

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.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 248

INTRODUCER: Senator Garcia

SUBJECT: Medical Assistance Funding for Lawfully Residing Children

DATE: October 27, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Lloyd | Stovall | HP | Pre-meeting |
| 2. | | | AHS | |
| 3. | | | AP | |

I. Summary:

SB 248 extends Medicaid and Children’s Health Insurance Program (CHIP) eligibility to a “lawfully residing child” who is not a citizen or national of the United States but meets other applicable eligibility qualifications of Medicaid or CHIP. The federal programs permit states to cover this population if states elect to do so.

The bill defines “lawfully residing child” to conform to the federal program eligibility requirements and deletes references to “qualified alien.” The bill specifies that the statutory changes do not extend Kidcare program eligibility or Medicaid eligibility to undocumented immigrants.

The fiscal impact for the 2016-2017 fiscal year for matching funds is estimated to be \$1,336,537 in state general revenue.

The bill is effective July 1, 2016.

II. Present Situation:

The Medicaid Program

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare & Medicaid Services. The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the Agency for Health Care Administration (AHCA) and financed with federal and state funds. Over 3.7 million Floridians are currently enrolled in

Medicaid, and the program’s estimated expenditures for the 2015-2016 fiscal year are over \$23.4 billion.¹

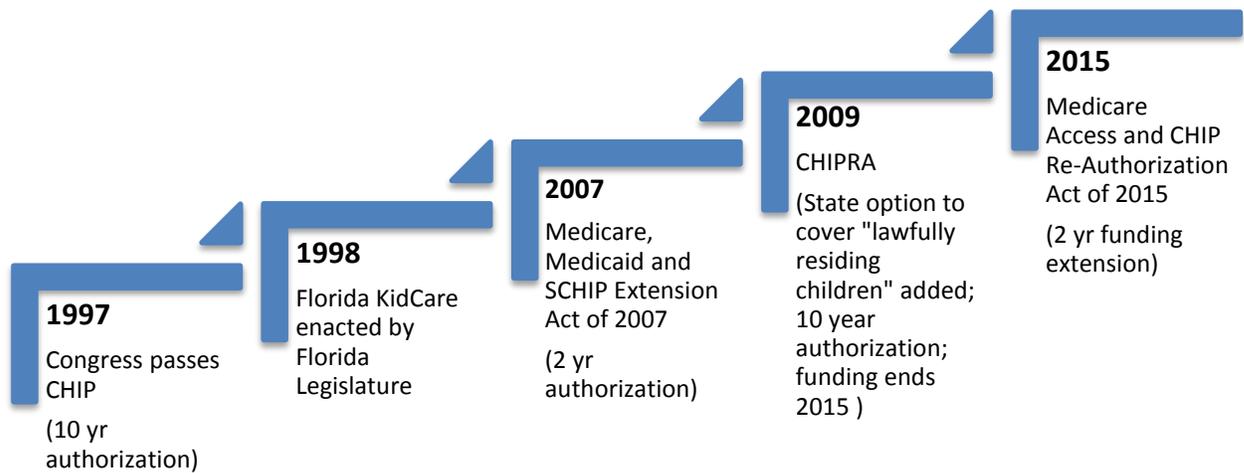
Eligibility for Florida Medicaid is based on a number of factors, including age, household or individual income, and assets. State Medicaid eligibility payment guidelines are provided in statute under s. 409.903, F.S., (Mandatory Payments for Eligible Persons) and s. 409.904, F.S., (Optional Payments for Eligible Persons). Minimum coverage thresholds are established in federal law for certain population groups, such as children.

Florida Kidcare Program

The Florida Kidcare Program (Kidcare) was created in 1998 by the Florida Legislature in response to the federal enactment of the Children’s Health Insurance Program (CHIP) in 1997.² Initially authorized for 10 years, the program was re-authorized³ by Congress through 2019 with federal funding through September 30, 2015.

To address re-authorization again, federal funding for CHIP was extended for an additional 2 year period through 2017 in April 2015.⁴ Authorization for federal funding had been set to expire on September 30, 2015 without such action by Congress and the President. Figure 1 below illustrates the re-authorization timeline for CHIP since its inception.

Figure 1-Milestones in the Medicaid and CHIP Program



¹ Office of Economic and Demographic Research, *Social Services Estimating Conference of August 4, 2015*, <http://edr.state.fl.us/Content/conferences/medicaid/medltexp.pdf> (last visited Oct. 27, 2015).

² Social Security Administration, *Title XXI - State Children’s Health Insurance Program*, http://www.ssa.gov/OP_Home/ssact/title21/2100.htm (last visited Oct. 27, 2015).

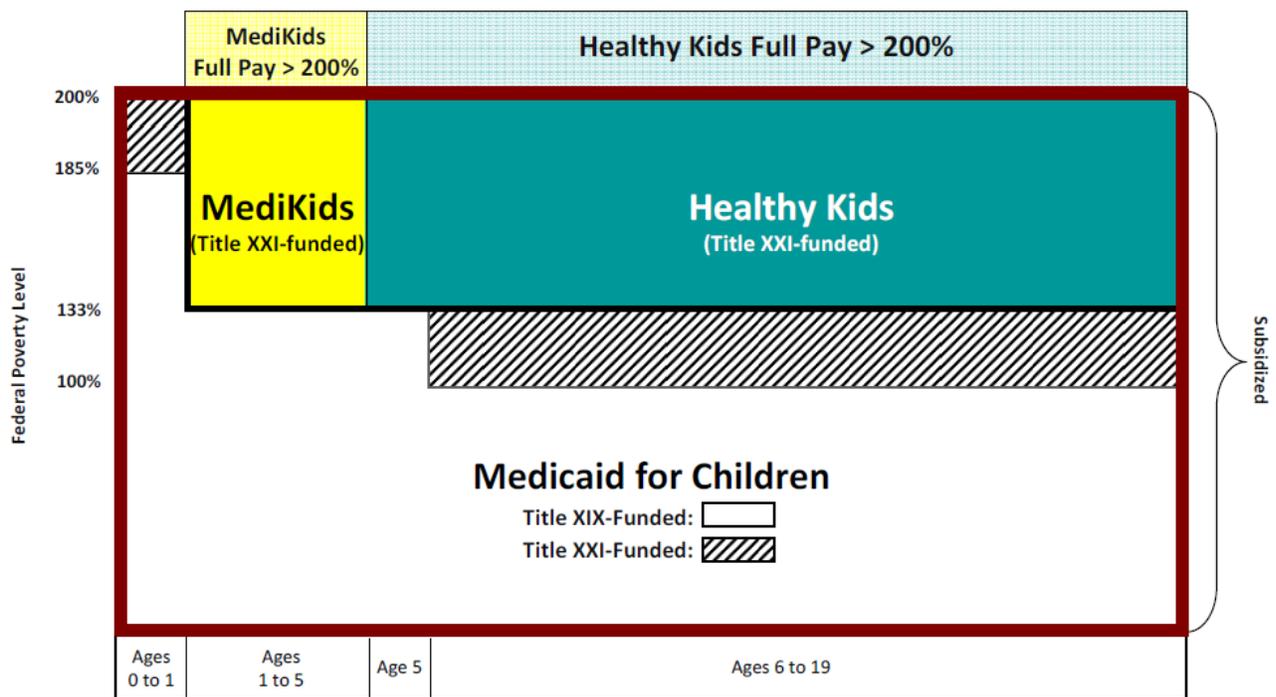
³ Children’s Health Insurance Re-Authorization Act of 2009, Pub. Law 2009-3, <http://www.gpo.gov/fdsys/pkg/PLAW-111publ3/pdf/PLAW-111publ3.pdf> (last visited Oct. 27, 2015).

⁴ See Pub. L. No. 114-10, s. 301 (2015).

CHIP provides subsidized health insurance to uninsured children who do not qualify for Medicaid but who have family incomes under 200 percent of the federal poverty level (FPL) and meet other eligibility criteria.

The state statutory authority for Kidcare is found under part II of ch. 409, ss. 409.810 through 409.821, F.S. Kidcare includes four operating components: Medicaid for children, Medikids, the Children’s Medical Services Network (CMS Network), and the Florida Healthy Kids Corporation (FHKC). The following chart illustrates the different program components and funding sources:⁵

Florida KidCare Eligibility



Eff. 1/1/2014

CMS Network (Title XIX and Title XXI)

Coverage for the non-Medicaid components are funded through Title XXI of the federal Social Security Act. Title XIX of the Social Security Act (Medicaid), state funds, and family contributions also provide funding for the different components. Family contributions under the Title XXI component are based on family size, household incomes, and other eligibility factors. Families above the income limits for premium assistance or who are not otherwise eligible for

⁵ State of Florida, Florida KidCare Program, State Plan Amendment #25 to Florida’s Title XXI Child Health Insurance Plan (July 1, 2014), p. 5. available at https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/program_policy/FLKidCare/PDF/KidCare_Program_Amen_dment_25_to_Title_XXI_2014-07-01.pdf (last visited Oct. 27, 2015).

premium assistance are offered the opportunity to participate in Kidcare at a non-subsidized rate (full pay). Currently, the income limit for premium assistance is 200 percent of the FPL.

Several state agencies and the FHKC share responsibilities for Kidcare. The AHCA, the Department of Children and Families (DCF), the Department of Health (DOH), and the FHKC have specific duties under Kidcare as detailed in part II of ch. 409, F.S. The DCF determines eligibility for Medicaid. The FHKC receives all Kidcare applications and screens for Medicaid eligibility and determines eligibility for all Title XXI programs, referring applications to the DCF, as appropriate, for a complete Medicaid determination.

To enroll in Kidcare, families may apply online or use a paper application that determines eligibility for multiple programs, including Medicaid and CHIP, for the entire family. Applications are available in English, Spanish, and Creole. Eligibility for premium assistance is determined first 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.

The 2015-2016 General Appropriations Act appropriated \$405,203,249 for the Title XXI (CHIP) components.⁶ As of September 1, 2015, a total of 2,391,259 children were enrolled in Kidcare.⁷

| PROGRAM | ENROLLMENT |
|--|-------------------|
| Medicaid - Title XIX funded | 2,054,470 |
| Medicaid - Title XXI funded | 119,999 |
| Healthy Kids - Total | 176,001 |
| Children’s Medical Services Network | 11,429 |
| Medikids | 29,360 |
| Total Florida Kidcare Enrollment: | 2,391,259 |

Under s. 409.814, F.S., Kidcare’s eligibility guidelines are described in conformity with current Title XIX and Title XXI terminology and requirements for each funding component. A child who is an alien, but does not meet the definition of a qualified alien in the United States, is specifically excluded from eligibility from Title XXI premium assistance.

Eligibility of Alien Children for Medicaid and the CHIP

The Immigration and Nationality Act (INA) was created in 1952 to consolidate a variety of statutes governing immigration law. The INA has been amended numerous times since 1952. The INA defines the term “alien” as “any person not a citizen or national of the United States.”⁸ Nationals of the United States are citizens of the United States, or persons who, though not a citizen of the United States, owe permanent allegiance to the United States.⁹

⁶ Chapter 2015-232, ss. 167-172, Laws of Florida.

⁷ Agency for Health Care Administration, *Florida Kidcare Enrollment Report - September 2015*, (on file with the Senate Committee on Health Policy).

⁸ See 8 U.S.C. s. 1101(a)(3).

⁹ See 8 U.S.C. s. 1101(a)(21) and (22).

Generally, under the INA, an alien is not eligible for any state or local public benefit, including health benefits, unless the alien is:¹⁰

- A qualified alien;¹¹
- A nonimmigrant alien;¹² or
- An alien who is paroled into the United States under the INA.¹³

There are limited exceptions to the ineligibility for public benefits for treatment of emergency medical conditions, emergency disaster relief, immunizations, and services such as soup kitchens, crisis counseling and intervention, and short-term shelter.¹⁴

The INA gives states the authority to provide that an alien who is not lawfully present in the United States is eligible for any state or local public benefit for which the alien would otherwise not be eligible, but only through the enactment of a state law which affirmatively provides for such eligibility.¹⁵

The enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193), placed limitations on federal funding for health care 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.¹⁶ 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. The PRWORA did not affect eligibility of undocumented aliens, and these individuals remain ineligible for services, except for emergency services under Medicaid.

The Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Public Law No. 111-3), permits states to cover certain children and pregnant women who are "lawfully residing in the United States" in both Medicaid and CHIP, notwithstanding certain provisions under PRWORA. States may elect to cover these groups under Medicaid only or under both Medicaid and CHIP. The law does not permit states to cover these new groups in CHIP without also extending the option to Medicaid children.¹⁷

Prior to the enactment of the CHIPRA, the term "lawfully residing" had not been used to define eligibility for either Medicaid or CHIP; however, the term has been used by the U.S. Department of Agriculture (USDA) and the Social Security Administration (SSA). The federal Centers for Medicare & Medicaid Services utilized existing regulations from these agencies to define a lawful presence for Medicaid and CHIP through a letter to state health officials dated July 1,

¹⁰ See 8 U.S.C. s. 1621(a).

¹¹ See 8 U.S.C. s.1641(b) and (c). There are nine classes of qualified aliens.

¹² See 8 U.S.C. s. 1101(a)(15). There are 22 classes of nonimmigrant aliens identified in this section.

¹³ See 8. U.S.C. s. 1182(d)(5).

¹⁴ See 8 U.S.C. s. 1621(b).

¹⁵ See 8 U.S.C. s. 1621(d).

¹⁶ Section 403 of Pub. L No. 104-193, H.R. 3734,104th Congress (Aug. 22, 1996).

¹⁷ See 42 U.S.C. s. 1397gg(e).

2010.¹⁸ 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, if the state elects the 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 PRWORA;
- An alien in non-immigrant 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 United States pursuant to section 212(d)(5) of the INA 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:
 - Temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. s. 1160 or 1255a, respectively);
 - Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. s. 1254a), and pending applicants for TPS who have been granted employment authorization under 8 C.F.R. s. 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - Family Unity beneficiaries pursuant to section 301 of Public Law 101-649, as amended;
 - Deferred Enforced Departure (DED) pursuant to a decision made by the president of the United States;
 - Deferred action status; or,
 - Visa petition has been approved and has a pending application for adjustment of status;
- A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. s. 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. s. 1231) or under the Convention Against Torture, who has been guaranteed 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. s. 1101 (a)(27)(J));
- An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. s. 1806(e); or
- An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

As of January 2015, 28 states cover lawfully residing children under Medicaid or CHIP without the 5-year waiting period.¹⁹

¹⁸ Centers for Medicare and Medicaid Services, *Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women*, State Health Official Letter, CHIPRA#17 (July 1, 2010), <http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO10006.pdf> (last visited Oct. 27, 2015).

¹⁹ Based on results from a national survey by the Kaiser Commission on Medicaid and the Uninsured and the Georgetown University Center for Children and Families, 2015, <http://kff.org/report-section/modern-era-medicare-and-medicare-and-chip-eligibility/> (last visited Oct. 27, 2015).

III. Effect of Proposed Changes:

Section 1 amends definitions under s. 409.811, F.S., to permit certain non-citizen children to receive federal financial premium assistance under Medicaid or the Children’s Health Insurance Program (CHIP).

The definition of a “lawfully residing child” is added as a child who:

- Is present in the United States as defined under 8 C.F.R. s. 103.12(a);
- Meets Medicaid or CHIP residency requirements, and
- May be eligible for federal financial premium assistance under s. 214 of CHIPRA and related federal regulations.

The definition of a “resident” is amended to substitute a “lawfully residing child” rather than a “qualified alien.”

The definition for a “qualified alien” is deleted from s. 409.811, F.S.

Section 2 amends s. 409.814, F.S., to replace a reference to “qualified alien” with “lawfully residing child” when referring to children who are not eligible for Title XXI funded premium assistance. The bill also clarifies that Kidcare program eligibility is not being extended to undocumented immigrants.

Section 3 amends s. 409.904, F.S., relating to optional Medicaid payments, to designate that a child younger than 19 years of age who is a lawfully residing child as defined in s. 409.811, F.S., is eligible for Medicaid under s. 409.903, F.S. The bill also clarifies that Medicaid eligibility is not being extended to undocumented immigrants.

Section 4 amends s. 624.91, F.S., the Florida Healthy Kids Corporation Act, to conform to changes made under the bill and update references to modified or deleted terms.

Section 5 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Expanding eligibility to additional children who may currently be uninsured under SB 248 may have a positive impact on health care providers that currently provide health care services to this population without compensation or at a discount. Accordingly, uncompensated care costs incurred by health care providers may be reduced if the insured population is increased.

C. Government Sector Impact:

The total state funds required for the 2015-2016 fiscal year for recurring and non-recurring state costs is related to enrollment of an estimated 11,323 children in Medicaid and an additional 2,077 children per month in CHIP for the first 12 months.

Section 214 of the federal CHIPRA legislation allows states to claim the CHIP enhanced federal match rate for both CHIP and Medicaid children during their 5-year waiting period. Additionally, family premiums collected from Title XXI enrollees will be used to offset federal and state costs.

During SFY 2015-16, under Title XXI (CHIP), the break-out is:

| Enrollment Costs | |
|--|---------------|
| Total Additional Cost | \$4,672,735 |
| Less Federal Funds under Title XXI (96.1%) | (\$4,191,532) |
| Less Grants & Donation Trust Fund (6.39%) | (\$298,811) |
| State General Revenue Required (3.90%) | \$182,393 |

During SFY 2015-2016, under Title XIX (Medicaid), the break-out is:

| Enrollment Costs | |
|---|----------------|
| Total Additional Cost | \$27,677,330 |
| Less Federal Funds under Title XXI (95.83%) | (\$26,523,185) |
| Less Grants & Donation Trust Fund | (\$0) |
| State General Revenue Required (9.81%) | \$1,154,145 |

The total annual state general revenue impact of the bill is estimated to be \$1,336,537.²⁰

Both a Medicaid and CHIP state plan amendment will need to be submitted for federal approval to implement the eligibility changes.

²⁰ Agency for Health Care Administration, *Senate Bill 248 Analysis* (Aug. 27, 2015), pp. 5-8, (on file with the Senate Committee on Health Policy).

Department of Children and Families

In addition to the enrollment costs above, the DCF estimates the bill will generate administrative costs for workload increases related to additional enrollment and non-recurring costs for programming changes to the eligibility system. These costs are indeterminate and will be absorbed within existing resources.²¹

Florida Healthy Kids Corporation

The Florida Healthy Kids Corporation reports no additional impact.²²

Children's Medical Services Network

Enrollment in the Children's Medical Services Network component is incorporated in the Title XXI and Title XIX projections. The DOH reports no fiscal impact.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.811, 409.814, 409.904, and 624.91.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²¹ Department of Children and Families, *Senate Bill 294 Analysis* (Jan. 21, 2015) (on file with the Senate Committee on Health Policy).

²² Email from Fred Knapp (10/27/2015) (on file with the Senate Committee on Health Policy).

²³ Department of Health, *Senate Bill 248 Analysis* (Oct. 16, 2015) (on file with the Senate Committee on Health Policy).