

**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 Budget Subcommittee on Criminal and Civil Justice Appropriations

**BILL:** CS/CS/SB 490

**INTRODUCER:** Budget Subcommittee on Criminal and Civil Justice Appropriations; Health Regulation Committee and Senator Jones

**SUBJECT:** Medical Expenses of Pretrial Detainees or Sentenced Inmates

**DATE:** April 18, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Brown</u>	<u>Stovall</u>	<u>HR</u>	<b>Fav/CS</b>
3.	<u>Sneed</u>	<u>Sadberry</u>	<u>BJA</u>	<b>Fav/CS</b>
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:**

SB 490 limits county or municipal medical costs of an in-custody pretrial detainee or sentenced inmate to 110 percent of the Medicare allowable rate (not to exceed 125 percent of the Medicare rate if the third-party provider has reported a negative operating margin to the Agency for Health Care Administration) if no formal written agreement exists between the county or municipality and the third-party medical care provider. The bill also limits remuneration for emergency room services to 75 percent of the hospitals' billed charges.

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

The bill specifies responsibility of the governmental body for payment of any in-custody medical costs ceases upon release of the in-custody pretrial detainee or sentenced inmate.

The bill also changes the language that states that the responsibility of paying for an injury that occurred as a result of arrest is on the person receiving care (current law uses the language “at the time of arrest”).

The bill defines the term “in-custody pretrial detainees or sentenced inmates” and specifies that law enforcement or the county or municipal detention facility is responsible for restricting the personal freedom of in-custody pretrial detainees or sentenced inmates receiving medical treatment or services from third-party providers.

The bill exempts Broward and Miami-Dade counties, which have negotiated hospital rates below those established in this bill.

This bill substantially amends sections 901.35 and 951.032 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 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 of the person receiving the medical care;
- (2) The person receiving medical care; and
- (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

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

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

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

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

<sup>5</sup> See *Williams v. Ertle*, 698 So. 2d 1294, (Fla. 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 s. 901.35, F.S. 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*

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>

A county detention facility or municipal detention facility incurring expenses for providing medical care may seek reimbursement for the expenses incurred in the following order:

- From the prisoner or person receiving care, including authorizing a lien against a prisoner's cash account for medical care by deducting the cost from the prisoner's cash account; and
- From an insurance company, health care corporation, or other source if the prisoner or person is covered by an insurance policy or subscribes to a health care corporation or other source for those expenses.<sup>9</sup>

Section 951.23, F.S., provides the following relevant definitions:

“County prisoner” means a person who is detained in a county detention facility by reason of being charged with or convicted of either a felony or misdemeanor<sup>10</sup>;

“Municipal prisoner” means a person who is detained in a municipal detention facility by reason of being charged with or convicted of violation of municipal law or ordinance;

“County detention facility” means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor; and

“Municipal detention facility” means a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.

### **Medicare Rates**

The Social Security Act, 42 U.S.C. § 1395, addresses Medicare. Medicare is federal 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).

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*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.).

<sup>9</sup> Section 951.23, F.S.

<sup>10</sup> Note that case law has held that pretrial detainees are “prisoners” for purposes of state statutes allowing recovery of subsistence costs and certain medical expenses from prisoners. *Williams v. Ergle*, 698 So. 2d 1294 (Fla. 5th DCA 1997).

Medicare reimburses providers based on the type of service they provide. The Federal 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 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.

Medicare rates are generally higher than Medicaid rates, but could be lower than rates charged by a medical services provider. In 2008, the General Appropriations Implementing Bill, chapter 2008-153, Laws of Florida, capped medical payment rates the Department of Corrections (DOC) 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, the DOC was allowed to pay a hospital up to 125 percent of the Medicare allowable rate if the hospital had reported a negative operating margin to the Agency for Health Care Administration for the previous year.

In 2009, s. 945.6041, F.S., created by chapter 2009-63, Laws of Florida, codified the payment caps. Section 945.6041, F.S., also made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap. The DOC has saved \$20 million in the year after payment caps were implemented.<sup>11</sup> The DOC expenditures from the Inmate Health Services appropriation category, from which hospital and physician services are paid, totaled \$170 million in FY 2008-09.

### **Indigent Health Care**

Federal<sup>12</sup> and state law, as well as hospital collection policies, manage the way that medical care providers handle indigent patients. The Florida Health Care Responsibility Act<sup>13</sup> places the ultimate financial obligation for the out-of-county hospital care of qualified indigent patients on the county in which the indigent patient resides.<sup>14</sup> This part of ch. 154, F.S., defines “qualified indigent person” or “qualified indigent patient” as:

a person who has been determined pursuant to s. 154.308 to have an average family income, for the 12 months preceding the determination, which is below 100 percent of the federal nonfarm poverty level; who is not eligible to participate in any other government program that provides hospital care; who has no private insurance or has inadequate private insurance; and who does not reside in a public

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<sup>11</sup> Senate Policy and Steering Committee on Ways and Means, *CS/CS/CS/SB 218 Bill Analysis* (April 8, 2010).

<sup>12</sup> Title XIX of the Social Security Act, 42 U.S.C §§ 1396 et seq.

<sup>13</sup> Sections 154.301-154.331, F.S.

<sup>14</sup> Section 154.302, F.S.

institution as defined under the medical assistance program for the needy under Title XIX of the Social Security Act, as amended.<sup>15</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 901.35(1), F.S., to specify that except as provided in s. 951.032, F.S., 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 provider can recover medical care expenses from arrestees from s. 901.35(2), F.S., and adds it to s. 951.032, F.S., (which relates to how county and municipal detention facilities recover medical costs from prisoners).

**Section 2** of the bill amends s. 951.032, F.S., by replacing each use of the term “prisoner” with the term “in-custody pretrial detainee or sentenced inmate.” However, the process by which county and municipal facilities recover medical care expenses from such persons remains unchanged.

The bill defines an “in-custody pretrial detainee or sentenced inmate” as a person whose physical freedom is restricted by a certified law enforcement officer or certified correctional officer pending disposition of an arrest or completion of a county court sentence. The term also includes a person who is furloughed by a criminal court for the express purpose of receiving medical treatment if a condition of the furlough is the immediate return to the custody of a county or municipal detention facility following completion of such treatment.

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 in-custody 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;
- (3) A financial settlement for the medical care; or
- (4) The general fund of the county or municipality.

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 in which a person was arrested. 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 requires that, in the absence of a written agreement, remuneration for hospital services, excluding emergency room services, made from county or municipal general funds for an in-custody pretrial detainee or sentenced inmate’s medical care, must be billed and paid at a rate not

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<sup>15</sup> Section 154.304, F.S.

to exceed 110 percent of the Medicare allowable rate. Emergency room services and care must be billed and paid at a rate not to exceed no more than 75 percent of the hospital's billed charges. In addition, the bill provides that compensation may not exceed 125 percent of the Medicare allowable rate if the third-party provider has reported a negative operating margin for the previous year to the Agency of Health Care Administration through hospital-audited financial data. However, the bill does not apply the maximum limits to amounts billed and paid for medical physicians or osteopathic physicians licensed under ch. 458, F.S., or ch. 459, F.S., respectively, for emergency services provided within a hospital emergency department.

The bill specifies that the responsibility of a governmental body (a county or municipality) for payment of medical costs ceases upon release of the in-custody pretrial detainee or sentenced inmate.<sup>16</sup>

The bill requires an in-custody pretrial detainee or sentenced inmate who has health insurance, subscribes to a health care corporation, or receives health care benefits from any other source to assign such benefits to the health care provider.

The bill specifies that law enforcement or the county or municipal detention facility is responsible for restricting the personal freedom of in-custody pretrial detainees or sentenced inmates receiving medical treatment or services from third-party providers.

**Section 3** of the bill provides an effective date of July 1, 2011.

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

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

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

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

The provisions of this bill 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.

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<sup>16</sup> This applies even if those costs were incurred while the pretrial detainee or sentenced inmate was in custody. *See Jones v. Jenne*, 2008 WL 2323890 (S.D. Fla. 2008) (interpreting similar language in s. 901.35, F.S.).

**B. Private Sector Impact:**

With the exception of certain physician services provided within hospital emergency departments, providers of medical care will be limited regarding the rates they are allowed to charge for services provided 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. To the extent such providers are currently charging and being paid more than 75 percent of hospital billed emergency room services, 110 percent of Medicare rates or more than 125 percent of Medicare rates under certain conditions, the bill could result in decreased revenue for providers.

**C. Government Sector Impact:**

To the extent counties and municipalities are currently paying more than 75 percent of hospital billed charges for emergency room services; 110 percent of Medicare rates; or more than 125 percent of Medicare rates under certain conditions for medical services, not including certain physician services provided within hospital emergency departments, that are provided to persons ill, wounded, or otherwise injured during or at the time of arrest, the bill could result in cost savings for counties and municipalities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill's language regarding maximum payment at a percentage of the Medicare allowable rate is similar to the provisions of s. 945.6041, F.S., regarding payments by the DOC to a third-party health care provider for medical services provided to inmates if the health care provider does not have a contract for such services with the DOC or a private correctional facility that houses the inmate.

However, the bill's language differs from the DOC requirements in the following ways:

- The bill requires that remuneration must be *billed and paid* at a rate not to exceed 110 percent of Medicare, while s. 945.6041, F.S., requires only that compensation may not exceed 110 percent of Medicare rates. The bill and s. 945.6041, F.S., contain virtually identical provisions that compensation paid to hospitals may not exceed 125 percent of Medicare rates under certain conditions.
- The bill contains an exception to this maximum payment for amounts billed and paid for physicians licensed under ch. 458 or ch. 459, F.S., for emergency services provided within a hospital emergency department. Section 945.6041, F.S., contains no such exception. It is not clear if this exception within the bill applies only to payments made directly to physicians by the governmental body or whether the exception also applies to payments made to hospitals by the governmental body for services provided by physicians at the hospital.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS to CS by the Budget Subcommittee on Criminal and Civil Justice  
Appropriations on April 13, 2011:**

The CS makes the following changes:

- It limits the amount of medical services billed and paid for emergency room services and care to 75 percent of the hospital's billed charges rather than at 110 percent of the Medicare allowable rate, or 125 percent under certain conditions; and
- It excludes Broward and Miami-Dade counties from the payment limitation provisions of this bill because both counties have negotiated lower rates.

**CS by Health Regulation on March 9, 2011:**

The CS makes three changes when compared to the bill as filed:

- The CS makes a technical correction to a statutory reference;
- The CS provides a definition of “in-custody pretrial detainees or sentenced inmates;” and
- The CS specifies that law enforcement or the county or municipal detention facility is responsible for restricting the personal freedom of in-custody pretrial detainees or sentenced inmates receiving medical treatment or services from third-party providers.

- B. **Amendments:**

None.