



## ELDER LAW AND ESTATE PLANNING

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# Medicaid planning advice from non-lawyer could spell trouble

**Question:** My husband's nursing home referred me to an agency to help me get Medicaid benefits for him. At 77, I have a small fixed income and need to hold onto the little I have for my remaining years. The agency's staff person said I shouldn't report the \$4,000 my husband gave our son two years ago to pay for his divorce. She said that's the advice from the agency's attorney who works with her, but it sounds fishy to me. I already gave this agency a \$2,000 retainer. I don't know if they'd refund it if I walked away.

**Answer:** You have good reason for concern. Hiding assets and falsifying information on a Medicaid application is a crime. Certain gifts may be exempt from Medicaid penalties and are permissible, but even so, you must report them. All this could end badly for you, even if you are just following the advice of a so-called expert.

In 2015 the Florida Supreme Court ruled that a non-lawyer who provides advice on implementing Florida law in order to obtain Medicaid benefits is practicing law without a license, which is a crime. Just preparing the application is not unlawful, but in your case the agency is doing more than that. That an attorney is supposedly

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supervising the process is irrelevant; the agency is still committing unlicensed practice of law if you do not personally meet with the attorney and pay him/her.

It is prudent to cut ties with the agency. Remind them you were told not to report the gift; that should give you some leverage and make them more inclined to refund your money. Even if you lose your retainer, that may be a minor loss compared to what you would lose if you were found to have submitted an intentionally false Medicaid application. Then see an experienced Florida elder law attorney.

*Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.*