

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Health Regulation Committee

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BILL: SM 1836

INTRODUCER: Senator Negrón

SUBJECT: A Memorial to the United States Secretary of Health and Human Services

DATE: February 20, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

Senate Memorial 1836 requests the United States Secretary of Health and Human Services to approve Florida's requested Medicaid waivers so that the Medicaid managed care pilot program can be implemented statewide.

This bill creates a Senate Memorial.

**II. Present Situation:**

**Medicaid**

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. The Agency for Health Care Administration (AHCA) is responsible for administering the Medicaid program in Florida. Medicaid serves approximately 3.19 million people in Florida, with over half of those being children and adolescents 20 years of age or younger. Estimated Medicaid expenditures for FY 2011-2012 are approximately \$20.3 billion.

Medicaid is a joint program between the federal government and state governments. Although each state administers its own Medicaid program, the federal Centers for Medicare and Medicaid Services (CMS) within the United States Department of Health and Human Services monitors the state-run programs and establishes requirements for service delivery, quality, funding, and eligibility standards. Medicaid was created by the Social Security Amendments of 1965 which added Title XIX to the Social Security Act.

## Medicaid Managed Care in Florida

Part III of ch. 409, F.S., provides the statutory requirements for the Florida Medicaid program. Sections 409.9121 – 409.9124, F.S., contain provisions relating to managed care in Medicaid.

In 1993, the Legislature passed legislation declaring its intent that the Medicaid program require, to the maximum extent practicable and permitted by federal law, all Medicaid recipients to be enrolled in a managed care program.<sup>1</sup> This intent language was codified in s. 409.9121, F.S., and has remained in effect and unchanged since 1993. Section 409.9122, F.S., which was also created in 1993, set Florida on the path of mandatory enrollment of Medicaid recipients in managed care by providing for the statewide expansion of the primary care case management program known as MediPass and for the growth of health maintenance organizations and prepaid health plans for Medicaid recipients. Section 409.9122, F.S., has been amended almost every year since 1993 to expand the role of managed care in Medicaid as managed care has evolved.

In 2005, the Legislature directed the AHCA to seek federal Medicaid waivers pursuant to s. 1115 of the Social Security Act to create a Medicaid managed care pilot program in five counties in the state. Under the pilot program, most Medicaid recipients have been moved from Medicaid fee-for-service and the MediPass program into capitated managed care systems. As of December 15, 2011, the pilot program waiver was extended for 3 years, through June 30, 2014. This coincides with the implementation schedule of the new statewide Medicaid managed care program established in 2011 and codified in pt. IV of ch. 409, F.S. (s. 409.961 – 409.9841, F.S.).<sup>2</sup>

Part IV of ch. 409, F.S., requires all Medicaid recipients to enroll in a managed care plan unless they are specifically exempted. The statewide Medicaid managed care program includes the long-term care managed care program and the managed medical assistance program. The law directs the AHCA to begin implementation of the long-term care managed care program by July 1, 2012, with full implementation in all regions of the state by October 1, 2013. By January 1, 2013, the AHCA must begin implementation of the managed medical assistance program, with full implementation in all regions of the state by October 1, 2014.

The AHCA is required to separately procure long-term care managed care plans and managed medical assistance plans in each of the 11 regions of the state, which coincide with the existing Medicaid areas. The AHCA is required to select a limited number of eligible plans to participate in the program using Invitations to Negotiate. Each Medicaid recipient must have a choice of plans and may select any available plan unless that plan is restricted by contract to a specific population that does not include the recipient.

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<sup>1</sup> See s. 50 of ch. 93-129, L.O.F.

<sup>2</sup> See ch. 2011-134, L.O.F.

## Medicaid Waiver Requests

Waivers are the means by which states can get approval to waive certain federal Medicaid requirements in order to test new or existing ways to deliver and pay for health care services. There are four primary types of waivers and demonstration projects:<sup>3</sup>

- Section 1115 Research and Demonstration Projects – states can apply for program flexibility to test new or existing approaches to financing and delivering Medicaid;
- Section 1915(b) Managed Care Waivers – states can apply for waivers to provide services through managed care delivery systems or otherwise limit people’s choice of providers;
- Section 1915(c) Home and Community-Based Services Waivers – states can apply for waivers to provide long-term care services in home and community settings rather than institutional settings; and
- Concurrent Section 1915(b) and 1915(c) Waivers – states can apply to simultaneously implement two types of waivers to provide a continuum of services to the elderly and people with disabilities, as long as all Federal requirements for both programs are met.

Section 409.964, F.S., requires the AHCA to apply for and implement state plan amendments or waivers of applicable federal laws and regulations necessary to implement the statewide managed care program. The law requires the AHCA to submit any state plan amendments, new waiver requests, or requests for extensions or expansions for existing waivers, needed to implement the statewide Medicaid managed care program by August 1, 2011.

The AHCA had already submitted, on June 30, 2010, a request for extension of the Florida Medicaid Reform 1115 Demonstration waiver. On December 15, 2011, the CMS approved the request, with special terms and conditions. With the approval of the extension, Florida has received approval of many of the authorities required to proceed with the statewide Medicaid managed care program. Also, with federal approval, certain parts of the original demonstration waiver have been dropped.

On August 1, 2011, the AHCA submitted three requests<sup>4</sup> to amend the Florida Medicaid Reform 1115 Demonstration waiver in order to implement the managed medical assistance component of the statewide Medicaid managed care program enacted by the 2011 Legislature. The three requests include requests to:

- Expand the geographic operation of the program statewide and transition certain Medicaid eligibility groups into mandated participation in the statewide managed medical assistance program;
- Require Medicaid recipients who are enrolled in managed care plans operating in the managed medical assistance program, as a condition of Medicaid eligibility, to pay the Medicaid program a premium of \$10 per month; and
- Require Medicaid recipients to pay a \$100 copayment for nonemergency services and care furnished in a hospital emergency department.

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<sup>3</sup> Medicaid.gov, *Waivers*. Found at: < <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html>> (Last visited on February 16, 2012).

<sup>4</sup> Agency for Health Care Administration, *Federal Submission and Authorities*. Found at: <[http://ahca.myflorida.com/Medicaid/statewide\\_mc/index.shtml#fedsubmiss](http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#fedsubmiss)> (Last visited on February 16, 2012).

In a letter dated February 9, 2012,<sup>5</sup> the CMS responded to these requests by rejecting the requests for the \$10 per month premium and the \$100 copayment. The letter states that the CMS shares the state's goal of promoting cost-effective use of hospital emergency department services and will work with Florida to consider alternative approaches to meeting this goal. The letter also states that the CMS is continuing to review the state's request to expand the demonstration statewide and looks forward to working with Florida on this request.

### **III. Effect of Proposed Changes:**

Senate Memorial 1836 provides a series of Whereas clauses supporting the establishment of Florida's Medicaid program as a statewide, integrated managed care program for all covered services, including long-term care services. The memorial requests the United States Secretary of Health and Human Services to approve Florida's requested Medicaid waivers, which will allow the existing Medicaid managed care pilot project to be implemented statewide.

Copies of the memorial will also be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the United States Secretary of Health and Human Services, and to each member of the Florida delegation to the United States Congress.

### **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 the 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. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>5</sup> Letter to Mr. Justin M. Senior, Deputy Secretary for Medicaid, Florida Agency for Health Care Administration from Victoria Wachino, Director, Center for Medicaid and CHIP Services, Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services. Found at: [http://ahca.myflorida.com/medicaid/statewide\\_mc/fsdocs/Final\\_signed\\_FL\\_amend\\_02-09-12.pdf](http://ahca.myflorida.com/medicaid/statewide_mc/fsdocs/Final_signed_FL_amend_02-09-12.pdf) (Last visited on February 16, 2012).

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

On lines 5-6 and 56-57, the bill refers to statewide expansion of Florida's managed care pilot program, although lines 11-14 refer to the new statewide, integrated managed care program, including long-term care services. It is unclear whether the request for approval of the Medicaid waivers includes waivers for both the managed medical assistance component and the long-term care managed care component of the new managed care program. The memorial appears to address only the managed medical assistance component of the statewide Medicaid managed care program, not the long-term care managed care component.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.