

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Health Innovation Subcommittee; Diaz

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|-----------------|---------|--|
| 1) Health Innovation Subcommittee | 9 Y, 3 N, As CS | McElroy | Shaw |
| 2) Health & Human Services Committee | | McElroy | Calamas |

SUMMARY ANALYSIS

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 pediatric dental services. On February 6, 2014, AHCA executed 5-year contracts with the managed care plans selected to provide care, including pediatric dental services, 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.

The bill removes pediatric dental services from the otherwise integrated SMMC program by creating a new statewide prepaid dental program. AHCA is directed to contract with at least two prepaid dental health plans (PDHP) on a statewide basis. The statewide prepaid dental program will begin no later than September 1, 2015, or when AHCA receives the necessary federal authority to implement the program. AHCA is given authority to seek any state plan amendments or waiver authority necessary to implement the program.

To remove dental services from the SMMC program, AHCA will have to apply for an amendment of the approved section 1115 waiver, and may also have to apply for a new 1915(b) waiver to authority to use a PDHP model to deliver dental services. The federal government has no deadline for acting on a section 1115 waiver application. Until new federal approval is granted, AHCA is required to proceed with the full implementation of the SMMC program.

The bill requires that any child who becomes eligible for Medicaid benefits between the effective date of the act and implementation of the statewide prepaid dental program must receive dental services through the SMMC program. The child will be removed from the SMMC plan and enrolled in the statewide prepaid dental program once it is implemented. The bill requires AHCA to provide recipients with all required notices regarding this transition.

Pediatric dental services are currently provided in many areas of the state through contracts with PDHPs. The existing PDHPs contracts are scheduled to expire with the full implementation of the SMMC program. The bill requires AHCA to extend the existing PDHP contracts. It additionally requires AHCA to amend the existing contracts to include all counties; however, current procurement law prohibits extending these contracts with the existing PDHPs extended beyond March 30, 2017.

The bill requires a medical loss ratio of 85 percent for prepaid dental plans participating in the statewide prepaid dental 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 has a significant negative fiscal impact on the Medicaid program.

The bill provides that the act will take effect upon becoming a law.

FULL ANALYSIS

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

STORAGE NAME: h0027b.HHSC

DATE: 4/1/2014

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 using prepaid dental health plans.

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, the state began using PDHPs to deliver dental services to children through a pilot program in Miami-Dade County³. 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.⁴ The authority excluded Miami-Dade County from this contracting process but did permit AHCA the option⁵ of including the Medicaid reform pilot counties in the procurement.⁶ 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). Section 409.912(41)(b), F.S.,

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 Proviso language in the 2001 General Appropriations Act (GAA) authorized AHCA to initiate a PDHP pilot program in Miami-Dade County. Similar statutory authority was provided in 2003.

⁴ S. 409.912(42), F.S. (2003). The 2010-2011 GAA proviso specifically authorized AHCA to contract with PDHPs on either a regional or statewide basis.

⁵ 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).

⁶ 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.

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.⁷ The original procurement period was December 1, 2011 through September 30, 2013. Both contracts were renewed in September 2013.⁸ There are two one-year renewal options and a one-time six month extension remaining.⁹ Consequently, current contracts with the PDHPs could not be extended beyond March 30, 2017, without having to re-procure.¹⁰ The current PDHP contractors are DentaQuest and MCNA.

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 PDHPs¹¹

| Calendar Year | Reform Pilot Plans | Dentaquest 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. The MMA contracts¹² have specific performance goals for pediatric dental and penalties for not reaching the performance standards. Each Managed Care Plan is required to provide a Child Health Check Up (CHCUP) to enrollees. The CHCUP includes dental screenings starting at age 3, or earlier if indicated. As part of the integration of care, the Managed Care Plan must provide transportation to and from the child's appointment, if needed.

The Managed Care Plans are required to achieve a preventive dental services rate of at least twenty-eight percent for those enrollees who are continuously eligible for CHCUP for ninety continuous days. Failure to meet this goal could result in a corrective action plan and liquidated damages of \$50,000 per occurrence in addition to \$10,000 for each percentage point less than the target.

Additionally, the Managed Care Plans are required to have HEDIS scores of above 50% for pediatric dental or be subject liquidated damages. The liquidated damages will be calculated based on the number of members enrolled in the Managed Care Plan as follows:

⁷ 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.

⁸ Correspondence from AHCA to Health and Human Services Committee staff, dated March 26, 2014 (currently on file with the Florida House of Representatives Health and Human Services Committee).

⁹ Id.

¹⁰ Id.

¹¹ Information from AHCA and on file with the Health Innovation Subcommittee.

¹² The Managed Medical Assistance Model Contract is available at:

http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#SMMC_Home (last viewed March 10, 2014).

| PM Ranking | Amount per member |
|--|-------------------|
| 40 th – 49 th percentile | \$1.25 |
| 25 th – 39 th percentile | \$2.00 |
| 10 th – 24 th percentile | \$2.75 |
| < 10 th percentile | \$3.50 |

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 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. The contract requires managed care plan to maintain an annual medical loss ratio of a minimum of eighty-five percent (85%) for the first full year of MMA program operation.¹⁶

Under the MMA contracts, all managed care plans are required to provide comprehensive Medicaid services, including all Medicaid covered dental services, to their enrollees. Most of MMA managed care plans will also provide full dental services, not currently covered under Medicaid, to adult enrollees

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);

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 Model Agreement, Attachment II, Exhibit II A, Medicaid Managed Medical Assistance Program, Agency for Health Care Administration, February, 2014, available at http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#mmaplans (last viewed March 8, 2014).

at no additional cost to the state. Full adult dental services have never before been offered by Florida Medicaid. Examples of these additional benefits include twice-yearly exams and cleanings, fluoride treatments, fillings, and yearly x-rays.¹⁷ These additional services are valued at over \$100 million over the 5-year duration of the MMA contracts.¹⁸

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.

The Managed Care Plans participating in the SMMC program have developed their dental networks by both subcontracting with PDHPs and directly contracting with dentists. Both DentaQuest and MCNA, the current PDHP contractors, have subcontracts in a majority of regions of the state, while two other plans, Liberty Dental Plan and Dental Benefits Provider, Inc. also have subcontracts.¹⁹

| Dental Subcontractor | MMA Region |
|--------------------------------|--------------------------------|
| DentaQuest | 1, 4, 5, 6, 7, 9, 10, 11 |
| MCNA | 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 |
| Liberty Dental Plan | 2, 3, 4, 6, 7, 8, 11 |
| Dental Benefits Provider, Inc. | 3, 7, 11 |

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.²⁰

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.²¹

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

Effect of the Proposed Changes

The bill removes pediatric dental services from the integrated SMMC program by creating a new statewide prepaid dental program. AHCA is directed to contract with at least two PDHPs on a statewide basis to provide dental services to children enrolled in Medicaid. The bill requires AHCA to contract only with PDHPS that have experience maintaining statewide dental provider networks for Medicaid programs.

To remove dental services from the SMMC program, AHCA will have to apply for an amendment of the approved section 1115 waiver to remove pediatric dental services from the SMMC program's covered

¹⁷ Information provided by AHCA and on file with the subcommittee.

¹⁸ 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).

¹⁹ Information from AHCA and on file with the subcommittee.

²⁰ Id.

²¹ Id.

benefits. AHCA may also have to seek 1915(b) waiver authority to utilize the PDHP model to deliver dental services. AHCA's prior waiver authority for a PDHP expired on January 31, 2014. AHCA will have to either apply for a new 1915(b) waiver or seek an amendment to the approved section 1115 waiver to reestablish this authority. AHCA is given authority to seek any state plan amendments or waiver authority necessary to implement the program.

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. The bill delays enrollment in the PDHPs until all necessary state plan amendments or federal waivers have been obtained. However, the bill requires that enrollment begin no later than September 1, 2015. The bill appears to require enrollment on this date even if federal approval has not been granted yet. In the interim, AHCA is required to proceed, as required by ch. 409 and the 1115 waiver, with the full implementation of the SMMC program.

The bill requires that any child who is eligible for Medicaid benefits between the effective date of the act and implementation of the PDHP must receive dental services through the SMMC. The child will be removed from the SMMC plan and enrolled in the PDHP once it is implemented. The bill requires AHCA to provide recipients with all required notices regarding this transition, and allows AHCA to assess the PDHPs for the costs of this notification.

Because AHCA and the SMMC plans based their contract negotiations and capitated rates on the current law that requires coverage of pediatric dental services, AHCA may be required to renegotiate rates with all the SMMC plans. Similarly, because the SMMC plans based their provider payment and network development on the current law requirement to cover pediatric dental services, the SMMC plans may have to renegotiate with dental providers to reflect the lower volume of (adult only) care.

The bill requires AHCA to extend the existing contracts with the existing PDHPs, rather than issuing a new competitive procurement.²² It also requires AHCA to amend the existing contracts to include all counties. The existing statewide PDHPs were procured through a competitive process. The original procurement period was December 1, 2011, through September 30, 2013. The ITN for this procurement allowed for renewal; however, the renewal cannot go beyond September 30, 2016, because s. 287.057(13), F.S. limits state contract renewals to no more than three years. AHCA already renewed the PDHP 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 a medical loss ratio of 85 percent for prepaid dental plans participating in the PDHP. This is identical to the medical loss ratio requirement for MMA managed care plans providing services in 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 amends s. s. 409.973, F.S., remove pediatric dental services from the SMMC program and to provide that only adult dental services²³ are a mandatory service for the program.

B. SECTION DIRECTORY:

Section 1. Creating s. 409.91205, F.S., relating to statewide prepaid dental program.

Section 2. Amending s. 409.973, F.S., relating to social and economic assistance benefits.

Section 3. Providing that the act shall take effect upon becoming a law.

²² Since AHCA's waiver authority to provide dental services through PDHPs expired January 31, 2014, subject to temporary extensions during the SMMC rollout, AHCA has no authority to pay the PDHPs for dental services once the SMMC is fully implemented and before new waiver authority is obtained.

²³ Adult dental services include only dentures and medically necessary, emergency dental procedures to alleviate pain or infection. S. 409.906(1), (6), F.S.

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.²⁴

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.²⁵ 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.²⁶ 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.²⁷

²⁴ Id.

²⁵ AHCA, *supra*.

²⁶ AHCA, *supra*, note 16.

²⁷ Id.

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:

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.²⁸ 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.²⁹ 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."³⁰

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.³¹ 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.³²

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:

²⁸ AHCA, *supra*, note 15.

²⁹ U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

³⁰ *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).

³¹ *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).

³² *Pomponio v. Cladridge of Pompano Condo., Inc.*, 378 So. 2d 774 (Fla. 1980).

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.

On December 28, 2012, AHCA released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis. 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.

Legal challenges could result 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 contracted rates and networks would not be valid under the bill; therefore, AHCA may have to reopen rate negotiations prior to implementing the SMMC program.

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.³³ 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.³⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2014, the Health Innovation Subcommittee adopted an amendment to HB 27. The amendment:

- Establishes that it is the Legislature's intent to provide a statewide Medicaid prepaid dental program for children which is separate and apart from the Medicaid managed medical care program;
- Requires AHCA to create a new statewide pediatric dental program by contracting with at least two appropriately licensed prepaid dental health plans;
- Authorizes AHCA to apply and implement any state plan amendments or waivers necessary to implement statewide pediatric dental plan;
- Authorizes AHCA to extend any existing contracts with licensed prepaid dental health plans;
- Delays enrollment in the statewide pediatric dental plan until all required state plan amendments and federal waivers have been obtained;
- Authorizes children who become eligible to receive Medicaid benefits prior to the implementation of the statewide pediatric dental health plan to receive dental services through Medicaid Managed Care;
- Requires AHCA to provide notice to recipients regarding the transition from managed care to the statewide pediatric prepaid dental plan;
- Requires prepaid dental health plans to submit encounter data to AHCA;
- Requires a medical loss ratio of 85 percent for prepaid dental plans participating in statewide prepaid dental program; and
- Requires AHCA to provide an annual report on the statewide pediatric dental program to the Governor, President of the Senate and Speaker of the House.
- Removes pediatric dental services from the services required under the SMMC program.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

³³ AHCA, *supra*, note 16.

³⁴ Medicaid Managed Care Study, Pacific Health Policy Group, p. 73, March 2010