

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 certain nursing facility  
 5           services under the Medicaid program after a specified  
 6           date; requiring the Department of Children and Family  
 7           Services to take certain actions if a community spouse  
 8           refuses to make certain resources available to the  
 9           institutional spouse; authorizing the Agency for Health  
 10          Care Administration to recover certain Medicaid expenses;  
 11          authorizing the Department of Children and Family Services  
 12          to adopt rules; providing an effective date.

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

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

18           409.902   Designated single state agency; payment  
 19   requirements; program title; release of medical records;  
 20   eligibility requirements.—

21           (1)   The Agency for Health Care Administration is  
 22   designated as the single state agency authorized to make  
 23   payments for medical assistance and related services under Title  
 24   XIX of the Social Security Act. These payments shall be made,  
 25   subject to any limitations or directions provided for in the  
 26   General Appropriations Act, only for services included in the  
 27   program, shall be made only on behalf of eligible individuals,  
 28   and shall be made only to qualified providers in accordance with

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29 federal requirements for Title XIX of the Social Security Act  
30 and the provisions of state law. This program of medical  
31 assistance is designated the "Medicaid program." The Department  
32 of Children and Family Services is responsible for Medicaid  
33 eligibility determinations, including, but not limited to,  
34 policy, rules, and the agreement with the Social Security  
35 Administration for Medicaid eligibility determinations for  
36 Supplemental Security Income recipients, as well as the actual  
37 determination of eligibility. As a condition of Medicaid  
38 eligibility, subject to federal approval, the Agency for Health  
39 Care Administration and the Department of Children and Family  
40 Services shall ensure that each recipient of Medicaid consents  
41 to the release of her or his medical records to the Agency for  
42 Health Care Administration and the Medicaid Fraud Control Unit  
43 of the Department of Legal Affairs.

44 (2) In determining eligibility for nursing facility  
45 services, including institutional hospice services and home and  
46 community-based waiver programs under the Medicaid program, the  
47 Department of Children and Family Services shall apply the asset  
48 transfer limitations specified in subsection (3) for transfers  
49 made after July 1, 2011.

50 (3) Individuals who enter into a personal services  
51 contract with a relative shall be considered to have transferred  
52 assets without fair compensation to qualify for Medicaid unless  
53 all of the following criteria are met:

54 (a) The contracted services do not duplicate services  
55 available through other sources or providers, such as Medicaid,

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56 Medicare, private insurance, or another legally obligated third  
57 party.

58 (b) The contracted services directly benefit the  
59 individual and are not services normally provided out of  
60 consideration for the individual.

61 (c) The actual cost to deliver services is computed in a  
62 manner that clearly reflects the actual number of hours to be  
63 expended and the contract clearly identifies each specific  
64 service and the average number of hours required to deliver each  
65 service each month.

66 (d) The hourly rate for each contracted service is equal  
67 to or less than the amount normally charged by a professional  
68 who traditionally provides the same or similar services.

69 (e) The cost of contracted services is provided on a  
70 prospective basis only and does not apply to services provided  
71 before July 1, 2011.

72 (f) The contract for services provides fair compensation  
73 to the individual during her or his lifetime as set forth in the  
74 life expectancy tables published by the Office of the Actuary of  
75 the Social Security Administration.

76 (4) When determining eligibility for nursing facility  
77 services, including institutional hospice services and home and  
78 community-based waiver programs under the Medicaid program, if a  
79 community spouse refuses to make her or his resources available  
80 to her or his institutional spouse, the Department of Children  
81 and Family Services shall:

82 (a) Require proof that estrangement existed during the  
83 months before the individual submitted an application for

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84 institutional care services. If the individuals have not lived  
85 separate and apart without cohabitation and without interruption  
86 for at least 36 months, all resources of both individuals shall  
87 be considered to determine eligibility.

88 (b) Consider transfer of assets between spouses in excess  
89 of the Community Spouse Resource Allowance within the look-back  
90 period to be a transfer of assets for less than fair market  
91 value and therefore subject to a penalty period.

92 (c) Determine that undue hardship does not exist when the  
93 individual, or the person acting on her or his behalf, transfers  
94 resources to the community spouse and the community spouse  
95 refuses to make her or his resources available to the  
96 institutional spouse.

97 (d) Determine the institutional spouse to be ineligible  
98 for Medicaid if she or he, or the person acting on her or his  
99 behalf, refuses to provide information about the community  
100 spouse or cooperate in the pursuit of court-ordered medical  
101 support or the recovery of Medicaid expenses paid by the state  
102 on her or his behalf.

103 (5) The Agency for Health Care Administration shall seek  
104 recovery of all Medicaid-covered expenses and pursue court-  
105 ordered medical support from the community spouse when she or he  
106 refuses to make her or his assets available to the institutional  
107 spouse.

108 (6) The Department of Children and Family Services may  
109 adopt rules governing the administration of this section  
110 pursuant to ss. 120.536(1) and 120.54.

111 Section 2. This act shall take effect July 1, 2011.