

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Policy Committee

BILL: SB 366

INTRODUCER: Senator Wilson

SUBJECT: Infant eye care

DATE: March 10, 2007

REVISED: 03/14/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bedford</u>	<u>Wilson</u>	<u>HP</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>BI</u>	<u></u>
3.	<u></u>	<u></u>	<u>GA</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

This bill requires every baby born in a hospital to receive, prior to being discharged from the hospital, an eye examination performed using an ophthalmoscope and dilation of the pupils for detection of pediatric congenital and ocular abnormalities. The bill specifies that failure to comply with this requirement does not make a person guilty of a second-degree misdemeanor, which is the penalty for failure to comply with the requirement to instill a prophylactic in the eyes of a newborn.

The bill requires health insurance policies and health maintenance contracts to provide coverage for an eye examination performed using an ophthalmoscope and dilation of the pupils 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.

This bill amends ss. 383.04, 627.6416, and 641.31, Florida Statutes.

## II. Present Situation:

### Prophylactic Required for the Eyes of Infants

Section 383.04, F.S., specifies that: “Every physician, midwife, or other person in attendance at the birth of a child in the state is required 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 for the prevention of neonatal ophthalmia. 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.”

*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. gonorrhoeae*, *C. trachomatis*, *S. aureus*, *E. coli*, and other micro-organisms. Complications of the infection can include corneal perforation, blindness, and dacryocystitis (inflammation of the lacrimal gland, the gland that secretes tears).

### Recommended Eye Exams for Newborns

Currently, there is an examination of the newborn’s eyes in the newborn nursery. The examination includes a red reflex test.

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 or prematurity, or those with family histories of congenital cataracts, retinoblastoma, and metabolic and genetic diseases, should have ophthalmologic examinations within the first two months of birth. In addition, the AAP’s Policy Statement, *Eye Examination in Infants, Children, and Young Adults by Pediatricians* (April 2003), recommends that examination of the eyes be performed beginning in the newborn period and at all well-child visits. Newborns should be examined for ocular structural abnormalities, such as cataracts, corneal opacity, and ptosis, “which are known to result in visual problems.”

Currently, the American Academy of Ophthalmology (AAO) recommends vision screening consisting of red light reflex testing for all newborns. 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.

### **Health Insurance Coverage for Children**

Section 627.6416, F.S., requires health insurance policies providing coverage for a member of a family to provide that benefits applicable for children will cover child health supervision services from birth to age 16. 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* published by the American Academy of Pediatrics. Section 641.31(30), F.S., requires a health maintenance contract that provides coverage for a member of a family to provide coverage for child health supervision services.

The Medicaid program 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 screens, and adult health screens). As part of the Medicaid Child Health Check Up Coverage, vision screening must be assessed and documented as part of the comprehensive physical examination, with age appropriate testing to determine if the child's vision is within the normal range. Currently, eye examinations using an ophthalmoscope and dilation of the pupils are not usually done at birth, at 6 to 8 weeks of age, or 6 to 9 months of age unless there is an indication of the need for further ophthalmic assessment.

### **Proposals for Mandated Health Benefit Coverage**

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal which would mandate a health coverage or the offering of a health coverage by an insurance carrier, health care service contractor, or health maintenance organization as a component of individual or group policies to submit to the agency and the Legislature a report which assesses the social and financial impacts of the proposed coverage. This section specifies the information that must be included in the report.

## **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 383.04, F.S., to require every baby born in a hospital to receive, prior to being discharged from the hospital, an eye examination performed using an ophthalmoscope as the light source and dilation of the pupils for detection of pediatric congenital and ocular abnormalities. This requirement is not subject to s. 383.07, F.S., which makes it a second-degree misdemeanor to violate the provisions of ss. 383.04-383.06, F.S. The bill also expands the ability for parents to opt out of newborns receiving eye examinations by written objection by not requiring the written objection to be on account of religious beliefs contrary to the use of drugs.

**Section 2.** Amends s. 627.6416, F.S., pertaining to health insurers' coverage for child health supervision services, to require coverage for an eye examination performed using an ophthalmoscope and dilation of the pupils 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 3.** Amends s. 641.31, F.S., pertaining to health maintenance contracts, to require coverage for an eye examination performed using an ophthalmoscope and dilation of the pupils 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 4.** Provides that the act shall take effect July 1, 2007.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

##### **D. Other Constitutional Issues:**

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.

To the extent that the bill, effective July 1, 2007, 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 in violation of the prohibition against impairment of contracts. *Hassen v. State Farm Mutual Auto. Ins. Co.*, 674 So.2d 106 (Fla. 1996).

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill could have a fiscal impact on health insurers and HMOs by mandating them to provide coverage for a particular benefit, certain eye examinations, and follow-up visits for covered infants for detection of pediatric congenital and ocular and developmental abnormalities. There will be an estimated 123,684 non-Medicaid newborns in Florida for 2007, resulting in an estimated cost of \$11,164,063, using a \$41 fee for eye examinations.

The bill may also have an additional impact on providers, hospitals, midwives and others in attendance at the birth of a child in Florida. The bill will have a significant fiscal impact on those hospitals that have reached the Medicaid per diem cap since they would have to absorb the costs unless the costs would be an add-on to the current Medicaid per diem.

The bill requires follow-up visits that may not be medically necessary and may also increase costs. These costs could ultimately be passed on to consumers in the forms of higher premiums.

### C. Government Sector Impact:

#### **Office of Insurance Regulation and Department of Management Services**

The impact on the Office of Insurance Regulation in reviewing insurance filings and the Department of Management Services, Division of State Group Insurance to include the coverage of the eye exams required in this bill is indeterminate. Some, but not all, of the required services are covered by the State Employees' Health Insurance plan. Any benefit changes occurring other than at the beginning of the State Employees' Health Insurance plan year (January 1) require the Department of Management Services to issue a Summary of Material Modifications to all enrollees resulting in increased mailing cost of approximately \$50,000. Additional costs would be incurred for printing, paper, envelopes, etc.

#### **Department of Health**

This bill would require review of premiums for Title XIX (Medicaid) and Title XXI (State Children's Health Insurance Program) recipients. The type of provider necessary to provide the recommended services will need to be determined before a cost analysis can be developed.

Children's Medical Services will be affected by this proposed legislation due to the increased number of referrals. The exact increase in the number of referrals for ongoing treatment cannot be determined at this time.

### **Agency for Health Care Administration**

For Medicaid, the potential fiscal impact depends on the staff used to provide this service in the inpatient hospital setting. If staff from the hospital are able to perform this screening, Medicaid's per diem (daily reimbursement rate) may cover the screenings/exams with no additional funding. If physicians or optometrists were anticipated to come into the hospital to perform the screening, reimbursement would have to be set. The current fees for the least invasive examination for eye health are reimbursed at \$41.

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

The estimated Medicaid costs for FY 2007-08 include \$5,277,939 for 135,167 screenings at birth, \$3,702,474 for 94,819 screenings at 6 to 8 weeks, and \$2,639,124 for 67,587 screenings at 6 to 9 months, if the screening is added on as another service not covered under the all-inclusive Medicaid hospital per diem rate.

If the service is included in the all-inclusive Medicaid hospital per diem rate and, assuming that the Medicaid per diem rate for hospitals that have reached the Medicaid per diem rate cap does not increase, most of the costs would have to be absorbed by those hospitals. However, the per diem rates for hospitals that have not reached the cap are expected to increase at a total cost to Medicaid of \$5,110,272. This cost would come from federal Medicaid funds (Medical Care Trust Fund) – 56.91 percent or \$2,908,256 and the other part would need to come from the General Revenue Fund – 43.09 percent or \$2,202,016.

The estimate for fiscal year 2008-09 is \$12,200,513 if it is added on as another service covered under the all-inclusive Medicaid hospital per diem rate. The cost to Medicaid considering the cap factor of 43.98 percent would be \$5,365,786 with \$3,053,669 coming from the Medical Care Trust Fund and \$2,312,117 from the General Revenue Fund.

The exact impact on insurers, including HMOs, is unavailable. However, this bill would increase screening services available to newborns and infants up to age 9 months, possibly 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.

**Local Counties**

The bill could have an impact on county health department costs for those health departments that include well child care in their provision of services. Costs associated with this bill are difficult to determine due to lack of definition of the type of provider necessary to provide eye examinations with dilation.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 624.215, F.S., requires that any proposal for legislation that mandates a health benefit coverage must be submitted with a report to AHCA and the legislative committees having jurisdiction. The report must assess the social and financial impact of the proposed coverage. The Health Policy Committee has not received a report for SB 366. The AHCA has not received a report for SB 366.

This bill suggests a mandate in statute for the standard of care used in the examination of newborn's eyes. Because standards of care change with new technology and advances in science, it may not be appropriate to statutorily mandate what the standard of care should be. According to the Department of Health, it would be more appropriate for the Board of Medicine, by rule, to establish what types of tests are appropriate to meet the standard of care. By having the requirements established in rule, the methods of screening can be changed and updated with the changes in technology and advances in science.





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## VIII. Summary of Amendments:

### **Barcode 651394 by Health Policy:**

Provides that the act fulfills an important state interest. Specifies that the effective date applies to policies and contracts issued or renewed on or after that date. (WITH TITLE AMENDMENT)

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

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