

Florida Legislature Proposes Bill to Implement Provisions of the Deficit Reduction Act of 2005

By Howard S. Krooks

There is a bill pending in the Florida Legislature (Senate Bill 2532) that attempts to implement at least part of the Deficit Reduction Act of 2005 (the "DRA").

A summary of the bill's more significant provisions (as it exists at the time of this writing in late April 2006) is set forth below:



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1. The new asset transfer provisions would be effective for transfers made on or after October 1, 2006. The other parts of the bill, if passed into law, would become effective on July 1, 2006.
2. The penalty period for transfers begins on the first day of the month in which the individual applies for Medicaid and is otherwise eligible.
3. The Agency for Health Care Administration (similar to the Department of Health in New York) is required to create a method to reimburse facilities receiving Medicaid dollars for bad debts incurred as a result of penalties applied to applicants, during which periods the facility would otherwise have to provide care without payment. This would apply for two years after passage of the federal DRA.
4. Individuals who enter into a Personal Services Contract with a relative will be considered to have transferred assets without fair compensation unless all of the following criteria are met:
 - a. The contracted services do not duplicate services available through other source providers, such as Medicaid, Medicare, private insurance, or another legally obligated third party;
 - b. The contracted services directly benefit the individual and are not services normally provided out of love and consideration for the individual;
 - c. The actual cost to deliver services is computed in a manner that clearly reflects the actual number of hours to be expended, and the contract clearly identifies each specific service and the average number of hours of each service to be delivered each month;
- d. The hourly rate for each contract service must be equal to or less than the amount normally charged by a professional who traditionally provides the same or similar services;
- e. The contracted services are provided on a prospective basis only (contract cannot allow for reimbursement of past services);
- f. The contract must provide fair compensation to the individual in his/her lifetime according to life expectancy tables adopted in Florida.
5. A financial instrument signed within the new 5-year look-back period that allows deferred, graduated, balloon payments, or debt forgiveness will be considered a countable asset to the extent of the outstanding value of the financial instrument when determining Medicaid eligibility.
6. The following limitations apply to annuities purchased by the applicant or the applicant's spouse on or after October 1, 2006 (excluded from these rules are work-related pension annuities, such as civil service annuities, railroad retirement annuities, or similar pension annuities), such that the annuity must:
 - a. Be purchased from an insurance company or financial institution that is subject to licensing or regulation by the Office of Insurance Regulation or a similar regulatory agency of another state;
 - b. Be irrevocable;
 - c. Pay out principal and interest in equal monthly installments within the annui-

tant's life expectancy based on the life expectancy table used by the Social Security Administration or based on a shorter life expectancy, if the annuitant has a condition that would shorten the annuitant's life and that was diagnosed by a physician before funds were placed into the annuity;

- d. Name the State of Florida or the Agency for Health Care Administration, or its successor agency, as the beneficiary of any funds remaining in the annuity, not to exceed the amount of any Medicaid funds paid on the individual's behalf during his or her lifetime (this applies only to the applicant's annuity and does not apply to the spouse's annuity if the spouse is not also seeking Medicaid benefits).

If all of the foregoing criteria are not met, the annuity's fair market value is counted as a resource in the amount of its fair market value with the following exception: When an annuity does not provide for payout of principal and interest in equal installments within the annuitant's lifetime and the issuing company indicates the payout arrangement cannot be changed, the annuity will be excluded as a resource if the contract is amended to name the State of Florida as the beneficiary of any funds remaining in the annuity, not to exceed the amount of Medicaid funds paid on the individual's behalf during his or her lifetime.

7. The income first rule would apply when the spouse requests an adjustment in support from the applicant spouse's income or an increase in the resource allowance, such that

all income (community spouse and applicant) must be considered before raising the community spouse's income or resource allowance.

There is no House companion bill to Senate Bill 2532. Furthermore, as of the time of this writing in late April 2006, there are no proposed rulemaking designed to implement the DRA. We will keep readers posted as to any developments regarding the implementation of the DRA in Florida.

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