

STORAGE NAME: h2047.hcs

DATE: April 10, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE SERVICES
ANALYSIS**

BILL #: HB 2047

RELATING TO: The Medicaid Fraud Control Unit of the Department of Legal Affairs

SPONSOR(S): Representative Edwards

TIED BILL(S):

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

- (1) HEALTH CARE SERVICES
 - (2) JUDICIARY
 - (3) GOVERNMENTAL OPERATIONS
 - (4) EDUCATION INNOVATION
 - (5)
-

I. SUMMARY:

HB 2047 provides express exemptions for the Medicaid Fraud Control Unit of the Department of Legal Affairs in several confidential medical records provisions contained in Florida Statutes. The bill clarifies the Attorney General's power to subpoena medical records relating to Medicaid recipients and authorizes investigators employed by the unit to serve process. The bill requires that certain confidential records held by the Department of Health must be provided to the Medicaid Fraud Control Unit upon request.

The effective date of the bill is July 1, 2000.

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:

Medicaid Fraud and Abuse

The Legislature, the Attorney General's Office, and specifically the Medicaid Fraud Control Unit under the Attorney General, the Agency for Health Care Administration, the Office of Statewide Prosecutor, and the federal government have taken numerous steps over the past several years to combat fraud and abuse within the Florida Medicaid program. Past initiatives have included: claims payment analyses and controls, provider surety bonds and financial background checks, on-site provider visits, Level I and Level II criminal background checks, additional Medicaid Management Information System edits, and improved interagency coordination. Current initiatives include: pharmacy audits, including on-site audits and audits specific to overpayments, an explanation of medical benefits mailing to some recipients; pharmacy lock-in, whereby a federal waiver has been obtained to permit the state to lock-in an abusive Medicaid recipient to a single pharmacy; recipient fingerprinting demonstration project, at approximately 200 pharmacies to ensure that only the eligible recipient or an authorized representative is picking up prescribed drugs; enhanced claims analysis and automated fraud and abuse detection capabilities; additional pharmacy fraud and abuse controls, including surety bonds and on-site inspections prior to entering provider agreements; fraud detection system enhancements to identify patterns of fraud; and physician practice pattern review, including drug usage evaluation, prescribing profiles, physician education, and outcomes analysis.

Section 409.920(2)(a-f), F.S., makes it unlawful to engage in certain activities the purpose of which is to falsely procure Medicaid benefits. The prohibited activities range from knowingly making false statements in claims submitted for payment to knowingly receiving any remuneration in return for referring an individual to a person for services for which payment may be made under the Medicaid program. A person who engages in any of the prohibited activities commits a third degree felony.

Section 409.920(7), F.S., requires the Attorney General to conduct a statewide program of Medicaid fraud control. This section directs the Attorney General to:

- Investigate possible criminal violations of any applicable state law pertaining to fraud in the administration of the Medicaid program;

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- Investigate the alleged abuse or neglect of patients, and misappropriation of patients' private funds, in health care facilities receiving payments under the Medicaid program;
- Refer to the Office of Statewide Prosecution or the appropriate state attorney all violations indicating a substantial potential for criminal prosecution;
- Refer to the Agency for Health Care Administration (agency) all suspected abusive activities not of a criminal nature;
- Refer to the agency for collection each instance of overpayment; and
- Safeguard the privacy rights of all individuals and provide safeguards to prevent the use of patient medical records for any reason beyond the scope of a specific investigation for fraud or abuse.

Section 409.920(8), F.S., authorizes the Attorney General to enter upon the premises of any health care provider, excluding a physician, participating in the Medicaid program to examine all accounts and records that may be relevant in determining:

- The existence of fraud;
- Abuse or neglect of patients; or
- Misappropriation of patients' private funds.

The Attorney General also may subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in either civil or criminal judicial proceedings. Additionally, this section allows the Attorney General to request and receive the assistance of any state attorney or law enforcement agency in the investigation and prosecution of any violation of s. 409.920, F.S.

Section 409.920(8)(b), F.S., requires a participating physician to make available any accounts or records that may be relevant in determining the existence of fraud in the Medicaid program. However, the accounts or records of a non-Medicaid patient may not be reviewed by, or turned over to, the Attorney General without the patient's written consent.

Section 409.9205, F.S., provides that all investigators employed by the Medicaid Fraud Control Unit who have been certified under s. 943.1395, F.S., are law enforcement officers of the state. Such investigators have the authority to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, and capias (to order law enforcement to take a person, generally a child/juvenile, into custody) throughout the state as it pertains to Medicaid fraud. The Attorney General is required to provide notice of criminal investigations to, and coordinate those investigations with, the sheriffs of the respective counties.

Confidential Patient Records

Generally, medical records kept by health care providers in connection with the examination or treatment of patients may not be furnished to, and the medical condition of the patient may not be discussed with, any person other than the patient or the patient's legal representative, except upon written authorization of the patient. Likewise, patient records maintained by a hospital or similar licensed health care facility are also confidential. Some of the statutes providing for confidentiality of medical records, and accompanying exceptions thereto, include the following:

- Clinical records for patients receiving treatment pursuant to the Baker Act pursuant to s. 394.4615, F.S.;
- Records for patients in hospitals, ambulatory surgical centers, and mobile surgical centers pursuant to s. 395.3025, F.S.;

- Nursing home or long-term care facility patient records, as well as complaint records about those facilities, in the possession of the state or district ombudsman council pursuant to s. 400.0077, F.S.;
- Information about patients received by persons employed by, or providing services to, a home health agency pursuant to s. 400.494, F.S.;
- Patient records maintained by school districts enrolled as Medicaid providers pursuant to s. 409.9071, F.S.;
- Patient records of home health care providers pursuant to s. 430.608, F.S.; and
- Patient records obtained by the Department of Health which are used in health care practitioner disciplinary proceedings pursuant to s. 455.667, F.S.

C. EFFECT OF PROPOSED CHANGES:

The bill provides express authority to the Attorney General to subpoena medical records relating to Medicaid recipients and Medicaid fraud investigations. The bill expressly provides the Medicaid Fraud Control Unit investigators with the authority to apply for, serve, and execute other processes throughout the state. The bill requires that certain confidential records held by the Department of Health relating to current or former Medicaid recipients must be provided to the Medicaid Fraud Control Unit upon request.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Adds a new subsection (6) to s. 394.4615, F.S., and redesignates other subsections relating to confidentiality of mental health and health care clinical records, to provide that clinical records relating to a Medicaid recipient must be furnished to the Medicaid Fraud Control Unit, upon request.

Section 2. Adds a new paragraph (k) to subsection (4) of s. 395.3025, F.S., relating to copies and examinations of patient and personnel records, of hospitals, ambulatory surgical centers, and mobile surgical centers, to authorize the release of patient records without consent of the patient to the Medicaid Fraud Control Unit.

Section 3. Adds a new subsection (6) to s. 400.0077, F.S., relating to confidentiality, to provide that the confidentiality attached to nursing home or long-term care facility patient records in the possession of the state or district long-term care ombudsman does not limit the subpoena power granted the Attorney General under s. 409.920(8)(b), F.S., relating to Medicaid provider fraud.

Section 4. Adds a new subsection (2) to s. 400.494, F.S., relating to confidentiality of records about home health agency patients, to provide that this section does not apply to information lawfully requested by the Medicaid Fraud Control Unit.

Section 5. Adds a new subsection (7) to s. 409.9071, F.S., relating to Medicaid provider agreements for school districts certifying state match, to provide that the agency's and school districts' confidentiality is waived and that they must provide any information or documents relating to the Medicaid provider agreement to the Medicaid Fraud Control Unit, upon request.

Section 6. Amends s. 409.920(8)(b), F.S., relating to Medicaid provider fraud, to provide authorization for the Attorney General to subpoena medical records relating to Medicaid recipients.

Section 7. Amends s. 409.9205, F.S., relating to the Medicaid Fraud Control Unit, to authorize the investigators to apply for, serve, and execute other processes throughout the state pertaining to Medicaid fraud as authorized by ch. 409, F.S. [Note: *Black's Law Dictionary* (7th Ed. 1999), defines "process" as "[a] summons or writ, esp. to appear or respond in court..."]

Section 8. Amends s. 430.608, F.S., relating to confidentiality of information, to provide that this section does not limit the subpoena authority of the Medicaid Fraud Control Unit.

Section 9. Adds a new paragraph (b) to subsection (8) of s. 455.667, F.S., relating to ownership and control of patient records, to provide that patient records obtained by the Department of Health in health care practitioner disciplinary proceedings which relate to a current or former Medicaid recipient must be provided to the Medicaid Fraud Control Unit, upon request.

Section 10. Provides that the act takes effect on July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Agency for Health Care Administration, this bill may provide a collateral positive impact on the private sector through the increased detection of Medicaid fraud.

D. FISCAL COMMENTS:

According to the Agency for Health Care Administration, this bill will likely streamline investigations and provide some small savings in investigative resources.

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 to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The title of the bill contains an error in reference to s. 455.667, F.S. The bill title (on page 1, line 30) refers to the Department of Business and Professional Regulation. The correct reference should be the Department of Health.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

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