

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 322

INTRODUCER: Fiscal Policy Committee, Senator Stargel and others

SUBJECT: Medicaid Reimbursement for Hospital Providers

DATE: April 17, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Lloyd	Stovall	HP	Favorable
2. Jones	Hrdlicka	FP	Fav/CS

I. Summary:

CS/SB 322 clarifies reimbursement provisions, provider notification requirements, and the administrative challenge process for Medicaid inpatient and outpatient hospital rates. The bill specifies that the written notice of the hospital reimbursement rates provided by the Agency for Health Care Administration (AHCA) constitutes final agency action for purposes of administrative challenges to the rate.

The bill provides additional finality for future rate adjustments by requiring a challenge to a final audited rate to be filed within 180 days of the AHCA providing written notice of a final audited rate. By tying the window for a rate challenges to the notice of a final audited rate, the bill preserves that option regardless of how long it takes the AHCA to complete the auditing and rate-setting process.

The bill also limits the period of time considered for rate reconciliation that is needed when the rate methodology is found invalid due to a rule challenge. Such reconciliations can only be made for the 5 years preceding the petition challenging the rule.

The bill specifies that the AHCA may not be compelled to pay additional compensation in excess of \$5 million to a hospital for adjusted rate unless there is a specific appropriation for that purpose.

These clarifications are deemed remedial in nature and apply retroactively to all proceedings pending or commenced on or after the effective date of this act.

The bill has an indeterminate significant negative fiscal impact on any subsequent challenges to hospital reimbursement rates.

II. Present Situation:

Florida Medicaid

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. The program is administered by the AHCA and financed with federal and state funds. Over 3.7 million Floridians are currently enrolled in Medicaid¹ and its enrollees make up 20 percent of Florida's population.² The state statutory authority for the Medicaid program is contained in ch. 409, F.S.

Medicaid's estimated expenditures for FY 2014-15 are over \$23.3 billion.³ The total budget for the current state fiscal year is over \$24.5 billion with over \$14.6 billion of those funds coming from federal sources.⁴

Nationally, Medicare and Medicaid account for 58 percent of all care provided by hospitals.⁵ Hospital participation in Medicaid is voluntary. However, for a not-for-profit hospital to receive a federal tax exemption, the hospital must care for Medicare and Medicaid beneficiaries.⁶ The Florida Hospital Association reports that Florida hospitals provided more than \$1.4 billion in community benefit to Florida Medicaid and other government programs in 2012.⁷

Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services.⁸ The state plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies, including inpatient and outpatient hospital rate charges. Florida's Medicaid state plan and its attachments provide the methodology for the reimbursement of both inpatient and outpatient services.⁹

¹ Agency for Health Care Administration, Statewide Medicaid Enrollment Report March 2015, available at http://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited April 10, 2015).

² Agency for Health Care Administration, *Agency for Health Care Administration - An Overview*, Presentation to Senate Health and Human Services Appropriations Subcommittee on January 22, 2015, p. 10, slide 10, available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/AHS/MeetingRecords/MeetingPacket_2759.pdf (last visited April 10, 2015).

³ Social Services Estimating Conference, *Medicaid Caseloads and Expenditures, November 21 and December 12, 2014 Executive Summary*, available at <http://edr.state.fl.us/Content/conferences/medicaid/medsummary.pdf> (last visited April 10, 2015).

⁴ See *supra* note 2, at slide 3.

⁵ American Hospital Association, *Underpayment by Medicare and Medicaid Fact Sheet 2015*, available at <http://www.aha.org/content/15/medicaremedicaidunderpmt.pdf> (last visited April 10, 2015).

⁶ *Id.*

⁷ Florida Hospital Association, *2014 Florida Hospitals' Community Benefit Report*, p. 4, available at <http://www.fha.org/reports-and-resources/show-details/2014-Community-Benefit-Report/102> (last visited April 10, 2015).

⁸ Medicaid.gov, *Medicaid State Plan Amendments*, available at <http://medicaid.gov/state-resource-center/medicaid-state-plan-amendments/medicaid-state-plan-amendments.html> (last visited April 10, 2015).

⁹ Agency for Health Care Administration, *Medicaid State Plan Under Title XIX of the Social Security Act Medical Assistance Program*, available at <http://www.fdhc.state.fl.us/Medicaid/stateplan.shtml> (last visited April 10, 2015).

Hospital Reimbursements for Medicaid

Pre 2013 Reimbursements for Medicaid

Prior to July 1, 2013, rates for hospital both inpatient and outpatient services under the Florida Medicaid program were set on a facility-specific basis based on each facility's reported costs.¹⁰,¹¹ Hospital rates were based on reported costs for services provided by the hospital to Medicaid recipients on a fee-for-service basis (all-inclusive "per diem" rates.)¹²

The hospital cost report¹³ details costs for the entire year and includes any appropriate adjustments for allowable costs as required by the state's adopted *Medicaid Hospital Outpatient or Inpatient Reimbursement Plans*.¹⁴ Both inpatient and outpatient hospital rate reimbursement plans are promulgated as rules under the Florida Administrative Procedures Act and are made available for public comment and inspection.¹⁵

Hospitals participating in the Medicaid program submitted cost reports to the AHCA for both inpatient and outpatient services twice a year (July and January) and then just once a year beginning in 2011.¹⁶ These reports are now due no later than five calendar months after the close of the hospital's cost-reporting year.^{17, 18, 19} The AHCA must retain all cost reports following the date of submission.

Hospitals were then notified of their fee-for-service rates via letters sent from the AHCA. As amended or updated cost reports were submitted by hospitals, rates were adjusted to reflect the updated reported cost, if applicable.²⁰ The *Medicaid Hospital Outpatient Plan* and the *Inpatient Reimbursement Plan* each include a provision for challenging any rate adjustment or denial of a rate adjustment by the AHCA under Rule 28-106 of the Florida Administrative Code and s. 120.57, F.S.

¹⁰ Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

¹¹ Beginning July 1, 2013, the AHCA began paying Medicaid inpatient hospital fee-for-service claims under the Diagnosis Related Groups method. Under Statewide Medicaid Managed Care, hospitals providing services to Medicaid managed care enrollees are paid by managed care plans typically in accordance with negotiated rates.

¹² *Supra* note 10.

¹³ The cost report forms are established by the federal Centers for Medicare and Medicaid Services. See 42 U.S.C. s. 1396a(a)(6) (2012).

¹⁴ *Infra* note 17 at Section I, Paragraphs C and O. *Infra* note 18 at Section I, Paragraph C and N-P.

¹⁵ See Rule 59G-6.020, F.A.C., for inpatient and Rule 59G-6.030, F.A.C., for outpatient.

¹⁶ Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

¹⁷ Rule 59G-6.030, F.A.C., *Florida Title XIX Outpatient Hospital Reimbursement Plan, Version XXIV*, (Effective July 1, 2013) Section I (Attachment 4.19-B, Part I) available at <https://www.flrules.org/gateway/reference.asp?No=Ref-04493> (last visited April 10, 2015).

¹⁸ Rule 59G-6.020, F.A.C., *Florida Title XIX Inpatient Hospital Reimbursement Plan, Version XL*, (Effective July 1, 2013) Section I, Paragraph A (Attachment 4.19-A, Part I) available at <https://www.flrules.org/gateway/reference.asp?No=Ref-04814> (last visited April 10, 2015).

¹⁹ For both rates, hospitals filing a certified cost report audited by independent auditors may receive a 30-day extension.

²⁰ Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

Current Reimbursements for Medicaid

Beginning July 1, 2013, the AHCA implemented a new prospective payment methodology that uses a diagnosis related group (DRG) for Medicaid inpatient hospital fee-for-service claims.

Under this reimbursement methodology, hospital inpatient fee-for-service reimbursement rates are not noticed, except for the state mental health hospitals which are paid based on a fee-for-service methodology.²¹

The reimbursement methodology is a prospective payment system that classifies hospital stays using DRG.²² The DRG system assigns each discharge from a hospital a code which is based on the diagnosis of a patient, the procedures performed, and patient age, and gender, and birth weight.²³ Patients are then categorized based on those who have similar clinical characteristics and similar hospital resource intensity. Generally hospital payments are fixed based on the assignment, rather than a unique rate per hospital.²⁴

Legislation Limiting Hospital Reimbursement Rate Adjustments

In 2011, the Legislature amended s. 409.905(5), F.S., relating to hospital inpatient services, to require errors in cost reporting or calculation of rates discovered after September 30 to be reconciled in a subsequent rate period.²⁵ The amendment also prohibited the AHCA from making any adjustment to a hospital's reimbursement rate more than 5 years after a hospital is notified of an audited rate established by the AHCA. This prohibition was remedial and applied to actions by providers involving Medicaid claims for hospital services.

In 2012, the Legislature again amended s. 409.905(5), F.S., to change the September 30 date to October 31.²⁶

In 2013, the Legislature amended s. 409.905(5) and (6), F.S., to its existing state.²⁷ Currently, for both hospital inpatient and outpatient services, errors in source data or calculations discovered after October 31 must be reconciled in a subsequent rate period.²⁸ The AHCA is prohibited from making any adjustment to a hospital's reimbursement more than five years after a hospital is notified of an audited rate established by the agency. This prohibition is remedial and applies to actions by providers involving Medicaid claims for hospital services.²⁹

²¹ Agency for Health Care Administration, *Hospital Rates*, available at http://ahca.myflorida.com/medicaid/cost_reim/hospital_rates.shtml (last visited April 10, 2015).

²² Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

²³ *Id.* and Navigant, *DRG Conversion Implementation Plan - Final* (December 21, 2012), p. 10, available at http://ahca.myflorida.com/medicaid/cost_reim/pdf/DRG_Payment-Conversion_Implementation_Plan-FL_AHCA-Final.pdf (last visited April 10, 2015).

²⁴ *Supra* note 22.

²⁵ Chapter 2011-135, s. 9, L.O.F.

²⁶ Chapter 2012-33, s. 5, L.O.F.

²⁷ Chapter 2013-48, s. 3, L.O.F.

²⁸ Section 409.905(5) and (6), F.S.

²⁹ *Id.*

Administrative Challenges

Presently, the AHCA is involved in several lawsuits with hospital providers who are challenging the fee-for-service hospital rates regardless of the amount of time passed since the initial rate setting period.³⁰ Some of these challenges involve rates initially set as far back as the 1980's and 90's.³¹

III. Effect of Proposed Changes:

SB 322 amends s. 409.908, F.S., to clarify provider notification requirements and the administrative challenge process for Medicaid inpatient and outpatient fee-for-service hospital rates.

The bill defines the term "appropriation made by law" as having the same meaning as provided in s. 11.066, F.S., and the term "reimbursement rate" as the audited hospital cost-based per diem reimbursement rate for inpatient or outpatient care established by the agency.

The bill requires the AHCA to furnish written notice of reimbursement rates to hospital providers pursuant to ch. 120, F.S. The written notice constitutes final agency action for the purposes of administrative challenges to the rate.

The bill specifies that a substantially affected provider seeking to correct or adjust the calculation of a reimbursement rate, based on a challenge other than a challenge to a methodology used to calculate a reimbursement rate, may request an administrative hearing by filing a petition with the agency within 180 days after receipt of the written notice by the provider. Failure to timely file a complaint petition is deemed conclusive acceptance of the reimbursement rate.

A challenge to the methodology that is specified in an agency rule or in a reimbursement plan incorporated by reference in such rule and that is used to calculate a reimbursement rate will not result in a correction or an adjustment of a reimbursement rate for a rate period that occurred more than 5 years preceding the date the petition was filed.

A correction or adjustment of a reimbursement rate which is required by an administrative order or appellate decision to any challenge addressed in the bill and any right to challenge which arose before July 1, 2015,:
• Must be reconciled in the first rate period after the order or decision becomes final; and
• May not serve as the basis for a challenge to correct or adjust hospital rates required to be paid by a Medicaid managed care provider pursuant to part IV of ch. 409, F.S.

The bill specifies that the AHCA may not be compelled by an administrative body or a court to pay compensation that exceeds \$5 million to a hospital relating to the establishment of reimbursement rates by the agency or for remedies relating to such rates, unless an appropriation made by law is enacted for the exclusive, specific purpose of paying such additional compensation.

³⁰ Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

³¹ *Id.*

The bill provides that an administrative proceeding pursuant to ch. 120, F.S., is the only means to challenge a reimbursement rate and that the periods of time set out in the bill are not tolled by the pendency of any administrative or civil proceeding.

The bill is remedial in nature and intended to clarify existing law. The bill applies to all proceedings pending or commenced on or after the date the bill becomes law.

Other sections of related Medicaid and Kidcare statutes, ss. 383.18, 409.8132(4), and 409.905(5)(c), and (6)(b), F.S., are reenacted for the purpose of incorporating the changes made to s. 409.908, F.S.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does affect counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill is remedial in nature and intended to clarify existing law. The bill applies to all proceedings pending or commenced on or after the date the act becomes law. To the extent that a court may find that the bill is a type of penalty then the retroactivity of the bill could be in question.³²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The specific timelines set in the bill for filing challenges and addressing corrections or adjustments to fee-for-service rates will establish finality in hospital reimbursements. This bill may affect the ability of privately owned hospitals to seek increased, retroactive

³² See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1995).

rate adjustments. Currently, several administrative challenges are pending and unresolved.

Should the ACHA provide written notice of past hospital reimbursement rates to providers, such providers will have 180 days to file a petition seeking to correct or adjust the calculation of the reimbursement rate. Otherwise, the rate will become final. Any challenges to the methodology used to determine the rate can only be made for the 5 years preceding the date the petition is filed. The bill provides the AHCA may not be compelled to pay additional compensation in excess of \$5 million to a hospital for adjusted rate unless there is a specific appropriation for that purpose.

The impact of the bill is indeterminate but could result in a significant negative fiscal impact on any challenges to hospital reimbursement rates to privately owned hospitals.

C. Government Sector Impact:

The specific timelines set in the bill for filing challenges and addressing corrections or adjustments to fee-for-service rates will establish finality in hospital reimbursements. This bill may affect the ability of publicly owned hospitals to seek increased, retroactive rate adjustments.

Long-term, this bill may reduce the number of rate challenges that the AHCA must address and reduce the amount of time that the AHCA directs towards addressing such challenges. However, the AHCA may see a short term increase in challenges if the ACHA provides written notice of past hospital reimbursement rates to providers and the providers decide file a petition seeking to correct or adjust a rate calculation within the 180-day time period or challenging the methodology used to determine the rate for the 5 years preceding the date the petition is filed. The bill provides the AHCA may not be compelled to pay additional compensation in excess of \$5 million to a hospital for adjusted rate unless there is a specific appropriation for that purpose. Currently, several administrative challenges are pending and unresolved.

The impact of the bill is indeterminate for publicly owned hospitals but could result in a significant negative fiscal impact on any challenges to hospital reimbursement rates to publicly owned hospitals.

The impact on the AHCA of the any subsequent challenges is indeterminate at this time.³³

VI. Technical Deficiencies:

None.

³³ Agency for Health Care Administration, *Senate Bill 322 Analysis* (January 28, 2015) (on file with Senate Health Policy Committee).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.908 of the Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 383.18, 409.8132, and 409.905.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Fiscal Policy on April 15, 2015:

The committee substitute (CS):

- Provides additional finality for future rate adjustments by requiring a challenge to a final audited rate to be filed within 180 days of the AHCA providing written notice of a final audited rate. By tying the window for a rate challenges to the notice of a final audited rate, the bill preserves that option regardless of how long it takes the AHCA to complete the auditing and rate-setting process.
- Limits the period of time considered for rate reconciliation that are needed when the rate methodology is found invalid due to a rule challenge. Such reconciliations can only be made for the 5 years preceding the petition challenging the rule.
- Provides the AHCA may not be compelled to pay additional compensation in excess of \$5 million to a hospital for adjusted rate unless there is a specific appropriation for that purpose.

B. Amendments:

None.