

CHAMBER ACTION

1 The Health Care Appropriations Committee recommends the  
2 following:

3  
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

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

20  
21 Be It Enacted by the Legislature of the State of Florida:  
22

HB 543 CS

2005  
CS

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

25 409.902 Designated single state agency; payment  
26 requirements; program title; release of medical records;  
27 eligibility requirements.--

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

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

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

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

69       a. The contracted services do not duplicate services  
 70 available through other sources or providers, such as Medicaid,  
 71 Medicare, private insurance, or another legally obligated third  
 72 party.

73       b. The contracted services directly benefit the individual  
 74 and are not services normally provided out of love and  
 75 consideration for the individual.

76       c. The actual cost to deliver services is computed in a  
 77 manner that clearly reflects the actual number of hours to be  
 78 expended and the contract clearly identifies each specific

79 service and the average number of hours of each service to be  
 80 delivered each month.

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

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

86 f. The contract provides fair compensation to the  
 87 individual in his or her lifetime as set forth in life  
 88 expectancy tables adopted in rule 65A-1.716, Florida  
 89 Administrative Code.

90 3. A financial instrument signed within the transfer look-  
 91 back period for institutional Medicaid coverage or home and  
 92 community-based waiver programs that allows deferred payments,  
 93 graduated payments, balloon payments, or debt forgiveness shall  
 94 be considered a countable asset to the individual in the amount  
 95 of the outstanding value of the financial instrument when  
 96 determining Medicaid eligibility.

97 (b) In determining eligibility for nursing facility  
 98 services, including institutional hospice services and home and  
 99 community-based waiver programs under the Medicaid program, the  
 100 following limitations apply to annuities purchased on or after  
 101 October 1, 2005, when the applicant or the applicant's spouse  
 102 owns an annuity, other than a work-related pension annuity, such  
 103 as a civil service annuity, a railroad retirement annuity, or  
 104 another similar pension annuity.

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

HB 543 CS

2005  
CS

107 a. Was purchased from an insurance company or financial  
108 institution that is subject to licensing or regulation by the  
109 Office of Insurance Regulation or a similar regulatory agency of  
110 another state;

111 b. Is irrevocable;

112 c. Pays out principal and interest in equal monthly  
113 installments wherein the principal investment is paid within the  
114 annuitant's life expectancy based on the life expectancy table  
115 used by the Social Security Administration or based on a shorter  
116 life expectancy, if the annuitant has a condition that would  
117 shorten the annuitant's life and that was diagnosed by a  
118 physician before funds were placed into the annuity; and

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

126 2. If all of the conditions in subparagraph 1. are not  
127 met, the annuity's fair market value is counted as a resource in  
128 the amount of its fair market value with the following  
129 exception: When an annuity does not provide for payout of  
130 principal and interest in equal installments within the  
131 annuitant's lifetime and the issuing company indicates the  
132 payout arrangement cannot be changed, the annuity shall be  
133 excluded as a resource if the contract is amended to name the  
134 State of Florida as the beneficiary of any funds remaining in

Page 5 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0543-02-c2

HB 543 CS

2005  
CS

135 | the annuity, not to exceed the amount of Medicaid funds paid on  
 136 | the individual's behalf during his or her lifetime.

137 |       (c) Under the spousal impoverishment policies of s. 1924  
 138 | of the Social Security Act, the following special provision  
 139 | applies: When a hearing officer considers revisions of community  
 140 | spouse income or resource allowances permitted by s. 1924(e)(2)  
 141 | of the Social Security Act, the hearing officer must consider  
 142 | all income first, including the community spouse's own income as  
 143 | well as all potential income that would be available from the  
 144 | institutionalized spouse upon approval of Medicaid institutional  
 145 | care, before raising the community spouse's income or resource  
 146 | allowance.

147 |       (d) The Department of Children and Family Services may  
 148 | adopt rules pursuant to ss. 120.536(1) and 120.54 to implement  
 149 | the requirements of this subsection.

150 |       Section 2. This act shall take effect July 1, 2005, except  
 151 | that if any provision of subsection (2) of section 409.902,  
 152 | Florida Statutes, as created by this act, is prohibited by  
 153 | federal law, that provision shall take effect when federal law  
 154 | is changed to permit its application or when a waiver is  
 155 | received. If, by October 1, 2005, any provision of subsection  
 156 | (2) of section 409.902, Florida Statutes, as created by this  
 157 | act, has not taken effect because of prohibitions in federal  
 158 | law, the Secretary of Health Care Administration shall apply to  
 159 | the Federal Government by January 1, 2006, for a waiver of the  
 160 | prohibitions in federal law or other federal authority, and the  
 161 | provisions of subsection (2) of section 409.902, Florida  
 162 | Statutes, as created by this act, shall take effect upon receipt

HB 543 CS

2005  
CS

163 | of a federal waiver or other federal approval, notification to  
164 | the Secretary of State, and publication of a notice in the  
165 | Florida Administrative Weekly to that effect.