

STORAGE NAME: h1633.cf

DATE: March 6, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Children & Families
ANALYSIS**

BILL #: HB 1633 (formerly PCB CF 00-08A)

RELATING TO: Medicaid eligibility determinations

SPONSOR(S): Committee on Children & Families and Representative Murman

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) Children & Families YEAS 9 NAYS 0

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I. SUMMARY:

This bill restores rulemaking authority of the Department of Children and Family Services with respect to Medicaid eligibility determinations and clarifies responsibilities.

During the 1999 session of the Legislature, a revisor's bill changed the word "department," in s. 409.919, F.S., referring to the Department of Children and Families (DCF), to the word "Agency," referring to the Agency for Health Care Administration (AHCA). The section provides statutory authority for rulemaking in the Medicaid program which is under AHCA as the state agency responsible for Medicaid. The unintended result of this changed wording was to remove DCF's rulemaking authority for Medicaid eligibility determinations.

According to the department, 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. The department has issued 33 Medicaid-related program memorandums since July 1, 1999. Each policy memorandum represents a potential litigation risk for the department.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

During the 1999 session of the Legislature, a revisor's bill changed the word "department," which referred to the Department of Children and Families (DCF), to the word "Agency," which referred to the Agency for Health Care Administration (AHCA), in s. 409.919, F.S. Section 409.919, F.S., provides statutory authority for rulemaking in the Medicaid program. As AHCA is the state agency responsible for Medicaid, this appeared to be a simple, noncontroversial change. However, the result of this changed wording was to remove DCF's rulemaking authority for Medicaid eligibility determinations.

Through interagency agreement since AHCA was created, AHCA and DCF have agreed that DCF perform Medicaid eligibility determinations. Prior to the 1999 revisor's amendment to s. 409.919, F.S., DCF had rulemaking authority for any rules necessary to the Medicaid eligibility determination process, and DCF has promulgated 16 Medicaid-specific and several other partially Medicaid-related rules under that authority in the intervening years.

The Department of Children and Families is currently involved in litigation about Medicaid-related disability determinations (*Spencer v. Bush*) and must have rulemaking authority for any policy changes stemming from this suit. Discussion about policy changes with plaintiffs is ongoing. Some agreements have been reached, and, as a result, policy statements have been issued that must be supported in rule. Without the proper rulemaking authority as provided in this draft bill, any necessary rule amendments stemming from this suit cannot be promulgated.

C. EFFECT OF PROPOSED CHANGES:

Clarifies responsibilities and restores rulemaking authority of the Department of Children and Family Services with respect to Medicaid eligibility determinations.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsections 409.901(3), 409.901(15) and 409.901(18), F.S., relating to definitions.

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Substitutes "department" for "agency" that applications for medical assistance are submitted to in the definition of Medicaid applicant. Adds Social Security Administration for submission of applications for supplemental security income.

Section 2. Amends section 409.902, F.S., relating to designated single state agency; payment requirements.

Designates that the Department of Children and Family Services is responsible for Medicaid eligibility determinations, including policies and rules. Also designates that the department is responsible for agreements with the Social Security Administration for Medicaid eligibility determinations for supplemental security income recipients.

Section 3. Amends section 409.903, F.S., relating to mandatory payments for eligible persons.

Substitutes Department of Children and Family Services or Social Security Administration for the word agency.

Section 4. Amends section 409.919, F.S., relating to rules.

Requires the department adopt rules to comply with sections 409.901-409.904 and 409.906 and other provisions necessary for Medicaid eligibility determination.

Section 5. Establishes the act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

Potential large negative impact. See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

According to the Department of Children and Families 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. The department has issued 33 Medicaid-related program memorandums since July 1, 1999. Each policy memorandum represents a potential litigation risk for the department. The final order in the Spencer v. Bush suit can award reasonable costs and a reasonable attorney's fee to the plaintiff pursuant to s. 120.595, F.S.

Passage of the bill will result in the department resuming its rulemaking activities and the related costs. The primary fiscal impact at this point 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.

The funds will be necessary for the department to exercise its rulemaking authority once the grant of rulemaking authority has been returned by these proposed changes.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

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B. RULE-MAKING AUTHORITY:

The bill provides specific rulemaking authority for Medicaid eligibility determination.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON Children & Families:

Prepared by:

Staff Director:

Glenn A. Mitchell

Robert Barrios