

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1700

SPONSOR: Senator Grant

SUBJECT: Medicaid; Estate Recovery

DATE: April 16, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Liem</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 1700 addresses Medicaid third party liability, estate recovery, and program integrity issues. The bill also requires that, in the instance that health insurers and health maintenance organizations who are liable for Medicaid costs and require tape or electronic billing, the entities must, at their own expense, develop the means to use the standard tape or electronic format adopted by the agency. Entities which cannot use the agency's format are required to accept paper claims in any format adopted by the agency.

The bill creates the "Medicaid Estate Recovery Act," which codifies into statute Medicaid's estate recovery process. The provisions are applicable only to estates of those deceased Medicaid recipients who received Medicaid-reimbursed services after reaching the age of 55, and the Agency for Health Care Administration (AHCA or agency) is expressly prohibited from enforcing a claim against any homestead of a deceased Medicaid recipient. The bill requires notification of the Medicaid program of the administration of an estate by the personal representative of a deceased Medicaid recipient and creates a claim and interest in the estate on the part of the state in the amount of Medicaid assistance received by a recipient after the age of 55. The bill creates exemptions from the estate recovery process for homestead property, as well as, in the instance of a surviving spouse, a child under the age of 21 or a disabled child living in the home, a waiver provision if enforcement of the estate recovery process would create a hardship. The bill provides for a Medicaid claim against a settlement due from a third party and provides for the disposal of real property which has value exceeding the cost of its sale.

The bill modifies the agency's program integrity authority to allow Medicaid to withhold payments based on reliable evidence that a provider is engaged in fraud or abuse of the Medicaid program or a crime is being committed while rendering goods or services to Medicaid recipients.

The bill amends ss. 409.910, F.S., 1998 Supplement, 409.9101, F.S., 409.913, F.S., and 733.212, F.S.

II. Present Situation:

Medicaid Third Party Liability

Section 409.910, F.S., 1998 Supplement, is the “Medicaid Third-Party Liability Act,” under which AHCA is directed to recover the costs of goods and services delivered to a Medicaid recipient when another third party may be responsible for such costs. Subsection (20) of this section requires insurers and health maintenance organizations (HMOs) to “provide such records and information as are necessary to accomplish the purpose of this section, unless such requirement results in an unreasonable burden.” Additionally, this subsection requires AHCA and the Insurance Commissioner to enter a cooperative agreement for requesting and obtaining information from insurers and HMOs for purposes of the subsection, including the adoption of rules for implementing the cooperative agreement. Even though this authority for a cooperative agreement has been in statute for several years, no such agreement exists. Medicaid staff report that the agency has experienced difficulty in billing, since procedures and formats are unique to the multiple insurers and HMOs which are responsible for reimbursing the costs of services which Medicaid has provided.

Medicaid Estate Recovery

In August 1993, Congress passed the Omnibus Budget Reconciliation Act (OBRA 93) which, in part, requires state Medicaid agencies to establish and maintain estate recovery programs. The act requires states to recover the cost of medical assistance correctly paid on behalf of an eligible recipient who had reached age 55 prior to receiving services. OBRA 93 allows states to recover the costs of such benefits after the death of the recipient and after the death of the surviving spouse, dependent minor, or adult or minor handicapped children meeting the Social Security Administration definition of handicapped, if any. The Agency for Health Care Administration is responsible for identifying the estates of former Medicaid recipients and recovering any funds the estate might owe the state as reimbursement for Medicaid expenditures made on behalf of the decedent. Under the provisions of Article X, Section 4, of the Florida Constitution, the homestead of the individual is exempt from estate recovery.

Medicaid’s estate recovery efforts operate under the general provisions relating to public assistance. While specifying Medicaid estate recovery provisions in law, the Legislature has taken steps in the past to enhance the state’s estate recovery efforts. For example, ch. 98-191, L.O.F., amended s. 198.30, F.S., relating to estate recovery, to require that circuit judges provide to AHCA a copy of a monthly report containing the estate information of all decedents whose wills have been or will be probated before the court judge. This 1998 measure also amended s. 414.28, F.S., relating to public assistance debts, to raise public assistance recovery debts from Class 7 (debts acquired after death) to Class 3 (debts and taxes with preferences under federal law).

Section 733.212, F.S., relates to notices of administration and the filing of claims against estates of decedents. Such notice requirements currently do not involve any notice to AHCA for estates of decedents who may have been Medicaid recipients.

The primary source of information for estate recoveries comes from monthly Clerk of Court reports that detail estates opened in that county during that month. Letters of Administration

submitted by personal representatives or attorneys also serve as leads for the recoveries, but are inconsistently provided to AHCA. When a lead is received, research is conducted to determine if the individual was a Medicaid recipient and the estate meets criteria for an estate recovery. The claim history is reviewed to determine a lien amount to file against the estate. This lien amount may be amended as Medicaid providers file additional claims on the recipient.

In June 1996, AHCA awarded the contract for estate recovery activities to Public Consulting Group. The contract will expire in April, 1999, however the agency plans to exercise one of its renewal options to extend the contract through October 31, 1999. The estate recovery program collected \$1,175,590 in 1995, \$3,955,840 in 1996, \$3,511,365 in 1997, and \$6,024,165 in 1998.

Medicaid Program Integrity

Section 409.913, F.S., provides for the oversight of the integrity of the Florida Medicaid Program. Staff of Medicaid Program Integrity develop and use statistical methodologies to identify providers who exhibit aberrant billing patterns, conduct investigations and audits of these providers, calculate provider overpayments, initiate recovery of overpayments in instances of provider abuse, recommend administrative sanctions for providers who have abused or defrauded Medicaid, and refer cases of suspected fraud to the Medicaid Fraud Control Unit in the Attorney General's Office.

Currently the agency may only withhold payments from a Medicaid provider during the pendency of an administrative hearing to determine an overpayment. The agency is allowed by s. 409.913 (24)(a), F.S., to withhold 10 percent of a provider's billing during the pendency of the proceeding. This statute originated during a time when the only means available to the Medicaid program to recover overpayments were administrative hearings at the Division of Administrative Hearings. The agency now has authority to pursue recoupment under the civil theft statutes (which require intent to defraud) and the False Claims Act. These two provisions are used in the instance of serious, intentional over billing. Since these are criminal prosecutions, the language allowing withholding 10 percent of billings does not apply. Consequently, during the pendency of these proceedings, the agency has no authority to stop payments while the over billing is prosecuted. The agency reports that cases being prosecuted often involve large sums of money, and that recoupments are very difficult once the money has been paid out. It is therefore very important to the agency's program integrity efforts to be able to stop the flow of money to providers who the agency believes are deliberately taking money to which they are not entitled.

III. Effect of Proposed Changes:

Section 1. Amends s. 409.910, F.S., 1998 Supplement, to require that, in the instance that health insurers and health maintenance organizations who are liable for Medicaid costs and require tape or electronic billing, the entities must, at their own expense, develop the means to use the standard tape or electronic format adopted by the agency. Entities which cannot use the agency's format are required to accept paper claims in any format adopted by the agency.

Section 2. Creates s. 409.9101, F.S., to create the "Medicaid Estate Recovery Act," which codifies into statute Medicaid's estate recovery process. The bill imposes the requirement of providing a copy of a notice of administration to AHCA by estate personal representatives under

s. 733.212(4)(a), F.S., within three months after the first publication of the notice of administration. An exemption is provided if Medicaid has already filed a claim under the section. The bill states that acceptance of Medicaid assistance creates a claim and interest, as defined in s. 731.201(4) and (21), F.S., of the probate code, in favor of the agency, in the amount of assistance received by a Medicaid recipient after the recipient has reached the age of 55. The agency is allowed to amend its claim based on provider claims received after the initial determination of the amount of the claim.

The bill creates a rebuttable presumption that the agency's claim equals the current total allowable amount of Medicaid payments contained in the agency's claims processing system at the time the claim or amendment is filed, and restates the provision that the claim against the estate is a class (3) claim as provided in s. 414.28 (1), F.S., 1998 Supplement.

In the bill, the claim created is unenforceable if the recipient is survived by a spouse, a child under 21, a child who is living in the home who is blind or permanently or totally disabled pursuant to Title XIX of the Social Security Act. The claim is also unenforceable against any property which is determined to be the homestead of the deceased recipient, in accordance with section 4, Article X, State Constitution.

The bill provides an exemption from enforcement of these provisions in circumstances in which doing so would create an undue hardship for the qualified heirs. Criteria are specified for determination of a hardship. The criteria relate to residency issues, basic needs issues, care history issues, and property settlement cost considerations.

The bill requires that, in the instance that the estate of the deceased includes as an asset a settlement against a third party, the agency's claim must be satisfied before the third party settlement proceeds are included as estate assets. Proceeds remaining must be included in the estate and available to settle the agency's claim.

In the instance that there are no liquid assets to satisfy Medicaid's claim and there is real property which can be sold for more than the costs of a sale, the bill requires that the property be sold to satisfy the Medicaid claim. The title to real estate cannot be transferred to the agency.

The agency may adopt rules to administer the section and enforce federal estate requirements.

Section 3. Amends s. 409.913, F.S., to authorize AHCA to withhold payments, in whole or in part, based on reliable evidence of fraud, willful misrepresentation, or criminal activities associated with the delivery of Medicaid goods or services; and delete existing limitations that the agency may only reduce payments up to 10 percent of the amount owed, or up to \$25,000 per month when an overpayment by the agency exceeds \$75,000. The agency reports that reliable evidence will equate to probable cause such as the issuance of a warrant, an arrest, or charges being filed against a provider. The agency will have to defend its actions, and will have to produce substantial evidence that the criminal action has occurred. If the provider is ultimately cleared, the funds will be returned with interest paid at the rate of 10 percent per year.

Section 4. Amends s. 733.212, F.S., to specify that Medicaid is considered a reasonably ascertainable creditor for purposes of the requirement that a personal representative of an estate serve a copy of the notice of administration of an estate on creditors of the decedent who are

reasonably ascertainable. This provision applies to a decedent who had received Medicaid assistance for Medical care after the age of 55.

Section 5. The effective date of the bill is July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will be a cost to insurers and HMOs to develop software to accept electronic and tape billings in the agency's format.

Those with a stake in the estate of a deceased Medicaid recipient may see the estate reduced by a Medicaid claim against the estate. Those with a stake in the estate of a deceased Medicaid recipient, and an estate administrator, will have a better understanding of the parameters of AHCA's authority in the estate recovery process.

C. Government Sector Impact:

To the extent that a clearer estate recovery process results from the creation of parameters in statute for this process, AHCA may recover additional estate revenue.

The ability to halt the flow of funds to providers who are intentionally over billing the Medicaid program will produce savings to the state.

VI. Technical Deficiencies:

On page 2, line 24, the word "Budget" should be inserted after "Omnibus".

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
