

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 Appropriations Subcommittee on Health and Human Services

BILL: SB 1670

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Grimsley

SUBJECT: Medically Complex Children

DATE: March 31, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Sanford</u>	<u>Hendon</u>		CF SPB 7076 as introduced
1.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Pre-meeting
2.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1670 amends statutes relating to the care of medically complex children and their continued placement in their homes with appropriate services. The bill defines “medical neglect” and describes the requirements for the investigation of medical neglect. It requires Child Protection Teams involved in cases alleging abuse, neglect, or abandonment of a medically complex child to consult with a physician with experience in treating that child’s condition.

The bill requires the Department of Children and Families (DCF) to work with the Department of Health and the Agency for Health Care Administration to provide care for medically complex children. It allows placement of such children in medical foster homes and requires placement to be made in the least restrictive, most nurturing environment. The bill clarifies statutes that require services to be offered in the child’s home or in the home of relatives if such care can meet the needs of the child.

The bill clarifies the definition of the term “provider service network” and the conditions for a provider service network’s procurement and contracting in the Medicaid program.

The bill requires Medicaid managed care plans to provide defined information to the DCF on children who are under DCF care and who are enrolled in Medicaid managed care.

The bill has no fiscal impact.

II. Present Situation:

Care of Medically Complex Children

Current law requires that children in this state be provided with the following:

- Protections from abuse, abandonment, neglect, and exploitation;

- A permanent and stable home;
- A safe and nurturing environment, which will preserve a sense of personal dignity and integrity;
- Adequate nutrition, shelter, and clothing;
- Effective treatment to address physical, social, and emotional needs, regardless of geographical location;
- Equal opportunity and access to quality and effective education, which will meet the individual needs of each child, and to recreation and other community resources to develop individual abilities;
- Access to preventive services; and
- An independent, trained advocate, when intervention is necessary, and a skilled guardian or caregiver in a safe environment when alternative placement is necessary.¹

Special provisions for medically complex children are not currently provided in statute.

Section 39.01(43), F.S., provides a definition of “necessary medical treatment” as care that is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child’s condition or to alleviate immediate pain of a child. Additionally, s. 39.01(44), F.S., sets out the circumstances for neglect of a child. The statute specifically provides that certain circumstances may not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered and rejected by a parent. Also, a parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or specific religious organization who does not provide specific medical treatment for a child, may not, for that reason alone, be considered a negligent parent or legal guardian. However, ch. 39, F.S., does not include a definition of “medical neglect” or special provisions related to the investigation of allegations of abuse, neglect, or abandonment when children with serious medical conditions are the reported victims.

Suspected child abuse, neglect, or abandonment may be reported to the Department of Children and Families (DCF) child abuse hotline regarding children with significant medical issues, as with any other children. Child Protection Teams, operated by the Department of Health (DOH), provide medical expertise to the DCF if there are medical issues associated with child abuse or neglect. However, current statute does not require the teams to coordinate their findings with physicians who have special knowledge of the medical condition of the child who is alleged to be the victim of abuse or neglect. Without the information possessed by those familiar with a particular disease or disability processes, parents can be found to be neglectful or abusive even when observed problems are related to insufficient services or a natural change in medical conditions.

In order to maintain these children in a safe environment that is the least restrictive, families with children who have medical issues need access to various medical and social services. These services are sometimes most readily available to the child in placements outside of the home. It is the current policy of the state, supported by federal and state law, that the parent or legal guardian decides what is best for the child. The state respects the parent or legal guardian’s

¹ See s. 39.001, F.S.

decision made in consultation with medical professionals. Many children with complex medical needs live safely in their homes with supportive services through the Florida Medicaid program.

Florida Medicaid has a comprehensive medical service package to accommodate families that choose to care for their medically complex child at home. Medical services are made available in the home, including private duty nursing, personal care assistance, home health aide services, and occupational, physical, and speech therapy when medically necessary, in unlimited amounts or durations for children in the Medicaid program.

The DCF requires foster care caseworkers to obtain high-level approval before placing any dependent child in a nursing home. Foster children already placed in nursing homes are reviewed monthly by the AHCA in an effort to return the children to their birth parents or place them in foster homes run by parents with specialized medical training.

The state is currently a party to a lawsuit related to the placement of medically complex children in settings such as nursing homes. The U.S. Department of Justice joined the lawsuit that alleges that the state violated the Americans with Disabilities Act (ADA).² The AHCA has worked with the families of over 200 children in nursing homes under the Medicaid program to ensure they are aware of in-home health services and have been offered those services. In addition, the DCF and the Agency for Persons with Disabilities (APD) have worked with the families of medically complex children served by APD to ensure the least restrictive placement.

Statewide Medicaid Managed Care

Part IV of ch. 409, F.S., was created in 2011 by ch. 2011-134, L.O.F., and governs the Statewide Medicaid Managed Care program (SMMC). The program, authorized by two federal Medicaid waivers, is designed for the Agency for Health Care Administration (AHCA) to issue invitations to negotiate³ and competitively procure contracts with managed care plans in 11 regions of the state to provide comprehensive Medicaid coverage for most of the state's enrollees in the Medicaid program. SMMC has two components: managed medical assistance (MMA) and long-term care managed care (LTCMC).

The LTCMC component began enrolling Medicaid recipients in August 2013 and is scheduled to complete its statewide roll-out in March 2014.⁴ The MMA component is scheduled to begin enrolling Medicaid recipients in May 2014 and finish its roll-out in August 2014.⁵

² *A.R. et al. v. Dudek et al, United States V. Florida*, Consolidated Case No. 0:12-cv-60460-RSR, U.S. District Court for the Southern District of Florida.

³ An "invitation to negotiate" is a written or electronically posted solicitation for vendors to submit competitive, sealed replies for the purpose of selecting one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. *See* s. 287.012(17), F.S.

⁴ *See* < http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#LTCMC >, last visited March 20, 2014.

⁵ *See* < http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#MMA >, last visited March 20, 2014.

Provider Service Networks in SMMC

Types of managed care plans that are eligible for SMMC include health insurers, exclusive provider organizations, health maintenance organizations, provider service networks (PSNs), and federally-authorized accountable care organizations, among other entities.⁶

A PSN is defined as a type of managed care plan of which a controlling interest is owned by a health care provider, or group of affiliated providers, or a public agency or entity that delivers health services. For the purpose of this definition, “health care provider” includes Florida-licensed health care professionals or licensed health care facilities, federally qualified health care centers, and home health care agencies.⁷

The AHCA is required to procure a specified number of managed care plans per region or a number of plans that range between a minimum and maximum specified for each region. At least two plans per region must be procured, and at least one plan per region must be a PSN, if a PSN submits a responsive bid during the procurement. If no PSN submits a responsive bid for a region, the AHCA is required to procure no more than one less than the maximum number of plans for that region during the initial procurement and, within 12 months after the initial invitation to negotiate, attempt once again to procure a PSN for that region.⁸

III. Effect of Proposed Changes:

Section 1 amends s. 39.001, F.S., to underscore the responsibility of the Department of Children and Families (DCF) to maximize contact between siblings removed from their homes together. The bill makes explicit the requirement for the DCF to preserve and strengthen families who are caring for medically complex children. The bill also requires that among the protections provided to children in this state is access to sufficient home and community-based support for medically complex children to allow them to remain in the least restrictive and most nurturing environment, including sufficient home and community-based services in an amount and scope comparable to those the child would receive in an out-of-home placement.

The DCF is directed to maintain a program of family-centered services and supports for medically complex children to prevent abuse and neglect while enhancing the ability of families to provide for their children’s needs. Services for medically complex children must include outreach, early intervention, and provision of home and community-based services such as care coordination, respite care, and direct home care. The DCF is directed to work with the Agency for Health Care Administration (AHCA) and the Department of Health (DOH) to provide needed services.

Section 2 amends s. 39.01, F.S., to define “medical neglect” as the failure to provide or to allow needed care as recommended by a health care practitioner for a physical injury, illness, medical condition, or impairment, or the failure to seek timely and appropriate medical care for a serious health problem that a reasonable person would have recognized as requiring professional medical attention. The definition also provides circumstances under which medical neglect will not

⁶ See s. 409.962(6), F.S.

⁷ See s. 409.962(13), F.S.

⁸ See s. 409.974(1), F.S.

statutorily occur, including cases in which the parent or legal guardian has made reasonable efforts to obtain health care services, the immediate health condition giving rise to an allegation of neglect is a known and expected complication of the child's diagnosis or treatment, or the recommended care offers limited benefit and the side effects may be considered worse than the anticipated benefit.

Section 3 amends s. 39.303, F.S., to require that a DOH Child Protection Team that is evaluating a report of medical neglect and assessing the health care needs of a medically complex child must consult with a physician who has experience treating children with the same condition.

Section 4 creates s. 39.3068, F.S., to require that reports of medical neglect must be investigated by staff with specialized training in medical neglect and medically complex children. The bill requires that the investigation identify immediate medical needs of the child and use a family-centered approach to assess the capacity of the family to meet those needs. The bill describes the attributes of a family-centered approach and requires that any investigation of cases involving medically complex children include determination of Medicaid coverage for needed services and coordination with the AHCA to access such covered services.

Section 5 amends s. 409.165, F.S., to clarify that funds appropriated for the alternative care of children may be used to meet the needs of children in their own homes or the homes of relatives if the children can be safely served in such settings and the expenditure of funds in such a manner is equal to or less than the cost of out-of-home placement. The bill requires the DCF to cooperate with all child service institutions or agencies within the state which meet DCF standards in order to maintain a comprehensive, coordinated, and inclusive system for promoting and protecting the well-being of children set forth in s. 409.986, F.S. The bill also requires the DCF to work with the DOH in the development, utilization, and monitoring of medical foster homes for medically complex children and to work with the AHCA to provide such home and community-based services as may be necessary to maintain medically complex children in the least restrictive and most nurturing environment. It adds medical foster homes to the list of placements available to the DCF in placing medically complex children. It provides that placements of children in their own homes or in the homes or relatives may be made if the child can be safely served in such a placement and the cost of the placement is equal to or less than the cost of out-of-home placement.

Section 6 amends s. 409.962(13), F.S., to revise the definition of "provider service network" (PSN) within the Statewide Medicaid Managed Care program (SMMC). The bill requires that a group of affiliated health care providers that owns a controlling interest in a PSN must be affiliated for the purpose of providing health care.

Section 7 amends s. 409.967, F.S., to require that under SMMC, managed care plans serving children in the care and custody of the DCF must maintain complete medical, dental, and behavioral health information and provide that information to the DCF for inclusion in the state's child welfare data system. The AHCA and the DCF are required to use this managed care plan data to determine each plan's compliance with standards for access to medical, dental, and behavioral health services, the use of psychotropic medications, and follow-up on all medically necessary services recommended as a result of early and periodic screening, diagnosis, and treatment.

Section 8 amends s. 409.974, F.S., to require the AHCA to procure and contract with managed care plans in each SMMC region under specified parameters regarding the number of PSNs and total plans per region. The bill also provides that in a region containing only one contracted PSN, if changes in the PSN's ownership or business structure result in the PSN no longer meeting the definition of a PSN, the AHCA is required to terminate that plan's contract and provide notice of another invitation to negotiate.

Section 9 amends s. 39.302, F.S., to correct a cross-reference.

Section 10 amends s. 39.524, F.S., to correct a cross-reference.

Section 11 amends s. 316.613, F.S., to correct a cross-reference.

Section 12 amends s. 409.1678, F.S., to correct a reference.

Section 13 amends s. 960.065, F.S., to correct a reference.

Section 14 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Placement of medically complex and medically fragile children in nursing homes is the subject of current litigation, *A.R. et al. v. Dudek et al, United States V. Florida*, Consolidated Case No. 0:12-cv-60460-RSR, U.S. District Court for the Southern District of Florida.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1670 may encourage families to access services which will enable them to care for their medically complex children in their own homes.

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: 39.001, 39.01, 39.302, 39.303, 39.524, 316,613, 409.165, 409.1678, 409.962, 409.967, 409.974, and 960.065.

This bill creates s. 39.3068 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.