By Senator Posey

24-1222-06

1 A bill to be entitled
2 An act relating to Medicaid eligibility;
3 amending s. 409.902, F.S.; providing for
4 determination of eligibility for nursing
5 facility services under the Medicaid program;
6 specifying a penalty period; requiring the
7 Agency for Health Care Administration to
8 develop a reimbursement methodology for certain
9 facilities; specifying criteria for certain
10 personal services contracts; providing that
11 certain financial instruments signed within a
12 specified period of time be considered
13 countable assets when determining Medicaid
14 eligibility; specifying criteria for certain
15 annuities; providing direction to hearing
16 officers relating to revisions of community
17 spouse income or resource allowances;
18 authorizing the Department of Children and
19 Family Services to adopt rules; providing a
20 contingent effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23
24 Section 1. Section 409.902, Florida Statutes, is
25 amended to read:
26 409.902 Designated single state agency; payment
27 requirements; program title; release of medical records<u>;</u>
28 <u>eligibility requirements</u>.--
29 <u>(1)</u> 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

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1 Title XIX of the Social Security Act. These payments shall be
2 made, subject to any limitations or directions provided for in
3 the General Appropriations Act, only for services included in
4 the program, shall be made only on behalf of eligible
5 individuals, and shall be made only to qualified providers in
6 accordance with federal requirements for Title XIX of the
7 Social Security Act and the provisions of state law. This
8 program of medical assistance is designated the "Medicaid
9 program." The Department of Children and Family Services is
10 responsible for Medicaid eligibility determinations,
11 including, but not limited to, policy, rules, and the
12 agreement with the Social Security Administration for Medicaid
13 eligibility determinations for Supplemental Security Income
14 recipients, as well as the actual determination of
15 eligibility. As a condition of Medicaid eligibility, subject
16 to federal approval, the Agency for Health Care Administration
17 and the Department of Children and Family Services shall
18 ensure that each recipient of Medicaid consents to the release
19 of her or his medical records to the Agency for Health Care
20 Administration and the Medicaid Fraud Control Unit of the
21 Department of Legal Affairs.
22 (2)(a) In determining eligibility for nursing facility
23 services, including institutional hospice services and home
24 and community-based waiver programs under the Medicaid
25 program, the Department of Children and Family Services shall
26 apply the following asset-transfer limitations effective for
27 transfers made on or after October 1, 2006:
28 1.a. The penalty period associated with all transfers
29 of assets for less than fair market value begins on the first
30 day of the month in which an individual applies for medical
31 assistance and is otherwise eligible. For recipients of

1 medical assistance, the penalty period begins on the first day
2 of the month in which the Department of Children and Family
3 Services becomes aware of the transfer or on the first day of
4 the month following a period of ineligibility for an earlier
5 transfer.
6 b. The Agency for Health Care Administration shall
7 amend the Medicaid state plan to create a methodology to
8 reimburse facilities licensed under chapter 400 for the bad
9 debts incurred as the result of the obligation to care for
10 residents without payment during this period of ineligibility.
11 Payments shall be limited to the daily Medicaid rate, shall be
12 offset by any collections from the resident or resident's
13 responsible party, and shall be limited to the period of
14 ineligibility from the date of application to the date of
15 discharge or eligibility, whichever is earlier. This payment
16 methodology shall be effective for bad debts incurred for any
17 resident determined ineligible under this provision for a
18 period of 2 years after federal law relating to the period of
19 ineligibility is changed or federal approval of the waiver is
20 granted. Upon expiration of this methodology, any bad debt
21 incurred as the result of the obligation to care for residents
22 without payment during this period of ineligibility shall be
23 deemed an allowable Medicaid bad debt and shall be reported on
24 a facility's Medicaid cost report.
25 2. Individuals who enter into a personal services
26 contract with a relative shall be considered to have
27 transferred assets without fair compensation to qualify for
28 Medicaid unless all of the following criteria are met:
29 a. The contracted services do not duplicate services
30 available through other sources or providers, such as
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1 Medicaid, Medicare, private insurance, or another legally
2 obligated third party.
3 b. The contracted services directly benefit the
4 individual and are not services normally provided out of love
5 and consideration for the individual.
6 c. The actual cost to deliver services is computed in
7 a manner that clearly reflects the actual number of hours to
8 be expended and the contract clearly identifies each specific
9 service and the average number of hours of each service to be
10 delivered each month.
11 d. The hourly rate for each contracted service is
12 equal to or less than the amount normally charged by a
13 professional who traditionally provides the same or similar
14 services.
15 e. The contracted services are provided on a
16 prospective basis only and not for services provided in the
17 past.
18 f. The contract provides fair compensation to the
19 individual in his or her lifetime as set forth in life
20 expectancy tables adopted in rule 65A-1.716, Florida
21 Administrative Code.
22 3. A financial instrument signed within the transfer
23 look-back period for institutional Medicaid coverage or home
24 and community-based waiver programs that allows deferred
25 payments, graduated payments, balloon payments, or debt
26 forgiveness shall be considered a countable asset to the
27 individual in the amount of the outstanding value of the
28 financial instrument when determining Medicaid eligibility.
29 (b) In determining eligibility for nursing facility
30 services, including institutional hospice services and home
31 and community-based waiver programs under the Medicaid

1 program, the following limitations apply to annuities
2 purchased on or after October 1, 2006, when the applicant or
3 the applicant's spouse owns an annuity, other than a
4 work-related pension annuity, such as a civil service annuity,
5 a railroad retirement annuity, or another similar pension
6 annuity.
7 1. An annuity is an excluded resource and the monthly
8 payments are counted as unearned income if the annuity:
9 a. Was purchased from an insurance company or
10 financial institution that is subject to licensing or
11 regulation by the Office of Insurance Regulation or a similar
12 regulatory agency of another state;
13 b. Is irrevocable;
14 c. Pays out principal and interest in equal monthly
15 installments wherein the principal investment is paid within
16 the annuitant's life expectancy based on the life expectancy
17 table used by the Social Security Administration or based on a
18 shorter life expectancy, if the annuitant has a condition that
19 would shorten the annuitant's life and that was diagnosed by a
20 physician before funds were placed into the annuity; and
21 d. With the exception of an annuity for a community
22 spouse who is not requesting Medicaid nursing facility care or
23 home and community-based services waiver care, names the State
24 of Florida or the Agency for Health Care Administration, or
25 its successor agency, as the beneficiary of any funds
26 remaining in the annuity, not to exceed the amount of any
27 Medicaid fund paid on the individual's behalf during his or
28 her lifetime.
29 2. If all of the conditions in subparagraph 1. are not
30 met, the annuity's fair market value is counted as a resource
31 in the amount of its fair market value with the following

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1 exception: When an annuity does not provide for payout of
2 principal and interest in equal installments within the
3 annuitant's lifetime and the issuing company indicates the
4 payout arrangement cannot be changed, the annuity shall be
5 excluded as a resource if the contract is amended to name the
6 State of Florida as the beneficiary of any funds remaining in
7 the annuity, not to exceed the amount of Medicaid funds paid
8 on the individual's behalf during his or her lifetime.
9 (c) Under the spousal impoverishment policies of s.
10 1924 of the Social Security Act, the following special
11 provision applies: When a hearing officer considers revisions
12 of community spouse income or resource allowances permitted by
13 s. 1924(e)(2) of the Social Security Act, the hearing officer
14 must consider all income first, including the community
15 spouse's own income as well as all potential income that would
16 be available from the institutionalized spouse upon approval
17 of Medicaid institutional care, before raising the community
18 spouse's income or resource allowance.
19 (d) The Department of Children and Family Services may
20 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
21 the requirements of this subsection.
22 Section 2. This act shall take effect July 1, 2006,
23 except that if any provision of subsection (2) of section
24 409.902, Florida Statutes, as created by this act, is
25 prohibited by federal law, that provision shall take effect
26 when federal law is changed to permit its application or when
27 a waiver is received. If, by October 1, 2006, any provision of
28 subsection (2) of section 409.902, Florida Statutes, as
29 created by this act, has not taken effect because of
30 prohibitions in federal law, the Secretary of Health Care
31 Administration shall apply to the Federal Government by

1 January 1, 2007, for a waiver of the prohibitions in federal
2 law or other federal authority, and the provisions of
3 subsection (2) of section 409.902, Florida Statutes, as
4 created by this act, shall take effect upon receipt of a
5 federal waiver or other federal approval, notification to the
6 Secretary of State, and publication of a notice in the Florida
7 Administrative Weekly to that effect.
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10 SENATE SUMMARY

11 Provides for determination of eligibility for nursing facility services under the Medicaid program. Specifies a
12 penalty period. Requires the Agency for Health Care Administration to develop a reimbursement methodology for
13 certain facilities. Specifies criteria for certain personal services contracts. Provides that certain
14 financial instruments signed within a specified period of time be considered countable assets when determining
15 Medicaid eligibility. Specifies criteria for certain annuities. Provides direction to hearing officers
16 relating to revisions of community spouse income or resource allowances. Authorizes the Department of
17 Children and Family Services to adopt rules.

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