

## Non-Lawyers Beware: Medicaid Planning Activities May Constitute Unlicensed Practice of Law, Florida No. SC14-211 (January 15, 2015)

---

### Summary

Florida Supreme Court Advisory Opinion states that certain Medicaid planning activities constitute unlicensed practice of law when performed by a non-attorney on behalf of another.

---

### Medicaid planning is legal business

Advising your client about Medicaid planning strategies may have disastrous consequences if you are not a licensed attorney. The Florida Supreme Court issued a formal advisory opinion that it is the unauthorized practice of law for a non-lawyer to engage in any of the following Medicaid planning activities<sup>1</sup>:

1. Preparation of personal service contracts. A personal service contract is a contract between the Medicaid applicant and a caregiver, often an adult child, to provide care or assistance to the applicant. Often, the payment for these services is an up-front lump sum payable to the service provider, thereby spending down countable assets for Medicaid eligibility. The court clarified that a personal service contract imposes duties and obligations on the parties, and the preparation of the contract must be done by a licensed attorney.
2. Preparation and execution of qualified income trusts. When a Medicaid applicant has income above qualification limits, a Qualified Income Trust (“QIT”) may be used to transfer some of the income from the applicant to the trust, thereby shifting from countable to non-countable income for calculation of aid. Because of the strict requirements to establish and fund a QIT, the court expressly prohibits non-lawyers from preparing or executing a Qualified Income Trust. In fact, the opinion specifies that even gathering information and determining whether a QIT is necessary requires a law license.
3. Rendering legal advice regarding the implementation of Florida law to obtain Medicaid benefits. Finally, because Medicaid eligibility relies on many technical and complex statutes and regulations, the court stated that it is unlicensed practice of law for a non-lawyer to render advice regarding application of Florida law for Medicaid eligibility or to suggest strategies for spending down or restructuring assets.

---

<sup>1</sup> The Florida Bar re: Advisory Opinion-Medicaid Planning Activities by Nonlawyers, No. SC14-211, Florida Supreme Court, January 15, 2015.

## From Advanced Planning Bulletin – May 2015

### But what about family?

The Florida court expressly forbids a non-attorney advisor from providing Medicaid advice to a client, and nothing in the opinion limits the restriction to a professional application. As such, the restriction would seem to apply to a non-lawyer spouse planning for the other's Medicaid eligibility, as well as a parent planning for a child's or a child for a parent's. However, the court clarified that nothing in the opinion prohibits an individual from helping another actually prepare or file a Medicaid application on another's behalf (after the planning phase has been completed).

### Unlicensed practice of law rules are state specific

It is important to note that the legal arena of unauthorized practice of law is controlled by highly complicated state law with each state determining where a non-lawyer advisor crosses the line in advising the client. In coming years, we could see other states weigh in on this very important issue, with many likely to reach a similar result on the issue. Until clear, an abundance of caution is recommended for non-lawyers who have clients who are planning to qualify for Medicaid. Non-lawyer beware!

*This publication is not intended as legal or tax advice; nonetheless, Treasury Regulations might require the following statements. This information was compiled by the advanced planning attorneys of The Northwestern Mutual Life Insurance Company. It is intended solely for the information and education of Northwestern Mutual Financial Representatives and advisors with whom they work. It must not be used as a basis for legal or tax advice, and is not intended to be used and cannot be used to avoid any penalties that may be imposed on a taxpayer. Northwestern Mutual and its Financial Representatives do not give legal or tax advice. Taxpayers should seek advice based on their particular circumstances from an independent tax advisor. Tax and other planning developments after the original date of publication may affect these discussions.*

*– To comply with Circular 230*

Northwestern Mutual is the marketing name for The Northwestern Mutual Life Insurance Company, Milwaukee, WI and its subsidiaries