

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 515 Public Assistance Fraud

SPONSOR(S): Smith

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|-----------|---------|--|
| 1) Criminal Justice Subcommittee | 11 Y, 0 N | Jones | Cunningham |
| 2) Healthy Families Subcommittee | 10 Y, 2 N | Entress | Brazzell |
| 3) Appropriations Committee | | | |
| 4) Judiciary Committee | | | |

SUMMARY ANALYSIS

Section 414.39, F.S., establishes a variety of crimes involving public assistance fraud. Public assistance fraud includes fraud involving temporary cash assistance, food assistance, Medicaid, or optional state supplementation program. The criminal penalties that apply to these offenses are based on the value of the public assistance involved in the offense. For example, s. 414.39(5)(b), F.S., specifies that if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more, in any 12 consecutive months, such person commits a third degree felony.

The bill amends the aggregate value amount in s. 414.39(5)(b), F.S., to make it a third degree felony if the value of the public assistance fraud or identification is of an aggregate value of \$200 or more *but less than \$20,000* in any 12 consecutive months. The bill also creates s. 414.39(5)(c) and (d), F.S., which:

- (c) Makes it a second degree felony if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months.
- (d) Makes it a first degree felony if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$100,000 or more in any 12 consecutive months.

The bill requires the Department of Children and Families (DCF), subject to available funding, to pay a reward to a person who reports original information relating to a violation of the state's public assistance fraud laws. The bill provides specifications that must be met before the reward money is paid.

The bill also amends s. 414.095(14), F.S., to add the following prohibitions and restrictions that apply to persons applying for or receiving Temporary Cash Assistance (TCA) benefits:

- Use of TCA benefits out-of-state is limited to 30 consecutive days. The TCA benefits of a recipient using his or her benefits out-of-state for more than 30 days shall be terminated.
- A parent or caretaker relative who has been disqualified due to fraud must have a protective payee designated to receive TCA benefits for an eligible child. An individual disqualified for fraud cannot be designated as a protective payee. In a two-parent household, if only one parent is disqualified, the other parent may be designated as the payee of the benefit.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the bill creates new first and second degree felony offenses relating to public assistance fraud. The bill may also have a fiscal impact on DCF and the Department of Financial Services (see fiscal section).

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Assistance Fraud

“Public assistance” refers to benefits paid on the basis of the temporary cash assistance,¹ food assistance,² Medicaid,³ or optional state supplementation program.^{4,5} Section 414.39, F.S., establishes the following crimes involving public assistance fraud, which are investigated by the Division of Public Assistance Fraud within the Department of Financial Services (DFS)⁶:

Section 414.39(1), F.S., provides that a person commits a crime if he or she:

- Fails, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to such person's qualification to receive public assistance under any state or federally funded assistance program;
- Fails to disclose a change in circumstances in order to obtain or continue to receive any such public assistance to which he or she is not entitled or in an amount larger than that to which he or she is entitled; or
- Aids and abets another person in the commission of any such act.

Section 414.39(2), F.S., provides that a person commits a crime if he or she:

- Uses, transfers, acquires, traffics, alters, forges, or possesses;
- Attempts to use, transfer, acquire, traffic, alter, forge, or possess; or
- Aids and abets another person in the use, transfer, acquisition, traffic, alteration, forgery, or possession of, a food assistance identification card, an authorization, including, but not limited to, an electronic authorization for the expenditure of food assistance benefits, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law.

Section 414.39(3), F.S., specifies that any person having duties in the administration of a state or federally funded public assistance program or in the distribution of public assistance, or authorizations or identifications to obtain public assistance, under a state or federally funded public assistance program commits a crime if he or she:

- Fraudulently misappropriates, attempts to misappropriate, or aids and abets in the misappropriation of food assistance, an authorization for food assistance, a food assistance identification card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or public assistance from any other state or federally funded program with which he or she has been entrusted or of which he or she has gained possession by virtue of his or her position, or if they knowingly fail to disclose any such fraudulent activity; or
- Knowingly misappropriates, attempts to misappropriate, or aids or abets in the misappropriation of, funds given in exchange for food assistance program benefits or for any form of food assistance benefits authorization.

Section 414.39(4), F.S., provides that a person commits a crime if he or she:

- Knowingly files, attempts to file, or aids and abets in the filing of, a claim for services to a recipient of public assistance under any state or federally funded public assistance program for services that were not rendered; knowingly files a false claim or a claim for nonauthorized items or services under such a program; or if they knowingly bill the recipient of public assistance under such a program, or his or her family, for an amount in excess of that provided for by law or regulation;

¹ Temporary cash assistance provides cash assistance to families with children to help families become self-supporting.

² The Food Assistance Program helps people with low-income, buy healthy food.

³ Medicaid provides medical coverage to low-income individuals and families.

⁴ Optional State Supplementation provides monthly cash payments to indigent elderly or disabled individuals.

⁵ Section 414.0252(10), F.S.

⁶ Section 414.411, F.S.

- Knowingly fails to credit the state or its agent for payments received from social security, insurance, or other sources; or
- In any way knowingly receives, attempts to receive, or aids and abets in the receipt of, unauthorized payment or other unauthorized public assistance or authorization or identification to obtain public assistance as provided herein.

Section 414.39(5), F.S., establishes criminal penalties that apply to all of the above-described offenses. The criminal penalties are based on the value of the public assistance involved in the offense.

Currently, s. 414.39(5), F.S., provides:

- If the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of \$200 in any 12 consecutive months, such person commits a first degree misdemeanor;⁷ or
- If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more in any 12 consecutive months, such person commits a third degree felony.⁸

In Fiscal Year 2012-2013, TCA served 209,142 people, food assistance served 4,879,342 people, and Medicaid served 3,744,588 people.⁹

Effect of the Bill

The bill amends the aggregate value amount in s. 414.39(5)(b), F.S., to make it a third degree felony if the value of the public assistance fraud or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more *but less than \$20,000* in any 12 consecutive months.

The bill creates s. 414.39(5)(c) and (d), F.S., which:

- Makes it a second degree felony¹⁰ if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months.
- Makes it a first degree felony¹¹ if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$100,000 or more in any 12 consecutive months.

The bill requires the Department of Children and Families (DCF) or the director of DCF's Office of Public Benefits Integrity to pay a reward to a person who furnishes and reports original information relating to a violation of the state's public assistance fraud laws, unless the person declines the reward. The information and report must:

- Be made to DCF, DFS, or the Florida Department of Law Enforcement;
- Relate to criminal fraud upon public assistance program funds or a criminal violation of public assistance fraud laws by another person; and
- Lead to the recovery of a fine, penalty, or forfeiture of property.

The reward requirement is subject to availability of funds and may not exceed 10 percent of the amount recovered or \$500,000, whichever is less, in a single case. The reward must be paid from the state share of the recovery in the Federal Grants Trust Fund from moneys collected pursuant to s. 414.41,

⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁸ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁹ *DCF 2013 Annual Report*, Florida Department of Children and Families.

¹⁰ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹¹ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

F.S.¹² The bill specifies that a person who receives a reward for providing information about Medicaid fraud is not eligible to receive funds pursuant to the Florida False Claims Act.¹³

Temporary Cash Assistance

“Temporary Case Assistance” (TCA) is defined as cash assistance provided under the state program certified under Title IV-A of the Social Security Act, as amended.¹⁴ TCA is a program under the Temporary Assistance for Needy Families block grant.¹⁵ DCF administers Florida’s TCA Program, which provides cash assistance to families with children under the age of 18 or under age 19 if full time high school students, that meet specified technical, income, and asset requirements. The program helps families become self-supporting while allowing children to remain in their own homes.¹⁶

Section 414.095, F.S., establishes the technical, income, and asset requirements that must be met before becoming eligible to receive TCA benefits,¹⁷ sets forth criteria for determining how much TCA a person is entitled to, and establishes how TCA may be calculated and paid. For example, the statute requires that an applicant register for work and engage in work activities, be a resident of Florida, and have a minor child. The statute also contains a multitude of prohibitions and restrictions, such as:

- A family without a minor child living in the home is not eligible to receive TCA. However, a pregnant woman is eligible for TCA in the ninth month of pregnancy if all eligibility requirements are otherwise satisfied;
- An individual is ineligible to receive TCA during any period when the individual is fleeing to avoid prosecution, custody, or confinement after committing a crime, attempting to commit a crime that is a felony under the laws of the place from which the individual flees or a high misdemeanor in the State of New Jersey, or violating a condition of probation or parole imposed under federal or state law; and
- The parent or other caretaker relative must report to the department within a specified period that a minor child will be absent from the home for 30 or more consecutive days. A parent or caretaker relative who fails to report this information to DCF shall be disqualified from receiving TCA for 30 days for the first occurrence, 60 days for the second occurrence, and 90 days for the third or subsequent occurrence.¹⁸

Currently, eligible recipients may use benefits out of state, but there are no regulations relating to determining the length of absence that is permissible.¹⁹

In the event that TCA is terminated due to noncompliance with work requirements, DCF will establish a protective payee to receive cash assistance or food assistance funds on behalf of any children in the home who are under the age of 18.²⁰ The protective payee shall be designated by DCF and may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children.
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children.

¹² Section 414.41, F.S., requires DCF to take all necessary steps to recover overpayment whenever it becomes apparent that any person or provider has received any public assistance to which she or he is not entitled, through either simple mistake or fraud on the part of DCF or on the part of the recipient or participant.

¹³ Under Florida’s False Claims Act (ss. 68.081-68.092, F.S.), people who blow the whistle on Medicaid Fraud are entitled to share in any funds recovered by the state. <http://myfloridalegal.com/pages.nsf/Main/ebc480598bbf32d885256cc6005b54d1> (last visited on January 29, 2014). See s. 68.085(3), F.S.

¹⁴ S. 414.0252(12), F.S.

¹⁵ Title IV-A of the Social Security Act.

¹⁶ *Temporary Cash Assistance*, The Department of Children and Families, *accessible at*: <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/temporary-cash-assistance-tca> (last visited on February 23, 2014).

¹⁷ DCF determines if the families meet such requirements. Section 414.095(1), F.S.

¹⁸ Section 414.095(14), F.S.

¹⁹ DCF’s Bill Analysis of HB 515 (2014) (on file with the Healthy Families Subcommittee).

²⁰ Section 414.095(4), F.S.

- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and utilize the assistance in the best interest of the child or children.²¹

Effect of the Bill

The bill amends s. 414.095(14), F.S., to add two additional prohibitions and restrictions. The first limits the out-of-state use of TCA benefits to 30 consecutive days and requires termination of the TCA benefits if used out-of-state for more than 30 days. The bill directs DCF to adopt rules providing for the determination of temporary absence and a recipient's intent to return to the state.

The second requires a parent or caretaker relative who has been disqualified due to fraud to have a protective payee designated to receive the TCA benefits for an eligible child. The requirements for designation of a protective payee are the same as provided in s. 414.065(2)(b), F.S.²² The bill specifies that an individual disqualified for fraud cannot be designated as a protective payee and in a two-parent household; if only one parent is disqualified, the other parent may be designated as the payee of the benefit.

B. SECTION DIRECTORY:

Section 1. Amends s. 414.39, F.S., relating to fraud.

Section 2. Amends s. 414.095, F.S., relating to determining eligibility for temporary cash assistance.

Section 3. Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

- DCF reports that reducing annual TCA expenditures by terminating the benefits received by recipients no longer residing in the state of Florida may result in an estimated annual savings of \$1.8 million (based on repeated out of state use and averages).²³
- DFS and DCF report that possible increased revenues if the reward provisions result in increased numbers of fraud violations reported that may generate a repayment to the state. According to DFS, the state retains between 20% and 35% of recoveries.²⁴

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the bill creates new first and second degree felony offenses relating to public assistance fraud.

According to DCF:

- Funding for rewards will be taken from moneys collected pursuant to s. 414.41, F.S.,²⁵ in the Federal Grants Trust Fund, which is a significant source of funding for DCF's Public Benefit

²¹ Section 414.065(2), F.S.

²² Section 414.065, F.S., requires all TCA applicants to register for work and engage in work activities in accordance with s. 445.024, F.S. Those who do not comply with the work requirements are subject to penalties. Upon the second or third occurrence of noncompliance, TCA for a child or children in a family who are under age 16 may be continued. However, any payments must be made through a protective payee. Protective payees must be designated by DCF and may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children;
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and to utilize the assistance in the best interest of the child or children.

²³ DCF's Bill Analysis of HB 515 (2014)(on file with the Healthy Families Subcommittee).

²⁴ DFS's Bill Analysis of HB 515 (2014)(on file with the Healthy Families Subcommittee).

Integrity (PBI) program. Reduction of these funds may cause the need for additional funding sources for the PBI operation.

- Additional staff would be needed to receive and investigate the tips and complaints received through the reward program. The Florida Office of the Attorney General experienced a 286% increase in calls relating to Medicaid fraud in the first year of a new reward program. DCF's Office of Public Benefit Integrity currently receives an average of 26,400 online and telephonic fraud reports annually. Assuming a similar increase in reports, an additional 7 staff would be needed to process the increase in complaint volume, investigative leads, and oversee the administration of the program.

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| Current call/ complaint volume | 26,400 |
| Additional anticipated volume (286% increase) | 75,504 |
| Minutes to log and process each complaint | 8 |
| Hours of additional workload | 10,067 |
| Contract staff to handle workload (10,067 hrs / 2,000 hrs per yr) | 5 |

Expected additional cost (\$16.10/hr * 2,000 hrs * 5 staff) \$161,000

Additional DCF Staffing Need

- 1 FTE: Rewards Program Manager
- 1 OPS ACCESS Integrity Investigator

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|---|------------------|
| Salaries and Benefits | \$48,003 |
| Other Personnel Services | \$35,601 |
| Nonrecurring Expenses (furniture for FTE, Equipment for OPS & Contract Staff) | \$9,473 |
| Recurring Expenses (Rent, Supplies, telephone, postage) | \$9,761 |
| Technology (Software Programming) | \$85,000 |
| Contracted Services (6 Financial Specialists) | \$161,000 |
| <u>DMS-Human Resources Services Surcharge</u> | <u>\$344</u> |
| Total—FY 2014-15 | \$349,182 |

- Notification to TCA recipients regarding out of state use will annually cost an estimated \$3,500 for mailings and communication costs.²⁶

According to DFS:

- Implementation of the cash reward process provided by this bill will likely generate a significant increase in the number of complaints received, based on the 286% increase in public complaints received when a similar reward system began by the Attorney General's Medicaid Fraud Unit.²⁷ Given current Division staffing and the lack of sufficient administrative support positions, additional personnel resources would be needed along with dedicated telephone lines.
- DFS estimates the need for additional funding of:
 - \$122,874 for five administrative support positions (five @ \$19,199/yr = \$95,995 + \$26,878/yr in benefit costs @ 28% of salary).
 - \$1,140 for office space (80sqft @ average of \$18sqft/ year = \$1,140).
 - A non-recurring \$9,000 for office furniture and computer equipment for 5 OPS employees (5 @ \$1.8K).
 - **Total—FY 2014-15** **\$133,014**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

²⁵ S. 414.41 allows DCF, in conjunction with the Food and Nutrition Service and the Internal Revenue Service, to intercept federal income tax refunds when clients owe food assistance or temporary cash assistance debt to the state.

²⁶ DCF's Bill Analysis of HB 515 (2014)(on file with the Healthy Families Subcommittee).

²⁷ See DFS's Bill Analysis of HB 515 (2014)(on file with the Healthy Families Subcommittee).

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because:

- Portions of the bill are criminal law; and
- The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill limits the out-of-state use of TCA benefits to 30 consecutive days and requires termination of the TCA benefits if used out-of-state for more than 30 days. DCF is required to adopt rules providing for the determination of temporary absence and a recipient's intent to return to the state. Section 414.45, F.S., also gives DCF the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement and enforce the provisions of ch. 414, F.S. Therefore, adequate rulemaking authority appears to exist to implement any rules necessitated by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES