

OAST & HOOK

Offices in
Portsmouth, Virginia
and
Virginia Beach, Virginia
Tel: 757-399-7506
Fax: 757-397-1267
E-mail: eln@oasthook.com



Member, National Academy
of Elder Law Attorneys

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Editor
Sandra L. Smith
Attorney at Law

2005 DEFICIT REDUCTION ACT AND PROOF OF CITIZENSHIP FOR MEDICAID APPLICANTS

Oast & Hook will present a two hour workshop entitled

“Recent Developments in Long-term Care Planning.”

This seminar will be held at the Chesapeake Conference Center, from 9:00 a.m. to 11:00 a.m., Monday, January 23, 2006.

A registration form is attached to this newsletter.

The December 3, 2005, issue of the *Elder Law News* described the significant changes to the Medicaid eligibility rules that are included in the 2005 Deficit Reduction Act (DRA). The DRA also includes another provision relating to Medicaid applications that may prove problematic for many of our seniors.

If the DRA becomes law, then those applying for Medicaid after July 1, 2006, and those undergoing redetermination of Medicaid eligibility after July 1, 2006, will be required to provide satisfactory documentary evidence of citizenship or nationality. (Certain aliens will not have to comply.) One of the following documents can be used to satisfy this requirement:

- United States passport;
- Form N-550 or N-570 (Certificate of Naturalization);
- Form N-560 or N-561 (Certificate of United States Citizenship);
- Valid U.S. driver’s license or identity documents, but only if the state issuing the document required proof of citizenship, or if the state obtained a Social Security Number from the applicant and verified

before certification that the Social Security Number is valid and assigned to the applicant who is a citizen; and

- “Such other document as the Secretary [of Health and Human Services] may specify, by regulation, that provides proof of United States citizenship or nationality, and that provides a reliable means of documentation of personal identity.”

If an applicant does not have any of the above documents, then the applicant can provide one document from each of the following groups of documents:

First Group:

- Certificate of birth in the United States;
- Form FS-545 or Form DS-1350 (Certificate of Birth Abroad);
- Form I-97 (United States Citizen Identification Card);
- Form FS-240 (Report of Birth Abroad of a Citizen of the United States); and
- “Such other documents as the Secretary may specify that provides proof of United States citizenship or nationality.”

Second Group:

- Any identity documents described in section 274A(b)(1)(D) of the Immigration and Nationality Act; and
- “Any other documentation of personal identity of such other type as the Secretary finds, by regulation, provides a reliable means of identification.”

The Virginia Medicaid Manual, section M0130.200(E), effective January 1, 2006, outlines similar requirements for proof of citizenship or legal presence in the United States. The requirements, however, do not apply to “[i]ndividuals who, on June 3, 1997, were Medicaid eligible and were residing in long-term care facilities or participating in home and community-based waivers, and who continue to maintain that status. . . .” This section lists several documents that are not included as proof of citizenship in the DRA, such as:

- Valid Social Security Number verified by Social Security Administration;
- U.S. non-immigrant visa;
- Pending or approved application for legal asylum;
- Refugee or temporary protected status document; and
- Pending application for an adjustment of residence status.

If an applicant cannot provide any of the documents listed in section M0130.200(E), the applicant must sign an affidavit under oath attesting that he or she is a U.S. citizen or legally present in the U.S. in order to meet the proof of legal presence. Section M0130, Appendix 2, includes the affidavit. It is unlikely that the affidavit would meet the requirements as outlined in the DRA, unless the Secretary of Health and Human Services approves it as acceptable documentation.

For many Medicaid applicants and recipients, these requirements will impose a significant hardship on them. Poor individuals probably do not have passports and many may not have birth certificates. There are no exceptions to this provision, not even for those with serious physical or mental disabilities, including Alzheimer's disease. Further, those who are incapacitated not only may not have the required documentation, but they may also no longer be able to execute the affidavit that is currently allowed under Virginia law. The impact of the DRA on their eligibility for Medicaid is far from clear.

Announcement

Oast & Hook is please to announce that Jennifer Rossetini has been admitted to the Virginia State Bar. Ms. Rossetini is an attorney with Oast & Hook who concentrates her practice in the areas of elder law and disability. She is also licensed to practice law in New Jersey and Pennsylvania.

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 *Elder Law News*, then please e-mail us at eln@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

Please visit us on the world wide web at:
www.oasthook.com

Our Web site contains information about Oast & Hook and an archive of our newsletters and other estate planning, estate administration, and elder law articles in searchable format.

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OAST & HOOK

presents:

Recent Developments in Long-term Care Planning

Date: Monday, January 23, 2006

Location: Chesapeake Conference Center
900 Greenbrier Circle
Chesapeake, Virginia 23320

Schedule: Registration: 8:30 a.m. to 9:00 a.m.
Workshop: 9:00 a.m. to 11:00 a.m.

Presenters: Andrew H. Hook
Sandra L. Smith

Tuition: The registration fee is \$15.

Space is limited, so please register as soon as possible. No refunds after January 10, 2006.

Registration Form

Please complete this registration form and either mail it or fax it to Oast & Hook at 757-397-1267.

Name: _____

Company: _____

Address: _____

Telephone: _____ Email: _____

Payment Method:

Mail check payable to **Oast & Hook, P.C.**, Attn: Linda Gerber, at 295 Bendix Road, Suite 170, Virginia Beach, Virginia 23452.

MC VISA AmEx Discover

Card No: _____ Expires: _____

Cardholder Name: _____

Signature: _____

For more information, please telephone Jennifer Lantz or Linda Gerber at 757-399-7506.