

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 1370

INTRODUCER: Senator Grimsley

SUBJECT: Medicaid Provider Overpayments

DATE: February 5, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	<b>Pre-meeting</b>
2.			AHS	
3.			AP	

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**I. Summary:**

SB 1370 authorizes the Agency for Health Care Administration (AHCA) to certify that a Medicaid provider is “out of business” and that any overpayments made to that provider cannot be collected. Such an authorization allows Florida to use a federal exemption from repayment of the mandatory Medicaid federal share for provider overpayments.

The bill appears to have a positive fiscal impact to the state.

The bill provides an effective date of July 1, 2016.

**II. Present Situation:**

**Florida Medicaid Program**

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the AHCA and financed with federal and state funds. Over 3.7 million Floridians are currently enrolled in Medicaid, and the program’s estimated expenditures for the 2015-2016 fiscal year are over \$23.4 billion.<sup>1</sup>

Medicaid provider agreements are voluntary contracts between the provider and the AHCA under s. 409.907, F.S., and specifies that a person or entity who enrolls in Medicaid as a provider

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<sup>1</sup> Office of Economic and Demographic Research, *Social Services Estimating Conference* (August 4, 2015) available at <http://edr.state.fl.us/Content/conferences/medicaid/medltxp.pdf> (last visited Dec. 11, 2015).

agrees to comply with all laws, rules, and policies relating to the Medicaid program. Additionally, s. 409.907(4), F.S., specifically states:

(4) A provider agreement shall provide that, if the provider sells or transfers a business interest or practice that substantially constitutes the entity named as the provider in the provider agreement, or sells or transfers a facility that is of substantial importance to the entity named as the provider in the provider agreement, the provider is required to maintain and make available to the agency Medicaid-related records that relate to the sale or transfer of the business interest, practice, or facility in the same manner as though the sale or transaction had not taken place, unless the provider enters into an agreement with the purchaser of the business interest, practice, or facility to fulfill this requirement.

The Office of Medicaid Program Integrity (MPI), a unit within the Office of the Inspector General at AHCA, audits Medicaid providers and determines if an overpayment has occurred requiring a provider to return funds to the Medicaid program. The AHCA also works jointly with the Medicaid Fraud Control Unit (MFCU) of the Department of Legal Affairs to prevent, reduce, and mitigate health care fraud, waste, and abuse. Because audits are often retrospective in nature and completed on claims data that may be two to five years old, the Medicaid provider may have gone out of business, moved, or may not otherwise be able to be located when the audit has been completed.

The MPI is statutorily required to develop statistical methodologies to identify providers who exhibit aberrant billing patterns.<sup>2</sup> The MPI uses these methods to perform comprehensive audits and analyses of Medicaid providers. Overpayments identified through these audits are referred to the AHCA's Division of Operations, Bureau of Financial Services for collection.<sup>3</sup>

Any suspected criminal violation identified by the AHCA must be referred to the MFCU of the Office of the Attorney General for investigation.<sup>4</sup> The MFCU is responsible for investigating and prosecuting provider fraud within the Medicaid program which commonly involves fraud related to providers billing for services not provided, overcharging for services that are provided, or billing for services that are medically unnecessary.<sup>5</sup> The AHCA and the MFCU are required to submit an annual joint report to the Legislature documenting the effectiveness of the state's efforts to control Medicaid fraud and abuse and to recover Medicaid overpayments during the previous fiscal year.<sup>6</sup>

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<sup>2</sup> Section 409.913(2), F.S.

<sup>3</sup> Agency for Health Care Administration and the Department of Legal Affairs, *The State's Efforts to Control Medicaid Fraud and Abuse FY 2014-2015*, p. 44 (December 15, 2015) available at [https://ahca.myflorida.com/Executive/Inspector\\_General/docs/Medicaid\\_Fraud\\_Abuse\\_Annual\\_Reports/2014-15\\_MedicaidFraudandAbuseAnnualReport.pdf](https://ahca.myflorida.com/Executive/Inspector_General/docs/Medicaid_Fraud_Abuse_Annual_Reports/2014-15_MedicaidFraudandAbuseAnnualReport.pdf) (last visited Feb. 5, 2016).

<sup>4</sup> Section 409.913(4), F.S.

<sup>5</sup> *Supra* note 3, at 1.

<sup>6</sup> *Supra* note 3.

## Federal Law on Medicaid Overpayments

Federal law requires the state to refund the federal share of any overpayment made to a Medicaid provider.<sup>7</sup> An overpayment occurs when a Medicaid provider is paid an amount in excess of the Medicaid established allowable amount for the service.<sup>8</sup> The AHCA and the MFCU discover overpayments in a variety of ways, including through data mining activities of their program integrity offices and audits by third parties, such as the federal Centers for Medicare and Medicaid Services (CMS). After one year, the state must refund the federal share of the overpayment, regardless of whether the state had actually recovered the payment from the provider.<sup>9</sup>

CMS requires states to report overpayments from federal audits, as well as from other sources, such as state audit results, the MFCU, and others, on its quarterly requests to the federal government for federal reimbursement for services provided under the Medicaid program.<sup>10</sup> If a state does not return the federal share of an overpayment within a year, the state will also be liable for interest on the federal share of the overpayments not recovered and not returned.<sup>11</sup>

Federal law does provide an exception to the mandatory federal share repayment provision. Audits may occur several years after the overpayment to the Medicaid provider. Sometimes, the Medicaid provider has gone out of business by the time the overpayment has been identified. A state is not required to refund the federal portion of the overpayment if the provider has been determined bankrupt or is out of business on the date the state has discovered the overpayment, or if the provider goes out of business before the end of one year from the date of discovery.<sup>12</sup>

To prove the provider is out of business, the state must:<sup>13</sup>

- Document its efforts to locate the party and its assets consistent with state policies and procedures; and
- Provide an affidavit or certification from the appropriate state legal authority establishing that the provider is out of business and the overpayment cannot be collected under state law and procedures and citing the effective date of that determination under state law.

Since Florida does not have a state law authorizing the AHCA to certify that a provider is out of business, the state is currently required to repay the federal share of an overpayment when a provider is out of business. As a result, the AHCA reports that Florida has refunded the federal government \$7.3 million in 2011-2012 fiscal year, \$1.5 million in 2012-2013 fiscal year, and \$2.8 million in 2013-2014 fiscal year for the federal share of Medicaid provider overpayments that could have otherwise been retained.<sup>14</sup>

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<sup>7</sup> 42 U.S.C. s. 1396b(d)(2)(D); 42 C.F.R. s. 433.312. States must return the federal share of an overpayment either when it is recovered or at the end of the one year period following discovery of the overpayment, whichever is earlier.

<sup>8</sup> 42 C.F.R. 304.

<sup>9</sup> 42 C.F.R. 433.312.

<sup>10</sup> U.S. Government Accountability Office, *Medicaid: CMS Should Ensure That States Clearly Report Overpayments*, p. 5 (December 2013) available at <http://www.gao.gov/assets/660/659501.pdf> (last visited Feb. 5, 2016).

<sup>11</sup> *Id.*, and see also 42 C.F.R. 433.320(a)(4).

<sup>12</sup> 42 C.F.R. 433.312(b).

<sup>13</sup> 42 C.F.R. 433.318(d).

<sup>14</sup> Agency for Health Care Administration, *Senate Bill 1370 Analysis*, p. 3 (January 13, 2016) (on file with the Senate Committee on Health Policy).

**III. Effect of Proposed Changes:**

**Section 1** amends s. 409.908, F.S., to authorize the AHCA to certify a Medicaid provider as “out of business.” The statutory change permits the AHCA to reclaim or retain the federal portion of Medicaid overpayments that cannot currently be collected from closed providers.

**Section 2** reenacts subsection (4) of s. 409.8132, F.S., relating to the Medikids program for the purposes of incorporating the changes to s. 409.908(25), F.S. This section is included as a cross-reference of Medicaid statutes that are also applicable to the Medikids program.

**Section 3** provides an effective date of July 1, 2016.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Taxpayers will benefit from the retention of the state’s federal share of Medicaid dollars.

**C. Government Sector Impact:**

The AHCA estimates the bill would result in the anticipated average retention of \$1 million to \$3 million per state fiscal year in federal dollars to the state.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>15</sup> Id at 4.

**VIII. Statutes Affected:**

This bill substantially amends section 409.908 of the Florida Statutes:

This bill reenacts section 409.8132 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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