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MEMBER



Special needs require special lawyers.

INSIDE THIS ISSUE

- CMS Provides First Guidance for Liability Medicare Set-Asides
- Ask Allie
- Announcements
- Seminar
- Distribution of this Newsletter

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CMS PROVIDES FIRST GUIDANCE FOR LIABILITY MEDICARE SET-ASIDES BY BRIAN BOYS

The Centers for Medicare and Medicaid Services (CMS) recently issued its first memorandum directly addressing the use of a Medicare Set Aside (“MSA”) in third-party liability cases. Previously, the only guidance available to attorneys was that CMS’s interests must be taken into account when settling third-party liability cases. This memorandum provides the first information about how CMS’s interests must be considered.

Under the Medicare Secondary Payer Act, Medicare makes conditional payment for medical expenses for beneficiaries, with the understanding that Medicare will be paid when the beneficiary receives payment from a third-party. Medicare is opposed to any settlement that results in a contrived shift to Medicare of the responsibilities for a claimant’s future medical care. In settling claims, the only guidance that CMS has published to date is that Medicare’s interest must be considered. One solution to the problem of burden shifting and properly considering CMS’s interests is to establish an MSA.

The September 29, 2011, memorandum makes it clear that when a Medicare beneficiary’s treating physician certifies in writing that treatment for the injury related to the personal injury settlement has been completed as of the date of the settlement, and that future medical treatment or services will not be required, then Medicare considers its interests satisfied. Personal injury settlements are defined as liability insurance settlements, judgments, awards, or other payments. The memorandum also makes clear that when such certification occurs, there is no need for the certification or a proposed MSA to be submitted to CMS for its review. CMS also indicates that it will not provide the settling parties with confirmation that Medicare’s interests have been considered.

This CMS memorandum is important and extremely useful not just because of its content, but also because it is an indication that CMS is beginning the process of addressing some of the many questions that exist for parties settling third-party liability cases. We will keep Oast & Hook News readers informed on any additional guidance from CMS in this developing area. The CMS alert can be found at: www.cms.gov/COBGeneralInformation/Downloads/FutureMedicals.pdf.

There are many considerations that need to be addressed prior to or at the time of a personal injury settlement or judgment. These may include medical insurance, eligibility for medical and non-medical public benefits, income and estate taxes, estate planning, guardianship, conservatorship, structured settlement advice, investment advice, special needs trusts, support or settlement preservation trusts, Medicare set-aside arrangements, and qualified settlement funds.

Oast & Hook has attorneys and staff who are knowledgeable and experienced in assisting personal injury attorneys in navigating these issues, and in maximizing their clients' personal injury settlements or awards. Oast & Hook can also assist clients with their estate, financial, insurance, long-term care, veterans' benefits, and special needs planning issues.

Brian Boys is an elder law attorney with Oast & Hook, and he practices in the areas of estate planning, estate and trust administration, special needs planning, guardianships and conservatorships, and litigation. Mr. Boys also works with personal injury attorneys and their clients to provide consultation on issues ranging from estate planning, maintaining public benefits, and the need for a guardian or a conservator.

Ask Allie

O&H: Allie, we've heard about a fun event to benefit the Norfolk SPCA. Please tell us about it.

Allie: Sure! The Norfolk SPCA is the only no-kill local animal shelter in Hampton Roads, Virginia, and the shelter is expensive to maintain. The agency's largest fundraiser is the PETropolitan, which will be held at 7:00 p.m. October 21st in the Big Blue Room at Old Dominion University's Ted Constant Convocation Center. Tickets are \$50 in advance and \$60 at the door. The SPCA is looking for donations for the silent auction, as well as inviting people to attend the event. I hope our readers will help in spreading the word to those who may be interested in either attending or donating. For more information, please visit <http://petropolitan.org/>. What a great idea! I hope the Norfolk SPCA can raise lots of money to maintain the shelter and help the animals find homes. I'll provide an update in a future column. See you next week!

Announcements

Walk to End Alzheimer's

On Saturday, October 8th, many attorneys and staff members of Oast & Hook along with family members and several pets took part in the Alzheimer's Association 2011 Western Tidewater Walk to

End Alzheimer's that was held in Suffolk, Virginia. The Oast & Hook team led by Brian Boys raised over \$1,200, and the Suffolk event raised over \$28,000 for this worthy cause.

The Walk to End Alzheimer's is the nation's largest event to raise awareness and funds for Alzheimer care, support, and research. Since 1989, this all-age, all-ability walk has mobilized millions to join the fight against Alzheimer's disease, raising more than \$347 million for the cause. Walks are held annually in the fall in nearly 600 communities nationwide. This year 20 Walks will be held in Virginia, including upcoming walks in Virginia Beach on October 16th, Newport News on October 22nd, and Williamsburg on October 29th.

For more information about the Alzheimer's Association, to register for an upcoming Walk to End Alzheimer's, or to make a donation, visit the Alzheimer's Association website at: www.alz.org.

Seminar

Oast & Hook is proud to announce that it has partnered with TowneBank to offer a series of seminars for seniors and their families. Each seminar will cover issues facing our seniors such as reverse mortgages, planning for retirement, elder law, Medicare, and long-term care planning. The final seminar will begin at 10:00 a.m. and will end at noon on October 26th, and it will be held at the NC Cooperative Extension, 120 Community Way, Barco, North Carolina 27917. Seating is limited. If you have any questions or would like to register for this seminar, then please phone Jo Ann Mansfield at 252-435-6331.

Distribution of This Newsletter

Oast & Hook encourages you to share this newsletter with anyone who is interested in issues pertaining to the elderly, the disabled, and their advocates. The information in this newsletter may be copied and distributed, without charge and without permission, but with appropriate citation to Oast & Hook, P.C. If you are interested in a free subscription to the *Oast & Hook News*, then please e-mail us at mail@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

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