Introduction for Faculty Colleagues

I prepared this assignment about Medicaid Misconceptions for the Elder Law Clinic. Advanced Law students in the clinic often advise clients about public benefits, especially Medicaid. This assignment is designed to educate students about this benefit program and help them identify when a client expresses a common misconception about Medicaid. The assignment will also require students to conduct research using unfamiliar sources. Law students are primed to research case law and to a lesser extent, statutes, but they are rarely aware of the extensive regulations, policies, procedures, and substantive manuals promulgated by various administrative agencies – sources that most attorneys in this area rely on regularly. Also, some students rely heavily on information they find on other attorney’s websites. I’m hoping that when they complete this assignment, they will see that it is not “safe” to rely on any information without verifying it in a primary legal source.

This is not an assignment that I have used before. In the past, I have taught the research skills in a variety of other ways. Generally, students are directed to at least one unfamiliar administrative law source during the course of their casework for a real client. However, I like the idea that every student will be required to look at the same source and be educated about it – instead of students having variable need to do any research in administrative law sources.

Also, with regard to the substance of the Medicaid program, I have taught this differently in the past. Previously, I have had the students prepare presentations on various public benefits to teach each other about them. However, I never feel that the whole class is really taking much away from those presentations. This semester, students will hear lectures on several public benefit programs instead, and I will follow-up those lectures with a short assignment like this one that requires each student to go deeper into the material.
The Assignment I Distribute to Students

The Elder Law Clinic
Medicaid Misconceptions

Purpose
You will review interview notes from a meeting with client to identify common misconceptions that clients may have about Medicaid. In the process of verifying or discrediting each statement made about the Medicaid program, you will learn to research primary and secondary sources in Administrative Law and to document your research in a clear and organized way. You will also see how much misinformation is available and understand why our clients are often confused about benefits.

Background
As a brand new associate in an elder law firm, you have met with your first client. Your client interview notes are below. This client already seems to know a lot about Medicaid benefits and how they work. Based on this perceived knowledge, the client has asked you to perform a specific task for Medicaid planning purposes and wants you to get started on his legal work right away. You have (appropriately) told him that you need time to do some research before you can provide him with any legal counsel. Before you can advise the client about whether his proposed course of action is appropriate, you need to make sure you have a clear understanding of Medicaid benefits. Specifically, you will need to determine whether the information the client has told you about Medicaid is true and whether it applies to his particular situation. Because you are a new associate, your supervising attorney needs to review your knowledge of Medicaid before allowing you to advise the client.

Client Meeting Memo

To: File

From: Associate Attorney

Date: Yesterday

RE: Initial Meeting with Client

Jack Jones came into the office today seeking legal advice. His wife died several years ago. He now lives alone in Reidsville, NC. He is a relatively healthy 82 year old, but he has recently become very concerned about the cost of nursing home care after seeing what has happened with his sister. He said that his younger sister lives in upstate New York and has a touch of dementia. She was placed in a nursing home earlier this year after falling and breaking her hip. She was
transferred to a nursing home after having been in a hospital for a week. Medicaid was paying the bill initially, but they stopped paying for her care after 100 days. Her children didn’t know why they stopped paying. He thinks it’s because of something he read on the internet. He read on the internet that in order to receive Medicaid benefits, a person has to sell their home because it is considered a “countable asset”. He also read that after her children sold the home, all of the proceeds would have to be paid to the nursing home. He told her children this information and they found it unacceptable, so they decided not to contact Medicaid about any further payment. They were going to leave her in the nursing home, but the cost to pay for the nursing home care on a private pay basis beyond that 100 day limited time frame was so expensive that the family had no choice but to move her home. Because there are no Medicaid programs available to pay for care at home, the local family members are all taking turns with 4 hour shifts during the day and taking turns spending the night at her home in order to provide her with the care she requires.

Jack wants the law firm to help him in planning for the possibility that he might need long term care in the future and might need to apply for Medicaid. Specifically, he wants to give his home to his daughter now so that he doesn’t have this “countable asset” problem later. He read on the internet that there is a 36 month “look-back” period for gifts, so he wants to make the gift to his daughter as soon as possible. I told him that I needed to do some research before I could advise him about this course of action. I said I would be back in touch with him next week.

Note to self…. some of what he has said about Medicaid sounds correct, but some of it doesn’t fit with what I think I know about Medicaid. I need to start by picking apart his statements and verify my knowledge of Medicaid benefits.

**Instructions**

Draft a memo to your supervising attorney in a format that works for you (list, chart, paragraph, or other format), then use that format to verify or discredit each statement the client has made about the Medicaid program. For each statement or part of a statement, please identify whether it is true or false. For each statement or part of a statement that you believe to be true, please provide an explanation, cite to a primary source, and attach the source to the memo. For each statement or part of a statement that you believe to be false, please explain why you think the client may have had that misconception and provide a citation to a source that explains the misconception and attach it to the memo. The source that discredits the client’s belief can be a rule from another public benefit program, a confusing Medicaid rule, an outdated Medicaid rule, a secondary source (e.g. website) that contains incorrect information, or any other source. Please print and attach all sources to your memo.

**Assessment Criteria**

- Student created a format that was clear for the reader (supervising attorney) to understand.
- Student accurately identified which statements were true and which statements were false.
- Student found and attached appropriate sources to memo.
<table>
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<th>CRITERIA</th>
<th>Done Well</th>
<th>Rating and Comments</th>
<th>Needs Improvement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Elements (Format, Organization, Audience)</td>
<td>Student chose a format such as a list or a chart that was well organized and easy to follow – but also provided sufficient explanation for each response; Student complied with the internal clinic guidelines for a research memo caption, Student chose appropriate language for communicating knowledge with a supervising attorney.</td>
<td></td>
<td>Student’s memo is disorganized. Memo either does not provide explanations for answers or only provides explanations and does not indicate a clear true or false. Student does not include a memo caption indicating date, to, from, and re:. Student oversimplifies language in the memo</td>
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<td>Student accurately identified which statements were true and which statements were false</td>
<td>Student pulled apart compound statements for research and analysis of each assertion. Student was accurate in determining whether each statement was true or false</td>
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<td>Student found and attached appropriate sources to memo.</td>
<td>Student found primary source material to verify true statements and found sources for inaccurate information.</td>
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