STORAGE NAME: h1415.hcc.doc
DATE: April 19, 2001

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: HB 1415

RELATING TO: Medicaid Environmental Modification Services

SPONSOR(S): Representative(s) Kallinger & others

TIED BILL(S): None

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

(1) BUSINESS REGULATION YEAS 9 NAYS 0
(2) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 10 NAYS 0
(3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 13 NAYS 0
(4)
(5)

I. SUMMARY:

In order for a licensed contractor to perform structural modifications to a Medicaid client's home, e.g., wheelchair ramps, etc., that are necessary to prevent the client's institutionalization, present law requires the contractor to execute a Medicaid Provider Agreement and be enrolled as a provider in a Medicaid waiver program. These procedures require licensed contractors to undergo background investigations, file fingerprint cards, and complete various contracts and applications, many of which are already required in order for the contractor to be licensed under chapter 489, F.S.

This bill eliminates these duplicate licensing requirements by enabling general, building, or residential contractors, licensed pursuant to chapter 489, F.S., to be enrolled as a provider of environmental modification services for any Medicaid home and community-based services waiver program upon the contractor's signing of the required Medicaid provider agreement.

The bill defines "environmental modification services" and "environmental accessibility adaptations" as those physical adaptations to the home required by a Medicaid recipient's plan of care that are necessary to ensure the health, safety, and welfare of the recipient or to enable such person to function with greater independence and prevent his or her institutionalization.

This bill is not anticipated to have a significant impact on state revenue collections or expenditures and may decrease Medicaid-related renovation expenses by removing barriers to participation by general, building, and residential contractors.

The bill will take effect October 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [x]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes [x]	No []	N/A []
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

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

B. PRESENT SITUATION:

Medicaid

Medicaid is a medical assistance program that pays for health care for the poor and disabled. The program is jointly funded by the federal government, the state, and the counties. The federal government, through law and regulations, has established extensive requirements for the Medicaid program. The Agency for Health Care Administration (AHCA) is the single state agency responsible for the Florida Medicaid Program. The statutory provisions for the Medicaid program appear in ss. 409.901 through 409.9205, F.S. Individuals who are elderly or disabled, whose incomes are under 100 percent of the federal poverty level are an optional coverage group eligible for Medicaid under s. 409.904(1), F.S. Payments for services to individuals in the optional categories are subject to the availability of monies and any limitations established by the General Appropriations Act or chapter 216, F.S. Federal Supplemental Security Income (SSI) pays a cash benefit to individuals who are age 65 or older, or who are blind, or who have a disability and who have limited income and assets. Persons who qualify for SSI automatically qualify for Medicaid.

On July 1, 1993, the Medicaid program was transferred to AHCA from the former Department of Health and Rehabilitative Services. While AHCA 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 AHCA.

Medicaid Home and Community-based Services Waivers

Under section 1915(c) of the Social Security Act (the Act), States may request waivers of certain Federal requirements in order to develop Medicaid-financed community-based treatment alternatives. The three requirements that may be waived are specified in section 1902 of the Act and deal with statewideness, comparability of services, and community income and resource rules. Waiver programs allow states to offer additional services outside those contained in the state Medicaid plan, to a specified subset of recipients, for the purpose of assisting those recipients in remaining in their own homes. In the aggregate, the cost of the additional waiver services may not exceed the cost of the institutional care that would otherwise be required. Although the services offered under the waiver programs may be medical services that are not covered under the state Medicaid plan, they often include services that are not medical in nature, such as case

management, assistance with housekeeping, escort services, and home modifications such as construction of wheelchair ramps and door widening.

Medicaid Provider Enrollment

Section 1902(a)(23) of the Social Security Act requires that (with the exception of programs under s. 1915 of the Act) Medicaid recipients must be allowed to receive services from any institution, agency, or person qualified to perform the service who undertakes to provide the service. Implementing federal regulations at 42 CFR 431.51(b)(1)(i) and (ii) require that, absent a waiver, the state plan for Medicaid must provide that a recipient may obtain services from any provider that is qualified to furnish the services and is willing to furnish them to that recipient. 42 CFR 431.51(c) clarifies that these requirements do not prohibit the Medicaid agency from establishing fees, setting reasonable standards for providers, or restricting free choice under a waiver or, under certain conditions, for the purchase of medical devices, laboratory and x-ray services, or for the purpose of Alocking-in@ recipients who over utilize services of designated providers, or to Alock-out@ providers who have abused the program. According to the Health Care Financing Administration, the state is allowed to determine its own provider standards, so long as such standards are reasonably related to the provider's ability to render care to recipients.

Subsection (9) of s. 409.907, F.S., requires AHCA to either enroll a qualified provider, or deny a prospective provider=s application if enrollment is not in the best interests of the program. The determination that enrollment is not in the best interests of the program must be based on grounds specified in subsection (10) of s. 409.907, F.S., which include:

- making false statements on the application;
- having been involuntarily excluded or terminated from participation in a Medicaid or insurance program;
- conviction of an offense related to delivery of goods or services under Medicaid or other health care or insurance program;
- conviction of offenses related to neglect or abuse of a patient;
- drug-related convictions;
- conviction of any crime punishable by imprisonment of a year or more which involves moral turpitude;
- conviction of obstructing or interfering with the investigation of any of the offenses listed in the subsection;
- violation of laws or rules governing Medicaid or any other health care or insurance program which resulted in sanctions;
- previous violations of standards related to professional licensure; and
- failure to pay a fine or overpayment by Medicaid.

Section 409.908(8)(a), F.S., requires each provider, or each principal of the provider if the provider is a corporation, to submit a complete set of fingerprints to the agency for the purpose of a criminal history record check. The fingerprints are submitted to the Florida Department of Law Enforcement

and the Federal Bureau of Investigation for a national criminal record check. The cost of this check (currently $39) is borne by the provider.

Waiver Program Provider Enrollment Process

An entity that wishes to be enrolled as a provider in a Medicaid waiver program must be in compliance with any federal, state, or local licensing law for the services that are to be provided, meet any additional qualifications contained in the waiver document approved by the Health Care Financing Administration, meet the standard requirements for Medicaid enrollment, and complete the standard Medicaid provider enrollment process. In addition, the state agencies administering the waivers have agency-specific provider requirements such as agreement with a set of core principles (Developmental Services), agreements with Area Agencies (Elder Affairs), and provider enrollment in department-specific financial tracking systems. Since providers under the waiver are often not licensed medical entities, the various state agencies administering the waiver programs under inter-agency agreement with AHCA are responsible for certifying to AHCA that prospective providers meet approved waiver standards. Once the agencies have made this certification, provider enrollment materials are processed in the same manner as other Medicaid provider applications.

Each of the state agencies administering Medicaid waiver programs has local staff that assists potential waiver service providers with the provider application process. Upon completion, the prospective provider's application is mailed to AHCA's Medicaid fiscal agent for enrollment processing.

When the fiscal agent receives the application, the application is checked for completeness and processed. The criminal background screening required by s. 409.908, F. S., is reported to be the most time consuming part of the Medicaid provider enrollment process, accounting for approximately 60 percent of the time required for Medicaid provider enrollment. Nevertheless, it often takes months to complete the application process and obtain certification.

After the results of the screening process are returned to AHCA with no disqualifying entries and other elements of the enrollment process are completed, the applicant is enrolled as a Medicaid waiver service provider. If there are flaws in the application or documentation, the application is returned to the provider for correction.

Contracting

Chapter 489, F.S., provides that any person who desires to engage in contracting on a statewide basis shall, as a prerequisite thereto, establish his or her competency and qualifications to be certified pursuant to part I of this chapter, relating to construction contracting. To establish competency, a person must pass the appropriate examination approved by the Construction Industry Licensing Board and be certified by the Department of Business and Professional Regulation. Any person who wishes to engage in contracting on other than a statewide basis must: be registered pursuant to chapter 489, F.S., unless otherwise exempt. To be eligible for licensure, a person must be at least 18 years of age; be of good moral character; and meet other specified eligibility requirements applicable to that classification. Section 489.105, F.S., provides definitions for "general contractor," "building contractor," and "residential contractor."

A "general contractor" is defined as a contractor whose services are unlimited as to the type of work which he or she may perform, who may contract for any activity requiring licensure under Part I of Chapter 489, F.S., unless expressly exempt pursuant to s. 489.113, F.S.

A "building contractor" is defined as a contractor whose services are limited to construction of commercial buildings and single dwelling or multiple-dwelling residential buildings, which commercial or residential buildings do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

A "residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

These contractors are required to be licensed and insured, the contractor is subject to civil and criminal penalties and the contractor's license [certification] may be revoked for specified violations of law.

C. EFFECT OF PROPOSED CHANGES:

In order for a licensed contractor to perform structural modifications to a Medicaid client's home, e.g., wheelchair ramps, door widening, etc., that are necessary to prevent the client's institutionalization, present law requires the contractor to be enrolled as a provider in a Medicaid waiver program. These procedures require contractors to undergo background investigations, file fingerprint cards, and complete various contracts and applications, many of which are already required in order for the contractor to be licensed under chapter 489, F.S.

This bill eliminates these duplicate licensing requirements by enabling general, building, or residential contractors, licensed pursuant to chapter 489, to be enrolled as a provider of environmental modification services for any Medicaid home and community-based services waiver program upon the contractor's signing of the required Medicaid provider agreement.

The bill defines "environmental modification services" and "environmental accessibility adaptations" as those physical adaptations to the home required by a Medicaid recipient's plan of care that are necessary to ensure the health, safety, and welfare of the recipient or to enable such person to function with greater independence and prevent his or her institutionalization.

This bill is not anticipated to have a significant impact on state revenue collections or expenditures and may decrease Medicaid-related renovation expenses by removing barriers to participation by general, building, and residential contractors.

The bill will take effect October 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 409.9072, F.S., to require enrollment of any qualifying general, building, or residential contractor as a provider of environmental modification services for any Medicaid home and community-based services waiver program upon the contractor's signing of the required agreement.

Section 2. Provides an effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenue collections.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may decrease Medicaid-related renovation expenses by removing barriers to contractor participation, and, therefore, increase competition in the market. Increased competition has the potential to benefit clients, contractors, and the general public as a whole.

D. FISCAL COMMENTS:

None.

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 any 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 state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

In its analysis of HB 1415, the Agency for Health Care Administration noted that the bill would require "Medicaid to enroll any general, building, or residential contractor licensed under chapter 489, F.S., notwithstanding the provisions of s. 409.907, F.S., relating to provider enrollment and screening….The proposed legislation exempts environmental modification contractors from the criminal history record check required for all other Medicaid providers under s. 409.907, F.S. This could lead to an increase in Medicaid fraud, which is a frequent source of litigation between providers and the agency."

The Department of Business and Professional Regulation does not require criminal background checks as part of its licensing process for contractors under part I of ch. 489, F.S., but relies on an applicant's attestation that there is no criminal past.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:	Staff Director:
Janet Clark Morris	M. Paul Liepshutz

AS REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES APPROPRIATIONS:

Prepared by:	Staff Director:
Cynthia Kelly	Cynthia Kelly

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:	Council Director:
Phil E. Williams	Mary Pat Moore