

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 1336

SPONSOR: Senator Diaz-Balart

SUBJECT: Medicaid Eligibility Determination

DATE: February 20, 2000

REVISED: 03/07/00

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 Amendment</u>
2.	<u></u>	<u></u>	<u>FP</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>

I. Summary:

Senate Bill 1336 amends the definitions for “applicant,” “Medicaid program,” and “Medicaid recipient” to provide for the following:

- ◆ Changing the state agency to which the application for Medicaid is submitted from the Agency for Health Care Administration to the Department of Children and Family Services.
- ◆ Adding the Social Security Administration as an entity to which an application for Medicaid can be submitted for those persons applying for Supplemental Security Income.
- ◆ Adding individuals determined eligible for Supplemental Security Income by the Social Security Administration as individuals who are eligible for Medicaid.

Inconsistent reference to the agency responsible for Medicaid eligibility determination is corrected, through both the substitution of Department of Children and Family Services for the Agency for Health Care Administration in reference to this function and added language stipulating the department’s responsibility for this function, including rules and policies. This bill corrects previously adopted legislative language delineating the administrative functions of the Agency for Health Care Administration and restores statutory authority for actual practice.

In response to a federal directive requiring that the Social Security Administration’s determination of an individual’s eligibility for Supplemental Security Income automatically qualifies that individual for Medicaid, the bill grants statutory authority for the Social Security Administration to receive Medicaid applications and for the Social Security Administration’s determination of eligibility for Supplemental Security Income to be considered the determination of Medicaid eligibility. It also provides that the department is responsible for the agreement with the Social Security Administration relative to Medicaid eligibility determinations for Supplemental Security Income recipients.

The bill restores rulemaking authority to the Department of Children and Family Services relative to determining Medicaid eligibility.

This bill substantially amends sections 409.901(3), 409.901(15), 409.901(18), 409.902, 409.903, and 409.919 of the Florida Statutes.

II. Present Situation:

Department of Children and Family Services' Responsibility for Medicaid Eligibility Determination

Medicaid is a medical assistance program that pays for health care for the poor and disabled. The statutory provisions for the Medicaid program appear in ss. 409.901 through 409.9205, F.S. On July 1, 1993, the Medicaid program was transferred to the Agency for Health Care Administration from the Department of Health and Rehabilitative Services as specified in ch. 93-129, L.O.F. While the Agency for Health Care Administration is the single state agency responsible for the Medicaid program, the Department of Children and Family Services has retained the responsibility for receiving the applications for Medicaid and determining Medicaid eligibility through an interagency agreement with the Agency for Health Care Administration.

Since 1993, three laws have been enacted that clarified the administrative functions of the Agency for Health Care Administration, but also erroneously shifted statutory references to the Agency for Health Care Administration for responsibilities that were intended to remain with the Department of Children and Family Services. Chapter 96-386, L.O.F., changed the responsibility for receiving applications for Medicaid to Agency for Health Care Administration in s. 409.901(3), F.S. Chapter 98-190, L.O.F., changed in s. 409.903, F.S., the entity determining Medicaid eligibility to the Agency for Health Care Administration. However, the definitions of "Medicaid Program" and "Medicaid Recipient" in s. 409.901, F.S., continued to identify the Department of Children and Family Services as determining eligibility for Medicaid. Finally, ch. 99-8, L.O.F., changed in s. 409.919, F.S., the authority to adopt rules for the Medicaid program from the Department of Children and Family Services to the Agency for Health Care Administration, but did not retain with the department any authority for adopting rules to prescribe the procedures for determining Medicaid eligibility. Specifically, these revisions removed the authority of the Department of Children and Family Services to receive the Medicaid application and adopt rules relative to Medicaid eligibility and created an inconsistent reference as to which entity is responsible for determining Medicaid eligibility. The result is that the Department of Children and Family Services has both inconsistent statutory authority relative to performing these functions and no statutory authority to promulgate rules relative to their responsibilities for the Medicaid program.

Chapter 120, F.S., presents the legal requirement for state agencies to adopt administrative rules. A rule is an agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedures or practice requirements of an agency. An agency may adopt only rules that implement or interpret the specific powers and duties granted to them by the enabling statute (s. 120.52(8), F.S.). With the passage of ch. 99-8, L.O.F., eliminating the Department of Children and Family Services' authority to adopt rules, there is currently no rulemaking authority for the 33 Medicaid-related policy memorandums that have been issued by the department since July 1, 1999.

The Department of Children and Family Services is currently conducting negotiations to resolve the Spencer lawsuit (David Spencer, et al. v. Jeb Bush (formerly Lawton Chiles) et al./ Case #96-2351-CIV-T-24(E)). The Spencer lawsuit claims that the Department of Children and Family Services does not determine eligibility for Medicaid based upon disability within 90 days of application and that the department does not document in the case files the unusual circumstances explaining the reasons for the delay when the 90 days is exceeded. As part of the negotiations to resolve the lawsuit, the department has agreed to promulgate rules to provide for this delay and the unusual circumstances necessitating the delay. However, without rulemaking authority the department is unable to move forward with necessary actions to resolve the lawsuit.

Medicaid Eligibility for Supplemental Security Income Recipients

In an agreement between the Social Security Administration and the Agency for Health Care Administration, called a Section 1634 Agreement, the Social Security Administration has been authorized to perform the functions necessary to provide Medicaid eligibility to certain disabled, blind, or aged individuals who are determined eligible for Title XVI cash benefits. However, in 1999, this authorized process became required when a federal directive was issued providing that the Social Security Administration's determination of an individual's eligibility for Supplemental Security Income automatically qualify them for Medicaid. Current statutory language relative to the Medicaid program does not permit either the acceptance of the Social Security Administration applications nor their determination of eligibility for Supplemental Security Income as the determination of eligibility for Medicaid.

III. Effect of Proposed Changes:

Department of Children and Family Services' Responsibility for Medicaid Eligibility Determination

SB 1336 returns statutory authority and clarifies the responsibilities of the Department of Children and Family Services to receive and process Medicaid applications and determine Medicaid eligibility. This will bring the department into compliance with ch. 120, F.S., and allow them to promulgate the rules to support the agreements reached in the Spencer vs. Bush lawsuit.

Medicaid Eligibility for Supplemental Security Income Recipients

The bill also authorizes the Department of Children and Family Services to implement a process to automatically qualify Supplemental Security Income recipients for Medicaid. This new process will bring Florida into compliance with the 1999 federal directive requiring that the Social Security Administration's determination of an individual's eligibility for Supplemental Security Income automatically qualifies that individual for Medicaid. It may also reduce the processing procedures for this particular group.

Section by Section Analysis

Section 1. amends s. 409.901, F.S., relative to the definitions used for the Medicaid program. The definition of "applicant" is amended to change the state agency to which the application for Medicaid is submitted from the Agency for Health Care Administration to the Department of

Children and Family Services. The Social Security Administration is also added as an entity to which an application for Medicaid can be submitted, for those persons applying for Supplemental Security Income. The definitions of “Medicaid program” and “Medicaid recipient” are amended to add individuals determined eligible for Supplemental Security Income by the Social Security Administration as individuals who are eligible for Medicaid. These provisions grant statutory authority for the Department of Children and Family Services and the Social Security Administration to receive Medicaid applications. In addition, to bring Florida in compliance with the recent federal directive, statutory authority is provided for the Social Security Administration’s determination of eligibility for Supplemental Security Income to be considered the determination of Medicaid eligibility.

Section 2. adds language to the section designating the Agency for Health Care Administration as the single state agency for Title XIX of the Social Security Act (s. 409.902, F.S.), which stipulates that the Department of Children and Family Services is responsible for Medicaid eligibility determination, including the rules and policies. It also provides that the department is responsible for the agreement with the Social Security Administration relative to Medicaid eligibility determinations for Supplemental Security Income recipients. This provision grants specific statutory authority for the department to determine Medicaid eligibility, including Medicaid eligibility determinations as provided in the agreement with the Social Security Administration for Supplemental Security Income recipients, and for the necessary rules and policies to carry out this function.

Section 3. amends s. 409.903, F.S., to substitute the Department of Children and Family Services for the Agency for Health Care Administration, and add the Social Security Administration, as entities identified for determining Medicaid eligibility. This amendment corrects statutory revisions enacted in previous years and identifies the department as the state agency that determines eligibility for Medicaid, as is the current practice. It also adds the Social Security Administration as an agency that can determine eligibility for Medicaid.

Section 4. specifies in s. 409.919, F.S., relative to rulemaking, that the Department of Children and Family Services can adopt rules necessary for administering ss. 409.901 through 409.904 and s. 409.906, F.S., and for determining Medicaid eligibility. This provision restores to the Department of Children and Family Services the statutory authority to adopt rules prescribing the policies and procedures for their current responsibility of determining Medicaid eligibility.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Family Services reports that there will be a significant economic impact to the department if the bill is not passed. For every policy made by the department for which it lacks rulemaking authority, the department is subject to litigation by any individual affected by the policy. Each of the 33 Medicaid related policy memorandums issued since July 1, 1999 represents a potential litigation risk for the department.

Passage of the bill will result in the department resuming its rulemaking activities and the related costs. The primary fiscal impact is in unspent funds. The funds currently not being spent are for the cost of advertising in the Florida Administrative Weekly at the rate of 79 cents per line. The department publishes a minimum of two advertisements per rule. Although the funds are not currently being spent, the funds were budgeted and are available for use after the bill is passed. These funds will be necessary for the department to exercise its rulemaking authority once the grant of rulemaking authority has been returned.

VI. Technical Deficiencies:

The bill provides rulemaking authority for the full scope of administering ss. 409.901 through 409.904 and s. 409.906, F.S., which is broader than the responsibilities stipulated in this bill for the Department of Children and Family Services (i.e. receiving and processing the Medicaid application and determining Medicaid eligibility). Amendment 1 adopted by the committee addressed this issue.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Children and Families:

Narrows the rulemaking authority of the Department of Children and Family Services to receiving and processing the applications for Medicaid and determining Medicaid eligibility.

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