

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 793 Cost-effective Purchasing of Health Care

SPONSOR(S): Health Innovation Subcommittee; Diaz

TIED BILLS: **IDEN./SIM. BILLS:** SB 896

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	10 Y, 1 N, As CS	McElroy	Shaw
2) Health & Human Services Committee	14 Y, 2 N	McElroy	Calamas

SUMMARY ANALYSIS

Medicaid currently covers dental services for children, and, on a more limited basis, for adults. Dental services are provided through both fee-for-service and managed care delivery systems.

Pursuant to s. 409.912(41)(a), F.S., dental services are delivered to Medicaid recipients on a prepaid or fee-for-service basis through prepaid dental health plans (PDHPs), in counties not participating in the 5-county Medicaid reform pilot program. Under s. 409.912(41)(b), F.S., the Agency for Health Care Administration (AHCA) must provide a fee-for-service option as well.

Separate from this requirement, s. 409.912(41)(b), F.S., authorizes the AHCA to use PDHPs for dental services in Miami-Dade County, and does not require a fee-for-service option. The General Appropriations Act (GAA) for Fiscal Year 2012-2013 provides similar authority for PDHPs in Miami-Dade County, but is specific to children and requires that three plans be offered.

In 2011, Florida established the Statewide Medicaid Managed Care (SMMC) program as Part IV of Chapter 409, F.S. The SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees to provide all the mandatory and optional Medicaid benefits for primary and acute care, including dental. Dental services will be provided by comprehensive managed care organizations (provider service networks and health maintenance organizations) instead of being delivered as a separate benefit under a separate managed care contract, and the fee-for-service option will be eliminated. The SMMC program must be fully implemented by October, 2014. Pursuant to this change in policy, s. 409.912(41)(b), F.S., sunsets July 1, 2013, and s. 409.912(41)(a), F.S., sunsets October 1, 2014. The repeal of these subsections eliminates a conflict with the intent of the SMMC program.

The bill amends s. 409.912(41)(a), F.S., to postpone its scheduled expiration until October 1, 2017. The bill amends s. 409.912(41)(b), F.S., to authorize the AHCA to provide a Medicaid prepaid dental program in Miami-Dade on a permanent basis. This creates a conflict with the SMMC program for which the bill provides an exemption. The bill's provisions either create an exemption to the SMMC program, or create overlapping dental service programs. In either instance, the bill may materially change the AHCA's ongoing contract negotiations for the SMMC program, and could delay the implementation of the SMMC program.

The bill also requires that the AHCA provide an annual report to the Governor and Legislature which compares the utilization, benefit and cost data from Medicaid dental contractors as well as compliance reports and access to care to the state's overall Medicaid dental population.

The bill has an indeterminate fiscal impact on state government.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Medicaid

Medicaid is a joint federal- and state-funded program that provides health care for low-income Floridians, administered by the AHCA under ch. 409, F.S. Federal law establishes the mandatory services to be covered in order to receive federal matching funds. Benefit requirements can vary by eligibility category. For example, more benefits are required for children than for the adult population. Florida's mandatory and optional benefits are prescribed in state law under ss. 409.905, and 409.906 F.S., respectively.

Dental services are an optional Medicaid benefit. Florida provides full dental services for children, and emergency dental services for adults.¹

Presently Florida Medicaid recipients receive their benefits through either a fee-for-service or managed care delivery system.

Prepaid Dental Health Plans

A prepaid dental health plan (PDHP) is:

A managed care plan that is licensed or certified as a risk-bearing entity, or qualified pursuant to s. 409.912(4)(d), F.S., in the state and is paid a prospective per-member, per-month payment by the agency.²

In 2001, proviso language in the General Appropriations Act (GAA) authorized the AHCA to initiate a PDHP pilot program in Miami-Dade County.³ Similar statutory authority was provided in 2003.⁴ The AHCA implemented the program in Miami-Dade County in July 2004 for Medicaid children under age 21.⁵ In the 2010-2011 General Appropriations Act (GAA), the Legislature directed the AHCA to provide enrollees with a choice of at least two licensed plans in Miami-Dade County and increased the number to three in the 2011-2012 and 2012-2013 GAAs.⁶ Currently, two PDHPs serve Medicaid recipients in Miami-Dade County.⁷

In 2003, the Legislature expanded the PDHP initiative beyond Miami-Dade County by authorizing the AHCA to contract with PDHPs without specifying the county or the population.⁸ The 2010-2011 GAA proviso specifically authorized the AHCA to contract with PDHPs on either a regional or statewide basis.⁹ This authority was not limited to children, and the contracts were not to exceed 2 years. The authority excluded Miami-Dade County from this contracting process but did permit the AHCA the

¹ S. 409.906(1), (6), F.S.

² S. 409.962, F.S., See Agency for Health Care Administration, *Model Statewide Prepaid Dental Health Plan (SPDHP) Contract, Attachment II-Core Contract Provisions*, p. 17, http://ahca.myflorida.com/medicaid/pdhp/docs/120120_Attachment_II_Core.pdf (last visited Mar. 24, 2013). PDHPs are classified as prepaid ambulatory health plans by 42 CFR Part 438.

³ See Specific Proviso 135A, General Appropriations Act 2001-2002 (Conference Report on CS/SB 2C).

⁴ Chapter 2003-405, s. 18.

⁵ Agency for Health Care Administration, *Statewide Prepaid Dental Program*, <http://ahca.myflorida.com/Medicaid/index.shtml#pdhp> (last visited: Mar. 24, 2013).

⁶ See, Specific Proviso, line 204, General Appropriations Act for Fiscal Year 2010-2011 (Conference Report on HB 5001); Specific Proviso, line 192, General Appropriations Act for Fiscal Year 2011-2012 (Conference Report on SB 5000); Specific Proviso, line 186, General Appropriations Act for Fiscal Year 2012-2013 (Conference Report on HB 5001). Note, however, "an appropriations bill must not change or amend existing law on subjects other than appropriations". *Brown v. Firestone*, 382 So.2d 654 (Fla., 1980).

⁷ AHCA, *supra*, note 5.

⁸ S. 409.912(42), F.S. (2003).

⁹ See Specific Proviso 204, General Appropriations Act 2010-2011 (Conference Report on HB 5001).

option of including the Medicaid reform pilot counties in the procurement.¹⁰ The AHCA elected not to include those counties. (Children enrolled in managed care plans in the reform counties receive their dental benefits through comprehensive managed care plans; not through PDHPs.)¹¹

The statewide proviso language was repeated in the 2011-2012 GAA,¹² and similar language was enacted in s. 409.912(41)(a), F.S. However, these provisions made PDHP contracting mandatory, not discretionary, outside the reform counties (and Miami-Dade county). However, s. 409.912(41)(b), F.S., limits the use of PHDPs by requiring that the ACHA may not limit dental services to PDHPs and must allow dental services to be provided on a fee-for-service basis as well.

Section 409.912(41)(b), F.S., continues the AHCA's discretionary authority to use PDHPs in Miami-Dade County for Fiscal Year 2012-2013. This language prohibits the use of fee-for-service in Miami-Dade County during this time period (if the discretionary authority is exercised).

Statewide Medicaid Managed Care

In 2011, Florida established the Statewide Medicaid Managed Care (SMMC) program as Part IV of Chapter 409, F.S. The SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees to provide all the mandatory and optional Medicaid benefits for primary and acute care, including dental. Dental services will be provided by comprehensive managed care organizations (provider service networks and health maintenance organizations) instead of being delivered as a separate benefit under a separate managed care contract, and the fee-for-service option will be eliminated.¹³ The AHCA must implement the SMMC program by October, 2014.

The SMMC program will be the primary method of delivery for Medicaid services. The program's enacting laws repeal many sections of current Medicaid law effective upon the implementation of the SMMC program. Pursuant to this change in policy, the PDHP laws will sunset as well. Section 409.912(41)(b), F.S., sunsets July 1, 2013, and s. 409.912(41)(a), F.S., sunsets October 1, 2014.

The sunset of these subsections eliminates a conflict with the SMMC program. Even if they were not repealed, they would be preempted by the SMMC program: s. 409.961, F.S., requires any conflict between the SMMC program law and pre-reform laws to be resolved in favor of the SMMC laws.

On December 28, 2012, the ACHA released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis, and is currently negotiating contracts for the SMMC program.¹⁴ The ACHA anticipates that the Notice of Intent to Award will be posted by September 16, 2013.¹⁵ Pursuant to s. 409.973, F.S., the ITN lists dental services as one of the services to be offered by the managed care plans.¹⁶

The ITN is currently in a statutorily imposed "blackout period" until 72 hours after the award and the ACHA cannot provide interpretation or additional information not included in the ITN documents. Specifically, s. 287.057(23), F.S., provides:

¹⁰ In 2005, the Legislature enacted laws to reform the delivery and payment of services through the Medicaid program and directed AHCA to seek a federal waiver for a Medicaid managed care pilot program over five years. The program began in Broward and Duval counties in 2006 and later expanded to Baker, Clay and Nassau counties in 2007, as authorized in statute. The five year waiver was set to expire June 30, 2011, but has been renewed through June 30, 2014.

¹¹ Agency for Health Care Administration, Capitated Health Plan Contract, Scope of Services, Attachment I, http://ahca.myflorida.com/mchq/Managed_Health_Care/MHMO/docs/contract/1215_Contract/2012-2015/Sept1-Versions/2012-15_HP-ContractAtt-I-CAP-CLEAN-SEPT2012.pdf (last visited: Mar. 24, 2013).

¹² See Chapter 2011-69; Specific Proviso for Line Item 192, General Appropriations Act 2011-2012, (Conference Report on SB 2000).

¹³ S. 409.973, F.S.

¹⁴ ACHA Invitation to Negotiate, *Statewide Medicaid Managed Care, Addendum 2* Solicitations Number: ACHA ITN 017-12/13; dated February 26, 2013. http://myflorida.com/apps/vbs/vbs_www.ad.view_ad?advertisement_key_num=105774 (last visited March 24, 2013); ACHA Invitation to Negotiate, *Statewide Medicaid Managed Care*, Solicitation Number: ACHA ITN 017-12/13; dated December 28, 2012. http://myflorida.com/apps/vbs/vbs_www.ad.view_ad?advertisement_key_num=105774 (last visited March 24, 2013). The deadline for written inquiries on the ITN was February 12, 2013, and the deadline for the ACHA's responses is March 29, 2013. The negotiations for the plans will be conducted from July 8, 2013, through September 6, 2013.

¹⁵ Id.

¹⁶ AHCA, *supra* note 16.

Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

Final approval of the necessary Medicaid waiver by the federal government has not yet been received; however, on February 20, 2013, the AHCA and the Centers for Medicare and Medicaid Services reached an "Agreement in Principle" on the proposed plan.¹⁷

Effect of the Proposed Changes

Section 409.912 (41)(a), F.S., requires that the ACHA contract with PDHPs, and sunsets October 1, 2014.¹⁸ The bill postpones the repeal to October 1, 2017. In addition, the bill eliminates the requirement that the AHCA continue to allow fee-for-service dental as an option, making PDHPS the exclusive delivery method for those services.

Section 409.912(41)(b), F.S., authorizes the AHCA to provide a Medicaid prepaid dental program in Miami-Dade for Fiscal Year 2012-2013, and expires July, 1, 2013.¹⁹ The bill deletes the current fiscal year reference and authorizes the AHCA to provide a Medicaid prepaid dental program in Miami-Dade County on a permanent basis. This action would allow the AHCA to continue to provide a separate Medicaid prepaid dental plan in Miami-Dade County.

The bill's provisions would exclude dental services from the integrated SMMC, creating an exception to the comprehensive reform of Medicaid. In the alternative, they would create redundant dental benefits obligating the ACHA to contract with two managed care organizations to provide the same services to the same group of recipients.

The bill's provisions conflict with the SMMC statutory requirement that SMMC plans provide comprehensive care (including dental). To address this, the bill expressly exempts its provisions from the conflict resolution language in s. 409.961, F.S.

The bill creates a requirement that the AHCA provide an annual report to the Governor and Legislature which compares the utilization, benefit and cost data from Medicaid dental contractors as well as compliance reports and access to care to the state's overall Medicaid dental population.

B. SECTION DIRECTORY:

Section 1. Amends s. 409.912, F.S., relating to cost effective purchasing of health care.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

¹⁷ See Correspondence between Agency for Health Care Administration and the Centers for Medicare and Medicaid Services, http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/Letter_from_CMS_re_Agreement_in_Principal_2013-02-20.pdf (last visited Mar. 24, 2013).

¹⁸ Section 409.912 (41)(a), F.S.

¹⁹ Section 409.912(41)(b), F.S.

The fiscal impact of this bill is indeterminate at this time.²⁰ Any potential savings which might occur if the fee-for-service option is eliminated would become a minor component of capitation rate calculations in the SMMC program.²¹

If the effect of the bill is to create two dental coverage programs, the AHCA would be required to contract with both PDHPs and SMMC managed care organizations for these services, which could increase expenditures. If the effect of the bill is to exempt dental services from the SMMC program, the lack of comprehensive care coordination could result in higher than expected costs in the SMMC program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Statewide implementation of the SMMC program is expected to be completed by October 1, 2014. Dental benefits are a required benefit in the program. Extending the requirement that the AHCA contract with PDHPs to October 1, 2017, may result in redundant dental services contracts.

The changes proposed by the bill conflict with the SMMC ITN. Specifically, the bill creates a question as to whether dental services are to be provided as part of the managed care services under the ITN or whether they are to be provided pursuant to s. 409.912, F.S. Parties interested in responding to the ITN cannot ask for clarification on this issue as the ITN is currently in a statutorily imposed "blackout period". The bill may increase the potential for a procurement challenge, as it may make a material

²⁰ Agency for Health Care Administration, *House Bill 793 Bill Analysis and Economic Impact Statement*, (Mar. 14, 2013) (on file with the House of Representatives Health and Human Services Committee).

²¹ *Id.*

change to the terms and conditions of the ITN. The ACHA could reissue the ITN and address this issue. Either outcome would delay the expected date for the implementation of the SMMC.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2013, the Health Innovation Subcommittee adopted an amendment to HB 793. The amendment:

- Exempting the provision from the statutory construction requirements of s. 409.961, F.S.
- Requiring AHCA to provide the Governor, President of the Senate and Speaker of the House of Representatives with a report that compares benefits, utilization and costs of the contracted dental plans.

The bill was reported favorably as a Committee Substitute. The analysis reflects the Committee Substitute.