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LEGISLATIVE ACTION

Senate	.	House
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Senators Negron and Gaetz moved the following:

Senate Amendment (with title amendment)

Between lines 250 and 251
insert:

Section 8. Subsection (2) of section 400.179, Florida
Statutes, are amended to read:

400.179 Liability for Medicaid underpayments and
overpayments.—

(2) Because any transfer of a nursing facility may expose
the fact that Medicaid may have underpaid or overpaid the
transferor, and because in most instances, any such underpayment
or overpayment can only be determined following a formal field
audit, the liabilities for any such underpayments or



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14 overpayments shall be as follows:

15 (a) The Medicaid program shall be liable to the transferor
16 for any underpayments owed during the transferor's period of
17 operation of the facility.

18 (b) Without regard to whether the transferor had leased or
19 owned the nursing facility, the transferor shall remain liable
20 to the Medicaid program for all Medicaid overpayments received
21 during the transferor's period of operation of the facility,
22 regardless of when determined.

23 (c) Where the facility transfer takes any form of a sale of
24 assets, in addition to the transferor's continuing liability for
25 any such overpayments, if the transferor fails to meet these
26 obligations, the transferee shall be liable for all liabilities
27 that can be readily identifiable 90 days in advance of the
28 transfer. Such liability shall continue in succession until the
29 debt is ultimately paid or otherwise resolved. It shall be the
30 burden of the transferee to determine the amount of all such
31 readily identifiable overpayments from the Agency for Health
32 Care Administration, and the agency shall cooperate in every way
33 with the identification of such amounts. Readily identifiable
34 overpayments shall include overpayments that will result from,
35 but not be limited to:

- 36 1. Medicaid rate changes or adjustments;
37 2. Any depreciation recapture;
38 3. Any recapture of fair rental value system indexing; or
39 4. Audits completed by the agency.

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41 The transferor shall remain liable for any such Medicaid
42 overpayments that were not readily identifiable 90 days in



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43 advance of the nursing facility transfer.

44 (d) Where the transfer involves a facility that has been
45 leased by the transferor:

46 1. The transferee shall, as a condition to being issued a
47 license by the agency, acquire, maintain, and provide proof to
48 the agency of a bond with a term of 30 months, renewable
49 annually, in an amount not less than the total of 3 months'
50 Medicaid payments to the facility computed on the basis of the
51 preceding 12-month average Medicaid payments to the facility.

52 2. A leasehold licensee may meet the requirements of
53 subparagraph 1. by payment of a nonrefundable fee, paid at
54 initial licensure, paid at the time of any subsequent change of
55 ownership, and paid annually thereafter, in the amount of 1
56 percent of the total of 3 months' Medicaid payments to the
57 facility computed on the basis of the preceding 12-month average
58 Medicaid payments to the facility. If a preceding 12-month
59 average is not available, projected Medicaid payments may be
60 used. The fee shall be deposited into the Grants and Donations
61 Trust Fund and shall be accounted for separately as a Medicaid
62 nursing home overpayment account. These fees shall be used at
63 the sole discretion of the agency to repay nursing home Medicaid
64 overpayments. Payment of this fee shall not release the licensee
65 from any liability for any Medicaid overpayments, nor shall
66 payment bar the agency from seeking to recoup overpayments from
67 the licensee and any other liable party. As a condition of
68 exercising this lease bond alternative, licensees paying this
69 fee must maintain an existing lease bond through the end of the
70 30-month term period of that bond. The agency is herein granted
71 specific authority to promulgate all rules pertaining to the



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72 administration and management of this account, including
73 withdrawals from the account, subject to federal review and
74 approval. This provision shall take effect upon becoming law and
75 shall apply to any leasehold license application. The financial
76 viability of the Medicaid nursing home overpayment account shall
77 be determined by the agency through annual review of the account
78 balance and the amount of total outstanding, unpaid Medicaid
79 overpayments owing from leasehold licensees to the agency as
80 determined by final agency audits. By March 31 of each year, the
81 agency shall assess the cumulative fees collected under this
82 subparagraph, minus any amounts used to repay nursing home
83 Medicaid overpayments and amounts transferred to contribute to
84 the General Revenue Fund pursuant to s. 215.20. If the net
85 cumulative collections, minus amounts used to repay nursing home
86 Medicaid overpayments, exceed \$25 million, the provisions of
87 this paragraph shall not apply for the subsequent fiscal year.

88 3. The leasehold licensee may meet the bond requirement
89 through other arrangements acceptable to the agency. The agency
90 is herein granted specific authority to promulgate rules
91 pertaining to lease bond arrangements.

92 4. All existing nursing facility licensees, operating the
93 facility as a leasehold, shall acquire, maintain, and provide
94 proof to the agency of the 30-month bond required in
95 subparagraph 1., above, on and after July 1, 1993, for each
96 license renewal.

97 5. It shall be the responsibility of all nursing facility
98 operators, operating the facility as a leasehold, to renew the
99 30-month bond and to provide proof of such renewal to the agency
100 annually.



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101 6. Any failure of the nursing facility operator to acquire,
102 maintain, renew annually, or provide proof to the agency shall
103 be grounds for the agency to deny, revoke, and suspend the
104 facility license to operate such facility and to take any
105 further action, including, but not limited to, enjoining the
106 facility, asserting a moratorium pursuant to part II of chapter
107 408, or applying for a receiver, deemed necessary to ensure
108 compliance with this section and to safeguard and protect the
109 health, safety, and welfare of the facility's residents. A lease
110 agreement required as a condition of bond financing or
111 refinancing under s. 154.213 by a health facilities authority or
112 required under s. 159.30 by a county or municipality is not a
113 leasehold for purposes of this paragraph and is not subject to
114 the bond requirement of this paragraph.

115 ~~(c) For the 2009-2010 fiscal year only, the provisions of~~
116 ~~paragraph (d) shall not apply. This paragraph expires July 1,~~
117 ~~2010.~~

118
119 ===== T I T L E A M E N D M E N T =====

120 And the title is amended as follows:

121 Delete line 19

122 and insert:

123 Contract Management Program; amending s. 400.179,
124 F.S.; requiring that the Agency for Health Care
125 Administration assess certain fees and amounts
126 annually by a specified deadline; providing for the
127 nonapplication of specified provisions of state law
128 under certain circumstances; deleting an obsolete
129 provision; repealing s. 400.195,