Indigent Care Surtax used for Medicaid contributions

Number: AGO 2005-54

Date: October 04, 2005

Subject:
Indigent Care Surtax used for Medicaid contributions

The Honorable Jim Norman
Chairman
Hillsborough County Board of
County Commissioners
Post Office Box 1110
Tampa, Florida 33601

RE: COUNTIES – INDIGENT CARE SURTAX – TAXATION – REFERENDUM – authority of county to use voter-approved indigent care surtax to pay county's mandatory Medicaid contributions. ss. 212.055(4), and 409.915, Fla. Stat.

Dear Commissioner Norman:

On behalf of the Board of County Commissioners for Hillsborough County, you have asked substantially the following question:

Is Hillsborough County authorized to pay the mandatory Medicaid contributions required by section 409.915, Florida Statutes, from the indigent care and trauma center surtax revenues generated pursuant to section 212.055(4), Florida Statutes?

Chapter 212, Florida Statutes, the "Florida Revenue Act of 1949," provides for taxation on sales, use and other transactions.[1] Section 212.055 of the chapter authorizes counties to impose and collect discretionary sales surtaxes under conditions prescribed by the Legislature. The section about which you inquire, section 212.055(4), Florida Statutes, specifically provides for an indigent care and trauma center surtax. Pursuant to the statute, certain counties, including Hillsborough County, "may levy, pursuant to an ordinance either approved by an extraordinary vote of the governing body or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent."

The statute requires that the ordinance adopted by the county "set forth a plan for providing health care services to *qualified residents*, as defined in subparagraph 4." (e.s.) For purposes of section 212.055(4), Florida Statutes, a "qualified resident" is defined as a resident of the authorizing county who is: (a) qualified as indigent as certified by the county; (b) certified by the county as medically poor, or (c) participating in innovative, cost-effective programs approved by the authorizing county.[2]

For purposes of certification, the term "medically poor" is defined by the statute as

"persons having insufficient income, resources, and assets to provide the needed medical care without using resources required to meet basic needs for shelter, food, clothing, and personal expenses; *or not being eligible for any other state or federal program*, or having medical needs that are not covered by any such program; or having insufficient third-party insurance coverage. In all cases, the authorizing county is intended to serve as the payor of last resort."[3] (e.s)

You have asked whether the voter-approved indigent care surtax may be used to pay Hillsborough County's mandatory Medicaid contributions pursuant to section 409.915, Florida Statutes.[4] Medicaid is a program that pays for medical assistance for qualifying individuals and families with low incomes and resources. The program became law in 1965 and is funded by both the states and the federal government, and assists states in providing medical long-term care assistance to those who meet the eligibility criteria.[5]

Section 212.055(4)(a)4., Florida Statutes, states that county residents are entitled to take advantage of the health care services provided with indigent care and trauma center surtax moneys if those residents are indigent, medically poor, or participants in particular county-designated programs. Pursuant to section 212.055(4)(a)4.b., to meet the statutory definition of "medically poor" a county resident must be ineligible for "any other state or federal program," *e.g.* , the Medicaid program, unless the person has medical needs that are not otherwise covered by such programs. In contrast, the other two categories of "qualified resident" - indigent or participant in specific county-approved programs - are not subject to the limitation contained in section 212.055(4)(a)4.b, Florida Statutes (*i.e.*, that the person not be eligible for any other state or federal program).

Thus, it would appear appropriate for the county to use its indigent care and trauma center surtax funds to pay the mandatory Medicaid contributions required by section 409.915, Florida Statutes, for those county residents who are certified as indigent, as well as those who are participating in "innovative, cost-effective programs approved by the authorizing county." However, it would appear inappropriate to use those funds to pay the mandatory Medicaid contributions for those individuals who qualify as "medically poor" because they are not eligible for coverage under the Medicaid program (unless the person has medical needs that are not otherwise covered by the Medicaid program).

In Attorney General Opinion 2004-40 this office considered similar provisions in another subsection of this statute, section 212.055(7), Florida Statutes. That opinion addressed the use of voter-approved indigent care surtax proceeds for the payment of a county's mandatory Medicaid contributions for the medically poor, and, like this opinion, concluded that indigent care surtax moneys should not be utilized for this purpose for those residents who are certified as "medically poor" and who are eligible for any other state or federal program. However, it is my opinion that indigent care surtax moneys approved under either section 212.055(4) or (7) may be used to pay the mandatory Medicaid contributions set out in section 409.915, Florida Statutes, for any other "qualified resident" as that term is defined in those statutory sections. It may be appropriate for the Florida Legislature to review these provisions and address the expenditure of indigent care surtax moneys by counties for payment of the mandatory Medicaid contribution required by section 409.915.

Sincerely,

Charlie Crist
Attorney General

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[1] *See* s. 212.01, Fla. Stat., providing a title for the chapter.

[2] *See* Fla. Stat. § 212.055(4)(a)4.

[3] Section 212.055(4)(a)4.b., Fla. Stat.

[4] Section 409.915, Fla. Stat., prescribes county contributions to Medicaid and authorizes the state to charge the counties for certain items of care and service.

[5] *See* "Welcome to Medicaid," at www.cms.hhs.gov/medicaid.