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Information Brief

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Uncertainty Exists Regarding Florida's Proposed Physician Upper Payment Limit Program

at a glance

Federal Medicaid regulations allow states flexibility to disburse supplemental payments to cover the difference between standard Medicaid fees and the usual and customary charges for certain providers. These supplemental payments are often referred to as upper payment limit programs.

In November 2002, the Agency for Health Care Administration submitted a Medicaid plan amendment to the federal government to allow payments for physician services provided through public teaching hospitals and certain other facilities. The agency estimates this program will generate approximately $62 million in supplemental federal funds through this arrangement in Fiscal Year 2002-03.

Florida's plan amendment is currently under review by the federal Centers for Medicare and Medicaid Services. However, uncertainty exists as to when, and at what level funding will be approved by the federal government.

This report includes policy options for legislative consideration. The Legislative Budget Commission may need to re-address these issues if federal approval is not received before the end of the 2003 Legislative Session.

Scope

OPPAGA examined this program at the request of House and Senate fiscal committees. This report

- describes the proposed Medicaid physician upper payment limit (UPL) program;
- describes the estimated fiscal benefit of implementing the physician UPL program;
- identifies issues and concerns to be considered in implementing Florida's physician UPL; and
- provides policy options for legislative consideration.

Background

The 2002 Legislature authorized the Agency for Health Care Administration (AHCA) to pursue a Medicaid plan amendment under Ch. 2002-394, *Laws of Florida*. The Legislature's intent is to maximize all available federal Medicaid funds, increase Medicaid fees for health professionals, finance physician-related projects to increase Medicaid access to primary and specialty care, and to test additional care management programs.

On November 18, 2002, Florida submitted to the federal Centers for Medicare and Medicaid Services (FCMS) a plan amendment that would

allow supplemental payments for Medicaid services provided by doctors of medicine and osteopathy employed by or under contract with (1) a medical school that is part of the public university system; (2) a private medical school that places over 50% of its residents with a public hospital; (3) NOVA Southeastern University; or (4) a public hospital. In addition, under the plan amendment, supplemental payments also may be paid to doctors of medicine and osteopathy affiliated with the Florida Department of Health's Division of Children's Medical Services. [1]

The supplemental payment mechanism would allow the state to draw down additional federal funds

The supplemental payment mechanism, also called physician upper payment limit (UPL), is a complex funding arrangement between the state and the federal government. This arrangement is based upon an interpretation of federal Medicaid regulations (42 CFR 447) that states assert allow them to make special Medicaid payments to compensate certain providers to make up the difference between Medicaid and Medicare fees or usual and customary charges for certain services. [2]

If approved, Florida's supplemental physician payments will be based on the difference between the provider's usual and customary charges or a ceiling established by AHCA, whichever is lower, and the actual Medicaid payment under the current physician fee schedule. This funding mechanism would allow the medical schools to receive additional Medicaid reimbursements.

For example, assume that a patient receives a service from a medical school physician. The charges for this service typically vary depending on the payor source. These billing differences occur because of differing payment arrangements negotiated with private insurers and predetermined fee schedules established by Medicare and Medicaid. Thus, if the usual and customary charge is $5,000, the negotiated rate with a private insurer may be $3,150, while Medicare would reimburse $1,400 and Medicaid would pay $900. The proposed supplemental payment plan amendment would allow the medical school to bill Medicaid for an additional $4,100 to bring the total charge up to the usual and customary level. The federal/state match for the charge would be $2,416 federal and $1,684 state. The state would require the medical schools to transfer funds from general revenue or other sources equal to the state's matching portion to AHCA to enable the state to draw down the federal share.

AHCA estimates that the physician UPL program could generate $62 million in Fiscal Year 2002-03

AHCA, in consultation with the medical schools, has estimated that the proposed physician UPL program could generate an additional $62 million in federal funds from October 1, 2002, to June 30, 2003. These estimates assume that medical schools at the University of Florida (UF) in Gainesville and Jacksonville, the University of South Florida (USF), and the University of Miami (UM) through Jackson Memorial Hospital will be able to bill the Medicaid program for usual and customary rates retroactively from October 1, 2002. This estimate is based on the difference between the usual and customary charges and the actual Medicaid payments for physician services received by each medical school during Fiscal Year 2001-02. Exhibit 1 shows the estimated benefit by each medical school.

[1] The Department of Health and AHCA have not determined whether the proposed supplemental physician payments can be applied to NOVA or the Children's Medical Service Program at this time.

[2] Usual and customary charges are defined by the insurance industry as the charge for health care that is consistent with the average rate or charge for identical or similar services in a certain geographical area.

Exhibit 1
Estimates for Physician UPL by Each College of Medicine (in millions)
From October 1, 2002 to June 30, 2003

College	Total Charges	Medicaid Payments	Supplemental Charges	State Match	Federal Match[2]
UF—Gainesville/Jacksonville	$ 77.85	$ 19.42	$ 58.43	$24.05	$34.37
UM / Jackson Memorial Hospital	51.53	12.68	38.85	15.99	22.86
USF	11.25	3.60	7.65	3.15	4.50
NOVA University[1]	Not provided	Not provided	.23	.10	.13
Florida State University[1]	Not provided	Not provided	.23	.10	.13
Total	**$140.63**	**$ 35.70**	**$105.39**	**$ 43.39**	**$ 62.00**

[1] Amounts provided by NOVA Southeastern University and Florida State University physician practices. Not an AHCA estimate.

[2] Column may not add due to rounding.

Source: Florida Agency for Health Care Administration.

Issues

While the proposed UPL program has merit, there are several specific issues noted below that could hinder the state's ability to implement the physician UPL, some due to fiscal constraints and others due to unsettled policy questions. [3]

- Medical schools may experience cash flow problems if federal approval of the plan is delayed or if supplemental payments are delayed.
- Immediate reductions in general revenue to medical schools would increase the uncertainty of program success.
- Thirty-seven percent of the required matching dollars are under local government control (Jackson Memorial Hospital-Dade County Public Health Trust). Jackson Memorial Hospital administrators expressed concerns about the levels of risk versus the return on investment, which could jeopardize their participation.
- Federal Centers for Medicare and Medicaid Services officials have expressed concerns about the growing number of states submitting similar plan amendments and the potential implication on the federal budget. As a result, FCMS is reevaluating this policy, which may slow the approval process, limit states' flexibility in applying upper payment limits, and increase scrutiny of how states use supplemental payments.

Each of these issues may affect how Florida implements the physician UPL plan in the current fiscal year and creates uncertainty for future policy alternatives that likely will not be resolved unless and until the plan amendment receives federal approval.

Some medical schools have cash flow concerns

The proposed physician UPL program is based on the premise that each medical school will provide an intergovernmental transfer of funds to AHCA, to serve as the state match. [4] The agency will process the supplemental claims

[3] We identified these issues through interviews with administrators from AHCA, the state's medical schools deans and finance officers, program administrators in states with approved physician supplemental payment programs, and officials with the FCMS program. We also conducted analyses of financial documents provided by the colleges of medicine, reviewed federal regulations, and compared agency timelines against the experience of other states and the concerns of the federal government.

[4] For Fiscal Year 2002-03, medical schools will certify their expenditures from October 1, 2002, through June 30, 2003. The certification process allows AHCA to obtain federal dollars using past expenditures rather than using current available cash.

quarterly after it receives the transfers from the medical schools. AHCA will then distribute the supplemental claim payments to the respective schools. How and in what proportion the federal funds obtained through this process will be redistributed has yet to be determined. However, AHCA has proposed allocations of federal funds and reductions in general revenue. This proposal assumes FCMS will approve the proposed amendment at usual and customary charges and that the approval occurs by March 1, 2003.

Each of the public medical schools expressed concerns about cash flow and how program implementation may affect them. The University of Florida (UF) and the University of South Florida (USF) provided examples of these problems.

At any given time, UF (Gainesville and Jacksonville) and USF may not have cash readily available to submit to AHCA to serve as the state match. This problem relating to providing the state match could be mitigated if the medical schools received supplemental payments using the payment certification process which is based on prior expenditures. While the certification process does not require matching funds to be forwarded to AHCA, it sometimes results in the total supplemental payment being delayed. This is a concern because both schools have cash flow problems. Over the last year, operating cash for the UF at Gainesville has been as low as 14 days of reserves and the Jacksonville campus has had as low as 1 day of operating cash. While the amount of cash reserves has recently increased at UF-Jacksonville due to a recent bond issue, UF-Gainesville may experience cash flow difficulties under the proposed plan.

Other factors may contribute to these difficulties. For example, Medicare cut spending 5.4% in 2002, and will cut another 4.4% in 2003. These cuts will have a cumulative estimated impact of $4.1 million on UF's medical school revenue. The use of operating revenue for an intergovernmental transfer also may put the institutions in jeopardy of violating its bond covenants, which require a minimum amount of cash reserves.

While cash flow concerns are not currently an issue for USF, the availability of cash will likely become a limitation after July 1, 2003, when the university will deploy new accounting software and begin issuing warrants directly from the university. USF administrators expressed concerns that if federal supplemental payments could not be made within two days of the required intergovernmental transfer, it could have significant policy implications on how to cover other commitments.

However, other information suggests that the lack of cash may not be a significant issue. Administrators in Kentucky reported that they developed fund transfer procedures for their physician UPL program that "borrowed" and replaced medical school funds in 48 hours or less. They reported that this was implemented with some minor difficulties, but felt that Florida may not face the same challenges, especially if Florida relies on certified expenditures rather than intergovernmental transfers. They also reported that Kentucky's medical schools were able to use funds from sources other than general revenue to facilitate the federal drawdown.

Reductions in general revenue to the medical schools increase uncertainty

The state may choose to reduce general revenue provided to the medical schools on the assumption that any reductions will be more than offset by increased federal funding. However, due to the uncertain nature of the federal approval of this funding source, medical schools are concerned that general revenue reductions may not be restored if federal funding under this program is less than expected. Medical schools will benefit from this program only if FCMS allows them to

charge rates that will produce sufficient federal funds.

However, the federal government has imposed limits in other UPL programs that may justify medical school officials' concerns. For example, the federal government recently reduced its level of funding provided under the hospital UPL program from 150% to 100% of Medicare reimbursement rates. If the federal government reduces the amount that can be charged under the physician UPL program, medical schools may be at risk for a net reduction in funding unless all or part of the general revenue funding is restored.

The problem associated with reductions in general revenue is exacerbated by the manner in which general revenue is appropriated within the public universities. The majority of appropriated general revenue covers medical programs and services other than the colleges of medicine. A large proportion of general revenue goes to programs such as the schools of nursing, physical therapy, public health, veterinary medicine, and dentistry. Another portion of general revenue covers support and administrative services (e.g., medical libraries, finance). As a result, general revenue tied directly to the medical practice plans only equals between 17% and 25% of general revenue appropriated to the health science centers of each school. If the required state match exceeds this proportion, the medical schools will need to take funds from these other programs in order to make the required budget adjustment.

University of Miami medical school matching funds are contingent upon Jackson Memorial Hospital providing the intergovernmental transfer

The University of Miami (UM) is a private university that will require special arrangements in order for its medical school physicians to qualify for supplemental payments. UPL programs are usually limited to public facilities. However, UM's medical school is closely associated with a publicly-owned hospital (Jackson Memorial) that provides high levels of care to low-income individuals. Therefore, UM's supplemental payments will need to pass through Jackson Memorial. The hospital will be required to provide the intergovernmental transfer out of its own funds to facilitate the state's match. The hospital's board will want assurances that this arrangement has minimal risk while helping it provide services to its patients. It is uncertain how Jackson Memorial will partner with UM to facilitate this arrangement. This is a concern because UM/Jackson Memorial represents 37% of estimated supplemental charges that would be eligible for increased federal funding. If the hospital decides not to participate, the potential benefits from the program will be substantially reduced.

Uncertainty exists as to whether the federal government will approve Florida's plan amendment as submitted

The FCMS program is responsible for reviewing and approving Medicaid plan amendments. Three states (Kentucky, South Carolina, and Arkansas) have submitted similar payment mechanisms and received approval. However, FCMS officials report that they have recently received a number of plan amendments for supplemental payments for medical school physician services, including Florida's. While each state's plan review and approval will be based on the individual merits of its request, FCMS reported that the volume of plan amendments has required them to consider whether there are more general policy implications.

Some of the federal policy implications include whether FCMS has sufficient ability to limit expenditures relating to usual and customary charges as the upper payment limit for physicians because these charges are not addressed in current federal regulations. As such, FCMS is considering whether to limit physician charges to a blended mix of private

payor rates or to benchmark charges against Medicare. This could substantially reduce the amount of additional federal funds that Florida would receive. Other federal concerns relate to how states will use funds, specifically whether they will be used for Medicaid-related activities. Due to these concerns, FCMS officials indicated that they are carefully reviewing the individual nuances of the various plan amendments received.

During November 2002, Florida submitted its plan amendment to FCMS, which has 90 days to request additional information and technical corrections. FCMS officials indicated that its request for additional information should be returned to the state before mid-February. However, FCMS officials told us that there were some technical problems with Florida's amendment and that AHCA would be required to provide corrections and comment before receiving approval. After AHCA responds, FCMS has another 90 days to approve or reject the amendment. Thus, Federal approval could be delayed until mid-May.

Due to the volume of plan amendments and the potential policy and fiscal implications, FCMS officials stated that the timeframe presented by AHCA for physician UPL approval (by March 1, 2003) appears to be ambitious. They also cautioned that the amendment could be approved as submitted, but the upper payment limit could subsequently be reduced. While FCMS may approve the amendment as proposed, we believe it is premature to make this assumption. FCMS changes to Florida's plan could substantially affect the amount of additional federal matching funding the program could generate.

Policy Options

While all parties want to maximize Florida's Medicaid revenue, the Legislature may wish to consider four options to address the primary concerns raised by the affected parties.

Option 1—Delay making decisions on current-year general revenue reductions until FCMS approves the plan amendment. While this approach provides protections for the medical schools, it would not help the state reduce current-year general revenue.

Option 2—Maintain current-year general revenue appropriations for the medical schools even after plan approval is received, which would allow them to receive all supplemental physician payments through June 30, 2003. This option would provide significant federal revenues to offset shortfalls caused by recent Medicare reductions and low reimbursement rates for Medicaid services. However, the state's general revenues would not financially share in any of the benefits. This option is most favorable to the medical schools.

Option 3—Make some reductions in general revenue appropriations to the medical schools for the fourth quarter of the current fiscal year contingent upon plan amendment approval, as submitted, by March 1, 2003. To reduce uncertainty, the Legislature could adopt proviso or contingency language that would restore general revenue funds in proportion to those funds not recovered by federal supplemental physician payments. This proviso or contingency language would protect medical schools that participate in the supplemental physician payment program. This option minimizes the risk to the medical schools while allowing the state to share in the benefits.

Option 4— This option is similar to Option 3. Reduce all general revenue appropriations to the medical schools for the fourth quarter of the current fiscal year, and "reimburse" the amount received from the federal match. Under this option, proposed by AHCA, medical schools may be at financial risk if the plan amendment does not produce sufficient revenues to offset general revenue reductions. While this option is advantageous to the state, it could cause hardships to the medical schools and reduce access to care for low-income

patients if it results in a net loss of revenue. For this reason, AHCA's proposal does indicate, "reductions in the Department of Education's budget are contingent upon FCMS approval of the physician UPL plan amendment." Medical school officials expressed concern about this option because there is no assurance that the contingency language will be included in the proposed budget amendment.

The options described above also are valid for making decisions relating to the adoption of the 2003-04 fiscal year budget. Final implications of the UPL plan will not become known until the federal government gives final approval to the plan. Thus, the Legislature may need to make its Fiscal Year 2003-04 appropriations decisions in the absence of final data. The Legislative Budget Commission may need to re-address these issues if federal approval is not received before the end of the 2003 Legislative Session.

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