

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR
RE: ADVISORY OPINION
MEDICAID PLANNING ACTIVITIES
BY NONLAWYERS

CASE NO. SC14-211

REPLY BRIEF OF INTERESTED PARTY
Florida Legal Services, Inc.

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**ARGUMENT IN RESPONSE AND REBUTTAL TO
ANSWER BRIEF OF STANDING COMMITTEE**

The Standing Committee on the Unlicensed Practice of Law (“the Standing Committee”) issued a proposed advisory opinion on Medicaid planning activities by nonlawyers (“proposed advisory opinion”) at the request of the Elder Law Section of the Florida Bar. As an interested party, Florida Legal Services, Inc., (“FLS”) has asked this Court to approve that proposed advisory opinion with the following clarifying language to comport the opinion with the duty of the Department of Children and Family Services (“DCF”) under 42 C.F.R. § 435.905(a) to tell Medicaid applicants about policies relevant to their unique facts and circumstances:

Nonlawyer DCF staff are government employees responsible for assisting in the application process. DCF staff has an affirmative duty to tell a Medicaid applicant about Medicaid trusts and other eligibility laws and policies governing the structuring of income and assets when relevant to the applicant's facts and financial situation. These activities are not the unlicensed practice of law. They will allow each applicant, and the applicant’s attorney, the ability to choose the course of action for qualifying for assistance that best suits the applicant.

FLS is pleased that the Standing Committee has no objection to adding this language to the proposed advisory opinion. Answer Br. of the Standing Comm. on the Unlicensed Practice of Law of the Florida Bar at 2, 4. This clarification is essential to preserving the duty of DCF under federal law to provide information to Medicaid applicants about specific policies relevant to the applicant’s situation.

Maintaining this duty has not been--and will not be--without vigilant advocacy by Medicaid recipients and the lawyers who represent them. Indeed, as is evidenced by the plethora of cases in which Florida appellate courts have been forced to reiterate DCF's obligation to disclose relevant eligibility policies to applicants, this duty cannot be taken for granted. *See* Brief of Interested Party Florida Legal Services, Inc., Responding in Qualified Support of the Proposed Advisory Opinion at 11, 12-16.

To make eligibility determinations, DCF is required to apply Medicaid law, in its entirety, to an applicant's unique situation in every single application it gets for assistance. *See* 42 C.F.R. § 435.2(a),(c)(requiring Medicaid agencies to use federal eligibility requirements and procedures in determining eligibility); 42 C.F.R. § 435.901(requiring Medicaid agencies to use eligibility standards that are consistent with relevant federal and state law); and 42 C.F.R. § 435.930(b)(requiring Medicaid agencies to furnish Medicaid to all eligible individuals). It is DCF's job under this mandate to apply the panoply of Medicaid law to all applications, and inform applicants about policies that are relevant to their unique situations. With the inclusion of the language proposed by FLS, the advisory opinion will recognize this obligation yet protect vulnerable Medicaid applicants against the unauthorized practice of law.

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CERTIFICATE OF SERVICE

I certify that a copy of this brief was sent by electronic mail (email) to the following on this 28th day of March 2014:

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CERTIFICATE OF COMPLIANCE

I certify that this brief is in Time New Roman 14-point font in compliance with Rule 9.210 of the Florida Rules of Appellate Procedure.

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