

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.)

Prepared By: Health Care Committee

BILL: SB 1122

SPONSOR: Senator Saunders

SUBJECT: Medicaid Third Party Liability

DATE: March 3, 2005

REVISED: 03/22/05 03/29/05 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Garner</u>	<u>Wilson</u>	<u>HE</u>	<u>Favorable</u>
2.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
3.	_____	_____	<u>GE</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes the Department of Revenue (DOR) to provide the Agency for Health Care Administration (AHCA) with estate tax information for purposes of determining recoveries through the state's Medicaid Estate Recovery Act. The bill also reenacts the existing confidentiality provisions relating to this information. The bill requires third-party administrators (TPAs) and pharmacy benefits managers (PBMs) to provide data to AHCA for purposes of determining Medicaid third party liability and requires a copy of a death certificate to be included with any notice to creditors served on AHCA.

This bill amends ss. 213.053, 409.910, and 733.2121, Florida Statutes.

This bill reenacts s. 206.27(2), Florida Statutes.

II. Present Situation:

The Medicaid Program

Medicaid is jointly funded by the federal, state, and county governments to provide medical care to eligible individuals. Medicaid is the largest program providing medical and health-related services to the nation's poorest citizens. Within broad national guidelines, which the federal government establishes, each of the states:

- Establishes its own eligibility standards;
- Determines the type, amount, duration, and scope of services;
- Sets the rate of payment for services; and
- Administers its own program.

The Agency for Health Care Administration is the single state agency responsible for the Florida Medicaid Program. The Florida statutory provisions for the Medicaid program appear in ss. 409.901 through 409.9205, F.S. The federal Medicaid provisions are in Title XIX of the federal Social Security Act.

Medicaid Third Party Liability

The Medicaid program, by federal law, is intended to be the payer of last resort; that is, all other available third party resources must meet their legal obligation to pay claims before the Medicaid program pays for the care of a Medicaid recipient. Medicaid third party liability (TPL) refers to the legal obligation of third parties, i.e., certain individuals, entities, or programs, to pay all or part of the expenditures for medical assistance furnished under a state's Medicaid program. Examples of third parties which may be liable to pay for services include private health insurance, Medicare, employment-related health insurance, medical support from non-custodial parents, court judgments or settlements from a liability insurer, worker's compensation, first party probate-estate recoveries, long-term-care insurance, and other federal programs (Veterans' benefits, etc.).

Individuals eligible for Medicaid assign their rights to third party payments to AHCA when they apply for benefits. States are required to take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the state Medicaid plan. Once states have determined that a potentially liable third party exists, the state is required to either "cost avoids" or "pay and chase" claims. Cost avoidance is where the provider of services bills and collects from liable third parties before sending the claim to Medicaid. Pay and chase is utilized when the state Medicaid agency pays the medical bills and then attempts to recover from liable third parties. States are generally required to cost avoid claims unless they have a waiver approved by the federal Centers for Medicare and Medicaid Services which allows them to use the pay and chase method.

Florida enacted this payer-of-last-resort requirement in 1990. Under s. 409.910, F.S., Medicaid is to be the payer of last resort for medically necessary goods and services furnished to Medicaid recipients. All other sources of payment for medical services are considered primary to the fiscal assistance provided by Medicaid. If benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, state law requires that Medicaid be repaid in full and prior to any other person, program, or entity. Medicaid is to be repaid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors are paid.

The Medicaid Estate Recovery Act

In certain cases, third party liability extends to the estate of a deceased person who had received Medicaid benefits. The federal Omnibus Budget Reconciliation Act of 1993 mandated that states implement an estate recovery program. Florida implemented its program in 1994.

Florida's Medicaid Estate Recovery Act, s. 409.9101, F.S., specifies that any person who accepts public medical assistance, as defined by Title XIX of the Social Security Act, shall create a debt to AHCA in the total amount paid on behalf of the recipient for medical assistance after the

recipient reached age 55. Florida’s law allows exclusions and AHCA does not pursue estate recovery if the deceased recipient is survived by:

- A spouse;
- A child or children under 21 years of age;
- A child or children who are blind or permanently and totally disabled pursuant to the eligibility requirements of Title XIX of the Social Security Act; or
- A person for whom the recovery would cause undue hardship based on specific criteria.

The AHCA is also prohibited from recovery against any property that is determined to be exempt from the claims of creditors under the State Constitution or the laws of Florida.

Barriers to Medicaid Third Party Liability Recoveries

The AHCA is responsible for recoveries from third party entities and estates of deceased Medicaid recipients. Since 2001, AHCA has contracted with a vendor to manage its third party liability program on a contingency fee basis of 5.9 percent of each dollar recovered. This contract expires in 2007. The vendor has recovered approximately \$232 million over the last three years. The following table details recoveries made by the vendor since it was awarded its contract.

Fiscal Year	Estate Recoveries	Other Collections	Total
FY 2001-02*	\$ 2,729,094	\$25,064,404	\$27,793,498
FY 2002-03	9,357,374	54,130,163	63,487,537
FY 2003-04	12,107,042	72,492,520	84,599,562
FY 2004-05**	6,927,915	48,851,925	55,779,840
TOTAL	\$31,121,425	\$200,539,012	\$231,660,437

* November 2001 through June 2002.

** July 2004 through January 2005.

The AHCA states that there are several barriers to third party recoveries that could be addressed to recover additional funds. Specifically:

- During the 2003 legislative session, TPAs and PBMs were added to the definition of a third party under s. 409.901(26), F.S., due to the increasing number of insurance companies contracting their claims processing functions through these entities. However, AHCA states that many TPAs and PBMs have claimed they are not “third parties,” and therefore are exempt from federally-required data matching and billing requirements. Changes in law that specify that these entities must provide this data could remedy this issue.
- Section 733.2121(3)(d), F.S., requires the personal representative of an estate to serve AHCA with a notice to creditors within three months after the first publication of the notice to creditors. Creditors have 30 days from receipt of the notice to creditors to file a statement of claim. The AHCA utilizes the notice to creditors to determine if the AHCA should file a statement of claim for Medicaid benefits pursuant to sections 409.9101 and 414.28, F.S. Florida law does not require the notice to creditors to contain identifying information such as

Medicaid identification or social security numbers, nor does Florida law require the notice to creditors to indicate whether the decedent was survived by a spouse.

Upon receipt of the notice to creditors, AHCA searches its database to determine if the decedent was a Medicaid beneficiary. Without identifying information, AHCA searches by name and county of residence. In instances of common names, a statement of claim may be filed in a probate estate of a decedent who did not receive Medicaid. Likewise, without sufficient identifying information AHCA may fail to identify a decedent as a Medicaid beneficiary. The AHCA diligently attempts to prevent problems related to identifying the decedent as a Medicaid beneficiary by making phone calls to the estate attorneys.

Additionally, section 409.9101(6), F.S., provides that AHCA's statement of claim is unenforceable if the decedent is survived by a spouse. Without indication of whether there is a surviving spouse on the notice to creditors, AHCA often files statements of claims in estates where there is a surviving spouse. The AHCA withdraws these statements of claims once a death certificate is received indicating a surviving spouse.

Changes in law to require the provision of a death certificate would: provide additional information to speed the identification of a deceased Medicaid beneficiary; avoid unnecessary claims against wrong Medicaid recipients or non-Medicaid recipients; and help to identify cases where there is a surviving spouse that would preclude AHCA from pursuing estate recoveries. Death certificates provide the social security number of the decedent and the city and county of residence, and the name of the surviving spouse, including the spouse's maiden name, if applicable.

Presently AHCA has an agreement with Department of Revenue to share estate tax information for use in the enforcement of the general Medicaid provisions and the Medicaid Third Party Liability Act, as authorized in s. 213.053, F.S. The agreement currently includes sections 409.901 - 409.910, F.S., however, it excludes s. 409.9101, F.S., which is the Medicaid Estate Recovery Act.

III. Effect of Proposed Changes:

Section 1 amends s. 213.053, F.S., relating to the sharing of tax information by the Department of Revenue (DOR), to authorize DOR to share estate tax information with the Agency for Health Care Administration (AHCA) for use in the enforcement of the Medicaid estate recovery provision, s. 409.9101, F.S. Presently, s. 213.053, F.S., only references s. 409.901-409.910, F.S. which authorizes the Agency for Health Care Administration (AHCA) and the Department of Revenue (DOR) to share estate tax information relating to the administration of general Medicaid provisions and for use in the enforcement of the Medicaid third party liability (TPL) provisions.

Section 2 reenacts s. 206.27(2), F.S., for purposes of incorporating the changes to s. 213.053, F.S., continuing the confidentiality and public records exemption provided to the sharing of tax information between DOR and AHCA.

Section 3 amends s. 409.910, F.S., to require third party administrators (TPAs) and pharmacy benefits managers (PBMs) to provide data to AHCA for purposes of determining third party liability. This information will be used by the TPL contractor to conduct data matches. These data matches will be used to bill claims that Medicaid originally paid, but a TPA or PBM was liable for those claims. These data matches will also provide new or updated insurance information that will be added to the Medicaid claims processing system (TPL resource file) to ensure that when a provider submits a claim through the system for a Medicaid beneficiary who has another insurance on their file, Medicaid will deny payment of the claim, instructing the provider to bill the insurance for the service.

Presently, TPAs and PBMs are included in the definition of a third party under s. 409.901(26), F.S., which could be liable for all or part of the cost of medical services related to any medical assistance provided by Medicaid. However, AHCA states that many TPAs and PBMs have claimed they are not “third parties,” and therefore are exempt from providing information and records for the purpose of determining third-party liability. This change in the law would specifically subject the TPA and PBMs to the data reporting requirements.

Section 4 amends s. 733.2121, F.S., to provide that if a decedent was 55 years of age or older at death, the personal representative of the estate is required to provide a copy of the death certificate to AHCA within 3 months after the first publication of the notice to creditors. The death certificate provides additional information, such as the decedent’s social security number, city and county of residence, and the spouse’s name, if applicable.

Currently, the law only requires the personal representative of an estate for such a decedent to serve AHCA with a notice to creditors within three months after the first publication of the notice to creditors. Creditors have 30 days from receipt of the notice to creditors to file a statement of claim. The notice to creditors is used by AHCA to determine if AHCA should file a statement of claim for Medicaid benefits pursuant to sections 409.9101 and 414.28, F.S. Currently, this section does not require the notice to creditors to contain identifying information such as Medicaid identification or social security numbers, nor does law require the notice to creditors to indicate whether the decedent was survived by a spouse. The death certificate would provide this additional information to expedite the identification of a deceased Medicaid beneficiary; avoid unnecessary claims against wrong Medicaid recipients or non-Medicaid recipients; and help to identify cases where there is a surviving spouse that would preclude AHCA from pursuing estate recoveries.

Section 5 provides an effective date of July 1, 2005.

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:

While this bill does reenact an exemption for tax information exchanged between DOR and AHCA, it does not expand the types of records that are exempted from public records disclosure requirements. Therefore, the provisions of this bill have no impact on public records or open meetings issues under the requirements of Article 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 Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The third party administrators and pharmacy benefits managers will be required to provide data to AHCA’s third party liability contractor. These entities will incur some administrative costs as a result. The personal representatives of a decedent’s estate will be required to submit a copy of the death certificate along with the already required notice to creditors to AHCA, which may result in some minor costs associated with providing the additional documentation.

C. Government Sector Impact:

By ensuring more timely and effective identification of probate-related cases, it is estimated there will be improved collections on an additional five cases per month at an average of \$5,000 each for a total of \$300,000 per year, resulting in an additional \$116,025 for the state.

Five additional cases at \$5,000 each for 12 months	= \$300,000
Less administrative costs (5.9% contingency fee paid to TPL Contractor)	= \$17,700
Net Savings	= \$282,300
Federal Share	= \$166,275
State Share	= \$116,025

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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