

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 433 w/CS Behavioral Health

**SPONSOR(S):** Murman

**TIED BILLS:** IDEN./SIM. BILLS: SB 1918

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) ELDER & LONG TERM CARE (SUB)	9 Y, 0 N	Meyer	Liem
2) FUTURE OF FLORIDA'S FAMILIES	17 Y, 0 N w/CS	Meyer	Liem
3) STATE ADMINISTRATION	6 Y, 0 N w/CS	Brazzell	Everhart
4) HUMAN SERVICES APPROP. (SUB)	7 Y, 0 N	Ekholm	Ekholm
5) APPROPRIATIONS			

---

### SUMMARY ANALYSIS

CS/HB 433 specifies the appointment of the position of Assistant Secretary of Behavioral Health Services by the Secretary of the Department of Children and Family Services (DCFS) to manage behavioral health services within DCFS. The Assistant Secretary, through Directors of Mental Health and Substance Abuse, will be directly responsible for all programs and staff working in mental health and substance abuse in the districts, institutions, and in headquarters. The CS provides that the department secretary shall appoint the directors or executive directors of any commission or council assigned to the department. The CS creates a behavioral health advisory board of eleven members. The advisory board is responsible for developing the department's Legislative Budget Request.

The department and the Agency for Health Care Administration (agency) must execute a written agreement to provide for joint management of behavioral health services. The agency is authorized to seek federal approval to contract with a single behavioral health pre-paid plan to provide services to all Medicaid recipients in a group of districts or counties. The bill revises the provisions related to Medicaid's contracting for pre-paid behavioral health services and allows Medicaid and DCF to contract with a single provider to serve a region or combination of regions. The agency is directed to provide for certification of local funds to be used as "match" for federal dollars and to implement new Medicaid procedure codes to maximize federal financial participation in behavioral health services. The CS revises and limits the monitoring authority of DCFS and of AHCA. The CS provides that payments made to a prepaid limited health services organization by AHCA under a pre-paid behavioral health contract will not be subject to the premium tax under section 624.509, F.S. The CS amends the definition of emergency medical condition to include persons in acute psychiatric or substance abuse-related distress who are being evaluated for involuntary commitment.

There is minimal fiscal impact projected at this time. As the managed care pilot projects are implemented, there is anticipated to be some savings in Medicaid mental health dollars. No funds are appropriated in this bill; therefore, the Department of Children and Families and the Agency for Health Care Administration will need to implement the provisions of the bill within resources provided in the Fiscal Year 2003-2004 General Appropriations Act. A reduction in budget in the Agency for Health Care Administration is contained in House Bill 1789, First Engrossed, reflecting anticipated savings relating to the capitation of Medicaid payments for behavioral health.

The bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0433h.ap.doc

**DATE:** April 16, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

The CS makes these organizational changes at the Department of Children and Family Services:

- Specifies that the secretary will appoint an assistant secretary for behavioral health services.
- Provides that the directors of mental health and substance abuse will each administer all of the programs, staff, budgets, duties, and functions of each respective program.
- Provides that the directors or executive directors of any commission or council assigned to the department will be appointed by the secretary and serve at the pleasure of the secretary.
- Creates a Behavioral Health Advisory Board of eleven members each appointed for a two year term:
  - five members are appointed by the Governor, three by the President of the Senate and three by the Speaker of the House;
  - provides criteria for the appointment of members; and,
  - the advisory board is to prepare the department’s behavioral health budget and the secretary is to submit that request to the Governor.

The CS makes these changes related to Medicaid’s cost-effective purchasing of health care:

- AHCA and DCF must develop a written agreement that requires collaboration and joint development of all policies, budgets, procurement documents, contracts, and monitoring plans;
- AHCA is required to seek federal approval to contract with a single behavioral health pre-paid plan to provide services to all Medicaid recipients in a county combination of regions:
  - these entities are required to provide “sufficient choice of providers to ensure recipient access and satisfaction;”
  - the managed care entity is expected to provide comprehensive inpatient and outpatient mental health and substance abuse services through pre-paid capitated arrangements to all Medicaid recipients as allowable under federal law and regulation;
  - the agency must submit its plan for implementing capitated prepaid behavioral health care in all regions of the state by October 1, 2003;
  - implementation begins in 2003 in some areas of the state; and,
  - the agency is to consider the impact of an inadequate service system and lack of access to care in creating capitation rates.

To maximize federal financial participation (Medicaid matching dollars):

- AHCA is to implement new Medicaid procedure codes by October 1, 2003, to the extent possible, to allow Medicaid reimbursement of emergency and crisis care, supportive residential services, and other services designed to maximize the use of Medicaid funding;

- AHCA is to certify local dollars spent on behavioral health services for match;
- Standards for certifying local match are provided; and,
- Confidentiality requirements are waived so that the agency and local providers can provide information related to this section to the Medicaid Fraud Control Unit.

#### Auditing and Monitoring

- DCFS or AHCA may perform inspections to ensure that services that have been “billed” rather than “deliverables” have been provided in accordance with the contract.
- DCFS is to perform an off-site review of the contractor’s most recent independent CPA audit, and only conduct on-site monitoring of problems identified by such audit.

#### Taxes

The CS provides that payments made to a prepaid limited health services organization by AHCA under a pre-paid behavioral health contract will not be subject to the premium tax under section 624.509, F.S.

#### Emergency Medical Condition

The CS provides that a person in a designated receiving facility who is exhibiting acute symptoms of psychiatric disturbance or substance abuse is in an emergency medical condition.

### C. SECTION DIRECTORY:

Section 1 amends section 20.19, F.S., related to the organization of DCFS.

Section 2 creates section 394.655, F.S., the Behavioral Health Advisory Board in DCFS.

Section 3 amends section 409.912, F.S., related to Medicaid cost-effective purchasing of health care.

Section 4 amends section 394.741, F.S., related to the accreditation requirements of behavioral health care providers.

Section 5 amends subsections (4) and (5) of s. 394.9082, F.S., to allow a single, rather than multiple contractors.

Section 6 amends subsection (2) of section 636.066, F.S. related to taxes on limited health services organizations.

Section 7 amends subsection (7) of section 641.47, F.S., related to the definition of “emergency medical condition.”

Sections 8-13 correct cross references.

Section 14 provides the bill takes effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

If Medicaid is able to certify local money as “match” for federal financial participation, Medicaid would be able to reimburse additional behavioral health services without additional general revenue being required.

2. Expenditures:

Travel and per diem expenses are authorized for members of the advisory board.

No funds are appropriated in this bill; therefore, the Department of Children and Families and the Agency for Health Care Administration will need to implement the provisions of the bill within resources provided in the Fiscal Year 2003-2004 General Appropriations Act.

The Agency for Health Care Administration estimates that the cost savings associated with capitation of behavioral health care is estimated to be \$3,517,159 for six months in Fiscal Year 2003-2004, and this level of savings is included in the House proposed General Appropriations Bill, House Bill 1789, First Engrossed. This amount includes \$2,072,310 in trust fund authority and \$1,444,849 of general revenue. The amount of projected savings in Fiscal Year 2004-2005 is \$7,034,318, comprised of \$4,144,620 of trust fund authority and \$2,889,698 of general revenue.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None are anticipated.

2. Expenditures:

None are anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None is anticipated.

D. FISCAL COMMENTS:

The bill obliquely raises the issue of which agency of state government is responsible for the development, implementation, and overall management of mental health and substance abuse services. Current statute provides that DCFS has responsibility and authority for these programs. In practice, however, the effective control of these programs has shifted to Medicaid as more and more of the mental health and substance abuse program’s budgets have been transferred to Medicaid to earn federal “matching dollars.” For example, the decision to move all recipients of behavioral health services to pre-paid, capitated, managed care plans was apparently made by AHCA without the input of DCF. If the Legislature wants DCF to maintain responsibility for mental health and substance abuse, it may want to consider administrative arrangements that would ensure that DCF is operationally the manager. If the Legislature prefers that responsibility and control for behavioral health services rest with AHCA, it may be beneficial to ensure that the statutes reflect that policy decision and that the shift in responsibility not continue simply as unarticulated consequence of budgetary decisions.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.

2. Other: None.

B. RULE-MAKING AUTHORITY: No new rule making authority is granted.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

HB 433 was amended by the Committee on the Future of Florida's Families on March 25, 2003.

Related to the structure of DCFS, the amendment provides that:

- The position of assistant secretary for behavioral services is specified in the bill.
- The assistant secretary, through Directors of Mental Health and Substance Abuse, will be directly responsible for all programs and staff working in mental health and substance abuse in the districts, institutions, and in headquarters.

Related to the pre-paid behavioral health plan, the amendment provides that:

- The agency seek federal approval to contract with a single entity to provide comprehensive behavioral health care services to all Medicaid recipients in a group of districts or counties.
- AHCA contract by July 1, 2004, with a single managed care entity to provide comprehensive inpatient and outpatient mental health and substance abuse services through capitated prepaid arrangements to all Medicaid recipients for whom such plans are allowable under federal law and regulations and who live in the geographic area designated by the agency to be served by the single managed care entity.
- By October 1, 2003, the agency is to submit a plan to the Governor, the President of the Senate, the Speaker of the House and the chairmen of the substantive committee for review and approval that describes how the capitated prepaid behavioral health care will be implemented in all regions of the state. Implementation begins in 2003 in those areas where an actuarially sound rate can be developed.
- Payments made to a prepaid limited health services organization by AHCA for pre-paid behavioral health care services are not premiums, contributions, or assessments; and, therefore those payments are not subject to the premium tax levied under section 626.509, F.S. AHCA is to provide prepaid limited health services organization with a certification letter stating this fact.

Related to management of the of the Mental Health program, the amendment:

- Provides standards which allow local tax dollars to be "certified" for purposes of matching federal Medicaid dollars.
- Limits DCF is to an off-site desk review of its contractors' most recent financial audit and is permitted to conduct on-site monitoring only of problems identified by such audit.

The bill was reported favorably with a committee substitute.

On April 15, 2003, HB 433 (CS) was amended in the Human Services Appropriations Subcommittee. Eight amendments were adopted, and these actions are briefly summarized below:

1. **Changes in the Board Composition and Duties**--The amendment makes modifications regarding the Board established in the bill: including; the title is changed to the Behavioral Health Services Board, the membership is altered slightly to specify additional types of representation, duties and powers are further defined to outline board responsibilities, and the section of the bill relating to the board expires in 2006 unless reviewed and reenacted before that date.
2. **Capitated Pre-Paid Health Care**--Revises provisions about mental health and substance abuse capitated pre-paid plans to delete the requirement for a plan by October 1, 2003 that provides for fully

implementing capitated prepaid behavioral health care in all regions of the state. The amendment provides that by July 1, 2006, AHCA shall contract with managed care entities in each AHCA area to provide mental health and substance abuse services through capitated pre-paid arrangements. Provides that by January 1, 2004, AHCA and DCF shall submit a plan for review and approval that provides for the full implementation of capitated prepaid behavioral health care in all areas of the state.

3. **Child Welfare Providers Participation in Network for Prepaid Behavioral Health Services--** Includes child welfare providers as participants in the network for prepaid behavioral health services.
4. **Implementation of Procedure Codes to Maximize Use of Medicaid Funds--**Modifies provisions relating to implementation of Medicaid procedure codes for certain services and regarding the requirements for the certification of local match. A plan must be developed to project the number of procedures to be delivered during FY 2003-2004 and a financial analysis which describes the certified match procedures and accountability mechanisms. The plan shall not be implemented unless approved by the Legislative Budget Commission.
5. **Department Monitoring--**Modifies provisions relating to monitoring by the department, providing that audits monitor for compliance with state and federal statutes, are not duplicative, and utilize certified public accountant audits, if required.
6. **Retains Current Definition of Emergency Medical Condition--**Deletes provision in the bill which added a condition to emergency medical condition relating to an acute psychiatric condition.
7. **DCF Residential Programs not included in a Prepaid Health Plan—**Specifies that DCF residential programs, in addition to DJJ residential programs, are not included in a behavioral health care prepaid health plan pursuant to this portion of the law.
8. **Adds Retaliatory Tax to Exemption in Addition to Premium Tax—**Amendment makes a technical change that specifies that payments made to a prepaid limited health services organization by the Agency for Health Care Administration for behavioral health care services are not subject to the premium tax or the retaliatory tax.