

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Health and Human Services Appropriations Committee

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**BILL:** CS/SB 556

**INTRODUCER:** Health Regulation Committee and Senator Gaetz and Others

**SUBJECT:** Medicaid Program/Low-Income Pool Plan

**DATE:** March 9, 2009      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bell	Wilson	HR	<b>Fav/CS</b>
2.	Kynoch	Peters	HA	<b>Favorable</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The CS for SB 556 increases the membership of the Low-Income Pool (LIP) Council from 17 members to 24 members. The seven additional members include:

- One nonvoting member from the Agency for Health Care Administration (AHCA) to serve as chair of the LIP Council;
- Three members appointed by the Speaker of the House of Representatives; and
- Three members appointed by the President of the Senate.

The six members appointed by the Speaker of the House of Representatives and the President of the Senate must not be employed by any entity receiving funds from the low-income pool. In addition, the bill requires that one of the members appointed by the Speaker of the House of Representatives must be a physician, and that one of the members appointed by the President of the Senate must be a physician.

The estimated cost of per diem and reimbursement for travel expenses associated with the increased membership of the council is minimal and can be absorbed within the AHCA's budget authority.

The bill specifies that no member of the LIP Council will be subject to s. 11.045, F.S., relating to lobbying before the Legislature, or s. 112.3215, F.S., relating to lobbying before the executive branch, unless the member is also a full-time employee of a public entity.

This bill substantially amends s. 409.911, F.S.

## II. Present Situation:

The federal government is the largest payer of medical assistance expenditures in the Florida Medicaid program. The federal share of Medicaid expenditures, known as the Federal Medical Assistance Percentage (FMAP), is based on the ratio of state per capita income to the national per capita income. The current Florida FMAP is 55.4 percent.<sup>1</sup> In addition to the Medicaid fee-for-service program, there are several federal/state programs that provide supplemental Medicaid payments to ensure access to hospital inpatient and specialty care for more than 2.3 million Medicaid recipients and access to primary care and safety-net hospitals for the over 3.7 million uninsured. These programs include disproportionate share hospital (DSH) programs and the low-income pool (LIP) program. The LIP and DSH programs qualify for the FMAP, but each state must meet its state match requirement. In order to maximize federal funds, counties and local taxing districts contribute to the state match requirement via intergovernmental transfers (IGT), the process of transferring public funds between government entities. In Florida, many counties and special taxing authorities transfer funds to the state to support the state's share of the DSH and the LIP programs that supplement Medicaid payments for hospitals. Not all counties donate IGT funds to fund the match of supplemental Medicaid payments for hospitals.

The DSH payments supplement standard Medicaid payment rates to help offset certain unreimbursed hospital costs. The DSH payments compensate hospitals for the additional costs of serving a disproportionate share of low-income individuals who either are part of the Medicaid program or are uninsured. Under federal Medicaid law, each state receives an annual DSH allotment. Florida's federal DSH allotment for FY 2008-2009 is \$188,384,000<sup>2</sup>. The Florida DSH programs are codified in law in ss. 409.911 – 409.9119, F.S.

Chapter 2005-133, L.O.F. , authorized the AHCA to apply for a Medicaid reform waiver. Although the primary focus of Medicaid reform was implementing consumer focused Medicaid managed care, it also included a change in Medicaid supplemental funding programs for hospitals. The Medicaid reform waiver was authorized in ch. 2005-358, L.O.F., during the 2005 B Special Legislative Session, and the LIP was created as a primary funding source for Medicaid-participating hospitals. The LIP program also authorized supplemental Medicaid payments to provider access systems, such as federally qualified health centers, county health departments, and hospital primary care programs, to cover the cost of providing services to Medicaid recipients, the uninsured and the underinsured.

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<sup>1</sup> The current FMAP is for the federal fiscal year from 10/1/08-9/30/09.

<sup>2</sup> Federal Register, Volume 74, No. 15

### **Low-Income Pool Council**

Chapter 2005-358, L.O.F., directed the AHCA to create the Medicaid LIP Council, codified in s. 409.911(9), F.S. The Council makes recommendations on the financing and distribution of the LIP and the DSH funds, advises the AHCA on the development of the LIP plan required by the Centers for Medicare and Medicaid Services waiver, and advises the AHCA on the distribution of hospital funds used to adjust inpatient hospital rates, rebase rates, or otherwise exempt hospitals from reimbursement limits as financed by IGT. The Council is required to submit its findings and recommendations to the Governor and Legislature each year, by February 1. Prior to the LIP Council, the DSH Council performed a similar function. The LIP Council members are appointed by the Secretary of the AHCA. By law, the LIP Council consists of 17 members that include:

- Three representatives of statutory teaching hospitals;
- Three representatives of public hospitals;
- Three representatives of nonprofit hospitals;
- Three representatives of for-profit hospitals;
- Two representatives of rural hospitals;
- Two representatives of units of local government which contribute funding; and
- One representative of family practice teaching hospitals.

The LIP Council meetings are subject to Florida's Sunshine Law, codified in s. 286.011, F.S. In 2008 the Council met six times. All meetings were noticed in the Florida Administrative Weekly and were open to the public.

The LIP Council was responsible for making allocation recommendations for \$1,979,485,119 for FY 2009-2010. The funds include \$53 million in state general revenue and \$854.8 million in local taxes collected from 22 contributors combined to draw down the federal match of \$1.1 billion. The Council recommended funding four supplemental Medicaid programs: \$1,000.2 million for the LIP, \$663.4 million for the hospital exemptions program, \$251.7 million for the DSH program and \$64.1 million in Medicaid rate buy-backs. The Council recommendations include detailed distribution methodologies for each program.

The FY 2009-2010 LIP funds will be allocated by the Legislature in the General Appropriations Act. The legislature has the final authority for allocating all supplemental Medicaid payments to hospitals and other provider access systems in the General Appropriations Act.

### **III. Effect of Proposed Changes:**

**Section 1** Amends s. 409.911, F.S., to add seven members to the LIP Council. The new members include:

- One nonvoting member from the AHCA to serve as chair of the Council;
- Three members appointed by the Speaker of the House of Representatives; and
- Three members appointed by the President of the Senate.

The bill requires that one of the three members appointed by the Speaker of the House of Representative and that one of the three members appointed by the President of the Senate must be a physician; the remaining four appointees cannot be physicians. All of the LIP Council

members appointed by the Speaker of the House of Representatives and the President of the Senate must not be employed by any entity receiving funds from the low-income pool.

The bill specifies that no member of the LIP Council will be subject to s. 11.045, F.S., relating to lobbying before the legislature, or s. 112.3215, F.S., relating to lobbying before the executive branch, unless the member is also a full-time employee of a public entity.

**Section 2** The bill provides an effective date of July 1, 2009.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The LIP Council meetings are held in multiple locations around Florida, and members are authorized to receive per diem and reimbursement for travel expenses, as provided in s. 112.061, F.S. The AHCA has indicated that any expenses incurred as a result of the additional seven LIP Council members can be absorbed into its current base operating budget.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 33-36 of the bill exempt LIP Council members from being subject to s. 11.045, F.S., or s. 112.2315, F.S., unless the member is also a full-time employee of a public entity. It is unclear whether this is the intended consequence. Section 11.045, F.S., governs legislative lobbyists and provides for registration, reporting requirements, exemptions, and penalties. Section 112.2315, F.S., provides similar requirements for executive branch lobbyists. The bill appears to require the LIP Council members who are full-time employees of a “public entity” to register as lobbyists and comply with the provisions of s. 11.045, F.S., or s. 112.2315, F.S. It is also unclear which LIP Council members are employed by a “public entity,” because a public entity is not defined in the bill nor defined in the laws governing the Medicaid program, pursuant to ss. 409.901-409.920, F.S. A public entity is defined elsewhere in Florida law, as provided in ss. 287.133, 287.134, 255.072, 279.02, and 153.91, F.S., but these definitions are inconsistent and unrelated to the Medicaid program.

On lines 37 and 39 of the bill, there are references to the Speaker of the House of Representatives appointing a physician and the President of the Senate appointing a physician. The bill does not define which health care practitioners qualify as a physician or reference an existing physician definition in Florida law. Physicians licensed under Florida law, include allopathic physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, and naturopathic physicians, licensed pursuant to chapters 458, 459, 460, 461, and 462, F.S., respectively. In addition, the Florida Statutes include various definitions of physician. For instance, there is a narrow definition of a physician in s. 765.512, F.S., which describes a physician as only licensed allopathic and osteopathic physicians. There is a broader physician definition in, s. 39.01, F.S., which also includes dentists, optometrists, and interns or residents.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Health Regulation on March 4, 2009:**

The committee substitute adds members to the LIP Council, rather than repealing the Council, and specifies the qualifications of and appointing authority for the new members.

- B. **Amendments:**

None.