

By Senator Baker

20-1426-05

See HB 543

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

A bill to be entitled
An act relating to Medicaid eligibility;
amending s. 409.902, F.S.; providing asset
transfer limitations for determination of
eligibility for nursing facility services under
the Medicaid program; authorizing the
Department of Children and Family Services to
adopt rules; providing a contingent effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 409.902, Florida Statutes, is
amended to read:

409.902 Designated single state agency; payment
requirements; program title; release of medical records;
eligibility requirements.--

(1) The Agency for Health Care Administration is
designated as the single state agency authorized to make
payments for medical assistance and related services under
Title XIX of the Social Security Act. These payments shall be
made, subject to any limitations or directions provided for in
the General Appropriations Act, only for services included in
the program, shall be made only on behalf of eligible
individuals, and shall be made only to qualified providers in
accordance with federal requirements for Title XIX of the
Social Security Act and the provisions of state law. This
program of medical assistance is designated the "Medicaid
program." The Department of Children and Family Services is
responsible for Medicaid eligibility determinations,
including, but not limited to, policy, rules, and the

1 | agreement with the Social Security Administration for Medicaid
2 | eligibility determinations for Supplemental Security Income
3 | recipients, as well as the actual determination of
4 | eligibility. As a condition of Medicaid eligibility, subject
5 | to federal approval, the Agency for Health Care Administration
6 | and the Department of Children and Family Services shall
7 | ensure that each recipient of Medicaid consents to the release
8 | of her or his medical records to the Agency for Health Care
9 | Administration and the Medicaid Fraud Control Unit of the
10 | Department of Legal Affairs.

11 | (2)(a) In determining eligibility for nursing facility
12 | services under the Medicaid program, the Department of
13 | Children and Family Services shall apply the following asset
14 | transfer limitations effective for transfers made after
15 | October 1, 2005:

16 | 1. All transfers of assets for less than fair market
17 | value are prohibited.

18 | 2. All transfers of assets for less than fair market
19 | value, including transfers of assets to trusts, are subject to
20 | a 72-month look-back period.

21 | 3. The penalty period associated with all transfers of
22 | assets for less than fair market value begins on the first day
23 | of the month in which an individual applies for medical
24 | assistance and is otherwise eligible. For recipients of
25 | medical assistance, the penalty period begins on the first day
26 | of the month in which the Department of Children and Family
27 | Services or the Agency for Health Care Administration becomes
28 | aware of the transfer or on the first day of the month
29 | following a period of ineligibility that existed when the
30 | transfer was made.

31 |

1 4. Transfers of the eligible individual's interest in
2 a homestead for less than fair market value are prohibited
3 even to those relatives specified under federal law; however,
4 the homestead retains its excluded status so long as the
5 specified relative continues to reside in the household.

6 5. Transfers of assets to community spouses for less
7 than fair market value after medical assistance eligibility is
8 established are permitted only up to the amount of the asset
9 threshold for spousal impoverishment.

10 6. Payments for care or personal services provided by
11 a relative are prohibited, unless the compensation was
12 stipulated in a notarized written agreement that was in
13 existence when the service was performed; the care or services
14 directly benefited the person, are reasonably related to the
15 person's health condition, and do not duplicate services
16 otherwise provided by Medicaid; and the payments made
17 represent reasonable compensation for the care or services
18 provided. A notarized written agreement is not required if
19 payment for the services was made within 60 days after the
20 care or service was provided.

21 7. Transfers of assets are prohibited to any annuity
22 that exceeds the value of the benefit likely to be returned to
23 the annuitant or the annuitant's spouse while alive, based on
24 estimated life expectancy using the life expectancy tables
25 employed by the Supplemental Security Income program or based
26 on a shorter life expectancy if the annuitant has a medical
27 condition that would shorten the annuitant's life expectancy
28 and that was diagnosed before funds were placed into the
29 annuity. The department may request and receive a physician's
30 statement to determine if the annuitant has a diagnosed
31 medical condition that would shorten the annuitant's life

1 expectancy. If so, the department shall determine the expected
2 value of the benefits based upon the physician's statement
3 instead of using a life expectancy table. This section applies
4 to an annuity described in this subparagraph that was
5 purchased on or after October 1, 2005, and that:

6 a. Is not purchased from an insurance company or
7 financial institution that is subject to licensing or
8 regulation by the Office of Insurance Regulation or a similar
9 regulatory agency of another state;

10 b. Does not pay out principal and interest in equal
11 monthly installments; or

12 c. Does not begin payment at the earliest possible
13 date after annuitization.

14 (b) The Department of Children and Family Services may
15 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
16 the requirements of this subsection.

17 Section 2. This act shall take effect July 1, 2005,
18 except that if any provision of subsection (2) of section
19 409.902, Florida Statutes, as created by this act, is
20 prohibited by federal law, that provision shall take effect
21 when federal law is changed to permit its application or when
22 a waiver is received. If, by October 1, 2005, any provision of
23 subsection (2) of section 409.902, Florida Statutes, as
24 created by this act, has not taken effect because of
25 prohibitions in federal law, the Secretary of Health Care
26 Administration shall apply to the Federal Government by
27 January 1, 2006, for a waiver of the prohibitions in federal
28 law or other federal authority, and the provisions of
29 subsection (2) of section 409.902, Florida Statutes, as
30 created by this act, shall take effect upon receipt of a
31 federal waiver or other federal approval, notification to the

1 Secretary of State, and publication of a notice in the Florida
2 Administrative Weekly to that effect.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31