SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL:	CS/SB 1852
SPONSOR:	Health Care Committee and Senator Wise
SUBJECT:	Mental Health Services Providers
DATE:	April 22, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins	Whiddon	CF	**Favorable**
2.	Garner	Wilson	HE	**Fav/CS**
3.			HA	
4.				
5.				
6.				

I. Summary:

CS/SB 1852 creates specific criteria for Medicaid prepaid health plans regarding the provision of mental health services for residents of assisted living facilities with limited mental health licenses (ALF-LMHL). These criteria include provisions to ensure that ALF-LMHL residents: have access to an adequate and appropriate array of behavioral health services; may not be displaced as a result of the implementation of any behavioral health managed care plan; have access to therapeutic medications, including atypical psychotropics, as directed by the resident's physician; and have access to state-funded primary care and mental health services covered by Medicaid.

The committee substitute requires that if the Agency for Health Care Administration (AHCA) implements a managed care plan that would include behavioral health care services in the counties of Nassau, Baker, Clay, Duval, and St. Johns, the agency must establish a workgroup. The workgroup is to examine strategies to allow administrative service organizations (ASOs) to offer behavioral health services under a capitated payment and make recommendations to AHCA for how behavioral health services should be addressed in the request for proposal process. The bill specifies the workgroup's membership.

The committee substitute also requires AHCA, in consultation with the Department of Elderly Affairs, to establish a workgroup on best practices in ALF-LMHLs. The workgroup is to identify best practices associated with providing state-funded behavioral health services in ALF-LMHL. The bill specifies membership on the workgroup and requires a report to the Governor and Legislature no later than January 5, 2006.

The bill amends s. 409.912, F.S., and creates two undesignated sections of law.

II. Present Situation:

Assisted Living Facilities

ALFs provide housing, meals, and personal assistance to frail elders and persons with physical and mental disabilities who need support to live in the community but do not require institutionalization (chapter 400, part III, F.S.). Facility staff provide supervision to residents, including oversight of their diet, activities, general whereabouts, and activities of daily living. These facilities are licensed by AHCA.

Limited Mental Health Services in ALFs

In 1995, the Legislature established limited mental health specialty licensure for ALFs that serve residents with mental illness (ch. 95-418, L.O.F.). Any ALF that serves three or more mental health residents is required under s. 400.4075, F.S., to obtain a limited mental health license. Additional requirements for ALFs with the limited mental health license include: specialized training for direct care staff, coordination with the residents' mental health provider, and participation in planning for resident needs.

Mental health residents are persons with severe and persistent mental illnesses, who may have been recently released from a state mental health treatment facility or an acute care intensive treatment setting. These residents are typically aged 40-60, have severe and chronic mental health disorders such as schizophrenia, other psychosis, or bipolar disorder, and need a supervised living environment.

These residents are in need of significant services and support to allow them to live in the community. Because many of these individuals have very limited financial resources and may need assistance with their activities of daily living, ALFs are often the only living arrangement available to them. If they receive either Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), these residents are Medicaid-eligible and have access to the same array of services that all other Medicaid recipients may access in the community.

Under AHCA's Medicaid State Plan, ALFs receive a Medicaid payment of $9.28 per Medicaid resident per day for assistive care services.[1] This fee does not include behavioral health services. Medicaid behavioral health care services are provided on a fee-for-service basis by local and community behavioral health care providers. Residents of ALFs who are Medicaid recipients are eligible for the same array of services that all other Medicaid recipients have access to in the community.

The Department of Children and Family Services (DCF) staff at the district level are responsible for ensuring that mechanisms are in place to provide appropriate services to ALF residents with mental health problems. Residents with mental illness receive personal services from the ALFs and mental health services from local community mental health centers. Cooperative

[1] Assistive care services are similar to services typically provided in residential care facilities to residents who require an integrated set of services on a 24-hour basis. They include assistance with activities of daily living, medication assistance, assistance with instrumental activities of daily living, and health support.

arrangements are made between ALF staff and local mental health treatment providers to provide mental health residents with emergency and after-hours services when they are needed.

Currently, there are more than 74,000 ALF beds statewide in 2,250 facilities, and 764 of these facilities hold a limited mental health license.

Services Provided by the Department of Children and Family Services

DCF is required by s. 394.4574, F.S., to provide certain services to residents in ALFs. Those services include:

- Assessment prior to ALF placement by a mental health professional or person supervised by one;
- Cooperative agreement with the ALF to ensure coordination of services, as well as procedures for responding to emergent conditions;
- Assignment of a case manager to each mental health resident; and
- Development of a community living support plan, specifying services to be provided in the ALF residence.

The statute further requires that each DCF district administrator develop detailed plans that describe how the district will ensure that state-funded substance abuse and mental health services are provided to residents of ALFs with a limited mental health license. The plans must address how case management services, access to consumer-operated drop-in centers, access to services during evenings, weekends and holidays, supervision of clinical needs, and access to emergency psychiatric care will be provided to residents who may need those services. Services must be provided within existing resources available in the district. However, due to reorganization, functional responsibility is now in the Substance Abuse and Mental Health Program Office rather than with the district administrators.

Section 394.4574, F.S., further requires that the administrator of an ALF with a limited mental health license have a cooperative agreement with the mental health care provider that is providing services to residents. This section stipulates that in cases when a resident of an ALF providing limited mental health services is also a Medicaid recipient in a prepaid health plan, the entity that is providing the prepaid plan must ensure coordination of health care with the ALF. If the entity is also at risk for Medicaid targeted case management and behavioral health services, it must ensure that the ALF administrator has been made aware of procedures to follow to obtain mental health services for a resident in an emergency.

Behavioral Health Services Integration Workgroup

Since 1996, at least two reports to the Florida Legislature have raised concerns about the provision of behavioral health (mental health and substance abuse) services for residents living in ALFs.[2] Specific concerns have been raised regarding the adequacy of available placement

[2] Office of Program Policy Analysis and Government Accountability. (1997). *Review of Assisted Living Facilities Serving Residents with Severe Mental Illness*. Report No. 96-57. Office of Program Policy Analysis and Government Accountability. (1998). *Follow-Up Report on Assisted Living Facilities Serving Residents with Severe Mental Illnesses*. Report No. 98-27.

resources for mental health clients and the adequacy of services available to support community placement options for individuals with severe mental illnesses. The availability of after-hours mental health coverage is also a problem that is frequently cited by ALF administrators.

Efforts have been made to address concerns relating to the provision of mental health and substance abuse services to residents of ALFs. The interface between the publicly-funded mental health and substance abuse system and ALFs was one area focused on by the Behavioral Health Services Integration Workgroup, which was established by the 2001 Legislature. As a result of recommendations by this workgroup, further study was conducted by the Louis de la Parte Florida Mental Health Institute (FMHI) resulting in a 2003 report, *Behavioral Health Services Integration: Assisted Living Facility Study*. Some of the findings from this report include:

- There are mixed opinions concerning whether ALF residents receive the mental health services they need. Most residents, case managers and direct care staff are satisfied with the availability of mental health services; however, the majority of administrators are not satisfied with the availability of these services.
- Administrators, case managers, and direct care staff are not satisfied with the availability of substance abuse services.
- Most residents would like to receive substance abuse services such as Alcoholics Anonymous, group therapy, or counseling.

Despite the information contained in this report, the extent of difficulty that is encountered in obtaining mental health services for persons with mental illness who reside in an ALF remains unclear, largely due to the lack of available data. Unfortunately, there is no single standard assessment system or data base maintained for ALFs. Information pertaining to ALFs is maintained separately by DCF and AHCA, which has made it difficult to obtain cohesive, critical information since at least 1996.[3]

Florida's Medicaid Program

Florida's Medicaid program is jointly funded by the federal, state, and county governments to provide medical care to eligible individuals. Medicaid is the largest program providing medical and health-related services to the nation's poorest citizens. Within broad national guidelines, which the federal government establishes, each of the states:

- Establishes its own eligibility standards;
- Determines the type, amount, duration, and scope of services;
- Sets the rate of payment for services; and
- Administers its own program.

AHCA is the single state agency responsible for the Florida Medicaid Program. The statutory provisions for the Medicaid program appear in ss. 409.901 through 409.9205, F.S.

[3] Office of Program Policy Analysis and Government Accountability. (1997). *Review of Assisted Living Facilities Serving Residents with Severe Mental Illness.* Report No. 96-57.

Some services are mandatory services that must be covered in any state that participates in the Medicaid program. Other services are optional (such as behavioral health services). A state may choose to include optional services in its state Medicaid plan, but such services must be offered to all individuals statewide who meet Medicaid eligibility criteria. Payments for services to individuals in the optional categories are subject to the availability of monies and any limitations established by the General Appropriations Act or chapter 216, F.S.

Medicaid Behavioral Health Services

Behavioral health services are classified as Medicaid optional services and may only be provided if determined to be medically necessary by a psychiatrist or physician. Medicaid behavioral health services include both mental health and substance abuse services. These services include:

- Inpatient and outpatient hospitalization;
- Psychiatric hospitalization services for persons over 65 years of age in a state mental hospital;
- Psychiatric and physician services;
- Community mental health and substance abuse services (i.e., group therapy, individual therapy, day treatment, therapeutic on-site services, rehabilitative and recovery based services) provided through entities under contract with AHCA or DCF;
- Targeted mental health case management (Medicaid Areas 1 and 6, only);
- Therapeutic group care services for children; and
- Therapeutic foster care services for children.

Medicaid behavioral health services are delivered through three systems in Florida: 1) the statewide primary care case management plan (MediPass); 2) a health maintenance organization (HMO); or 3) in AHCA Areas 1 and 6, stand alone prepaid behavioral health care plans.

Medicaid Prepaid Mental Health Plans

In AHCA Areas 1 (Escambia, Santa Rosa, Okaloosa, and Walton Counties) and 6 (Hillsborough, Hardee, Highlands, Manatee, and Polk Counties), Medicaid recipients who need behavioral health services must use the behavioral health stand alone program, known as the Florida Prepaid Mental Health Plan (PMHP), regardless of whether they are already in an HMO or MediPass. PMHP services include:

- Inpatient psychiatric services;
- Outpatient hospital services for covered diagnosis;
- Community mental health services;
- Mental health targeted case management; and
- Psychiatrist physician services.
- Substance abuse services are not included in the prepaid mental health plan.

Medicaid pays the PMHP a per member per month capitation rate based on the recipient's eligibility category and age group. This payment is currently 91 percent of Medicaid's anticipated fee-for-service cost of providing mandatory covered mental health services to eligible

persons residing in each area. The rate is calculated in accordance with a CMS-approved actuarial methodology. Mandatory services covered by the PMHP are detailed in the contracts. The PMHP also provides, to qualifying members as a downward substitution, several additional services not reimbursable by fee-for-service Medicaid. These services currently include crisis stabilization, drop-in/self help centers, preventive services, residential care for adults, respite care, sheltered and supported employment, supported housing, partial hospitalization, and transportation.

All persons in Medicaid eligibility categories not dually-eligible for Medicare are enrolled in the PMHP. When Medicaid recipients in Areas 1 and 6 choose or are assigned to MediPass for their physical health care, they are automatically assigned to the PMHP for their mental health services. MediPass provides primary care case management and authorizes physical health services and the PMHP manages and provides mental health services. Currently, the Medicaid HMOs in these counties also manage and provide both physical and mental health care. Services for substance abuse and chemical dependency diagnoses remain covered under the Medicaid fee-for-service program for recipients enrolled in both plans.

An additional requirement of the PMHP contracts is that the plan has to have a local Medicaid Managed Mental Health Care Advisory Group that includes representation from all stakeholders within the area. The advisory groups meet on a quarterly basis and minutes from each meeting are developed and provided to the plan and AHCA.

AHCA's Bureau of Medicaid Services manages and monitors the PMHP contracts. Contract and desk reviews of mandatory reports from the contractors are conducted each month and an on-site contract compliance monitoring is completed on an annual basis for each PMHP. These monitoring visits are coordinated with the local Substance Abuse and Mental Health Program Offices. Results are shared with the local Managed Care Advisory Group to obtain input and direction for quality improvement activities.

AHCA continues to contract with the Florida Mental Health Institute (FMHI) at the University of South Florida to complete an independent evaluation of the PMHP (carve-out) as part of the requirement for a 1915(b) waiver.

Prepaid Mental Health Plans Expansion

The PMHP in Area 6 has been in place since March 1, 1996, and the Area 1 PMHP was implemented November 1, 2001. The Legislature directed AHCA to expand these programs in 2004. Section 409.912(4)(b), F.S., directs AHCA and DCF to contract, by July 1, 2006, with managed care entities in each AHCA area to provide comprehensive inpatient and outpatient mental health and substance abuse services through capitated prepaid arrangements to all Medicaid recipients who are eligible to participate in such plans.

The first Request for Proposals (RFP) for expansion was released on January 14, 2005, to select contractors for Areas 5 (Pasco and Pinellas Counties) and 7 (Brevard, Orange, Osceola, and Seminole Counties). The contracts are being awarded with an anticipated start date of June 2005. The following is the proposed schedule of implementation through March 2006:

- **September 2005** – Area 2 (Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Taylor, Wakulla, and Washington Counties), Area 3 (Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Madison, Marion, Putnam, Sumter, and Suwannee Counties), and Area 4 (Baker, Clay, Duval, Flagler, Nassau, St. Johns, and Volusia Counties)
- **December 2005** – Area 11 (Miami-Dade and Monroe Counties)
- **March 2006** – Area 8 (Charlotte, Collier, De Soto, Glades, Hendry, Lee, and Sarasota Counties), Area 9 (Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie Counties), and Area 10 (Broward County)

Medicaid Reform

On January 11, 2005, Governor Bush released an outline of a plan to restructure the Florida Medicaid program. Entitled "Empowered Care," the framework outlined a Medicaid program operated within a system of capitated, managed care plans. The Governor's proposal is premised on the concept that fostering competition among private insurance carriers and provider service networks that seek to assume the risk of providing services will save the state money without compromising the quality and scope of services for Medicaid recipients. These managed care plans would replace the current Medicaid program.

In anticipation of the challenges concerning the future of Florida's Medicaid Program and in response to the release of the Governor's reform proposal, the Senate President created the Senate Select Committee on Medicaid Reform on January 19, 2005. The Senate Select Committee met five times in Tallahassee and conducted five public hearings in cities around the state, including Tampa, Ft. Lauderdale, Orlando, Panama City, and Jacksonville.

The Select Committee reviewed, amended, and approved a set of recommendations for Medicaid reform legislation in the 2005 Session, and submitted them to the President of the Senate for consideration. CS/SB 838 incorporates the Select Committee's recommendations and is currently under consideration in the Senate. A provision of CS/SB 838 authorizes a pilot of the Governor's reform proposal and allows comprehensive managed care plans to replace the current Medicaid program in two areas of the state: Broward County and Duval, Nassau, Baker, and Clay Counties.

III. Effect of Proposed Changes:

Section 1. Amends s. 409.912(6), F.S., to create new paragraphs (c)-(f) establishing additional criteria for Medicaid prepaid health plans to provide services to persons who live in a licensed assisted living facility that holds a limited mental health license (ALF-LMHL). In order to provide prepaid services in Medicaid, this section requires entities to:

- Ensure that residents in ALF-LMHLs receive access to an adequate and appropriate array of state-funded mental health services;
- Ensure that state-funded mental health services promote recovery by implementing best practices through cooperative agreements between mental health providers and ALF-LMHLs, by implementing the community living support plans, and by complying with s. 394.4574, F.S.;

- Ensure that a resident of an ALF-LMHL may not be displaced as a result of the implementation of any behavioral health care managed care plan;
- Develop and implement a plan that complies with s. 394.4574, F.S., for providing state-funded mental health services;
- Ensure that residents of ALF-LMHLs have access to therapeutic medications, including atypical psychotropics, as directed by the resident's doctor, within available resources; and
- Ensure that each resident of an ALF-LMHL has access to state-funded primary care and mental health services covered by the Medicaid program.

Section 2. Creates an undesignated section of law that requires a workgroup to be established if AHCA implements a managed care plan that would include behavioral health services in the counties of Nassau, Baker, Clay, Duval, and St. Johns. The workgroup is to:

- Examine strategies that would allow minority access and county-based administrative service organizations (ASOs) the ability to seek a capitation rate to provide programs to improve access to behavioral health care services in rural areas;
- Make recommendations to AHCA for incorporation in the request for proposal process relating to minority access in the emerging networks, the role of county-based service delivery systems for behavioral health care, requirements to be met by managed care plans when serving residents of ALF-LMHLs, and the development of administrative service organizations.

This section also specifies membership on the workgroup.

Section 3. Creates an undesignated section of law that requires AHCA, in consultation with the Department of Elderly Affairs, to establish a workgroup on best practices for ALF-LMHLs. The workgroup shall:

- Identify best practices associated with implementing a state-funded behavioral health care service system for residents of ALF-LMHLs and review the need for developing enhanced services for residents who have additional needs associated with aging or disabilities;
- Identify best practices in the delivery of state-funded mental health services under a managed care plan;
- Determine which services are most frequently used by these residents and how integrated models of service delivery may emerge that promote best practices under managed care plans in Medicaid;
- Evaluate the strategies, services, and supports that are necessary to ensure an adequate and appropriate array of state-funded mental health service which promotes recovery-based outcomes under Medicaid; and
- Review, and when appropriate, recommend changes to laws, administrative rules, and modifications to 1915c waivers that relate to eligibility and services. The workgroup shall also propose legislative budget recommendations needed to implement the recommendations of the workgroup.

This section specifies membership on the workgroup and requires a report to be provided to the Governor and the Legislature no later than January 5, 2006.

Section 4. Provides that this bill shall take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill authorizes membership from the private sector for two proposed workgroups. Members of the committee are to serve at their own expense on one workgroup; however, the same is not specified for the other workgroup.

C. Government Sector Impact:

Agency for Health Care Administration

The agency has not provided a fiscal analysis of the committee substitute at this time.

VI. Technical Deficiencies:

On page 4, lines 17-20, the bill appears to make all residents of ALF-LMHLs eligible for Medicaid coverage of primary care and mental health services, irregardless of whether they are otherwise eligible for Medicaid.

VII. Related Issues:

The bill carves out a subpopulation of individuals with mental illness (those living in ALFs with a limited mental health license) from inclusion in Medicaid managed care plans without the agency first forming workgroups to study service delivery in these systems. Carving out small

groups under a managed care arrangement puts plans at higher risk of not being able to cover costs because of their inability to spread risk across many plan enrollees. It is unclear how many of the ALFs with a limited mental health license would participate in such a demonstration project and if such a demonstration could attract sufficient enrollees to reach a critical mass to provide effective services at the capitated rate.

The counties specified in this bill are essentially the same as those identified in the Medicaid reform legislation (CS/SB 838) as a proposed pilot project area for the Governor's Medicaid reform proposal. The provisions of this committee substitute could affect the implementation of this pilot project if approved by the Legislature.

VIII. Summary of Amendments:

None.