

By Senator Jones

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1 A bill to be entitled
2 An act relating to Medicaid eligibility; amending s.
3 409.902, F.S.; providing asset transfer limitations
4 for determination of eligibility for certain nursing
5 facility services under the Medicaid program after a
6 specified date; requiring the Department of Children
7 and Family Services to take certain actions if a
8 community spouse refuses to make certain resources
9 available to the institutional spouse; authorizing the
10 Agency for Health Care Administration to recover
11 certain Medicaid expenses; authorizing the Department
12 of Children and Family Services to adopt rules;
13 providing an effective date.

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

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

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

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

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

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

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

55 (a) The contracted services do not duplicate services
56 available through other sources or providers, such as Medicaid,
57 Medicare, private insurance, or another legally obligated third
58 party.

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

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

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

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

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

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

83 (a) Require proof that estrangement existed during the
84 months before the individual submitted an application for
85 institutional care services. If the individuals have not lived
86 separate and apart without cohabitation and without interruption
87 for at least 36 months, all resources of both individuals shall

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88 be considered to determine eligibility.

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

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

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

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

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

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