The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Bean, Chair
Senator Sobel, Vice Chair

MEETING DATE: Monday, November 2, 2015
TIME: 4:00—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Bean, Chair; Senator Sobel, Vice Chair; Senators Braynon, Flores, Gaetz, Galvano, Garcia, Grimsley, and Joyner

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**Audrey Brown,** Florida Association of Health Plans - Comments on Preliminary HEDIS Quality Scores for Statewide Medicaid Managed Care		Presented
2	**SB 238** Grimsley (Identical H 4007)	Medical Assistant Certification; Repealing provisions relating to certification of a medical assistant by the American Association of Medical Assistants or as a Registered Medical Assistant by the American Medical Technologists, etc. HP 11/02/2015 Favorable AHS FP	Favorable Yeas 7 Nays 0
3	**SB 242** Braynon (Similar CS/H 81)	Infectious Disease Elimination Pilot Program; Citing this act as the “Miami-Dade Infectious Disease Elimination Act (IDEA)”; authorizing the University of Miami and its affiliates to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; providing that the possession, distribution, or exchange of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; requiring the pilot program to collect certain data; prohibiting the collection of personal identifying information from program participants, etc. HP 11/02/2015 Fav/CS AHS FP	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 248** Garcia (Similar H 89)	Medical Assistance Funding for Lawfully Residing Children; Defining the term "lawfully residing child"; revising eligibility for the Florida Kidcare program to conform to changes made by the act; clarifying that undocumented immigrants are excluded from eligibility; providing eligibility for optional payments for medical assistance and related services for certain lawfully residing children; clarifying that undocumented immigrants are excluded from eligibility for optional Medicaid payments or related services, etc. HP 11/02/2015 Favorable AHS AP	Favorable Yeas 7 Nays 0
5	**SB 450** Grimsley (Similar H 107)	Physical Therapy; Revising the definition of the term "practice of physical therapy"; providing that a licensed physical therapist who holds a specified doctoral degree may use specified letters in connection with her or his name or place of business; revising the terms and specified letters prohibited from being used by certain unlicensed persons, etc. HP 11/02/2015 Favorable AHS FP	Favorable Yeas 7 Nays 0
	Consideration of proposed bill:		
6	**SPB 7024**	OGSR/Information Held by the Florida Center for Brain Tumor Research; Amending provisions which provide an exemption from public records requirements for information held by the Florida Center for Brain Tumor Research; removing the scheduled repeal of the exemption, etc.	Submitted as Committee Bill Yeas 7 Nays 0
	Other Related Meeting Documents		

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 238
INTRODUCER:	Senator Grimsley
SUBJECT:	Medical Assistant Certification
DATE:	October 27, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Favorable**
2.			AHS	
3.			FP	

I. Summary:

SB 238 amends s. 458.3485(3), F.S., to remove a voluntary provision which recognized two certification organizations for medical assistants.

The bill is effective July 1, 2016.

II. Present Situation:

Medical Assistants (MAs) provide medical assistance under the direct supervision and responsibility of a physician. An MA is not a licensed profession in Florida.

Under such an arrangement, an MA may perform certain administrative and clinical procedures, including:

- Performing clinical procedures, such as:
  - Aseptic procedures;
  - Taking vital signs;
  - Preparing patients for the physician's care;
  - Performing venipunctures and nonintravenous injections; and
  - Observing and reporting patients' signs or symptoms.
- Administering basic first aid;
- Assisting with patient examinations or treatments;
- Operating office medical equipment;
- Collecting routine laboratory specimens as directed by the physician;
- Administering medication as directed by the physician;
- Performing basic laboratory procedures;
- Performing office procedures including all general administrative duties required by the physician; and

- Performing dialysis procedures, including home dialysis.[1]

According to the United States Department of Labor statistics, Florida has the third highest number of MAs in the country with 40,770.[2] The mean hourly wage is $14.13 or an annual mean wage of $29,400.[3] Nationally, the mean hourly wage is $15.01 and mean annual wage is $31,220 with the 90th percentile at $20.56 and $42,760, respectively.[4] Overwhelmingly, MAs find employment within the offices of physicians, health care practitioners, or medical and surgical hospitals.[5] In the next 10 years, job growth in this occupation is expected to increase by 29 percent nationally.[6]

Certification of Medical Assistants

Under current Florida law, an MA is not required to be certified. The law, however, recognizes two certifying entities for MAs. An MA may be certified by either the American Association of Medical Assistants (AAMA) or as a Registered Medical Assistant (RMA) by the American Medical Technologists (AMT).[7] Both of these organizations are non-profits, but only the AAMA certifies medical assistants exclusively.[8] At least two other organizations, both for-profits that also certify several allied health professions, offer certifications for medical assistants. The AAMA has offered exams the longest, since 1963.[9]

To be eligible for the AAMA certification examination, applicants must fall into one of three eligibility criteria:

- Completing student[10] or recent graduate[11] from a medical assisting program accredited by the Commission on Accreditation of Allied Health Education Program (CAAHEP) or the Accrediting Bureau of Health Education Schools (ABHES);
- Non-recent graduate of a CAAHEP or ABHES accredited medical assisting program; or
- MA re-certificant.[12]

[1] Section 458.3485, F.S.
[2] United States Department of Labor, Bureau of Labor Statistics, *Occupational Employment and Wages, May 2014(31-9092 Medical Assistants)* http://www.bls.gov/oes/current/oes319092.htm (last visited Oct. 27, 2015).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] United States Department of Labor, Bureau of Labor Statistics, *Employment Projections (2012-2022),* http://data.bls.gov/projections/occupationProj (last visited Oct. 27, 2015).
[7] Section 458.3485(3), F.S.
[8] American Association of Medical Assistants, *How the CMA (AAMA) stands apart*, http://www.aama-ntl.org/docs/default-source/employers/cma-stands-apart.pdf?sfvrsn=10, p. 1, (Updated May 2014) (Last visited Oct. 27, 2015).
[9] *Id.*
[10] A completing student may take the exam no more than 30 days prior to completing their formal education and practicum.
[11] Recent graduates are defined by the AAMA as those students who apply for the exam within 12 months of graduation.
[12] American Association of Medical Assistants, *Exam Eligibility Requirements*, http://www.aama-ntl.org/cma-aama-exam/application-steps/eligibility (Last visited Oct. 27, 2015).

The non-refundable fee for the examination is $125. For non-recent graduates, or re-certificants who are not members of the AAMA, the examination fee is $250.[13] In 2014, the AAMA reported over 75,000 MAs were credentialed through its organization.[14]

An accredited medical assisting program includes academic and clinical training in areas such as human anatomy, physiology, and pathology; medical terminology, record keeping and accounting; laboratory techniques; pharmacology; first aid; office practices and patient relations; and medical law and ethics.[15] A practicum or an unpaid, supervised on-site work experience in an ambulatory health care setting is also a required component of the certification process.[16]

Certifications are current for 60 months and may be re-certified through either re-examination or by continuing education.[17] Expired certifications greater than 60 months may only be re-certified through examination.[18]

The AMT is accredited by the National Commission for Certifying Agency (NCCA) through April 2018.[19] In its 2012-13 Annual Report, AMT reported certification of 38,518 members as RMAs.[20]

Certification for its nine different specialties through AMT may be accomplished through passage of the appropriate examinations and compliance with one of the following five pathways:

- Graduation from an accredited medical assisting program with a minimum of 720 clock hours, including 160 hours of clinical externship within the last 4 years of application for certification;
- Graduation of a formal medical services training program of the United States Armed Forces within 4 years of application for certification or if greater than 4 years from application, provide evidence of relevant work experience in 3 of the last 5 years prior to application;
- Employment as a medical assistant for a minimum of 5 out of the last 7 years with both clinical and administrative duties, no more than 2 years as an instructor in a post-secondary medical assistant program, and proof of high school graduation;
- Employment as an instructor in an accredited medical assisting program, completion of a course of instruction in healthcare discipline related to medical assisting that includes both clinical and administrative duties, and if the applicant has less than 3 years teaching experience, but more than 1 year, documentation of at least 3 years of clinical experience in a healthcare profession in which the scope is equal to the medical assisting scope of practice; or

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[13] American Association of Medical Assistants, *Exam Application Steps*, *http://www.aama-ntl.org/cma-aama-exam/application-steps#.VhPzlE3ot9A* (last visited Oct. 27, 2015).
[14] American Association of Medical Assistants, *History - 2014*, *http://www.aama-ntl.org/about/history* (last visited Oct. 27, 2015).
[15] American Association of Medical Assistants, *CAAHEP and ABHEP Accredited Programs*, http://www.aama-ntl.org/medical-assisting/caahep-abhes-programs#.VhLZRk3ot9A (last visited Oct. 27, 2015).
[16] *Id.*
[17] American Medical Technologies, *Recertification Policies*, http://www.aama-ntl.org/continuing-education/recertification-policies#.VhPxpk3ot9A (Last visited Oct. 27, 2015).
[18] *Id.*
[19] American Medical Technologies, *2012-13 Annual Report*, http://www.americanmedtech.org/Portals/0/PDF/AMTIE-About%20Us/About%20Us/AMT_2013AnnualRpt_web.pdf p. 6, (Last visited Oct. 27, 2015).
[20] *Id* at 11.

- Passage of another certification examination that has been approved by the AMT Board of Directors and the applicant has meet one of the other eligibility routes.[21]

The application fee, exam cost, and initial annual fee is $100.[22] RMAs are required to maintain their certifications through an annual fee. The current fee is $50.[23]

At least two other organizations certify MAs, the National Healthcareer Association (NHA) and the National Center for Competency Testing (NCCT). Under the NHA, individuals who have completed a training program for a Medical Assistant and have graduated high school qualify to take the certification examination for a Clinical Medical Assistant (CCMA).[24] The examination fee is $149. A certification is valid for 2 years and must be maintained through continuing education credits of at least 10 credit hours every certification cycle.[25]

The National Center for Competency Testing (NCCT) is also accredited by the NCCA and offers three mechanisms for eligibility for exam eligibility:

- Current or graduated student in a Medical Assistant program from an NCCT authorized school within the past 5 years;
- Two years of verifiable full-time experience as a Medical Assistant practitioner within the past 5 years; or
- Completion of Medical Assistant training or its equivalent during U.S. Military service within the past 5 years.[26]

Examination fees through the NCCT vary based on the route taken by the applicant. For current students, graduates testing within 6 months of graduation date, and military, the examination cost is $90. For all other applicants, the examination cost is $135.[27] Annual recertification is required and includes both a recertification fee and the completion of continuing education courses. Fourteen clock hours are required each year per certification.[28]

III. Effect of Proposed Changes:

Section 1 repeals subsection (3) of s. 458.3485, F.S., to remove the voluntary certification provision through the American Association of Medical Assistants (AAMA) or as a Registered Medical Assistant by the American Medical Technologists. The statute would be silent as to

[21] American Medical Technologists, *Medical Assistant*, http://www.americanmedtech.org/GetCertified/RMAEligibility.aspx See Route 5: Other Recognized Exam (Last visited Oct. 27, 2015).
[22] American Medical Technologies, *Stay Certified*, *http://www.americanmedtech.org/StayCertified.aspx* (Last visited Oct. 27, 2015).
[23] *Id.*
[24] National Healthcareer Association Candidate Handbook, http://www.nhanow.com/docs/default-source/pdfs/handbooks/nha-candidate-handbook.pdf?sfvrsn=2 , p. 8, (Last visited Oct.27, 2015).
[25] *Supra* note 24 at 31.
[26] National Center for Competency Testing, *Medical Assistant (NCMA)*, *https://www.ncctinc.com/Certifications/MA.aspx* (Last visited Oct. 27, 2015).
[27] National Center for Competency Testing, *Examination Fees*, *https://www.ncctinc.com/documents/ExamFees.pdf* (Last visited Oct. 27, 2015).
[28] National Center for Competency Testing, *Guide to the Re-Certification Process*, p. 4, https://www.ncctinc.com/Documents/Guide%20to%20the%20Recertification%20Process.pdf (Last visited Oct. 27, 2015).

certification or to the identification of any specific certification organization for medical assistants.

The bill is effective 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:

Removal of a reference to two specific voluntary, certification programs in statute may expand the number of individuals who choose the other certification organizations that were not named in the statute that also certify medical assistants. Even though the certification was voluntary, the removal of the reference may still have an impact on those organizations that were either named or not named in the provision.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 458.3485 of the Florida Statutes.

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.

By Senator Grimsley

21-00310-16 2016238__

A bill to be entitled

An act relating to medical assistant certification; repealing s. 458.3485(3), F.S., relating to certification of a medical assistant by the American Association of Medical Assistants or as a Registered Medical Assistant by the American Medical Technologists; providing an effective date.

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

Section 1. Subsection (3) of section 458.3485, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2016.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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:	CS/SB 242
INTRODUCER:	Health Policy Committee and Senators Braynon and Flores
SUBJECT:	Infectious Disease Elimination Pilot Program
DATE:	November 2,, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.			AHS	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 242 creates the Miami-Dade Infectious Disease Elimination Act (IDEA), which authorizes the University of Miami and its affiliates to establish a single sterile needle and syringe exchange pilot program in Miami-Dade County as a means to prevent the transmission of blood-borne diseases. The bill provides duties and requirements for the operation of the pilot program.

The bill prohibits state, county, or municipal funds from being used to operate the pilot program. Instead, the pilot program must be funded through grants and donations from private resources.

The pilot program expires on July 1, 2020.

The bill has no fiscal impact. The bill has an effective date of July 1, 2016.

II. Present Situation:

Needle and syringe exchange programs (NSEPs) provide sterile needles and syringes in exchange for used needles and syringes to reduce the transmission of human immunodeficiency virus (HIV) and other blood-borne infections associated with the reuse of contaminated needles and syringes by injection-drug-users (IDUs).

Intravenous Drug Use in Florida

The majority of Florida counties with high rates of persons living with HIV/AIDS (PLWHA), and with a high IDU-associated risk, in 2013 were in the southeast or central parts of the state.[1] The Department of Health (DOH) reports that 50 to 90 percent of HIV-infected IDUs are also co-infected with Hepatitis C Virus.[2] The chart below displays data from 2013 of the 11 Florida counties with the highest incidence of PLWHA with an IDU-associated risk.[3]

County	Total PLWHA Cases	Total IDU	Percent IDU
Miami-Dade	26,445	3,240	12%
Broward	17,214	2,132	12%
Palm Beach	7,964	1,481	19%
Orange	7,508	1,304	17%
Hillsborough	6,262	1,198	19%
Duval	5,584	999	18%
Pinellas	3,675	728	20%
Lee	1,777	310	18%
St. Lucie	1,550	309	20%
Volusia	1,408	340	24%
Brevard	1,300	273	21%
STATE TOTAL	101,977	17,368	17%

Intravenous Drug Use in Miami-Dade County

In a 2011 study, researchers from the University of Miami estimated that there are more than 10,000 IDUs in Miami and that one in five of these IDUs are HIV positive while one in three are Hepatitis C Virus positive.[4] The researchers also found that IDUs in Miami—a city without a needle and syringe exchange program—had over 34 times the adjusted odds of disposal of a used syringe in a public location relative to IDUs in San Francisco—a city with multiple exchange programs.[5]

Needle and Syringe Exchange Programs

In the mid-1980s, the National Institute on Drug Abuse (NIDA) undertook a research program to develop, implement, and evaluate the effectiveness of intervention strategies to reduce risk behaviors and prevent the spread of HIV/AIDS, particularly among IDUs, their sexual partners, and offspring. The studies found that comprehensive strategies—in the absence of a vaccine or

[1] Florida Dep't of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2014* (power point slide 18) (revised Jan. 29, 2015), *available at* http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/_documents/hiv-aids-slide-sets/2014/idu-2014.pdf (last visited Sept. 19, 2015).
[2] Florida Dep't of Health, *HIV Disease and Hepatitis C Virus (HCV) Co-Infection – Florida, 2013* (Revised Sept. 3, 2014) (on file with the Senate Committee on Health Policy).
[3] *Supra* note 1. Percent IDU adjusted to conform to previous data charts.
[4] Hansel E. Tookes, et al. "A comparison of syringe disposal practices among injection drug users in a city with versus a city without needle and syringe programs." Drug and Alcohol Dependence, June 2012, Vol. 123, Issue 1, pp. 255-259, *available at* http://www.ncbi.nlm.nih.gov/pubmed/22209091 (last visited Sept. 21, 2015).
[5] *Id*.

cure for AIDS—are the most cost effective and reliable approaches to prevent new blood-borne infections. The strategies NIDA recommends are community-based outreach, drug abuse treatment, and sterile syringe access programs, including needle and syringe exchange programs (NSEPs). In general, these strategies are referred to as harm reduction. [6]

Needle and syringe exchange programs provide free sterile needles and syringe units and collect used needles and syringes from IDUs to reduce transmission of blood-borne pathogens, including HIV, hepatitis B virus, and hepatitis C virus (HCV). In addition, the programs help to:

- Increase the number of drug users who enter and remain in available treatment programs;
- Disseminate HIV risk reduction information and referrals for HIV testing and counseling and drug treatment;
- Reduce injection frequency and needle-sharing behaviors;
- Reduce the number of contaminated syringes in circulation in a community; and
- Increase the availability of sterile needles, thereby reducing the risk that new infections will spread.[7]

The first sanctioned NSEP in the world began in Amsterdam, the Netherlands, in 1984. The first sanctioned program to operate in North America originated in Tacoma, Washington, in 1988. As of June 2014, there are 194 NSEPs in 33 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Indian Nations.[8]

Safe Sharps Disposal

Improperly discarded sharps pose a serious risk for injury and infection to sanitation workers and the community. "Sharps" is a medical term for devices with sharp points or edges that can puncture or cut skin.[9]

Examples of sharps include:

- Needles - hollow needles used to inject drugs (medication) under the skin;
- Syringes - devices used to inject medication into or withdraw fluid from the body;
- Lancets - also called "fingerstick" devices - instruments with a short, two-edged blade used to get drops of blood for testing;
- Auto injectors - including epinephrine and insulin pens - syringes pre-filled with fluid medication designed to be self-injected into the body;
- Infusion sets - tubing systems with a needle used to deliver drugs to the body; and

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[6] National Institute of Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services, *Principles of HIV Prevention in Drug-Using Populations: A Research-Based Guide* (March 2002), *available at* http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20(17).pdf (last visited Sept. 21, 2015).

[7] *Id*, at 18. *See also* World Health Organization, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users* (2004) pp. 28–29, *available at* http://www.who.int/hiv/pub/idu/pubidu/en/ (last visited Sept. 21, 2015).

[8] North American Syringe Exchange Network, *Syringe Services Program Coverage in the United States* (June 2014), *available at* http://www.amfar.org/uploadedFiles/_amfarorg/On_the_Hill/2014-SSP-Map-7-17-14.pdf (last visited Sept. 21, 2015).

[9] U.S. Food and Drug Administration, *Needles and Other Sharps (Safe Disposal Outside of Health Care Settings)*, (Jan. 27, 2014) *available at:* http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/Sharps/ (last visited Sept. 21, 2015).

- Connection needles/sets - needles that connect to a tub to transfer fluids in and out of the body.[10]

Used needles and other sharps pose a dangerous risk to people and animals if not properly disposed as they can spread disease and cause injury. On November 8, 2011, the Federal Drug Administration (FDA) launched a new website for patients and caregivers on the safe disposal of sharps.[11] The most common infections from such injuries are Hepatitis B (HBV), Hepatitis C (HCV), and Human Immunodeficiency Virus (HIV).[12] The FDA's guidelines for disposal are to never place loose needles or other sharps into household or public trash cans or recycling bins, and never to flush them down the toilet.[13]

Federal Ban on Funding Needle and Syringe Exchange Programs

In 1988, Congress enacted an initial ban on the use of federal funds for NSEPs which remained in place until 2009. In 2009, Congress passed the 2010 Consolidated Appropriations Act, which removed the ban on federal funding of NSEPs. In July 2010, the U.S. Department of Health and Human Services issued implementation guidelines for programs interested in using federal dollars for NSEPs.[14]

However, on December 23, 2011, President Barack Obama signed the 2012 omnibus spending bill that reinstated the ban on the use of federal funds for NSEPs, which reversed the 111th Congress's 2009 decision to allow federal funds to be used for NSEPs.[15] The ban on federal funding for NSEPs remains in effect.

Florida Comprehensive Drug Abuse Prevention and Control Act

In Florida, the term "drug paraphernalia" is defined as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.[16]

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or

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[10] *Id.*
[11] U.S. Food and Drug Administration, *Improperly Discarded "Sharps" Can Be Dangerous,* http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm278763.htm#1 (last visited Sept. 21, 2015).
[12] *Supra*, note 10.
[13] *Id.*
[14] Matt Fisher, Center for Strategic and International Studies, *A History of the Ban on Federal Funding for Syringe Exchange Programs*, SmartGlobalHealth.org (Feb. 6, 2012), *available at* http://www.smartglobalhealth.org/blog/entry/a-history-of-the-ban-on-federal-funding-for-syringe-exchange-programs/ (last visited Sept. 21, 2015).
[15] *Id.*
[16] Section 893.145, F.S.

- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S.

Any person who violates this provision commits a first degree misdemeanor.[17]

It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act, or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates this provision commits a third degree felony.[18]

A court, jury, or other authority, when determining in a criminal case whether an object constitutes drug paraphernalia, must consider specified facts surrounding the connection between the item and the individual arrested for possessing drug paraphernalia. A court or jury is required to consider a number of factors in determining whether an object is drug paraphernalia, such as proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.[19]

Federal Law Exemption

Any person authorized by local, state, or federal law to manufacture, possess, or distribute drug paraphernalia is exempt from the federal drug paraphernalia statute.[20]

III. Effect of Proposed Changes:

Section 1 titles the bill as the "Miami-Dade Infectious Disease Elimination Act ("IDEA")."

Section 2 amends s. 381.0038, F.S., to create a sterile needle and syringe exchange pilot program in Miami-Dade County.

The bill authorizes the University of Miami and its affiliates to establish a single sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot program may operate at a fixed location or through a mobile health unit. The pilot program is designed to offer the free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes as a means to prevent the transmission of HIV, AIDS, viral hepatitis, or other blood-borne diseases.

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[17] A first degree misdemeanor is punishable by up to 1-year imprisonment in a county jail, a fine of up to $1,000, or both. *See* ss. 775.082 and 775.083, F.S.
[18] A third degree felony is punishable by up to 5 years in state prison, a fine not to exceed $5,000, or both. *See* ss. 775.082 and 775.083, F.S.
[19] Section 893.146, F.S.
[20] 21 U.S.C. § 863(f)(1).

The bill provides that the pilot program must provide for maximum security of exchange sites and equipment, including:

- An accounting of the number of needles and syringes in use;
- The number of needles and syringes in storage;
- Safe disposal of returned needles; and
- Any other measure required to control the use and dispersal of needles and syringes.

The pilot program must operate a one-to-one exchange, whereby participants receive one sterile needle and syringe unit in exchange for each used one. In addition to the needle and syringe exchange, the pilot program must make available:

- Educational materials;
- HIV, AIDS, and viral hepatitis counseling and testing;
- Referral services to provide education regarding HIV, AIDS, viral hepatitis, and other blood-borne disease transmission; and
- Drug-abuse prevention and treatment counseling and referral services.

The bill specifies that the possession, distribution, or exchange of needles or syringes as part of the pilot program is not a violation of any law. However, a pilot program staff member, volunteer, or participant is not immune for criminal prosecution for:

- Possession of needles or syringes that are not a part of the pilot program; or
- Redistribution of needles or syringes in any form, if acting outside the pilot program.

The pilot program must collect data for annual and final reporting purposes, including information on:

- The number of participants served;
- The number of needles and syringes exchanged and distributed;
- The demographic profiles of the participants served;
- The number of participants entering drug counseling and treatment;
- The number of participants receiving testing for HIV, AIDS, viral hepatitis, or other blood-borne diseases, and
- Other data deemed necessary for the pilot program.

The bill specifies that personal identifying information may not be collected from a participant for any purpose.

State, county, or municipal funds may not be used to operate the pilot program and the pilot program must be funded through grants and donations from private resources and funds.

The bill provides that the pilot program will expire July 1, 2020.

Section 3 creates an undesignated section of Florida law to provide a severability clause, providing that if any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the bill that can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

Section 4 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:

The University of Miami will be responsible for securing funding through grants and donations from private sources. According to the Department of Health, the needle exchange site must obtain a Biomedical Waste Operating Permit as a sharps collection program in accordance with Chapter 64E-16, Florida Administrative Code, through the Department's Miami-Dade Environmental Health office.

C. Government Sector Impact:

The pilot program may reduce state and local government expenditures for the treatment of blood-borne diseases associated with intravenous drug use in Miami-Dade County. As one example, the state and local governments currently pay for medical expenditures through a number of programs for patients with AIDS, such as Medicaid, the AIDS Drug Assistance Program, and the AIDS Insurance Continuation Program. In 2010 dollars, the lifetime treatment of an HIV infection is $379,668.[21]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the pilot program to collect various data for the purpose of annual reports and the program's final report, including "other data deemed necessary for the pilot program." The

[21] Centers for Disease Control, *HIV Cost-effectiveness*, http://www.cdc.gov/hiv/prevention/ongoing/costeffectiveness/ (last visited Oct. 27, 2015).

bill does not provide guidance as to standards under which data may be deemed necessary or which entity may deem data to be necessary. Furthermore the bill does not identify to whom the annual and final reports are to be submitted.

VIII. Statutes Affected:

This bill substantially amends section 381.0038 of the Florida Statutes.

IX. 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 Policy on November 2, 2015:
The CS added county and municipal funds as other sources of public funding that may not be used to operate the pilot program. The CS also removed the requirement for the Office of Program Policy Analysis and Government Accountability to submit a report on the pilot program.

B. Amendments:

None.

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

135326

LEGI42SLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/02/2015	.	
	.	
	.	
	.	

The Committee on Health Policy (Braynon) recommended the following:

Senate Amendment (with title amendment)

Delete lines 121 - 132

and insert:

(e) State, county, or municipal funds may not be used to operate the pilot program. The pilot program shall be funded through grants and donations from private resources and funds.

(f) The pilot program shall expire July 1, 2020.

========== T I T L E A M E N D M E N T ==========

135326

And the title is amended as follows:

Delete lines 17 - 25

and insert:

from program participants; prohibiting state, county, or municipal funds from being used to operate the pilot program; requiring the pilot program to be funded through private grants and donations; providing for expiration of the pilot program; providing for severability; providing an effective date.

By Senator Braynon

36-00294-16 2016242__

A bill to be entitled

An act relating to an infectious disease elimination pilot program; creating the "Miami-Dade Infectious Disease Elimination Act (IDEA)"; amending s. 381.0038, F.S.; authorizing the University of Miami and its affiliates to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; establishing the pilot program criteria; providing that the possession, distribution, or exchange of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a pilot program staff member, volunteer, or participant may be prosecuted; requiring the pilot program to collect certain data; prohibiting the collection of personal identifying information from program participants; prohibiting state funds from being used to operate the pilot program; requiring the pilot program to be funded through private grants and donations; providing for expiration of the pilot program; requiring the Office of Program Policy Analysis and Government Accountability to submit a report and recommendations regarding the pilot program to the Legislature; providing for severability; providing an effective date.

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

Section 1. This act may be cited as the "Miami-Dade

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

36-00294-16 2016242__

Infectious Disease Elimination Act (IDEA)."

Section 2. Section 381.0038, Florida Statutes, is amended to read:

381.0038 Education; sterile needle and syringe exchange pilot program.—The Department of Health shall establish a program to educate the public about the threat of acquired immune deficiency syndrome.

(1) The acquired immune deficiency syndrome education program shall:

(a) Be designed to reach all segments of Florida's population;

(b) Contain special components designed to reach non-English-speaking and other minority groups within the state;

(c) Impart knowledge to the public about methods of transmission of acquired immune deficiency syndrome and methods of prevention;

(d) Educate the public about transmission risks in social, employment, and educational situations;

(e) Educate health care workers and health facility employees about methods of transmission and prevention in their unique workplace environments;

(f) Contain special components designed to reach persons who may frequently engage in behaviors placing them at a high risk for acquiring acquired immune deficiency syndrome;

(g) Provide information and consultation to state agencies to educate all state employees; ~~and~~

(h) Provide information and consultation to state and local agencies to educate law enforcement and correctional personnel and inmates;~~.~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(i) Provide information and consultation to local governments to educate local government employees;~~.~~

(j) Make information available to private employers and encourage them to distribute this information to their employees;~~.~~

(k) Contain special components which emphasize appropriate behavior and attitude change; and~~.~~

(l) Contain components that include information about domestic violence and the risk factors associated with domestic violence and AIDS.

(2) The education program designed by the Department of Health shall use ~~utilize~~ all forms of the media and shall place emphasis on the design of educational materials that can be used by businesses, schools, and health care providers in the regular course of their business.

(3) The department may contract with other persons in the design, development, and distribution of the components of the education program.

(4) The University of Miami and its affiliates may establish a single sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot program may operate at a fixed location or through a mobile health unit. The pilot program shall offer the free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes as a means to prevent the transmission of HIV, AIDS, viral hepatitis, or other blood-borne diseases among intravenous drug users and their sexual partners and offspring.

(a) The pilot program must:

1. Provide for maximum security of exchange sites and

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equipment, including an accounting of the number of needles and syringes in use, the number of needles and syringes in storage, safe disposal of returned needles, and any other measure that may be required to control the use and dispersal of sterile needles and syringes.

2. Operate a one-to-one exchange, whereby the participant shall receive one sterile needle and syringe unit in exchange for each used one.

3. Make available educational materials; HIV, AIDS, and viral hepatitis counseling and testing; referral services to provide education regarding the transmission of HIV, AIDS, viral hepatitis, and other blood-borne diseases; and drug abuse prevention and treatment counseling and referral services.

(b) The possession, distribution, or exchange of needles or syringes as part of the pilot program established under this subsection is not a violation of any part of chapter 893 or any other law.

(c) A pilot program staff member, volunteer, or participant is not immune from criminal prosecution for:

1. The possession of needles or syringes that are not a part of the pilot program; or

2. The redistribution of needles or syringes in any form, if acting outside the pilot program.

(d) The pilot program must collect data for annual and final reporting purposes, which must include information on the number of participants served, the number of needles and syringes exchanged and distributed, the demographic profiles of the participants served, the number of participants entering drug counseling and treatment, the number of participants

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

receiving testing for HIV, AIDS, viral hepatitis, or other blood-borne diseases, and other data deemed necessary for the pilot program. However, personal identifying information may not be collected from a participant for any purpose.

(e) State funds may not be used to operate the pilot program. The pilot program shall be funded through grants and donations from private resources and funds.

(f) The pilot program shall expire July 1, 2020. By January 1, 2020, the Office of Program Policy Analysis and Government Accountability shall submit a report to the President of the Senate and the Speaker of the House of Representatives which includes the data collection requirements established in this subsection; the rates of HIV, AIDS, viral hepatitis, or other blood-borne diseases before the pilot program began and for every subsequent year; and a recommendation on whether to continue the pilot program.

Section 3. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 4. This act shall take effect July 1, 2016.

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	**Favorable**
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]

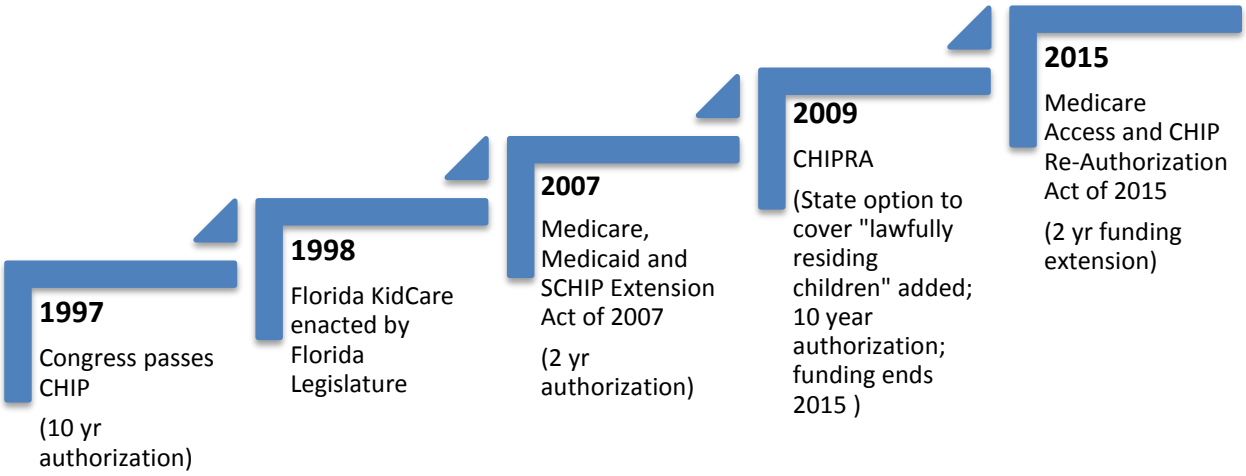
Eligibility for Florida Medicaid is based on a number of factors, including age, household or individual income, and assets. State Medicaid eligibility payment guidelines are provided in statute under s. 409.903, F.S., (Mandatory Payments for Eligible Persons) and s. 409.904, F.S., (Optional Payments 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-authorized[3] 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.

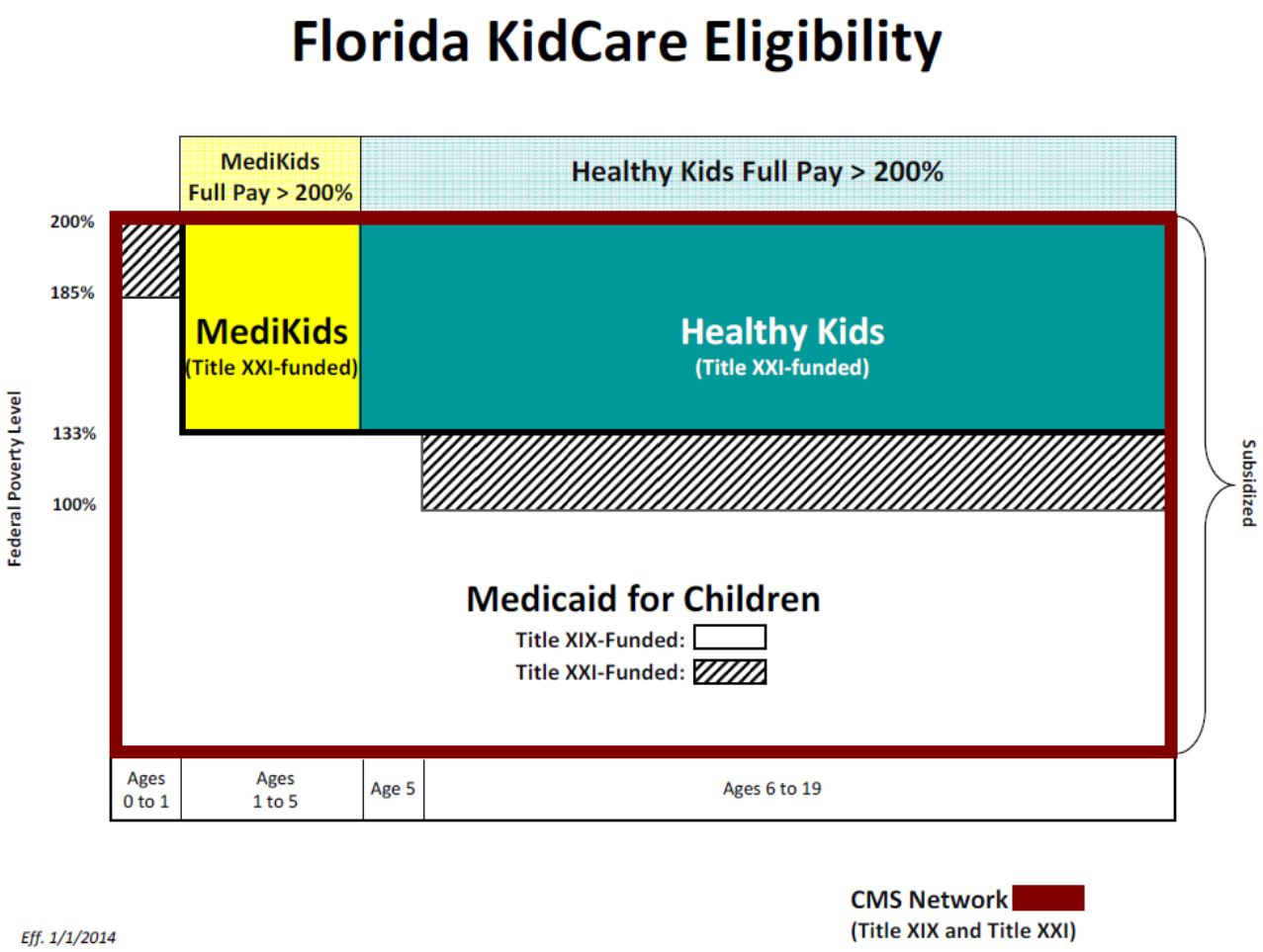
Figure 1-Milestones in the Medicaid and CHIP Program



[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]



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_Amendment_25_to_Titlle_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-medicaid-medicaid-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).

By Senator Garcia

38-00325-16 2016248__

A bill to be entitled

An act relating to medical assistance funding for lawfully residing children; amending s. 409.811, F.S.; defining the term "lawfully residing child"; deleting the definition of the term "qualified alien"; conforming provisions to changes made by the act; amending s. 409.814, F.S.; revising eligibility for the Florida Kidcare program to conform to changes made by the act; clarifying that undocumented immigrants are excluded from eligibility; amending s. 409.904, F.S.; providing eligibility for optional payments for medical assistance and related services for certain lawfully residing children; clarifying that undocumented immigrants are excluded from eligibility for optional Medicaid payments or related services; amending s. 624.91, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsections (17) through (22) of section 409.811, Florida Statutes, are redesignated as subsections (18) through (23), respectively, a new subsection (17) is added to that section, and present subsections (23) and (24) of that section are amended, to read:

409.811 Definitions relating to Florida Kidcare Act.—As used in ss. 409.810-409.821, the term:

(17) "Lawfully residing child" means a child who is lawfully present in the United States, meets Medicaid or the Children's Health Insurance Program (CHIP) residency requirements, and may be eligible for medical assistance with federal financial participation as provided under s. 214 of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, and related federal regulations.

~~(23) "Qualified alien" means an alien as defined in s. 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Pub. L. No. 104-193.~~

(24) "Resident" means a United States citizen~~,~~ or lawfully residing child ~~qualified alien,~~ who is domiciled in this state.

Section 2. Paragraph (c) of subsection (4) of section 409.814, Florida Statutes, is amended to read:

409.814 Eligibility.—A child who has not reached 19 years of age whose family income is equal to or below 200 percent of the federal poverty level is eligible for the Florida Kidcare program as provided in this section. If an enrolled individual is determined to be ineligible for coverage, he or she must be immediately disenrolled from the respective Florida Kidcare program component.

(4) The following children are not eligible to receive Title XXI-funded premium assistance for health benefits coverage under the Florida Kidcare program, except under Medicaid if the child would have been eligible for Medicaid under s. 409.903 or s. 409.904 as of June 1, 1997:

(c) A child who is an alien~~,~~ but who does not meet the definition of a lawfully residing child ~~qualified alien, in the United States~~. This paragraph does not extend eligibility for the Florida Kidcare program to an undocumented immigrant.

Section 3. Present subsections (8) and (9) of section

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

409.904, Florida Statutes, are redesignated as subsections (9) and (10), respectively, and a new subsection (8) is added to that section, to read:

409.904 Optional payments for eligible persons.—The agency may make payments for medical assistance and related services on behalf of the following persons who are determined to be eligible subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the General Appropriations Act or chapter 216.

(8) A child who has not attained the age of 19 who, notwithstanding s. 414.095(3), would be eligible for Medicaid under s. 409.903, except that the child is a lawfully residing child as defined in s. 409.811. This subsection does not extend eligibility for optional Medicaid payments or related services to an undocumented immigrant.

Section 4. Paragraph (b) of subsection (3) of section 624.91, Florida Statutes, is amended to read:

624.91 The Florida Healthy Kids Corporation Act.—

(3) ELIGIBILITY FOR STATE-FUNDED ASSISTANCE.—Only the following individuals are eligible for state-funded assistance in paying Florida Healthy Kids premiums:

(b) Notwithstanding s. 409.814, a legal alien ~~aliens~~ who is ~~are~~ enrolled in the Florida Healthy Kids program as of January 31, 2004, who does ~~do~~ not qualify for Title XXI federal funds because he or she is ~~they are~~ not a lawfully residing child ~~qualified aliens~~ as defined in s. 409.811.

Section 5. This act shall take effect July 1, 2016.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 450
INTRODUCER:	Senator Grimsley
SUBJECT:	Physical Therapy
DATE:	October 27, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Favorable**
2.			AHS	
3.			FP	

I. Summary:

SB 450 authorizes a physical therapist to implement a plan of treatment provided for a patient by a physician licensed in a state other than Florida. The bill increases the time frame for physical therapy treatment for a patient for a condition not previously assessed by a practitioner of record or a physician licensed in another state. The time frame is increased from 21 to 30 days before the physical therapist must obtain a Florida practitioner who will review and sign the treatment plan.

The bill authorizes any person who holds a physical therapy license, and obtains a degree of Doctor of Physical Therapy, to use the letters "D.P.T." and "P.T." However, a physical therapist may not use the title "doctor" without also clearly informing the public of his or her profession as a physical therapist.

The bill revises terms prohibited from use by a person who is not licensed as a physical therapist or a physical therapist assistant; and makes it a first degree misdemeanor to falsely represent licensure.

The bill has no fiscal impact on government entities.

II. Present Situation:

Physical Therapy Practice in Florida

The Physical Therapy Practice Act is codified in ch. 486, F.S. Physical therapists (PTs) in Florida are regulated by the Board of Physical Therapy Practice (Board) within the Department of Health (DOH).[1] A licensed PT or a licensed physical therapist assistant (PTA), must practice physical

[1] Section 486.023, F.S.

therapy in accordance with the provisions of the Act and the Board rules. To be eligible for licensing as a PT in Florida, an applicant must:[2]

- Be at least 18 years of age;
- Be of good moral character;
- Have graduated from an approved school of physical therapy recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education at the time of her or his graduation; and
- Have passed a national examination approved by the Board.

Alternatively, an applicant for a PT license may also:[3]

- Have received a diploma from a program in physical therapy in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of PTs in the United States; or
- Be entitled to licensure without examination as provided in s. 486.081, F.S.[4]

Under ch. 486, F.S., a "physical therapist assistant" means a person who is licensed to perform patient-related activities, including the use of physical agents, whose license is in good standing, and whose activities are performed under the direction of a PT as set forth in rules adopted pursuant to ch. 486., F.S. Patient-related activities performed by a PTA for a board-certified orthopedic physician or physiatrist licensed pursuant to chs. 458 or 459, F.S., or a chiropractor licensed under ch. 460, F.S., must be under the general supervision of a PT, but do not require onsite supervision by a PT. Patient-related activities performed for all other health care practitioners licensed under chapters 458 and 459, F.S., and those patient-related activities performed for podiatrists licensed under ch. 461, or dentists licensed under ch. 466, F.S., must be performed under the onsite supervision of a PT.[5]

Currently, there are 14,108 PTs and 7,616 PTAs who hold active Florida licenses.[6]

Physical Therapy Scope of Practice

"Practice of physical therapy" is defined in s. 486.021(11), F.S., as the performance of physical therapy assessments and treatment, or prevention of any disability, injury, disease, or other health condition of human beings and rehabilitation as it relates to the use of various modalities such as: exercise, massage, ultrasound, ice, heat, water, and equipment. A PT's professional responsibilities include:[7]

- Interpretation of a practitioner's referral;

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[2] Section 486.031, F.S.
[3] *Id.*
[4] The Board may issue a license without examination in Florida to any applicant who presents evidence of having passed the American Registry Examination prior to 1971 or an examination in physical therapy before a similar lawfully authorized examining board of another state, the District of Columbia, a territory, or a foreign country, if the standards for licensure in physical therapy are determined by the Board to be as high as those of Florida.
[5] Section 486.021(6), F.S.
[6] Number of active Florida licenses calculated by adding "In State Active" practitioners and "Out of State Active" practitioners. *See* Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2013-2014: Summary of Licensed Practitioners*, available at http://mqawebteam.com/annualreports/1314/#16 (last visited October 20, 2015).
[7] Rule 64B17-6.001, F.A.C.

- Delivery of the initial physical therapy assessment of the patient;
- Identification of and documentation of precautions, special problems, contraindications;
- Development of a treatment plan for a patient including the long and short term goals;
- Implementation of or directing implementation of the treatment plan;
- Delegation of appropriate tasks;
- Direction and supervision of supportive staff in a manner appropriate for the patient's individual needs;
- Reassessment of the patient in reference to goals and, when necessary, modification of the treatment plan; and
- Collaboration with members of the health care team when appropriate.

Section 486.021(11), F.S., limits treatments that PTs may provide or what procedures may be performed for diagnosing a condition. A PT must refer a patient to, or consult with, a practitioner of record if a patient's condition is found to be outside the scope of physical therapy.[8] Under s. 486.021(11), F.S., a "practitioner of record" is a health care practitioner licensed under chs. 458 (Medical Practice), 459 (Osteopathic Medicine), 460 (Chiropractic Medicine), 461 (Podiatric Medicine), or 466 (Dentistry), F.S., and engaged in active practice. A PT may not practice chiropractic medicine, including specific spinal manipulation, and must refer a patient with the need for such to a chiropractor licensed under ch. 460, F.S.[9] Additionally a PT is not authorized to implement a plan for a patient being treated in a hospital or an ambulatory surgical center licensed under ch. 395, F.S.[10]

Section 486.081(1), F.S., authorizes a licensed PT to use the words "physical therapist" or "physiotherapist," or the letters "P.T." in connection with his or her name or place of business to denote his or her licensure. False representation of a PT license, or willful misrepresentation or false representation to obtain a PT license is unlawful.[11]

Physical Therapy Treatment Plan and Referral for Treatment

Florida law provides that a PT may implement a plan of treatment developed by the PT for a patient or provided for a patient by a practitioner of record or by an advanced registered nurse practitioner licensed under s. 464.012, F.S.[12] Currently, a PT may implement a treatment plan for a patient without a written order from a practitioner of record if the recommended treatment plan is performed within a 21-day timeframe. If the treatment plan requires treatment beyond 21 days, the condition must be assessed by a practitioner of record who is required to review and sign the treatment plan.[13]

[8] Section 486.021(11)(a), F.S.
[9] Section 486.021(11)(c), F.S.
[10] Section 486.021(11)(d), F.S.
[11] *See* s. 486.135, F.S.
[12] *Supra* note 8.
[13] *Id.*

III. Effect of Proposed Changes:

SB 450 amends the definition of the "practice of physical therapy," set out in s. 486.021 (11), F.S., to increase the time from 21 to 30 days that a physical therapist may treat a patient for a condition not previously assessed by a practitioner of record. If physical therapy treatment of a patient is required beyond 30 days the physical therapist must have a practitioner of record review and sign the treatment plan.

The requirements for a physical therapist to have a practitioner of record review and sign a plan of treatment do not apply when a physician, licensed in another state:

- Has physically examined the patient;
- Has diagnosed the patient as having a condition for which physical therapy is required, and
- The physical therapist has been treating that specific condition.

The bill amends s. 486.081, F.S., to add letters a licensed physical therapist may use in connection with her or his name or place of business when he or she has a doctoral degree in physical therapy to "D.P.T." and "P.T." Physical therapists may not use the title "doctor" unless he or she holds a degree of Doctor of Physical Therapy and the public is clearly informed that his or her profession is a physical therapist.

The bill amends s. 486.135, F.S., to revise terms prohibited from use by a person who is not licensed as a PT or a PTA. The bill provides that use of the letters "D.P.T." in connection with a name or business is unlawful for any person who is not licensed as a PT under ch. 486, F.S., and holds a doctoral degree in PT. The letters "Ph.T.," "R.P.T.," and "L.P.T." are removed from statute by the bill. The bill also provides for a penalty for false representation of licensures under this section of law. A violation is punishable as a misdemeanor of the first degree.

The bill amends s. 486.151, F.S., to add that the use of the letters "D.P.T." is unlawful, and a first degree misdemeanor, unless the person holds a valid license under ch. 486, F.S., and has a doctoral degree in physical therapy.

The bill takes effect upon becoming law.

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:

Visitors to the state and patients who have an order for physical therapy from a practitioner licensed in another state will be able to receive the ordered physical therapy in this state without incurring additional costs for a medical examination from or assessment by a practitioner of record. Increasing the period of time in which a physical therapist may provide treatment for a patient without a practitioner of record assessing the patient may save patients the cost of examination by a practitioner of record.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 486.021, 486.081, 486.135, 486.151

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.

By Senator Grimsley

21-00474-16 2016450__

A bill to be entitled

An act relating to physical therapy; amending s. 486.021, F.S.; revising the definition of the term "practice of physical therapy"; amending s. 486.081, F.S.; providing that a licensed physical therapist who holds a specified doctoral degree may use specified letters in connection with her or his name or place of business; prohibiting a physical therapist with a specified doctoral degree from using the title "doctor" without informing the public of his or her profession as a physical therapist; amending s. 486.135, F.S.; revising the terms and specified letters prohibited from being used by certain unlicensed persons; providing a criminal penalty; amending s. 486.151, F.S.; prohibiting an unlicensed person from using specified letters; providing an effective date.

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

Section 1. Paragraph (a) of subsection (11) of section 486.021, Florida Statutes, is amended to read:

486.021 Definitions.—In this chapter, unless the context otherwise requires, the term:

(11) "Practice of physical therapy" means the performance of physical therapy assessments and the treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related

21-00474-16 2016450__

thereto by the use of the physical, chemical, and other properties of air; electricity; exercise; massage; the performance of acupuncture only upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs; the use of radiant energy, including ultraviolet, visible, and infrared rays; ultrasound; water; the use of apparatus and equipment in the application of the foregoing or related thereto; the performance of tests of neuromuscular functions as an aid to the diagnosis or treatment of any human condition; or the performance of electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medicine.

(a) A physical therapist may implement a plan of treatment developed by the physical therapist for a patient or provided for a patient by a practitioner of record or by an advanced registered nurse practitioner licensed under s. 464.012. The physical therapist shall refer the patient to or consult with a practitioner of record if the patient's condition is found to be outside the scope of physical therapy. If physical therapy treatment for a patient is required beyond 30 ~~21~~ days for a condition not previously assessed by a practitioner of record, the physical therapist shall have ~~obtain~~ a practitioner of record ~~who will~~ review and sign the plan. The requirement that a physical therapist have a practitioner of record review and sign a plan of treatment does not apply when a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the physical therapist is treating the condition. For purposes of

this paragraph, a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 and engaged in active practice is eligible to serve as a practitioner of record.

Section 2. Subsection (1) of section 486.081, Florida Statutes, is amended to read:

486.081 Physical therapist; issuance of license without examination to person passing examination of another authorized examining board; fee.—

(1) The board may cause a license to be issued through the department without examination to any applicant who presents evidence satisfactory to the board of having passed the American Registry Examination prior to 1971 or an examination in physical therapy before a similar lawfully authorized examining board of another state, the District of Columbia, a territory, or a foreign country, if the standards for licensure in physical therapy in such other state, district, territory, or foreign country are determined by the board to be as high as those of this state, as established by rules adopted pursuant to this chapter. Any person who holds a license pursuant to this section may use the words "physical therapist" or "physiotherapist~~,~~" or the letters "P.T.~~,~~" in connection with her or his name or place of business to denote her or his licensure hereunder. A person who holds a license pursuant to this section and obtains a doctoral degree in physical therapy may use the letters "D.P.T." and "P.T." A physical therapist who holds a degree of Doctor of Physical Therapy may not use the title "doctor" without also clearly informing the public of his or her profession as a physical therapist.

Section 3. Subsection (1) of section 486.135, Florida Statutes, is amended, subsection (2) is renumbered as subsection (3), and a new subsection (2) is added to that section, to read:

486.135 False representation of licensure, or willful misrepresentation or fraudulent representation to obtain license, unlawful.—

(1)(a) It is unlawful for any person who is not licensed under this chapter as a physical therapist, or whose license has been suspended or revoked, to use in connection with her or his name or place of business the words "physical therapist," "physiotherapist," "physical therapy," "physiotherapy," "registered physical therapist," or "licensed physical therapist"; ~~or~~ the letters "P.T.~~,~~" ~~"Ph.T.," "R.P.T.," or "L.P.T."~~; or any other words, letters, abbreviations, or insignia indicating or implying that she or he is a physical therapist or to represent herself or himself as a physical therapist in any other way, orally, in writing, in print, or by sign, directly or by implication, unless physical therapy services are provided or supplied by a physical therapist licensed in accordance with this chapter.

(b) It is unlawful for a person who is not licensed under this chapter as a physical therapist and who does not hold a doctoral degree in physical therapy to use the letters "D.P.T." in connection with his or her name or place of business.

(c)~~(b)~~ It is unlawful for any person who is not licensed under this chapter as a physical therapist assistant, or whose license has been suspended or revoked, to use in connection with her or his name the words "physical therapist assistant," ~~"licensed physical therapist assistant," "registered physical~~

~~therapist assistant," or "physical therapy technician"; or~~ the letters "P.T.A.," ~~"L.P.T.A.," "R.P.T.A.," or "P.T.T.";~~ or any other words, letters, abbreviations, or insignia indicating or implying that she or he is a physical therapist assistant or to represent herself or himself as a physical therapist assistant in any other way, orally, in writing, in print, or by sign, directly or by implication.

(2) An unlawful act under this section is a violation of s. 486.151.

Section 4. Paragraph (d) of subsection (1) of section 486.151, Florida Statutes, is amended to read:

486.151 Prohibited acts; penalty.—

(1) It is unlawful for any person to:

(d) Use the name or title "Physical Therapist" or "Physical Therapist Assistant" or any other name or title which would lead the public to believe that the person using the name or title is licensed to practice physical therapy, unless such person holds a valid license, or use the letters "D.P.T.," unless such person holds a valid license under this chapter and a doctoral degree in physical therapy.

Section 5. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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:	SPB 7024
INTRODUCER:	Health Policy Committee
SUBJECT:	OGSR/Information Held by the Florida Center for Brain Tumor Research
DATE:	November 2, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall		**HP Submitted as Committee Bill**

I. Summary:

SPB 7024 amends and reenacts s. 381.8531, F.S., to save from repeal the public records exemption for personal identifying information held by the Florida Center for Brain Tumor Research. Currently, the exemption will be automatically repealed under the provisions of the Open Government Sunset Review Act on October 2, 2016.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.[2]

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.[3] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[4] The Public Records Act states that:

> It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[5]

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[1] FLA. CONST. art. I, s. 24(a).
[2] FLA. CONST. art. I, s. 24(a).
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type."[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

The Legislature may create an exemption to public records requirements.[9] An exemption must pass by a two-thirds vote of the House and the Senate.[10] In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.[11] A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.[12]

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[13] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as 'exempt' may be released at the discretion of the records custodian.[14]

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

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[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).

[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

[9] FLA. CONST. art. I, s. 24(c).

[10] FLA. CONST. art. I, s. 24(c).

[11] FLA. CONST. art. I, s. 24(c).

[12] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

[13] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[14] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.[15] The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[16] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:[17]

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.[18] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.[19]

The Florida Center for Brain Tumor Research

Section 381.853, F.S., creates the Florida Center for Brain Tumor Research (Center). The Center is established within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida (Institute) and is intended to establish a coordinated effort among the state's public and private universities and hospitals and the biomedical industry to discover brain tumor cures and develop brain tumor treatment modalities. The Institute is required to develop and maintain a brain tumor registry that is an automated, electronic, and centralized database of individuals with brain tumors. The registry is a central repository for brain tumor biopsies from individuals throughout the state.[20]

Additionally, in furthering its goal of finding cures for brain tumors, the Center is required to:

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[15] Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

[16] Section 119.15(3), F.S.

[17] Section 119.15(6)(a), F.S.

[18] FLA. CONST. art. I, s. 24(c).

[19] Section 119.15(7), F.S.

[20] The individual, or the parent or guardian of the individual if the individual is a minor, may refuse to participate in the brain tumor registry by signing a form obtained from the department or from the health care practitioner or entity that provides brain tumor care or treatment which indicates that the individual does not wish to be included in the registry. The decision to not participate in the registry must be noted in the registry. Section 381.853(2), F.S.

- Award funds appropriated by the Legislature in a competitive grant process;
- Hold an annual brain tumor biomedical technology summit;
- Encourage clinical trials on research that holds the promise of curing brain tumors; and
- Facilitate the formation of partnerships between researchers, physicians, clinicians, and hospitals for the purpose of sharing new techniques, sharing new research findings, and coordinating the voluntary donation of brain tumor biopsies.

Section 381.853, F.S., requires that the Center be funded through private, state, and federal sources and also establishes a scientific advisory council within the Center which includes biomedical researchers, physicians, clinicians, and representatives from public universities, private universities, and hospitals.

The Registry

The Center maintains a collaborative, statewide registry of banked cancerous and non-cancerous brain tumor specimens, matched samples of DNA, plasma, serum and cerebrospinal fluid, clinical and demographic information, and quality-of-life assessments obtained from patients. Patients are asked to participate in the Center's bio-repository and registry, which has been approved by an Institutional Review Board, to provide valuable specimens and data for future research. The banked materials are made available to researchers in Florida and beyond who are investigating improved treatments and cures for brain tumors. A web-based database stores demographic, clinical and quality-of-life data, creates a registry of participants, and bar-codes and tracks the samples. This clinical database contains information available (in unidentifiable format) to researchers who study brain tumors.[21]

Information Protected from Disclosure

Section 381.8531, F.S., makes confidential and exempt from Florida's public records laws any personal and identifying information held by the Center which relates to donors to either the central repository for brain tumor biopsies or registrants on the brain tumor registry. Additionally, the exemption protects any information received by the Center from an individual from another state or nation, or from the Federal Government, if that information is confidential or exempt pursuant to the laws of the state or nation from which the information is transmitted. The only exception to the confidentiality of the protected information is for persons who are engaged in bona fide research and who agree to submit a research plan to the Center, sign a confidentiality agreement, maintain the confidentiality of the information received, and destroy any confidential information received after the research is completed.

As of August 12, 2015, the Center has not received any requests for records protected under s. 381.8531, F.S., nor has the public records exemption been the subject of litigation.[22] The Center has received requests for information from other states but has only sent limited Health Insurance Portability and Accountability (HIPAA) compliant data sets. Although other state and

[21] Florida Center for Brain Tumor Research, Annual Report for 2014-2015, Jan. 15, 2015, pp. 16-17 (on file with the Senate Committee on Health Policy.)
[22] See survey response by Barbara Frentzen, Administrator for the Florida Center for Brain Tumor Research, August 12, 2015, (on file with the Senate Committee on Health Policy staff.)

federal laws most likely protect the information made confidential and exempt[23] under s. 381.8531, F.S., the Center relies on the public records exemption as it is "clearly applicable to the data contained in the [Center's] database."[24]

III. Effect of Proposed Changes:

SPB 7024 saves from repeal the public records exemption in s. 381.8531, F.S., which makes confidential and exempt from s. 119.07(1), F.S., and s. 24, Art. I, of the State Constitution information held by the Florida Center for Brain Tumor Research which is:

- Personal identifying information of donors to the central repository for brain tumor biopsies;
- Personal identifying information of registrants on the brain tumor registry; or
- Any information that is received by the Center from an individual from another sate or nation, or from the Federal Government, if that information is confidential or exempt pursuant to the laws of the state or nation form which the information is transmitted.

The effective date of the bill is 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:

None.

C. Government Sector Impact:

None.

[23] Examples of such laws include the Federal HIPAA, s. 456.057, F.S., and the Federal Genetic Information Nondiscrimination Act and s. 760.40, F.S. Id. at p. 4.
[24] Id. at p. 5.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.8531 of the Florida Statutes.

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.

FOR CONSIDERATION By the Committee on Health Policy

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 381.8531, F.S., which provides an exemption from public records requirements for information held by the Florida Center for Brain Tumor Research; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 381.8531, Florida Statutes, is amended to read:

381.8531 Florida Center for Brain Tumor Research; public records exemption.—

(1) The following information held by the Florida Center for Brain Tumor Research before, on, or after July 1, 2011, is confidential and exempt from s. 119.07(1) and s. 24, Art. I of the State Constitution:

(a) Personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry.

(b) Any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

(2) Such information may be disclosed to a person engaged in bona fide research if that person agrees to:

(a) Submit to the Florida Center for Brain Tumor Research a research plan that has been approved by an institutional review

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board and that specifies the exact nature of the information requested, the intended use of the information, and the reason that the research could not practicably be conducted without the information;

(b) Sign a confidentiality agreement with the Florida Center for Brain Tumor Research;

(c) Maintain the confidentiality of the information received; and

(d) To the extent permitted by law and after the research has concluded, destroy any confidential information obtained.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect July 1, 2016.

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