HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 581 Third-Party Liability
SPONSOR(S): Proctor
TIED BILLS: **IDEN./SIM. BILLS:** SB 1122

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee		Bell	Mitchell
2) Finance & Tax Committee			
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

HB 581 provides the Agency for Health Care Administration (AHCA) tools to help recover payments made on behalf of Medicaid beneficiaries when other parties are liable under the Medicaid Third-Party Liability Act or the Medicaid Estate Recovery Act. The federal Omnibus Budget Reconciliation Act (OBRA) of 1993 requires states to recover the costs of Medicaid coverage for certain long-term care services after the death of Medicaid recipients aged 55 years or older. States are given the option to include, “any items or services under the State plan.” Florida Medicaid seeks recovery on all items and services paid on behalf of the beneficiary.

HB 581 amends s. 213.053, F.S., expanding the statutory reference to allow the Department of Revenue to provide tax information to AHCA for collecting payments under the Medicaid Estate Recovery Act.

The bill amends s. 409.910, F.S., to clarify that third-party administrators and pharmacy benefits managers must provide claims data to AHCA so that the Agency’s third-party liability contractor can conduct data matches. This ensures that AHCA is receiving all the data it needs to successfully carry out third-party recovery efforts.

HB 581 amends s. 733.2121, F.S., to require a copy of the death certificate be submitted to AHCA with the mandatory “notice of creditors.” The death certificate will contain the Social Security number and indication of whether or not there is a surviving spouse. These two key pieces of information facilitate identification of estates that owe AHCA monies and prevent the filing of a statement of claim when there is a surviving spouse. Currently, the “notice of creditors” does not provide this information to AHCA.

AHCA estimates that implementation of this bill could potentially recoup $300,000 from Medicaid estate and third-party recovery. After subtracting administrative costs, $166,275 would be returned to the federal Medical Care Trust Fund and $116,025 would be returned to the state Administrative Trust Fund.

The effective date of the bill is July 1, 2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility/Provide Limited Government – This bill provides tools to help the Agency for Health Care Administration (AHCA) recover payments made on behalf of Medicaid beneficiaries when other parties are liable under the Medicaid Third-Party Liability Act or the Medicaid Estate Recovery Act.

Ensure Lower Taxes – AHCA estimates that implementation of this bill could potentially recoup $300,000 from Medicaid estate and third-party recovery. After subtracting administrative costs, $166,275 would be returned to the federal Medical Care Trust Fund and $116,025 would be returned to the state Administrative Trust Fund.

B. EFFECT OF PROPOSED CHANGES:

HB 581 amends s. 213.053, F.S., to allow the Department of Revenue to provide tax information to AHCA for its use in conducting official business related to the Medicaid Estate Recovery Act.

The bill reenacts s. 206.27(2), F.S., to provide that any audit documents received by AHCA for the purpose of the Medicaid Estate Recovery Act are confidential and not subject to public records requests.

HB 581 amends s. 409.910, F.S., to clarify that third-party administrators and pharmacy benefits managers, must provide claims data to AHCA so that the Agency's third-party liability contractor can conduct data matches. Entities providing health insurance, health maintenance organizations (HMOs), and prepaid health clinics are already required to do this. The data matches will be used to bill claims that Medicaid originally paid, but a third-party administrator or pharmacy benefits manager was liable for. Additionally, the matches will also provide new and/or updated insurance information that will be added to the Medicaid claims processing system to ensure that when a provider submits a claim through the system for a Medicaid beneficiary who has another insurance, Medicaid will deny payment of the claim, instructing the provider to bill the insurance for the service.

HB 581 amends s. 733.2121, F.S., to require a copy of the death certificate be submitted to AHCA with the mandatory "notice of creditors." The death certificate contains the Social Security number and indication of whether or not there is a surviving spouse. These two key pieces of information facilitate identification of estates that owe AHCA monies and prevent the filing of a statement of claim when there is a surviving spouse. Currently, the "notice of creditors" does not provide this information to AHCA.

There have been instances where the Agency has been unable to identify whether an individual was a Medicaid beneficiary in sufficient time to file a statement of claim. The primary benefit of the bill is increased AHCA time efficiency. The bill would prevent the necessity of calling estate attorneys for the identifying information, and prevent statement of claims from being filed in estates where the claim is unenforceable. These efficiency savings will both benefit the Agency and reduce frustration experienced by courts and estate attorneys when working with the Agency.

HB 581 provides for an effective date of July 1, 2005.

PRESENT SITUATION

Federal Government Mandate for Recovery of Medicaid Expenditures from Third-Parties

The federal Omnibus Budget Reconciliation Act (OBRA) of 1993 requires states to recover the costs of Medicaid coverage for certain long-term care services after the death of Medicaid recipients aged 55 years or older[1]. Recovery is mandated on certain services: nursing facilities services, home and community-based services, and related hospital and prescription drug services. Every state that has implemented the federal law has done so in a slightly different manner, depending upon its Medicaid program and state laws. Federal law provides protections to ensure adequate notice to recipients, prevention of undue hardship, and cost effectiveness under a state's estate recovery program. States are given the option to include, "any items or services under the State plan." Florida Medicaid seeks recovery on all items and services paid on behalf of the beneficiary. Florida Medicaid contracts its recovery efforts to Health Management Systems (HMS), Inc.

Third-Party Liability 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 plan. The Medicaid program by 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 an individual eligible for Medicaid. Examples of third parties which may be liable to pay for services include employment-related health insurance, court-ordered health insurance derived by noncustodial parents, workers' compensation, long-term care insurance, and other State and Federal programs (unless specifically excluded by Federal statute).

Individuals eligible for Medicaid assign their rights to third-party payments to the State Medicaid Agency. 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 plan. Once States have determined that a potentially liable third-party exists, the State is required to either "cost avoid" 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 currently uses the cost avoidance method.

Florida Medicaid Third-party Liability Act

The Medicaid Third-party Liability Act found in s. 409.910, F.S., reads in part, "if benefits of a liable third-party are discovered or become available after medical assistance has been provided by Medicaid, it is the intent of the Legislature that Medicaid be repaid in full and prior to any other person, program, or entity." Medicaid is to be the payor of last resort. The beneficiary or legal representative is required to notify Medicaid of any possible third-party benefits. For example, if a Medicaid beneficiary is injured in a car accident, Medicaid may have to pay medical bills for which the at fault driver's auto insurance should have covered.

Florida Medicaid Estate Recovery Act

The Medicaid Estate Recovery Act is codified in s. 409.9101, F.S. Medicaid is to seek reimbursement by filing a claim against the estate of Medicaid beneficiaries for benefits received at age 55 years or older. Florida probate law requires that the estate notify Medicaid of a probate opening by sending a Notice to Creditors or a Petition for Summary Administration. The state does not file a claim where the recipient is under the age of 55 at the time of death or where there is a surviving spouse, minor child or blind/disabled child. Estate information is matched against a database of Medicaid recipients. A Medicaid claim is filed against the estate as appropriate. Medicaid is a "Class 3" creditor, getting paid after the cost of administering the estate, funeral, and internments costs with remaining available assets.

[1] Federal Law, 42 U.S.C., Section 1396p(b)(1).

Current Florida Statutory Regulation

There are a number of statutes that facilitate Medicaid third-party recovery.

Currently, pursuant to s. 213.053, F.S., the Agency has an agreement with the Department of Revenue (DOR) to provide tax information for use in the enforcement of the Medicaid Third-Party Liability Act. At present this agreement cannot be expanded to include the Medicaid Estate Recovery Act without a statutory reference.

In order to determine third-party liability, AHCA's contractor collects claims data from insurance companies, health maintenance organizations (HMOs), and prepaid health clinics to identify Medicaid claims billable to insurance companies. Although many insurance companies contract with third-party administrators and pharmacy benefits managers to process claims, these proxy claims processors often do not submit the necessary data to AHCA. Thus, during the 2003 legislative session, third-party administrators and pharmacy benefit managers were added to the definition of third-party (section 409.901(25), F.S.). However, third-party administrators and pharmacy benefit managers are still reluctant to submit claims data to AHCA.

As part of the Medicaid estate recovery process AHCA receives a copy of the "notice to creditors" from a personal representative of a Medicaid descendent. The Florida Probate Code (chapters 731-735, F.S.), requires that "notice to creditors" is published. The notice contains the name of the descendent, the file number of the estate, the designation and address of the court in which the proceedings are pending, the name and address of the personal representative, the name and address of the personal representative's attorney, and the date of first publication. However, Florida law does not require that the notice to creditors 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.

Section 733.2121(3)(d), F.S., requires the personal representative of a Medicaid decedents to serve the Agency with a copy of "notice to creditors" within three months after the first publication of the "notice to creditors." AHCA has 30 days from receipt of the "notice to creditors" to file a statement of claim.

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 telephoning estate attorneys.

Additionally, section 409.9101(6), F.S., provides that AHCA'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 statement 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.

C. SECTION DIRECTORY:

Section 1. Amends s. 213.053, F.S., to provide AHCA with tax information to recover Medicaid estate monies.

Section 2. Reenacts s.206.27, F.S., to incorporate the amendment to s. 213.053, F.S.

Section 3. Amends s. 409.910, F.S., to clarify that pharmacy benefit managers and third-party administrators must provide claim data to AHCA.

Section 4. Amends s. 409.9101, F.S., to require a death certificate be served to AHCA to facilitate Medicaid estate recovery.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

AHCA Estimated Revenues

	Amount Year 1 FY 05-06	Amount Year 2 FY 06-07
Recurring Impact:		
Revenues:		
Grants	$123,300	$123,300
Medical Care Trust Fund	$176,700	$176,700
Total Recurring Revenues	**$300,000**	**$300,000**

2. Expenditures:

AHCA Estimated Expenditures

	Amount Year 1 FY 05-06	Amount Year 2 FY 06-07
Expenditures:		
Expenses		
Contractual Services	$17,700	$17,700
Total Expenses	$17,700	$17,700
Total Recurring Expenditures	**$17,700**	**$17,700**
Total Revenues and Expenditures:		
Sub-Total Non-Recurring Revenues	$0	$0
Sub-Total Recurring Revenues	$300,000	$300,000
Total Revenues	**$300,000**	**$300,000**
Sub-Total Non-Recurring Expenditures	$0	$0
Sub-Total Recurring Expenditures	$17,700	$17,700
Total Expenditures	**$17,700**	**$17,700**
Difference (Total Revenues minus Total Expenditures)	**$282,300**	**$282,300**

Funding of Expenditures

State Administrative Trust Fund (2021)	41.1%	$7,275	$7,275
Federal Medical Care Trust Fund (2474)	58.9%	$10,425	$10,425
Total	**100%**	**$17,700**	**$17,700**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

By ensuring more timely and effective identification of probate-related cases, AHCA estimates 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. Additionally, there is a yearly administrative cost of $17,700 paid to the AHCA third-party liability contractor for a 5.9% contingency fee. The estimated net yearly savings is $282,300. Approximately 59% ($166,275) of the savings will be returned to the federal Medical Care Trust-Fund and the remaining 41% ($116,025) will be returned to the Florida Administrative Trust-Fund savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES