

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 282

INTRODUCER: Senators Garcia and Flores

SUBJECT: Florida Kidcare Program

DATE: March 20, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	<b>Pre-meeting</b>
2.			AHS	
3.			AP	

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**I. Summary:**

SB 282 extends Medicaid and Children’s Health Insurance Program (CHIP) eligibility to a “lawfully residing child” who meets other eligibility qualifications of the Medicaid or CHIP program, as applicable. The federal programs permit states to cover this population group, those in a 5-year waiting period, if the state elects to do so.

The bill defines “lawfully residing child” which conforms to the federal program eligibility requirements and deletes references to “qualified alien.” The bill specifies that the definition of lawfully residing child does not extend Kidcare program eligibility to undocumented immigrants.

The bill has a substantial fiscal impact for Fiscal Year 2014-2015 for recurring and non-recurring state costs of \$27,611,139.

**II. Present Situation:**

**The Medicaid Program**

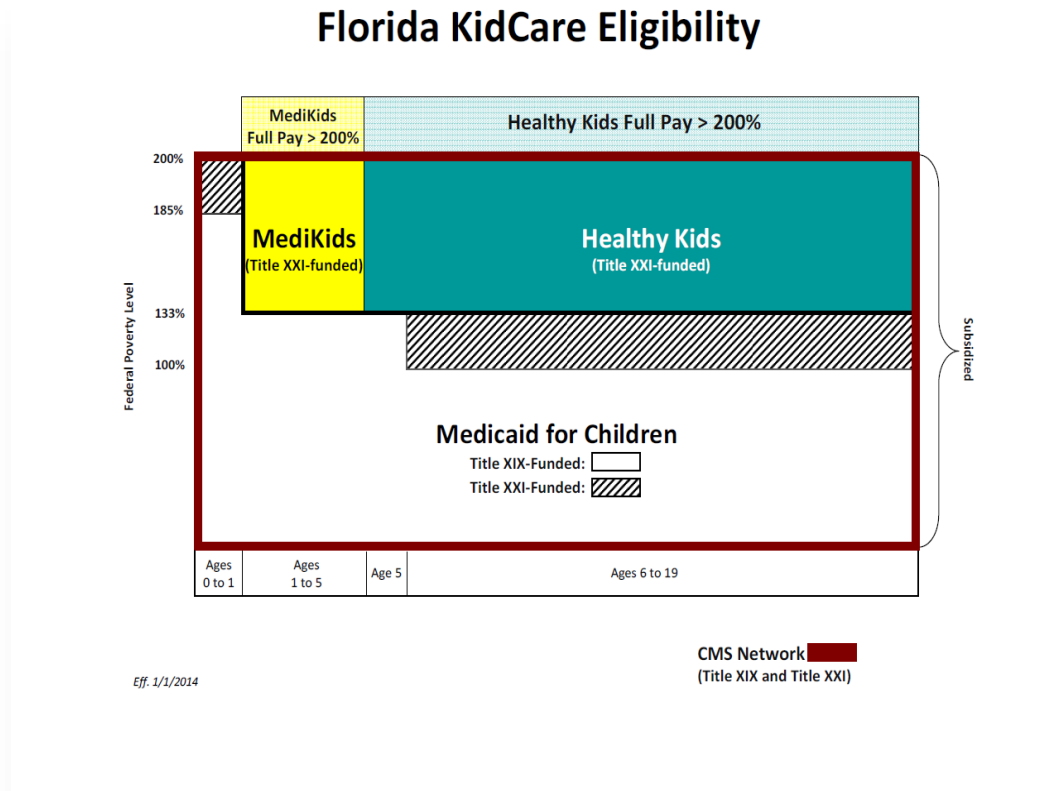
The Florida Medicaid Program is a partnership between the federal and state governments where the federal and state governments share the costs of the program. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services. The plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies.

Eligibility for the Medicaid program 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 (the program) was created in 1998 by the Florida Legislature in response to the federal enactment of the Children’s Health Insurance Program (CHIP) in 1997.<sup>1</sup> Initially authorized for 10 years and then re-authorized<sup>2</sup> through 2019 with federal funding through 2015, the CHIP provides subsidized health insurance coverage 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 the program is found under part II of ch. 409, ss. 409.810 through 409.821, F.S.

The program includes four operating components: Medicaid for children, Medikids, the Children’s Medical Services Network, and the Florida Healthy Kids Corporation (FHKC). The following chart illustrates the different program components and funding sources.<sup>3</sup>



<sup>1</sup> Social Security Administration, *Title XXI - State Children’s Health Insurance Program*, [http://www.ssa.gov/OP\\_Home/ssact/title21/2100.htm](http://www.ssa.gov/OP_Home/ssact/title21/2100.htm) (last visited Mar. 20, 2014).

<sup>2</sup> 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 Mar. 20, 2014).

<sup>3</sup> Department of Health - Florida Kidcare, *Florida Kidcare Eligibility Chart*, <http://www.floridahealth.gov/AlternateSites/KidCare/images/data/2014KidCareFlag.pdf> (last visited Mar. 20, 2014).

Coverage for the non-Medicaid program 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 premium assistance are offered the opportunity to participate in the program 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 the program. The Agency for Health Care Administration (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 use a form that is both a Medicaid and a CHIP application. Families may apply using the paper application or an online application. Both formats are available in English, Spanish, and Creole. Income eligibility is determined 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 2013-2014 General Appropriations Act appropriated \$474,825,007 for the Title XXI (CHIP) components.<sup>4</sup> As of February 1, 2014, a total of 2,121,428 children enrolled in Kidcare.<sup>5</sup>

<b>PROGRAM</b>	<b>ENROLLMENT</b>
Medicaid - Title XIX funded	1,809,869
Medicaid - Title XXI funded	279,396
Healthy Kids - Total	231,345
Children’s Medical Services Network	21,145
Medikids	31,454
<b>Total Florida Kidcare Enrollment:</b>	<b>2,121,428</b>

Under s. 409.814, F.S., the program’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.

<sup>4</sup> 2013-2014 General Appropriation Act, Ch 2013-40, ss. 174-179, Laws of Fla.

<sup>5</sup> Agency for Health Care Administration, *Florida Kidcare Enrollment Report - February 2014*, on file with the Senate Health Policy Committee.

The INA defines the term “alien” as “any person not a citizen or national of the United States.”<sup>6</sup> 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.<sup>7</sup>

Generally, under the INA, an alien is not eligible for any state or local public benefit, including health benefits, unless the alien is:<sup>8</sup>

- A qualified alien;<sup>9</sup>
- A nonimmigrant alien;<sup>10</sup> or,
- An alien who is paroled into the United States under the INA.<sup>11</sup>

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.<sup>12</sup>

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 be eligible, but only through the enactment of a state law which affirmatively provides for such eligibility.<sup>13</sup>

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.<sup>14</sup> 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 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 only in CHIP, without also extending the option to Medicaid children.<sup>15</sup>

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<sup>6</sup> See 8 U.S.C. s. 1101(a)(3).

<sup>7</sup> See 8 U.S.C. s. 1101(a)(21) and (22).

<sup>8</sup> See 8 U.S.C. s. 1621(a).

<sup>9</sup> See 8 U.S.C. s.1641(b) and (c). There are nine classes of qualified aliens.

<sup>10</sup> See 8 U.S.C. s. 1101(a)(15). There are 22 classes of nonimmigrant aliens identified in this section.

<sup>11</sup> See 8. U.S.C. s. 1182(d)(5).

<sup>12</sup> See 8 U.S.C. s. 1621(b).

<sup>13</sup> See 8 U.S.C. s. 1621(d).

<sup>14</sup> Section 403 of Pub. L No. 104-193, H.R. 3734, 104th Congress (Aug. 22, 1996).

<sup>15</sup> See 42 U.S.C. s. 1397gg(e).

Prior to the enactment of the CHIPRA provisions, the term “lawfully residing” had not been used to define eligibility for either Medicaid or CHIP; however, the term has been used by the United States Department of Agriculture (USDA) and the Social Security Administration (SSA). The federal Centers for Medicare and Medicaid Services utilized existing regulations from these agencies to define a lawful presence for Medicaid and CHIP through a July 1, 2010 “Dear State Health Official” letter.<sup>16</sup> 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;
  - 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.

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<sup>16</sup> 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 Mar. 20, 2014).

As of January 31, 2014, 21 states cover lawfully residing children in both Medicaid and CHIP and 27 states, including Washington, D.C., cover these children in Medicaid only.<sup>17</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 409.811, F.S., to define a “lawfully residing child” as a child who:

- Is present in the United States as defined under 8 C.F.R. s. 103.12(a);
- Meets Medicaid or federal Children’s Health Insurance Program (CHIP) residency requirements, and,
- May be eligible for federal premium assistance under s. 214 of CHIPRA and related federal regulations.

The definition for a “qualified alien” is deleted from s. 409.811, F.S.

**Section 2** amends s. 409.814, F.S., to replace references 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 an undocumented immigrant.

**Section 3** amends s. 409.904, F.S., relating to optional Medicaid payments, to designate that a child younger than 19 years of age that is a lawfully residing child as defined in s. 409.811, F.S., is eligible for Medicaid under s. 409.903, F.S.

**Section 4** amends s. 624.91, F.S., the Florida Healthy Kids Corporation Act, to conform to changes made under the act and update references to modified or deleted terms.

**Section 5** 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.

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<sup>17</sup> Centers for Medicare and Medicaid Services, *Medicaid and CHIP Coverage of Lawfully Residing Children and Pregnant Women*, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Outreach-and-Enrollment/Lawfully-Residing.html> (last visited Mar. 20, 2014).

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Expanding eligibility to additional children who may currently be uninsured may have a positive impact on health care providers that currently provide health care services to this population. Uncompensated care costs by these providers may be reduced with increased insured rates.

C. Government Sector Impact:

Since more children would apply for Medicaid and CHIP, the additional enrollment would have an administrative and enrollment impact on the agency, the DOH, and the Florida Healthy Kids Corporation. The combined enrollment impact for the 2014-2015 fiscal year is provided below:

*Agency for Health Care Administration*

<b>Title XXI - Children’s Health Insurance Program Impact</b>	
Total Additional Costs:	\$5,580,328
Less: Federal Funds under Title XXI (28.63% Federal Match)	\$3,741,169
Less: Grants & Donations Trust Fund (Family Premium Contributions)	\$338,392
State Funds Required - General Revenue (71.37 % State Match)	\$1,500,766
<i>Assumes 2,652 additional children would be covered per month for the first 12 months and on a recurring basis.</i>	
<b>Title XIX - Medicaid</b>	
Total Additional Costs:	\$63,632,779
Less: Federal Funds under Title XIX: (59.10% Federal Match)	\$37,606,972
Less: Grants & Donations Trust Fund:	\$0
State Funds Required: General Revenue: (40.90% State Match)	\$26,025,807
<i>Assumes 22,903 additional children would be covered in Medicaid per month for the first month and on a recurring basis.</i>	
<b>TOTAL ENROLLMENT COST IMPACT RECURRING STATE REVENUE NEEDED - AHCA:</b>	<b>\$27,526,573</b>

***Department of Children and Families***

In addition to enrollment costs, the DCF estimates recurring administrative costs for workload increases related to additional enrollment and non-recurring costs for programming changes to the eligibility system for the 2014-2015 fiscal year for a total of all funds of \$169,132, approximately 50 percent of which would be funded through a Medicaid administration grant.

Salaries and Benefits - 3 FTEs:	\$107,530
\$27,941 Minimum Salary @ 3 FTE (8.3% lapse)	
\$10,785 Benefits @ 3 FTE	
Expenses:	
Recurring Costs per FTE @ \$6,261	\$18,783
Non-Recurring Programming Costs, Equipment	\$42,819
<b>TOTAL:</b>	<b>\$169,132</b>
<b>State Funds Required for 2014-2015: (50% Federal/State Match)</b>	<b>\$84,566</b>

The Florida Healthy Kids Corporation reports no additional impact. Enrollment in the Children’s Medical Services Network component is incorporated in the Title XXI and Title XIX projections.

The combined total state funds required for the 2014-2015 fiscal year for recurring and non-recurring state costs is estimated at \$27,611,139.

**VI. Technical Deficiencies:**

The AHCA does not believe the proposed language for s. 409.904, F.S., extends eligibility for optional Medicaid services to immigrant children lawfully residing in the United States without requiring them to wait. The AHCA suggests the provision be re-written to clarify that these lawfully-residing children are eligible for Medicaid goods and services.<sup>18</sup>

**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.

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<sup>18</sup> Agency for Health Care Administration, *2014 Agency Legislative Bill Analysis - HB 7 (January 21, 2014)*, on file with Senate Health Policy. Confirmed via telephone conversation with Gail Hansen, Agency staff that SB 282 contains similar conflict on Mar. 20, 2014.



**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.

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

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