

**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 Children, Families, and Elder Affairs

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BILL: SPB 7076

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Medically Complex Children

DATE: March 10, 2014      REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sanford	Hendon		<b>Submitted as Committee Bill</b>

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**I. Summary:**

SPB 7076 amends statutes to improve the care of medically complex children and encourage their continued placement in the home 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 or the department) to work with the Department of Health (DOH) and the Agency for Health Care Administration (AHCA) to provide care for medically complex children. It allows placement of such children in medical foster homes and requires placement 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 term “provider service network” by explaining the circumstances in which affiliated groups of providers are considered providers and requires Medicaid managed care plans to provide defined information to DCF on children under DCF care. It revises provisions relating to procurement of provider service networks and requires termination of a contract with any such network that may undergo organizational changes that cause the entity to no longer comply with the definition of a provider service network.

The bill is not expected to have a fiscal impact. It provides for an effective date of July 1, 2014.

## II. Present Situation:

### Care of Medically Complex Children

Currently law requires that the children of this state be provided with the following protections:

- 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.<sup>1</sup>

Special provisions for medically complex children are not currently included 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. Also, s. 39.01(44), F.S., sets out the circumstances when neglect of a child may occur. 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 or a parent. Also, a parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or specific religious organization does not provide specific medical treatment for a child, may not, for that reason alone be considered a negligent parent or legal guardian. However, chapter 39 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, and abandonment may be reported to the DCF child abuse hotline regarding children with significant medical issues, as with any other children. The Child Protection Teams, operated by DOH, provide medical expertise to 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 with 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 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.

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<sup>1</sup> Section 39.001, F.S.

In order to maintain these children in a safe and least restrictive environment, families with children with 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 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 any families who chooses to care for their medically complex child at home. Medical services are 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 and/or duration up to 24 hours per day, 7 days per week for children under the Medicaid program.

The department requires foster care caseworkers to obtain high-level agency approval before placing any dependent child in a nursing home. Foster children already placed in nursing homes are reviewed monthly by 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 more restrictive settings such as nursing homes. The United States Department of Justice joined the lawsuit that alleges that the state violated the Americans with Disabilities Act (ADA).<sup>2</sup> The Agency for Health Care Administration (AHCA) has worked with the families of over 200 children in nursing homes under the Medicaid program to ensure they are aware of and provided in home health services. In addition, the Department of Children and Families and the Agency for Persons with Disabilities have worked with medically complex children and their families that they serve to ensure the least restrictive placement.

### ***Medicaid Statewide Managed Medical Care Program***

In 2011, the Legislature passed HB 7107, creating the Statewide Medicaid Managed Care Program as ch. 409, part IV, F.S. The law required AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits, for the delivery of primary and acute care as well as long-term care services. The Agency for Health Care Administration sought and received federal authorization through two different Medicaid waivers.

In most regions, the law prescribed the minimum and the maximum number of contract awards. The law also directed that at least one plan per region be a provider service network (PSN), if a responsive PSN bid was received. If no responsive bids were received from a PSN, the AHCA was to contract with one less than the maximum number of plans permitted for the region and to conduct a re-procurement within 12 months of the initial procurement in order to secure a PSN.

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<sup>2</sup> *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.

Ongoing litigation<sup>3</sup> arising from the procurement of managed care organizations as part of the implementation of statewide managed care has identified several ambiguities in the current statutes. These issues include whether any group of providers constitutes “an affiliated provider group” and whether the AHCA has a continuing responsibility to maintain a contract with at least one PSN in every region.

Under Medicaid managed care, all persons meeting applicable eligibility requirements of Title XIX of the Social Security Act must be enrolled in a managed care plan. Medicaid recipients who (a) have other creditable care coverage, excluding Medicare; (b) reside in residential commitment facilities operated through the Department of Juvenile Justice, group care facilities operated by the DCF, and treatment facilities funded through DCF Substance Abuse and Mental Health Program; (c) are eligible for refugee assistance; or (d) residents of a developmental disability center, may voluntarily enroll in the program. If they elect not to enroll, they will be served through the Medicaid fee for service system.

### III. Effect of Proposed Changes:

**Section 1** amends s. 39.001, F.S., to underscore the responsibility of DCF to maximize contact between siblings removed from their homes together. The bill makes explicit the requirement for DCF to preserve and strengthen families who are caring for medically complex children. This section 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 care placement. The department is directed to maintain a program of family-centered services and supports for medically complex children. The purpose of this program is to prevent abuse and neglect of medically complex children while enhancing the ability of families to provide for their children’s needs. Program services must include outreach, early intervention, and provision of home and community-based services such as care coordination, respite care, and direct home care. The department is directed to work with AHCA and the Department of Health to provide needed services. This section also provides for reference corrections.

**Section 2** amends s. 39.01, F.S., to add a definition of “medical neglect” and to renumber subsequent paragraphs.

**Section 3** amends s. 39.303, F.S., to require that a Child Protection Team in the Department of Health 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 in 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. It 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. It describes the attributes of a

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<sup>3</sup> *Care Access PSN, LLC, vs. State of Florida, Agency for Health Care Administration and Prestige Health Choice, LLC, DOAH Case No. 13 4113BID, AHCA ITN 027 12/13* (Agency for Health Care Administration Final Order, Jan. 2014) available at [https://www.doah.state.fl.us/FLAID/HCA/2014/HCA\\_AHCA%20ITN%20027-12-13\\_02102014\\_095654.pdf](https://www.doah.state.fl.us/FLAID/HCA/2014/HCA_AHCA%20ITN%20027-12-13_02102014_095654.pdf)

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 AHCA to secure 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. It requires 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. This section also requires DCF to work with DOH in the development, utilization, and monitoring of medical foster homes for medically complex children, and to work with 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 department 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, F.S., to clarify the definition of “provider service network.”

**Section 7** amends s. 409.967, F.S., to specify the components of managed care plans serving children in the care and custody of DCF and to require that providers of such plans make information available to DCF for inclusion in the state’s child welfare data system. It directs DCF and AHCA to use the information provided to determine the 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 clarify that the standards for eligible managed care plan selection apply to contracting as well. It also clarifies actions to be taken when a managed care plan no longer meets the definition of a provider service network.

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

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

**Section 11** amends s. 316.613, F.S., to correct a 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:

The bill 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.

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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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