

OAST & HOOK

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Member, National Academy
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ASK THE EXPERT

Mark your calendars to listen to the “Ask the Expert” show on WTAR radio (850 AM) from 8:00 a.m. to 9:00 a.m. on June 24th. William Oast and Stefan Gravenstein, M.D., will be the guest speakers. Dr. Gravenstein is the director of the Glennan Center for Geriatrics and Gerontology at the Eastern Virginia Medical School.

UPDATE ON PROOF OF CITIZENSHIP AND IDENTITY FOR MEDICAID APPLICANTS AND RECIPIENTS

The January 13, 2006, issue of the *Elder Law News* described significant changes to the Medicaid application process with regard to proof of citizenship that might occur under the Deficit Reduction Act of 2005. The Center for Medicare and Medicaid Services (CMS) recently announced the guidelines for implementation of the new proof of citizenship requirements. The proof of citizenship and identity requirements are effective July 1, 2006, and will affect seniors applying for Medicaid assistance for their long-term care costs.

People 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. The Bush Administration said in a letter to state officials that “self-attestation of citizenship and identity is no longer an acceptable practice.” The letter also states: “An applicant or recipient who fails to cooperate with the state in presenting documentary evidence of citizenship may be denied or terminated” from the program. Applicants and recipients will generally have 45 days to provide documentation, while those with disabilities will have 90 days to provide documentation. The guidelines also state that “beneficiaries

will not lose benefits as long as they are undertaking a good-faith effort to provide documentation.” States are asked to assist people to document citizenship, especially the homeless, or those mentally or physically impaired who have no one to act on their behalf.

The guidelines state that the best evidence of citizenship is a United States passport or certificate of naturalization or citizenship. A passport does not have to be currently valid to be accepted, as long as it was issued without limitation. A passport issued with limitation can be used as proof of identity. If other documents are used to establish citizenship, a second document must also be produced as proof of identity. State and local birth certificates and State Department documents issued to children born abroad to United States citizens, and an official military record of service, such as a DD-214, are the next most reliable documents. Nongovernment documents showing the applicant’s or recipient’s date of birth can also be used. These documents include medical records from hospitals at the time of birth, and records from life and health insurance companies. The lowest level of documents includes census records, nursing home admission papers, or medical records from a hospital, from a physician, or from a clinic. The current Virginia Medicaid Manual also permits applicants and recipients to present an affidavit under oath attesting that the applicant or recipient is a U.S. citizen legally present in the United States. The CMS guidance permits affidavits, but they can be used “only in rare circumstances when the state is unable to secure evidence of citizenship” from other sources. Further, the applicant or recipient cannot supply their own affidavit. The guidelines state: “An affidavit must be supplied by at least two individuals, one of whom is not related to the applicant or recipient. Each must attest to having personal knowledge of the events establishing the applicant’s or recipient’s claim of citizenship. The individuals making the affidavit must be able to provide proof of their own citizenship and identity.” An additional affidavit must also be provided stating “why documentary evidence of citizenship does not exist or cannot be readily obtained.”

Documents to establish identity include a driver’s license with photograph or other identifying information, a school identification card with photograph, a U.S. military card or draft record, a military dependent’s identification card, an identification card issued by the federal, state or local government with the same information as included on a driver’s license, a Native American Tribal document, or a U.S. Coast Guard Merchant Mariner card.

For many Medicaid applicants and recipients, these requirements will impose a significant hardship on them. Many older individuals and people born at home in rural areas may not have birth certificates, much less passports. Further, those who are incapacitated not only may not have the required documentation, but also they may not know anyone who can execute the alternative affidavits.

Oast & Hook will monitor the developments in this area and will report them in future editions of the *Elder Law News*. Working with an elder law attorney can make this process significantly easier. The attorneys at Oast & Hook represent seniors, the disabled, and their families in obtaining Medicaid assistance for their medical and long-term care needs.

Announcements

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." It will be aired at 4:30 p.m., Saturday, June 17th.

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.

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.

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Our website 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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