

By the Committee on Children, Families, and Elder Affairs; and
Senator Brandes

586-01990-13

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1 A bill to be entitled
2 An act relating to Medicaid eligibility; creating s.
3 409.995, F.S.; providing conditions for the Department
4 of Children and Families to evaluate an applicant's
5 life insurance policy when determining eligibility for
6 Medicaid services; authorizing the Agency for Health
7 Care Administration to use federal or state funds
8 under the Medicaid program to pay life insurance
9 premiums of an applicant or recipient under certain
10 circumstances; providing restrictions on the sale,
11 assignment, or transfer of ownership of a life
12 insurance policy for which the state is named as a
13 beneficiary or which is collaterally assigned to the
14 state; providing for proceeds to be paid to a
15 beneficiary under certain conditions; providing
16 conditions for the owner of a life insurance policy to
17 enter into a viatical settlement contract with a
18 health care services provider for coverage of Medicaid
19 long-term care services; specifying content of the
20 contract; requiring that all marketing materials,
21 actuarial memoranda, and pricing methodologies used by
22 the viatical settlement provider be filed with and
23 approved by the Office of Insurance Regulation;
24 requiring the office to conduct market examinations
25 and financial audits of certain viatical settlement
26 providers; requiring the department to provide notice
27 of life insurance policy options; authorizing the
28 department, the agency, and the office to adopt rules;
29 authorizing the agency to seek state plan amendments

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30 and federal waivers; defining the term "value";
31 providing an effective date.
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33 Be It Enacted by the Legislature of the State of Florida:
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35 Section 1. Section 409.995, Florida Statutes, is created to
36 read:

37 409.995 Life insurance assets.—

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

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

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

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

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

57 (b) Medicaid benefits may not be authorized or provided
58 until the designation of the state as an irrevocable beneficiary

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59 or the collateral assignment in favor of the state or written
60 acknowledgement of irrevocable assignment by the insurer is
61 completed and accepted by the department as part of the
62 application process.

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

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

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

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

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

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

87 (4) Upon the death of the insured who is the subject of the

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88 policy, proceeds that exceed the amount of Medicaid benefits
89 provided to a recipient plus premiums and other costs incurred
90 by the agency shall be paid to a beneficiary named by the
91 applicant or recipient.

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

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

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

107 (c) A schedule evidencing the total amount payable to the
108 viator under the contract.

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

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

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117 practice under s. 626.9927.

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

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

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

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

137 (10) The agency is instructed to seek any state plan
138 amendments or federal waivers that may be required to implement
139 this section.

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

143 Section 2. This act shall take effect October 1, 2013.