

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 89 Florida Kidcare Program  
**SPONSOR(S):** Health Care Appropriations Subcommittee; Diaz  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	13 Y, 0 N	Poche	Poche
2) Health Care Appropriations Subcommittee	12 Y, 0 N, As CS	Pridgeon	Pridgeon
3) Health & Human Services Committee	15 Y, 0 N	Poche	Calamas

### SUMMARY ANALYSIS

The Florida Kidcare Program (Kidcare) was created by the Florida Legislature in 1998 in response to the federal enactment of the State Children's Health Insurance Program in 1997, later known more simply as the Children's Health Insurance Program (CHIP). CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. The state statutory authority for Kidcare is found in part II of ch. 409, F.S.

Kidcare consists of Medicaid, MediKids, the Children's Medical Services Network, and Florida Healthy Kids. Kidcare coverage is funded by state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the federal Social Security Act. Families also contribute to the cost of the coverage under the Title XXI-funded components of Kidcare based on their household size, income, and other eligibility factors. For families with incomes above the income limits for premium assistance or who do not otherwise qualify for assistance, Kidcare also offers an option under the Healthy Kids component and the Medikids component for the family to obtain coverage for their children by paying the full premium.

Federal law restricted the eligibility of documented immigrants, including children and pregnant women, for social service benefits and programs such as Medicaid and CHIP. Documented immigrants were ineligible to apply for and received these benefits for 5 years, beginning with the date of their arrival in the United States. In 2009, the Children's Health Insurance Program Reauthorization Act permitted states to remove the 5 year waiting period and allow certain children immediate eligibility for Medicaid and CHIP coverage.

CS/HB 89 removes the 5-year waiting period for lawfully present children in Florida, which makes those children immediately eligible for health care coverage through Kidcare. The bill clearly states that eligibility is not being extended to undocumented immigrants.

The bill provides an appropriation of \$28,538,785 in recurring funds from the Medical Care Trust Fund and \$296,429 from the Grants and Donations Trust Fund for the purpose of implementing the provisions of this bill. There is no state General Revenue Fund impact as the general revenue need is offset by a reduction in the Emergency Medical Assistance for Noncitizens program. See Fiscal Comments.

The bill provides an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Florida Kidcare Program

The Florida Kidcare Program (Kidcare or Program) was created by the Florida Legislature in 1998 in response to the federal enactment of the State Children's Health Insurance Program in 1997, later known more simply as the Children's Health Insurance Program (CHIP). The federal authority for the CHIP is located in Title XXI of the Social Security Act. Initially authorized for 10 years and then recently re-authorized through 2019, with federal funding through 2015 by the Patient Protection and Affordable Care Act<sup>1</sup> and additional funding through 2017 by the Medicare Access and CHIP Reauthorization Act,<sup>2</sup> the CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. The state statutory authority for the Program is found in part II of ch. 409, F.S.

Kidcare encompasses four programs:

- Medicaid for children;
- The Medikids program;
- The Children's Medical Services Network; and
- The Florida Healthy Kids program.

Kidcare coverage is funded by state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the federal Social Security Act. Families also contribute to the cost of the coverage under the Title XXI-funded components of Kidcare based on their household size, income, and other eligibility factors. For families with incomes above the income limits for premium assistance or who do not otherwise qualify for assistance, Kidcare also offers an option under the Healthy Kids component and the Medikids component for the family to obtain coverage for their children by paying the full premium. Eligibility for the Program components that are funded by Title XXI is determined in part by age and household income as follows:

- Medicaid for Children: Title XXI funding is available from birth until age 1 for family incomes between 185 percent and 200 percent of the Federal Poverty Level (FPL).
- Medikids: Title XXI funding is available from age 1 until age 5 for family incomes between 133 percent and 200 percent of the FPL.
- Healthy Kids: Title XXI funding is available from age 5 until age 6 for family incomes between 133 percent and 200 percent of the FPL. For age 6 until age 19, Title XXI funding is available for family incomes between 100 percent and 200 percent of the FPL.
- Children's Medical Services Network: Title XXI and Title XIX funds are available from birth until age 19 for family incomes up to 200 percent of the FPL for children with special health care needs. The Department of Health assesses whether children meet the program's clinical requirements.

Kidcare is administered jointly by the Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), the Department of Health (DOH), and the Florida Healthy Kids Corporation (FHKC). Each entity has specific duties and responsibilities under Kidcare as detailed in part II of ch. 409, F.S. The DCF determines eligibility for Medicaid, and the FHKC processes all Kidcare applications and determines eligibility for the CHIP, which includes a Medicaid screening and referral process to the DCF, as appropriate.

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<sup>1</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, s. 10203.

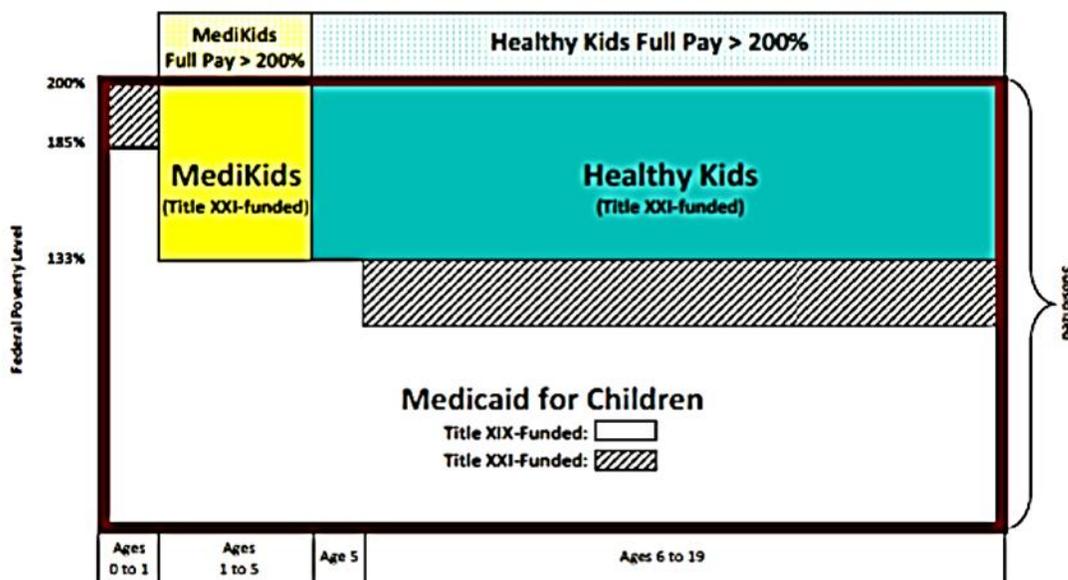
<sup>2</sup> Pub. L. No. 114-10, s. 301.

To enroll in Kidcare, families utilize a form that is both a Medicaid and CHIP application. Families may apply using the paper application or an online application. Both formats are available in English, Spanish, and Creole. Income eligibility is determined through electronic data matches with available databases or, in cases where income cannot be verified electronically, through submission of current pay stubs, tax returns, or W-2 forms. Children are then determined to be eligible or ineligible for the appropriate Program component based on the applicable income standards.

Currently, FHKC receives all KidCare applications and screens for Medicaid eligibility. Families can apply for Medicaid for children or the Title XXI programs using the KidCare application. Families may also apply for Medicaid using the DCF form, Request for Assistance. The DCF Request for Assistance form cannot be used to apply for the Title XXI programs. Families can apply for both programs online. KidCare applications for children potentially eligible for Medicaid are electronically sent to the DCF for a complete Medicaid eligibility determination. If the child is not eligible for Medicaid, FHKC is notified to continue the Title XXI eligibility determination. FHKC determines eligibility for all of the Title XXI programs.

The following chart summarizes eligibility and funding for Kidcare.<sup>3</sup>

## Florida KidCare Eligibility



Eff. 1/1/2014

**CMS Network**  
(Title XIX and Title XXI)

The 2015-2016 General Appropriations Act appropriated \$417,791,567 for the Title XXI (CHIP) Program.<sup>4</sup> As of January 2016, a total of 2,374,446 children are enrolled in Kidcare.<sup>5</sup>

### Eligibility of Alien Children for Medicaid and CHIP

The Immigration and Nationality Act (INA)<sup>6</sup> was created in 1952 to consolidate statutes governing immigration law. The INA defines the term “alien” as “any person not a citizen or national of the United

<sup>3</sup> Florida KidCare Coordinating Council, *2014 Annual Report and Recommendations*, page 4, available at [http://www.floridakidcare.org/council/wp-content/uploads/2014/08/2014\\_Annual\\_Report.pdf](http://www.floridakidcare.org/council/wp-content/uploads/2014/08/2014_Annual_Report.pdf) (last viewed on February 1, 2016).

<sup>4</sup> Email correspondence from Health Care Appropriations Subcommittee staff, January 7, 2016 (on file with Health and Human Services Committee staff).

<sup>5</sup> Agency for Health Care Administration, *Florida KidCare Enrollment Report-January 2016* (on file with Health and Human Services Committee staff).

<sup>6</sup> Pub. L. No. 82-414

States.”<sup>7</sup> Generally, under the INA, an alien is not eligible for any State or local public benefit, including health benefits, unless the alien is:

- A qualified alien,
- A nonimmigrant alien under the INA, or
- An alien who is paroled into the United States under the INA.<sup>8</sup>

The INA permits a state to provide an alien, who is not lawfully present in the United States, eligibility for any state or local public benefit for which the alien would otherwise be ineligible, but only through the enactment of a state law which affirmatively provides for such eligibility.<sup>9</sup>

The enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“Reconciliation Act”)<sup>10</sup> placed limitations on federal funding for health coverage of immigrant families. The law imposed a 5-year waiting period on certain groups of qualified aliens, including most children and pregnant women who were otherwise eligible for Medicaid.<sup>11</sup> Medicaid coverage for individuals subject to the 5-year waiting period and for those who do not meet the definition of qualified alien was limited to treatment of an emergency medical condition. The 5-year waiting period also applies to children and pregnant women under the CHIP.

### Children’s Health Insurance Program Reauthorization Act of 2009

The Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA)<sup>12</sup> permits states to cover certain children and pregnant women who are “lawfully residing in the United States” through both Medicaid and the CHIP, notwithstanding certain provisions in the Reconciliation Act. CHIPRA gives the state the option to eliminate the 5-year waiting period for these lawfully resident immigrant children and pregnant women. States may elect to cover these groups under Medicaid only or under both Medicaid and the CHIP. The law does not permit states to cover these new groups only in the CHIP, without also extending the option to Medicaid.

On July 1, 2010, the Centers for Medicare and Medicaid Services sent a letter to state health officials regarding Medicaid and CHIP coverage for lawfully residing children and pregnant women. The letter states that children and pregnant women who fall into one of the following categories will be considered lawfully present. These individuals are eligible for Medicaid and CHIP coverage, if the state elects the new option under CHIPRA, and the child or pregnant woman meets the state residency requirements and other Medicaid or CHIP eligibility requirements.

- A qualified alien as defined in section 431 of Reconciliation Act (8 U.S.C. §1641).
- An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.
- An alien who has been paroled into the U.S. pursuant to section 212(d)(5) of the INA (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings.
- An alien who belongs to one of the following classes:
  - Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
  - Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
  - Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
  - Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;

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<sup>7</sup> Id. at s. 101(3)

<sup>8</sup> 8 U.S.C. §1621(a)(1)-(3)

<sup>9</sup> 8 U.S.C. §1621(d)

<sup>10</sup> Pub. L. No. 104-193

<sup>11</sup> Id. at s. 403(a)

<sup>12</sup> Pub. L. No. 111-3

- Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
- Aliens currently in deferred action status; or
- Aliens whose visa petition has been approved and who have a pending application for adjustment of status.
- A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. §1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. §1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days.
- An alien who has been granted withholding of removal under the Convention Against Torture.
- A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. §1101(a)(27)(J)).
- An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. §1806(e).
- An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

### Effect of Proposed Changes

The bill adds the definition of “lawfully residing child” to the Florida Kidcare Act.<sup>13</sup> To meet the definition, a child must be lawfully present in the United States and meet state residency requirements for CHIP or Medicaid, and may be eligible for assistance under CHIPRA.

The bill makes a lawfully residing child immediately eligible for health benefits coverage under Kidcare, thereby removing the 5-year waiting period imposed under the Reconciliation Act and exercising the state’s option to do so as provided under CHIPRA.

The bill clearly states that Kidcare eligibility is not extended to an undocumented immigrant by the changes to s. 409.814, F.S. The bill also clearly states that Kidcare eligibility for optional Medicaid payments or other services is not extended to an undocumented immigrant through the changes to s. 409.904, F.S.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 409.811, F.S., relating to definitions relating to Florida Kidcare Act.

**Section 2:** Amends s. 409.814, F.S., relating to eligibility.

**Section 3:** Amends s. 409.904, F.S., relating to optional payments for eligible persons.

**Section 4:** Amends s. 624.91, F.S., relating to the Florida Health Kids Corporation Act.

**Section 5:** Provides an appropriation.

**Section 6:** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The state would earn \$28,538,785 in additional federal revenues and collect \$296,429 in additional family premiums under this legislation.

##### 2. Expenditures:

<sup>13</sup> SS. 409.810, F.S., through 409.821, F.S.

The Agency for Health Care Administration provides the following fiscal impact analysis of the bill on both the CHIP and Medicaid programs:<sup>14</sup>

Title XXI (CHIP)

As federal funds are available for these expenditures, the state would incur its share of this additional cost. For SFY 2016-17, the state will pay 4.305% of the qualified expenditures and the federal government under Title XXI covers the remaining 95.695%. This analysis assumes that funding will continue for the Title XXI KidCare eligible children. Average monthly caseloads of 2,077 additional children are estimated to be covered.

Total Additional Costs	\$4,777,482
Less: Federal Funds under Title XXI	\$4,288,143
Less: Grants & Donation Trust Fund	<u>\$296,429</u>
<b>State Funds required - General Revenue</b>	<b>\$192,909</b>

Funds from the Grants and Donation Trust Fund, derived from family payment of premiums, are applied to reduce state and federal share.

Medicaid Services funded by Title XXI funds

This analysis assumes that Medicaid services would be funded by Title XXI FMAP per section 214 of the federal CHIPRA legislation. Average monthly caseloads of 15,097 additional children are estimated to be covered.

Total Additional Cost with no Family Premiums	\$27,599,882
Less: Federal Funds under Title XIX	\$26,411,708
Less: Grants & Donation Trust Fund	<u>\$0</u>
<b>State Funds required - General Revenue</b>	<b>\$1,188,175</b>

Potential Medicaid EMA cost offset

This analysis assumes that the Medicaid EMA program would see an overall caseload reduction of 1,418 beneficiaries receiving Medicaid services.

Total Savings with no Family Premiums	(\$3,542,150)
Less: Federal Funds under Title XIX	(\$2,161,066)
Less: Grants & Donations Trust Fund	<u>\$0</u>
State Funds required - General Revenue	(\$1,381,084)

The total fiscal impact for both CHIP and Medicaid funded under Title XIX and XXI in SFY 2016-17 for the provisions in this bill, including the potential Medicaid EMA cost offset, are estimated to be \$28,835,214 in federal funds and family premiums with no impact to General Revenue.

The bill provides an appropriation of \$28,538,785 in recurring funds from the Medical Care Trust Fund and \$296,429 from the Grants and Donations Trust Fund for the purpose of implementing the provisions of this bill.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

<sup>14</sup> Agency for Health Care Administration, 2016 Agency Legislative Bill Analysis- HB 89, January 15, 2016 (on file with Health and Human Services Committee staff).

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care providers may see an increase in patients who receive health insurance coverage through the Program sooner than they would see them under current law. Children who are lawfully present in the state will be eligible for health insurance coverage, potentially increasing the frequency of access to medical care. Individuals and families accessing coverage under the Title XXI program would be required to pay family premiums totaling \$296,429.

D. FISCAL COMMENTS:

The fiscal impact from increased enrollment in the Title XIX and Title XXI program will be offset by a reduction in expenditures under the Emergency Medical Assistance for Noncitizens (EMA) program.<sup>15</sup> Medicaid currently pays for emergency services for part of the population of children who will be newly eligible for coverage under the bill.

During fiscal year 2014-15, a total of 3,192 children received EMA coverage, totaling \$7,970,967 in expenditures.<sup>16</sup> It is estimated that 50 percent of these EMA expenditures were for children who were in the 5-year waiting period and who would have qualified for and enrolled in CHIP or Medicaid coverage under the provisions of this bill.

This analysis estimates that 42.42% of the EMA expenditures from fiscal year 2014-15 were for children who were in the waiting period and would have qualified for and enrolled in CHIP or Medicaid coverage.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DOH, the DCF, and the AHCA have appropriate rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

AHCA will need to submit to the federal Centers for Medicare and Medicaid Services (CMS) an amendment to the Medicaid and CHIP State Plans for approval to implement the changes proposed in the bill. It is unknown how long it will take CMS to approve the amendments, which may delay implementation of the changes made by the bill.

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<sup>15</sup> Noncitizens, who are Medicaid eligible except for citizenship, may be eligible for Medicaid to cover a serious medical emergency. If so, Medicaid will cover necessary treatment until the medical emergency has abated. Before Medicaid may be authorized, applicants must provide proof from a medical professional stating the treatment was due to an emergency condition. The proof also must include the date or dates of the emergency.

<sup>16</sup> Supra, FN 14 at page 4.

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

On January 27, 2016, the Health Care Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided an appropriation of \$28,538,785 in recurring funds from the Medical Care Trust Fund and \$296,429 from the Grants and Donations Trust Fund for the purpose of implementing this act.

The analysis is drafted to the committee substitute.