

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 601    Statewide Prepaid Dental Program

**SPONSOR(S):** Magar

**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 350

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

### 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, in a Managed Medical Assistance (MMA) program. In February 2014, AHCA executed 5-year contracts for the MMA program, and began implementation, which was completed August 1, 2014. As of February 2015, over 2.9 million Medicaid recipients enrolled in the MMA program receive their dental services through managed care plans that offer a full array of medical, behavioral, and dental health benefits.

HB 601 removes pediatric dental services from the otherwise integrated SMMC program by creating a new statewide prepaid dental program. Adult dental services will remain with the MMA plans. The bill directs AHCA 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, 2016, or when AHCA receives the necessary federal authority to implement the program.

The bill gives AHCA 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 will likely also have to apply for a new 1915(b) waiver to have authority to use a PDHP model to deliver dental services. The federal government has no deadline for acting on a section 1115 waiver application.

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. The bill authorizes AHCA to assess the costs incurred in providing a notice to the participating plans.

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

### 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.<sup>1</sup>

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 previously had waiver authority for Medicaid recipients receive dental benefits through a managed care delivery system using prepaid dental health plans.

##### Prepaid Dental Health Plans

A Medicaid prepaid dental health plan (PDHP) is a risk-bearing entity paid a prospective per-member, per-month payment by AHCA to provide dental services.

In 2001, the state began using PDHPs to deliver dental services to children as a pilot program in Miami-Dade County<sup>2</sup>. In 2003, the Legislature expanded the PDHP initiative beyond Miami-Dade County by authorizing AHCA to contract with PDHPs in other areas.<sup>3</sup> The statutory authority excluded Miami-Dade County from this contracting process but did permit AHCA the option<sup>4</sup> of including the Medicaid reform pilot counties.<sup>5</sup> 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., 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.

Pursuant to the above statutory provisions, and the 2010-2011 General Appropriations Act, 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

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<sup>1</sup> S. 409.906(1), (6), F.S.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</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 was renewed through June 30, 2014.

noted above.<sup>6</sup> The original procurement period was December 1, 2011 through September 30, 2013. The program was renewed once, which extended the contracts through September 30, 2014. DentaQuest and MCNA were the PDHP contractors when the contracts expired on September 30, 2014.

### *PDHP Accountability and Performance*

The PDHP contracts imposed various accountability provisions and performance measures on the PDHP contractors.

The PDHP contracts imposed specific requirements for network adequacy, to ensure a sufficient number of primary and specialty dental care providers were available to meet the needs of plan enrollees.<sup>7</sup> This included having at least one full time primary dental provider per service area and at least one full time primary dental provider per every 1500 enrollees.<sup>8</sup>

AHCA required the PDHPs to meet a specific medical loss ratio. Under the terms of the contract, an 85 percent of the capitation paid to a PDHP must be expended on dental care services. If the MLR is not met, the PDHP was required to pay the difference back to AHCA. In calendar year 2013, both PDHPs failed to meet the MLR and were required to repay AHCA an estimated \$20 million.<sup>9</sup>

Each PDHP was required to provide a Child Health Check-Up to enrollees.<sup>10</sup> The Check-Up includes dental screenings and referral starting at age 3, or earlier if indicated.<sup>11</sup> The PDHPs were required to achieve an annual screening and participation Check-Up rate of 80%.<sup>12</sup> PDHPs which failed to achieve this rate were required to file a corrective action plan (CAP) with ACHA.<sup>13</sup>

The PDHP contracts included incentive payments for providers if certain preventive dental service utilization criteria were met.<sup>14</sup> Specifically, providers who met or exceeded a 60% utilization rate for preventive dental services during a six month reporting period were entitled to receive incentive payments.<sup>15</sup>

AHCA measured the performance of PDHPs based on standards established by the National Committee for Quality Assurance called the Healthcare Effectiveness Data and Information Set (HEDIS). PDHPs that failed to achieve acceptable HEDIS scores were potentially subject to unspecified monetary damages. "Acceptable HEDIS score" was not defined in the PDHP contracts.<sup>16</sup> Annual HEDIS 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 PDHPs<sup>17</sup>

Calendar Year	Reform Plans 5 Counties	DentaQuest Statewide	MCNA Statewide
2012	40.4%	47.3%	39.3%

<sup>6</sup> 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.

<sup>7</sup> Medicaid Prepaid Dental Health Plan Contract, Attachment II, Agency for Health Care Administration, January, 2012, available at [http://www.fdhc.state.fl.us/MCHQ/Managed\\_Health\\_Care/MHMO/PDHP\\_prov.shtml](http://www.fdhc.state.fl.us/MCHQ/Managed_Health_Care/MHMO/PDHP_prov.shtml) (last visited on March 9, 2015).

<sup>8</sup> Id.

<sup>9</sup> AHCA 2015 Agency Legislative Bill Analysis for HB 601, January 28, 2015 (on file with the Health Innovation Subcommittee).

<sup>10</sup> Medicaid Prepaid Dental Health Plan Contract at 53-54.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Medicaid Prepaid Dental Health Plan Contract at 64.

<sup>15</sup> Id.

<sup>16</sup> Medicaid Prepaid Dental Health Plan Contract at 83.

<sup>17</sup> Information provided by AHCA and on file with the Health Innovation Subcommittee.

2013	42.3%	37.2%	34.3%
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HEDIS annual dental visit scores are also available for the original Miami-Dade County pilot for 2005-2013 (pilot began in 2001).<sup>18</sup> The data indicate an initial improvement from 2005-2010, followed by relatively static numbers over the next few years.<sup>19</sup>

Miami Dade PDHP (ADV)	2005	2006	2007	2008	2009	2010	2011	2012	2013
DentaQuest	20.0%	25.7%	30.0%	31.5%	32.9%	37.7%	39.1%	41.4%	43.3%
MCNA						34.81%	35.63%	36.8%	39.9%

### Statewide Medicaid Managed Care

In 2011, the Legislature established the Statewide Medicaid Managed Care (SMMC) program as Part IV of Chapter 409, F.S. The SMMC program is an integrated managed care program for Medicaid enrollees to provide all the mandatory and optional Medicaid benefits. Within the SMMC program, the Managed Medical Assistance (MMA) program provides primary and acute medical assistance and related services, including dental services<sup>20</sup>.

The SMMC program reflects a deliberate policy shift away from the isolated silos of care embodied by the dental-specific PDHP contracts, toward a model of fully integrated, comprehensive, coordinated care. In the SMMC program, each Medicaid recipient has one managed care organization to coordinate all health care services, rather than various entities.<sup>21</sup> Such coordinated care is particularly important in the area of oral health, which is connected to overall health outcomes.<sup>22</sup>

In December, 2012, AHCA released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a regional basis for the MMA program.<sup>23</sup> AHCA selected 19 managed care plans and executed 5-year contracts in February, 2014. The MMA program was fully implemented statewide by of August 1, 2014.

### *Dental Care in the MMA Program*

The last remaining contracts with the PDHP providers (DentaQuest and MCNA) expired on September 30, 2014. On October 1, 2014, the statutory authority for the AHCA to contract with PDHPs to provide dental services to eligible Medicaid recipients expired.

As of February 2015, over 2.9 million Medicaid recipients are enrolled in the MMA program and receive their dental services through managed care plans that offer a full array of medical, behavioral, and dental health benefits.<sup>24</sup>

<sup>18</sup> The 2005-2011 data for PDHPs was self-reported by the plans. 2012 was the first year the PDHPs submitted performance measures that were audited by an NCQA-certified HEDIS auditor.

<sup>19</sup> AHCA, *supra*, note 17.

<sup>20</sup> The other component of the SMMC program is the Long-Term Care Managed Care Program.

<sup>21</sup> This comprehensive coordinated system of care was successfully implemented in the 5-county Medicaid reform pilot program, 2006-2014.

<sup>22</sup> 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 March 7, 2015).

<sup>23</sup> AHCA Invitation to Negotiate, *Statewide Medicaid Managed Care, Addendum 2 Solicitations* Number: AHCA ITN 017-12/13; dated February 26, 2013 <http://www.govcb.com/Statewide-Medicaid-Managed-Care-ADP13619273520001182.htm> (March 6, 2015); AHCA Invitation to Negotiate, *Statewide Medicaid Managed Care*, Solicitation Number: AHCA ITN 017-12/13; dated December 28, 2012 <http://www.govcb.com/Statewide-Medicaid-Managed-Care-ADP13619273520001182.htm> (March 6, 2015).

<sup>24</sup> Comprehensive Medicaid Managed Care Enrollment Reports, AHCA, February 2015. [http://www.fdhc.state.fl.us/MCHQ/Managed\\_Health\\_Care/MHMO/med\\_data.shtml](http://www.fdhc.state.fl.us/MCHQ/Managed_Health_Care/MHMO/med_data.shtml) (last viewed March 8, 2015).

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 also provide full adult dental services 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.<sup>25</sup> These additional services are valued at over \$100 million over the 5-year duration of the MMA contracts.<sup>26</sup> This unusual offering may be due to two factors: Consumer choice drove plans to offer more competitive benefit packages, and the risk-adjusted capitated payment model ensures plans will bear the cost of dental emergencies, which gives them an incentive to avoid costly crisis events with preventive care. Since July 2014, 72,552 adult enrollees have received dental benefits under the MMA program.

The Managed Care Plans participating in the SMMC have developed their dental networks both by subcontracting with PDHPs and directly contracting with dentists. Both DentaQuest and MCNA, the former 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.<sup>27</sup>

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

### *Dental Service Accountability and Performance in the MMA Program*

The MMA program contracts impose various accountability provisions and performance measures on the MMA plans, specific to dental services.

First, the MMA contracts impose specific requirements for network adequacy, to ensure a sufficient number of primary and specialty dental care providers are available to meet the needs of plan enrollees.<sup>28</sup> This includes having at least one full time primary dental provider per service area and at least one full time primary dental provider per every 1500 enrollees.<sup>29</sup> Dentist participation in Medicaid has increased 17 percent since the implementation of the MMA program.<sup>30</sup>

### Dentists Participating in Medicaid

Nov.2013	Jan.2015	Total Percent Change
1,884	2,203	17%

Second, the contracts require managed care plans to maintain an annual medical loss ratio of a minimum of 85 percent for the first full year of MMA program operation.<sup>31</sup>

In addition, under the federal terms and conditions of the 1115 waiver, AHCA must work with MMA plans on an oral health quality improvement initiative. For this initiative, the MMA contracts<sup>32</sup> have specific performance goals for pediatric dental and penalties for not reaching the performance standards.

<sup>25</sup> Information provided by AHCA and on file with the Health Innovation Subcommittee.

<sup>26</sup> AHCA 2014 Agency Legislative Bill Analysis for HB 27, dated November 25, 2013 (on file with the Health Innovation Subcommittee).

<sup>27</sup> AHCA, *supra*, note 17.

<sup>28</sup> MMA Model Agreement, Attachment II, Exhibit II-A, pp. 83-85.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> MMA 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/plans.shtml](http://ahca.myflorida.com/Medicaid/statewide_mc/plans.shtml) (last viewed March 7, 2015).

<sup>32</sup> The Managed Medical Assistance Model Contract is available at: [http://ahca.myflorida.com/Medicaid/statewide\\_mc/plans.shtml](http://ahca.myflorida.com/Medicaid/statewide_mc/plans.shtml) (last viewed March 7, 2015).

Each MMA plan is required to provide a Child Health Check-Up to enrollees. The Check-Up includes dental screenings and referral starting at age 3, or earlier if indicated. The MMA plans must achieve a Check-Up (including dental screening) rate of at least 80 percent for children enrolled for eight continuous months. A plan that fails to meet this goal is subject to 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.<sup>33</sup> As part of the integration of care, the MMA plan must provide transportation to and from the child's Check-Up, if needed.

The MMA plans are required to achieve a preventive dental services rate of at least 28 percent for children enrolled for 90 continuous days. A plan that fails to meet this goal is subject to 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.<sup>34</sup> As part of the integration of care, the MMA plan must provide transportation to and from the child's dental appointment, if needed.

Additionally, the Managed Care Plans are required to have HEDIS scores above 50 percent for pediatric dental or be subject liquidated damages. This requires a significant improvement over current PDHPs and reform county plans. The liquidated damages will be calculated based on the number of members enrolled in the Managed Care Plan as follows:

PM Ranking	Amount per Member
40 <sup>th</sup> -49 <sup>th</sup> percentile	\$1.25
25 <sup>th</sup> -39 <sup>th</sup> percentile	\$2.00
10 <sup>th</sup> -24 <sup>th</sup> percentile	\$2.75
< 10 <sup>th</sup> percentile	\$3.50

### 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. Instead, the federal government agreed to give a series of temporary extensions to the 1915(b) waiver as AHCA implemented the SMMC program, allowing dental services to be gradually folded into the SMMC program and then letting the section 1915(b) waiver expire.<sup>35</sup>

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.<sup>36</sup>

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 MMA 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

<sup>33</sup> MMA Model Agreement, Attachment II, Exhibit II-A, pp. 22, 109.

<sup>34</sup> MMA Model Agreement, Attachment II, Exhibit II-A, pp. 22, 110.

<sup>35</sup> AHCA, *supra*, note 26.

<sup>36</sup> AHCA, *supra*, note 9.

benefits. AHCA will likely also have to seek 1915(b) waiver authority to utilize the PDHP model to deliver dental services, because the prior waiver authority expired September 30, 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. The bill gives AHCA the 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. The bill delays enrollment in the PDHPs until all necessary state plan amendments or federal waivers have been obtained. However, the bill intends that enrollment begin no later than September 1, 2016.

The bill requires that any child who is eligible for Medicaid benefits between the effective date of the act and implementation of the PDHP receive dental services through the MMA program. The child will be removed from the MMA plan and enrolled in a PDHP once the PDHP program 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 MMA 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 MMA plans and amend contract terms, including network adequacy requirements and performance measures. 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 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.

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 MMA program and to provide that only adult dental services<sup>37</sup> are the only dental services available in that 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.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

AHCA anticipates the need for an additional five (5) FTEs, pay grade 24, employees to implement this bill. AHCA will need: (a) an FTE to develop the competitive procurement document and manage the contracts, (b) three (3) FTEs to monitor the contracts, and (c) an FTE to prepare and manage the new Section 1915(b) waiver including all required federal reporting. Expenditures for these activities will be \$21,315 nonrecurring (AHCA standard expense package), \$191,544 in FY 2015-16 and \$230,927 annually thereafter. Expenditures related to the five additional positions and

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<sup>37</sup> Adult dental services include only dentures and medically necessary, emergency dental procedures to alleviate pain or infection. S. 409.906(1), (6), F.S.

the cost implied from FY 2016-17 would be funded using General Revenue and federal match dollars

A procurement defense of specifications and bid awards, through appeal, will cost approximately \$100,000.00 in contract services dollars for outside counsel representation.

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 MMA program.

**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.<sup>38</sup> 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.<sup>39</sup> In all likelihood, adult Medicaid enrollees will lose access to expanded dental benefits, dental providers will 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:**

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:

Requiring AHCA to contract with licensed prepaid dental health plans for Medicaid dental services after October 1, 2014, could implicate constitutional prohibitions against impairment of contracts.

On December 28, 2012, AHCA released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis.<sup>40</sup> Dental services were included in the ITN as one of the enumerated services to be provided under the MMA program. On February 6, 2014, AHCA executed contracts with the managed care plans selected to provide care, including dental services, under the MMA program.

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<sup>38</sup> AHCA, *supra*, note 26.

<sup>39</sup> AHCA, *supra*, note 9.

<sup>40</sup> *Id.*



The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.<sup>41</sup> 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.”<sup>42</sup>

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 reasonable and necessary to serve an important public purpose.<sup>43</sup> 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.<sup>44</sup>

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:

There is a potential that non-winning vendors of the MMA procurement might initiate litigation. Non-winning vendors which had not included comparable adult 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 may have chosen 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 previously noted 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.<sup>45</sup> AHCA additionally notes that there is no data or evidence to suggest that the current approach to providing children's dental services through the MMA program is flawed in design, network adequacy, quality, or implementation.<sup>46</sup> A unified, coordinated system of care is a

<sup>41</sup> U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

<sup>42</sup> *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).

<sup>43</sup> *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).

<sup>44</sup> *Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774 (Fla. 1980).

<sup>45</sup> AHCA, *supra*, note 26.

<sup>46</sup> AHCA, *supra*, note 9.

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.<sup>47</sup>

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

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<sup>47</sup> Medicaid Managed Care Study, Pacific Health Policy Group, p. 73, March 2010  
**STORAGE NAME:** h0601.HIS  
**DATE:** 3/9/2015