HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 467 Entities Contracting with the Medicaid Program
SPONSOR(S): Albritton and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	15 Y, 0 N	Poche	Calamas
2) Finance & Tax Committee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 467 exempts a prepaid limited health service organization licensed under Chapter 636, F.S., from payment of a tax on premiums, contributions, and assessments received under a contract with Medicaid to solely provide services to Medicaid recipients.

The bill provides for remedial retroactive application of the exemption to December 31, 1998. The bill expressly states that the retroactive application does not create a right to a refund for any tax, penalty or interest on premiums, contributions, and assessments paid to the Department of Revenue prior to the effective date.

The bill has a negative fiscal impact to the state.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 636, F.S., regulates the operation and administration of prepaid limited health service organizations[12] (PLHSO) and discount medical plan organizations in the state of Florida. PLHSOs solely providing services to Medicaid recipients under a contract with Medicaid are exempt from several provisions of Chapter 636, F.S., including those related to rates and charges[3]; changes in rates and benefits, material modifications, and the addition of limited health services[4]; restrictions upon expulsion or refusal to issue or renew a contract[5]; notice of cancellation of contract[6]; and extension of benefits.[7]

Since 1993, Florida law has imposed a tax on the insurance premiums, contributions, and assessments received by a PLHSO.[8] The premium tax is to be paid annually and is calculated at a rate of 1.75 percent of the gross amount of premiums, contributions, and assessments collected on health insurance policies issued by PLHSOs.[9]

There are five PLHSOs which provide mental health services to Medicaid recipients through a contract with AHCA that are subject to this tax[10]. One organization, Lakeview Center, Inc. (Lakeview), filed a legal challenge in 2007 to the imposition of the tax by the Department of Revenue.[11] According to the court's order, Lakeview had been paying the premium tax under s. 624.509, F.S., since 2003. Subsequently, Lakeview determined that the tax was paid in error and sought a refund from DOR. The request for refund was denied and Lakeview timely filed a Complaint with the Circuit Court for the Second Circuit in Tallahassee. The court found that Lakeview contracted with the Agency for Health Care Administration (AHCA) to provide mental health and other services to Medicaid recipients. Lakeview was paid a fixed sum by AHCA to provide the stated services. Lakeview argued that the fixed sum paid by AHCA under the contract did not constitute a premium to trigger the imposition of the premium tax under s. 624.509, F.S. The court disagreed, finding that a rule established by the Office of Insurance Regulation (OIR), which regulated Lakeview as an insurer in the state of Florida, defined "premium"[12] and concluded that the fixed rate paid to Lakeview by AHCA met the definition and was taxable.

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[1] Part I, Ch. 636, F.S.

[2] S. 636.003(7), F.S., defines a "prepaid limited health service organization" as "any person, corporation, partnership, or any other entity which, in return for a prepayment, undertakes to provide or arrange for, or provide access to, the provision of a limited health service to enrollees through an exclusive panel of providers; s. 636.003(5), F.S., defines a "limited health service" as ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services.

[3] S. 636.017, F.S.

[4] S. 636.018, F.S.

[5] S. 636.022, F.S.

[6] S. 636.028, F.S.

[7] S. 636.034, F.S.

[8] S. 636.066(1), F.S.

[9] S. 624.509(1)(a), F.S.

[10] Agency for Health Care Administration, 2011 Bill Analysis and Economic Impact Statement for SB 472/HB 467; the five vendors are: Lakeview Center, Inc. (d/b/a Access Behavioral Health), Magellan Behavioral Health of Florida, Inc., North Florida Behavioral Health Partners, Inc., Florida Health Partners, Inc., and The Community Based Care Partnership, LLC.

[11] *See* Lakeview Center, Inc. v. State of Florida, Dept. of Revenue, No. 2007-CA-1255 (Fla. 2nd Cir. Co. Jan 23, 2008), *per curiam affirmed*, Lakeview Center, Inc. v. State of Florida, Dept. of Revenue, 8 So.3d 1136 (Fla. 1st DCA 2009)(unpublished disposition).

[12] Rule 69O-203.013(6), F.A.C. (2007), defined "premium" as "[t]he contracted sum paid by or on behalf of a subscriber or group of subscribers on a prepaid per capita or a prepaid aggregate basis for limited health services rendered by or through the PLHSO."

Currently, some PLHSOs are paying the premium tax and some are not. Additional information regarding the identity of those PLHSOs and the amount being paid or owed is not available due to confidentiality provisions.[13]

Effect of Proposed Changes

The bill exempts any entity providing services solely to Medicaid recipients through a contract with Medicaid from payment of the premium tax required by s. 624.509, F.S. The bill also provides for retroactive application of the exemption from tax to December 31, 1998. The bill provides that the retroactive application is remedial in nature and does not create the right to a refund of any tax, penalty or interest to those companies that have paid the tax or a penalty or interest prior to July 1, 2011.

Exempting PLHSOs from the premium tax will impact the way in which AHCA determines the capitation rate for the organizations that provide mental health services to Medicaid recipients. The rates will be adjusted for the 2011-12 year, effective September 1, 2011, and would result in a reduction to the rates paid to the plans by Medicaid.

Passage of the bill will result in the forgiveness of $11.2 million of past due taxes and interest, as determined by the Revenue Estimating Impact Conference.[14] Further, it is estimated that, for the next four fiscal years looking forward, there is a negative impact to the amount of taxes collected for General Revenue of $1.6 million to $1.7 million. The companies who have paid the tax to date will not receive a refund.

B. SECTION DIRECTORY:

Section 1: Amends s. 636.0145, F.S., relating to certain entities contracting with Medicaid.
Section 2: Creates an unnumbered section of general law which provides for retroactive application of the amended statute to December 31, 1998, clarifies that retroactive application of the amended statute is remedial in nature and does not create a right to a refund or authorize any governmental entity to issue a refund of any tax, penalty or interest remitted to the Department of Revenue before July 1, 2011.
Section 3: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[13] S. 231.015(9), F.S., The Taxpayer Bill of Rights, and s. 213.053(2)(a), F.S., through sub-subsection (1)(q).
[14] Report of the Revenue Estimating Conference, Insurance Premium Tax, Certain Prepaid Health Plans, February 25, 2011.

None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A PLHSO which provides mental health services only to Medicaid recipients through a contract with Medicaid, through AHCA, will be exempt from paying the premium tax on the funds received through the contract to provide the services. If the tax is no longer imposed on the PLHSO, the amount of the tax (1.75 percent of the fixed rate paid for services) will be removed from the rate paid by Medicaid.

D. FISCAL COMMENTS:

On February 25, 2011, the Revenue Estimating Conference adopted a consensus estimate of the tax impact of exempting PLHSOs from payment of the premium tax in s. 624.509, F.S. Assuming an effective tax rate of .75%, the bill will have a negative impact of $11.2 million for FY 11-12. This figure contains the past due tax and interest that has not been remitted to date by the PLHSOs subject to the statute. The bill will have the following negative impact for each of the next four fiscal years:

	FY2011-12 Cash	FY 2011-12 Annualized	FY 2012-13 Cash	FY 2013-14 Cash	FY 2014-15 Cash
General Revenue	($11.2m)	($1.6m)	($1.6m)	($1.6m)	($1.7m)
State Trust	0	0	0	0	0
Total State Impact	($11.2m)	($1.6m)	($1.6m)	($1.6m)	($1.7m)
Total Local Impact	0	0	0	0	0
Total Impact	($11.2m)	($1.6m)	($1.6m)	($1.6m)	($1.7m)

According to AHCA, the capitation rates for prepaid mental health plans for September 1, 2010 to August 31, 2011 were increased by 1.75 percent to account for the premium tax. This is a recurring add-on. As a result, while the state would be collecting $1.6 million in tax revenue, assuming the tax was collected, the state is spending $1.6 million in General Revenue to increase the capitation rates each year. If the bill passes, AHCA will readjust the capitation rates effective September 1, 2011 to account for the elimination of tax liability. The removal of the tax will result in a reduction to the rates paid to the PLHSOs by Medicaid. Medicaid will not seek to recoup two months (July 2011 and August 2011) of the 1.75 percent rate added to current capitation rates from companies that have been paying the tax. Instead, an adjustment will be made to the capitation rate for 2011-12 to account for the "overpayment". However, AHCA will recoup the portion of the capitation payment relating to the premium tax that has already been disbursed to companies that have not paid the premium tax for 2010-2011.[15]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[15] Agency for Health Care Administration, 2011 Bill Analysis and Economic Impact Statement for SB 472/HB 467.

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of sales tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES