

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Health Care Committee

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BILL: SB 1122

SPONSOR: Senator Saunders

SUBJECT: Medicaid Third Party Liability

DATE: March 3, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner	Wilson	HE	<b>Favorable</b>
2.	_____	_____	BI	_____
3.	_____	_____	GE	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill expands the authority of the Department of Revenue (DOR) to provide the Agency for Health Care Administration (Agency) with certain tax information for purposes of determining recoveries through the state's Medicaid Estate Recovery Act. The bill also reenacts the existing protection of this information from disclosure and from public records requests. The bill requires third-party administrators (TPAs) and pharmacy benefits managers (PBMs) to provide data to the Agency for purposes of determining Medicaid third party liability and requires a copy of a death certificate to be included with any notice to creditors served on the Agency.

This bill amends ss. 213.053, 409.910, and 733.2121, Florida Statutes.

This bill reenacts s. 206.27(2), Florida Statutes.

## II. Present Situation:

### The Medicaid Program

Medicaid is jointly funded by the federal, state, and county governments to provide medical care to eligible individuals. Medicaid is the largest program providing medical and health-related services to the nation's poorest citizens. Within broad national guidelines, which the federal government establishes, each of the states:

- Establishes its own eligibility standards;
- Determines the type, amount, duration, and scope of services;
- Sets the rate of payment for services; and
- Administers its own program.

The Agency is the single state agency responsible for the Florida Medicaid Program. The Florida statutory provisions for the Medicaid program appear in ss. 409.901 through 409.9205, F.S. The federal Medicaid provisions are in Title XIX of the Social Security Act.

### **Medicaid Third Party Liability**

The Medicaid program, by federal law, is intended to be the payer of last resort; that is, all other available third party resources must meet their legal obligation to pay claims before the Medicaid program pays for the care of a Medicaid recipient. Medicaid third party liability (TPL) refers to the legal obligation of third parties, i.e., certain individuals, entities, or programs, to pay all or part of the expenditures for medical assistance furnished under a state's Medicaid program. Examples of third parties which may be liable to pay for services include private health insurance, Medicare, employment-related health insurance, medical support from non-custodial parents, court judgments or settlements from a liability insurer, worker's compensation, first party probate-estate recoveries, long-term-care insurance, and other federal programs (Veterans' benefits, etc.).

Individuals eligible for Medicaid assign their rights to third party payments to the Agency when they apply for benefits. States are required to take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the state Medicaid plan. Once states have determined that a potentially liable third party exists, the state is required to either "cost avoids" or "pay and chase" claims. Cost avoidance is where the provider of services bills and collects from liable third parties before sending the claim to Medicaid. Pay and chase is utilized when the state Medicaid agency pays the medical bills and then attempts to recover from liable third parties. States are generally required to cost avoid claims unless they have a waiver approved by CMS which allows them to use the pay and chase method.

Florida codified this payer-of-last-resort requirement in 1990. Under s. 409.910, F.S., Medicaid is to be the payer of last resort for medically necessary goods and services furnished to Medicaid recipients. All other sources of payment for medical services are considered primary to the fiscal assistance provided by Medicaid. If benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, state law requires that Medicaid be repaid in full and prior to any other person, program, or entity. Medicaid is to be repaid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors are paid.

### **The Medicaid Estate Recovery Act**

In certain cases, third party liability extends to the estate of a deceased person who had received Medicaid benefits. The federal Omnibus Budget Reconciliation Act of 1993 mandated that states implement an estate recovery program. Florida implemented its program in 1994.

Florida's Medicaid Estate Recovery Act (s. 409.9101, F.S.) specifies that any person who accepts public medical assistance, as defined by Title XIX of the Social Security Act, shall create a debt to the Agency in the total amount paid on behalf of the recipient for medical assistance after the recipient reached age 55. Florida's law allows exclusions and the Agency does not pursue estate recovery if the deceased recipient is survived by:

- A spouse;
- A child or children under 21 years of age;
- A child or children who are blind or permanently and totally disabled pursuant to the eligibility requirements of Title XIX of the Social Security Act; or
- A person for whom the recovery would cause undue hardship based on specific criteria.

The Agency is also prohibited from recovery against any property that is determined to be exempt from the claims of creditors under the state constitution or the laws of Florida.

**Barriers to Medicaid Third Party Liability Recoveries**

The Agency is responsible for recoveries from third party entities and estates of deceased Medicaid recipients. Since 2001, the Agency has contracted with a vendor to manage its third party liability program on a contingency fee basis of 5.9 percent of each dollar recovered. This contract expires in 2007. The vendor has recovered approximately \$232 million over the last three years. The following table details recoveries made by the vendor since it was awarded its contract.

Fiscal Year	Estate Recoveries	Other Collections	Total
FY 2001-02*	\$ 2,729,094	\$25,064,404	\$27,793,498
FY 2002-03	9,357,374	54,130,163	63,487,537
FY 2003-04	12,107,042	72,492,520	84,599,562
FY 2004-05**	6,927,915	48,851,925	55,779,840
<b>TOTAL</b>	<b>\$31,121,425</b>	<b>\$200,539,012</b>	<b>\$231,660,437</b>

\* November 2001 through June 2002.

\*\* July 2004 through January 2005.

The Agency states that there are several barriers to third party recoveries that could be addressed to recover additional funds. Specifically:

- During the 2003 legislative session, TPAs and PBMs were added to the definition of a third party [s. 409.901(26), F.S.] due to the increasing number of insurance companies contracting their claims processing functions through these entities. However, the Agency states that many TPAs and PBMs have claimed they are not “third parties,” and therefore are exempt from federally-required data matching and billing requirements. Changes in law that specify that these entities must provide this data could remedy this issue.
- Section 733.2121(3)(d), F.S., requires the personal representative of an estate to serve the Agency with a notice to creditors within three months after the first publication of the notice to creditors. Creditors have 30 days from receipt of the notice to creditors to file a statement of claim. The Agency utilizes the notice to creditors to determine if the Agency should file a statement of claim for Medicaid benefits pursuant to sections 409.9101 and 414.28, F.S. Florida law does not require the notice to creditors to contain identifying information such as Medicaid identification or social security numbers, nor does Florida law require the notice to creditors to indicate whether the decedent was survived by a spouse.

Upon receipt of the notice to creditors, the Agency searches its database to determine if the decedent was a Medicaid beneficiary. Without identifying information, the Agency searches by name and county of residence. In instances of common names, a statement of claim may be filed in a probate estate of a decedent who did not receive Medicaid. Likewise, without sufficient identifying information the Agency may fail to identify a decedent as a Medicaid beneficiary. The Agency diligently attempts to prevent problems related to identifying the decedent as a Medicaid beneficiary by making phone calls to the estate attorneys.

Additionally, section 409.9101(6), F.S., provides that the Agency's statement of claim is unenforceable if the decedent is survived by a spouse. Without indication of whether there is a surviving spouse on the notice to creditors, the Agency often files statements of claims in estates where there is a surviving spouse. The Agency withdraws these statements of claims once a death certificate is received indicating a surviving spouse.

Changes in law to require the provision of a death certificate would: provide additional information to speed the identification of a deceased Medicaid beneficiary; avoid unnecessary claims against wrong Medicaid recipients or non-Medicaid recipients; and help to identify cases where there is a surviving spouse that would preclude the Agency from pursuing estate recoveries.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 213.053, F.S., allowing DOR to add the Medicaid estate recovery statute, s. 409.9101, F.S., to the agreement between the Agency and DOR to provide tax information for use in the enforcement of the Medicaid Third Party Liability Act.

**Section 2.** Reenacts s. 206.27(2), F.S., for purposes of incorporating the amendment to s. 213.053, F.S., continuing the confidentiality and public records exemption provided to the transfer of tax information between DOR and the Agency.

**Section 3.** Amends s. 409.910, F.S., to require TPAs and PBMs to provide data to the Agency for purposes of determining third party liability.

**Section 4.** Amends s. 733.2121, F.S., to require the personal representative of an estate to provide a copy of the death certificate to the Agency.

**Section 5.** Provides an effective date of July 1, 2005.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

While this bill does reenact an exemption for tax information exchanged between DOR and the Agency, it does not expand the types of records that are exempted from public records disclosure requirements. Therefore, the provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Private TPAs and PBMs will be required to provide data to the Agency’s third party liability vendor. These entities will incur some administrative costs as a result. Attorneys and/or personal representatives will be required to submit a copy of the death certificate along with the already required notice to creditors to the Agency, which may have some minor costs associated with providing the additional documentation.

**C. Government Sector Impact:**

**Agency for Health Care Administration**

By ensuring more timely and effective identification of probate-related cases, it is estimated there will be improved collections on an additional five cases per month at an average of \$5,000 each for a total of \$300,000 per year.

Five additional cases at \$5,000 each for 12 months	= \$300,000
Less administrative costs (5.9% contingency fee paid to TPL Contractor)	= \$17,700
<b>Net Savings</b>	<b>= \$282,300</b>
Federal Share	= \$166,275
State Share	= \$116,025

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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