

CHAMBER ACTION

1 The Elder & Long-Term Care Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to Medicaid eligibility; amending s.
7 409.902, F.S.; providing for determination of eligibility
8 for nursing facility services under the Medicaid program;
9 specifying a penalty period; requiring the Agency for
10 Health Care Administration to develop a reimbursement
11 methodology for certain facilities; specifying criteria
12 for certain personal services contracts; providing for
13 certain financial instruments signed within a specified
14 period of time to be considered countable assets when
15 determining Medicaid eligibility; specifying criteria for
16 certain annuities; providing direction to hearing officers
17 relating to revisions of community spouse income or
18 resource allowances; authorizing the Department of
19 Children and Family Services to adopt rules; providing a
20 contingent effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

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

26 409.902 Designated single state agency; payment
27 requirements; program title; release of medical records;
28 eligibility requirements.--

29 (1) The Agency for Health Care Administration is
30 designated as the single state agency authorized to make
31 payments for medical assistance and related services under Title
32 XIX of the Social Security Act. These payments shall be made,
33 subject to any limitations or directions provided for in the
34 General Appropriations Act, only for services included in the
35 program, shall be made only on behalf of eligible individuals,
36 and shall be made only to qualified providers in accordance with
37 federal requirements for Title XIX of the Social Security Act
38 and the provisions of state law. This program of medical
39 assistance is designated the "Medicaid program." The Department
40 of Children and Family Services is responsible for Medicaid
41 eligibility determinations, including, but not limited to,
42 policy, rules, and the agreement with the Social Security
43 Administration for Medicaid eligibility determinations for
44 Supplemental Security Income recipients, as well as the actual
45 determination of eligibility. As a condition of Medicaid
46 eligibility, subject to federal approval, the Agency for Health
47 Care Administration and the Department of Children and Family
48 Services shall ensure that each recipient of Medicaid consents
49 to the release of her or his medical records to the Agency for
50 Health Care Administration and the Medicaid Fraud Control Unit
51 of the Department of Legal Affairs.

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52 (2)(a) In determining eligibility for nursing facility
53 services, including institutional hospice services and home and
54 community-based waiver programs under the Medicaid program, the
55 Department of Children and Family Services shall apply the
56 following asset transfer limitations effective for transfers
57 made on or after October 1, 2005:

58 1.a. The penalty period associated with all transfers of
59 assets for less than fair market value begins on the first day
60 of the month in which an individual applies for medical
61 assistance and is otherwise eligible. For recipients of medical
62 assistance, the penalty period begins on the first day of the
63 month in which the Department of Children and Family Services
64 becomes aware of the transfer or on the first day of the month
65 following a period of ineligibility for an earlier transfer.

66 b. The Agency for Health Care Administration shall amend
67 the Medicaid state plan to create a methodology to reimburse
68 facilities licensed under chapter 400 for the bad debts incurred
69 as the result of the obligation to care for residents without
70 payment during this period of ineligibility. Payments shall be
71 limited to the daily Medicaid rate, shall be offset by any
72 collections from the resident or resident's responsible party,
73 and shall be limited to the period of ineligibility from the
74 date of application to the date of discharge or eligibility,
75 whichever is earlier. This payment methodology shall be
76 effective for bad debts incurred for any resident determined
77 ineligible under this provision for a period of 2 years after
78 federal law relating to the period of ineligibility is changed
79 or federal approval of the waiver is granted. Upon expiration of

80 this methodology, bad debts incurred as the result of the
81 obligation to care for residents without payment during this
82 period of ineligibility shall be deemed an allowable Medicaid
83 bad debt and shall be reported on a facility's Medicaid cost
84 report.

85 2. Individuals who enter into a personal services contract
86 with a relative shall be considered to have transferred assets
87 without fair compensation to qualify for Medicaid unless all of
88 the following criteria are met:

89 a. The contracted services do not duplicate services
90 available through other sources or providers, such as Medicaid,
91 Medicare, private insurance, or another legally obligated third
92 party.

93 b. The contracted services directly benefit the individual
94 and are not services normally provided out of love and
95 consideration for the individual.

96 c. The actual cost to deliver services is computed in a
97 manner that clearly reflects the actual number of hours to be
98 expended and the contract clearly identifies each specific
99 service and the average number of hours of each service to be
100 delivered each month.

101 d. The hourly rate for each contracted service is equal to
102 or less than the amount normally charged by a professional who
103 traditionally provides the same or similar services.

104 e. The contracted services are provided on a prospective
105 basis only and not for services provided in the past.

106 f. The contract provides fair compensation to the
107 individual in his or her lifetime as set forth in life

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108 expectancy tables adopted in rule 65A-1.716, Florida
 109 Administrative Code.

110 3. A financial instrument signed within the transfer look-
 111 back period for institutional Medicaid coverage or home and
 112 community-based waiver programs that allows deferred payments,
 113 graduated payments, balloon payments, or debt forgiveness shall
 114 be considered a countable asset to the individual in the amount
 115 of the outstanding value of the financial instrument when
 116 determining Medicaid eligibility.

117 (b) In determining eligibility for nursing facility
 118 services, including institutional hospice services and home and
 119 community-based waiver programs under the Medicaid program, the
 120 following limitations apply to annuities purchased on or after
 121 October 1, 2005, when the applicant or the applicant's spouse
 122 owns an annuity, other than a work-related pension annuity, such
 123 as a civil service annuity, a railroad retirement annuity, or
 124 another similar pension annuity.

125 1. An annuity is an excluded resource and the monthly
 126 payments are counted as unearned income if the annuity:

127 a. Was purchased from an insurance company or financial
 128 institution that is subject to licensing or regulation by the
 129 Office of Insurance Regulation or a similar regulatory agency of
 130 another state;

131 b. Is irrevocable;

132 c. Pays out principal and interest in equal monthly
 133 installments wherein the principal investment is paid within the
 134 annuitant's life expectancy based on the life expectancy table
 135 used by the Social Security Administration or based on a shorter

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136 life expectancy, if the annuitant has a condition that would
 137 shorten the annuitant's life and that was diagnosed by a
 138 physician before funds were placed into the annuity; and

139 d. With the exception of an annuity for a community spouse
 140 who is not requesting Medicaid nursing facility care or home and
 141 community-based services waiver care, names the State of Florida
 142 or the Agency for Health Care Administration, or its successor
 143 agency, as the beneficiary of any funds remaining in the
 144 annuity, not to exceed the amount of any Medicaid fund paid on
 145 the individual's behalf during his or her lifetime.

146 2. If all of the conditions in subparagraph 1. are not
 147 met, the annuity's fair market value is counted as a resource in
 148 the amount of its fair market value with the following
 149 exception: When an annuity does not provide for payout of
 150 principal and interest in equal installments within the
 151 annuitant's lifetime and the issuing company indicates the
 152 payout arrangement cannot be changed, the annuity shall be
 153 excluded as a resource if the contract is amended to name the
 154 State of Florida as the beneficiary of any funds remaining in
 155 the annuity, not to exceed the amount of Medicaid funds paid on
 156 the individual's behalf during his or her lifetime.

157 (c) Under the spousal impoverishment policies of s. 1924
 158 of the Social Security Act, the following special provision
 159 applies: When a hearing officer considers revisions of community
 160 spouse income or resource allowances permitted by s. 1924(e)(2)
 161 of the Social Security Act, the hearing officer must consider
 162 all income first, including the community spouse's own income as
 163 well as all potential income that would be available from the

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164 institutionalized spouse upon approval of Medicaid institutional
 165 care, before raising the community spouse's income or resource
 166 allowance.

167 (d) The Department of Children and Family Services may
 168 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
 169 the requirements of this subsection.

170 Section 2. This act shall take effect July 1, 2005, except
 171 that if any provision of subsection (2) of section 409.902,
 172 Florida Statutes, as created by this act, is prohibited by
 173 federal law, that provision shall take effect when federal law
 174 is changed to permit its application or when a waiver is
 175 received. If, by October 1, 2005, any provision of subsection
 176 (2) of section 409.902, Florida Statutes, as created by this
 177 act, has not taken effect because of prohibitions in federal
 178 law, the Secretary of Health Care Administration shall apply to
 179 the Federal Government by January 1, 2006, for a waiver of the
 180 prohibitions in federal law or other federal authority, and the
 181 provisions of subsection (2) of section 409.902, Florida
 182 Statutes, as created by this act, shall take effect upon receipt
 183 of a federal waiver or other federal approval, notification to
 184 the Secretary of State, and publication of a notice in the
 185 Florida Administrative Weekly to that effect.