

Medicaid Eligibility: Court Warns Of Unauthorized Legal Practice.

To qualify for Medicaid payment for long-term care, while retaining control of personal assets and finances to the fullest extent permitted by law, some individuals choose to enter into very complex legal arrangements.

Assessing the facts relevant to such a client's situation, applying those facts to the laws governing Medicaid, developing a plan to structure or spend-down the client's assets in compliance with those laws and drafting legal documents to execute the plan constitute the practice of law.

When a non-lawyer engages in these activities or renders legal advice regarding the implementation of state law to obtain Medicaid benefits, the non-lawyer is engaged in the illegal unlicensed practice of law.

SUPREME COURT OF FLORIDA
January 15, 2015

The Supreme Court of Florida was asked by the Florida Bar to draw the line between permissible lay assistance and illegal unlicensed practice of law by persons who are not lawyers who assist seniors going into long-term care with their pre-admission legal arrangements.

Help With Medicaid Application No Unlicensed Practice of Law

According to the Court, the simple act of a non-lawyer helping another person to complete an application for Medicaid is not unlicensed practice of law. That is true because Federal regulations expressly say that a non-lawyer may help another person with the application itself.

Qualified Income Trust Personal Service Contract

Legal Advice from a Lawyer Required

However, other persons such as elder counselors or lay volunteers at community legal centers step over the line if they attempt to draft personal service contracts, prepare or execute qualified income trusts or give general legal advice as to how to structure one's personal finances under state law to retain assets and control as much as possible and still qualify as eligible for Medicaid payment of long-term care expenses.

The Court cited complaints to the Florida Bar from members of the public, some of whose involvement with non-attorneys resulted in significant loss of assets and income while still failing to qualify for Medicaid. Florida Bar Advisory Opinion, __ So. 3d __, 2015 WL 174994 (Fla., January 15, 2015).

Disability Bias: Skilled Nursing Facility Is Patient's Dwelling.

A patient who is paralyzed from the chest down uses a motorized wheelchair for mobility. He has only limited use of his hands and cannot grasp objects. He requires extensive assistance with his activities of daily living.

A lawsuit was filed on his behalf against the skilled nursing facility where he lives. The lawsuit alleged disability discrimination. The US District Court for the Central District of California upheld his right to sue.

For handicapped or elderly persons in skilled nursing or long-term care facilities where they expect to remain for the rest of their lives, the facility is in essence their home, or their "dwelling" as that word is used as legal terminology in fair-housing and anti-discrimination laws.

Thus this patient is entitled to reasonable accommodation to his mobility disability, the Court ruled. Specifically, he is entitled to a handicapped bathroom with a wide doorway, special door handles and a sink and shower that are both accessible to him in his wheelchair and functional for him with limited use of his hands. Montano v. Bonnie Brae, __ F. Supp. 3d __, 2015 WL 93327 (C.D., Calif., January 7, 2015).

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