

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 185 Access to Health Care  
**SPONSOR(S):** Health Care Regulation Policy committee and Hudson and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 702

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee	7 Y, 0 N, As CS	Holt	Calamas
2)	Insurance, Business & Financial Affairs Policy Committee	19 Y, 0 N	Cooper	Cooper
3)	Health & Family Services Policy Council			
4)	Health Care Appropriations Committee			
5)	Full Appropriations Council on General Government & Health Care			

### SUMMARY ANALYSIS

The Florida Healthy Kids Corporation ("Corporation"), under contract with the Agency for Health Care Administration, performs administrative functions for the overall Florida KidCare program and administers the SCHIP HealthyKids program. The Corporation handles eligibility determination, premium billing and collection, refunds, and customer service for KidCare, except for the large Medicaid component, which is administered by the Agency and the Department of Children and Families.

The bill increases the Florida Healthy Kids Corporation board of directors from 11 to 12 members. The member would be appointed by the Governor from three candidates nominated by the Florida Dental Association.

The bill prohibits all prepaid limited health service organizations from prohibiting their contract providers from contracting with more than one prepaid limited health service organization provider. The bill further prohibits prepaid health service organizations from requiring a contracted health service provider to accept the terms of other contracts entered into by other providers, if those contracts are under common management and control. Furthermore, the bill provides that any contract that requires a provider to accept the terms of other contracts is void, but that violations are not subject to certain criminal penalties.

The bill authorizes health care practitioners to count non-compensated service hours provided to low-income recipients as a government contractor on a biennial basis, rather than annually. This change conforms to the current licensure renewal cycle for health care practitioners.

The bill has no fiscal impact to the state or local government.

The bill takes effect July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida Healthy Kids Corporation**

The Florida Healthy Kids Corporation ("Corporation"), under contract with the Agency for Health Care Administration, performs administrative functions for the overall Florida KidCare program and administers the SCHIP Healthy Kids program. The Florida KidCare program includes four separate components, each serving a distinct population of Florida's children:

- Children's Medicaid: An entitlement program for qualified children birth through 18.
- Children's Medical Services Network: For uninsured children birth through 18 who have special health care needs or ongoing medical conditions (including behavior health).
- MediKids: For uninsured children ages one through four.
- Health Kids: For uninsured children ages five through 18.<sup>1</sup>

Eligibility for each component of the program is determined largely by family size and household income. Those families with income under 200% of the Federal Poverty Level are currently eligible for subsidized health coverage. Families over 200% may also enroll in the program, but at the full cost of their coverage. This full pay option is affordable, guarantee issue coverage available in both the MediKids and Health Kids program.<sup>2</sup>

The corporation is governed by an 11-member board of directors who serve for 3-year terms of office. The current membership includes:

- The Chief Financial Officer, or his or her designee;
- The Secretary of Health Care Administration, or his or her designee;

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<sup>1</sup> Florida Healthy Kids Corporation, *Annual Report 2007-2008*. Available online at: [www.healthykids.org](http://www.healthykids.org), last viewed March 8, 2009.

<sup>2</sup> Id.

- One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education;
- One member appointed by the Chief Financial Officer from among three members nominated by the Florida Pediatric Society;
- One member, appointed by the Governor, who represents the Children's Medical Services Program;
- One member appointed by the Chief Financial Officer from among three members nominated by the Florida Hospital Association;
- One member, appointed by the Governor, who is an expert on child health policy;
- One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Academy of Family Physicians;
- One member, appointed by the Governor, who represents the state Medicaid program;
- One member, appointed by the Chief Financial Officer, from among three members nominated by the Florida Association of Counties; and
- The State Health Officer or her or his designee.

The bill adds a representative of the dental community to the Florida Healthy Kids Corporation board of directors. The member will be appointed by the Governor from three candidates nominated by the Florida Dental Association.

### **Exclusive Provider Clause for Prepaid Limited Health Service Organizations**

Prepaid Limited Health Service Organizations are similar to health maintenance organizations but are limited to offering the following services: ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services, pursuant to contractual arrangements with preferred providers in a designated service area.<sup>3</sup> Prepaid Limited Health Service Organizations provide health care coverage in the private market and in the state Medicaid program. They are regulated by the Office of Insurance Regulation. According to the Office of Insurance Regulation website, there are currently 23 licensed prepaid limited health service organizations in Florida.<sup>4</sup>

Currently, the Agency has two types of prepaid limited health service organizations: Prepaid Dental Health Plans, authorized in s. 409.912(43), F.S., and Prepaid Mental Health Plans, authorized in s. 409.912(4)(b), F.S.. These plans are administered under contract with the Agency and are reimbursed on a capitated basis.

Currently, the Florida Medicaid Program has two contracts for prepaid dental services, both in Miami-Dade County: Atlantic Dental, Inc., (ADI) and MCNA of North America. These two contracts are up for renewal in September 2009. ADI has 239 unduplicated providers in its plan network, while MCNA currently has 83 unduplicated providers in their plan network. Thirty-five providers are currently participating in both the ADI and MCNA networks.<sup>5</sup>

According to the Agency, both prepaid dental providers have at some time requested their network dentists to sign contracts prohibiting them from entering into or renewing contracts with another prepaid dental health plan. Currently, neither Florida Medicaid law nor Prepaid Limited Health Service Organizations law prohibit this practice. Florida law does not require dentists to sign these restricted contracts.

The bill prohibits *all* prepaid limited health service organizations from restricting providers from contracting with more than one prepaid limited health service organization provider. This prohibition applies to all prepaid limited health service organization contracts in government programs and in the

<sup>3</sup> Section 636.003, F.S.

<sup>4</sup> Office of Insurance Regulation, Company Directory: Prepaid Limited Health Service Organizations (February 2009). Available online at: [http://www.floir.com/CompanySearch/show\\_results.asp](http://www.floir.com/CompanySearch/show_results.asp); viewed February 22, 2009.

<sup>5</sup> Agency for Health Care Administration email to House Health Regulation Policy Committee staff, March 2, 2009.

private sector. The bill addresses all provider types, and is not limited to dentists.<sup>6</sup> The prohibition applies to contracts entered into or renewed on or after July 1, 2009.

According to the Agency, this limitation could be established contractually, without a statutory change.<sup>7</sup> The Agency intends to address this issue during the next contract term in September 2009.<sup>8</sup>

The bill further prevents prepaid health service organizations from requiring a contracted health service provider from having to accept the terms of other health care practitioner contracts which are part of a prepaid limited service provider organization, insurer, or limited health service organization that are under common management and control as a condition of continuation or renewal of a contract. This prohibition includes Medicare and Medicaid practitioner contracts, preferred provider contracts, exclusive provider contracts, and health maintenance organization contracts. The prohibition does not include group practices, which must accept the terms of a contract negotiated for the practitioner by the group. The term "health care practitioner" is not defined.

The bill provides that contract provisions requiring a provider to accept the terms of other contracts are void. However, violations of this prohibition are not subject to the criminal penalties contained in the Florida Insurance Code. The prohibition applies to contracts entered into or renewed on or after July 1, 2009.

Current law imposes this prohibition on health maintenance organizations ("HMOs").<sup>9</sup> This prohibition impacts Medicare and Medicaid practitioner contracts, preferred provider network contracts, HMO provider contracts, and exclusive provider network contracts. The bill adds prepaid health service organization contracts to that list, via cross-reference.

### **Waiver of Licensure Renewal Fees and Continuing Education Requirements**

Currently, health care practitioners who provide at least 80 hours annually of non-compensated service to low-income recipients as a government contractor are eligible for a waiver of their biennial license renewal fee. In addition, the practitioners may claim up to 25 percent of their continuing education requirements. To qualify, the health care practitioner must provide the appropriate documentation to the Department of Health at the time of licensure renewal. Retired health care practitioners are also eligible, but must provide at least 400 hours of service a year, for each year during the two-year licensure period. Health practitioners must accumulate service hours on a yearly basis, even though their licensure period is for two years.

The bill authorizes health care practitioners to count non-compensated service hours provided to low-income recipients as a government contractor on a biennial basis, rather than annually. The bill amends the current 80 hours annual requirement to 160 hours for each biannual licensure period. Likewise, the bill amends the 400 hours required annually for retired health care practitioners to 800 hours biannually.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 624.91, F.S., relating to the Florida Healthy Kids Corporation Act.

Section 2. Amends s. 636.035, F.S., relating to prepaid limited health service organization provider arrangements.

Section 3. Amends s. 641.315, F.S., relating to health maintenance organization provider contracts.

Section 4. Amends s. 766.1116, F.S., relating to health care practitioner waiver of licensure renewal fees and continuing education requirements.

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<sup>6</sup> "Provider" means, but is not limited to, any physician, dentist, health facility, or other person or institution which is duly licensed in this state to deliver limited health services." s. 636.003, F.S.

<sup>7</sup> Agency for Health Care Administration Bill Analysis, House Bill 185 (2009).

<sup>8</sup> Agency for Health Care Administration email to House Health Regulation Policy Committee staff, March 2, 2009.

<sup>9</sup> Section 641.315(10). F.S. The HMO statute defines "health care practitioner" as defined in s. 456.001(4), which includes physicians, osteopathic physicians, chiropractors, podiatrists, nurses, pharmacists, dentists, midwives, optometrists, speech pathologists, occupational therapists, orthotic providers, massage therapists, clinical lab personnel, and psychologists.

Section 5. Provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not applicable.

2. Expenditures:

Not applicable.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not applicable.

2. Expenditures:

Not applicable.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not applicable.

### D. FISCAL COMMENTS:

Not applicable.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax sharing with counties or municipalities.

2. Other:

Not applicable.

### B. RULE-MAKING AUTHORITY:

Additional rule-making authority is not needed to implement the provisions of the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill impacts *all* prepaid limited health service organizations regulated in the state. According to the Office of Insurance Regulation website, there are currently 23 licensed prepaid limited health service organizations in Florida. Because the articulated problem is limited to Medicaid prepaid dental plans, it may be advantageous to limit the impact to Medicaid prepaid dental plans, or all Medicaid prepaid plans.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 3, 2009, the Health Care Regulation Policy Committee adopted a strike-all amendment and reported the bill favorably. The amendment:

- Removed the language creating the Florida Dental Health Access Task Force;
- Changed the implementation date from October 1, 2009 to July 1, 2009 in s. 636.035(11), F.S., and
- Added an implementation date to s. 636.035(12), F.S., for all contracts entered into or renewed on or after July 1, 2009.

The analysis is drafted to the committee substitute.