

### OAST & HOOK

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



Member, National Academy  
of Elder Law Attorneys

### INSIDE THIS ISSUE

- DRA of 2005 Impact on Medicaid, Part I
- Announcements
- Oast & Hook
- Distribution of This Newsletter

Editor  
Sandra L. Smith  
Attorney at Law

## DRA OF 2005 IMPACT ON MEDICAID PART I

The Deficit Reduction Act of 2005 (DRA), signed into law by President Bush on February 8, 2006, contains several provisions that impact eligibility for Medicaid long-term care services. Oast & Hook will discuss some of these issues in this and future editions of the *Elder Law News*.

The most significant changes in the law as a result of the DRA pertain to transfers of assets provisions. The first two changes combined will have a significant impact on applicants' eligibility for Medicaid. First, the look-back period for disclosing transfers of assets and computing penalty periods has been extended from 36 months to 60 months for all transfers. Second, states will no longer be able to round down the penalty period. Currently, an applicant for Medicaid is asked if they have made transfers of more than \$4,060 in any one month for the previous 36 months, or 60 months for transfers to a trust. If transfers have been made within the 36 month period, the Department of Social Services (DSS) computes the penalty period for the transfer. The period of ineligibility expressed in months is determined by dividing the amount transferred by the average monthly nursing home costs in Virginia as set by the DSS. For gifts made prior to February 8, 2006, the DSS rounds down the result to the next whole number to determine the number of months of ineligibility. For gifts made on or after February 8, 2006, the DSS does not round down the result, and a partial month eligibility period may result. Gifts with overlapping periods of ineligibility are aggregated for the calculation of the period of ineligibility. Effective January 1, 2004, the DSS has set the average monthly nursing home cost at \$4,060 per month (\$5,403 per month for the counties of Arlington, Fairfax, Loudon and Prince William, and the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park). For example, if an applicant in Portsmouth made gifts totaling \$60,000 prior to February 8, 2006, the applicant would be ineligible for Medicaid for 14 months ( $\$60,000 \div \$4,060 = 14.77$ , rounded down to 14). If the gift were made on or after February 8, 2006, the penalty period would be 14.77 months.

For transfers made after August 10, 1993, there is no cap on the period of ineligibility. Thus, for example, the period of ineligibility for the transfer of property worth \$160,000 is approximately 39 months. DSS, however, may currently only consider transfers made during the 36-month look-back period for transfers occurring prior to February 8, 2006. If the \$160,000 transfer were made prior to February 8, 2006, and prior to the 36 month look-back period, a penalty period would not be computed. For the same transfer occurring on or after February 8, 2006, the look-back period is 60 months, and a penalty period would be computed if the individual applied for Medicaid prior to the expiration of the 60 month look-back period.

What is the impact of these two changes? Although the Virginia Medicaid Manual and Medicaid application have not yet been updated to reflect the changes in the law, it is likely that applicants may be required to disclose all transfers made during the look-back period, and produce all financial records for the look-back period. Because rounding down is no longer permitted, there is no lower limit on transfers that must be reported (as opposed to the current \$4,060 per month lower limit for transfers). Thus, transfers of any size may have to be reported, including gifts to charities, gifts to grandchildren for their education, and gifts to children and grandchildren for birthdays and holidays, for the 60 months preceding the application date. These reporting requirements will result in extensive record-keeping for all transfers regardless of amount. This will likely result in “guaranteed ineligibility” for Medicaid, because many seniors, particularly those suffering from dementia or Alzheimer’s disease, will be unable to produce the documentation required for the Medicaid application.

These two changes emphasize the need for prior planning and for expert legal assistance with that planning. Oast & Hook is prepared to help seniors and their families plan within the boundaries of the new law. Please call Oast & Hook at 757-399-7506 to schedule an appointment with one of our experienced elder law attorneys.

#### Announcements

Oast & Hook will present a workshop entitled:

**“Special Needs Trusts: A Wealth of Information.”**

This seminar will be held at the Chesapeake Conference Center, from 9:00 a.m. to 12:30 p.m., Wednesday, March 8, 2006. This seminar has been approved for three CLE credits by the Virginia State Bar. A registration form is attached to this newsletter.

Oast & Hook is pleased to announce its sponsorship of a series on WHRO-TV entitled “Boomers: Redefining Life After 50.” This week’s episode is Self and Spirit and will be aired at 4:30 p.m., Saturday, February 25th. Meet some Boomers who are turning inward and seeking out their authentic selves through spiritual practices, old and new.

Oast & Hook has recently updated its Virginia Medicaid Explanation and Asset Protection Planning Explained materials. The new version can be found on Oast & Hook's website at [www.oasthook.com/legal\\_information.php](http://www.oasthook.com/legal_information.php).

### **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 and 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).

### **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](mailto: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](http://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.

**Copyright © 2006**  
**By**  
**Oast & Hook, P.C.**

*This newsletter is not intended as a substitute for legal counsel. While every precaution has been taken to make this newsletter accurate, we assume no responsibility for errors or omissions, or for damages resulting from the use of the information in this newsletter.*

*This newsletter is produced to be sent electronically. If we currently fax you a copy of the Elder Law News but you prefer to receive it by e-mail, then please contact us at: [eln@oasthook.com](mailto:eln@oasthook.com).*

*If you would like to be removed from our Elder Law News distribution list, please e-mail us at [eln@oasthook.com](mailto:eln@oasthook.com), telephone us at 757-399-7506, or fax us at 757-397-1267.*