

Medicaid planning legal only if service offered by attorney

Among the scams affecting our elderly population is the practice of non-attorneys in the state of Texas who brazenly offer their services to elderly clients who hope to achieve Medicaid eligibility while attempting to preserve assets.

The practice known as Medicaid planning is legal but the service offered by non-attorneys is not. It's criminal.

According to Texas Human Resources Code Section 12.001, prohibited activities are:

- (a) A person who is not licensed to practice law in Texas commits an offense if the person charges a fee for representing or aiding an applicant or recipient in procuring assistance from the department.
- (b) A person commits an offense if the person advertises, holds himself or herself out for, or solicits the procurement of assistance from the department.
- (c) An offense under this section is a Class A misdemeanor.

A Class A misdemeanor is punishable by jail and/or fine. It's not just criminal for the non-attorney to assist or represent, it's also criminal for them to advertise. If you do an Internet search for "Medicaid planners" in the cities mentioned below, you will see that these criminal operators advertise in disregard of the law.

There's a reason for this law. The area is complicated and chocked full of legal intricacies that seriously affect the financial well-being of the elderly client. These are clients who will never be able to replace the money they have.

Non-attorneys who defy the state law, continue to operate in Tyler, Austin, Abilene and Huntsville, as well as local communities in the greater Houston area.

Violators present the appearance of legitimacy and offer other financial services and products including investment advice, insurance and annuities.

What they won't tell you is that they are involved in a criminal conspiracy, by plying their trade in the area of Medicaid assistance whether it be advertising for cases, Medicaid planning or assisting with the Medicaid application.

The elderly client and family that is seeking help may end up in more trouble than they were in because Medicaid planning is complicated and it's easy for the uninformed to make mistakes.

Some of the companies camouflage their criminal operations by saying "they work with attorneys", but what this means is that they farm out a few legal documents to be prepared by an attorney while still controlling the Medicaid case. They advertised for it, secured the client and advised the client on what to do including structuring their assets for Medicaid eligibility and in many cases complete the Medicaid application.

In some cases nursing homes have aided by actually directing families to the criminal operator.

As district attorneys, attorney general's office and Medicaid fraud officials become more aware, then anyone connected to the criminal operator is subject to a potential criminal case. This includes the employees of the operator, the nursing home employees who participated and the Internet websites that allow the operator to advertise with them.

Too frequently, mistakes are made by the non-attorney operator, requiring an experienced elder law attorney to fix them. The elderly client involved is frequently left with no way to seek redress for the financial loss.

Sometimes the companies have even sought and received approval by the Better Business Bureau (BBB) which is likely unaware of the criminality of the practice. The Texas Chapter of the National Academy of Elder Law Attorneys recently decided to help by referring elderly individuals who have been financially damaged by these operators to Marian Rosen, a litigation attorney with Rosen & Spears in Houston to review these cases for possible legal action.

Persons seeking Medicaid planning assistance should beware of the criminal operators in Texas and should report violators to their local district attorney for action.

Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, P.C., with offices in Bellaire, the Woodlands, and Carmine. Both Wright and Abshire are Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and are certified as Elder Law Attorneys by the National Elder Law Foundation. Nothing contained in this publication should be considered as the rendering of legal advice to any person's specific case, but should be considered general information.