

House Bill No. 7077

An act relating to trust funds; amending s. 20.425, F.S.; providing an additional source of funds for the Grants and Donations Trust Fund within the Agency for Health Care Administration; amending s. 215.5601, F.S., relating to the Lawton Chiles Endowment Fund; revising the date of reversion of undisbursed balances in the fund; amending s. 400.179, F.S.; requiring that a leasehold licensee fee be deposited into the Grants and Donations Trust Fund of the agency; amending s. 409.916, F.S.; requiring that funds from nursing home facility quality assessments, certain grants and donations, and leasehold licensee fees be deposited into the Grant and Donations Trust Fund of the agency; amending ss. 893.165 and 938.23, F.S.; requiring that certain assessments for alcohol and drug abuse treatment programs collected by clerks of the circuit courts be deposited into the Grants and Donations Trust Fund of the Department of Children and Family Services; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 20.425, Florida Statutes, is amended to read:

20.425 Agency for Health Care Administration; trust funds.—The following trust funds shall be administered by the Agency for Health Care Administration:

(2) Grants and Donations Trust Fund.

(a) Funds to be credited to and uses of the trust fund shall be administered in accordance with the provisions of ss. 215.32, 400.179, and 409.916.

(b) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

Section 2. Paragraph (e) of subsection (5) of section 215.5601, Florida Statutes, is amended to read:

215.5601 Lawton Chiles Endowment Fund.—

(5) AVAILABILITY OF FUNDS; USES.—

(e) Notwithstanding s. 216.301 and pursuant to s. 216.351, all unencumbered balances of appropriations from each department's respective Tobacco Settlement Trust Fund as of June 30 or undisbursed balances as of September 30 ~~December 31~~ shall revert to the endowment's principal. Unencumbered balances in the Biomedical Research Trust Fund shall be managed as provided in s. 20.435(8)(b).

Section 3. Paragraph (d) of subsection (2) of section 400.179, Florida Statutes, is amended to read:

400.179 Liability for Medicaid underpayments and overpayments.—

(2) Because any transfer of a nursing facility may expose the fact that Medicaid may have underpaid or overpaid the transferor, and because in most instances, any such underpayment or overpayment can only be determined following a formal field audit, the liabilities for any such underpayments or overpayments shall be as follows:

(d) Where the transfer involves a facility that has been leased by the transferor:

1. The transferee shall, as a condition to being issued a license by the agency, acquire, maintain, and provide proof to the agency of a bond with a term of 30 months, renewable annually, in an amount not less than the total of 3 months' Medicaid payments to the facility computed on the basis of the preceding 12-month average Medicaid payments to the facility.

2. A leasehold licensee may meet the requirements of subparagraph 1. by payment of a nonrefundable fee, paid at initial licensure, paid at the time of any subsequent change of ownership, and paid annually thereafter, in the amount of 1 percent of the total of 3 months' Medicaid payments to the facility computed on the basis of the preceding 12-month average Medicaid payments to the facility. If a preceding 12-month average is not available, projected Medicaid payments may be used. The fee shall be deposited into the Grants and Donations Health Care Trust Fund and shall be accounted for separately as a Medicaid nursing home overpayment account. These fees shall be used at the sole discretion of the agency to repay nursing home Medicaid overpayments. ~~The agency is authorized to transfer funds to the Grants and Donations Trust Fund for such repayments.~~ Payment of this fee shall not release the licensee from any liability for any Medicaid overpayments, nor shall payment bar the agency from seeking to recoup overpayments from the licensee and any other liable party. As a condition of exercising this lease bond alternative, licensees paying this fee must maintain an existing lease bond through the end of the 30-month term period of that bond. The agency is herein granted specific authority to promulgate all rules pertaining to the administration and management of this account, including withdrawals from the account, subject to federal review and approval. This provision shall take effect upon becoming law and shall apply to any leasehold license application. The financial viability of the Medicaid nursing home overpayment account shall be determined by the agency through annual review of the account balance and the amount of total outstanding, unpaid Medicaid overpayments owing from leasehold licensees to the agency as determined by final agency audits.

3. The leasehold licensee may meet the bond requirement through other arrangements acceptable to the agency. The agency is herein granted specific authority to promulgate rules pertaining to lease bond arrangements.

4. All existing nursing facility licensees, operating the facility as a leasehold, shall acquire, maintain, and provide proof to the agency of the 30-

month bond required in subparagraph 1., above, on and after July 1, 1993, for each license renewal.

5. It shall be the responsibility of all nursing facility operators, operating the facility as a leasehold, to renew the 30-month bond and to provide proof of such renewal to the agency annually.

6. Any failure of the nursing facility operator to acquire, maintain, renew annually, or provide proof to the agency shall be grounds for the agency to deny, revoke, and suspend the facility license to operate such facility and to take any further action, including, but not limited to, enjoining the facility, asserting a moratorium pursuant to part II of chapter 408, or applying for a receiver, deemed necessary to ensure compliance with this section and to safeguard and protect the health, safety, and welfare of the facility's residents. A lease agreement required as a condition of bond financing or refinancing under s. 154.213 by a health facilities authority or required under s. 159.30 by a county or municipality is not a leasehold for purposes of this paragraph and is not subject to the bond requirement of this paragraph.

Section 4. Section 409.916, Florida Statutes, is amended to read:

409.916 Grants and Donations Trust Fund.—

(1) The agency shall deposit any funds received from pharmaceutical manufacturers and all other funds received by the agency from any other person as the result of a Medicaid cost containment strategy, in the nature of a rebate, grant, or other similar mechanism into the Grants and Donations Trust Fund.

(2) Funds received from pharmaceutical manufacturers shall be used as the state portion for funding Medicaid prescribed drug services. However, at least \$75,000 may be appropriated from the Grants and Donations Trust Fund for Medicaid research and development activities as specified in the General Appropriations Act.

(3) Receipts from the agency's share of Medicaid fraud and abuse recoupments and fines shall be deposited into the Grants and Donations Trust Fund for purposes established by law and the General Appropriations Act.

(4) Funds received from Medicaid providers as nursing home quality assessment fees shall be deposited into the Grants and Donations Trust Fund and used for purposes established by law and the General Appropriations Act.

(5) Funds received through grants and donations from the state and from counties, local governments, public entities, and taxing districts shall be deposited into the Grants and Donations Trust Fund and used for purposes established by law and the General Appropriations Act.

(6) Funds received from the leasehold licensee fee pursuant to s. 400.179(2)(d)2. shall be deposited into the Grants and Donations Trust Fund and used for purposes established by law and the General Appropriations Act.

Section 5. Paragraph (b) of subsection (3) of section 893.165, Florida Statutes, is amended to read:

893.165 County alcohol and other drug abuse treatment or education trust funds.—

(3)

(b) Assessments collected by clerks of circuit courts having more than one county in the circuit, for any county in the circuit which does not have a County Alcohol and Other Drug Abuse Trust Fund, shall be remitted to the Department of Children and Family Services, in accordance with administrative rules adopted, for deposit into the department's ~~Community Alcohol and Other Drug Abuse Services Grants and Donations Trust Fund~~ Community Alcohol and Other Drug Abuse Trust Fund for distribution pursuant to the guidelines and priorities developed by the department.

Section 6. Subsection (2) of section 938.23, Florida Statutes, is amended to read:

938.23 Assistance grants for alcohol and other drug abuse programs.—

(2) All assessments authorized by this section shall be collected by the clerk of court and remitted to the jurisdictional county as described in s. 893.165(2) for deposit into the County Alcohol and Other Drug Abuse Trust Fund or remitted to the Department of Revenue for deposit into the ~~Community Alcohol and Other Drug Abuse Services Grants and Donations Trust Fund~~ Community Alcohol and Other Drug Abuse Trust Fund of the Department of Children and Family Services pursuant to guidelines and priorities developed by the department. If a County Alcohol and Other Drug Abuse Trust Fund has not been established for any jurisdictional county, assessments collected by the clerk of court shall be remitted to the Department of Revenue for deposit into the ~~Community Alcohol and Other Drug Abuse Services Grants and Donations Trust Fund~~ Community Alcohol and Other Drug Abuse Trust Fund of the Department of Children and Family Services.

Section 7. This act shall take effect July 1, 2009.

Approved by the Governor May 20, 2009.

Filed in Office Secretary of State May 20, 2009.