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## DRA OF 2005 IMPACT ON MEDICAID PART III

Last week, the *Elder Law News* discussed two provisions of the Deficit Reduction Act of 2005 (DRA) that will impact Medicaid eligibility for long-term care services. This week, the *Elder Law News* discusses additional provisions of the DRA.

Several provisions in the DRA address the treatment of annuities. The first provision provides that the purchase of an annuity is considered the disposal of an asset for less than fair market value unless the State is named the first remainder beneficiary at least for the amount of medical assistance provided to the annuitant. The State must be named as the beneficiary in the second position after a community spouse or a minor or disabled child. If the community spouse or representative of a minor or disabled child disposes of the remainder of the annuity for less than fair market value, then the State must be named as the remainder beneficiary in the first position.

There is, however, an exception to this provision. An annuity is not subject to the transfer of assets provision if it is an individual retirement annuity or deemed an IRA under certain employer plans (Internal Revenue Code (I.R.C.) Section 408, (b) and (q)). An annuity is also not subject to the transfer of assets provision if it is purchased with the proceeds of simple retirement account, individual retirement account or trust (I.R.C. Section 408 (a), (c), or (p)), a simplified employee pension or Roth IRA, or if the annuity is irrevocable and non-assignable, actuarially sound, and provides equal payments throughout the term of the annuity with deferral and no balloon payments.

The DRA contains a provision pertaining to the disclosure of annuities by applicants for Medicaid and Medicaid recipients undergoing recertification. These applicants and recipients must disclose a description of any interest that the individual or the community spouse has in an annuity, regardless of

whether the annuity is irrevocable or treated as an asset. In the case of annuities for which the State must be named as a remainder beneficiary, the disclosure must include the statement that the State becomes a remainder beneficiary of the annuity because of the provision of medical assistance. For those annuities, the State will notify the issuer of the annuity of the right of the State as a preferred remainder beneficiary in the annuity for medical assistance provided to the individual. Further, the State may require the issuer of the annuity to notify the State when there is a change in the amount of income or the principal withdrawn from what was reported in the previous disclosure. The States are directed to take such differences into account when determining the amount of medical assistance to provide, or in determining the individual's eligibility for assistance.

These provisions, as well as other provisions in the DRA, underscore the necessity for careful advance planning. Oast & Hook is prepared to assist seniors and their families understand and implement these provisions in order to establish and maintain eligibility for Medicaid.

#### **Announcement**

Oast & Hook is please to announce that Roger Hurwitz was the winner of the gift basket that was raffled off at our seminar.

#### **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.

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