

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

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,

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

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 upon becoming a law.