

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HCC 08-19

Medicaid Providers

SPONSOR(S): Healthcare Council

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Healthcare Council		Calamas/Massengale	Gormley
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Proposed Council Bill Health Care Council 08-19 revises several sections of Chapter 409, Florida Statutes relating to Medicaid provider changes of ownership and Medicaid durable medical equipment (DME) providers. The bill:

- Provides a definition of "Change of Ownership" to include events when a provider changes to a different legal entity under certain circumstances;
- Specifies transferor liability upon a change of ownership, and provides that a transferor shall remain liable for all outstanding overpayments before administrative fines and other moneys owed to the Agency for Health Care Administration (AHCA) owed prior to the transfer of ownership;
- In addition to the continuing liability of the transferor, the bill provides that the transferee shall be liable to the agency for all outstanding overpayments identified by the agency on or before the effective date of the change of ownership;
- Requires the transferee of a change of ownership for a skilled nursing facility or an intermediate care facility to satisfy all other Medicaid provider qualifications prior to assuming ownership;
- Provides that, in the event a change ownership occurs without compliance with the notice requirements imposed by the bill, the transferor and transferee are jointly and severally liable for all overpayments, administrative fines and other moneys due to the agency; and
- Specifies enrollment effective dates for providers requiring a Medicare certification survey, a provider completing a change of ownership, and a provider of emergency medical services transportation or emergency services and care.

Moreover, the bill amends s. 409.912, F.S., to establish additional criteria, effective January 1, 2009, for Medicaid-enrolled durable medical equipment providers to be reimbursed for services under the Medicaid program.

The bill appears to have no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

None of the House Principles appear to be implicated in the present legislation.

B. EFFECT OF PROPOSED CHANGES:

Background

Change of Ownership by a Medicaid Provider

Presently, under s. 409.907(6), F.S., the agency is authorized to revoke a Medicaid provider agreement following the change of ownership of any facility, association, partnership, or other entity named as the provider in the provider agreement.

Additionally, such a provider is required to give the agency 60 days notice before making any change in ownership of the entity named in the provider agreement as the provider.

Durable Medical Equipment and Medical Supply Providers

Durable medical equipment and medical supply providers (DME providers) are licensed and regulated by the AHCA as home medical equipment providers in part VII of ch. 400, F.S., and part II of ch. 408, F.S. Home medical equipment includes any products:

- As defined by the Federal Food and Drug Administration,
- Reimbursed under Medicare Part B Durable Medical Equipment benefits, or
- Reimbursed under the Florida Medicaid durable medical equipment program.¹

Home medical equipment includes:

- Oxygen and related respiratory equipment;
- Manual, motorized, or customized wheelchairs and related seating and positioning, but does not include prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner;
- Motorized scooters;
- Personal transfer systems; and
- Specialty beds, for use by a person with a medical need.

The AHCA is the single state agency that administers or supervises the administration of the state Medicaid plan under federal law.² According to the Medicaid program, the ACHA must pay eligible providers for the provision of certain medically-necessary services to eligible recipients. Under federal and state law, certain other services are optional under the Medicaid program. Durable medical equipment and supplies is an optional service in the state. Florida law authorizes the AHCA to pay for certain medically-necessary durable medical equipment and supplies provided to an eligible Medicaid recipient.³

¹ Section 400.925(6), F.S.

² Sections 409.901(2) and (14), F.S. The Medicaid DME and medical supplies program is authorized by Title XIX of the Social Security Act and 42 C.F.R. Part 440.70. The program was implemented through ch. 409, F.S., and Chapter 59G, F.A.C.

³Section 409.906(10), F.S.

The *Florida Medicaid, Durable Medical Equipment/Medical Supply Services Coverage and Limitations Handbook* provides that a DME entity must meet the following criteria to enroll as a Medicaid DME provider:⁴

- Be licensed by the local government agency as a business or merchant or provide documentation from the city or county authority that no licensure is required;
- Be licensed by the Department of Health, Board of Orthotics and Prosthetics, if providing orthotics and prosthetic devices;
- Be licensed by the AHCA with a Home [Medical] Equipment license;
- Be in compliance with all applicable laws relating to qualifications or licensure;
- Have an in-state business location or be located not more than fifty miles from the Florida state line;
- Meet all the general Medicaid provider requirements and qualifications;
- Be fully operational;
- Submit a surety bond as part of the enrollment application unless the provider is owned and operated by a governmental entity. One \$50,000 bond is required for each provider location up to a maximum of five bonds statewide or an aggregate bond of \$250,000;⁵ and
- Pass a site visit unless the applicant is associated with a pharmacy or rural health clinic, or provides only orthotic or prosthetic devices and is licensed by the Board of Orthotics and Prosthetics.

On October 2, 2007, the AHCA presented to the House Health Innovation Committee information indicating there has been an increase in Medicaid Program Integrity investigations of Medicaid-enrolled DME providers as well as an increase in the number of referrals to the Medicaid Fraud Control Unit within the Office of the Attorney General over the last several years related to Medicaid-enrolled DME providers.

Effect of Proposed Changes

Proposed Council Bill Health Care Council 08-19 revises several sections of Chapter 409, Florida Statutes relating to provider change of ownership and Medicaid-enrolled durable medical equipment (DME) providers. The bill:

- Provides a definition of “Change of Ownership” to include events when a provider changes to a different legal entity under certain circumstances;
- Specifies transferor liability upon a change of ownership, and provides that a transferor shall remain liable for all outstanding overpayments before administrative fines and other moneys owed to the Agency for Health Care Administration (AHCA) owed prior to the transfer of ownership;
- In addition to the continuing liability of the transferor, the bill provides that the transferee shall be liable to the agency for all outstanding overpayments identified by the agency on or before the effective date of the change of ownership;
- Requires the transferee of a change of ownership for a skilled nursing facility or an intermediate care facility to satisfy all other Medicaid provider qualifications prior to assuming ownership;
- Provides that, in the event a change ownership occurs without compliance with the notice requirements imposed by the bill, the transferor and transferee are jointly and severally liable for all overpayments, administrative fines and other moneys due to the agency; and
- Specifies enrollment effective dates for providers requiring a Medicare certification survey, providers completing changes of ownership, and providers of emergency medical services transportation or emergency services and care.

⁴ *Florida Medicaid, Durable Medical Equipment/Medical Supply Services Coverage and Limitations Handbook*, Agency for Health Care Administration, found at < http://floridamedicaid.acs-inc.com/XJContent/Durable_Medical_Equipment-Medical_SuppliHB.pdf?id=000000182419> (Last visited on March 6, 2008).

⁵ *Ibid* at page 1-7.

Moreover, the bill amends s. 409.912, F.S., to establish additional criteria, effective January 1, 2009, for Medicaid-enrolled durable medical equipment providers to be reimbursed for services under the Medicaid program, including:

- Be accredited, and periodically re-accredited, by a Centers for Medicare and Medicaid Deemed Accreditation Organization for suppliers of durable medical equipment, prosthetics, orthotics and supplies. Accrediting reviews may be unannounced.
- Have a physical business location that meets these criteria:
 - Has substantial inventory;
 - Has exterior signage that can be read from 20 feet away which readily identifies the business as one providing durable medical equipment, medical supplies, or both;
 - Has a functional landline business telephone;
 - Is not located within or at the same number street address as another Medicaid-enrolled DME provider or Medicaid pharmacy that is also a DME provider;
 - If located outside of Florida's border, be no more than 50 miles from the Florida state line. Exceptions to this requirement may be made for a manufacturer of a unique type of durable medical equipment that is not otherwise available from a provider located within the state; and
 - Be easily accessible to the public no less than 5 hours a day, 5 days a week, with the exception of scheduled and posted holidays.
- Obtain a \$50,000 surety bond for each location up to a maximum of five bonds statewide or an aggregate bond of \$20,000 statewide. All locations that are covered by the bond are to be identified in an enrollment application or bond renewal. Proof that the bond has been renewed or is a continuous bond must be provided to the AHCA annually; and
- Have a level 2 background screening for staff in direct contact with and providing direct services to recipients. This requirement applies to, but is not limited to, repair and service technicians, fitters, and delivery staff. The cost of the background screening is to be borne by the provider.

The requirement for accreditation and the surety bond does not apply to a DME provider that is owned and operated by a governmental entity; operating within a pharmacy that is currently enrolled as a Medicaid pharmacy provider; and an active Medicaid-enrolled orthopedic physician's group, primarily owned by physicians, and which only provides orthotic and prosthetic devices.

C. SECTION DIRECTORY:

Section 1. Amends s. 409.901, F.S., providing a "Change of Ownership definition.

Section 2. Amends s. 409.907, F.S., regarding Medicaid provider agreements.

Section 3. Amends s. 409.912, F.S., regarding cost-effective purchasing of health care.

Section 4. Provides an effective date of July 1, 2008.

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:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The requirement for a \$50,000 surety bond for each DME provider location, up to a maximum of five bonds statewide or an aggregate bond of \$250,000 statewide could lead to increased costs for DME providers. In addition, the requirement for Level Two background screenings, as described in s. 435.04, F.S. for each provider employee in direct contact with or providing direct services to recipients of DME and medical supplies in their homes will lead to increase provider costs.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The legislation does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES