

HB 1323

2013

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 the determination of eligibility for certain
 5 nursing facility services under the Medicaid program
 6 after a specified date; requiring the Department of
 7 Children and Families 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 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. Subsection (9) is added to section 409.902,
 17 Florida Statutes, to read:

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

21 (9) In determining eligibility for nursing facility
 22 services, including institutional hospice services and home and
 23 community-based waiver programs under the Medicaid program, the
 24 Department of Children and Families shall apply the asset
 25 transfer limitations specified in paragraph (a) for transfers
 26 made after July 1, 2013.

27 (a) An individual who enters into a personal services
 28 contract with a relative is considered to have transferred

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29 assets without fair compensation to qualify for Medicaid unless:

30 1. The contracted services do not duplicate services
31 available through other sources or providers, such as Medicaid,
32 Medicare, private insurance, or another legally obligated third
33 party;

34 2. The contracted services directly benefit the individual
35 and are not services normally provided out of consideration for
36 the individual;

37 3. The actual cost to deliver services is computed in a
38 manner that clearly reflects the actual number of hours to be
39 expended and the contract clearly identifies each specific
40 service and the average number of hours required to deliver each
41 service each month;

42 4. The hourly rate for each contracted service is no more
43 than the amount normally charged by a professional who
44 traditionally provides the same or similar services;

45 5. The cost of contracted services is provided on a
46 prospective basis only and does not apply to services provided
47 before July 1, 2013; and

48 6. The contract for services provides fair compensation to
49 the individual during his or her lifetime as set forth in the
50 life expectancy tables published by the Office of the Chief
51 Actuary of the United States Social Security Administration.

52 (b) When determining eligibility for nursing facility
53 services, including institutional hospice services and home and
54 community-based waiver programs under the Medicaid program, if a
55 community spouse refuses to make his or her resources available
56 to his or her institutional spouse, the Department of Children

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57 and Families shall:

58 1. Require proof that estrangement existed during the
59 months before the individual submitted an application for
60 institutional care services. If the individuals have not lived
61 separate and apart without cohabitation and without interruption
62 for at least 36 months, all resources of both individuals shall
63 be considered to determine eligibility.

64 2. Consider transfer of assets between spouses in excess
65 of the Community Spouse Resource Allowance within the look-back
66 period to be a transfer of assets for less than fair market
67 value and therefore subject to a penalty period.

68 3. Determine that undue hardship does not exist when the
69 individual, or the person acting on his or her behalf, transfers
70 resources to the community spouse and the community spouse
71 refuses to make her or his resources available to the
72 institutional spouse.

73 4. Determine the institutional spouse to be ineligible for
74 Medicaid if he or she, or the person acting on his or her
75 behalf, refuses to provide information about the community
76 spouse or cooperate in the pursuit of court-ordered medical
77 support or the recovery of Medicaid expenses paid by the state
78 on his or her behalf.

79 (c) The Agency for Health Care Administration shall seek
80 recovery of all Medicaid-covered expenses and pursue court-
81 ordered medical support from the community spouse when he or she
82 refuses to make his or her assets available to the institutional
83 spouse.

84 (d) The Department of Children and Families may adopt

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85 rules to implement this subsection.

86 Section 2. This act shall take effect upon becoming a law.