

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1632

SPONSOR: Committee on Judiciary and Senator Saunders

SUBJECT: Medicaid Fraud

DATE: February 19, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Liem</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>APJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Committee Substitute clarifies that the Attorney General may seek any civil remedy provided by law in the conduct of the Medicaid fraud control program, and may, rather than shall, refer overpayments and suspected non-criminal abusive activities to the Agency for Health Care Administration. The Committee Substitute also clarifies that the Attorney General shall refer all suspected abusive activities not of a criminal nature or fraudulent nature to the Agency for Health Care Administration. The bill further clarifies that various investigatory powers are available to the Attorney General in fulfilling all of the responsibilities relating to Medicaid fraud control.

The Committee Substitute amends subsections (7) and (8) of s. 409.920, F.S.

II. Present Situation:

Medicaid is a medical assistance program that pays for health care for the poor and disabled. The federal government, the state, and the counties jointly fund the program. The federal government, through law and regulations, has established extensive requirements for the Medicaid Program. The Agency for Health Care Administration (agency) is the single state agency responsible for the Florida Medicaid Program. The statutory provisions for the Medicaid Program appear in ss. 409.901 through 409.9205, F.S.

Overpayments by Medicaid are often lumped into the generic category of “Medicaid fraud,” however, Medicaid fraud is a subset of the larger category of “Medicaid overpayments.” Medicaid overpayments may result from a host of problems, including provider billing errors, confusion about Medicaid policy requirements, poor medical practice, poor business practices, or

fraud. If an overpayment is the result of an intentional action on the part of the provider, in order to gain an unauthorized benefit, it becomes “fraud.”

Section 16.59, F.S., creates the Medicaid Fraud Control Unit (MFCU) within the Department of Legal Affairs. The MFCU is authorized to investigate all violations of s. 409.920, F.S., relating to Medicaid provider fraud, and any criminal violations discovered during the course of those investigations. The MFCU is authorized to refer any criminal violation to the appropriate prosecuting authority.

Section 409.920, F.S., contains provisions related to Medicaid provider fraud, and requires the Attorney General to conduct a statewide program of Medicaid fraud control. The duties of the program include investigation of possible criminal violations pertaining to the administration of the Medicaid program, in the provision of medical assistance, or in the activities of Medicaid providers. The Attorney General is to investigate alleged abuse or neglect of patients in health care facilities receiving Medicaid payments, and misappropriation of patient’s private funds in facilities receiving Medicaid payments, in coordination with the agency. The Attorney General is required to refer all suspected abusive activities not of a criminal nature to the agency, as well as each instance of overpayment which is discovered during the course of an investigation.

Section 409.913, F.S., prescribes the activities of the agency related to oversight of the integrity of the Medicaid program. The section requires that any suspected criminal violation identified by the agency be referred to the MFCU of the Office of the Attorney General, and that the agency and the MFCU develop a memorandum of understanding that includes protocols for referral of cases of suspected criminal fraud and return of these cases where investigation determines that administrative action by the agency is appropriate.

Federal regulations (42 CFR 1007) prescribe the relationship between the state Medicaid fraud control unit and the state Medicaid program. Generally, the Medicaid fraud control unit has the authority to prosecute and recover in the instance of Medicaid fraud, while the state Medicaid program integrity program recovers overpayments that are either not fraudulent or cases in which there does not appear to be a substantial potential for criminal prosecution. Federal regulations in 42 CFR 1007.11(c) require the Medicaid fraud control unit to collect Medicaid overpayments it discovers during fraud investigations and prosecutions or refer the matter to an appropriate state agency for collection.

The Florida False Claims Act (ss. 68.081-68.09, F.S.) provides for treble damages and civil penalties in the instance of a person who causes state government to pay claims which are false or submits a false claim against the state. The act allows the Department of Legal Affairs to investigate violations of the act and allows a person, the Department of Legal Affairs or, in some circumstances, the Department of Banking and Finance to bring a civil action against a person who has violated the act.

Likewise, the Florida Anti-Fencing Act (ss. 812.012-812.037, F.S.) provides for injunctive relief, civil remedies, and penalties pertaining to criminal activities related to theft and dealing in stolen property. Section 812.035(7), F.S., allows a governmental entity to recover treble damages, attorney’s fees, and court costs if it proves by clear and convincing evidence that it has been injured by reason of a violation of any of the provisions of the act. The Department of Legal

Affairs is allowed, pursuant to s. 812.035(9), F.S., to institute civil proceedings, intervene in injunctive proceedings brought by individuals, and intervene in any civil suit for monetary damages brought by a governmental entity.

The Medicaid Fraud Control Unit has raised the issue that the provisions of s. 409.920(7)(e) and (f), F.S., requiring that MFCU refer all suspected abusive activities not of a criminal nature to the Agency for Health Care Administration, may be interpreted to prevent the Attorney General from pursuing an action to recover Medicaid overpayments under the Florida False Claims Act.

III. Effect of Proposed Changes:

Section 1. Amends subsection (7) of s. 409.920, F.S., to: modify paragraph (e) to require the Attorney General to refer to the Agency for Health Care Administration all suspected abusive cases not of a fraudulent nature, in addition to those suspected abusive activities not of a criminal nature; and delete paragraph (f), which requires the Attorney General to refer to the Agency for Health Care Administration each instance of Medicaid overpayments to a provider which is discovered in the course of an investigation.

The Committee Substitute amends subsection (8) of s. 409.920, F.S., to *permit* the Attorney General to seek any civil remedy, including, but not limited, to those in the Florida False Claims Act, the civil recovery section of the Florida Anti-Fencing Act, or ch. 409, F.S.; to refer to the agency for collection any case of overpayment to a provider discovered during the course of an investigation; and to refer to the agency any case of suspected abusive activity not of a criminal nature.

The Committee Substitute additionally amends subsection (8) of s. 409.920, F.S., to clarify that the investigatory powers granted in subsection (8) are available to the Attorney General in carrying out the responsibilities delineated in other subsections of s. 409.920, F.S. These powers include the ability of the Attorney General to enter the premises of any health care provider, excluding a physician, to examine all records, to investigate all abuse or neglect of patients, or to investigate alleged misappropriation of patients' private funds; to subpoena witnesses or materials, administer oaths and collect evidence; and request and receive assistance of any state attorney or law enforcement agency.

Section 2. Establishes an effective date of upon becoming a law.

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 Art. VII, s. 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 Art. I, s. 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 Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill will clarify that the Attorney General may use civil remedies in addition to criminal prosecutions to recover Medicaid overpayments, potentially resulting in additional penalties to providers who improperly bill Medicaid.

C. Government Sector Impact:

The bill may result in additional recoveries of Medicaid funds for the state in the instance of providers who have been overpaid by the Medicaid program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.