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## VIRGINIA LONG-TERM CARE PARTNERSHIP PROGRAM ON THE WAY

Long-term care partnership programs encourage the purchase of private long-term care insurance as the primary source of funding of long-term care for the participant. This is because the program enables insurers to offer specially crafted long-term care insurance policies that increase a family's ability to protect part of the family's life savings if long-term care services are needed. For every dollar that a long-term care partnership insurance policy pays out in benefits, it protects this amount for one who eventually exhausts the policy's proceeds and then requires Medicaid assistance.

Prior to the passage of the Omnibus Reconciliation and Budget Act of 1993 (OBRA '93), four states had established long-term care partnership programs approved by the Health Care Financing Administration. OBRA '93's Waxman Amendment curtailed expansion of the partnership programs by mandating that states pursue estate recovery programs, even if long-term care insurance covered some of the costs of care for participants who later received Medicaid assistance. If a state had a partnership program approved prior to May 14, 1993, then estate recovery was not mandatory. This amendment curtailed the implementation of partnership programs in other states. Why? Because the key part of a partnership program is the ability of a participant to protect assets and receive Medicaid assistance after exhausting long-term care insurance benefits, without the threat of estate recovery. In anticipation of a change in federal law, in 2004 Virginia enacted Senate Bill 266, which amended Virginia Code § 31.1-325 to add a subsection to direct the State Board of Medical Assistance Services to include in the state plan for medical assistance "a provision, consistent with federal law, to establish a long-term care partnership program that shall encourage the private purchase of long-term care insurance as the primary source of funding the participant's long-term care. Such program shall

provide protection from estate recovery as authorized by federal law.” At that time, however, federal law under the Waxman Amendment did not permit such partnership programs to be established.

Federal law finally changed with the passage of the Deficit Reduction Act of 2005 (DRA). The DRA lifted the moratorium on long-term care partnership programs for states in addition to the four states that had programs in place prior to May 14, 1993. States are now permitted to submit state plan amendments to the U.S. Centers for Medicare and Medicaid Services (CMS) for approval. Virginia did submit such a state plan amendment, and the Virginia Department of Medical Assistance Services (DMAS) recently announced that CMS has approved the state plan amendment.

Federal approval is the first of several steps required to develop the Virginia Partnership. DMAS is working with the Bureau of Insurance, the Virginia Department for the Aging, the Virginia Department of Social Services, industry representatives, and others to ensure that state and federal requirements are met and the program is designed to best meet the needs of Virginians. Patrick Finnerty, Director of DMAS, said that the state is working toward a May 1, 2007, launch date for the Virginia Partnership program.

Long-term care partnership programs offer states and individuals the opportunity to save Medicaid dollars by sharing long-term care costs with the private sector. These partnership programs promote greater individual self-reliance and choice, stimulate the expansion of the long-term care insurance market, and allow individuals to protect a portion or all of their assets. Oast & Hook currently advises clients regarding all aspects of their estates, long-term care, financial and investment planning, including long-term care insurance. Oast & Hook will keep up-to-date on the Virginia Partnership program, and it will be available to advise and assist clients with this important new program.

### **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, February 13th. The guest speakers will be Oast & Hook attorney Sandra Smith and Susan Cunningham, the President of Senior Resources Group Inc.

### **Speakers**

If you are interested in having an elder law attorney from Oast & Hook speak at an event, then please call Jennifer Lantz at 757-399-7506.

### **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](http://www.oasthook.com).

Oast & Hook is a Virginia member of the Special Needs Alliance, a nationwide network of disability attorneys. As members of this alliance, we assist personal injury attorneys in resolving their cases to enhance the judgments and awards of their disabled clients and to maintain the eligibility of these clients for SSI and Medicaid. We are experienced in protecting the public benefits of persons with special needs and in assisting with the management of their assets. For more information about the Special Needs Alliance, visit its website at [www.specialneedsalliance.com](http://www.specialneedsalliance.com).

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