SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2108

SPONSOR: Criminal Justice Committee and Senator Brown-Waite

SUBJECT: Inmate Health Care

DATE: March 28, 2000 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable/CS
2.				
3.				
4.				
5.				

I. Summary:

This Committee Substitute provides for the implementation of a pilot project in prisons located in Region IV as the Region is designated by the Department of Corrections on March 1, 2000. This pilot project will implement a managed health care program in those select prisons for the purpose of providing inmate health care in accordance with the commonly accepted standards within the professional health community at large, in the most cost effective manner possible. The Correctional Managed Health Care Program will result from a contract between the Department of Corrections and a private health care vendor, to be selected at the discretion of the Department from those vendors responding to a Request for Proposal authorized in the 2000-2001 proposed Senate Budget proviso.

The CS also creates a Correctional Managed Health Care Oversight Board, appointed by the Governor, to oversee the implementation of the Program, monitor its status and report to the Governor and the Legislature. The Correctional Medical Authority, which currently monitors the delivery of health care in all of the Department's prisons, would be relieved of the responsibility of monitoring the prisons participating in the Program as a result of the creation of the Oversight Board.

This bill substantially amends the following section of the Florida Statutes: 945.603 and creates an as yet unnumbered section of the Laws of Florida.

II. Present Situation:

The Department of Corrections' Office of Health Services is responsible for providing health care to inmates. In 1998-1999, the Legislature appropriated $210 million for the Office of Health Services, after adjustments for the employee pay package, health insurance and casualty insurance premiums. The Office of Health Services reported the cost of providing health care to inmates totaled $230 million, which resulted in a $20 million deficit that had to be covered by the

Department through budget transfers from other areas such as security or probation and parole.[1] The approximate number of inmates in the system during this same period of time was 65,207. The rate per inmate for health care services in 1998-1999 was roughly $293 per month.

The state is required, under the constitution, to provide adequate health care to inmates. A guidepost in this area of the law is *Estelle v. Gamble,* 429 U.S. 98, 97 S.Ct. 285 (1976). The case involved an inmate who alleged he had received inadequate health care, was denied care, and interfered with in accessing care by correctional officers. The court set the standard for inmate health care in the case by stating: "a deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment". *Id.* at 291. The state is not relieved of its duty by contracting with a private vendor to provide inmate health care. *West v. Adkins,* 487 U.S. 42, 108 S.Ct. 2250 (1989). The state must provide, at a minimum, access to medical care and professional medical judgement, and treatment and care which has been ordered and prescribed.

Florida's prison health care system was under the jurisdiction of the United States District Court beginning in 1972 with the filing of a lawsuit by an inmate alleging inadequate physical and mental health care. *Celestineo and Costello v. Martinez and Dugger,* Case No. 72-109 and 72-94 Civ.J. 14. After many years of litigation, in 1993, the Court relinquished jurisdiction. One of the orders issued by the court during the 21 year period required the state to provide inmate health care in accordance with the commonly accepted standards within the professional health community at large. Because inmate health care litigation is fact-driven for the most part, it is virtually impossible to define a "standard" of care in the true sense of the word.

In November 1996, The Office of Program Policy Analysis and Governmental Accountability reported on inmate health services. Among the recommendations made by OPPAGA's report was the recommendation that the Department of Corrections issue a request for proposal to privatize health services for one of the Department's five regions, with the stipulation that the private vendor be able to guarantee a savings of 10 percent from the Department's annual costs over a period of five years. The report also suggests that the Department monitor vendor performance.[2]

III. Effect of Proposed Changes:

The Committee Substitute creates a chapter law which provides for the implementation of a pilot program for the delivery of inmate health care in the Department of Corrections' prisons located in what is designated as Region IV by the Department of Corrections as of March 1, 2000, and the creation of an oversight board to monitor and report on the program.

Current proviso language in the proposed 2000-2001 Senate Budget provides for the Department of Corrections to issue a Request for Information no later than September 1, 2000, requesting

[1]Report on the Health Care Delivery of the Florida Department of Corrections, The State of Florida Correctional Medical Authority, December, 1999.

[2]Review of Inmate Health Services Within the Department of Corrections, Office of Program Policy Analysis and Government Accountability, Report No. 96-22, November 27, 1996.

responders to submit options to provide inmates with health care services based upon a model which is comparable to a Medicaid level of service with enhanced dental, mental health and pharmacy programs at least equivalent to the current level of service provided by the Department. Subsequently the Department will issue a Request for Proposal for the purpose of securing one or more private vendors to provide inmate health care at a cost savings. Upon selecting the bidder that can provide the minimal constitutionally adequate level of health care at the least cost, the Department will submit a budget amendment transferring funds to the proper appropriation categories and issue the contract for inmate health care services. This CS more fully develops the intent of the Legislature and the requirements of the Correctional Managed Health Care Program, which is the product of the contract to be issued by the Department, and the oversight board.

The CS sets forth the intent of the Legislature that the delivery of inmate health care shall be done at the level required by the court in *Costello,* which is in accordance with the commonly accepted standards within the professional health community at large, in the most cost effective manner possible. This should be accomplished by providing service at a level comparable to a Medicaid-service level of care, enhanced to include dental, mental health and pharmacy programs that are at least equivalent to the level of care provided by the Department of Corrections. The responsibility of safeguarding the state's interest in providing lawfully adequate health care rests with the Department of Corrections.

The CS creates an oversight board (the Correctional Managed Health Care Oversight Board), upon the award of a contract, for the purpose of overseeing the implementation of the pilot program. The Board's responsibilities end no later than January 31, 2004. The Board will be comprised of members from the health care community, and one certified public accountant, all of whom shall have valid licenses to practice their professions in the State of Florida. Members may serve a term of two years.

The Board will evaluate the provision of primary, convalescent, dental and mental health care and the management of costs. The Board will inspect the pilot programs at the participating prisons by inspecting the programs at least annually and reporting its findings to the Governor, the President of the Senate and the Speaker of the House of Representatives within 60 days of the inspection. Life-threatening or otherwise serious deficiencies in the provision of health care found by the Board shall be reported to the Secretary of the Department of Corrections and the vendor immediately. The vendor must file a corrective action plan with the Secretary, the Department's Contract Manager and the Board within three days addressing the deficiencies and how they will be corrected.

The pilot program, the Correctional Managed Health Care Program, will commence with a contract awarded by the Department through the process explained previously. The vendor who is selected to provide the health care services to inmates shall do so at lawfully adequate levels of care and access to care, at a substantial cost savings. The CS specifies that the services provided should be at a Medicaid service level of care, enhanced to include dental, mental health, and pharmacy programs at least equivalent to the level of care provided by the Department of Corrections. The contract will terminate on December 31, 2003.

The CS provides that the vendor must adhere to the health care procedures, health care plans, health service bulletins and treatment protocols relating to the provision of inmate health care

services adopted by the Department. Should the vendor need to deviate from these standards, the CS provides a mechanism by which the vendor may file a Request for Change with the Board, with supporting documentation. The Board then either denies the Request for Change or submits its recommendation for approval to the Secretary of the Department of Corrections for a final decision.

Background checks on all of the vendor's employees who will be working within the corrections system are required by the CS. The Department of Corrections is required to provide training regarding security in the prisons.

Under the provisions of the CS, the vendor is liable in tort and for any breach of contract. Sovereign immunity may not be raised as a defense. The vendor must indemnify and defend the state and the Department of Corrections in any action which arises under the contract, including any tort or civil rights claim. Proof of insurance shall be required as will a performance bond, under the terms of the CS.

The CS provides that the population of inmates housed in prisons participating in the pilot project shall be of a substantially similar composition as those inmates housed in other prisons in the state.

The CS exempts those prisons which are participating in the pilot project from oversight by the Florida Correctional Medical Authority.

The CS makes the prime vendor pharmaceutical contract of the state available to the vendor, however the vendor is not required to use it.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If a contract is awarded by the Department of Corrections after the request for proposal process is complete, there would be a positive economic impact on the health care provider selected to implement the pilot project. There would be, presumably, a direct negative impact on those employees of the Department of Corrections who would be replaced in their jobs by employees of the vendor.

C. Government Sector Impact:

Based on informal cost comparisons performed by staff there is a projected savings in the overall cost of providing health care to inmates.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.