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Proposed Committee Substitute by the Committee on Banking and Insurance

1                                   A bill to be entitled  
2           An act relating to Medicaid and public assistance  
3           fraud; creating s. 624.35, F.S.; providing a short  
4           title; creating s. 624.351, F.S.; providing  
5           legislative intent; establishing the Medicaid and  
6           Public Assistance Fraud Strike Force within the  
7           Department of Financial Services to coordinate efforts  
8           to eliminate Medicaid and public assistance fraud;  
9           providing for membership; providing for meetings;  
10          specifying duties; requiring an annual report to the  
11          Legislature and Governor; creating s. 624.352, F.S.;  
12          directing the Chief Financial Officer to prepare model  
13          interagency agreements that address Medicaid and  
14          public assistance fraud; specifying which agencies can  
15          be a party to such agreements; amending s. 16.59,  
16          F.S.; conforming provisions to changes made by the  
17          act; requiring the Divisions of Insurance Fraud and  
18          Public Assistance Fraud in the Department of Financial  
19          Services to be collocated with the Medicaid Fraud  
20          Control Unit if possible; requiring positions  
21          dedicated to Medicaid managed care fraud to be  
22          collocated with the Division of Insurance Fraud;  
23          amending s. 20.121, F.S.; establishing the Division of  
24          Public Assistance Fraud within the Department of  
25          Financial Services; amending ss. 411.01, 414.33, and  
26          414.39, F.S.; conforming provisions to changes made by  
27          the act; transferring, renumbering, and amending s.



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28           943.401, F.S.; directing the Department of Financial  
29           Services rather than the Department of Law Enforcement  
30           to investigate public assistance fraud; directing the  
31           Auditor General, in consultation with the Office of  
32           Program Policy Analysis and Government Accountability  
33           to conduct an operational audit of the Medicaid fraud  
34           and abuse processes in the Agency for Health Care  
35           Administration; requiring a report to the Legislature  
36           and Governor by a certain date; establishing the  
37           Medicaid claims adjudication project in the Agency for  
38           Health Care Administration to decrease the incidence  
39           of inaccurate payments and to improve the efficiency  
40           of the Medicaid claims processing system; transferring  
41           activities relating to public assistance fraud from  
42           the Department of Law Enforcement to the Division of  
43           Public Assistance Fraud in the Department of Financial  
44           Services by a type two transfer; providing an  
45           effective date.

46  
47           WHEREAS, Florida's Medicaid program is one of the largest  
48           in the country, serving approximately 2.7 million persons each  
49           month. The program provides health care benefits to families and  
50           individuals below certain income and resource levels. For the  
51           2008-2009 fiscal year, the Legislature appropriated \$18.81  
52           billion to operate the Medicaid program which is funded from  
53           general revenue, trust funds that include federal matching  
54           funds, and other state funds, and

55           WHEREAS, Medicaid fraud in Florida is epidemic, far-  
56           reaching, and costs the state and the Federal Government



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57 billions of dollars annually. Medicaid fraud not only drives up  
58 the cost of health care and reduces the availability of funds to  
59 support needed services, but undermines the long-term solvency  
60 of both health care providers and the state's Medicaid program,  
61 and

62 WHEREAS, the state's public assistance programs serve  
63 approximately 1.8 million Floridians each month by providing  
64 benefits for food, cash assistance for needy families, home  
65 health care for disabled adults, and grants to individuals and  
66 communities affected by natural disasters. For the 2008-2009  
67 fiscal year, the Legislature appropriated \$626 million to  
68 operate public assistance programs, and

69 WHEREAS, public assistance fraud costs taxpayers millions  
70 of dollars annually, which significantly and negatively impacts  
71 the various assistance programs by taking dollars that could be  
72 used to provide services for those people who have a legitimate  
73 need for assistance, and

74 WHEREAS, both Medicaid and public assistance programs are  
75 vulnerable to fraudulent practices that can take many forms. For  
76 Medicaid, these practices range from providers who bill for  
77 services never rendered and who pay kickbacks to other providers  
78 for client referrals, to fraud occurring at the corporate level  
79 of a managed care organization. Fraudulent practices involving  
80 public assistance involve persons not disclosing material facts  
81 when obtaining assistance or not disclosing changes in  
82 circumstances while on public assistance, and

83 WHEREAS, ridding the system of perpetrators who prey on the  
84 state's Medicaid and public assistance programs helps reduce the  
85 state's skyrocketing costs, makes more funds available for



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86 essential services, and improves the quality of care and the  
87 health status of our residents, and

88 WHEREAS, aggressive and comprehensive measures are needed  
89 at the state level to investigate and prosecute Medicaid and  
90 public assistance fraud and to recover dollars stolen from these  
91 programs, and

92 WHEREAS, new statewide initiatives and coordinated efforts  
93 are necessary to focus resources in order to aid law enforcement  
94 and investigative agencies in detecting and deterring this type  
95 of fraudulent activity, NOW, THEREFORE,

96  
97 Be It Enacted by the Legislature of the State of Florida:

98  
99 Section 1. Section 624.35, Florida Statutes, is created to  
100 read:

101 624.35 Short title.—Sections 624.35-624.352 may be cited as  
102 the “Medicaid and Public assistance Fraud Strike Force Act.”

103 Section 2. Section 624.351, Florida Statutes, is created to  
104 read:

105 624.351 Medicaid and Public Assistance Fraud Strike Force.—

106 (1) LEGISLATIVE FINDINGS.—The Legislature finds that there  
107 is a need to develop and implement a statewide strategy to  
108 coordinate state and local agencies, law enforcement entities,  
109 and investigative units in order to focus programs and  
110 initiatives dealing with the prevention, detection, and  
111 prosecution of Medicaid and public assistance fraud.

112 (2) ESTABLISHMENT.—The Medicaid and Public Assistance Fraud  
113 Strike Force is created within the department to oversee and  
114 coordinate state and local efforts to eliminate Medicaid and



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115 public assistance fraud and to recover state and federal funds.  
116 The strike force shall serve in an advisory capacity and provide  
117 recommendations and policy alternatives to the Chief Financial  
118 Officer.

119 (3) MEMBERSHIP.—The strike force shall consist of the  
120 following 11 members who may not designate anyone to serve in  
121 their place:

122 (a) The Chief Financial Officer, who shall serve as chair.

123 (b) The Attorney General, who shall serve as vice chair.

124 (c) The executive director of the Department of Law  
125 Enforcement.

126 (d) The Secretary of Health Care Administration.

127 (e) The Secretary of Children and Family Services.

128 (f) The State Surgeon General.

129 (g) Five members appointed by the Chief Financial Officer,  
130 consisting of two sheriffs, two chiefs of police, and one state  
131 attorney. When making these appointments, the Chief Financial  
132 Officer shall consider representation by geography, population,  
133 ethnicity, and other relevant factors in order to ensure that  
134 the membership of the strike force is representative of the  
135 state as a whole.

136 (4) TERMS OF MEMBERSHIP; COMPENSATION; STAFF.—

137 (a) All members appointed by the Chief Financial Officer  
138 shall be appointed for a term of 2 years. The remaining members  
139 are standing members of the strike force and may not serve  
140 beyond the time he or she ceases to hold the position that was  
141 the basis for appointment to the strike force. A vacancy shall  
142 be filled in the same manner as the original appointment but  
143 only for the unexpired term.



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144       (b) The Legislature finds that the strike force serves a  
145 legitimate state, county, and municipal purpose and that service  
146 on the strike force is consistent with a member's principal  
147 service in a public office or employment. Therefore membership  
148 on the strike force does not disqualify a member from holding  
149 any other public office or from being employed by a public  
150 entity, except that a member of the Legislature may not serve on  
151 the strike force.

152       (c) Members of the strike force shall serve without  
153 compensation, but are entitled to reimbursement for per diem and  
154 travel expenses pursuant to s. 112.061. Reimbursements may be  
155 paid from appropriations provided to the department by the  
156 Legislature for the purposes of this section.

157       (d) The Chief Financial Officer shall appoint a chief of  
158 staff for the strike force who must have experience, education,  
159 and expertise in the fields of law, prosecution, or fraud  
160 investigations and shall serve at the pleasure of the Chief  
161 Financial Officer. The department shall provide the strike force  
162 with staff necessary to assist the strike force in the  
163 performance of its duties.

164       (5) MEETINGS.—The strike force shall hold its  
165 organizational session by March 1, 2011. Thereafter, the strike  
166 force shall meet at least four times per year. Additional  
167 meetings may be held if the chair determines that extraordinary  
168 circumstances require an additional meeting. Members may appear  
169 by electronic means. A majority of the members of the strike  
170 force constitutes a quorum.

171       (6) STRIKE FORCE DUTIES.—The strike force shall provide  
172 advice and make recommendations, as necessary, to the Chief



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173 Financial Officer.

174 (a) The strike force may advise the Chief Financial Officer  
175 on the feasibility of undertaking initiatives that include, but  
176 are not limited to:

177 1. Conducting a census of local, state, and federal efforts  
178 to address Medicaid and public assistance fraud in this state,  
179 including fraud detection, prevention, and prosecution, in order  
180 to discern overlapping missions, maximize existing resources,  
181 and strengthen current programs.

182 2. Developing a strategic plan for coordinating and  
183 targeting state and local resources for preventing and  
184 prosecuting Medicaid and public assistance fraud. The plan must  
185 identify methods to enhance multiagency efforts that contribute  
186 to achieving the state's goal of eliminating Medicaid and public  
187 assistance fraud.

188 3. Identifying methods to implement innovative technology  
189 and data sharing in order to identify and analyze Medicaid and  
190 public assistance fraud with speed and efficiency.

191 4. Establishing a program that provides grants to state and  
192 local agencies that develop and implement effective Medicaid and  
193 public assistance fraud prevention and investigative programs,  
194 which are determined by the strike force to significantly  
195 contribute to achieving the state's goal of eliminating Medicaid  
196 and public assistance fraud. The grant program may also provide  
197 startup funding for new initiatives by local and state law  
198 enforcement or administrative agencies to combat Medicaid and  
199 public assistance fraud.

200 5. Developing and promoting crime prevention services and  
201 educational programs that serve the public, including, but not



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202 limited to, a well-publicized rewards program for the  
203 apprehension and conviction of criminals who perpetrate Medicaid  
204 and public assistance fraud.

205 6. Providing grants, contingent upon appropriation, for  
206 multiagency or state and local Medicaid and public assistance  
207 fraud efforts, which would include, but are not limited to:

208 a. Providing for a Medicaid and public assistance fraud  
209 prosecutor in the Office of the Statewide Prosecutor.

210 b. Providing assistance to state attorneys for support  
211 services or equipment, or for the hiring of assistant state  
212 attorneys, as needed, to prosecute Medicaid and public  
213 assistance fraud cases.

214 c. Providing assistance to judges for support services or  
215 for the hiring of senior judges, as needed, so that Medicaid and  
216 public assistance fraud cases can be heard expeditiously.

217 (b) The strike force shall receive periodic reports from  
218 relevant state agencies, law enforcement officers,  
219 investigators, prosecutors, and coordinating teams which relate  
220 to Medicaid and public assistance criminal and civil  
221 investigations. Such reports may include discussions regarding  
222 significant factors and trends relevant to a statewide Medicaid  
223 and public assistance fraud strategy.

224 (7) REPORTS.—The strike force shall annually prepare and  
225 submit a report on its activities and recommendations, by  
226 October 1, to the President of the Senate, the Speaker of the  
227 House of Representatives, the Governor, and the chairs of the  
228 Senate and House committees that have substantive jurisdiction  
229 over Medicaid and public assistance fraud.

230 Section 3. Section 624.352, Florida Statutes, is created to





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231 read:  
232 624.352 Interagency agreements to detect and deter Medicaid  
233 and public assistance fraud.—

234 (1) The Chief Financial Officer shall prepare model  
235 interagency agreements for the prevention, investigation, and  
236 prosecution of Medicaid and public assistance fraud to be known  
237 as "Strike Force" agreements. Parties to such agreements may  
238 include any agency that is headed by a Cabinet officer, the  
239 Governor and Cabinet, a collegial body, or any federal, state,  
240 or local law enforcement agency.

241 (2) The agreements must include, but are not limited to:

242 (a) Establishing the agreement's purpose, mission,  
243 authority, organizational structure, procedures, supervision,  
244 operations, deputations, funding, expenditures, property and  
245 equipment, reports and records, assets and forfeitures, media  
246 policy, liability, and duration.

247 (b) Requiring that parties to an agreement have appropriate  
248 powers and authority relative to the purpose and mission of the  
249 agreement.

250 Section 4. Section 16.59, Florida Statutes, is amended to  
251 read:

252 16.59 Medicaid fraud control.—The Medicaid Fraud Control  
253 Unit ~~There~~ is created in the Department of Legal Affairs to the  
254 ~~Medicaid Fraud Control Unit, which may~~ investigate all  
255 violations of s. 409.920 and any criminal violations discovered  
256 during the course of those investigations. The Medicaid Fraud  
257 Control Unit may refer any criminal violation so uncovered to  
258 the appropriate prosecuting authority. The offices of the  
259 Medicaid Fraud Control Unit, ~~and the offices of the~~ Agency for



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260 Health Care Administration Medicaid program integrity program,  
261 and the Divisions of Insurance Fraud and Public Assistance Fraud  
262 within the Department of Financial Services shall, to the extent  
263 possible, be collocated; however, positions dedicated to  
264 Medicaid managed care fraud within the Medicaid Fraud Control  
265 Unit shall be collocated with the Division of Insurance Fraud.  
266 The Agency for Health Care Administration, ~~and~~ the Department of  
267 Legal Affairs, and the Divisions of Insurance Fraud and Public  
268 Assistance Fraud within the Department of Financial Services  
269 shall conduct joint training and other joint activities designed  
270 to increase communication and coordination in recovering  
271 overpayments.

272 Section 5. Paragraph (o) is added to subsection (2) of  
273 section 20.121, Florida Statutes, to read:

274 20.121 Department of Financial Services.—There is created a  
275 Department of Financial Services.

276 (2) DIVISIONS.—The Department of Financial Services shall  
277 consist of the following divisions:

278 (o) The Division of Public Assistance Fraud.

279 Section 6. Paragraph (b) of subsection (7) of section  
280 411.01, Florida Statutes, is amended to read:

281 411.01 School readiness programs; early learning  
282 coalitions.—

283 (7) PARENTAL CHOICE.—

284 (b) If it is determined that a provider has provided any  
285 cash to the beneficiary in return for receiving the purchase  
286 order, the early learning coalition or its fiscal agent shall  
287 refer the matter to the Department of Financial Services  
288 pursuant to s. 414.411 ~~Division of Public Assistance Fraud~~ for



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289 investigation.

290 Section 7. Subsection (2) of section 414.33, Florida  
291 Statutes, is amended to read:

292 414.33 Violations of food stamp program.—

293 (2) In addition, the department shall establish procedures  
294 for referring ~~to the Department of Law Enforcement~~ any case that  
295 involves a suspected violation of federal or state law or rules  
296 governing the administration of the food stamp program to the  
297 Department of Financial Services pursuant to s. 414.411.

298 Section 8. Subsection (9) of section 414.39, Florida  
299 Statutes, is amended to read:

300 414.39 Fraud.—

301 (9) All records relating to investigations of public  
302 assistance fraud in the custody of the department and the Agency  
303 for Health Care Administration are available for examination by  
304 the Department of Financial Services ~~Law Enforcement~~ pursuant to  
305 s. 414.411 ~~943.401~~ and are admissible into evidence in  
306 proceedings brought under this section as business records  
307 within the meaning of s. 90.803(6).

308 Section 9. Section 943.401, Florida Statutes, is  
309 transferred, renumbered as section 414.411, Florida Statutes,  
310 and amended to read:

311 414.411 ~~943.401~~ Public assistance fraud.—

312 (1) ~~(a)~~ The Department of Financial Services ~~Law Enforcement~~  
313 shall investigate all public assistance provided to residents of  
314 the state or provided to others by the state. In the course of  
315 such investigation the department ~~of Law Enforcement~~ shall  
316 examine all records, including electronic benefits transfer  
317 records and make inquiry of all persons who may have knowledge



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318 as to any irregularity incidental to the disbursement of public  
319 moneys, food stamps, or other items or benefits authorizations  
320 to recipients.

321 ~~(b)~~ All public assistance recipients, as a condition  
322 precedent to qualification for public assistance ~~received and as~~  
323 ~~defined~~ under ~~the provisions of~~ chapter 409, chapter 411, or  
324 this chapter 414, must shall first give in writing, to the  
325 Agency for Health Care Administration, the Department of Health,  
326 the Agency for Workforce Innovation, and the Department of  
327 Children and Family Services, as appropriate, and to the  
328 Department of Financial Services Law Enforcement, consent to  
329 make inquiry of past or present employers and records, financial  
330 or otherwise.

331 (2) In the conduct of such investigation the Department of  
332 Financial Services Law Enforcement may employ persons having  
333 such qualifications as are useful in the performance of this  
334 duty.

335 (3) The results of such investigation shall be reported by  
336 the Department of Financial Services Law Enforcement to the  
337 appropriate legislative committees, the Agency for Health Care  
338 Administration, the Department of Health, the Agency for  
339 Workforce Innovation, and the Department of Children and Family  
340 Services, and to such others as the department ~~of Law~~  
341 ~~Enforcement~~ may determine.

342 (4) The Department of Health and the Department of Children  
343 and Family Services shall report to the Department of Financial  
344 Services Law Enforcement the final disposition of all cases  
345 wherein action has been taken pursuant to s. 414.39, based upon  
346 information furnished by the Department of Financial Services



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347 ~~Law Enforcement.~~

348 (5) All lawful fees and expenses of officers and witnesses,  
349 expenses incident to taking testimony and transcripts of  
350 testimony and proceedings are a proper charge to the Department  
351 of Financial Services ~~Law Enforcement~~.

352 (6) The provisions of this section shall be liberally  
353 construed in order to carry out effectively the purposes of this  
354 section in the interest of protecting public moneys and other  
355 public property.

356 Section 10. Audit of the Medicaid fraud and abuse  
357 processes.—

358 (1) The Auditor General, in consultation with the Office of  
359 Program Policy Analysis and Government Accountability, shall  
360 conduct an operational audit of the Agency for Health Care  
361 Administration's Medicaid fraud and abuse systems, including the  
362 Medicaid program integrity program. The scope of the audit may  
363 include the Attorney General's Medicaid Fraud Control Unit, and  
364 the Medicaid-related programs in the Department of Health, the  
365 Department of Elderly Affairs, the Agency for Persons with  
366 Disabilities, and the Department of Children and Family  
367 Services. The audit must include, but is not limited to:

368 (a) An evaluation of current Medicaid policies and the  
369 Medicaid fiscal agent.

370 (b) A comprehensive analysis of all Medicaid fraud and  
371 abuse prevention and detection processes, including all agency  
372 contracts, Medicaid databases, and internal control risk  
373 assessments.

374 (c) A comprehensive evaluation of the effectiveness of the  
375 current laws, rules, and contractual requirements that govern



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376 Medicaid managed care entities.

377 (d) An evaluation of the agency's Medicaid managed care  
378 oversight processes.

379 (2) The audit report must include, but is not limited to:

380 (a) Recommendations for additional Medicaid fiscal agent  
381 edits to increase the overall efficiency of the Medicaid  
382 program, including reductions in Medicaid overpayments; and

383 (b) Operational and legislative recommendations to enhance  
384 the prevention and detection of fraud and abuse in the Medicaid  
385 program, including the Medicaid managed care program, and to  
386 manage the program in a more cost-effective manner.

387 (3) The Auditor General's Office and the Office of Program  
388 Policy Analysis and Government Accountability may contract with  
389 technical consultants to assist in the performance of the audit.  
390 The Auditor General shall submit the joint audit report to the  
391 President of the Senate, the Speaker of the House of  
392 Representatives, and the Governor by December 1, 2011.

393 Section 11. Medicaid claims adjudication project.—The  
394 Agency for Health Care Administration shall issue a competitive  
395 procurement pursuant to chapter 287, Florida Statutes, with a  
396 third-party vendor, at no cost to the state, to provide a real-  
397 time, front-end database to augment the Medicaid fiscal agent  
398 program edits and claims adjudication process. The vendor shall  
399 provide an interface with the Medicaid fiscal agent to decrease  
400 inaccurate payment to Medicaid providers and improve the overall  
401 efficiency of the Medicaid claims-processing system.

402 Section 12. All powers, duties, functions, records,  
403 offices, personnel, property, pending issues and existing  
404 contracts, administrative authority, administrative rules, and



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405 unexpended balances of appropriations, allocations, and other  
406 funds relating to public assistance fraud in the Department of  
407 Law Enforcement are transferred by a type two transfer, as  
408 defined in s. 20.06(2), Florida Statutes, to the Division of  
409 Public Assistance Fraud in the Department of Financial Services.

410 Section 13. This act shall take effect January 1, 2011.