A bill to be entitled

An act relating to Medicaid eligibility; creating s. 409.995, F.S.; providing conditions for the Department of Children and Families to evaluate an applicant's life insurance policy when determining eligibility for Medicaid services; authorizing the Agency for Health Care Administration to use federal or state funds under the Medicaid program to pay life insurance premiums of an applicant or recipient under certain circumstances; providing restrictions on the sale, assignation, or transfer of ownership of a life insurance policy for which the state is named as a beneficiary or which is collaterally assigned to the state; providing for proceeds to be paid to a beneficiary under certain conditions; providing conditions for the owner of a life insurance policy to enter into a viatical settlement contract with a health care services provider for coverage of Medicaid long-term care services; specifying content of the contract; requiring that all marketing materials, actuarial memoranda, and pricing methodologies used by the viatical settlement provider be filed with and approved by the Office of Insurance Regulation; requiring the office to conduct market examinations and financial audits of certain viatical settlement providers; requiring the department to provide notice of life insurance policy options; authorizing the department, the agency, and the office to adopt rules;

authorizing the agency to seek state plan amendments and federal waivers; defining the term "value"; providing an effective date.

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

Section 1. Section 409.995, Florida Statutes, is created to read:

409.995 Life insurance assets.—

(1) Notwithstanding any provision of law to the contrary, the department, in determining an applicant's eligibility for Medicaid, is authorized to treat a life insurance policy owned by an applicant as follows:

(a) The value of a life insurance policy that is in force and owned by an applicant or a recipient who meets the state's nursing home level of care shall not be considered as a resource or asset in determining the applicant's or recipient's eligibility for Medicaid if the applicant or recipient:

1. Makes an irrevocable election to name the state as a beneficiary of the life insurance policy for an amount that is not greater than the amount of Medicaid benefits provided to the recipient plus any premiums or other costs incurred by the agency to the insurer that issued the life insurance policy;

2. Collaterally assigns the life insurance policy to the state under a written agreement submitted to and recorded by the issuing company of the life insurance policy; or

3. Irrevocably assigns the ownership of the policy in favor of the state.

(b) Medicaid benefits may not be authorized or provided until the designation of the state as an irrevocable beneficiary or the collateral assignment in favor of the state or written acknowledgement of irrevocable assignment by the insurer is completed and accepted by the department as part of the application process.

(c) Any designation of the state as an irrevocable beneficiary, any collateral assignment, or an irrevocable assignment in favor of the state is void if the application for Medicaid benefits is not approved.

(2) To the extent allowed by federal law, the agency may use federal or state funds under the Medicaid program to pay premiums plus any other costs related to a life insurance policy that is in force and owned by an applicant or a recipient who:

(a) Meets the state's nursing home level of care;

(b) Has made an irrevocable election to name the state as a beneficiary of the life insurance policy for an amount that is not greater than the amount of Medicaid benefits provided to the recipient and the premiums or expenses paid by the agency to the insurer that issued the life insurance policy; or

(c) Collaterally assigned the life insurance policy to the state under a written agreement submitted to and recorded by the issuing company of the life insurance policy.

(3) Any life insurance policy that is in force and under which the state is named as an irrevocable beneficiary or that has been collaterally assigned to the state may not be sold, assigned, or have the ownership transferred to any person or entity. This restriction exists as long as the policy names the

state as an irrevocable beneficiary or as long as the policy is collaterally assigned to the state.

(4) Upon the death of the insured who is the subject of the policy, proceeds that exceed the amount of Medicaid benefits provided to a recipient plus premiums and other costs incurred by the agency shall be paid to a beneficiary named by the applicant or recipient.

(5) The owner of a life insurance policy with a face value in excess of $10,000, may enter into a viatical settlement contract pursuant to part X of chapter 626 in exchange for guaranteed periodic payments to the health care services provider chosen by the viator, which payments shall be used solely to provide Medicaid-covered long-term care services as of the effective date of the contract for the viator, and only when the viatical settlement contract complies with the requirements of part X of chapter 626. The contract must contain the following:

(a) The lesser of 5 percent of the face value of the life insurance policy or $5,000 is reserved as death benefit payable to the viator's estate or beneficiary.

(b) The balance of payments required under the contract unpaid at the death of the viator must be paid to the viator's estate or a named beneficiary.

(c) A schedule evidencing the total amount payable to the viator, the number of payments, and the amount of each payment required to be paid under the contract.

(d) All moneys must be held in an irrevocable state or federally insured account.

(e) The contract must provide that the type of long-term care benefits payable under the settlement contract shall be chosen only by the viator or recipient of the benefits. An attempt by any person to require the use of a specific long-term care provider to obtain long-term benefits under a settlement contract is strictly prohibited and constitutes and unfair trade practice under s. 626.9927.

(6) For purposes of this section, all marketing materials, including benefit projections, sales brochures, and contracts used by the viatical settlement provider or its brokers and agents, must be filed with and approved by the Office of Insurance Regulation. All pricing and valuation materials, including actuarial memoranda and pricing methodologies, must be filed with and approved by the Office of Insurance Regulation.

(7) The Office of Insurance Regulation shall conduct periodic market examinations and financial audits of each viatical settlement provider issuing viatical settlement contracts to provide long-term care benefits to a viator.

(8) The Department of Children and Families must provide, as part of the application for enrollment in the Medicaid program, written notice of the life insurance policy options provided in subsections (1) and (2).

(9) The Office of Insurance Regulation, the Department of Children and Families, and the Agency for Health Care Administration are authorized to adopt rules to implement this section.

(10) The agency is instructed to seek any state plan amendments or federal waivers that may be required to implement

this section.

(11) As used in this section, the term "value" includes the face value of a life insurance policy, the cash value of a life insurance policy, and the value received under subsection (5).

Section 2. This act shall take effect July 1, 2013.