

By Senator Albritton

26-01529A-20

20201544\_\_

1                   A bill to be entitled  
2       An act relating to elderly care; creating s. 409.9022,  
3       F.S.; providing applicability; prohibiting the  
4       Department of Children and Families, in determining  
5       Medicaid eligibility, from considering the cash  
6       surrender value of certain life insurance policies as  
7       assets if certain conditions are met; specifying  
8       requirements for a collateral assignment by a Medicaid  
9       applicant; requiring Medicaid recipients, or their  
10      guardians or legal representatives, to continue to pay  
11      premiums on such policies; requiring the deduction of  
12      the cost of premiums from a recipient's income for  
13      certain purposes; requiring the Agency for Health Care  
14      Administration to file a claim for the death benefit  
15      upon the recipient's death; specifying requirements  
16      for the payment of a certain funeral expense benefit  
17      by the state and the distribution of remaining  
18      balances by the issuer of the policy; providing that  
19      certain transfers constitute improper asset transfers  
20      unless certain conditions are met; requiring the  
21      Department of Children and Families and the agency, in  
22      collaboration with the Office of Insurance Regulation,  
23      to adopt rules; authorizing the agency to seek a  
24      federal waiver; amending s. 409.979, F.S.; revising  
25      the individuals who must be rescreened annually by  
26      aging resource centers under the Medicaid long-term  
27      care managed care program; revising the individuals  
28      who must be placed on the wait list for potential  
29      enrollment for certain services; requiring that

26-01529A-20

20201544\_\_

30 certain other individuals be placed on a registry of  
31 interest maintained by the Department of Elderly  
32 Affairs; requiring personnel of the aging resource  
33 center to provide certain information to individuals  
34 on the registry of interest; providing construction;  
35 requiring the Department of Elderly Affairs to notify  
36 individuals or their authorized representatives of  
37 placement on the registry of interest; amending s.  
38 430.04, F.S.; requiring the Department of Elderly  
39 Affairs to develop, and adopt by rule, a tool for  
40 comprehensive assessment of long-term-care supports  
41 and services needed by family and friend caregivers  
42 for elderly and disabled adults; providing the purpose  
43 of the tool; amending s. 430.205, F.S.; authorizing a  
44 community-care-for-the-elderly services provider to  
45 dispute certain referrals and request certain  
46 negotiations by the adult protective services program;  
47 providing construction; providing an effective date.

48  
49 Be It Enacted by the Legislature of the State of Florida:

50  
51 Section 1. Section 409.9022, Florida Statutes, is created  
52 to read:

53 409.9022 Exemption for certain life insurance policies as  
54 assets; requirements.-

55 (1) This section applies to an applicant:

56 (a) Who is in need of the services of a licensed nursing  
57 facility;

58 (b) Who meets the nursing facility level of care;

26-01529A-20

20201544\_\_

59 (c) Whose income does not exceed 300 percent of the  
60 Supplemental Security Income standard;

61 (d) Who owns one or more whole or universal life insurance  
62 policies; and

63 (e) Who would meet the assets standards for Medicaid  
64 eligibility except for the cash surrender value of the whole or  
65 universal life insurance policy or policies he or she owns.

66 (2) Notwithstanding any law to the contrary, in determining  
67 an applicant's eligibility for Medicaid, the department may not  
68 consider the cash surrender value of a whole or universal life  
69 insurance policy owned by the applicant as an asset if the  
70 applicant collaterally assigns the face value of the life  
71 insurance policy to the state for an amount that is not greater  
72 than the amount of Medicaid benefits to be provided to the  
73 applicant.

74 (3) The collateral assignment:

75 (a) Must be a written agreement submitted to and recorded  
76 by the issuing company of the life insurance.

77 (b) Must provide for the issuer to notify the department  
78 before a potential lapse in the policy.

79 (c) Must be completed and accepted by the department as  
80 part of the application process before Medicaid benefits may be  
81 authorized or provided.

82 (d) Is void if the application for Medicaid benefits is not  
83 approved.

84 (4) The Medicaid recipient, or his or her guardian or legal  
85 representative, shall continue to pay premiums on a life  
86 insurance policy that is subject to the collateral assignment.

87 The cost of premiums must be deducted from the recipient's

26-01529A-20

20201544\_\_

88 income for purposes of calculating his or her assets.

89 (5) Upon the recipient's death:

90 (a) The agency shall file a claim for the death benefit  
91 under the policy, up to the costs expended to provide Medicaid  
92 services to the recipient, to be remitted to the state.

93 (b) The state shall pay to the recipient's estate a funeral  
94 expense benefit of \$7,500 or 5 percent of the policy's face  
95 value, whichever is less.

96 (c) Any remaining balance of the death benefit must be paid  
97 by the issuer of each policy to other beneficiaries under the  
98 policy.

99 (6) A transfer of ownership of a whole or universal life  
100 insurance policy within the 60-month period preceding the  
101 Medicaid application by the applicant to a person or entity  
102 related to the applicant for less than the net present value of  
103 the death benefit, as determined by a standard actuarial  
104 discount factor, constitutes an improper asset transfer by the  
105 applicant unless the transferee collaterally assigns the face  
106 value of the policy pursuant to this section.

107 (7) The department and the agency shall, in collaboration  
108 with the Office of Insurance Regulation, adopt rules to  
109 administer this section.

110 (8) The agency may seek any federal waiver to implement  
111 this section.

112 Section 2. Subsection (3) of section 409.979, Florida  
113 Statutes, is amended to read:

114 409.979 Eligibility.—

115 (3) REGISTRY OF INTEREST, WAIT LIST, RELEASE, AND OFFER  
116 PROCESS.—The Department of Elderly Affairs shall maintain a

26-01529A-20

20201544\_\_

117 statewide wait list for enrollment for home and community-based  
118 services through the long-term care managed care program.

119 (a) The Department of Elderly Affairs shall prioritize  
120 individuals for potential enrollment for home and community-  
121 based services through the long-term care managed care program  
122 using a frailty-based screening tool that results in a priority  
123 score. The priority score is used to set an order for releasing  
124 individuals from the wait list for potential enrollment in the  
125 long-term care managed care program. If capacity is limited for  
126 individuals with identical priority scores, the individual with  
127 the oldest date of placement on the wait list shall receive  
128 priority for release.

129 1. Pursuant to s. 430.2053, aging resource center personnel  
130 certified by the Department of Elderly Affairs shall perform the  
131 screening for each individual requesting enrollment for home and  
132 community-based services through the long-term care managed care  
133 program. The Department of Elderly Affairs shall request that  
134 the individual or the individual's authorized representative  
135 provide alternate contact names and contact information.

136 2. The individual requesting the long-term care services,  
137 or the individual's authorized representative, must participate  
138 in an initial screening or rescreening for placement on the wait  
139 list. The screening or rescreening must be completed in its  
140 entirety before placement on the wait list.

141 3. Pursuant to s. 430.2053, aging resource center personnel  
142 shall administer rescreening annually for individuals with a  
143 priority score of 3, 4, or 5; or upon notification of a  
144 significant change in an individual's circumstances.

145 4. The Department of Elderly Affairs shall adopt by rule a

26-01529A-20

20201544\_\_

146 screening tool that generates the priority score, and shall make  
147 publicly available on its website the specific methodology used  
148 to calculate an individual's priority score.

149 (b) Upon completion of the screening or rescreening  
150 process, the Department of Elderly Affairs shall place all  
151 individuals with a priority score of 3, 4, or 5 on the wait  
152 list. Individuals with a priority score of 1 or 2 must be placed  
153 on a registry of interest established and maintained by the  
154 Department of Elderly Affairs. Aging resource center personnel  
155 shall inform individuals who are placed on the registry of  
156 interest of other community resources that may be available to  
157 assist them and shall inform them that they may contact the  
158 agency resource center for a new assessment if they experience a  
159 significant change in circumstances. Placement on the registry  
160 of interest does not prohibit an individual from receiving  
161 services, if available. The Department of Elderly Affairs shall  
162 notify the individual or the individual's authorized  
163 representative that the individual has been placed on the wait  
164 list or on the registry of interest.

165 (c) If the Department of Elderly Affairs is unable to  
166 contact the individual or the individual's authorized  
167 representative to schedule an initial screening or rescreening,  
168 and documents the actions taken to make such contact, it shall  
169 send a letter to the last documented address of the individual  
170 or the individual's authorized representative. The letter must  
171 advise the individual or his or her authorized representative  
172 that he or she must contact the Department of Elderly Affairs  
173 within 30 calendar days after the date of the notice to schedule  
174 a screening or rescreening and must notify the individual that

26-01529A-20

20201544\_\_

175 failure to complete the screening or rescreening will result in  
176 his or her termination from the screening process and the wait  
177 list.

178 (d) After notification by the agency of available capacity,  
179 the CARES program shall conduct a prerelease assessment. The  
180 Department of Elderly Affairs shall release individuals from the  
181 wait list based on the priority scoring process and prerelease  
182 assessment results. Upon release, individuals who meet all  
183 eligibility criteria may enroll in the long-term care managed  
184 care program.

185 (e) The Department of Elderly Affairs may terminate an  
186 individual's inclusion on the wait list if the individual:

- 187 1. Does not have a current priority score due to the  
188 individual's action or inaction;
- 189 2. Requests to be removed from the wait list;
- 190 3. Does not keep an appointment to complete the rescreening  
191 without scheduling another appointment and has not responded to  
192 three documented attempts by the Department of Elderly Affairs  
193 to contact the individual;
- 194 4. Receives an offer to begin the eligibility determination  
195 process for the long-term care managed care program; or
- 196 5. Begins receiving services through the long-term care  
197 managed care program.

198  
199 An individual whose inclusion on the wait list is terminated  
200 must initiate a new request for placement on the wait list, and  
201 any previous priority considerations must be disregarded.

202 (f) Notwithstanding this subsection, the following  
203 individuals are afforded priority enrollment for home and

26-01529A-20

20201544\_\_

204 community-based services through the long-term care managed care  
205 program and do not have to complete the screening or wait-list  
206 process if all other long-term care managed care program  
207 eligibility requirements are met:

208 1. An individual who is 18, 19, or 20 years of age who has  
209 a chronic debilitating disease or condition of one or more  
210 physiological or organ systems which generally make the  
211 individual dependent upon 24-hour-per-day medical, nursing, or  
212 health supervision or intervention.

213 2. A nursing facility resident who requests to transition  
214 into the community and who has resided in a Florida-licensed  
215 skilled nursing facility for at least 60 consecutive days.

216 3. An individual who is referred by the Department of  
217 Children and Families pursuant to the Adult Protective Services  
218 Act, ss. 415.101-415.113, as high risk and who is placed in an  
219 assisted living facility temporarily funded by the Department of  
220 Children and Families.

221 (g) The Department of Elderly Affairs and the agency may  
222 adopt rules to implement this subsection.

223 Section 3. Subsection (15) is added to section 430.04,  
224 Florida Statutes, to read:

225 430.04 Duties and responsibilities of the Department of  
226 Elderly Affairs.—The Department of Elderly Affairs shall:

227 (15) Develop, and adopt by rule, a tool for comprehensive  
228 assessment of long-term-care supports and services needed by  
229 family and friend caregivers for elderly and disabled adults.  
230 The tool is to be used by persons administering state funds for  
231 such supports and services in determining eligibility and which  
232 supports and services are appropriate for service recipients and



26-01529A-20

20201544\_\_

233 their caregivers.

234 Section 4. Paragraph (a) of subsection (5) of section  
235 430.205, Florida Statutes, is amended to read:

236 430.205 Community care service system.—

237 (5) Any person who has been classified as a functionally  
238 impaired elderly person is eligible to receive community-care-  
239 for-the-elderly core services.

240 (a) Those elderly persons who are determined by protective  
241 investigations to be vulnerable adults in need of services,  
242 pursuant to s. 415.104(3)(b), or to be victims of abuse,  
243 neglect, or exploitation who are in need of immediate services  
244 to prevent further harm and are referred by the adult protective  
245 services program, shall be given primary consideration for  
246 receiving community-care-for-the-elderly services. As used in  
247 this paragraph, "primary consideration" means that an assessment  
248 and services must commence within 72 hours after referral to the  
249 department or as established in accordance with department  
250 contracts by local protocols developed between department  
251 service providers and the adult protective services program.  
252 However, a community-care-for-the-elderly services provider may  
253 dispute the referral by requesting that the adult protective  
254 services program negotiate the referral placement of, and the  
255 services to be provided to, a vulnerable adult or victim of  
256 abuse, neglect, or exploitation. If an agreement cannot be  
257 reached with the adult protective services program for  
258 modification of the referral decision, the adult protective  
259 services program's determination shall control.

260 Section 5. This act shall take effect July 1, 2020.