

By the Committees on Health Regulation; and Banking and Insurance; and Senator Negrón

588-03754-10

20108c2

1 A bill to be entitled
2 An act relating to Medicaid and public assistance
3 fraud; creating s. 624.35, F.S.; providing a short
4 title; creating s. 624.351, F.S.; providing
5 legislative intent; establishing the Medicaid and
6 Public Assistance Fraud Strike Force within the
7 Department of Financial Services to coordinate efforts
8 to eliminate Medicaid and public assistance fraud;
9 providing for membership; providing for meetings;
10 specifying duties; requiring an annual report to the
11 Legislature and Governor; creating s. 624.352, F.S.;
12 directing the Chief Financial Officer to prepare model
13 interagency agreements that address Medicaid and
14 public assistance fraud; specifying which agencies can
15 be a party to such agreements; amending s. 16.59,
16 F.S.; conforming provisions to changes made by the
17 act; requiring the Divisions of Insurance Fraud and
18 Public Assistance Fraud in the Department of Financial
19 Services to be collocated with the Medicaid Fraud
20 Control Unit if possible; requiring positions
21 dedicated to Medicaid managed care fraud to be
22 collocated with the Division of Insurance Fraud;
23 amending s. 20.121, F.S.; establishing the Division of
24 Public Assistance Fraud within the Department of
25 Financial Services; amending ss. 411.01, 414.33, and
26 414.39, F.S.; conforming provisions to changes made by
27 the act; transferring, renumbering, and amending s.
28 943.401, F.S.; directing the Department of Financial
29 Services rather than the Department of Law Enforcement

588-03754-10

20108c2

30 to investigate public assistance fraud; directing the
31 Auditor General and the Office of Program Policy
32 Analysis and Government Accountability to review the
33 Medicaid fraud and abuse processes in the Agency for
34 Health Care Administration; requiring a report to the
35 Legislature and Governor by a certain date;
36 establishing the Medicaid claims adjudication project
37 in the Agency for Health Care Administration to
38 decrease the incidence of inaccurate payments and to
39 improve the efficiency of the Medicaid claims
40 processing system; transferring activities relating to
41 public assistance fraud from the Department of Law
42 Enforcement to the Division of Public Assistance Fraud
43 in the Department of Financial Services by a type two
44 transfer; providing effective dates.

45
46 WHEREAS, Florida's Medicaid program is one of the largest
47 in the country, serving approximately 2.7 million persons each
48 month. The program provides health care benefits to families and
49 individuals below certain income and resource levels. For the
50 2008-2009 fiscal year, the Legislature appropriated \$18.81
51 billion to operate the Medicaid program which is funded from
52 general revenue, trust funds that include federal matching
53 funds, and other state funds, and

54 WHEREAS, Medicaid fraud in Florida is epidemic, far-
55 reaching, and costs the state and the Federal Government
56 billions of dollars annually. Medicaid fraud not only drives up
57 the cost of health care and reduces the availability of funds to
58 support needed services, but undermines the long-term solvency

588-03754-10

20108c2

59 of both health care providers and the state's Medicaid program,
60 and

61 WHEREAS, the state's public assistance programs serve
62 approximately 1.8 million Floridians each month by providing
63 benefits for food, cash assistance for needy families, home
64 health care for disabled adults, and grants to individuals and
65 communities affected by natural disasters. For the 2008-2009
66 fiscal year, the Legislature appropriated \$626 million to
67 operate public assistance programs, and

68 WHEREAS, public assistance fraud costs taxpayers millions
69 of dollars annually, which significantly and negatively impacts
70 the various assistance programs by taking dollars that could be
71 used to provide services for those people who have a legitimate
72 need for assistance, and

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

82 WHEREAS, ridding the system of perpetrators who prey on the
83 state's Medicaid and public assistance programs helps reduce the
84 state's skyrocketing costs, makes more funds available for
85 essential services, and improves the quality of care and the
86 health status of our residents, and

87 WHEREAS, aggressive and comprehensive measures are needed

588-03754-10

20108c2

88 at the state level to investigate and prosecute Medicaid and
89 public assistance fraud and to recover dollars stolen from these
90 programs, and

91 WHEREAS, new statewide initiatives and coordinated efforts
92 are necessary to focus resources in order to aid law enforcement
93 and investigative agencies in detecting and deterring this type
94 of fraudulent activity, NOW, THEREFORE,

95

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

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98 Section 1. Section 624.35, Florida Statutes, is created to
99 read:

100 624.35 Short title.—Sections 624.35-624.352 may be cited as
101 the “Medicaid and Public Assistance Fraud Strike Force Act.”

102 Section 2. Section 624.351, Florida Statutes, is created to
103 read:

104 624.351 Medicaid and Public Assistance Fraud Strike Force.—

105 (1) LEGISLATIVE FINDINGS.—The Legislature finds that there
106 is a need to develop and implement a statewide strategy to
107 coordinate state and local agencies, law enforcement entities,
108 and investigative units in order to increase the effectiveness
109 of programs and initiatives dealing with the prevention,
110 detection, and prosecution of Medicaid and public assistance
111 fraud.

112 (2) ESTABLISHMENT.—The Medicaid and Public Assistance Fraud
113 Strike Force is created within the department to oversee and
114 coordinate state and local efforts to eliminate Medicaid and
115 public assistance fraud and to recover state and federal funds.
116 The strike force shall serve in an advisory capacity and provide

588-03754-10

20108c2

117 recommendations and policy alternatives to the Chief Financial
118 Officer.

119 (3) MEMBERSHIP.—The strike force shall consist of the
120 following 11 members who may not designate anyone to serve in
121 their place:

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

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

124 (c) The executive director of the Department of Law
125 Enforcement.

126 (d) The Secretary of Health Care Administration.

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

128 (f) The State Surgeon General.

129 (g) Five members appointed by the Chief Financial Officer,
130 consisting of two sheriffs, two chiefs of police, and one state
131 attorney. When making these appointments, the Chief Financial
132 Officer shall consider representation by geography, population,
133 ethnicity, and other relevant factors in order to ensure that
134 the membership of the strike force is representative of the
135 state as a whole.

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

137 (a) The five members appointed by the Chief Financial
138 Officer will serve 4-year terms; however, for the purpose of
139 providing staggered terms, of the initial appointments, two
140 members will be appointed to a 2-year term, two members will be
141 appointed to a 3-year term, and one member will be appointed to
142 a 4-year term. The remaining members are standing members of the
143 strike force and may not serve beyond the time he or she holds
144 the position that was the basis for strike force membership. A
145 vacancy shall be filled in the same manner as the original

588-03754-10

20108c2

146 appointment but only for the unexpired term.

147 (b) The Legislature finds that the strike force serves a
148 legitimate state, county, and municipal purpose and that service
149 on the strike force is consistent with a member's principal
150 service in a public office or employment. Therefore membership
151 on the strike force does not disqualify a member from holding
152 any other public office or from being employed by a public
153 entity, except that a member of the Legislature may not serve on
154 the strike force.

155 (c) Members of the strike force shall serve without
156 compensation, but are entitled to reimbursement for per diem and
157 travel expenses pursuant to s. 112.061. Reimbursements may be
158 paid from appropriations provided to the department by the
159 Legislature for the purposes of this section.

160 (d) The Chief Financial Officer shall appoint a chief of
161 staff for the strike force who must have experience, education,
162 and expertise in the fields of law, prosecution, or fraud
163 investigations and shall serve at the pleasure of the Chief
164 Financial Officer. The department shall provide the strike force
165 with staff necessary to assist the strike force in the
166 performance of its duties.

167 (5) MEETINGS.—The strike force shall hold its
168 organizational session by March 1, 2011. Thereafter, the strike
169 force shall meet at least four times per year. Additional
170 meetings may be held if the chair determines that extraordinary
171 circumstances require an additional meeting. Members may appear
172 by electronic means. A majority of the members of the strike
173 force constitutes a quorum.

174 (6) STRIKE FORCE DUTIES.—The strike force shall provide

588-03754-10

20108c2

175 advice and make recommendations, as necessary, to the Chief
176 Financial Officer.

177 (a) The strike force may advise the Chief Financial Officer
178 on initiatives that include, but are not limited to:

179 1. Conducting a census of local, state, and federal efforts
180 to address Medicaid and public assistance fraud in this state,
181 including fraud detection, prevention, and prosecution, in order
182 to discern overlapping missions, maximize existing resources,
183 and strengthen current programs.

184 2. Developing a strategic plan for coordinating and
185 targeting state and local resources for preventing and
186 prosecuting Medicaid and public assistance fraud. The plan must
187 identify methods to enhance multiagency efforts that contribute
188 to achieving the state's goal of eliminating Medicaid and public
189 assistance fraud.

190 3. Identifying methods to implement innovative technology
191 and data sharing in order to detect and analyze Medicaid and
192 public assistance fraud with speed and efficiency.

193 4. Establishing a program to provide grants to state and
194 local agencies that develop and implement effective Medicaid and
195 public assistance fraud prevention, detection, and investigation
196 programs, which are evaluated by the strike force and ranked by
197 their potential to contribute to achieving the state's goal of
198 eliminating Medicaid and public assistance fraud. The grant
199 program may also provide startup funding for new initiatives by
200 local and state law enforcement or administrative agencies to
201 combat Medicaid and public assistance fraud.

202 5. Developing and promoting crime prevention services and
203 educational programs that serve the public, including, but not

588-03754-10

20108c2

204 limited to, a well-publicized rewards program for the
205 apprehension and conviction of criminals who perpetrate Medicaid
206 and public assistance fraud.

207 6. Providing grants, contingent upon appropriation, for
208 multiagency or state and local Medicaid and public assistance
209 fraud efforts, which include, but are not limited to:

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

212 b. Providing assistance to state attorneys for support
213 services or equipment, or for the hiring of assistant state
214 attorneys, as needed, to prosecute Medicaid and public
215 assistance fraud cases.

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

219 (b) The strike force shall receive periodic reports from
220 state agencies, law enforcement officers, investigators,
221 prosecutors, and coordinating teams regarding Medicaid and
222 public assistance criminal and civil investigations. Such
223 reports may include discussions regarding significant factors
224 and trends relevant to a statewide Medicaid and public
225 assistance fraud strategy.

226 (7) REPORTS.—The strike force shall annually prepare and
227 submit a report on its activities and recommendations, by
228 October 1, to the President of the Senate, the Speaker of the
229 House of Representatives, the Governor, and the chairs of the
230 House of Representatives and Senate committees that have
231 substantive jurisdiction over Medicaid and public assistance
232 fraud.

588-03754-10

20108c2

233 Section 3. Section 624.352, Florida Statutes, is created to
234 read:

235 624.352 Interagency agreements to detect and deter Medicaid
236 and public assistance fraud.—

237 (1) The Chief Financial Officer shall prepare model
238 interagency agreements for the coordination of prevention,
239 investigation, and prosecution of Medicaid and public assistance
240 fraud to be known as "Strike Force" agreements. Parties to such
241 agreements may include any agency that is headed by a Cabinet
242 officer, the Governor, the Governor and Cabinet, a collegial
243 body, or any federal, state, or local law enforcement agency.

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

245 (a) Establishing the agreement's purpose, mission,
246 authority, organizational structure, procedures, supervision,
247 operations, deputations, funding, expenditures, property and
248 equipment, reports and records, assets and forfeitures, media
249 policy, liability, and duration.

250 (b) Requiring that parties to an agreement have appropriate
251 powers and authority relative to the purpose and mission of the
252 agreement.

253 Section 4. Section 16.59, Florida Statutes, is amended to
254 read:

255 16.59 Medicaid fraud control.—The Medicaid Fraud Control
256 Unit ~~There~~ is created in the Department of Legal Affairs to the
257 ~~Medicaid Fraud Control Unit, which may~~ investigate all
258 violations of s. 409.920 and any criminal violations discovered
259 during the course of those investigations. The Medicaid Fraud
260 Control Unit may refer any criminal violation so uncovered to
261 the appropriate prosecuting authority. The offices of the

588-03754-10

20108c2

262 Medicaid Fraud Control Unit, ~~and the offices of the~~ Agency for
263 Health Care Administration Medicaid program integrity program,
264 and the Divisions of Insurance Fraud and Public Assistance Fraud
265 within the Department of Financial Services shall, to the extent
266 possible, be collocated; however, positions dedicated to
267 Medicaid managed care fraud within the Medicaid Fraud Control
268 Unit shall be collocated with the Division of Insurance Fraud.
269 The Agency for Health Care Administration, ~~and~~ the Department of
270 Legal Affairs, and the Divisions of Insurance Fraud and Public
271 Assistance Fraud within the Department of Financial Services
272 shall conduct joint training and other joint activities designed
273 to increase communication and coordination in recovering
274 overpayments.

275 Section 5. Paragraph (o) is added to subsection (2) of
276 section 20.121, Florida Statutes, to read:

277 20.121 Department of Financial Services.—There is created a
278 Department of Financial Services.

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

281 (o) The Division of Public Assistance Fraud.

282 Section 6. Paragraph (b) of subsection (7) of section
283 411.01, Florida Statutes, is amended to read:

284 411.01 School readiness programs; early learning
285 coalitions.—

286 (7) PARENTAL CHOICE.—

287 (b) If it is determined that a provider has provided any
288 cash to the beneficiary in return for receiving the purchase
289 order, the early learning coalition or its fiscal agent shall
290 refer the matter to the Department of Financial Services

588-03754-10

20108c2

291 pursuant to s. 414.411 ~~Division of Public Assistance Fraud~~ for
292 investigation.

293 Section 7. Subsection (2) of section 414.33, Florida
294 Statutes, is amended to read:

295 414.33 Violations of food stamp program.—

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

301 Section 8. Subsection (9) of section 414.39, Florida
302 Statutes, is amended to read:

303 414.39 Fraud.—

304 (9) All records relating to investigations of public
305 assistance fraud in the custody of the department and the Agency
306 for Health Care Administration are available for examination by
307 the Department of Financial Services ~~Law Enforcement~~ pursuant to
308 s. 414.411 ~~943.401~~ and are admissible into evidence in
309 proceedings brought under this section as business records
310 within the meaning of s. 90.803(6).

311 Section 9. Section 943.401, Florida Statutes, is
312 transferred, renumbered as section 414.411, Florida Statutes,
313 and amended to read:

314 414.411 ~~943.401~~ Public assistance fraud.—

315 (1)~~(a)~~ The Department of Financial Services ~~Law Enforcement~~
316 shall investigate all public assistance provided to residents of
317 the state or provided to others by the state. In the course of
318 such investigation the department ~~of Law Enforcement~~ shall
319 examine all records, including electronic benefits transfer

588-03754-10

20108c2

320 records and make inquiry of all persons who may have knowledge
321 as to any irregularity incidental to the disbursement of public
322 moneys, food stamps, or other items or benefits authorizations
323 to recipients.

324 ~~(b)~~ All public assistance recipients, as a condition
325 precedent to qualification for public assistance ~~received and as~~
326 ~~defined under the provisions of~~ chapter 409, chapter 411, or
327 this chapter 414, must ~~shall~~ first give in writing, to the
328 Agency for Health Care Administration, the Department of Health,
329 the Agency for Workforce Innovation, and the Department of
330 Children and Family Services, as appropriate, and to the
331 Department of Financial Services ~~Law Enforcement~~, consent to
332 make inquiry of past or present employers and records, financial
333 or otherwise.

334 (2) In the conduct of such investigation the Department of
335 Financial Services ~~Law Enforcement~~ may employ persons having
336 such qualifications as are useful in the performance of this
337 duty.

338 (3) The results of such investigation shall be reported by
339 the Department of Financial Services ~~Law Enforcement~~ to the
340 appropriate legislative committees, the Agency for Health Care
341 Administration, the Department of Health, the Agency for
342 Workforce Innovation, and the Department of Children and Family
343 Services, and to such others as the department ~~of Law~~
344 ~~Enforcement~~ may determine.

345 (4) The Department of Health and the Department of Children
346 and Family Services shall report to the Department of Financial
347 Services ~~Law Enforcement~~ the final disposition of all cases
348 wherein action has been taken pursuant to s. 414.39, based upon

588-03754-10

20108c2

349 information furnished by the Department of Financial Services
350 ~~Law Enforcement~~.

351 (5) All lawful fees and expenses of officers and witnesses,
352 expenses incident to taking testimony and transcripts of
353 testimony and proceedings are a proper charge to the Department
354 of Financial Services ~~Law Enforcement~~.

355 (6) The provisions of this section shall be liberally
356 construed in order to carry out effectively the purposes of this
357 section in the interest of protecting public moneys and other
358 public property.

359 Section 10. Review of the Medicaid fraud and abuse
360 processes.—

361 (1) The Auditor General and the Office of Program Policy
362 Analysis and Government Accountability shall review and evaluate
363 the Agency for Health Care Administration's Medicaid fraud and
364 abuse systems, including the Medicaid program integrity program.
365 The reviewers may access Medicaid-related information and data
366 from the Attorney General's Medicaid Fraud Control Unit, the
367 Department of Health, the Department of Elderly Affairs, the
368 Agency for Persons with Disabilities, and the Department of
369 Children and Family Services, as necessary, to conduct the
370 review. The review must include, but is not limited to:

371 (a) An evaluation of current Medicaid policies and the
372 Medicaid fiscal agent;

373 (b) An analysis of the Medicaid fraud and abuse prevention
374 and detection processes, including agency contracts, Medicaid
375 databases, and internal control risk assessments;

376 (c) A comprehensive evaluation of the effectiveness of the
377 current laws, rules, and contractual requirements that govern

588-03754-10

20108c2

378 Medicaid managed care entities;

379 (d) An evaluation of the agency's Medicaid managed care
380 oversight processes;

381 (e) Recommendations to improve the Medicaid claims
382 adjudication process, to increase the overall efficiency of the
383 Medicaid program, and to reduce Medicaid overpayments; and

384 (f) Operational and legislative recommendations to improve
385 the prevention and detection of fraud and abuse in the Medicaid
386 managed care program.

387 (2) The Auditor General's Office and the Office of Program
388 Policy Analysis and Government Accountability may contract with
389 technical consultants to assist in the performance of the
390 review. The Auditor General and the Office of Program Policy
391 Analysis and Government Accountability shall report to the
392 President of the Senate, the Speaker of the House of
393 Representatives, and the Governor by December 1, 2011.

394 Section 11. Medicaid claims adjudication project.—The
395 Agency for Health Care Administration shall issue a competitive
396 procurement pursuant to chapter 287, Florida Statutes, with a
397 third-party vendor, at no cost to the state, to provide a real-
398 time, front-end database to augment the Medicaid fiscal agent
399 program edits and claims adjudication process. The vendor shall
400 provide an interface with the Medicaid fiscal agent to decrease
401 inaccurate payment to Medicaid providers and improve the overall
402 efficiency of the Medicaid claims-processing system.

403 Section 12. All powers, duties, functions, records,
404 offices, personnel, property, pending issues and existing
405 contracts, administrative authority, administrative rules, and
406 unexpended balances of appropriations, allocations, and other

588-03754-10

20108c2

407 funds relating to public assistance fraud in the Department of
408 Law Enforcement are transferred by a type two transfer, as
409 defined in s. 20.06(2), Florida Statutes, to the Division of
410 Public Assistance Fraud in the Department of Financial Services.

411 Section 13. Except for section 10 of this act and this
412 section, which shall take effect July 1, 2010, this act shall
413 take effect January 1, 2011.