

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 1456

INTRODUCER: Senator Wilson

SUBJECT: Medical Assistance Eligibility of Inmates

DATE: April 3, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner	Wilson	HP	Favorable
2.	Krol	Cannon	CJ	Favorable
3.			HA	
4.			JA	
5.				
6.				

I. Summary:

This bill requires Medicaid eligibility to be suspended for any individual who is an inmate in the state's correctional system, county detention facility, or a municipal detention facility, and who was eligible for and received Medicaid benefits under ch. 409, F.S., immediately prior to being incarcerated. The bill further provides that upon release from incarceration, an individual shall continue to be eligible for Medicaid benefits until such time as the person is determined to no longer be eligible. The bill requires that, to the extent permitted under federal law, the time during which a person is an inmate shall not be included in any calculation of when the person must recertify his or her eligibility for medical assistance in accordance with this act.

The bill clarifies that Medicaid benefits may not be used to pay for medical care, services, or supplies provided during the inmate's incarceration, but also provides that nothing prevents the inmate from receiving medical assistance for inpatient hospital services outside the premises of the correctional institution, to the extent that federal financial participation is available for the cost of such services.

This bill creates s. 409.9025, F.S.

II. Present Situation:

Florida Medicaid Program

Florida's Medicaid Program is jointly funded by the federal, state, and county governments to provide medical care to eligible individuals. Florida implemented its Medicaid program on January 1, 1970, to provide medical services to indigent people. 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.

Some Medicaid services are mandatory services that must be covered by any state participating in the Medicaid program pursuant to federal law.¹ Other services are optional. A state may choose to include optional services in its state Medicaid plan, but if included, such services must be offered to all individuals statewide who meet Medicaid eligibility criteria as though they are mandatory benefits.² 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 ch. 216, F.S.

For Fiscal Year 2008-09, the Florida Medicaid Program is projected to cover 2.25 million people³ at an estimated cost of \$15.8 billion.⁴

Medicaid Eligibility

Medicaid eligibility for Floridians is determined through two different processes. If eligibility is based on advanced age or disability, eligibility is determined by the Social Security Administration (SSA) because persons who qualify for Social Security Income (SSI) benefits are automatically eligible for participation in a state's Medicaid program.⁵ In the second process, the Department of Children and Families (DCF) determines eligibility for individuals who meet the income level and other requirements for programs for children and families or institutional care.⁶

When an individual applies for and receives Medicaid eligibility through the DCF, their application and enrollment information is maintained on the FLORIDA system at the DCF and then transmitted to the Florida Medicaid Management Information System (FMMIS) administered by the AHCA. Information for Floridians receiving SSI benefits through the SSA is maintained and updated by the SSA and transferred to the FMMIS, where provider billing and service provisions are handled.

Federal law requires states to re-determine each Medicaid recipient's eligibility every 12 months, and must have procedures in place for recipients to notify Medicaid of changes in circumstance that may affect their eligibility. If a recipient is blind or disabled, however, the recipient's disability is considered "continuing" until a medical evaluation determines that the recipient is no longer eligible for Medicaid.⁷

Section 409.9021, F.S., requires a Medicaid applicant, as a condition of Medicaid eligibility and subject to federal approval, to agree in writing to forfeit Medicaid entitlements if he or she has

¹ These mandatory services are codified in s. 409.905, F.S.

² Optional services covered under the Florida Medicaid Program are codified in s. 409.906, F.S.

³ <http://edr.state.fl.us/conferences/medicaid/medcases.pdf> (last visited on March 22, 2008).

⁴ <http://edr.state.fl.us/conferences/medicaid/medhistory.pdf> (last visited on March 22, 2008).

⁵ Individuals who receive SSI cash benefits are automatically eligible for Medicaid pursuant to 42 C.F.R. s. 435.120.

⁶ Sections 409.903 and 409.904, F.S., codify mandatory and optional Medicaid eligibility categories under Florida law.

General information about Medicaid eligibility can be found at <http://www.dcf.state.fl.us/ess/medicaid.shtml> (last visited on March 22, 2008).

⁷ 42 C.F.R. s. 435.916.

been found to have committed fraud two times in a period of 5 years. This provision does not apply to any family member who was not involved in the fraud.

Termination of Medicaid Eligibility Upon Incarceration

In general, federal law precludes the use of Medicaid funds for health care or services provided to inmates of public institutions.⁸ A “public institution” is a facility that is administered by a governmental unit or over which a governmental unit has administrative control.⁹ Municipal, county and state jails and prisons are public institutions. However, federal law allows exceptions for services to incarcerated Medicaid recipients by certain provider entities, including inpatient care at a “medical institution,” and does not prohibit the use of federal funds for such care.¹⁰ A “medical institution” is a facility licensed under state law that provides medical, nursing, and convalescent care by licensed health care professionals.¹¹ Hospitals, for example, are medical institutions.

Federal law permits states to suspend or terminate an inmate’s Medicaid eligibility. On May 25, 2004, the Centers for Medicare and Medicaid Services (CMS), Center for Medicaid and State Operations, issued a Memorandum to State Medicaid Directors and CMS Association Regional Administrators for Medicaid regarding chronic homelessness.¹² In that memorandum, CMS reiterated that payment exclusions for incarcerated individuals under Medicaid do not affect the eligibility of those individuals, and encouraged states to adopt a policy of suspending, rather than terminating, an individual’s Medicaid benefits while a person is in a public institution or institute for mental disease. The memorandum also stated that “Persons released from institutions are at risk of homelessness; thus, access to mainstream services upon release is important in establishing a continuum of care and ongoing support that may reduce the demand for costly and inappropriate services later.”

Current Termination Policy and Procedure in Florida for Incarcerated Persons

Currently, when the DCF is notified that an individual who receives Medicaid through the DCF eligibility process is incarcerated, the DCF terminates that individual’s enrollment in Medicaid at the end of the month and the individual must re-apply for Medicaid benefits upon release. Similarly, when the SSA is notified that an individual receiving SSI benefits is incarcerated, the SSA transmits a termination code to the FFMIS, which signals termination due to incarceration. Thus, the incarcerated individual must re-apply for SSI benefits through the SSA.

Pursuant to the federal Social Security Act, the SSA enters into agreements with state or local jails, prisons, penal institutions, or correctional facilities to provide payments each time the state or local entity notifies the SSA of an incarcerated individual who received SSI benefits the month immediately preceding incarceration. Subject to certain reductions or limitations, the

⁸ 42 U.S.C. s.1396d(a)(28)(A).

⁹ 42 C.F.R. s. 435.1010.

¹⁰ 42 U.S.C. s.1396d(a)(28)(A).

¹¹ 42 C.F.R. s.435.1010.

¹² See May 25, 2004 Letter from Charlene Brown, Acting Director, Disabled and Elderly Health Programs Group, to State Medicaid Directors and the CMS Associate Regional Administrators for Medicaid. Found at: <http://www.cms.hhs.gov/HomelessnessInitiative/Downloads/SMDLetter.pdf> (last visited on March 22, 2008).

payment is \$400 if the entity provides the information to the SSA within 30 days of the individual's confinement, or \$200 if the institution provides the information between 30 and 90 days after the individual's confinement.¹³

For individuals who apply and are eligible for Medicaid benefits through the DCF, the department and the AHCA have indicated that the FLORIDA and FMMIS systems are not currently programmed to include months of "partial eligibility," there is no capacity for receiving real time notification of incarceration, and the systems are not currently able to suspend Medicaid eligibility in what is called an "incarceration span." In addition, pursuant to the Medicaid program's agreement with the SSA, Medicaid eligibility cannot be suspended for incarcerated individuals who qualify for SSI if the SSA terminates a recipient's eligibility.

Broward and Duval Counties Pilot Projects

The DCF is currently conducting a series of pilot projects in Duval and Broward Counties designed to provide Medicaid benefits to individuals being released from incarceration in the most expeditious manner possible.

The department's preliminary research shows that 52 percent of recipients were incarcerated for less than 60 days. Due to the department's advance notice and temporary absence policies, an individual would generally need to be incarcerated more than 60 days before their eligibility would be affected.

In the Broward County institution, it has been determined that the average stay for individuals in the Mental Health ward is 60 days. The average stay in the general population is 30 days. A recent sample of 348 incarcerated individuals in Broward County shows that:

- 156 (45 percent) of the individuals were known to the FMMIS either currently or in the past.
- Of the 156 known to the FMMIS:
 - 43 individuals (15 percent) had their disability based Medicaid eligibility determined by the DCF. Of the 15 percent, half of these were open at the time of incarceration and eligible for services. It is likely an automated enrollment process could be developed for the remaining 7 percent based on disability data available in the old case.
 - 42 individuals (26 percent) had their non-disability based Medicaid eligibility determined by the DCF. Of these, 5 (3 percent) had Medicaid coverage at the time of the sample. The remaining 37 (23 percent) were not covered by Medicaid at the time of the sample. For these individuals non disability-related Medicaid eligibility could not automatically be restored. At a minimum, the department would need to establish that the individual's new living arrangement met the family based criteria of caring for related minor children (or pregnancy).
 - 91 individuals (58 percent) received Medicaid based on their eligibility for SSI cash. This eligibility was established and maintained by the SSA. Of these, 42 (27 percent) had Medicaid coverage at the time of the sample. For the remaining 49 (31 percent), the department would not have the information necessary to create eligibility, the department would need an application, interview or complete means for collecting the needed

¹³ 42 U.S.C. s.1382(e)(1)(I) and 42 U.S.C. s.402(x)(1)(A).

technical, asset and income information. In most of these cases, the department could establish eligibility without a separate disability determination.

The DCF is currently working with the AHCA to develop policies and technologies which will allow for the timely suspension of Medicaid eligibility for recipients whose eligibility was determined by the department, as well as those whose eligibility was determined by the SSA, which will provide for an expedited restoration of benefits for the department's customers and those whose eligibility was determined by the SSA.

The Department of Corrections

The Department of Corrections (DOC) is Florida's second largest provider of services for the mentally ill. In Florida between 1995 and 2007, the percentage of inmates receiving ongoing mental health services in state prisons increased from 10.6 percent to 18.1 percent, an overall proportional increase of more than 70 percent. Of the 96,000 state inmates, over 17,000 are diagnosed with a mental illness and 39.1 percent of those inmates are diagnosed with a severe and persistent mental injury.

In FY 2006-2007, the DOC spent \$41 million on inpatient hospital charges. The DOC is able to negotiate rates with hospitals; however, the rates are two to four times higher than Medicaid rates. These rates are typically negotiated based on the amount of business done within the hospital and standard charges based on major insurance carriers.

While the DOC does not know how many inmates were enrolled in Medicaid prior to incarceration, 30.4 percent were unemployed the month before their arrest, 8.8 percent were homeless the year before their arrest, and 7.8 percent reported their primary income as Welfare.

III. Effect of Proposed Changes:

Section 1. Creates s. 409.9025, F.S., to require Medicaid eligibility to be suspended for any individual who is an inmate in the state's correctional system as defined in s. 944.02, F.S., or a county detention facility as defined in s. 951.23, F.S., or in a municipal detention facility as defined in s. 951.23, F.S., and who was eligible for and received Medicaid benefits under ch. 409, F.S., immediately prior to being incarcerated. However, Medicaid eligibility would still be forfeited if the individual had been found to have committed fraud two times in a period of 5 years.

The bill provides that Medicaid benefits may not be used to pay for medical care, services, or supplies provided during the inmate's incarceration, which is consistent with federal law. The bill clarifies that nothing in s. 409.9025, F.S., prevents the inmate from receiving inpatient hospital services outside the premises of the correctional institution to the extent that federal financial participation is available for the cost of such services.

The bill further provides that upon release from incarceration, an individual shall continue to be eligible for Medicaid benefits until such time as the person is determined to no longer be eligible for such benefits. Finally, the bill requires that, to the extent permitted under federal law, the

time during which a person is an inmate shall not be included in any calculation of when the person must recertify his or her eligibility for medical assistance in accordance with this act.

Section 2. Provides that the bill takes effect July 1, 2008.

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:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 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. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Representatives from the Department of Corrections and the Florida Association of Counties stated that when the DOC or county detention facilities use non-corrections medical facilities and other health professionals, they are often charged rates substantially higher than Medicare or Medicaid rates for that care. If these charges are reduced to Medicaid reimbursement rates for persons with suspended Medicaid eligibility, facilities and health professionals treating some incarcerated individuals would likely receive lower reimbursements. The fiscal effect of these lower reimbursement rates is indeterminate at this time.

C. Government Sector Impact:

Agency for Health Care Administration

Programming by the fiscal agent will be necessary to implement system changes to create an incarceration span on the FMMIS. System modifications and enhancements for EDS, Medicaid's new fiscal agent, are built into the cost of the agency's contract with them, so there should not be a fiscal effect on the agency.

Department of Children and Families

The proposed legislation will require FLORIDA system programming changes to support the process of suspending and reinstating benefits. The DCF estimates it will require 985 hours for programming the necessary changes. The DCF also estimates they will need six additional Economic Self-Sufficiency Specialists (one per region) to review exception reports and to timely suspend and reinstate benefits including Medicaid, cash assistance and food stamps. The positions have been lapsed 25 percent for the 2008-09 fiscal year, but will require full funding in the 2009-10 fiscal year.

Department of Corrections

If enacted, the Department of Corrections' costs for outside medical care for incarcerated individuals would decrease overall, and it is possible that Medicaid federal match could be obtained for some hospitalizations, offsetting the need for General Revenue. The exact amount if savings is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Inmates eligible for Medicaid and in need of substance abuse treatment or mental health services upon exiting prison will benefit. Treatment providers who accept Medicaid could help provide community support for ex-offenders. This bill could help mitigate the lack of community supports available to ex-offenders and offer an opportunity for a more successful reentry.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.