HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5101 PCB HCAS 16-02 Medicaid
SPONSOR(S): Health Care Appropriations Subcommittee, Hudson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Care Appropriations Subcommittee	10 Y, 2 N	Clark	Pridgeon
1) Appropriations Committee	19 Y, 6 N	Clark	Leznoff

SUMMARY ANALYSIS

The bill conforms statutes to the funding decisions related to the Medicaid Program included in the House proposed General Appropriations Act (GAA) for Fiscal Year 2016-2017. The bill:

- Transfers appeals related to Medicaid programs directly administered by the Agency for Healthcare Administration (AHCA) from the Department of Children and Families (DCF) to AHCA.
- Amends 409.905, F.S., relating to the methodology of calculating payments for Medicaid hospital outpatient reimbursement through a prospective payment methodology; eliminates the requirement that the reimbursement payment system be cost based; specifies dates by which AHCA may correct hospital outpatient rate calculation errors; deletes obsolete requirements pertaining to the previous reimbursement methodology.
- Amends the definition of “Medicaid Payment” for purposes of the Statewide Medicaid Residency Program distribution formula, which pays hospitals for inpatient costs associated with Graduate Medical Education (GME).
- Repeals certain statutes related to reimbursement methods for Disproportionate Share Hospital (DSH) payments; payment methodologies will be delineated via the GAA rather than through statutory formula.
- Allows Broward County’s All-Inclusive Care for the Elderly program to serve frail elders in Miami-Dade County.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida's Medicaid Program

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. AHCA administers the program with financing from federal and state sources. Medicaid enrolls over 3.8 million Floridians and its enrollees make up over 20 percent of Florida's population. [1] Medicaid's estimated expenditure for FY 2015-16 is $24.9 billion.[2] The total Medicaid budget for the current state fiscal year is over $24.5 billion.[3] Federal funds comprise 60.5% or $14.6 billion of this amount.[4] The state statutory authority for the Medicaid program is contained in ch. 409, F.S.

Medicare and Medicaid account for 58 percent of nationwide hospital care.[5] Hospitals are not required to participate in Medicaid. However, non-profit hospitals must provide care for Medicare and Medicaid beneficiaries in order to receive a federal tax exemption.[6] Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services.[7] The state plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies, including inpatient and outpatient hospital rate charges. The State Plan may be modified via waiver, which permits specific deviations from state or federal requirements detailed in the State Plan.[8] Florida's State Plan and its attachments provide the methodology for reimbursing hospitals for inpatient and outpatient Medicaid services.[9]

Eligibility and Benefits

Applicants for Medicaid must be United States citizens or qualified noncitizens, must be Florida residents, and must provide social security numbers for data matching. While self-attestation is permitted for a number of data elements on the application, most components are matched through the Federal Data Services Hub.[10] Applicants must agree to cooperate with Child Support Enforcement during the application process.[11] In order to qualify for Medicaid, beneficiaries must fall into a benefit category and meet the related age, income and asset requirements. The benefit categories are:

- Aged or disabled individuals receiving social security income,
- Pregnant women
- Children on Medicaid, including their parents, caretakers and children.
- Medically needy individuals with high healthcare costs
- Former foster children up to age 26[12] (Note: there is no income requirement for foster children)

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[1] Agency for Health Care Administration, Statewide Medicaid Enrollment Report December 2015, available at http://ahca.myflorida.com/Medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited December 17, 2015). See also http://quickfacts.census.gov/qfd/states/12000.html

[2] Agency For Health Care Administration Presentation to Senate Health and Human Services Committee October 20, 2015 available at http://www.fdhc.state.fl.us/medicaid/recent_presentations/Florida_Medicaid_to_Senate_HHS_Appropriations_2015-10-20.pdf (last visited December 17, 2015)

[3] Chapter 2015-532, Laws of Florida Section 3, human services, lines 220A and 230A.

[4] *Supra* note 2, at slide 3.

[5] American Hospital Association, Underpayment by Medicare and Medicaid Fact Sheet 2015, available at http://www.aha.org/content/15/medicaremedicaidunderpmt.pdf (last visited December 17, 2015).

[6] *Id.*

[7] Medicaid.gov, Medicaid State Plan Amendments, available at http://www.medicaid.gov/state-resource-center/medicaid-state-plan-amendments/medicaid-state-plan-amendments.html (last visited December 17, 2015).

[8] Medicaid.gov, Medicaid Waivers http://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/waivers.html (last visited 12/17/2015)

[9] Agency for Health Care Administration, Medicaid State Plan Under Title XIX of the Social Security Act Medical Assistance Program, available at http://www.fdhc.state.fl.us/Medicaid/stateplan.shtml (last visited December 17, 2015).

[10] Florida Department of Children and Families, Family-Related Medicaid Programs Fact Sheet, (January 2015), p.3, http://www.dcf.state.fl.us/programs/access/docs/Family-RelatedMedicaidFactSheet.pdf (last visited: December. 17, 2015).

[11] *Id.*

[12] http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/medicaid

- Foreigners experiencing a medical emergency

Income Requirements for Florida Medicaid Eligibility[13]					
Children			Pregnant Women	Parents	Other Adults
Ages 0-1	Ages 1-5	Ages 6-18			
206%Federal Poverty Line (FPL)	140% FPL	133% FPL	191% FPL	30% FPL	0%FPL

Federal poverty guidelines are updated every year by the Census Bureau. The guidelines are used to adopt the threshold for eligibility for financial assistance under a number of different social and human service programs, including Medicaid and the Children's Health Insurance Program.

Federal Poverty Guidelines for 2015 Annual Income (rounded)[14]				
Family Size	100%	133%	150%	200%
1	$11,770	$15,654	$17,655	$23,540
2	$15,930	$21,187	$23,895	$31,860
3	$20,090	$26,720	$30,135	$40,180
4	$24,250	$32,252	$36,375	$48,500
5	$28,410	$37,785	$42,615	$56,820
	Add $4,160 for each person after 5.			

Federal law establishes minimum Medicaid Benefits, which all states must offer. Such minimum benefits include physician services, hospital services, home health services, and family planning.[15] For children under 21, benefits must include the Early and Periodic Screening, Diagnostic and Treatment services, which correct or ameliorate defects, illnesses and conditions discovered by screening services, consistent with federal law.[16] States can also offer optional benefits, pending federal approval. Florida's optional benefits include prescription drugs, adult dental services, and dialysis.[17]

Medicaid Hearings

Pursuant to federal law, AHCA must have a system to conduct Fair Hearings for Medicaid recipients/enrollees whose Medicaid services are denied, suspended or reduced. [18] Currently, The Office of Fair Hearings within the Department of Children and Families (DCF) administers these hearings on behalf of AHCA.[19] The Fair Hearing jurisdiction of DCF's Office of Appeal Hearings covers not only Medicaid services, but other areas within DCF's purview including eligibility and food stamp benefits. DCF rules govern all hearings conducted by the Department. [20]

In 2014, AHCA began enrolling Medicaid Beneficiaries in managed care plans, pursuant to the Statewide Medicaid Managed Care program.[21] The program, authorized by a federal Medicaid waiver, permits AHCA to contract with Managed Care Organizations (MCOs) in 11 regions of the state. In turn, the MCOs provide comprehensive Medicaid coverage to most of the state's Medicaid enrollees.[22]

Following the 2014 implementation of Statewide Medicaid Managed Care (SMMC), Medicaid hearings no longer revolve around AHCA action. Rather, hearings arise when a Medicaid recipient appeals an MCO's

[13] U.S. Centers for Medicare and Medicaid Services, Medicaid.gov, Florida, http://www.medicaid.gov/medicaid-chipprogram-information/by-state/florida.html (last visited December 21, 2015).
[14] U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Medicaid and CHIP Program Information - 2015 Federal Poverty Level Charts http://www.medicaid.gov/medicaid-chip-programinformation/by-topics/eligibility/downloads/2015-federal-poverty-level-charts.pdf (last visited December 21, 2015).
[15] Section 409.905, F.S.
[16] See Section 1905 9(r) of the Social Security Act
[17] Section 409.906, F.S.
[18] *see* 42 CFR ss. 431 and 438
[19] Rule 65-2.042, F.A.C, *see also* 409.285, F.S.
[20] *Supra*, note 19.
[21] ch. 2011-134, L.O.F
[22] *See Generally* s. 409.964, F.S.

denial, suspension or reduction of Medicaid service.[23] Thus most, if not all, witnesses involved in SMMC Fair Hearings are employees or contractors of the MCO. Likewise, documentary evidence is created by, and in the sole possession of, the MCOs, not AHCA. Consequently, federal law requires the MCO itself (rather than AHCA) be a party to hearings that arise when Medicaid beneficiaries appeal an MCO's denial of Medicaid Services.[24] DCF's fair hearings rule pre-dates implementation of SMMC, and conflicts with federal law because it requires AHCA to be the sole party to all Medicaid service related fair hearings—including SMMC fair hearings.[25]

Florida's current outpatient reimbursement model

Florida's Medicaid program reimburses hospital outpatient services using a flat-rate based on hospital specific costs. This rate is referred to as a "per diem." The state audits hospital cost-reports annually to ensure hospital costs justify the per diem paid. Currently, errors in source data or calculations must be discovered before October 31 in order to be reconciled in the same rate period. If discovered after October 31, must be reconciled in a subsequent period. Several years later, the state can retroactively adjust per-diem rates based on the audit, thereby ensuring payments match actual costs incurred.[26] This retroactive payment system creates significant variation in Medicaid payments because reimbursement is tied to costs at specific hospitals.[27]

Consequently, the Florida Legislature commissioned a 2015 study to explore transitioning from the current method of retroactive outpatient payment, to an Outpatient Prospective Payer System (OPPS).[28] Normally, an OPPS uses algorithms to categorize the average cost of services, devices, and supplies associated with providing a specific Medicaid Service.[29] The algorithm uses this average cost estimate to assign a relative weight for individual Medicaid services and multiplies the relative weight by a base rate of reimbursement to arrive at a base payment.[30] Unlike AHCA's current system, OPPS incentivizes payers and providers to manage overall cost of care because payment does not change based on an individual hospital's cost of providing services.[31] Instead, a provider hospital's net revenue from Medicaid Outpatient services will depend upon the hospital's costs relative to the statewide average.

Medicaid Residency Program

In 2013, the Legislature created the Statewide Medicaid Residency Program (SMRP) to fund graduate medical education (GME).[32] GME is the education and training of physicians following graduation from a medical school in which physicians refine the clinical skills necessary to practice in a specific medical field (surgery, dermatology, family practice, etc.). GME or "residency" programs for allopathic and osteopathic physicians include internships, residency training, and fellowships. These residency programs vary in length from three to seven years.[33] Previously, graduate medical education was reimbursed through hospital inpatient and outpatient reimbursements.

The SMRP defines "Medicaid payment" as payments made to reimburse a hospital for direct inpatient services, as determined by the AHCA.[34] Consequently, AHCA must calculate an allocation fraction in accordance with statutory formula on or before September 15 of each year. A hospital's annual allocation equals the funds appropriated for the SMRP in the GAA multiplied by its allocation fraction. Regardless of the formula, a hospital's annual allocation may not exceed two-times the average per FTE amount for all hospitals. Any funds beyond this amount must be redistributed to participating hospitals whose annual

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[23] The service may be denied because a peer review physician employed by a Quality Improvement Organization under contract with the MCO found that the Medicaid service requested by the enrollee is not Medically necessary. *Supra 12*

[24] 42 CFR s. 438.408 (f)(2).

[25] *See* Rule 65-2.042, F.A.C. (Parties in any Section 120.569, F.S., proceedings are agencies and appellants. Party includes the Agency.)

[26] Outpatient Prospective Payment System Design for Medicaid, prepared for the Agency for Healthcare Administration on November 30, 2015 by Navigant Healthcare at 6, on file with Healthcare Appropriations committee staff.

[27] See *Id.*, at 15.

[28] Chapter 2014-51, Section 3, Laws of Florida.

[29] *Id.*

[30] *Id.*, at 16

[31] *Id.*

[32] *See* ch. 2013-48, Laws of Florida

[33] Office of Program and Policy Analysis and Governmental Accountability, Florida's Graduate Medical Education System, February 2014, at 2, available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1408rpt.pdf.

[34] *Id.*

allocation does not exceed this limit. AHCA must distribute each participating hospital's annual allocation in four installments on the final business day of each quarter of the state fiscal year.[35]

Disproportionate Share Hospital Programs

Federal law requires state Medicaid programs to make Disproportionate Share Hospital (DSH) payments to qualifying hospitals that serve a large number of Medicaid recipients and uninsured individuals. Accordingly, the federal government provides an annual limited DSH allotment to each state. States may appropriate these federal funds based on the amount of state dollars appropriated as matching funds for the federal DSH allotment, up to the federal limit. The Legislature distributes DSH funds to each eligible facility in accordance with statutory formula. However, the legislature can make specific allocations which deviate from this formula.[36] For states to receive DSH payments, federal law requires states to submit an independent certified audit and an annual report to the secretary of the federal Department of Health and Human Services, describing DSH payments made to each DSH hospital. Florida law requires the AHCA to use audited data from specified years to determine the amount of Medicaid and charity care to be used in calculating DSH payments[37].

Program of All-Inclusive Care for the Elderly (PACE)

The Florida PACE project provides alternative, long-term care options for elders who qualify for Medicare and the state Medicaid program. The PACE project was initially authorized in ch. 98-327, L.O.F., and is codified in s. 430.707(2), F.S. The PACE model targets individuals who would otherwise qualify for Medicaid nursing home placement and provides them with a comprehensive array of home and community based services at a cost less than the cost of nursing home care. The PACE project is administered by the Department of Elder Affairs in consultation with the AHCA. In addition to receiving the necessary legislative authority, developing a new PACE organization or expanding an existing program is a lengthy process that includes: identifying a service area, acquiring and renovating a PACE facility and processing the PACE application through the state and the federal review systems. The PACE program for Southeast Florida is located in Broward County, and has 150 slots for serving frail elders who live in Broward.[38]

Effect of Proposed Changes

Medicaid Hearings

This legislation amends s. 409.285, F.S., giving AHCA statutory authority to hear and render final administrative decisions on appeals relating to Medicaid programs directly administered by the agency, including SMMC appeals. Appeals relating to the Medicaid Program administered by the Agency for Persons with Disabilities and DCF's own Medicaid eligibility decisions would remain under the jurisdiction of the existing Medicaid Fair Hearings program within DCF. Finally, the bill obligates AHCA to seek federal approval as necessary. Such approval includes seeking amendments to the State Plan and applicable federal waivers.[39]

Outpatient Reimbursement

The bill amends s. 409.905, F.S., replacing AHCA's existing per diem and retroactive adjustment fee methodology for Medicaid outpatient care, with a prospective payment system. Under the new system, AHCA will calculate reimbursement rates annually; the new rates will go into effect on October 1 during the first year of implementation and on July 1 every year thereafter. The new methodology must function like an OPPS by categorizing the amount and type of services used in outpatient visits, and group together procedures that share similar characteristics and costs. The bill also amends deadlines for discovering errors in cost data to reflect the new implementation schedule, and updates the term "Medicaid payments" to include outpatient services.

Medicaid Residency Program

This legislation amends s. 409.909 to modify the definition of "Medicaid payments" under the SMRP to include outpatient services. This change is necessitated by the proposed transition to a prospective outpatient

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[35] *Id*.

[36] 409.911, F.S. "**Disproportionate share program.**—Subject to specific allocations established within the General Appropriations Act and any limitations established pursuant to chapter 216, the agency shall distribute, pursuant to this section, moneys to hospitals providing a disproportionate share of Medicaid or charity care services by making quarterly Medicaid payments as required."

[37] s. 409.911, F.S.

[38] Chapter 2012-33, Laws of Florida.

[39] *Supra* note11, at 2

payment system. This is similar to transition that occurred when Florida moved to inpatient Diagnosis Related Groups.

Disproportionate Share Hospital Program
This bill repeals ss. 409.911, 409.9113, 409.9118, and 409.9119, F.S., which relate to the DSH program and AHCA's obligation to issue DSH payments to different types of hospitals. The parameters for future DSH payments will be prescribed by the GAA, instead of statutory formula. The bill amends ss. 409.915 and 409.9116 to conform with issuance of DSH payments through the GAA instead of the existing statutory framework.

Program of All-Inclusive Care for the Elderly (PACE)
The bill amends Chapter 2012-33, Laws of Florida, and allows the existing PACE organization in Broward County to serve frail elders residing in Miami-Dade County using existing slots.

B. SECTION DIRECTORY:

Section 1: Amends 409.285 relating to Medicaid hearings and appeals.
Section 2: Amends 409.905 relating to Medicaid payment methodology.
Section 3: Amends 409.909 relating to Calculating Medicaid payments.
Section 4: Amends 409.9115 relating to the Disproportionate Share Program for mental health hospitals.
Section 5: Amends 409.9116 relating the Disproportionate Share and Financial Assistance Program for rural hospitals.
Section 6: Amends Section 18 of chapter 2012-33, 2012 Laws of Florida, relating to PACE.
Section 7: Repeals 409.911, 409.9113, 409.9118, and 409.9119 relating to the Disproportionate Share Programs.
Section 8: Amends 409.908 relating to Reimbursement of Medicaid providers.
Section 9: Amends 1009.66 relating to Nursing Student Loan Forgiveness Program.
Section 10: Amends 1009.67 relating to Nursing Scholarship Program.
Section 11: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   $472,950,551 in federal Medicaid funds will be generated through the implementation of the Hospital Outpatient Prospective Payment System, the GME program, and the DSH programs:

   - Hospital Outpatient Services = $133,680,384
   - Graduate Medical Education = $120,372,730
   - Disproportionate Share Hospital Program = $218,897,437

2. Expenditures:

   The House proposed GAA will provide a transfer of 2 full-time equivalent (FTE) positions with associated rate and resources from DCF to AHCA to address the increased workload at AHCA resulting from the transfer of Medicaid related hearings from DCF.

   Additionally, the House proposed GAA will contain the following appropriations:

	FY 2016-17
HOSPITAL OUTPATIENT SERVICES	
General Revenue	$ 54,136,186
Grants and Donations Trust Fund	$ 10,617,692
Medical Care Trust Fund	$ 133,680,384
Public Medical Assistance Trust Fund	$ 20,768,022
Refugee Assistance Trust Fund	$ 603,783
Total	**$ 219,806,067**
GRADUATE MEDICAL EDUCATION	
General Revenue	$ 37,937,270
Grants and Donations Trust Fund	$ 38,990,000
Medical Care Trust Fund	$ 120,372,730
Total	**$ 197,300,000**
REGULAR DISPROPORTIONATE SHARE (DSH)	
General Revenue	$ 750,000
Grants and Donations Trust Fund	$ 87,562,687
Medical Care Trust Fund	$ 138,712,215
Total	**$ 227,024,902**
RURAL HOSPITAL FINANCIAL ASSISTANCE (RURAL DSH)	
General Revenue	$ 1,220,185
Grants and Donations Trust Fund	$ 3,534,825
Medical Care Trust Fund	$ 5,505,183
Total	**$ 10,260,193**
MENTAL HEALTH HOSPITAL DSH	
Medical Care Trust Fund	$ 72,236,154
Total	**$ 72,236,154**
TUBERCULOSIS DSH	
Medical Care Trust Fund	$ 2,443,885
Total	**$ 2,443,885**
DISPRPORTIONATE SHARE HOSPITAL (DSH) SUBTOTAL	
General Revenue	*$ 1,970,185*
Grants and Donations Trust Fund	*$ 91,097,512*
Medical Care Trust Fund	*$ 218,897,437*
SUBTOTAL	***$ 311,965,134***
TOTAL BUDGETARY IMPACT	
General Revenue	$ 94,043,641
Grants and Donations Trust Fund	$ 140,705,204
Medical Care Trust Fund	$ 472,950,551
Public Medical Assistance Trust Fund	$ 20,768,022
Refugee Assistance Trust Fund	$ 603,783
Total	**$ 729,071,201**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   In order to earn matching federal dollars for the GME and DSH programs, local governments and other local political subdivisions would be required to provide $130,087,512 in contributions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some private hospitals may see adjustments to the rate of Medicaid reimbursement for outpatient care. The amount and impact of these adjustments will depend on whether hospital costs are above or below the statewide average as calculated by AHCA. Hospitals may decide to purchase software licenses for use with outpatient EAPG. Costs would range from $4,500 to $30,000 annually based on hospital size. Additionally, hospitals providing a disproportionate share of Medicaid or charity care services will receive additional reimbursement toward the cost of providing care to uninsured and underinsured individuals. Hospitals eligible for the Statewide Medicaid Residency Program and the Graduate Medical Education Startup Bonus Program will receive additional reimbursement under the parameters of the programs.

D. FISCAL COMMENTS:

The AHCA will distribute a total of $311,965,134 through the federal Disproportionate Share Program to hospitals providing a disproportionate share of Medicaid or charity care services. Additionally, the AHCA will distribute $197,300,000 to hospitals eligible for the Statewide Medicaid Residency Program and the Graduate Medical Education Startup Bonus Program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill authorizes AHCA to adopt rules as necessary in order to conduct hearings on the SMMC program and related federal waivers. The bill also authorizes AHCA to implement a prospective payment methodology and removes the agency's authority relating to the prior, cost-based reimbursement methodology.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES