

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 27 Cost-effective Purchasing of Health Care

SPONSOR(S): Diaz

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee		McElroy	Shaw
2) Health & Human Services Committee			

SUMMARY ANALYSIS

Medicaid covers dental services for children, and, on a more limited basis, for adults. Currently, 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.

In 2011, Florida established the Statewide Medicaid Managed Care (SMMC) program. The SMMC program requires the Agency for Health Care Administration (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. On February 6, 2014, AHCA executed contracts with the managed care plans selected to provide care under the SMMC. AHCA will begin implementing the SMMC program in selected regions on May 1, 2014, with the last regions being implemented on August 1, 2014. The SMMC program must be fully implemented in all regions by October, 2014.

When the Legislature established the SMMC program, it also created a method to transition Medicaid recipients from PDHPs and fee-for-service into the SMMC program. The Legislature gave AHCA authority to maintain contracts with PDHPs until the SMMC program is scheduled to be fully implemented. Section 409.912(41)(b), F.S., which authorized AHCA to use PDHPs for dental services in Miami-Dade County, expired on July 1, 2013. Section 409.912(41)(a), F.S., which authorizes PSHPs in counties not participating in reform, is scheduled to sunset October 1, 2014.

The bill amends s. 409.912(41)(a), F.S., to continue the PDHP program and to postpone its scheduled expiration until October 1, 2017. The bill reenacts s. 409.912(41)(b), F.S., and authorizes AHCA to provide a Medicaid prepaid dental program in Miami-Dade on a permanent basis.

The bill creates a conflict with the SMMC program. Dental services cannot be excluded from the SMMC program without federal authority. The federal waiver authority to provide dental services through PDHPs expired on January 31, 2014. AHCA can seek new federal authorization but new authorization cannot be obtained prior to the effective date of the bill. Irrespective of this lack of authority, excluding dental services from the SMMC program is currently a logistic impossibility due to federal requirements and IT system limitations. The bill's provisions cannot be accomplished prior to full implementation of the SMMC program.

The bill requires AHCA to 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 authorizes AHCA to seek any necessary state plan amendments or waiver authority in order to implement this legislation.

The bill has a significant fiscal impact on state government.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0027.HIS

DATE: 2/10/2014

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 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 only dentures and medically necessary, emergency dental procedures to alleviate pain or infection for adults.¹

The delivery of Medicaid services through managed care is not expressly authorized by federal law. If a state wants to use a managed care delivery system, it must seek a waiver of certain requirements of Title XIX of the Social Security Act (Medicaid). Section 1915(b) of the Social Security Act provides authority for Secretary of Health and Human Services to waive requirements of the Act to the extent she "finds it to be cost-effective and efficient and not inconsistent with the purposes of this title."

Florida has received waiver authority for Medicaid recipients receive dental benefits through a 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 AHCA to initiate a PDHP pilot program in Miami-Dade County.³ Similar statutory authority was provided in 2003.⁴ AHCA implemented the program in Miami-Dade County in July 2004 for Medicaid children under age 21.⁵ In the 2010-2011 GAA, the Legislature directed 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

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 February 6, 2014). 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://www.fdhc.state.fl.us/medicaid/pdhp/index.shtml#Home> (last visited: February 6, 2014).

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 2021-2013 (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.

In 2003, the Legislature expanded the PDHP initiative beyond Miami-Dade County by authorizing AHCA to contract with PDHPs without specifying the county or the population.⁸ The 2010-2011 GAA proviso specifically authorized 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 AHCA the option of including the Medicaid reform pilot counties in the procurement.¹⁰ 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., limited the use of PHDPs by requiring that AHCA may not limit dental services to PDHPs and must allow dental services to be provided on a fee-for-service basis as well.

AHCA issued a competitive procurement for the statewide PDHP program in 2011 and awarded contracts to two PDHPs to provide dental services to Medicaid recipients in all Florida counties with the exceptions noted above. During 2012, the Agency implemented the statewide PDHP program in Medicaid Area 9 on January 1; Areas 5, 6, and 7 on October 1; and Areas 1, 2, 3, 4, 8, and 11 (Monroe County only) on December 1, 2012. The original procurement period was December 1, 2011 through September 30, 2013. The ITN for this procurement allows for renewal, but the renewal cannot exceed three years. The first renewal to the program extended the contracts through September 30, 2014. Section 287.057(13), F.S. limits state contract renewals to no more than three years. Consequently, current contracts with the PDHPs could not be extended beyond September 30, 2016 without having to re-procure.

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 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 Each Medicaid recipient will have one managed care organization to coordinate all health care services, rather than various entities as in the current Medicaid program. This comprehensive coordinated system of care was successfully implemented in the 5-county Medicaid reform pilot program. Such coordinated care is particularly important in the area of oral health, which is connected to overall health outcomes.¹⁴

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

⁸ S. 409.912(42), F.S. (2003).

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

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/mchg/Managed_Health_Care/MHMO/docs/contract/1215_Contract/2012-2015/Sept1-Versions/2012-15_HP-ContractAtt-I-CAP-CLEAN-SEPT2012.pdf (last visited: February 6, 2014).

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 U.S. Department of Health and Human Services. *Oral Health in America: A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services, National Institute of Dental and Craniofacial Research, National Institutes of Health, 2000. <http://profiles.nlm.nih.gov/ps/retrieve/ResourceMetadata/NNBBJT/> (last viewed February 9, 2014);

SMMC program. Pursuant to this change in policy, the PDHP laws will sunset as well. Section 409.912(41)(b), F.S., expired on July 1, 2013, and s. 409.912(41)(a), F.S., will sunset 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.

The SMMC program has two components: the Long-term Care Managed Care Program and the Managed Medical Assistance (MMA) Program. The MMA program provides primary and acute medical assistance and related services. On December 28, 2012, AHCA released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis for the MMA program.¹⁵ AHCA subsequently selected managed care plans that it will contract with for the MMA program via the competitive procurement and issued recommended contract awards on September 23, 2013. On February 6, 2014, AHCA executed contracts with the managed care plans selected to provide care under the MMA component of the SMMC program.

Under the MMA contracts, all managed care plans are required to provide comprehensive Medicaid services, including all Medicaid covered dental services, to their enrollees. A majority of MMA managed care plans will also provide full dental services, not currently covered under Medicaid, to adult enrollees at no additional cost to the state. Full adult dental services have never before been offered by Florida Medicaid. These additional services are valued at over \$100 million over the 5-year duration of the MMA contracts.¹⁶

AHCA will begin implementing the SMMC program in selected regions on May 1, 2014 with the last regions being implemented on August 1, 2014. The SMMC must be fully implemented in all regions by October, 2014, as directed in s. 409.971, F.S.

On October 1, 2014, the statutory authority for the Agency to contract with PDHPs to provide dental services to eligible Medicaid recipients is scheduled to sunset with the implementation of the SMMC program. Medicaid recipients who are enrolled in the SMMC program will receive their dental services through the fully integrated managed care plans.

Federal Waiver Authority

To use the PDHP model to deliver dental services to Medicaid recipients, AHCA had to obtain section 1915(b) waiver authority. This waiver authority expired on January 31, 2014. AHCA did not seek renewal of the waiver, and the deadline for seeking renewal under federal law has passed. Instead, the federal government has agreed to give a series of temporary extensions to the 1915(b) waiver as AHCA implements the SMMC program, allowing dental services to be gradually folded into the SMMC program and then letting the section 1915(b) waiver expire.¹⁷

To implement the SMMC program, AHCA applied for and obtained section 1115 waiver authority. Section 1115 of the Social Security Act allows states to use innovative service delivery systems that improve care, increase efficiency, and reduce costs. Federal authority for including dental services in the SMMC program is in the approved section 1115 waiver.¹⁸

Currently, Florida only has federal authority to provide dental services to Medicaid recipients as an integrated component of the SMMC program.

¹⁵ AHCA Invitation to Negotiate, *Statewide Medicaid Managed Care, Addendum 2 Solicitations* Number: AHCA ITN 017-12/13; dated February 26, 2013. http://myflorida.com/apps/vbs/vbs_www.ad.view_ad?advertisement_key_num=105774 (February 6, 2014); AHCA Invitation to Negotiate, *Statewide Medicaid Managed Care*, Solicitation Number: AHCA ITN 017-12/13; dated December 28, 2012

http://myflorida.com/apps/vbs/vbs_www.ad.view_ad?advertisement_key_num=105774 (last visited February 6, 2014).

¹⁶ AHCA 2014 Agency Legislative Bill Analysis for HB 27, dated November 13, 2014 (currently on file with the Florida House of Representatives Health Innovation Subcommittee).

¹⁷ *Id.*

¹⁸ *Id.*

PDHP Performance

AHCA measures the performance of PDHPs based on standards established by the National Committee for Quality Assurance called the Healthcare Effectiveness Data and Information Set (HEDIS). Annual pediatric dental visits in Miami-Dade, statewide, and in the reform pilot counties are reflected below.

HEDIS Annual Dental Visit Scores for Reform Plans and PDHP¹⁹

Calendar Year	Reform Pilot Plans	Dentaquest ²⁰ Statewide	Dentaquest Miami-Dade	MCNA Statewide	MCNA Miami-Dade
2012	40.4%	47.3%	41.4%	39.3%	36.8%

Under the terms and conditions of the 1115 waiver, AHCA must work with MMA plans on an oral health quality improvement initiative. AHCA developed the framework for initiative and included it in the contracts with the MMA plans.

Effect of the Proposed Changes

Section 409.912(41)(a), F.S., requires that AHCA contract with PDHPs, and sunsets October 1, 2014.²¹ The bill postpones the repeal to October 1, 2017. In addition, the bill eliminates the requirement that 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., created separate authority for AHCA to create a Medicaid prepaid dental health program in Miami-Dade. The statute expired on July 1, 2013. The bill reenacts the subsection and authorizes AHCA to provide a Medicaid prepaid dental program in Miami-Dade on a permanent basis. This action would allow AHCA to continue to provide a separate Medicaid prepaid dental plan in Miami-Dade County.

The bill's provisions cannot be accomplished prior to full implementation of the SMMC program. Federal authorization is required for AHCA to operate the PDHP program. To reestablish authority to have a stand-alone dental managed care program, AHCA would have to either apply for a new 1915(b) waiver, or seek an amendment to the approved section 1115 waiver. To remove dental services from the SMMC program, AHCA would have to apply for an amendment of the approved section 1115 waiver. The federal government has no time limits for reviewing a request for a section 1115 waiver; therefore, it is unknowable how long the process would take. In the interim, AHCA is required to proceed, as required by ch. 409, with the full implementation of the SMMC program.

Dental services cannot immediately be excluded from the SMMC program, even if AHCA currently had federal authority to do so. AHCA will begin implementing the SMMC on a staggered regional basis beginning on May 1, 2014, with the final regions implemented on August 1, 2014.²² AHCA will open its choice counseling lines roughly 75 days in advance of the implementation in each region, with the first choice counseling lines will open in mid-February 2014.²³ The service packages and the provider networks for the plans must be programmed into the choice counseling system in well in advance of the implementation. This includes loading dental service packages and dental networks into the system and loading capitation rates that include dental services into the system, as current law requires that these services be in the SMMC program.²⁴ It is a logistical impossibility for AHCA to make the system

¹⁹ Information from AHCA and on file with the Health Innovation Subcommittee.

²⁰ Dentaquest has contracted with several MMA plans to provide dental coverage in the SMMC for both children and adults.

²¹ Section 409.912 (41)(a), F.S.

²² AHCA, *supra*, note 16.

²³ *Id.*

²⁴ *Id.*

changes necessary to exclude dental services from the SMMC prior to mid-February 2014.²⁵ Thus, dental services cannot be excluded prior to full implementation of the SMMC.

The bill's provisions conflict with the SMMC statutory requirements. On December 28, 2012, AHCA released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis.²⁶ Dental services were included in the ITN as one of the enumerated services to be provided under the SMMC. On February 6, 2014, AHCA executed contracts with the managed care plans selected to provide care, including dental services, under the SMMC. The bill's provisions however require the exclusion of dental services from the SMMC.

Legal challenges could result to due to the change in the term of the contracts. The contracts were negotiated, rates were set, and provider networks were established based on the requirement that dental services be included. The contacted rates and networks would not be valid under the bill; therefore, AHCA may have to reopen rate negotiations prior to implementing the SMMC program.²⁷ Rates cannot be re-negotiated by AHCA and still allow AHCA to meet the statutory implementation deadline.

The bill's provisions require the continued use of PDHPs. The existing statewide PDHPs were procured through a competitive process. The original procurement period was December 1, 2011 through September 30, 2013.²⁸ The ITN for this procurement allowed for renewal, but the renewal cannot exceed beyond September 30, 2016 because s. 287.057(13), F.S. limits state contract renewals to no more than three years. The first renewal to the program extended the contracts for one year through September 30, 2014. Consequently, current contracts with the PDHPs would have to be competitively re-procured to continue to program beyond September 30, 2016.

The bill requires AHCA to 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 authorizes AHCA to seek any state plan amendments or waiver authority necessary to reestablish federal authority to have a stand-alone dental managed care program.

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, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

AHCA would need to add two pay grade 24 FTEs to function as contract managers for the two PDHPs. AHCA would also need increased funding for travel expenses to perform additional plan monitoring that is required. Expenditures for these activities would begin in SFY 2014-2015 based on the July 1, 2014, effective date of the bill and have recurring costs of \$131,489.00 annually.²⁹

²⁵ Id.

²⁶ AHCA, *supra*, note 15.

²⁷ AHCA, *supra*, note 16.

²⁸ Id.

²⁹ Id.

There are indeterminate, but likely significant, costs related to re-negotiation of the MMA contracts, re-procurement of the SMMC program, re-procurement of the PDHPs, legal challenges and system changes required to implement the exclusion of dental services from the SMMC.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For the majority of adult Medicaid enrollees, current dental benefits are extremely limited. Under MMA, AHCA negotiated expanded dental benefits with the managed care organizations at no cost to AHCA. AHCA estimates the value of these additional benefits at \$100 million over 5 years, at no additional cost to taxpayers.³⁰ However, if the pediatric enrollees are carved out of the MMA contracts, AHCA believes that the managed care organizations will lose leverage with the dental providers and existing dental provider networks resulting in the loss of the expanded benefit for the adults.³¹ In all likelihood, adult Medicaid enrollees will lose access to expanded dental benefits, dental providers may lose the opportunity for increased patients and revenue, and taxpayers will not have the benefit of a no-cost \$100 million negotiated contract term.

D. FISCAL COMMENTS:

If the SMMC implementation is delayed to re-negotiate rates or obtain amended waivers, AHCA expects that the state will also lose anticipated savings from the MMA contracts. Based on the projected 5 percent aggregate savings per year contemplated in s. 409.966(3)(d), F.S., and the estimated contract value of \$70 billion over 5 years, the minimum impact for a 1 year delay is \$736 million in lost savings.³²

The bill's provisions may also result in duplicative demand for payment for dental service benefits. The bill requires PDHP to continue to provide dental services. The current contracts for these services were set to expire with the implementation of the SMMC. However, dental services cannot be excluded prior to the full implementation of the SMMC due to the expiration of the 1915(b) waiver. AHCA can seek a new waiver or request an amendment to the 1115 waiver but it will be several months, possibly much longer, before either is provided. Thus, dental services are required under the PDHP pursuant to bill's provisions and under the MMA pursuant to the SMMC. Until the new waiver or amendment is provided or the MMA contracts are renegotiated, the potential exists that the state may be responsible for double payment of the dental service benefits. Since the federal government will not reimburse a state for duplicative payment for benefits, AHCA only remedy may be to delay the implementation of the SMMC program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

³⁰ AHCA, *supra*.

³¹ AHCA, *supra*, note 16.

³² *Id.*

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

2. Other:

Requiring AHCA to contract with licensed prepaid dental health plans for Medicaid dental services after October 1, 2014, could result in a legal challenge that the bill's provisions create an unconstitutional impairment of contracts.

On December 28, 2012, AHCA released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis.³³ Dental services were included in the ITN as one of the enumerated services to be provided under the SMMC. On February 6, 2014, AHCA executed contracts with the managed care plans selected to provide care, including dental services, under the SMMC.

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.³⁴ The courts will subject state actions that impact state-held contracts to an elevated form of scrutiny when the Legislature passes laws that impact such contracts. *Cf. Chiles v. United Faculty of Fla.*, 615 So.2d 671 (Fla. 1993). “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”³⁵

The estimated annualized value of the MMA contracts is approximately \$70 billion over 5 years. The change in the value of these MMA contracts due to the value of removing the dental benefit may be deemed substantial if AHCA must re-negotiate these contracts or re-procure due to severing dental benefits from the benefits to be provided.

If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.³⁶ The court will also consider three factors when balancing the impairment of contracts with the important public purpose:

- Whether the law was enacted to deal with a broad economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and,
- Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.³⁷

A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the act.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 409.961, F.S., provides that “it is the intent of the Legislature that if any conflict exists between the provisions contained in this part [SMMC program] and in other parts of this chapter the provisions in this part [SMMC program] control.” The bill’s provisions exclude dental services from otherwise integrated services in the SMMC program. However, s. 409.973(1)(e), F.S, still expressly provides that dental services must be included in the SMMC program. The bill expressly exempts its provisions from

³³ AHCA, *supra*, note 15.

³⁴ U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

³⁵ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1980). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

³⁶ *Park Benzinger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681 (Fla. 1980); *Yellow Cab C., v. Dade County*, 412 So. 2d 395 (Fla. 3rd DCA 1982). See also *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983).

³⁷ *Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774 (Fla. 1980).

the conflict resolution language in s. 409.961, F.S., thereby creating ambiguity as to which provision controls.

There is a potential that non-winning vendors of the SMMC procurement might initiate litigation. Non-winning vendors who had not included comparable dental benefits might challenge the change in terms and argue a different approach would have been taken if they had known that dental would be carved out later. Similarly, some vendors that chose not to compete due to an inadequate dental network might challenge a re-negotiation.

AHCA notes that creating a carve-out for any single service would set a bad precedent for the future of the new, reformed Medicaid program, and expects other service providers to seek carve-outs from the Legislature if HB 27 is enacted.³⁸ A unified, coordinated system of care is a primary characteristic of Medicaid reform, in part because it solves the problem of complexity with which Florida's Medicaid program has been plagued for decades. In 2010, the Florida House of Representatives contracted with a consultant to analyze Florida's Medicaid program and identify problems and possible solutions. One of the consultant's conclusions was that Florida Medicaid's fragmented, complex system makes it difficult to improve value for patients and taxpayers.³⁹

Since only pediatric dental services are currently provided by the PDHPs, AHCA's analysis assumes that only pediatric dental services would be provided by the PDHPs; however, the bill refers to "dental services" which would include both adult and pediatric. Consequently, it is unclear whether all dental, or only pediatric dental services, would be provided by the PDHPs.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³⁸ AHCA, *supra*, note 16.

³⁹ Medicaid Managed Care Study, Pacific Health Policy Group, p. 73, March 2010