

Asset Protection Law Newsletter



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A FREE LEGAL UPDATE FOR ELDERS AND SAME SEX PARTNERS WHO SEEK ASSET PROTECTION ♦ DECEMBER, 2015 EDITION

FLORIDA SUPREME COURT CRIMINALIZES MEDICAID PLANNING BY NON- LAWYERS: DECISION NOW FINAL!

By recently denying an appeal to the U.S. Supreme Court, the High Court, made final the earlier Florida Supreme Court decision. This decision prevents non-lawyers from Medicaid planning and preparation of legal documents.

The Florida opinion took aim at non-lawyers who are paid to help people get Medicaid benefits. This includes seniors who need Medicaid coverage for nursing-home care.

The unlicensed practice of law is a felony punishable by up to five years in prison. Anyone who refers a Medicaid planning case to a non-lawyer for such services may be deemed to be aiding and abetting a crime. This makes the referring nursing home social worker subject to criminal penalties as well.

This Florida Supreme Court opinion deems any of the following actions by a non-lawyer to constitute the unlicensed practice of law:

1. Giving legal advice regarding the application of Florida statutes to obtain Medicaid benefits.
2. Drafting personal service contracts.
3. Preparing and executing qualified income trusts.

(Preparation of the Medicaid application, by itself, is not the unlicensed practice of law.)

Moreover, this opinion holds that when the non-lawyer claims to have a working relationship with a licensed attorney who gives legal advice concerning application of Florida law to obtain Medicaid benefits and drafts these legal documents, his conduct is still the unauthorized practice of law.

To avoid this bad result, the attorney must have a direct relationship with the Medicaid applicant.

In addition, the attorney must receive payment of his fees directly from the client. Otherwise, the non-attorney's conduct still constitutes the unauthorized practice of law.

Testimony before the Court described the type of harm caused by non-lawyer Medicaid planners. These include denial of Medicaid eligibility, unexpected catastrophic tax liability, and the purchase of annuities which can threaten or destroy a client's life savings.

The potential for public harm is even greater when the non-lawyer advises his customers which Medicaid plan to utilize.

For example, this would include an annuity salesman who, acting as a Medicaid planner urges his "customer" to buy an annuity which generates a substantial commission for the Medicaid planner/annuity salesman.

"ASSESSING THE FACTS RELEVANT TO A CLIENT'S SITUATION, APPLYING THOSE FACTS TO THE LAWS GOVERNING MEDICAID, DEVELOPING A PLAN TO STRUCTURE OR SPEND THE CLIENT'S ASSETS IN COMPLIANCE WITH THOSE LAWS, AND DRAFTING LEGAL DOCUMENTS TO EXECUTE THE PLAN, WOULD CONSTITUTE THE PRACTICE OF LAW....."

The Florida Supreme Court concluded that when a non-lawyer engages in these activities or renders legal advice regarding the implementation of Florida law to obtain Medicaid benefits, he is engaged in the unlicensed practice of law. This is a third degree felony.

**TO FIND OUT HOW YOU
CAN QUALIFY FOR
VETERANS BENEFITS,
PLEASE CALL
MARK A. ROSEMAN, ESQ.
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FOR A
FREE CONSULTATION!**

News You Can Use

2015 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,199.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Community Spouse Resource Allowance:	\$119,220.00
Minimum Monthly Maintenance Income Allowance:	\$1,966.25
Maximum Monthly Maintenance Income Allowance:	\$2,980.50
Excess Shelter Standard:	\$589.88