

Medicaid, behavioral health services

Number: INFORMAL

Date: February 18, 2004

Ms. Mary Pat Moore
Interim Secretary, Agency for Health Care Administration
2727 Mahan Drive Mail Stop # 1
Tallahassee, Florida 32308

Dear Ms. Moore:

Your predecessor asked the following questions:

1. Does the statutory language in Chapter 03-279, Laws of Florida, referencing services delivered by a "single entity" permit the Medicaid program to contract with more than one managed care entity or arrange to provide mental health and substance abuse services through capitated prepaid arrangements?
2. Does such language permit the continuation of behavioral health services by Medicaid health maintenance organizations to their enrollees?

As these questions are interrelated, they will be considered together.

During the 2003 regular session, the Legislature passed Committee Substitute for Senate Bill 2404, enacted as Chapter 03-279, Laws of Florida. The chapter imposes certain responsibilities on the Department of Children and Families and Agency for Health Care Administration (AHCA) in the area of mental health and substance abuse services.

Subsequent to its passage, various sponsors of the legislation presented AHCA with differing interpretations of the intent and effect of the new law.[1] With respect to the duties imposed on AHCA, the question has been raised as to whether the new legislation requires AHCA to contract with a single managed care entity for behavioral health services for Medicaid recipients within an AHCA area where eligible recipients number less than 150,000, or whether health maintenance organizations (HMO) may continue to provide behavioral health services to their enrollees while non HMO Medicaid recipients would receive such services from a single managed care entity.

A review of the new legislation indicates inconsistencies in its provisions as well as inconsistencies with the existing provisions of the chapter. For example, section 9 of the legislation creates section 409.912(4)(b)3, Florida Statutes, which provides in part:

"By July 1, 2006, the agency and the Department of Children and Family Services shall contract with managed care entities in each AHCA area except area 6 or arrange to provide comprehensive inpatient and outpatient mental health and substance abuse services through capitated prepaid arrangements to all Medicaid recipients who are eligible to participate in such

plans under federal law and regulation. In AHCA areas where eligible individuals number less than 150,000, the agency shall contract with a single managed care plan. The agency may contract with more than one plan in AHCA areas where the eligible population exceeds 150,000. . . ."

The first sentence of the statute requires AHCA to contract with "managed care *entities* in *each* AHCA area" (e.s.) or provide comprehensive inpatient and outpatient mental health and substance abuse services through capitated prepaid arrangements, while the second sentence of the statute requires AHCA to contract with a *single* managed care plan in each AHCA area where eligible individuals number less than 150,000.

Thus, while one provision requires AHCA to contract with multiple entities in each area, except area 6, the next provision specifies AHCA to contract with a single plan in certain other areas. The provisions appear inconsistent on their face.

A further inconsistency arises in a review of section 409.912, Florida Statutes, which provides that AHCA "shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and alternative service delivery and reimbursement methodologies . . . designed to facilitate the cost-effective purchase of a case-managed *continuum of care*." (e.s.) Subsection 409.912(4)(b)3, Florida Statutes, however, in providing that AHCA contract with a single managed care plan would require HMO enrollees to receive their behavioral health care from one plan while receiving other medical services from their HMO provider.

A review of the legislative history failed to reveal any clear expression of legislative intent. In addition, this office has been provided with conflicting statements by the various sponsors of the Senate and House bills as to their intent. Thus, the intent underlying the adoption of Chapter 03-279, Laws of Florida, regarding this issue is unclear.

In light of the above and due to the significant issues raised by your request, it would be appropriate for the Legislature to clarify its intent on this issue. Moreover, due to the difficult and momentous question of law raised and its potential impact on the provision of behavioral health care services to Medicaid recipients, AHCA may wish to consider submitting this issue to the courts for resolution by declaratory judgment.[2]

Sincerely,

Charlie Crist
Attorney General

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[1] See, e.g., Letter from Senator Evelyn Lynn to Secretary Medows, dated July 30, 2003; Letter from Senator Durell Peadar to Secretaries Medows and Regier, dated July 16, 2003; Letter from Representative Heather Fiorentino to Governor Bush, dated September 19, 2003; and Letter from Representative Sandra Murman to Secretaries Medows and Regier, dated July 2, 2003.

[2] See this office's Statement Concerning Attorney General Opinions, stating that particularly difficult or momentous questions of law should be submitted to the court for resolution by declaratory judgment and when deemed appropriate, this office will recommend that course of action.