HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 467 Entities Contracting with the Medicaid Program
SPONSOR(S): Finance & Tax Committee; 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	23 Y, 0 N, As CS	Wilson	Langston
3) Health & Human Services Committee	17 Y, 0 N	Poche	Gormley

SUMMARY ANALYSIS

CS/HB 467 exempts from Insurance Premiums Tax the premiums, contributions, and assessments received under a contract with Medicaid to solely provide services to Medicaid recipients by a prepaid limited health service organization (PLHSO) licensed under Chapter 636, F.S.

The bill provides that the provisions within the bill will operate prospectively. The prospective operation of the bill does not provide a basis for an assessment of taxes not paid, or a basis for determining any right to a refund of taxes paid, prior to the effective date.

The Revenue Estimating Conference (REC) has estimated that the bill will have a recurring negative impact on state General Revenue of $1.6 million beginning in FY 2011-2012. However, at present, the cost of tax payments made by the affected organizations to the state is incorporated into Medicaid cost reimbursements received by those organizations from both state and federal funds. Consequently, the recurring tax revenue loss resulting from this bill is expected to be offset by like amounts of reductions in Medicaid reimbursements from the General Revenue fund. The recurring impact of the bill on the budget as a whole is therefore neutral.

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 1994, 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(DOR).[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 state 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 provides that the provisions within the bill will operate prospectively. The prospective operation of the bill does not provide a basis for an assessment of taxes not paid, or a basis for determining any right to a refund of taxes paid, prior to July 1, 2011.

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Exempting PLHSOs from premiums, contributions, and assessments 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.

B. SECTION DIRECTORY:

Section 1: Amends s. 636.0145, F.S., providing an exemption for certain entities contracting with Medicaid.

Section 2: Provides that the provisions within the bill will operate prospectively. The prospective operation of the bill does not provide a basis for an assessment of taxes not paid, or a basis for determining any right to a refund of taxes paid, prior to 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:

   The Revenue Estimating Conference estimated the bill will have a recurring negative impact on state General Revenue of $1.6 million. However, at present, the cost of tax payments made by the affected organizations to the state is incorporated into Medicaid payments received by those organizations from both state and federal funds. Consequently, the recurring tax revenue loss resulting from this bill is expected to be offset by like amounts of reductions in Medicaid payments from the General Revenue fund. The recurring impact of the bill on the budget as a whole is therefore neutral.

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2. Expenditures:

   At present, the cost of tax payments made by the affected organizations to the state is incorporated into Medicaid cost reimbursements received by those organizations from both state and federal funds. Consequently, the recurring tax revenue loss resulting from this bill will be offset by like amounts of reductions in Medicaid payments from the General Revenue fund. The first-year revenue impacts will not be similarly offset by reductions in Medicaid payments.

   Also, see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[13] Section 213.053(2)(a), F.S.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A PLHSO will become exempt from paying tax on premiums, contributions, and assessments received under contract with Medicaid to solely provide services to Medicaid recipients. The bill does not create the right to any refund of any tax, penalty or interest previously paid by any PLHSO.

D. FISCAL COMMENTS:

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. The present rates paid by Medicaid since September 2010 already reflect the capitation rates paid to the plans that were based on encounter data and the 1.75 percent increase. If the tax is no longer levied against the prepaid mental health plan contract vendors, the AHCA would adjust the rates according to its capitation rate setting methodology effective September 1, 2011.

As a minor component in the rate methodology, removal of the tax would result in a reduction to the rates paid to the plans by Medicaid. The reduction to the rates would only be the portion attributable to the actuarial adjustment and would not impact the service expenditure portion of the rates; therefore, the rates would remain actuarially sound. The plans would no longer be required to pay the tax; therefore, the tax would not be built into the rates.

The current adjustment acts as a pass-through of expenditures within the capitated rates. Because the tax became part of the rates in September 2010, sufficient expenditure data available after that date is not yet available to estimate savings to the ACHA. However, there would be no additional costs to the AHCA above current payments with or without the tax.[14]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

[14] Agency for Health Care Administration, 2011 Bill Analysis and Economic Impact Statement for SB 472/HB 467 (last visited 3/20/2011).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 5, 2011, the Finance & Tax Committee adopted an amendment to the bill, confirming that the provisions of the bill operate prospectively. The prospective operation of the bill does not provide a basis for an assessment of taxes not paid or a basis for determining any right to a refund of taxes paid, prior to July 1, 2011.

This analysis has been updated to reflect the committee substitute.