HOUSE OF REPRESENTATIVES ANALYSIS

BILL #: HB 115 **RELATING TO:** Infant Eye Care
SPONSOR(S): Bucher and others
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
(1) Health Services (Sub)		Rawlins	Collins
(2) Health Care			
(3) Health Access and Financing (Sub)			
(4) Insurance			
(5) Health Appropriation (Sub)			
(6) Appropriations			

SUMMARY ANALYSIS

Concerns have been expressed recently that diagnosis of serious ocular conditions, including retinoblastoma and congenital cataract, in which early treatment is essential for future ocular and systemic health, often is not made sufficiently early to minimize potential consequences of those conditions. These concerns have led to consideration of legislation in several states, mandating early pupil-dilated red-reflex examinations in all neonates or very young infants**.**

The bill requires that every baby born in a Florida hospital receive, prior to being discharged, a dilated pupillary red-reflex eye examination performed using a direct ophthalmoscope as the light source for detection of pediatric congenital and ocular abnormalities. Proponents of this bill state that it is important to test for retinoblastoma (eye tumors) and other ocular diseases in infants and that most cases of the occurrence of this particular tumor occur in the first 2 years of life. These representatives assert that in newborns and infants, the pupil is so small that dilation is necessary in order for the ophthalmoscope to detect 100 percent of the tumors and that without dilation; only 30 percent of such tumors are identified.

The bill reenacts s. 383.07, F.S., relating to a penalty for violation, instituting failure to comply with this act as a second-degree misdemeanor, punishable by a fine up to $500[1].

HB 115 requires group insurers and HMO's to require coverage for a dilated pupillary red-reflex eye examination performed using a direct ophthalmoscope at birth; at 6-8 weeks; and at 6-9 months of age to detect pediatric congenital and ocular abnormalities and developmental abnormalities.

The bill has an effective date of July 1, 2003.

A procedural requirement established for reviewing mandated health insurance benefits specifies that proponents submit to the Agency for Health Care Administration and the legislative committees having jurisdiction, a report which assesses the social and financial impacts of the proposed coverage[2]. Legislative committee staff has not received such an analysis from the proponents.

AHCA estimated cost: to Medicaid program: $5,375,223.

[1] s. 775.083, F.S.
[2] s. 624.215, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[x]	N/A[]
5. Empower families?	Yes[x]	No[]	N/A[]

For any principle that received a "no" above, please explain:

This bill removes the personal responsibility of parents for the health of their child and places that responsibility on the state through mandated medical services.

B. EFFECT OF PROPOSED CHANGES:

Concern has been expressed recently that diagnosis of serious ocular conditions, including retinoblastoma and congenital cataract, in which early treatment is essential for future ocular and systemic health, often is not made sufficiently early to minimize potential consequences of those conditions. This concern has led to consideration of legislation in several states, mandating early pupil-dilated red reflex examinations in all neonates or very young infants. Legislation has passed in California and under consideration in New York, Massachusetts, South Carolina, and New Jersey.

Prophylactic Required for the Eyes of Infants

Current law requires physicians, midwifes, or other persons in attendance at the birth of a child in the state to instill or have instilled into the eyes of the baby within 1 hour after birth an effective prophylactic recommended by the Committee on Infectious Diseases of the American Academy of Pediatrics (AAP) for the prevention of neonatal ophthalmia.[3] This section does not apply to cases where the parents file with the physician, midwife, or other person in attendance at the birth of a child written objections on account of religious beliefs contrary to the use of drugs. In such case the physician, midwife, or other person in attendance shall maintain a record that such measures were or were not employed and attach thereto any written objection.

Recommended Eye Exams for Newborns

The American Academy of Pediatrics' (AAP) Policy Statement (May 2002) entitled, "*Red Reflex Examination in Infants,"* recommends that eye exams of **newborns and infants include an *undilated* examination of eyelids and orbits,** external eye area, eye motility, eye muscle balance, pupils and red reflex. Additionally, the AAP recommends that **infants at risk** for eye problems, such as retinopathy of prematurity, or those with family histories of

[3] s. 383.04, F.S. Ophthalmia is an infection of the conjunctiva, the mucous membrane that lines the inner surface of the eyelids and the forepart of the eyeball. The infection may be caused by N. gonorrhea, C. trachomatis, S. aureus, E. coli, and other micro-organisms. Complications of the infection can include corneal perforation, blindness and dacryocystitis.

congenital cataracts, retinoblastoma, and metabolic and genetic diseases should have ophthalmologic examinations within the first two months of birth. In the AAP Policy Statement (July 1996) entitled, *"Eye Examination and Vision Screening in infants, Children, and Young Adults*" recommends that all infants should be examined by 6 months of age for the presence of any eye disease or disorder. One in 677 infants has a treatable eye disease that can blind them as early as 2 months if not detected.

However, the AAP cautions that "although in infants, pupils are easily dilated using various agents, significant complications have been sporadically reported with all commercially available dilating agents, including sympathomimetic agents like phenylephrine and anticholinergic agents like cyclopentolate hydrochloride and tropicamide. These complications include elevated blood pressure and heart rate, urticaria, cardiac arrhythmias, and contact dermatitis. However, pupillary dilation has been performed routinely for many years in almost all new patients seen in most pediatric ophthalmology offices, with no complications seen for years at a time, so this procedure appears to be very safe when performed in an office setting on infants older than 2 weeks. Similarly, premature infants' pupils are often dilated in the neonatal intensive care unit without significant complication, so dilation appears to be relatively safe even in very young infants."[4]

Additionally, the American Academy of Ophthalmology (AAO) recommends vision screening consisting of red light reflex testing is performed on all newborns[5]. Those with screening abnormalities, or who are considered high risk, are to be referred to an ophthalmologist, a medical doctor specializing in eye diseases and disorders, for further evaluation. Additional screening is recommended between 6 months to one year of age. The AAO recommends that a pediatrician, family physician, nurse practitioner, or physician assistant conduct these screenings.

An *ophthalmoscope* is a diagnostic instrument that is used to shine a light into a patient's eye. Light reflected from the patient's eye and projected into the examiner's eye enables the examiner to see the condition of the eye and to detect abnormalities. In the "red reflex" test that the AAP recommends for all newborns, a physician shines an ophthalmoscope into an infant's eye and sees the red reflection of the blood vessels of the retina. If the red reflex is not visible, further examination would be necessary. The red reflex test is done with the pupil of the infant's eye undilated. When the pupil is dilated—enlarged by the use of eye drops—the examiner is able to see more of the internal structure of the eye.

HB 115 requires that every baby born in a Florida hospital receive, prior to being discharged, a dilated pupillary red-reflex eye examination performed using a direct ophthalmoscope as the light source for detection of pediatric congenital and ocular abnormalities. The bill requires this procedure to be repeated at 6-8 weeks of age, and 6-9 months.

Health Insurance Coverage for Children

Florida law requires that health insurance policies providing coverage on an expense-incurred basis which provide coverage for a family member of the insured must, as to family member's coverage, also provide that the benefits applicable for children will cover child health supervision services from birth to age 16 years.[6] Child health supervision services are

[4] American Academy of Pediatric, Policy Statement, *Red Reflex Examination in Infants, May 2002.*
[5] www.aao.org
[6] s. 627.6416, F.S.

provided by a physician, or supervised by a physician, and include a physical exam, a developmental assessment, and appropriate immunizations and laboratory tests. The periodic visits and services must be in accordance with the prevailing medical standards consistent with the Recommendations for Preventive Pediatric Health Care of the American Academy of Pediatrics (AAP).

Health maintenance organization (HMO) contracts which provide coverage for a member of a family must also provide that benefits applicable for children include coverage for child health supervision services from the moment of birth to age 16 years.[7] Child health supervision services are provided by a physician, or supervised by a physician, and they include a physical exam, a developmental assessment, and appropriate immunizations and laboratory tests. The periodic visits and services must be in accordance with the Recommendations for Preventive Pediatric Health Care of the AAP.

According to representatives with one of the largest HMOs in Florida, the *undilated* red reflex test is a simple one which is performed on all newborns and is commonly a part of all routine health care exams. It involves looking at the pupils of the newborn or infant through an ophthalmoscope and observing the "red" light which is reflected off the retina. However, a *dilated* red reflex examination is only performed if there is some suspicion of abnormality or the infant is at high risk for ocular problems. Such an exam is usually performed by an ophthalmologist. [8]

Proponents of this bill state that it is important to test for retinoblastoma (eye tumors) and other ocular diseases in infants and that most cases of this particular tumor occur in the first 2 years of life. These representatives assert that in newborns and infants, the pupil is so small that dilation is necessary in order for the ophthalmoscope to detect 100 percent of the tumors and that without dilation; only 30 percent of such tumors are identified.

Penalty for Violation

HB 115 reenacts s. 383.07, F.S., relating to a penalty for violation, instituting failure to comply with this act as a second-degree misdemeanor, punishable by a fine up to $500, or any higher amount equal to double the pecuniary gain derived from the offense by the offender, or double the pecuniary loss suffered by the victim or any higher amount specifically authorized by statute[9].

Medicaid Coverage for Children

Medicaid is a medical assistance program that pays for health care for the poor and disabled and the program is jointly funded by the federal government, the state, and the counties.[10] In FY 2002, there were 368,180 children enrolled in Florida's Kidcare program,[11] which represents about a 24% increase from FY 2001. Approximately 72,000 children are enrolled in Medicaid. Medicaid currently pays for eye health care for recipients of all ages, provided through enrolled ophthalmologists and optometrists. Medicaid limits coverage for 'screening' procedures, to those specifically authorized by law, (Child Health Check Up, newborn hearing

[7] s. 641.31(30), F.S.
[8] *Senate Staff Analysis and Economic Impact Statement CS/CS/SB 2062, March 12, 2002.*
[9] s. 775.083, F.S.
[10] Ch. 409, F.S.
[11] U.S. Department of Health and Human Services, *SCHIP Enrollment Climbs to 5.3 million children in 2002, February 5, 2003.*

screens, and adult health screens).[12] For eye health care, patients must present a suspected illness, vision problem or actual illness.

According to AHCA, the eye infant screening maybe implemented two ways within the hospital:

- staff from the hospital may perform this screening, whereas, Medicaid's per diem (daily reimbursement rate) may cover this with no additional funding; or
- physicians or optometrists may perform the screening, therefore a reimbursement rate would need to be established, and the current Medicaid fees for the least invasive examination for eye health are reimbursed at $39.

Medicaid currently does not reimburse for the follow-up screenings mandated at 6-8 weeks and 6-9 months in this bill. Should a medical condition be identified through the screening process, then all follow-up treatment would be available through Medicaid. This bill requires Medicaid to pay for initial and follow-up screening visits that may not be medically necessary.

Florida Insurance Mandate Requirements

State laws frequently require private health insurance policies and health maintenance organization contracts to include specific coverage for particular treatments, conditions, persons, or providers. These are referred to as "mandated (health) benefits."

HB 115 requires group insurers and HMO's to require coverage for a dilated pupillary red-reflex eye examination performed using a direct ophthalmoscope at birth, at 6 to 8 weeks of age, and at 6 to 9 months to detect pediatric congenital and ocular abnormalities and developmental abnormalities.

Recognizing that "most mandated benefits contribute to the increasing cost of health insurance premiums," while acknowledging the social and health benefits of many of the mandates, the Legislature in 1987 called for a "systematic review of current and proposed" mandated benefits. At that point, the Legislature had approved 16 mandated benefits. In the 13 years since, the Legislature has approved an additional 35 mandated benefits. With 51 mandated health benefits, Florida now has one of the nation's most extensive sets of coverage requirements.

A procedural requirement established for reviewing mandated health insurance benefits specifies that proponents submit to the Agency for Health Care Administration and the legislative committees having jurisdiction, a report which assesses the social and financial impacts of the proposed coverage.[13] Legislative committee staff has not received such an analysis from the proponents.

The Wall Street Journal, October 2, 2002, reported that health benefit costs will rise by 15% in 2003, exceeding expected growth of 12%, according to Towers Perrin survey of large firms. In addition, *The New York Times, October 15, 2002,* reported that health insurance premiums will rise 15.4% in 2003, while HMO premiums will rise by 16%. Although there has never been a study on the cumulative cost of mandated benefits in Florida, a 1998 Blue Cross/Blue Shield report studied the cumulative cost of mandated benefits in various states including Maryland

[12] For example, benefits under the Florida Kidcare Program for eligible children include vision screening (s. 408.815(2), F.S.).
[13] s. 624.215, F.S.

(only Maryland had more mandates than Florida--47 at the time of the study, according to the report). According to the report, Maryland mandates are estimated to add 15.4 percent to the average monthly premium for a group policy. In Maine, 19 of its 31 mandates were found to increase premium costs on groups of 21 or more by just over 7 percent.

C. SECTION DIRECTORY:

Section 1. Amends s. 383.04, F.S., relating to prophylactic requirements for eyes of infants, to require every baby born in a Florida hospital to receive, prior to being discharged from the hospital, a dilated pupillary red-reflex eye examination performed using a direct ophthalmoscope as the light source for detection of pediatric congenital and ocular abnormalities.

Section 2. Reenacts s. 383.07, F.S., which states that "any person who fails to comply" with s. 383.04 (section 1 of the bill) through s. 383.06, is guilty of a second degree misdemeanor, punishable as provided in s. 775.083. Since the bill (and current law) specifically refers to s. 775.083, F.S., (describes the amounts of fines for various degrees of misdemeanors and felonies), a person violating this provision would be subject to a $500 fine, in lieu of any punishment (60 days incarceration) which is provided under s. 775.082, F.S., (describes punishment for the specified degrees of misdemeanors and felonies).

Section 3. Amends s. 627.6416, F.S., which applies to individual health insurance policies pertaining to health insurers' coverage for child health supervision services, to require coverage for a dilated pupillary red-reflex eye examination performed using a direct ophthalmoscope at birth, at 6 to 8 weeks of age, and at 6 to 9 months to detect pediatric congenital and ocular abnormalities and developmental abnormalities.

Section 4. Amends s. 641.31, F.S., pertaining to health maintenance contracts, to require coverage for a dilated pupillary red-reflex eye examination performed using a direct ophthalmoscope at birth, at 6 to 8 weeks of age, and at 6 to 9 months of age to detect pediatric congenital and ocular abnormalities and developmental abnormalities.

Section 5. Provides for an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   AHCA made the following assumptions:

   - The current fee for the least invasive examination is reimbursed at $39.
   - The number of births covered by Medicaid for FY 2001-2002 was 67,000.
   - Staff other than hospital staff are required (pediatric ophthalmologist or optometrist) to perform at least part or all of the examination.

- Fewer children remain Medicaid eligible or access the care offered at 6-8 weeks and at 6-9 months.

Estimated Medicaid Costs

Newborn Screenings at Birth (67,000 at $39)		$2,613,000
Screenings at 6-8 Weeks (47,000 at $39)		$1,833,000
Screenings at 6-9 Months (33,500 at $39)		$1,306,500
Total Annual Cost to Medicaid		$5,752,500
General Revenue	(41.08%)	$2,363,127
Medical Care Trust Fund	(58.92%)	$3,012,096
Total:		**$5,375,223**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent that local governments self-insurance plans do not already comply with the bill, the bill will require them to expend funds necessary to cover eye exams for children covered under the plan(s). The impact is indeterminate at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Cost estimates for the provision of the required infant eye examinations are not available to determine impact on insurers, including HMOs. However, this bill increases screening services available to newborns and infants up to age 9 months, resulting in earlier identification and treatment of serious eye conditions that could result in blindness or death, and reduction in health care costs associated with those conditions.

D. FISCAL COMMENTS:

As reported in the *Florida KidCare Program Evaluation Report, January 2003,* approximately 14.95% of all children in the state of Florida are currently uninsured. Therefore, the insurance mandates in this bill will affect approximately 85% of the children in Florida.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Since the bill may require local governments to incur expenses to pay additional employee health insurance costs, the bill falls within the purview of Article VII, Section 18 of the Florida Constitution, which provides that cities and counties are not bound by general laws requiring them to spend funds or to take action which requires the expenditure of funds unless certain specified exemptions or exceptions are met. The law is binding on counties

and municipalities if the Legislature determines that the law fulfills an important state interest. This bill requires that similarly situated persons (private and public employee health care coverage) must provide coverage of infant eye examinations, but does not state that the act fulfills an important state interest.[14]

2. Other:

   Article I, s. 10 of the State Constitution, prohibits laws impairing the obligation of contracts. The Supreme Court of Florida has held that laws cannot constitutionally be applied retroactively to insurance contracts in existence prior to the effective date of the legislation. *Hassen v. State Farm Mutual Auto. Ins. Co., 674 So.2d 106 (Fla. 1996).* That means that the respective laws in effect on the date of the policy at issue govern the respective rights, obligations of the parties, time limits as to the policy contract and terms as to the filing of claims.

   According to a 2002 Senate bill analysis of CS/CS/SB 2062 with an effective date of July 1, 2002, the bill applies new coverage requirements to all health insurance policies and health maintenance contracts in force on that date, the bill could impact obligations or rights under contract and could possibly be subject to constitutional challenge as being violative of the prohibition against impairment of contracts*. Hassen v. State Farm Mutual Auto. Ins. Co., 674 So.2d 106 (Fla. 1996).*[15]

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Does not amend small group or individual group health insurance plans.
- Does not amend Medicaid statute.
- Does not address children born outside of hospitals while other newborn screening is practitioner-based regulation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[14] Senate Staff Analysis CS/CS/SB/2062, March 12, 2002.
[15] Senate Staff Analysis CS/CS/SB/2062, March 12, 2002.