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Member, National Academy
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NEW LAW, NEW OPPORTUNITIES

Oast & Hook has reviewed Transmittal #84 from the Department of Medical Assistance Services. Although many of the new Medicaid Manual sections parallel the provisions of the Deficit Reduction Act of 2005 (DRA), several provisions are new. Oast & Hook will highlight the key aspects of Transmittal #84 in this and future editions of the *Elder Law News*.

The first non-DRA Medicaid Manual change pertains to the release of confidential applicant information. Medicaid Manual section M0110.100 (C)(3)(c) now provides that:

[I]ndividuals not determined to be incapacitated by a court can designate whomever they choose to be their authorized representatives, including a provider or a provider's contractor (such as an application assistance company). The designation must be in writing, with the applicant or recipient specifying the information to be released to the authorized representative. It is not sufficient to indicate that any information in the case record may be released; the designation must state the specific information to be released (i.e. notices, the ability to make application or provide information necessary to determine eligibility, and what, if any, other information can be released to the authorized representative). The authorized representative designation is valid for the life of the application.

An applicant must provide specific written authorization for another individual or law firm to receive information about the applicant or the application. Such authorization includes a release or a power of attorney.

The most significant non-DRA change to the Medicaid Manual pertains to life estates, otherwise known as life rights. Medicaid Manual section M1110.515 (A)(2)(a) defines a life estate as certain rights in a property conferred upon one or more persons for his/her/their lifetimes or the life of some other person by deed, will or operation of law. Paragraph (B)(1)(a) provides that the owner of a life estate has the right to possess, use, and obtain profits from the property

and to sell his or her life estate interest. A life estate (life rights) in real property is not counted as a resource when it was obtained prior to February 8, 2006. For a life estate obtained on or after February 8, 2006, the life rights are not counted as a resource when the property serves as the individual's principal place of residence, but life rights are counted as a resource when the property no longer serves as the individual's principal place of residence. These new rules are reiterated in Medicaid Manual section M1140.110 (A)(6).

Paragraph (B)(4)(b)(2) of the same section provides that the policy in section M1130.140 governing reasonable efforts to sell real property applies to life estates. This is a significant change in policy. Previously, life estates were exempt resources, regardless of whether the life estate was in the applicant's primary residence, or in other real property in Virginia or elsewhere. Because many applicants owned their life estates prior to February 8, 2006, the new policy means that their life estates will continue to be exempt resources. For those applicants who obtained their life estates on or after February 8, 2006, the life estates will no longer be exempt as such, but the applicants can follow the policy regarding reasonable efforts to sell the life estate to exempt the life estate as a countable resource.

These are just two new changes in the law that highlight the need for people to continue to plan carefully for their long-term care needs. The attorneys at Oast & Hook can help plan for the payment of these expenses and the protection of assets.

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 Saturday, July 22nd. Oast & Hook attorney Andrew Hook and Kenneth Wren Jr. from Towne Investment Group will be the guest speakers.

Boomers! Redefining Life After 50

Oast & Hook is pleased to continue its sponsorship of a series on WHRO-TV entitled "Boomers! Redefining Life After 50." This week's episode is "Be Your Own Boss." It will be aired at 4:30 p.m., Saturday, July 15th.

Oast & Hook Seminar

Oast & Hook presents "Recent Developments in Long-term Care Planning: New Law, New Opportunity" on Thursday, August 24, 2006. The seminar will be held at the Chesapeake Conference Center from 9:00 a.m. to 12:30 p.m. This half-day workshop will be presented by Oast & Hook attorneys Andrew Hook and Sandra Smith. The registration fee is \$15 before August 1, 2006, or the fee is \$30 after August 1, 2006. Please visit Oast & Hook's website (www.oasthook.com) to obtain a registration form for this seminar.

Speakers

If you are interested in having an Elder Law attorney from Oast & Hook speak at an event, then please call Vivian Lane at 757-399-7506.

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.

Special Needs Alliance

Oast & Hook is the Virginia member of the Special Needs Alliance, a nationwide network of disability attorneys. As members of this alliance, we assist personal injury attorneys in resolving their cases to enhance the judgments and awards of their disabled clients and to maintain the eligibility of these clients for SSI and Medicaid. We are experienced in protecting the public benefits of persons with special needs and in assisting with the management of their assets. For more information about the Special Needs Alliance, visit its website at www.specialneedsalliance.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.

Please visit us on the world wide web at:

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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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