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UPDATE ON PERSONAL CARE CONTRACTS

The April 6, 2007, issue of the *Elder Law News* discussed Louisiana's treatment of personal care contracts for services provided in a nursing home. The Virginia Department of Social Services has recently released Transmittal #87, effective July 1, 2007, which adds a new section to the Virginia Medicaid Manual regarding services contracts.

Section M1450.570 describes services contracts (also known as personal care contracts) as contracts entered into for services such as grocery shopping, housekeeping, cooking, financial management, and other services that individuals can no longer perform for themselves. Payments under these types of contracts may be considered an uncompensated transfer of assets for purposes of Medicaid payment of long-term care (LTC) services.

The eligibility worker must first determine when the Medicaid applicant/recipient met the requirements for institutionalization. Then the eligibility worker must obtain a copy of the written contract or written statement verifying the terms of the agreement by all parties. The contract must be legally binding (as defined by section M1450.003H), and it must have been made by the applicant/recipient or the authorized representative of the applicant/recipient. The contract must include the types of services, rate of payment, and the number of hours for each service. The terms must be specific and verifiable, and the eligibility worker must receive verification of payments made and the services provided for those payments. Any payment for a service that does not have a fair market value is considered an uncompensated transfer of assets for Medicaid purposes.

The contract must have been for services provided prior to the entrance of the applicant/recipient into long-term care. The section states "[o]nce an individual begins receipt of Medicaid LTC services, the individual's personal and medical needs are considered to be met by the LTC provider. Payments to

other individuals for services received after the individual enters LTC are considered an uncompensated transfer for Medicaid purposes.” Additionally, the applicant/recipient must provide a statement by his or her physician “that indicates the types of services that were to be provided under the contract, and that these services were necessary to prevent the individual’s entrance into LTC.”

Any payments made prior to the date that a written contract was signed, or prior to the date that the contract was agreed upon by all parties (for a legally binding oral contract), will be considered an uncompensated transfer of assets. Further, any payment for services that have not been performed will be considered an uncompensated transfer of assets; this precludes using advance lump sum payments.

Many families have been using personal care contracts so that family members can be compensated for services that they provide to seniors. Families providing payment under such contracts are advised to consult with an elder law attorney to determine how their contracts are affected by this transmittal. The attorneys at Oast & Hook are ready to assist families who are operating under these contracts to ensure that these families comply with these new rules.

Announcement

Oast & Hook attorneys William Oast and Andrew Hook have been selected as two of Virginia’s “Super Lawyers” for 2007. The Super Lawyers program is sponsored by Law and Politics. The candidates are screened and evaluated by peers in their practice areas.

Speakers

If you are interested in having an Elder Law attorney from Oast & Hook speak at an event, then please call Jennifer Lantz 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.

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.

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