

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 229 w/CS Developmental Disabilities

SPONSOR(S): Kravitz & Others

TIED BILLS: **IDEN./SIM. BILLS:** SB 150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder Affairs & Long Term Care (Sub)	8 Y, 0 N	Meyer	Liem
2) Future of Florida's Families	14 Y, 0 N w/CS	Meyer	Liem
3) Health Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

CS HB 229 amends section 409.912, F.S., related to the cost-effective purchasing of Medicaid services. The CS authorizes the Agency for Health Care Administration to work with the Department of children and Family Services to develop and seek federal approval for a Model home and community-based waiver to serve children who are diagnosed with familial dysautonomia.

The CS makes implementation of the waiver contingent upon the availability of funds and any limitations in the General Appropriations Act.

The bill takes effect July 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0229b.fff.doc

DATE: April 18, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

- 1 and 4: The bill authorizes a Medicaid waiver program to serve children diagnosed with a specific disease, this has the effect of expanding government.

B. EFFECT OF PROPOSED CHANGES:

Background

Familial dysautonomia (FD) is a genetic disease that is present from birth which results in incomplete development of the nervous system causing a decreased number of nerve cells. The affected nerve cells are those which control certain sensations and autonomic functions. The sensory nerve cells which are most severely affected are those responsible for pain, heat perception, and taste. The autonomic nerve cells control bodily functions such as sweating, swallowing, regulation of blood pressure and body temperature, and the ability to cry tears. Secondary problems associated with the disease may include feeding problems, vomiting, poor growth, spinal curvature and lung problems.

Familial dysautonomia patients can be expected to function independently, if treatment is begun early and major disabilities are avoided. Affected individuals usually are of normal intelligence.

FD is a recessive genetic disease, meaning that both parents carry the gene despite a lack of outward signs. The recessive gene causing FD occurs with a remarkably high carrier frequency in individuals of Eastern European Jewish ancestry (Ashkenazi Jewish extraction). It is estimated that one in 30 persons with Eastern European Jewish ancestry is a carrier of the FD gene. FD does not express itself in a consistent manner; and, the costs for treatment vary depending upon the severity and types of symptoms experienced by the individual. Symptoms vary by age as well.

The FD Foundation in New York reports that based on the FD world-wide registry, there are currently 331 persons living with FD. 178 of those persons reside in the United States. Of that 178 persons, seventy percent of them live in New York (68), New Jersey (24), Florida (17), and California (15).

The Department of Health, Children's Medical Services currently provides health care to children diagnosed with FD. Under the federal requirements of OBRA 89 that Medicaid programs meet children's medical needs, CMS is able to provide a range of needed services and therapies. However, CMS does not have funding to provide families with respite or behavioral services.

Persons with FD are not currently served by the Developmental Disabilities program of the department. According to the department, FD has not been approved by the Centers for Medicare and Medicaid Services as a developmental disability.

Medicaid Home and Community-based Waivers

In 1981, Congress authorized the waiver of certain Federal requirements to enable a state to provide home and community services (other than room and board) to individuals who would otherwise require institutional care reimbursed by Medicaid. The waiver programs are called "1915(c) waivers". Under 1915(c) waiver authority, states can provide services not usually covered by the Medicaid program, as long as these services are **required** to keep a person from being institutionalized.

The Model waiver (originally known as a Katie Beckett waiver) is a provision in the Tax Equity and Fiscal Responsibility Act (TEFRA, 134) that was added to the Medicaid program in 1982. TEFRA 134 gives states the option to cover non-institutionalized children with disabilities. Before TEFRA 134 was enacted, if a child with disabilities lived at home, the parents' income and resources were automatically counted (deemed) as available for medical expenses. However, if the same child was institutionalized for 30 days or more, only the child's own income and resources were counted in determining financial eligibility.

TEFRA 134 amended the Medicaid law to give states the option to waive or disregard the deeming of parental income and resources for children under 18 years old who were living at home but who would otherwise be eligible for Medicaid-funded institutional care. Not counting parental income enables these children to receive Medicaid services at home or in other community settings. CMS reports that many states use this option. States must determine that:

- (1) the child requires the level of care provided in an institution;
- (2) it is appropriate to provide care outside the facility; and
- (3) the cost of care at home is no more than the cost of institutional care. In states that use this option, parents may choose either institutional or community care for their Medicaid eligible children.

Effect of Changes

Medicaid is directed to apply for federal approval of a Model waiver. If approved, Medicaid would be able to serve children diagnosed with familial dysautonomia. It is likely that Medicaid and the department would serve children who are financially eligible by disregarding their parent's income and assets. Eligibility for the Medicaid waiver also provides access to all other Medicaid services.

C. SECTION DIRECTORY:

Section 1 adds subsection (41) to chapter 409.912, F.S.

Section 2 provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The fiscal impact of this bill is unknown as there is no historical cost data associated with serving persons with FD in either the Medicaid program or the Developmental Services program.

If the federal Center for Medicare and Medicaid Services approves the Model waiver authorized in CS HB 229, children with FD who qualified for the waiver would be eligible not only for the waiver services but the entire package of Medicaid services.

The average monthly cost of serving a person under the Developmental Disabilities waiver program currently exceeds \$1,500 per person per month. According to a report by the Auditor General, some participants have plans of care that exceed \$100,000 per year. That monthly cost, however, is only for waiver services. In addition to the \$1,500 monthly for waiver services, recipients also receive the full array of other Medicaid services.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The CS provides that the agency and the department may implement the federally approved waiver subject to the availability of funds and any limitations provided in the General Appropriations Act. Establishing Medicaid eligibility for the child under this waiver authority will also make the child eligible for all Medicaid services. However, Medicaid would coordinate benefits with any other third party payer as long as that payer was available. Very sick or disabled children frequently exhaust the lifetime cap on the family's health insurance benefits.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable

2. Other:

B. RULE-MAKING AUTHORITY:

The Department of Children and Family Services and the Agency for Health Care Administration currently have rule-making authority for home and community-based waiver services. This bill does not expand or revise it.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The original bill added the disease “familial dysautonomia” to the definitions of developmental disability and epilepsy in chapter 393, F.S., with the Sponsor’s expressed wish that this would permit families affected by this disease to receive services from the department.

The CS, however, directs AHCA and DCF to work together to develop a Model home and community-based waiver and to target that waiver specifically to children with familial dysautonomia. Provides that implementation is contingent upon available funding.