

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 257 Financial Responsibility for Medical Expenses of Arrestees, Pretrial Detainees, or Sentenced Inmates

SPONSOR(S): Insurance & Banking Subcommittee; Criminal Justice Subcommittee; Hooper and Baxley

TIED BILLS: **IDEN./SIM. BILLS:** SB 490

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|------------------|---------|---------------------------------------|
| 1) Criminal Justice Subcommittee | 14 Y, 0 N, As CS | Krol | Cunningham |
| 2) Insurance & Banking Subcommittee | 15 Y, 0 N, As CS | Barnum | Cooper |
| 3) Health & Human Services Committee | | | |
| 4) Judiciary Committee | | | |

SUMMARY ANALYSIS

Current law provides for recovery of expenses for medical care, treatment, hospitalization, and transportation (medical care) associated with arrestees for violating state law, or a county or municipal ordinance. A medical services provider is reimbursed by the insurance of the individual, the person, or in accordance with a financial settlement agreement. Absent these sources, the cost of medical care is paid from the general fund of the county in which the person was arrested or from the general fund of the municipality if the arrest was for a violation of a municipal ordinance. The rates medical service providers can charge local governments are not capped.

A county or municipal detention facility may seek reimbursement for the medical expenses of a pretrial detainee or prisoner from the individual, or an insurance company, health care corporation or other source, if the individual is covered by an insurance policy.

CS/CS/HB 257 allows a county or municipality to pay the medical costs of an arrestee, pretrial detainee, or sentenced inmate at 110 percent of the Medicare allowable rate if no formal written agreement exists between the county or municipality and the third-party medical care provider. However, if the provider reports an operating loss to the Agency for Health Care Administration, they will be paid at 125 percent of the Medicare allowable rate. The bill exempts payments to physicians for emergency services provided within a hospital emergency department from the maximum allowable rate.

Medical costs include medical care, treatment, hospitalization, and transportation.

The bill requires that before a third-party provider can seek reimbursement from a county or municipal's general fund, it must show that a "good faith effort" was made to collect payment for medical care expenses from an arrestee, pretrial detainee, or sentenced inmate.

The bill may have a positive fiscal impact on local governments but may have a negative impact on medical care providers. See "Fiscal Comments."

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Financial Responsibility for Medical Expenses of Arrestees

Section 901.35, F.S., provides that 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 arrest¹ for any violation of state law or a county or municipal ordinance from the following sources in the following order:

- (1) Insurance of the person receiving the medical care;
- (2) The person receiving medical care; or
- (3) A financial settlement for the medical care.²

When reimbursement from these sources is unavailable, the cost of medical care is paid from the general fund of the county in which the person was arrested or from the general fund of the municipality if the arrest was for a violation of a municipal ordinance.³ The rates medical service providers can charge local governments are not capped.⁴

The responsibility for payment of medical costs exists until the arrested person is released from the custody of the arresting agency.⁵ If an arrested person has health insurance, subscribes to a health care corporation, or receives health care benefits from any other source, he or she must assign those benefits to the health care provider.⁶

Financial Responsibility for Medical Expenses of County and Municipal Prisoners

Section 951.032, F.S., articulates a local government’s rights to reimbursement from a prisoner or person⁷ seeking medical attention. A county or municipal detention facility incurring expenses for providing medical care may seek reimbursement for the expenses from the following sources in the following order:

- (1) From the prisoner or person receiving medical care by deducting the cost from the prisoner's cash account on deposit with the detention facility or placing a lien on the prisoner's cash account or other personal property;⁸ or
- (2) From an insurance company, health care corporation or other source if the prisoner or person is covered by an insurance policy.

¹ The injury or illness need not be caused by the arrest. Fla. Op. Atty. Gen. 85-6, (Feb. 4, 1985). “[S]ection 901.35 seems to impose tertiary responsibility on the general fund for any medical expenses incurred for the treatment of persons ill or injured at the time of arrest, regardless of whether the person’s condition arises from or is attributable to the circumstances of the arrest.”

² Section 901.35, F.S.

³ *Id.*

⁴ 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).

⁵ 901.35, F.S. See *Comeau v. State*, 611 So. 2d 68 (Fla. 1st DCA 1992)(stating that the county, as a custodian of a prisoner charged with violating a state law or county ordinance, has a duty to provide medical care for its prisoner.)

⁶ *Id.*

⁷ 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).

⁸ Section 951.032(1)(a), F.S., provides that any existing lien may be carried over to future incarceration of the same prisoner as long as the future incarceration takes place within the county originating the lien and takes place within 3 years of the date the lien was placed against the prisoner’s account or other personal property.

If the prisoner refuses to cooperate with the reimbursement efforts of the detention facility, he or she may not receive gain-time as provided by s. 951.21, F.S.

Medicare Rates

The Social Security Act, 42 U.S.C. § 1395, addresses Medicare. Medicare consists of Part A (hospital insurance), Part B (medical insurance), and Part D (prescription drug coverage) as 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).⁹

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.¹⁰ 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 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.¹¹

The Department of Corrections and Medical Payment Caps

In 2008, the General Appropriations Implementing Bill, chapter 2008-153, Laws of Florida, capped medical payment rates the Department of Corrections (department) could pay to a hospital, or a health care provider providing services at a hospital. Payments were capped at 110 percent of the Medicare allowable rate for inmate medical care when no contract existed between the department and a hospital, or a health care provider providing services at a hospital. However, hospitals reporting an operating loss to the Agency for Health Care Administration were capped at 125 percent of the Medicare allowable rate.

In 2009, s. 945.6041, F.S., created by chapter 2009-63, Laws of Florida, codified the payment caps and made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap. The department has reported savings of over \$63 million since the payment caps were implemented.¹² The department's community hospital expenditures, which include inpatient and outpatient hospital charges, outpatient surgery and emergency room visits, totaled nearly \$70 million in FY 2009-10.¹³

Effect of the Bill

CS/CS/HB 257 modifies s. 901.35(1), F.S., to specify that a person is responsible for paying any medical care expenses if he or she is ill, wounded, or otherwise injured during or *as a result of* an arrest for any state law or county or municipal ordinance. This specification, "as a result of an arrest," replaces current language, "at the time of an arrest." The bill removes all language regarding how a medical care service provider can recover medical care expenses from arrestees from s. 901.35(2), F.S., and adds it

⁹ "Medicare Program – General Information," The Centers for Medicare and Medicaid Services, <http://www.cms.gov/MedicareGenInfo/> (Last visited on February 11, 2011)

¹⁰ "Fee Schedules – General Information," The Centers for Medicare and Medicaid Services, <http://www.cms.gov/FeeScheduleGenInfo/> (Last visited on February 11, 2011)

¹¹ "Prospective Payment System – General Information," The Centers for Medicare and Medicaid Services, <http://www.cms.gov/ProspMedicareFeeSvcPmtGen/> (Last visited on February 11, 2011)

¹² Savings from FY 2008- December 2010. Correspondence with the Department of Corrections. On file with the Criminal Justice Subcommittee.

¹³ *Id.*

to s. 951.032, F.S., (which relates to how county and municipal detention facilities recover medical costs from prisoners.) The bill allows for a provider of medical care services to seek reimbursement in accordance with s. 951.032, F.S.

The bill amends s. 951.032, F.S., by replacing each use of the term “prisoner” with the term “pretrial detainee or sentenced inmate.” However, the process by which county and municipal facilities recover medical care expenses from such persons remains unchanged.

As noted above, the bill moves language regarding how a medical care service provider can recover medical care expenses from s. 901.35, F.S., to s. 951.032, F.S. This language specifies that a third-party provider shall recover the expenses of medical care from an arrestee, pretrial detainee, or sentenced inmate from the following sources in the following order:

- (1) Insurance of the person receiving the medical care;
- (2) The person receiving medical care; or
- (3) A financial settlement for the medical care.

The bill requires the third-party provider to make a “good faith effort” to recover the payment before it can seek reimbursement from the general fund of a county or municipality. A “good faith effort” is described as one that is consistent with that provider’s usual policies and procedures related to the collection of fees from indigent patients who are not in the custody of a county or municipal detention facility.

The bill provides that, if the third-party provider has not received payment after making a “good faith effort” to collect medical care expenses from the parties listed above, medical care expenses will be paid to the provider:

- From the county general fund if the person who receives such services:
 - During or as a result of an arrest for a violation of a state law or county ordinance; or
 - While detained in a county detention facility.
- From the municipal general fund if the person who receives such services:
 - During or as a result of an arrest for a violation of a municipal ordinance; or
 - While detained in a municipal detention facility.

The bill requires that, in the absence of a formal written agreement, payments made from county or municipal general funds for an arrestee, pretrial detainee, or sentenced inmate’s medical care will be made at 110 percent of the Medicare allowable rate. However, payments can be increased to 125 percent of the Medicare allowable rate if the third-party provider reports a negative operating margin for the previous year to the Agency of Health Care Administration through hospital-audited financial data.

The bill exempts payments to physicians licensed under ch. 458, F.S., or ch. 459, F.S., for emergency services provided within a hospital emergency department from the maximum allowable rate.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Amends s. 901.35, F.S., relating to financial responsibility for medical expenses.

Section 2. Amends s. 951.032, F.S., relating to financial responsibility for medical expenses.

Section 3. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providers of medical care, treatment, hospitalization, and transportation may receive decreased revenue when providing services to arrestees, pretrial detainees, and sentenced inmates when the person receiving the services cannot provide for payment of the costs and the provider does not have a formal written agreement with the county or municipality.

D. FISCAL COMMENTS:

This bill may be a cost savings measure for counties and municipalities, when no written agreement exists, because it caps the cost of medical services provided to arrestees, pretrial detainees, and sentenced inmates at 110 percent of the Medicare allowable rate, or in some cases, at 125 percent of the Medicare allowable rate. When a written agreement exists containing rates less than those specified in the bill for use when no written agreement exists, the medical service provider may seek higher rates at the time of renewal, or simply let the written agreement expire.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At the March 9, 2011 meeting of the Insurance & Banking Subcommittee, two amendments were proposed and adopted.

Amendment 1 provided a definition for “pretrial detainee” and “sentenced inmate”. It assigned responsibility for restricting the personal freedom of pretrial detainees and sentenced inmates brought for treatment to law enforcement or the county or municipal jail.

Amendment 2 clarified that the responsibility for payment of medical costs is based upon the date services are rendered, regardless of the billing date.

The analysis is drafted to the committee substitute to the committee substitute.