

By Senator Grant

13-1165-99

1                                   A bill to be entitled  
2           An act relating to the Medicaid program;  
3           amending s. 409.910, F.S.; requiring providers  
4           to use the standard tape or electronic billing  
5           format adopted by the Agency for Health Care  
6           Administration, or to accept paper billing  
7           submitted by the agency; creating s. 409.9101,  
8           F.S.; creating the "Medicaid Estate Recovery  
9           Act"; providing legislative intent; allowing  
10          the agency to recover amounts expended for  
11          Medicaid assistance from the estate of a  
12          deceased recipient; providing exceptions;  
13          providing criteria to be used by the agency in  
14          granting waivers on the grounds of undue  
15          hardship; providing procedures and guidelines;  
16          providing restrictions on the computation of  
17          attorney's fees; amending s. 409.913, F.S.;  
18          allowing the agency to withhold Medicaid  
19          payments in whole or in part when there is  
20          evidence of fraud, abuse, or crime; amending s.  
21          733.212, F.S.; providing that Medicaid is a  
22          reasonably ascertainable creditor of a decedent  
23          in specified circumstances; providing an  
24          effective date.

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

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28           Section 1. Present subsection (21) of section 409.910,  
29 Florida Statutes, 1998 Supplement, is redesignated as  
30 subsection (22), and a new subsection (21) is added to that  
31 section, to read:

1           409.910 Responsibility for payments on behalf of  
2 Medicaid-eligible persons when other parties are liable.--

3           (21) Any entity that provides health insurance as  
4 defined in s. 624.603 or any health maintenance organization  
5 as defined in chapter 641 which requires billing to be done by  
6 tape or electronic format must, at its own expense, develop  
7 the means to use the standard tape or electronic billing  
8 format adopted by the agency. Any such entity that cannot use  
9 the standard tape or electronic billing format adopted by the  
10 agency must accept paper claims in any format adopted by the  
11 agency, in lieu of tape or electronic billing.

12           Section 2. Section 409.9101, Florida Statutes, is  
13 created to read:

14           409.9101 Recovery for payments made on behalf of  
15 Medicaid recipients.--

16           (1) This section may be cited as the "Medicaid Estate  
17 Recovery Act."

18           (2) It is the intent of the Legislature to supplement  
19 Medicaid funds which are used to provide medical services to  
20 eligible persons. Medicaid estate recovery will generally be  
21 accomplished through the filing of claims on the estates of  
22 deceased Medicaid recipients. Such recoveries will be made  
23 pursuant to federal authority set forth in section 13612 of  
24 the Omnibus Reconciliation Act of 1993, which amends section  
25 1917(b)(1) of 42 U.S.C. 1396p(b)(1).

26           (3) Pursuant to s. 733.212(4)(a), the personal  
27 representative for the estate of a deceased Medicaid recipient  
28 shall serve Medicaid with a copy of the notice of  
29 administration within 3 months after the first publication of  
30 the notice unless Medicaid has already filed a claim under  
31 this section.

1       (4) The acceptance of public medical assistance as  
2 defined by Title XIX (Medicaid) of the Social Security Act,  
3 including mandatory and optional supplemental payments under  
4 the Social Security Act, creates a claim and interest, as  
5 defined in s. 731.201(4) and (21), in favor of the agency. The  
6 allowable amount of the claim equals the total amount paid to  
7 or for the benefit of the recipient for medical assistance on  
8 behalf of the recipient after the recipient reaches age 55.  
9 There is no claim under this section against the estate of any  
10 Medicaid recipient who has not reached age 55.

11       (5) The agency may amend the amount of a claim on the  
12 basis of medical claims submitted by providers subsequent to  
13 the initial calculation of the amount of the claim.

14       (6) There is a rebuttable presumption, as set forth in  
15 s. 90.302(2), that the amount of the agency's claim equals the  
16 current total allowable amount of Medicaid payments as denoted  
17 in the agency's provider payment processing system at the time  
18 the agency's claim or amendment is filed.

19       (7) The agency's claim under this section constitutes  
20 a class 3 claim under s. 733.707(1)(c) as provided in s.  
21 414.28(1).

22       (8) The claim created under this section is  
23 unenforceable if the recipient is survived by:

24       (a) A spouse;

25       (b) A child who is under the age of 21 years; or

26       (c) A child who is living in the recipient's home and  
27 who is blind or permanently and totally disabled pursuant to  
28 the eligibility requirements of Title XIX of the Social  
29 Security Act.

30       (9) In accordance with s. 4, Art. X of the State  
31 Constitution, a claim under this section is unenforceable

1 against any property that is determined to be the homestead of  
2 the deceased Medicaid recipient.

3 (10) The state may not recover from an estate if doing  
4 so would cause undue hardship for the qualified heirs as  
5 defined in s. 731.201(18). An heir or the personal  
6 representative of an estate may request that the agency waive  
7 recovery of any or all of the debt if recovery would create an  
8 undue hardship. An undue hardship does not exist solely  
9 because recovery will prevent any heirs from receiving an  
10 anticipated inheritance. In reviewing a request for a waiver  
11 based on a claim of undue hardship, the agency must consider  
12 whether:

13 (a) An heir currently resides in the decedent's  
14 residence and:

- 15 1. Resided there at the time of the decedent's death;  
16 2. Has made the residence his or her primary residence  
17 for the 12 months immediately preceding the decedent's death;  
18 and  
19 3. Owns no other residence.

20 (b) Without such a waiver, the heir or heirs would be  
21 deprived of food, clothing, shelter, or medical care necessary  
22 for the maintenance of life or health.

23 (c) An heir who is the deceased recipient's son,  
24 daughter, or sibling resided in the recipient's home for at  
25 least 1 year preceding the recipient's death and can document  
26 that he or she provided the recipient with full-time care that  
27 delayed the recipient's entry into a nursing home.

28 (d) The cost involved in the sale of the property  
29 would be equal to or greater than the value of the property.

30 (11) In some Medicaid estate cases, the deceased  
31 recipient's assets include a settlement of a claim against a

1 liable third party. The agency's claim under s. 409.910 must  
2 be satisfied before the settlement proceeds are included as  
3 estate assets. The remaining settlement proceeds must be  
4 included in the estate and available to satisfy the agency's  
5 estate recovery claim. Medicaid's share of these assets must  
6 be calculated as follows:

7 (a) The total settlement less the amount paid to  
8 Medicaid under s. 409.910 equals the net settlement.

9 (b) After deducting from the net settlement the  
10 attorney's fees and taxable costs, as defined in the Florida  
11 Rules of Civil Procedure, which relate to the third-party  
12 action and not to the administration of the estate, half of  
13 the remaining recovery must be paid to the agency up to the  
14 amount of the outstanding Medicaid estate recovery lien.

15 (c) For the purposes of calculating the agency's  
16 recovery of medical assistance benefits paid, the attorney's  
17 fees for an attorney retained by the recipient or the  
18 recipient's representative must be calculated at 25 percent of  
19 the judgment, award, or settlement.

20 (12) If there are no liquid assets to satisfy a  
21 Medicaid claim and there is nonhomestead real property that  
22 can be sold for a sum that exceeds the costs of the sale, the  
23 property must be sold to satisfy the Medicaid claim. The title  
24 to real property may not be transferred to the agency.

25 (13) The agency shall adopt rules to administer this  
26 section and enforce federal requirements.

27 Section 3. Paragraph (a) of subsection (24) of section  
28 409.913, Florida Statutes, is amended to read:

29 409.913 Oversight of the integrity of the Medicaid  
30 program.--The agency shall operate a program to oversee the  
31 activities of Florida Medicaid recipients, and providers and

1 their representatives, to ensure that fraudulent and abusive  
2 behavior and neglect of recipients occur to the minimum extent  
3 possible, and to recover overpayments and impose sanctions as  
4 appropriate.

5 (24)(a) The agency may withhold Medicaid payments, in  
6 whole or in part, to a provider, upon receipt of reliable  
7 evidence that the circumstances giving rise to the need for  
8 withholding payments involve fraud or abuse under the Medicaid  
9 program or a crime committed while rendering goods or services  
10 to Medicaid recipients up to the amount of the overpayment as  
11 determined by final agency audit report, pending completion of  
12 legal proceedings ~~under this section. If the agency withholds~~  
13 ~~payments under this section, the Medicaid payment may not be~~  
14 ~~reduced by more than 10 percent.~~ If it ~~is~~ has been determined  
15 that ~~fraud, abuse, or crime did not occur~~ an overpayment has  
16 not occurred, the payments withheld must be paid to the  
17 provider within 60 days with interest at the rate of 10  
18 percent a year. ~~If the amount of the alleged overpayment~~  
19 ~~exceeds \$75,000, the agency may reduce the Medicaid payments~~  
20 ~~by up to \$25,000 per month.~~

21 Section 4. Paragraph (a) of subsection (4) of section  
22 733.212, Florida Statutes, is amended to read:

23 733.212 Notice of administration; filing of objections  
24 and claims.--

25 (4)(a) The personal representative shall promptly make  
26 a diligent search to determine the names and addresses of  
27 creditors of the decedent who are reasonably ascertainable and  
28 shall serve on those creditors a copy of the notice within 3  
29 months after the first publication of the notice. Medicaid is  
30 considered a reasonably ascertainable creditor of a decedent  
31 who had received Medicaid assistance for medical care after

1 the age of 55. Impracticable and extended searches are not  
2 required. Service is not required on any creditor who has  
3 filed a claim as provided in this part; a creditor whose claim  
4 has been paid in full; or a creditor whose claim is listed in  
5 a personal representative's timely proof of claim if the  
6 personal representative notified the creditor of that listing.

7 Section 5. This act shall take effect July 1, 1999.

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10 SENATE SUMMARY

11 Relates to Medicaid. Requires providers to use the  
12 standard tape or electronic billing format adopted by the  
13 Agency for Health Care Administration, or to accept paper  
14 billing as submitted by the agency. Creates the "Medicaid  
15 Estate Recovery Act." Provides legislative intent. Allows  
16 the agency to recover amounts expended for Medicaid  
17 assistance from the estate of a deceased recipient, with  
18 exceptions. Provides criteria to be used by the agency in  
19 granting waivers on the grounds of undue hardship.  
20 Provides procedures and guidelines. Provides restrictions  
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24 that Medicaid is a reasonably ascertainable creditor of a  
25 decedent in specified circumstances.  
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