

1 A bill to be entitled
 2 An act relating to Medicaid eligibility; amending s.
 3 409.902, F.S.; providing asset transfer limitations for
 4 determination of eligibility for nursing facility services
 5 under the Medicaid program; authorizing the Department of
 6 Children and Family Services to adopt rules; providing a
 7 contingent effective date.

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

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

13 409.902 Designated single state agency; payment
 14 requirements; program title; release of medical records;
 15 eligibility requirements.--

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

29 | policy, rules, and the agreement with the Social Security
 30 | Administration for Medicaid eligibility determinations for
 31 | Supplemental Security Income recipients, as well as the actual
 32 | determination of eligibility. As a condition of Medicaid
 33 | eligibility, subject to federal approval, the Agency for Health
 34 | Care Administration and the Department of Children and Family
 35 | Services shall ensure that each recipient of Medicaid consents
 36 | to the release of her or his medical records to the Agency for
 37 | Health Care Administration and the Medicaid Fraud Control Unit
 38 | of the Department of Legal Affairs.

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

43 | 1. All transfers of assets for less than fair market value
 44 | are prohibited.

45 | 2. All transfers of assets for less than fair market
 46 | value, including transfers of assets to trusts, are subject to a
 47 | 72-month look-back period.

48 | 3. The penalty period associated with all transfers of
 49 | assets for less than fair market value begins on the first day
 50 | of the month in which an individual applies for medical
 51 | assistance and is otherwise eligible. For recipients of medical
 52 | assistance, the penalty period begins on the first day of the
 53 | month in which the Department of Children and Family Services or
 54 | the Agency for Health Care Administration becomes aware of the
 55 | transfer or on the first day of the month following a period of
 56 | ineligibility that existed when the transfer was made.

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

62 5. Transfers of assets to community spouses for less than
63 fair market value after medical assistance eligibility is
64 established are permitted only up to the amount of the asset
65 threshold for spousal impoverishment.

66 6. Payments for care or personal services provided by a
67 relative are prohibited, unless the compensation was stipulated
68 in a notarized written agreement that was in existence when the
69 service was performed; the care or services directly benefited
70 the person, are reasonably related to the person's health
71 condition, and do not duplicate services otherwise provided by
72 Medicaid; and the payments made represent reasonable
73 compensation for the care or services provided. A notarized
74 written agreement is not required if payment for the services
75 was made within 60 days after the care or service was provided.

76 7. Transfers of assets are prohibited to any annuity that
77 exceeds the value of the benefit likely to be returned to the
78 annuitant or the annuitant's spouse while alive, based on
79 estimated life expectancy using the life expectancy tables
80 employed by the Supplemental Security Income program or based on
81 a shorter life expectancy if the annuitant has a medical
82 condition that would shorten the annuitant's life expectancy and
83 that was diagnosed before funds were placed into the annuity.
84 The department may request and receive a physician's statement

85 to determine if the annuitant has a diagnosed medical condition
 86 that would shorten the annuitant's life expectancy. If so, the
 87 department shall determine the expected value of the benefits
 88 based upon the physician's statement instead of using a life
 89 expectancy table. This section applies to an annuity described
 90 in this subparagraph that was purchased on or after October 1,
 91 2005, and that:

92 a. Is not purchased from an insurance company or financial
 93 institution that is subject to licensing or regulation by the
 94 Office of Insurance Regulation or a similar regulatory agency of
 95 another state;

96 b. Does not pay out principal and interest in equal
 97 monthly installments; or

98 c. Does not begin payment at the earliest possible date
 99 after annuitization.

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

103 Section 2. This act shall take effect July 1, 2005, except
 104 that if any provision of subsection (2) of section 409.902,
 105 Florida Statutes, as created by this act, is prohibited by
 106 federal law, that provision shall take effect when federal law
 107 is changed to permit its application or when a waiver is
 108 received. If, by October 1, 2005, any provision of subsection
 109 (2) of section 409.902, Florida Statutes, as created by this
 110 act, has not taken effect because of prohibitions in federal
 111 law, the Secretary of Health Care Administration shall apply to
 112 the Federal Government by January 1, 2006, for a waiver of the

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113 | prohibitions in federal law or other federal authority, and the
114 | provisions of subsection (2) of section 409.902, Florida
115 | Statutes, as created by this act, shall take effect upon receipt
116 | of a federal waiver or other federal approval, notification to
117 | the Secretary of State, and publication of a notice in the
118 | Florida Administrative Weekly to that effect.