

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 525 Medical Assistance Eligibility of Inmates  
**SPONSOR(S):** Healthcare Council; Roberson and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1456

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Health Innovation</u>	<u>8 Y, 0 N</u>	<u>Quinn-Gato</u>	<u>Calamas</u>
2) <u>Healthcare Council</u>	<u>16 Y, 0 N, As CS</u>	<u>Quinn-Gato/ Massengale</u>	<u>Gormley</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
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### SUMMARY ANALYSIS

CS/HB 525 requires Medicaid eligibility to be suspended for any individual who is an inmate in the state's correctional system or a county or municipal facility, and who was eligible for and received Medicaid benefits under chapter 409 immediately prior to being incarcerated. The bill clarifies that Medicaid benefits may not be used to pay for medical care, services, or supplies provided during the inmate's incarceration, and provides that nothing 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.

Finally, the bill requires that, to the extent permitted under federal law, the time period for calculating when the inmate's eligibility must be recertified shall be stayed during the time the inmate is incarcerated.

The bill provides that the implementation and enforcement of the new section of law created by the bill, s. 409.9025, F.S., is subject to a specific appropriation in the General Appropriations Act.

The bill has an indeterminate negative fiscal impact on the Medicaid program, and requires an appropriation of \$364,005 in fiscal year 2008-2009 and \$271,764 in fiscal year 2009-2010 of General Revenue funds by the Department of Children and Families for staffing and equipment changes. Implementation and enforcement of this bill is subject to a specific appropriation in the General Appropriations Act.

The effective date of the bill is July 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Limited government**-The bill will require an increase in the number of full time equivalent employees at the Department of Children and Families in order to employ 6 Economic Self-Sufficiency experts, one for each region, in order to implement and maintain the changes required in the bill.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Medicaid Eligibility Determinations

Medicaid eligibility for Floridians is determined through the Social Security Administration (“SSA”) for individuals who qualify for Social Security Income (“SSI”) benefits<sup>1</sup>, or by the Department of Children and Families (“DCF”) for individuals who meet the income level and other requirements for programs for children and families or institutional care.<sup>2</sup>

When Floridians qualify for Medicaid through the Department of Children and Families (“DCF”), their application and enrollment information is maintained on the FLORIDA system at the Department of Children and Families and then transmitted to the Florida Medicaid Management Information System (“FMMIS”) administered by the Agency for Health Care Administration (“AHCA”).<sup>3</sup> 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 provision is handled.<sup>4</sup>

Pursuant to section 1634 of the Social Security Act, Florida’s Medicaid program has agreed to accept eligibility determinations made by the SSA for the provision of Medicaid coverage.<sup>5</sup> If an individual’s eligibility is terminated by the SSA, then Medicaid cannot provide or suspend coverage for that individual unless he or she qualifies for eligibility through DCF.<sup>6</sup>

Federal law requires that states 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.<sup>7</sup> If a recipient is blind or disabled, however, the recipients’ disability is considered “continuing” until a medical evaluation determines that the recipient is no longer eligible for Medicaid.<sup>8</sup>

##### Federal Law Concerning the Use of Medicaid Funds for Incarcerated Individuals

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<sup>1</sup> Individuals who receive SSI cash benefits are automatically eligible for Medicaid. See DCF website concerning general information about Medicaid, located on March 8, 2008 at <http://www.dcf.state.fl.us/ess/medicaid.shtml>; 42 C.F.R. s. 435.120.

<sup>2</sup> s. 409.902, F.S.

<sup>3</sup> See Agency for Health Care Administration 2008 Bill Analysis And Economic Impact Statement for HB 525; Department Of Children And Families Staff Analysis And Economic Impact Statement for HB 525.

<sup>4</sup> *Id.*

<sup>5</sup> 42 U.S.C. s. 1383c (this is accomplished through an agreement between the State and the Commissioner of Social Security).

<sup>6</sup> *Id.*; See also Agency for Health Care Administration 2008 Bill Analysis And Economic Impact Statement for HB 525.

<sup>7</sup> 42 C.F.R. s. 435.916.

<sup>8</sup> *Id.*

Federal law precludes the use of Medicaid funds for health care or services provided to inmates of public institutions.<sup>9</sup> A “public institution” is a facility that is administered by a governmental unit or over which a governmental unit has administrative control.<sup>10</sup> Municipal, county and state jails and prisons are public institutions. 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.<sup>11</sup> A “medical institution” is a facility licensed under state law that provides medical, nursing, and convalescent care by licensed health care professionals.<sup>12</sup> 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, Center for Medicaid and State Operations, issued a Memorandum to State Medicaid Directors and CMS Association Regional Administrators for Medicaid regarding chronic homelessness.<sup>13</sup> 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 eligibility upon incarceration.<sup>14</sup>

### Florida Practices Regarding Incarcerated Medicaid Recipients

Currently, when DCF is notified that an individual who receives Medicaid through the DCF eligibility process is incarcerated, 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.<sup>15</sup> Similarly, when the SSA is notified that an individual receiving SSI benefits is incarcerated, the SSA transmits a termination code the FFMIS, which signals termination due to incarceration.<sup>16</sup> Thus, the incarcerated individual must re-apply for SSI benefits upon release.<sup>17</sup>

Pursuant to the 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.<sup>18</sup> Subject to certain reductions or limitations, the 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.<sup>19</sup>

For individuals that apply and are eligible for Medicaid benefits through the Department of Children of Families, DCF and AHCA have indicated that the FLORIDA and FMMIS systems are not currently programmed to include months of “partial eligibility.”<sup>20</sup> Accordingly, the systems are not currently able to suspend Medicaid eligibility in what is called an “incarceration span” once the individual is incarcerated.<sup>21</sup>

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<sup>9</sup> 42 U.S.C. s. 1396d(a)(28)(A).

<sup>10</sup> 42 C.F.R. s. 435.1010.

<sup>11</sup> 42 U.S.C. s. 1396d(a)(28)(A)

<sup>12</sup> 42 C.F.R. s. 435.1010.

<sup>13</sup> See May 25, 2004 Letter from Charlene Brown, Acting Director, Disabled and Elderly Health Programs Group to State Medicaid Directors and CMS Associate Regional Administrators for Medicaid; located on February 29, 2008 at <http://www.cms.hhs.gov/HomelessnessInitiative/Downloads/SMDLetter.pdf>.

<sup>14</sup> *Id.*

<sup>15</sup> See Department Of Children And Families Staff Analysis And Economic Impact Statement for HB 525.

<sup>16</sup> See Agency for Health Care Administration 2008 Bill Analysis And Economic Impact Statement for HB 525. SSI benefits are suspended if an individual is incarcerated for less than one year; however, if incarceration is for more than one year, then SSI benefits are terminated and the individual must reapply upon release. See 20 CF.R. s. 416.1335.

<sup>17</sup> See 20 CF.R. s. 416.1335.

<sup>18</sup> 42 U.S.C. s. 1382(e)(1)(I); 42 U.S.C. s. 402(x)(1)(A).

<sup>19</sup> *Id.*

<sup>20</sup> See *supra* note 4.

<sup>21</sup> *Id.*

Furthermore, as set forth above, pursuant to the Medicaid program's agreement with the Social Security Administration, Medicaid eligibility cannot be suspended for incarcerated individuals who qualify for SSI if the SSA terminates a recipient's eligibility.

### **Effect of Proposed Changes**

The bill creates s. 409.9025, F.S., and requires that Medicaid eligibility be suspended for any individual who is an inmate in the state's correctional system, or a county or municipal facility, and who was eligible for and received Medicaid benefits under chapter 409 immediately prior to being incarcerated. 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. Where Medicaid is notified of an incarcerated recipient, it does not reimburse for such services because eligibility is terminated upon notice.

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, during the time of incarceration, the time period for calculating when the inmate's eligibility must be recertified shall be stayed.

The bill provides that the implementation and enforcement of the new section of law created by the bill is subject to a specific appropriation in the General Appropriations Act.

The effective date of the bill is July 1, 2008.

### **C. SECTION DIRECTORY:**

**Section 1.** Creates s. 409.9025, F.S., relating to an individual's eligibility for Medicaid while an inmate.

**Section 2.** Provides an effective date of July 1, 2008.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The proposed legislation will require FLORIDA System programming changes to support the process of suspending and reinstating benefits. DCF estimates it will require 985 hours for programming the necessary changes. 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% for the 2008-09 fiscal year, but will require full funding in the 2009-10 fiscal year. See fiscal comments for further information.

	<u>2008-09</u>	<u>2009-10</u>
DCF (6.0 FTE)	\$240,798	\$271,764
Contractual Services	<u>\$123,207</u>	<u>\$ 0</u>
Total Expenditures	\$364,005*	\$271,764

\*Fiscal Year 2008-09 includes \$149,535 in non-recurring funding for equipment for the new staff positions and non-recurring funding for the FLORIDA system changes.

General Revenue Fund	\$364,005	\$271,764
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#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

At present, when a state or local facility notifies the SSA that an individual receiving SSI benefits is incarcerated, then the facility receives a payment from the SSA. According to AHCA, it is unclear whether this payment would be impacted by the bill.<sup>22</sup>

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

AHCA will be working with the Florida Department of Law Enforcement (FDLE) to collect the names of those Medicaid beneficiaries moving in and out of incarceration and will be “suspending” coverage to prevent Medicaid benefits from being paid in error. DCF will be working with AHCA to ensure they have access to the incarceration data so the data can be reflected in the FLORIDA eligibility determination system. The FLORIDA system is used to determine eligibility for Medicaid, Food Stamps and cash assistance. The incarceration data obtained from AHCA will be used to ensure all program benefits are managed correctly. As these individuals move in and out of incarceration, DCF will ensure their Medicaid (and any Food Stamps and any cash assistance) benefits are correct.

Projections from AHCA indicate there are approximately 62,000 Medicaid eligible or potentially eligible individuals arrested each year. The Social Security Administration (SSA) creates Medicaid eligibility for those eligible for Supplemental Security Income (SSI) and the SSI beneficiaries make up approximately 50% of the incarcerated population. That leaves some 30,000 individuals who have their eligibility determined by DCF. DCF is requesting one FTE per Region for a total of six positions to implement this legislation. The staff would be specifically designated to work the cases reported by AHCA as individuals are moving in and/or out of county or local jail. One of the critical keys to the success of this bill will be timely action on the information received from AHCA. Given the potential volume of these case changes, dedicated positions will ensure this takes place. Mixing these changes with other program eligibility work could result in individuals receiving (or not receiving) their Medicaid benefits in error.

<sup>22</sup> See Agency for Health Care Administration 2008 Bill Analysis And Economic Impact Statement for HB 525.

The bill allows for the provision of medical assistance for inpatient hospital services to be furnished to an inmate at a hospital outside of the premises of the inmate's facility to the extent that federal financial participation is available for the costs of such services. The bill would also prevent Medicaid beneficiaries from having a gap in medical coverage and would allow immediate access to Medicaid services upon release from incarceration. These provisions could potentially cause an indeterminate negative fiscal impact of Medicaid expenditures.

Implementation and enforcement of this bill is subject to a specific appropriation in the General Appropriations Act.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

As set forth above, if this bill passes, it is unclear whether counties and municipalities will be able to continue to raise revenue in the aggregate in the form of payments from the SSA for notification of incarcerated individuals. Accordingly, the mandates provision in Article VII, section 18(a) of the state constitution may be implicated. At this time, it is indeterminate whether the mandates provision would be implicated and, if so, whether an exemption would apply because the potential fiscal impact on each county or municipality also cannot be determined at this time.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

At lines 28 through 33 of the bill, the bill provides that "nothing in this section shall be deemed as preventing the provision of medical assistance for inpatient hospital services furnished to an inmate..." however, such services may already be provided to an inmate under current law. Because current practice results in the termination of Medicaid eligibility, however, Medicaid does not currently cover such services.

#### **D. STATEMENT OF THE SPONSOR**

No statement provided.

### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On April 17, 2008, the Healthcare Council adopted one amendment to the bill. The amendment provides that the implementation and enforcement of the bill is subject to a specific appropriation in the General Appropriations Act.

The bill, as amended, was reported favorably as a Council Substitute. This analysis reflects the Council Substitute.