

By Senator Negrón

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1 A bill to be entitled
2 An act relating to public assistance fraud; creating
3 s. 624.35, F.S.; providing legislative intent;
4 establishing the Medicaid and Public Assistance Fraud
5 Coordinating Council within the Department of
6 Financial Services to coordinate efforts to eliminate
7 Medicaid and public assistance fraud; providing for
8 membership; providing for meetings; specifying council
9 duties; requiring an annual report to the Governor and
10 Legislature; creating s. 624.351, F.S.; directing the
11 Chief Financial Officer to prepare model interagency
12 agreements that address Medicaid and public assistance
13 fraud; specifying which agencies can be a party to
14 such agreements; amending s. 16.59, F.S.; conforming
15 provisions to changes made by the act; requiring the
16 Divisions of Insurance Fraud and Public Assistance
17 Fraud in the Department of Financial Services to be
18 collocated with the Medicaid Fraud Control Unit if
19 possible; requiring positions dedicated to Medicaid
20 managed care fraud to be collocated with the Division
21 of Insurance Fraud; amending s. 20.121, F.S.;
22 establishing the Division of Public Assistance Fraud
23 within the Department of Financial Services; amending
24 ss. 411.01, 414.33, and 414.39, F.S.; conforming
25 provisions to changes made by the act; transferring,
26 renumbering, and amending s. 943.401, F.S.; directing
27 the Department of Financial Services rather than the
28 Department of Law Enforcement to investigate public
29 assistance fraud; establishing the Medicaid claims

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30 adjudication project in the Agency for Health Care
31 Administration to decrease the incidence of inaccurate
32 payments and to improve the efficiency of the Medicaid
33 claims processing system; transferring activities
34 relating to public assistance fraud from the
35 Department of Law Enforcement to the Division of
36 Public Assistance Fraud in the Department of Financial
37 Services by a type two transfer; providing an
38 effective date.

39
40 WHEREAS, Florida's Medicaid program is one of the largest
41 in the country, serving approximately 2.7 million persons each
42 month. The program provides health care benefits to families and
43 individuals below certain income and resource levels. For the
44 2008-2009 fiscal year, the Legislature appropriated \$18.81
45 billion to operate the Medicaid program which is funded from
46 general revenue, trust funds that include federal matching
47 funds, and other state funds, and

48 WHEREAS, Medicaid fraud in Florida is epidemic, far-
49 reaching, and costs the state and the Federal Government
50 millions of dollars annually. Medicaid fraud not only drives up
51 the cost of health care and reduces the availability of funds to
52 support needed services, but undermines the long-term solvency
53 of both health care providers and the state's Medicaid program,
54 and

55 WHEREAS, the state's public assistance programs serve
56 approximately 1.8 million Floridians each month by providing
57 benefits for food, cash assistance for needy families, home
58 health care for disabled adults, and grants to individuals and

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59 communities affected by natural disasters. For the 2008-2009
60 fiscal year, the Legislature appropriated \$626 million to
61 operate public assistance programs, and

62 WHEREAS, public assistance fraud costs taxpayers millions
63 of dollars annually, which significantly and negatively impacts
64 the various assistance programs by taking dollars that could be
65 used to provide services for those people who have a legitimate
66 need for assistance, and

67 WHEREAS, both Medicaid and public assistance programs are
68 vulnerable to fraudulent practices that can take many forms. For
69 Medicaid, these practices range from providers who bill for
70 services never rendered and who pay kickbacks to other providers
71 for client referrals, to fraud occurring at the corporate level
72 of a managed care organization. Fraudulent practices involving
73 public assistance involve persons not disclosing material facts
74 when obtaining assistance or not disclosing changes in
75 circumstances while on public assistance, and

76 WHEREAS, ridding the system of perpetrators who prey on the
77 state's Medicaid and public assistance programs helps reduce the
78 state's skyrocketing costs, makes more funds available for
79 essential services, and improves the quality of care and the
80 health status of our residents, and

81 WHEREAS, aggressive and comprehensive measures are needed
82 at the state level to investigate and prosecute Medicaid and
83 public assistance fraud and to recover dollars stolen from these
84 programs, and

85 WHEREAS, new statewide initiatives and coordinated efforts
86 are necessary to focus resources in order to aid law enforcement
87 and investigative agencies in detecting and deterring this type

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88 of fraudulent activity, NOW, THEREFORE,

89

90 Be It Enacted by the Legislature of the State of Florida:

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92 Section 1. Section 624.35, Florida Statutes, is created to
93 read:

94 624.35 Medicaid and Public Assistance Fraud Coordinating
95 Council.—

96 (1) LEGISLATIVE FINDINGS.—The Legislature finds that there
97 is a need to develop and implement a statewide strategy to
98 coordinate state and local agencies, law enforcement entities,
99 and investigative units in order to focus programs and
100 initiatives dealing with the prevention, detection, and
101 prosecution of Medicaid and public assistance fraud.

102 (2) ESTABLISHMENT.—The Medicaid and Public Assistance Fraud
103 Coordinating Council is created within the department to oversee
104 and coordinate state and local efforts to eliminate Medicaid and
105 public assistance fraud and to recover state and federal funds.
106 The coordinating council shall serve in an advisory capacity and
107 provide recommendations and policy alternatives to the Chief
108 Financial Officer.

109 (3) MEMBERSHIP.—The coordinating council shall consist of
110 the following 11 members who may not designate anyone to serve
111 in their place:

112 (a) The Chief Financial Officer, who shall serve as chair.

113 (b) The Attorney General, who shall serve as vice chair.

114 (c) The executive director of the Department of Law
115 Enforcement.

116 (d) The Secretary of Health Care Administration.

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117 (e) The Secretary of Children and Family Services.

118 (f) The State Surgeon General.

119 (g) Five members appointed by the Chief Financial Officer,
120 consisting of two sheriffs, two chiefs of police, and one state
121 attorney. When making these appointments, the Chief Financial
122 Officer shall consider representation by geography, population,
123 ethnicity, and other relevant factors in order to ensure that
124 the membership of the council is representative of the state as
125 a whole.

126 (4) TERMS OF MEMBERSHIP; COMPENSATION; STAFF.—

127 (a) All members appointed by the Chief Financial Officer
128 shall be appointed for a term of 2 years. The remaining members
129 are standing members of the council and may not serve beyond the
130 time he or she ceases to hold the position that was the basis
131 for appointment to the coordinating council. A vacancy shall be
132 filled in the same manner as the original appointment but only
133 for the unexpired term.

134 (b) The Legislature finds that the coordinating council
135 serves a legitimate state, county, and municipal purpose and
136 that service on the coordinating council is consistent with a
137 member's principal service in a public office or employment.
138 Therefore membership on the coordinating council does not
139 disqualify a member from holding any other public office or from
140 being employed by a public entity, except that a member of the
141 Legislature may not serve on the council.

142 (c) Members of the coordinating council shall serve without
143 compensation, but are entitled to reimbursement for per diem and
144 travel expenses pursuant to s. 112.061. Reimbursements may be
145 paid from appropriations provided to the department by the

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146 Legislature for the purposes of this section.

147 (d) The Chief Financial Officer shall appoint a chief of
148 staff for the coordinating council who must have experience,
149 education, and expertise in the fields of law, prosecution, or
150 fraud investigations and shall serve at the pleasure of the
151 Chief Financial Officer. The department shall provide the
152 coordinating council with staff necessary to assist the
153 coordinating council in the performance of its duties.

154 (5) MEETINGS.—The coordinating council shall hold its
155 organizational session by March 1, 2011. Thereafter, the
156 coordinating council shall meet at least four times per year.
157 Additional meetings may be held if the chair determines that
158 extraordinary circumstances require an additional meeting.
159 Members may appear by electronic means. A majority of the
160 members of the coordinating council constitutes a quorum.

161 (6) COUNCIL DUTIES.—The coordinating council shall provide
162 advice and make recommendations, as necessary, to the Chief
163 Financial Officer.

164 (a) The coordinating council may advise the Chief Financial
165 Officer on the feasibility of undertaking initiatives that
166 include, but are not limited to:

167 1. Conducting a census of local, state, and federal efforts
168 to address Medicaid and public assistance fraud in this state,
169 including fraud detection, prevention, and prosecution, in order
170 to discern overlapping missions, maximize existing resources,
171 and strengthen current programs.

172 2. Developing a strategic plan for coordinating and
173 targeting state and local resources for preventing and
174 prosecuting Medicaid and public assistance fraud. The plan must

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175 identify methods to enhance multiagency efforts that contribute
176 to achieving the state's goal of eliminating Medicaid and public
177 assistance fraud.

178 3. Identifying methods to implement innovative technology
179 and data sharing in order to identify and analyze Medicaid and
180 public assistance fraud with speed and efficiency.

181 4. Establishing a program that provides grants to state and
182 local agencies that develop and implement effective Medicaid and
183 public assistance fraud prevention and investigative programs,
184 which are determined by the coordinating council to
185 significantly contribute to achieving the state's goal of
186 eliminating Medicaid and public assistance fraud. The grant
187 program may also provide startup funding for new initiatives by
188 local and state law enforcement or administrative agencies to
189 combat Medicaid and public assistance fraud.

190 5. Developing and promoting crime prevention services and
191 educational programs that serve the public, including, but not
192 limited to, a well-publicized rewards program for the
193 apprehension and conviction of criminals who perpetrate Medicaid
194 and public assistance fraud.

195 6. Providing grants, contingent upon appropriation, for
196 multiagency or state and local Medicaid and public assistance
197 fraud efforts, which would include, but are not limited to:

198 a. Providing for a Medicaid and public assistance fraud
199 prosecutor in the Office of the Statewide Prosecutor.

200 b. Providing assistance to state attorneys for support
201 services or equipment, or for the hiring of assistant state
202 attorneys, as needed, to prosecute Medicaid and public
203 assistance fraud cases.

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204 c. Providing assistance to judges for support services or
205 for the hiring of senior judges, as needed, so that Medicaid and
206 public assistance fraud cases can be heard expeditiously.

207 (b) The coordinating council shall receive periodic reports
208 from relevant state agencies, law enforcement officers,
209 investigators, prosecutors, and coordinating teams which relate
210 to Medicaid and public assistance criminal and civil
211 investigations. Such reports may include discussions regarding
212 significant factors and trends relevant to a statewide Medicaid
213 and public assistance fraud strategy.

214 (7) REPORTS.—The coordinating council shall annually
215 prepare and submit a report on its activities and
216 recommendations, by October 1, to the Governor, the President of
217 the Senate, the Speaker of the House of Representatives, and the
218 chairs of the Senate and House committees that have substantive
219 jurisdiction over Medicaid and public assistance fraud.

220 Section 2. Section 624.351, Florida Statutes, is created to
221 read:

222 624.351 Interagency agreements to detect and deter Medicaid
223 and public assistance fraud.—

224 (1) The Chief Financial Officer shall prepare model
225 interagency agreements for the prevention, investigation, and
226 prosecution of Medicaid and public assistance fraud to be known
227 as "Attack Fraud" agreements. Parties to such agreements may
228 include any agency that is headed by a Cabinet officer, the
229 Governor and Cabinet, a collegial body, or any federal, state,
230 or local law enforcement agency.

231 (2) The agreements must include, but are not limited to:

232 (a) Establishing the agreement's purpose, mission,

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233 authority, organizational structure, procedures, supervision,
234 operations, deputations, funding, expenditures, property and
235 equipment, reports and records, assets and forfeitures, media
236 policy, liability, and duration.

237 (b) Requiring that parties to an agreement have appropriate
238 powers and authority relative to the purpose and mission of the
239 agreement.

240 Section 3. Section 16.59, Florida Statutes, is amended to
241 read:

242 16.59 Medicaid fraud control.—The Medicaid Fraud Control
243 Unit ~~There~~ is created in the Department of Legal Affairs to ~~the~~
244 ~~Medicaid Fraud Control Unit, which may~~ investigate all
245 violations of s. 409.920 and any criminal violations discovered
246 during the course of those investigations. The Medicaid Fraud
247 Control Unit may refer any criminal violation so uncovered to
248 the appropriate prosecuting authority. The offices of the
249 Medicaid Fraud Control Unit, and ~~the offices of the~~ Agency for
250 Health Care Administration Medicaid program integrity program,
251 and the Divisions of Insurance Fraud and Public Assistance Fraud
252 within the Department of Financial Services shall, to the extent
253 possible, be collocated; however, positions dedicated to
254 Medicaid managed care fraud within the Medicaid Fraud Control
255 Unit shall be collocated with the Division of Insurance Fraud.
256 The Agency for Health Care Administration, ~~and~~ the Department of
257 Legal Affairs, and the Divisions of Insurance Fraud and Public
258 Assistance Fraud within the Department of Financial Services
259 shall conduct joint training and other joint activities designed
260 to increase communication and coordination in recovering
261 overpayments.

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262 Section 4. Paragraph (o) is added to subsection (2) of
263 section 20.121, Florida Statutes, to read:

264 20.121 Department of Financial Services.—There is created a
265 Department of Financial Services.

266 (2) DIVISIONS.—The Department of Financial Services shall
267 consist of the following divisions:

268 (o) The Division of Public Assistance Fraud.

269 Section 5. Paragraph (b) of subsection (7) of section
270 411.01, Florida Statutes, is amended to read:

271 411.01 School readiness programs; early learning
272 coalitions.—

273 (7) PARENTAL CHOICE.—

274 (b) If it is determined that a provider has provided any
275 cash to the beneficiary in return for receiving the purchase
276 order, the early learning coalition or its fiscal agent shall
277 refer the matter to the Department of Financial Services
278 pursuant to s. 414.411 ~~Division of Public Assistance Fraud~~ for
279 investigation.

280 Section 6. Subsection (2) of section 414.33, Florida
281 Statutes, is amended to read:

282 414.33 Violations of food stamp program.—

283 (2) In addition, the department shall establish procedures
284 for referring ~~to the Department of Law Enforcement~~ any case that
285 involves a suspected violation of federal or state law or rules
286 governing the administration of the food stamp program to the
287 Department of Financial Services pursuant to s. 414.411.

288 Section 7. Subsection (9) of section 414.39, Florida
289 Statutes, is amended to read:

290 414.39 Fraud.—

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291 (9) All records relating to investigations of public
292 assistance fraud in the custody of the department and the Agency
293 for Health Care Administration are available for examination by
294 the Department of Financial Services ~~Law Enforcement~~ pursuant to
295 s. 414.411 ~~943.401~~ and are admissible into evidence in
296 proceedings brought under this section as business records
297 within the meaning of s. 90.803(6).

298 Section 8. Section 943.401, Florida Statutes, is
299 transferred, renumbered as section 414.411, Florida Statutes,
300 and amended to read:

301 414.411 ~~943.401~~ Public assistance fraud.—

302 (1)~~(a)~~ The Department of Financial Services ~~Law Enforcement~~
303 shall investigate all public assistance provided to residents of
304 the state or provided to others by the state. In the course of
305 such investigation the department ~~of Law Enforcement~~ shall
306 examine all records, including electronic benefits transfer
307 records and make inquiry of all persons who may have knowledge
308 as to any irregularity incidental to the disbursement of public
309 moneys, food stamps, or other items or benefits authorizations
310 to recipients.

311 ~~(b)~~ All public assistance recipients, as a condition
312 precedent to qualification for public assistance ~~received and as~~
313 ~~defined under the provisions of~~ chapter 409, chapter 411, or
314 this chapter 414, must ~~shall~~ first give in writing, to the
315 Agency for Health Care Administration, the Department of Health,
316 the Agency for Workforce Innovation, and the Department of
317 Children and Family Services, as appropriate, and to the
318 Department of Financial Services ~~Law Enforcement~~, consent to
319 make inquiry of past or present employers and records, financial

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320 or otherwise.

321 (2) In the conduct of such investigation the Department of
322 Financial Services ~~Law Enforcement~~ may employ persons having
323 such qualifications as are useful in the performance of this
324 duty.

325 (3) The results of such investigation shall be reported by
326 the Department of Financial Services ~~Law Enforcement~~ to the
327 appropriate legislative committees, the Agency for Health Care
328 Administration, the Department of Health, the Agency for
329 Workforce Innovation, and the Department of Children and Family
330 Services, and to such others as the department ~~of Law~~
331 ~~Enforcement~~ may determine.

332 (4) The Department of Health and the Department of Children
333 and Family Services shall report to the Department of Financial
334 Services ~~Law Enforcement~~ the final disposition of all cases
335 wherein action has been taken pursuant to s. 414.39, based upon
336 information furnished by the Department of Financial Services
337 ~~Law Enforcement~~.

338 (5) All lawful fees and expenses of officers and witnesses,
339 expenses incident to taking testimony and transcripts of
340 testimony and proceedings are a proper charge to the Department
341 of Financial Services ~~Law Enforcement~~.

342 (6) The provisions of this section shall be liberally
343 construed in order to carry out effectively the purposes of this
344 section in the interest of protecting public moneys and other
345 public property.

346 Section 9. Medicaid claims adjudication project.—The Agency
347 for Health Care Administration shall issue a competitive
348 procurement pursuant to chapter 287, Florida Statutes, with a

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349 third-party vendor, at no cost to the state, to provide a real-
350 time, front-end database to augment the Medicaid fiscal agent
351 program edits and claims adjudication process. The vendor shall
352 provide an interface with the Medicaid fiscal agent to decrease
353 inaccurate payment to Medicaid providers and improve the overall
354 efficiency of the Medicaid claims-processing system.

355 Section 10. All powers, duties, functions, records,
356 offices, personnel, property, pending issues and existing
357 contracts, administrative authority, administrative rules, and
358 unexpended balances of appropriations, allocations, and other
359 funds relating to public assistance fraud in the Department of
360 Law Enforcement are transferred by a type two transfer, as
361 defined in s. 20.06(2), Florida Statutes, to the Division of
362 Public Assistance Fraud in the Department of Financial Services.

363 Section 11. This act shall take effect January 1, 2011.