



FOR IMMEDIATE RELEASE

Contact:

Nancy Kinnally

nancy@therelatablegroup.com

(407) 375-2264

Florida Bar considers whether family members assisting children and incapacitated adults in Medicaid appeals are engaging in unlicensed practice of law

(TALLAHASSEE, Fla., Jan. 20, 2021) – At the request of the Florida Agency for Health Care Administration (AHCA), The Florida Bar’s Standing Committee on the Unlicensed Practice of Law is considering issuing an advisory opinion as soon as this week as to whether parents and close relatives of Medicaid beneficiaries are engaging in the unlicensed practice of law when they assist minor children or incapacitated adults in an appeal of a Medicaid fair hearing decision.

The [Florida Health Justice Project](#) (FHJP) led numerous statewide and national organizations and legal ethics professors in urging the committee to answer the question in the negative because of the extreme lack of free legal assistance available and the dire consequences for some of Florida’s most medically fragile and incapacitated residents who would lose their only access to the courts.

“The issues at stake in Medicaid fair hearings have far-reaching effects on both the beneficiaries and their families,” said FHJP Legal Director Katy DeBriere. “They include determinations as to whether a beneficiary can receive personal care assistance with basic daily living needs like eating and bathing, as well as prescription drug coverage and access to specialized medical equipment like wheelchairs, hospital beds, and feeding tubes.”

Once AHCA holds a fair hearing and issues a final order, the beneficiary has the right to appeal that decision to a Florida court. Because many Medicaid beneficiaries lack the capacity to speak for themselves, and because in many cases they and their families cannot obtain legal assistance, a parent or close relative is often their only voice.

Twenty legal ethics professors from some of the nation’s top law schools, including Harvard, Georgetown and New York University, signed written testimony prior to the Bar’s Jan. 15 public hearing on the matter, stating that, “When an immediate relative of a Medicaid recipient (such as the parent of a minor child or the adult son or daughter of a senior citizen with intellectual disabilities) seeks court review of an adverse administrative decision, the immediate relative is not engaged in the unlicensed practice

of law,” arguing that they are in fact representing their own interests, which are inherently entwined with those of their dependents, and that they are not holding themselves out as lawyers.

The legal scholars cited case law giving parents the right to assert claims on their own behalf under federal education law pertaining to their children and asserted that “If a state agency wrongly denies a claim to home care but the recipient lacks the ability to appeal to a court, that denial causes acute harm to both the family caregiver and the recipient.”

Furthermore, FHJP cited a recent Florida case, *A.C. v. Agency for Health Care Administration*, in which the court noted that under a Florida court rule the state’s courts have a duty to provide accommodations for people with disabilities in order to comply with the Americans with Disabilities Act. In the Florida case, the court found that a parent could represent an incapacitated child in a Medicaid appeal.

If family members were not permitted to file appeals and speak on behalf of minor and incapacitated Medicaid beneficiaries, the courthouse doors would in effect be closed to them. This is because Florida provides no state funding for civil legal aid, and as The Florida Bar Foundation notes in its comments to the Bar, “very few qualified civil legal aid agencies in Florida have the requisite expertise or resources to provide representation in these matters.”

And while Florida lawyers do thousands of hours of pro bono work every year, they rarely handle Medicaid appeals, as evidenced by a letter to The Florida Bar’s Unlicensed Practice of Law department from the chair of the Bar’s Appellate Practice Section, who said such cases do not meet the section’s pro bono criteria.

Among those groups urging the Bar to conclude that family members are not engaging in the practice of law when speaking on behalf of Medicaid beneficiaries are AARP, the Southern Poverty Law Center, the National Legal Aid and Defender Association and the National Health Law Program.

The Southern Poverty Law Center warns of far-reaching impacts of the committee’s decision, saying it will “extend not only to Medicaid fair hearing decisions but also to all adverse decisions on public benefits including Medicaid eligibility, SNAP, TANF, and Medicaid Home and Community Based Waiver Services for individuals with developmental disabilities.”

And the advocacy manager for AARP Florida noted that for adults with cognitive impairments, “In many instances, their disabilities present extraordinary impediments for them and their families to locate, afford and work with legal assistance, if any can be found.”

DeBriere said it is disingenuous to say that having a family member speak on a Medicaid beneficiary's behalf is worse than the alternative, which is often having no advocate at all.

“Any statement that this does not safeguard the Medicaid beneficiary's interest in competent legal counsel is not credible given that the alternative is the beneficiary will be totally unable to access judicial review as a mechanism for challenging arbitrary or unsupported administrative agency decisions.”

About the Florida Health Justice Project

The [Florida Health Justice Project](#) seeks to improve access to affordable health care for Floridians, with a focus on vulnerable low-income populations. FHJP expands the advocacy community's capacity to resolve individual access issues and educate consumers; identify and address systemic barriers to healthcare; and protect Medicaid and other safety-net programs.

###