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ACCELERATED BENEFITS AND LONG-TERM CARE PLANNING

The attorneys at Oast & Hook frequently advise their clients about how to pay for the expenses associated with long-term care for chronic illnesses. Unfortunately, these expenses are not covered by health insurance such as Medicare, and the bills can be large. Additionally, most senior citizens do not have long-term care insurance or the savings to pay for extended periods of long-term care. Many of our clients may not be eligible for Medicaid because of Medicaid's income, resource, and transfer of assets rules. There are, however, other strategies that may be available to pay the long-term care expenses for chronic illnesses.

Most seniors own life insurance policies, and many of these policies have an Accelerated Benefits Rider. This rider provides for payment, during the lifetime of the policy owner/insured, of a portion of the death benefits when the policy owner/insured has a terminal illness or suffers from a chronic illness. The lifetime benefits paid during the life of the policy owner/insured reduce the death benefit payable under the policy.

Virginia Administrative Code 14VAC5-70-40 regulates the use of accelerated insurance benefits in Virginia. The insurance benefits can be paid upon the occurrence of a single qualifying event. Qualifying events include one or more of the following:

- A medical condition that would result in a drastically limited life span as specified in the contract, for example, 24 months or less.
- A medical condition that has required or requires extraordinary medical intervention, including, but not limited to, major organ transplant or continuous artificial life support, without which the insured would die.
- Any condition that usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life.

- A medical condition that would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span. Such conditions may include, but are not limited to, one or more of the following:
 1. Coronary artery disease resulting in an acute infarction or requiring surgery;
 2. Permanent neurological deficit resulting from cerebral vascular accident (stroke);
 3. End stage renal failure;
 4. AIDS; and
 5. Other medical conditions that the Virginia State Corporation Commission shall approve for any particular filing.
- A condition where a qualified healthcare provider or court of competent jurisdiction has determined that the insured is no longer to perform at least two of the following activities of daily living: bathing, dressing, continence, eating, toileting, or transferring.
- A condition for which a qualified healthcare provider or court of competent jurisdiction has determined that the insured requires direct supervision by another person during the majority of each day to protect the health and safety of the insured or any other person.
- Other qualifying events that the Virginia State Corporation Commission shall approve for any particular filing.

The insurance benefits paid under an Accelerated Benefits Rider can qualify for a limited income tax exclusion (\$260 per day in 2007) if the payments are received for costs incurred for long-term care expenses, and certain tests are met.

The attorneys at Oast & Hook review their clients' life insurance policies to determine, among other things, whether they have an Accelerated Benefits Rider that can be considered as part of their long-term care plans. Please contact Oast & Hook if you are interested in a complete long-term care and estate planning review.

Announcement

Oast & Hook is pleased to announce that attorney Sandra L. Smith is now a partner of the firm. Ms. Smith is a Certified Elder Law Attorney (CELA), and she concentrates her practice in the areas of estate planning, estate and trust administration, special needs trusts, Medicaid asset protection planning, and long-term care planning.

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.

Oast & Hook is a 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.

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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 form at.

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