

CHAPTER 97-260

House Bill No. 1837

An act relating to health and human services; amending s. 945.602, F.S.; providing for assignment of the State of Florida Correctional Medical Authority to the Department of Health for administrative purposes; transferring to the department powers and duties of the State of Florida Correctional Medical Authority; transferring the Child Care Food Program from the Department of Education to the Department of Health and providing for hiring preferences; requiring the Department of Children and Family Services to develop individual transition plans for clients affected by the transition from Intermediate Care Facility for Developmentally Disabled funding to noninstitutional funding; requiring a report; requiring the Department of Children and Family Services to immediately notify the Legislature and develop a spending plan if judicial decisions are continued or rendered which the department feels will require expenditures in excess of the amount appropriated to Developmental Services; providing for future repeal; creating s. 409.9127, F.S.; requiring the Agency for Health Care Administration to develop and enforce standards to prohibit conflicts of interest among vendors selected to provide preauthorization and concurrent utilization review management services; authorizing the Department of Children and Family Services to certify local funds as state match for certain children's mental health services and for eligible Title IV-E services for certain children; requiring pass-through of funds to local jurisdictions; prohibiting reduction of certain general revenue funds; authorizing the Agency for Health Care Administration to apply for certain federal waivers if local funds are sufficient for state match; amending s. 945.6037, F.S.; increasing the inmate copayment; requiring the department to conduct a study and develop a plan to recover costs associated with over-the-counter and prescription medications; requiring a report to be submitted to the Legislature; requiring the Agency for Health Care Administration to apply for federal waivers or grants to expand services provided to the Florida Healthy Kids Corporation; amending s. 409.912, F.S.; authorizing the Agency for Health Care Administration to establish certain demonstration projects to test Medicaid direct contracting; amending s. 409.908, F.S.; requiring the Agency for Health Care Administration to implement a specified program related to payments for prescribed medicines; amending s. 409.906, F.S.; requiring the Agency for Health Care Administration to develop an enrollment process for community mental health providers; creating s. 409.9118, F.S.; providing a disproportionate share program for specialty hospitals; requiring the Department of Children and Family Services to privatize South Florida State Hospital and providing for hiring preferences; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (2) and paragraphs (b) and (c) of subsection (7) of section 945.602, Florida Statutes, 1996 Supplement, are amended to read:

945.602 State of Florida Correctional Medical Authority; creation; members.—

(1) ~~There is created in the Department of Corrections the State of Florida Correctional Medical Authority which for administrative purposes shall be assigned to the Department of Health.~~ The governing board of the authority shall be composed of nine persons appointed by the Governor subject to confirmation by the Senate. One member must be a member of the Florida Hospital Association; one member must be a member of the Florida League of Hospitals; one member must be a member of the Association of Community Hospitals and Health Systems of Florida Voluntary Hospitals; and one member must be a member of the Florida Medical Association. The authority shall contract with the Department of Health for the provision of administrative support services, including purchasing, personnel, general services, and budgetary matters. ~~The Department of Corrections shall provide administrative support and service to the authority.~~ The authority shall not be subject to control, supervision, or direction by the Department of Health or the Department of Corrections. The authority shall annually elect one member to serve as chairman. Members shall be appointed for terms of 4 years each. Each member is authorized to continue to serve upon the expiration of his term until his successor is duly appointed as provided in this section. Before entering upon his duties, each member of the authority shall take and subscribe to the oath or affirmation required by the State Constitution.

(2) A member of the authority may not be a current employee of the Department of Corrections. Not more than one member of the authority may be a former employee of the Department of Corrections and such member, if appointed, may not be appointed to a term of office which begins within 5 years after the date of his or her last employment with by the department.

(7)

(b) Neither the provisions of this section nor those of chapter 119, or of s. 154.207(7), shall apply to any health care provider under contract with the Department of Corrections except to the extent such provisions would apply to any similar provider ~~entity~~ not under contract with the department.

(c) Notwithstanding any general or special law, rule, regulation, or ordinance of any local agency to the contrary, service as a member of an authority by a trustee, director, officer, or employee of a health facility shall not in and of itself constitute a conflict of interest. However, any member of the authority who is employed by, or has received income from, a health facility under consideration by the authority or the Department of Corrections shall not vote on any matter related to such facility.

Section 2. All powers, duties and functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the State of Florida Correctional Medical Authority, as established

in s. 945.602, Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Corrections to the Department of Health.

Section 3. Effective October 1, 1997, through type two transfers, as defined in s. 20.06(2), Florida Statutes, the administration of the Federal Child Care Food Program is transferred from the Department of Education to the Department of Health. The administration of the Federal Adult Care Food Program is transferred from the Department of Education to the Department of Elderly Affairs. Current Department of Education personnel assigned to the Child Care and Adult Care Food Programs shall be given preference in hiring for comparable positions within the Department of Health and the Department of Elderly Affairs.

Section 4. Report required; department to notify Legislature and develop plan if judicial decisions result in spending requirements in excess of appropriations.—

(1) The Department of Children and Family Services shall develop individual support plans for the approximately 2,176 persons directly affected by the transition from funding through the Intermediate Care Facility for Developmentally Disabled Program to noninstitutional funding. The individual plans shall provide for appropriate services to each affected individual in the most cost-effective manner possible. The department shall report the projected aggregate cost of providing services by fund source through the individual plans to the Office of Planning and Budgeting, the Senate Ways and Means Committee, and the House Health and Human Services Appropriations Committee by September 30, 1997. The aggregate costs reported shall be based on typical industry rates and shall not include special adjustments for property costs or other additional costs unique to any individual provider or type of provider. The department may, however, report any such costs separately. The report must further provide detailed information on department efforts to maximize Medicare and other funding available outside the Developmental Services Program and the use of generic community resources along with a calculation of the value of such resources. The report must also include a summary of the department's progress in recruiting alternative providers in the event that any current providers decide to discontinue services to clients or cannot provide quality services within the anticipated rate structure.

(2) If judicial decisions are continued or rendered that the Department of Children and Family Services feels will require spending in excess of the amounts budgeted for Developmental Services, the department shall immediately notify the Chairs of the Senate Ways and Means Committee, the House Fiscal Responsibility Council, and the House Health and Human Services Appropriations Committee. Within 1 week after providing notification pursuant to this subsection, the department shall submit a spending plan that addresses the projected deficit.

(3) This section is repealed July 1, 1999.

Section 5. Section 409.9127, Florida Statutes, is created to read:

409.9127 Preauthorization and concurrent utilization review; conflict-of-interest standards.—

(1) The Agency for Health Care Administration shall be solely responsible for developing and enforcing standards to prohibit financial and other conflicts of interest among vendors selected to provide preauthorization and concurrent utilization review management with direct-service organizations providing alcohol, substance abuse, mental health, or related services to clients who have services authorized through the preauthorization and concurrent utilization review management system established to achieve cost savings in the provision of alcohol, substance abuse, mental health, or related services. The agency may require the posting of a surety bond to guarantee that no financial or other conflicts of interest exist or will exist among vendors selected to provide preauthorization and concurrent utilization review management services.

(2) Vendors selected to conduct preauthorization or concurrent utilization review management, or both, may be peer-review organizations, qualified licensed clinical practitioners, or public or private organizations that demonstrate the ability to conduct such reviews according to criteria developed by the agency and that have no financial or other conflict of interest with any direct-service organization providing alcohol, substance abuse, mental health, or related services. Selection of vendors shall be accomplished through a competitive process.

Section 6. In order to implement Specific Appropriations 330 and 334 through 352 of the 1997-1998 General Appropriations Act, the Department of Children and Family Services is authorized to certify local funds not to exceed \$5 million as state match for children's mental health services funded by Medicaid in excess of the amount of state general revenue matching funds appropriated for such services through the 1997-1998 General Appropriations Act. The department is also authorized to certify local funds not to exceed \$5 million as state match for eligible Title IV-E services for children under the supervision and custody of the state in excess of the amount of state general revenue matching funds appropriated for such services by the 1997-1998 General Appropriations Act in Specific Appropriations 334 through 352. Federal Medicaid or Title IV-E funds provided to the state as federal financial participation consequent to certified local matching funds shall automatically be passed through to the local jurisdiction that provided the certified local match. All of the provisions of this section are based upon federal approval of the provisions as specifically limited in this section and shall not become effective if any further modifications are required of the state. The Agency for Health Care Administration is authorized to apply for federal waivers to modify the state Medicaid plan to include optional Medicaid in-home and therapeutic services for Medicaid-eligible children if the state match for such services is provided by local funds certified by the department as state match. Such services shall be available only in communities that provide the certified match.

Section 7. Paragraph (a) of subsection (1) of section 945.6037, Florida Statutes, is amended to read:

945.6037 Nonemergency health care; inmate copayments.—

(1)(a) Effective October 1, ~~1997~~ 1994, for each nonemergency visit by an inmate to a health care provider which visit is initiated by the inmate, the inmate must make a copayment of \$4 ~~not less than \$1 or more than \$5, as set by rule by the Department of Corrections.~~ A copayment may not be charged for the required initial medical history and physical examination of the inmate.

Section 8. The Department of Corrections, in conjunction with the Correctional Privatization Commission, shall study and develop a plan to recover costs associated with prescription and over-the-counter medications provided to inmates. As part of the study, the department shall consider instituting an inmate copayment for prescription medications and selling over-the-counter drugs through the inmate canteen. The Department of Corrections shall report its plan and findings to the President of the Senate and the Speaker of the House of Representatives by January 1, 1998.

Section 9. The Agency for Health Care Administration shall apply for a federal Medicaid waiver or for other federal grants to allow for the receipt of Medicaid matching funds or other federal funds to be used in conjunction with state, local, and private funds to expand the services provided by the Florida Healthy Kids Corporation. In the event that a Medicaid waiver is used, it shall be limited to 118,725 children and shall include a provision for a lifetime cap of 60 months for those children enrolled in the program after July 1, 1997.

Section 10. Paragraph (c) is added to subsection (4) of section 409.912, Florida Statutes, 1996 Supplement, to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services.

(4) The agency may contract with any public or private entity otherwise authorized by this section on a prepaid or fixed-sum basis for the provision of health care services to recipients.

(c) The agency is authorized to establish no more than four demonstration projects with provider service networks to test Medicaid direct contracting. However, no such demonstration project shall be established with a Federally Qualified Health Center, nor shall any provider service network under contract with the agency pursuant to this paragraph include a Federally Qualified Health Center in its provider network. One demonstration project must be located in Orange County. The demonstration projects may

be reimbursed on a fee-for-service or prepaid basis. A provider service network that is reimbursed by the agency on a prepaid basis shall be exempt from parts I and III of chapter 641, but must meet appropriate financial reserve, quality assurance, and patient rights requirements as established by the agency. The agency shall award contracts on a competitive-bid basis and shall select bidders based upon price and quality of care. Medicaid recipients assigned to a demonstration project shall be chosen equally from those who would otherwise have been assigned to prepaid plans and Medi-Pass. The agency is authorized to seek federal Medicaid waivers as necessary to implement the provisions of this section. A demonstration project awarded pursuant to this paragraph shall be for 2 years from the date of implementation.

Section 11. Subsection (14) of section 409.908, Florida Statutes, 1996 Supplement, is amended to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(14) A provider of prescribed drugs shall be reimbursed the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the agency, plus a dispensing fee. The agency is directed to implement a variable dispensing fee for payments for prescribed medicines while ensuring continued access for Medicaid recipients. The variable dispensing fee may be based upon, but not limited to, either or both the volume of prescriptions dispensed by a specific pharmacy provider and the volume of prescriptions dispensed to an individual recipient. The agency is authorized to limit reimbursement for prescribed medicine in order to comply with any limitations or directions provided for in the General Appropriations Act, which may include implementing a prospective or concurrent utilization review program.

Section 12. Subsection (8) of section 409.906, Florida Statutes, 1996 Supplement, is amended to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state

under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Optional services may include:

(8) **COMMUNITY MENTAL HEALTH SERVICES.**—The agency may pay for rehabilitative services provided to a recipient by a mental health or substance abuse provider licensed by the agency and under contract with the agency or the Department of ~~Children and Family Health and Rehabilitative Services~~ to provide such services. Those services which are psychiatric in nature shall be rendered or recommended by a psychiatrist, and those services which are medical in nature shall be rendered or recommended by a physician or psychiatrist. The agency must develop a provider enrollment process for community mental health providers which bases provider enrollment on an assessment of service need. The provider enrollment process shall be designed to control costs, prevent fraud and abuse, consider provider expertise and capacity, and assess provider success in managing utilization of care and measuring treatment outcomes. Providers will be selected through a competitive procurement or selective contracting process. In addition to other community mental health providers, the agency shall consider for enrollment mental health programs licensed under chapter 395 and group practices licensed under chapter 458, chapter 459, chapter 490, or chapter 491. The agency is also authorized to continue operation of its behavioral health utilization management program and may develop new services if these actions are necessary to ensure savings from the implementation of the utilization management system. The agency shall coordinate the implementation of this enrollment process with the Department of Children and Family Services and the Department of Juvenile Justice. The agency is authorized to utilize diagnostic criteria in setting reimbursement rates, to preauthorize certain high-cost or highly utilized services, to limit or eliminate coverage for certain services, or to make any other adjustments necessary to comply with any limitations or directions provided for in the General Appropriations Act.

Section 13. Section 409.9118, Florida Statutes, is created to read:

409.9118 Disproportionate share program for specialty hospitals.—The Agency for Health Care Administration shall design and implement a system of making disproportionate share payments to those hospitals licensed in accordance with part I of chapter 395 as a specialty hospital which meet all requirements listed in subsection (2). Notwithstanding s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for patients.

(1) The following formula shall be used by the agency to calculate the total amount earned for hospitals that participate under this section:

$$\text{TAE} = (\text{MD}/\text{TMD}) \times \text{TA}$$

Where:

TAE=total amount earned by a specialty hospital.

TA=total appropriation for payments to hospitals that qualify under this program.

MD=total Medicaid days for each qualifying hospital.

TMD=total Medicaid days for all hospitals that qualify under this program.

(2) In order to receive payments under this section, a hospital must be licensed in accordance with part I of chapter 395, to participate in the Florida Title XIX program, and meet the following requirements:

(a) Be certified or certifiable to be a provider of Title XVIII services.

(b) Receive all of its inpatient clients through referrals or admissions from county public health departments, as defined in chapter 154.

(c) Require a diagnosis for the control of a communicable disease for all admissions for inpatient treatment.

Section 14. (1) The Department of Children and Family Services shall, through a request for proposals, privatize South Florida State Hospital. The department shall plan to begin implementation of this privatization initiative by July 1, 1998.

(a) Notwithstanding section 287.057(12), Florida Statutes, the department may enter into agreements, not to exceed 20 years, with a private provider, a coalition of providers, or another agency to finance, design, and construct a treatment facility having up to 350 beds and to operate all aspects of daily operations within the facility. The department may subcontract any or all components of this procurement to a statutorily established state governmental entity that has successfully contracted with private companies for designing, financing, acquiring, leasing, constructing, and operating major privatized state facilities.

(b) The selected contractor is authorized to sponsor the issuance of tax-exempt bonds, certificates of participation, or other securities to finance the project, and the state is authorized to enter into a lease-purchase agreement for the treatment facility.

(2) The contractor shall operate South Florida State Hospital as a mental health treatment facility that serves voluntarily and involuntarily committed indigent adults who meet the criteria of part I of chapter 394, Florida Statutes, and who reside in the South Florida State Hospital service area.

(a) South Florida State Hospital shall remain a participant in the mental health disproportionate share program so long as the residents receive eligible services.

(b) The department and the contractor shall ensure that the treatment facility is operated as a part of a total continuum of care for persons who are mentally ill. The contractor shall have as its primary goal for the treatment facility to effectively treat and assist residents to return to the community as quickly as possible.

(3)(a) Current South Florida State Hospital employees who are affected by the privatization shall be given first preference for continued employment by the contractor. The department shall make reasonable efforts to find suitable job placements for employees who wish to remain within the state Career Service System.

(b) Any savings that result from the privatization of South Florida State Hospital shall be directed to the department's service districts 9, 10, and 11 for the delivery of community mental health services.

Section 15. This act shall take effect July 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.