

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 2294

SPONSOR: Senator Brown-Waite

SUBJECT: Medicaid Fraud Control

DATE: April 20, 2000

REVISED: 4/25/00 _____

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

I. Summary:

Senate Bill 2294 provides express exemptions for the Medicaid Fraud Control Unit of the Department of Legal Affairs in several confidential medical records provisions contained in Florida Statutes. The bill also provides that investigators employed by the Medicaid Fraud Control Unit have the authority to apply for, serve, and execute "...other process" throughout the state pertaining to Medicaid fraud.

The bill amends the following sections of the Florida Statutes: 394.4615, 395.3025, 400.0077, 400.494, 409.9071, 409.920, 409.9205, 430.608, and 455.667.

II. Present Situation:

Medicaid Provider Fraud

Section 409.920(2)(a-f), F.S., makes it unlawful to engage in certain activities for the purpose of falsely procuring Medicaid benefits. The prohibited activities range from knowingly making false statements in claims submitted for payment to knowingly receiving any remuneration in return for referring an individual to a person for services for which payment may be made under the Medicaid program. A person who engages in any of the prohibited activities commits a third degree felony.

Section 409.920(7), F.S., provides that the Attorney General shall conduct a statewide program of Medicaid fraud control. This section directs the Attorney General to: investigate possible criminal violations of any applicable state law pertaining to fraud in the administration of the Medicaid program; investigate the alleged abuse or neglect of patients, and misappropriation of patients' private funds, in health care facilities receiving payments under the Medicaid program; refer to the Office of Statewide Prosecution or the appropriate state attorney all violations indicating a substantial potential for criminal prosecution; refer to the Agency for Health Care Administration (AHCA) all suspected abusive activities not of a criminal nature; refer to AHCA

for collection each instance of overpayment; and safeguard the privacy rights of all individuals and provide safeguards to prevent the use of patient medical records for any reason beyond the scope of a specific investigation for fraud or abuse.

Section 409.920(8), F.S., allows the Attorney General to enter upon the premises of any health care provider, excluding a physician, participating in the Medicaid program to examine all accounts and records that may be relevant in determining: the existence of fraud; abuse or neglect of patients; or misappropriation of patients' private funds. The Attorney General also may subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in either civil or criminal judicial proceedings. Additionally, this section allows the Attorney General to request and receive the assistance of any state attorney or law enforcement agency in the investigation and prosecution of any violation of s. 409.920, F.S.

Pursuant to s. 409.920(8)(a), F.S., a participating health care provider, excluding physicians, must provide access to the Attorney General to examine accounts and records, and a participating physician is required to make available any accounts or records, that may be relevant in determining the existence of fraud in the Medicaid program. The accounts or records of a non-Medicaid patient may not be reviewed by, or turned over to, the Attorney General without the patient's written consent.

Section 16.59, F.S., creates the Medicaid Fraud Control Unit in the Department of Legal Affairs to investigate all violations of s. 409.920, F.S., and any criminal violations discovered during the course of those investigations. Section 409.9205, F.S., provides that all investigators employed by the Medicaid Fraud Control Unit who have been certified under s. 943.1395, F.S., are law enforcement officers of the state. Such investigators have the authority to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, and *capias* throughout the state as it pertains to Medicaid fraud. The Attorney General must provide notice of criminal investigations to, and coordinate those investigations with, the sheriffs of the respective counties.

Confidential Patient Records

Generally, medical records kept by health care providers in connection with the examination or treatment of patients may not be furnished to, and the medical condition of the patient may not be discussed with, any person other than the patient or the patient's legal representative, except upon written authorization of the patient. *See, 19A Fla. Jur 2d Dis. & Dep s. 24 (1999)*. Likewise, patient records maintained by a hospital or similar licensed health care facility are also confidential. *Id.* Some of the statutes providing for confidentiality of medical records, and accompanying exceptions thereto, include the following:

- s. 394.4615, F.S. - Clinical records for patients receiving mental health treatment
- s. 395.3025, F.S. - Records for patients in hospitals, ambulatory surgical centers, and mobile surgical centers
- s. 400.0077, F.S. - Records in the possession of the state or district long-term care ombudsman council
- s. 400.494, F.S. - Information about patients received by persons employed by, or providing services to, a home health agency

- s. 409.9071, F.S. - Patient records maintained by school districts enrolled as Medicaid providers
- s. 430.608, F.S. - Patient records of the Home Care for the Elderly program
- s. 455.667, F.S. - Patient records obtained by the Department of Health which are used in health care practitioner disciplinary proceedings.

Medicaid Fraud Control Access to Records

The Medicaid Fraud Control Unit, in conducting its investigations, must review otherwise confidential patient records. Presently, due to laws governing access to patient and clinical records, as well as laws concerning confidentiality and public records, the Medicaid Fraud Control Unit can face delay and some restraint upon its ability to obtain Medicaid records and conduct investigations.

III. Effect of Proposed Changes:

Statutes governing the Medicaid program allow access to patient records by Medicaid fraud investigators. The bill clarifies these requirements by including this access in the individual sections of statute governing confidentiality of such records. The bill clarifies ‘confidentiality’ with regard to school district and elder care Medicaid records.

The bill amends paragraph (b) of subsection (8) of s. 409.920, F.S., to expressly state that the Attorney General may subpoena medical records relating to Medicaid recipients when it is carrying out the duties of controlling Medicaid fraud as provided for in s. 409.920(7-8), F.S. The bill also amends s. 409.9205, F.S., to expressly provide Medicaid Fraud Control Unit investigators with the authority to apply for, serve, and execute “other process” throughout the state. “Process” is defined as “[a] summons or writ, esp. to appear or respond in court...” *Black’s Law Dictionary* (7th Ed.1999). This provision will now allow these investigators to serve all court process papers, including witness and document production subpoenas, in conjunction with Medicaid fraud investigations.

The bill amends numerous confidential medical records statutes to provide exceptions for the Medicaid Fraud Control Unit when it is acting in accordance with its duties under s. 409.920, F.S. More specifically, the following statutes are amended:

- s. 394.4615, F.S. - Subsection (6) is added to provide that clinical records of Medicaid recipients receiving mental health treatment shall be furnished to the Medicaid Fraud Control Unit upon request.
- s. 395.3025, F.S. - paragraph (k) is added to subsection (4) to provide that records of patients in hospitals, ambulatory surgical centers and mobile surgical centers may be disclosed, without the consent of the patient, to the Medicaid Fraud Control Unit.
- s. 400.0077, F.S. - Subsection (6) is added to state that the confidentiality attached to records in the possession of the state or district long-term care ombudsman does not limit the subpoena power of the Attorney General under s. 409.920(8)(b), F.S.
- s. 400.494, F.S. - This section is amended to provide that the confidentiality of information about recipients of home health care does not apply to information requested by the Medicaid Fraud Control Unit.

- s. 409.9071, F.S. - Subsection (7) is added to state that AHCA's and school districts' confidentiality is waived and they shall provide any information or documents relating to the Medicaid provider agreement to the Medicaid Fraud Control Unit upon request pursuant to s. 409.920, F.S.
- s. 430.608, F.S. - This section is amended to state that the confidentiality of records of individuals in the Home Care for the Elderly program does not limit the subpoena authority of the Medicaid Fraud Control Unit.
- s. 455.667, F.S. - Paragraph (b) is added to subsection (8) to provide that patient records obtained by the Department of Health in health care practitioner disciplinary proceedings which relate to a current or former Medicaid recipient shall be provided to the Medicaid Fraud Control Unit upon request.

The bill has an effective date of July 1, 2000.

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 provide access to otherwise confidential and exempt patient records to the Medicaid Fraud Control Unit.

C. Trust Funds Restrictions:

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

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Medicaid Fraud Control Unit of the Attorney General's office has indicated that the bill's provisions allowing its investigators to serve all court process papers would reduce the use of outside private process servers, thus cutting costs and time spent on litigation. It would also increase the job duties and authority of the Unit's law enforcement personnel. However, no data was provided so the precise impact is indeterminate.

The Attorney General's office also has indicated that the bill's provisions creating exceptions to confidential records provisions would reduce the time and funds spent obtaining records when a provider or other entity asserts an unsupported privilege. The bill would have a positive financial impact due to lower personnel time costs and greater efficiency in investigations.

The Agency for Health Care Administration indicates that, under the current situation, access to various needed records could be blocked, delayed or denied. This enactment clarifies and enhances the ability of the Medicaid Fraud Control Unit to obtain access to needed records by eliminating some unneeded restraints and controls. The Medicaid Fraud Control Unit is specifically charged with the responsibility to investigate Medicaid fraud. It follows that access to Medicaid clinical and patient records should be largely unfettered and allowed upon request

VI. Technical Deficiencies:

The title of the bill, in describing changes to s. 455.667, F.S., refers to the Department of Business and Professional Regulation. This section actually pertains to the Department of Health.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary:
Technical.