

**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 Health Regulation Committee

BILL: CS/CS/SB 218

INTRODUCER: Health Regulation Committee; Community Affairs Committee and Senator Jones

SUBJECT: Medical Expenses of Inmates

DATE: March 26, 2010 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.	Bell	Wilson	HR	Fav/CS
3.			WPSC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This Committee Substitute for Committee Substitute (CS/CS) provides that when an arrested person requires medical attention but cannot provide for payment the medical service provider can recover from the local government 110 percent of the Medicare allowable rate for the medical services provided, not the provider's full fees, unless the medical services provider has an alternative, written agreement with the local government. The CS/CS exempts emergency services provided by physicians licensed under chapter 458, F.S., or chapter 459, F.S., within a hospital emergency department from the maximum allowable rate.

This CS/CS substantially amends section 901.35 of the Florida Statutes.

**II. Present Situation:**

**Financial Responsibility for Medical Expenses**

Pre-trial detainees have a constitutional right to "reasonable and adequate nourishment and medical care,"<sup>1</sup> but the cost of the medical care is the primary responsibility of the person

<sup>1</sup> *Williams v. Ergle*, 698 So.2d 1294 (Fla. 5th DCA 1997).

receiving the medical care.<sup>2</sup> A medical services provider shall recover the expenses of medical care, treatment, hospitalization, and transportation (hereinafter referred to simply as “medical care”) for a person ill, wounded, or otherwise injured during or at the time of arrest for any violation of state law or a county or municipal ordinance from the following sources in the following order:

- (1) Insurance;
- (2) The person receiving medical care;
- (3) A financial settlement for the medical care.<sup>3</sup>

When reimbursement from these sources is unavailable, the cost of medical care shall be paid from the general fund of the county in which the person was arrested. If the arrest was for violation of a municipal ordinance then the municipality shall pay the medical service provider.<sup>4</sup> Section 951.032, F.S., articulates the local government’s rights to reimbursement from the person seeking medical attention.<sup>5</sup>

The injury or illness need not be caused by the arrest.<sup>6</sup> The responsibility for payment of medical costs exists until the arrested person is released from the custody of the arresting agency. The rates medical service providers can charge local governments are not capped.<sup>7</sup> At least one Florida appellate court has held that the costs of medical services are not among the costs covered by the constitutional provision that prohibits compelling persons charged with a crime to pay costs before a judgment of conviction has become final.<sup>8</sup>

### **Medicare Rates**

The Social Security Act, 42 U.S.C. § 1395, addresses Medicare. Medicare is health insurance for people age 65 or older, people under age 65 with certain disabilities, and people of any age with End-Stage Renal Disease (ESRD) (permanent kidney failure requiring dialysis or a kidney transplant). Medicare consists of Part A (hospital insurance), Part B (medical insurance), and Part D (prescription drug coverage).

Medicare reimburses providers based on the type of service they provide. The Centers for Medicare and Medicaid Services (CMS) develops annual fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies. Other Medicare providers are paid via a prospective payment system (PPS). The PPS is a method of reimbursement in which Medicare payment is made based on a

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<sup>2</sup> Section 901.35, F.S.

<sup>3</sup> *Id.*

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

<sup>5</sup> See *Williams v. Ergle*, 698 So.2d 1294, (5th DCA 1997) (stating that pretrial detainees are prisoners for the purposes of state statutes allowing recovery of certain medical expenses from prisoners).

<sup>6</sup> See *North Brevard County Hospital District v. Brevard County Bd. of County Commissioners*, 899 So.2d 1200, 1202-03 (Fla. 5th DCA 2005) (“One cannot fault Brevard County or the trial court in its attempt to circumvent section 901.35. The implications of the statute can be financially devastating to a local government in view of the ever increasing cost of medical care, especially when the Legislature has not placed a cap on the liability of government.”) (citing Joseph G. Jarret, *The High Cost of Arrestee Medical Treatment: The Effects of F.S. § 901.35 on Local Government Coffers*, 78 FLA. B.J. 46 (Nov. 2004)); Fla. Atty. Gen. Op. 85-6, (Feb. 4, 1985).

<sup>7</sup> Joseph G. Jarret, *The High Cost of Arrestee Medical Treatment: The Effects of F.S. § 901.35 on Local Government Coffers*, 78 FLA. B.J. 46 (Nov. 2004).

<sup>8</sup> *Williams v. Ergle*, 698 So.2d 1294 (Fla. 5th DCA 1997) (citing Art. I, s. 19, Fla. Const).

predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services). The CMS uses separate PPSs for reimbursement to acute inpatient hospitals, home health agencies, hospices, hospital outpatient departments, inpatient psychiatric facilities, inpatient rehabilitation facilities, long-term care hospitals, and skilled nursing facilities.

These rates are generally higher than Medicaid rates but might not be as high as rates set by the medical services provider. In 2009, CS/SB 1722 created s. 945.6041, F.S., to set rates paid by the Department of Corrections for inmate medical care at 110 percent of the Medicare allowable rate for hospitals (125 percent for financially distressed hospitals).

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

The CS/CS modifies s. 901.35(2), F.S., to state that in the absence of a formal written agreement, costs that a medical services provider could charge a county or municipality for an arrestee's medical care, treatment, hospitalization, or transportation are set at 110 percent of the Medicare allowable rate.

The CS/CS exempts emergency services provided by physicians licensed under ch. 458, F.S., or ch. 459, F.S., within a hospital emergency department from the maximum allowable rate.

The CS/CS provides an effective date of July 1, 2010.

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

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

The provisions of this CS/CS 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 CS/CS have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

#### **C. Trust Funds Restrictions:**

The provisions of this CS/CS 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:**

Providers of medical care, treatment, hospitalization, and transportation may receive decreased revenue when providing services to arrested parties when (1) the person receiving the services cannot provide for payment of the costs and (2) the provider does not have a formal written agreement with the county or municipality in which the person was arrested.

**C. Government Sector Impact:**

This bill would act as a cost savings measure for counties and municipalities by capping the cost of medical services provided to persons ill, wounded, or otherwise injured during or at the time of arrest at 110 percent of the allowable Medicare rate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Health Regulation on March 26, 2010:**

Clarifies that emergency services provided by physicians in a hospital emergency department are exempt from the maximum allowable rate in the bill.

**CS by Community Affairs on February 2, 2010:**

Adds clarifying language that specifies that counties or municipalities may only be held responsible for costs of medical services provided during the time an arrested person is in custody.

- Changes the rate paid by the local government for medical services to 110 percent of the Medicare allowable rate.
- Exempts emergency room physicians from the maximum allowable rate provision.

**B. Amendments:**

None.