Fall Festival for Caregivers will be held Friday, October 27, 2006, at Grand Affairs in Virginia Beach from 8:30a.m. to 2:30 p.m. It will offer practical caregiving information and support for individuals providing care in the home and community. The keynote speaker will be Ms. Teepa Snow, Director for Educational Programs for the Eastern North Carolina Chapter of the Alzheimer's Association. Ms Snow's presentation, "Caregiver Stress: Reducing Distress by Building Skills and Knowledge," will help caregivers learn how to better handle the challenging behaviors and demands of those in their care. She will present realistic ideas that will apply to many caregiving situations, not just those involving dementia.

Reservations must be made and paid for by check in advance and no payment will be allowed at the door. The fee, which includes continental breakfast, lunch, and the program, is $25 for professionals (those whose paid work involves caregiving or healthcare services) and $15 for non-professionals (unpaid family members, students, and volunteers.) To request a registration brochure or for more information, please call Mary Catherine Dziedziak at 757-420-5448 or e-mail her at marycdz@verizon.net. The registration deadline is October 19, 2006. Please join us for a day of education, support, and fellowship.

Oast & Hook

Oast & Hook is an elder law firm. We represent older persons, disabled persons, their families, and their advocates. The practice of elder law includes estate planning, investment and insurance advice, estate and trust administration, powers of attorney, advance medical directives, titling of assets and designations of beneficiaries, guardianships, conservatorships, and public entitlements such as Medicaid, Medicare, Social Security, and SSI, disability planning, income tax planning and preparation, bill paying, account management and reporting, care management, and fiduciary services. We also handle litigation involving these issues, such as will contests and estate administration disputes. For more information about Oast & Hook, please visit our website at **www.oasthook.com**.

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