

## 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 Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Presently dental services are delivered to Medicaid recipients through prepaid dental health plans (PDHP) in counties not participating in Medicaid Reform. The Agency for Health Care Administration (ACHA) contracts on a prepaid or fixed-sum basis with appropriately licensed prepaid dental health plans to provide dental services. This authorization expires on October 1, 2014. This general authority does not include Miami-Dade. Section 409.912(41)(b), F.S., authorizes the AHCA to provide a Medicaid prepaid dental program in Miami-Dade for the fiscal year 2012-2013. This authorization expires on July, 1, 2013.

In 2011, the Legislature passed HB 7107 creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. The SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits for the delivery of primary and acute care, including dental. The AHCA began implementing the SMMC in January 2012.

On December 28, 2012, the ACHA released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis. Since dental services is a required benefit of SMMC, the ITN lists dental services as one of the core provisions of the scope of services to be offered in the managed care plans. Statewide implementation of the SMMC is expected to be completed by October 1, 2014.

The bill postpones the scheduled repeal of ACHA's general authority to contract with PDHPs until October 1, 2017. The bill directs the AHCA to provide a Medicaid prepaid dental program in Miami-Dade on a permanent basis.

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.

The bill appears to have 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. The program is administered by the AHCA and financed with federal and state funds. The statutory authority for the Medicaid program is contained in ch. 409, F.S.

Federal law establishes the minimum benefit levels 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.

Presently Florida Medicaid recipients receive their benefits through a number of different delivery systems including both fee-for-services and managed care models. Dental services are delivered through prepaid dental health plans (PDHP). The PDHPs are classified as prepaid ambulatory health plans by 42 CFR Part 438.<sup>1</sup> Prepaid plans are further defined in state law under s. 409.962, F.S., as:

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.

##### Prepaid Dental Health Plans – Florida Medicaid

In 2001, proviso language in the General Appropriations Act (GAA) authorized the AHCA to initiate a PDHP pilot program in Miami-Dade County.<sup>2</sup> The 2003 Legislature directed the AHCA to contract on prepaid or fixed sum basis for dental services for Medicaid-eligible recipients using PDHPs.<sup>3</sup> The AHCA implemented the program in Miami-Dade County in July 2004 to Medicaid children age 21 years of age or younger.<sup>4</sup> 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 updated this number to three in the 2011-2012 GAA. Currently, two PDHPs serve Medicaid members in Miami-Dade County.<sup>5</sup>

The 2010-2011 GAA proviso directed the AHCA to contract separately on prepaid or fixed sum basis with prepaid dental plans on either a regional or statewide basis to achieve better outcomes for Medicaid recipients.<sup>6</sup> The contract was not to exceed 2 years. The directive excluded Miami-Dade County from this contracting process but did permit the AHCA the option of including the Medicaid reform counties in the procurement.<sup>7</sup> The AHCA elected not to include those counties in the

---

<sup>1</sup> 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](http://ahca.myflorida.com/medicaid/pdhp/docs/120120_Attachment_II_Core.pdf) (last visited Mar. 24, 2013).

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

<sup>3</sup> Chapter 2003-405, s. 18.

<sup>4</sup> Agency for Health Care Administration, *Statewide Prepaid Dental Program*, <http://ahca.myflorida.com/Medicaid/index.shtml#pdhp> (last visited: Mar. 24, 2013).

<sup>5</sup> *Id.*

<sup>6</sup> See Specific Proviso 204, General Appropriations Act 2010-2011 (Conference Report on HB 5001).

<sup>7</sup> 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.

procurement process. Children enrolled in managed care plans in the reform counties receive their dental benefits through their health care plans and not directly through these PDHPs.<sup>8</sup>

The proviso language for the statewide effort was repeated in the 2011-2012 GAA.<sup>9</sup> Additionally, statutory changes made it mandatory, rather than discretionary, for the AHCA to contract on a prepaid or fixed sum basis for dental services.<sup>10</sup> An expiration date on the statutory subsection was added for October 1, 2014, to coincide with other non-managed care related statutory sunset provisions concerning the Medicaid program and to align with the implementation of the Statewide Medicaid Managed Care (SMMC) program.<sup>11</sup>

Changes made during the 2012 Legislative Session as part of the appropriations implementing bill modified the Statewide Prepaid Dental Program to reinstate the fee for service reimbursement option providing Medicaid recipients the option of either a prepaid dental plan or coverage through the traditional fee for service network of providers in all but Miami-Dade County. This subsection has a sunset date of July 1, 2013.

### **Statewide Medicaid Managed Care (SMMC)**

In 2011, the Legislature passed HB 7107 creating the SMMC program as part IV of ch. 409, F.S. The SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits for the delivery of primary and acute care, including dental.<sup>12</sup> Instead of being delivered as a separate benefit under a separate contract, dental services would be incorporated by and be the responsibility of the managed care organization. Medicaid recipients who are enrolled in the SMMC program will receive their dental services through the fully integrated managed care plans as the plans are implemented.<sup>13</sup> The AHCA began implementing the SMMC in January 2012.

On December 28, 2012, the ACHA released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis.<sup>14</sup> The deadline for written inquiries on the ITN was February 12, 2013, and the deadline for the ACHA's responses is March 29, 2013.<sup>15</sup> The negotiations for the plans will be conducted from July 8, 2013, through September 6, 2013.<sup>16</sup> The ACHA anticipates that the Notice of Intent to Award will be posted by September 16, 2013.<sup>17</sup> The ITN lists dental services as one of the core provisions of the scope of services to be offered in the managed care plans.<sup>18</sup>

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 managed medical assistance (MMA) ITN documents. Specifically, s. 287.057(23), F.S., provides as follows:

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

---

<sup>8</sup> 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](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).

<sup>9</sup> See Chapter 2011-69; Specific Proviso for Line Item 192, General Appropriations Act 2011-2012, (Conference Report on SB 2000).

<sup>10</sup> Chapter 2011-135, s. 17.

<sup>11</sup> Id.

<sup>12</sup> Health and Human Services Committee, Fla. House of Representatives, *PCB HHSC 11-01 Staff Analysis*, p.25, (Mar. 25, 2011).

<sup>13</sup> AHCA, *supra* note 6, at 2.

<sup>14</sup> 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](http://myflorida.com/apps/vbs/vbs_www.ad.view_ad?advertisement_key_num=105774) (last visited March 24, 2013).

<sup>15</sup> 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](http://myflorida.com/apps/vbs/vbs_www.ad.view_ad?advertisement_key_num=105774) (last visited March 24, 2013).

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> AHCA, *supra* note 16.

writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

Statewide implementation of the SMMC is expected to be completed by October 1, 2014. 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.<sup>19</sup>

### **Effect of the Proposed Changes**

Section 409.912 (41)(a), F.S., provides that the ACHA shall contract on a prepaid or fixed-sum basis with appropriately licensed prepaid dental health plans to provide dental services. This provision is set to expire October 1, 2014.<sup>20</sup> The bill amends section to postpone the scheduled repeal date to October 1, 2017.

Section 409.912(41)(b), F.S., authorizes the AHCA to provide a Medicaid prepaid dental program in Miami-Dade for the fiscal year 2012-2013. This provision expires on July, 1, 2013.<sup>21</sup> The bill deletes the current fiscal year reference which will become obsolete 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 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 the cost effective purchasing of health care under the Medicaid program.

**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:**

The fiscal impact of this bill is indeterminate at this time.<sup>22</sup> Any potential savings which might occur if the Fee for Services option is eliminated would become a minor component of capitation rate calculations under SMMC.<sup>23</sup>

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

<sup>19</sup> 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](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).

<sup>20</sup> Section 409.912 (41)(a), F.S.

<sup>21</sup> Section 409.912(41)(b), F.S.

<sup>22</sup> 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).

<sup>23</sup> *Id.*

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 Statewide Medicaid Managed Care program is expected to be completed by October 1, 2014. Dental benefits are a required benefit under both s. 409.973(1)(e), F.S., and the integrated managed care model. Thus, extending the requirement that the AHCA contract on a fixed-sum or pre-paid basis for dental services to October 1, 2017, may result in the possible overlap of dental services contracts between those contracts executed under s. 409.912, F.S., and those procured under SMMC.

Dental services are one of the ITN's core provisions of services to be offered in the managed care plans. The changes proposed by the bill create a conflict between s. 409.912, F.S., and the 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". Thus, the potential for an ITN protest exists as the bill potentially creates a material change to the terms and conditions of the ITN. Alternatively, the ACHA could reissue the ITN and address this issue. This however could potentially 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 favorable as a Committee Substitute. The analysis reflects the Committee Substitute.

