

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: PCS/SB 7034 (469062)

INTRODUCER: Appropriations Subcommittee on Health and Human Services; Children, Families, and Elder Affairs Committee

SUBJECT: Prenatal Services and Early Childhood Development

DATE: January 15, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Hendon	Hendon		CF Submitted as Committee Bill
1.	Brown	Pigott	AHS	Recommend: Fav/CS
2.			AP	

I. Summary:

PCS/SB 7034 revises the Early Steps program in the Department of Health (DOH). The program provides screening and early intervention services to parents with infants and toddlers who have or may have a developmental delay. The program is funded with both state and federal funds.

The bill expands the duties of the DOH clearinghouse for information on early intervention services for parents and providers of early intervention services. The bill provides goals for the Early Steps program, defines terms, and assigns duties to the DOH as well as the local Early Steps offices. The bill sets eligibility criteria for the program. The bill requires a statewide plan, performance standards, and an accountability report each year. The bill designates the Florida Interagency Coordinating Council for Infants and Toddlers as the state interagency coordination council required under federal law. The bill provides procedures for the successful transition of children from the Early Steps program to the local school districts. Finally, the bill repeals outdated sections of statute relating to the Early Steps program.

The bill, according to the DOH, has a negative fiscal impact of approximately \$221,640 in general revenue, \$7,998 of which is nonrecurring, plus an additional \$1,317,000 in recurring general revenue if the bill's new eligibility criteria are implemented.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Florida's Early Steps program has its foundation in federal law. The Individuals with Disabilities Education Act (IDEA) was originally enacted by Congress in 1975 to help ensure that children with disabilities have the opportunity to receive a free appropriate public education, just like other children. The law has been revised many times. The most recent amendments expanded the

program to pre-school children and were passed by Congress in December 2004, with final regulations published in August 2006 (Part B for school-aged children) and in September 2011 (Part C, for babies and toddlers).

The Early Steps program (Part C of the IDEA) provides services to families with infants and toddlers from birth until three years of age who have or are at risk of developmental delays or disabilities.¹ The federal government created grants to assist states in providing early intervention programs under Part C of the IDEA.² The program has no financial eligibility requirements and is an entitlement to any eligible child.³ Florida's Early Steps program is administered by Children's Medical Services within the Department of Health (DOH). The DOH contracts with hospitals and not-for-profit organizations such as Easter Seals across the state for coordination and delivery of services.⁴

States are not required to participate in Early Steps. The federal government encourages states to participate through its grant funding. By accepting a grant, states are required to abide by federal law and regulations for the program. For Fiscal Year 2015-2016, Florida's federal grant award is \$22.6 million.⁵ The 2015-2016 General Appropriations Act provides \$45.2 million general revenue for the program.⁶

The amount of a state's federal grant award is based each year on the number of children in the state's general population under three years of age using United States Census Bureau data.⁷ The amount of the grant is capped annually on that basis, regardless of the number of children receiving services. Federal data indicate that Florida served 1.9 percent of the population of infants and toddlers younger than three years of age in 2012, or 12,036 children.⁸

Federal rules governing early intervention programs for infants and toddlers with disabilities are found in Part 303 of Title 34, Code of Federal Regulations. The rules provide the purpose of the early intervention program, the activities that may be supported, the children that are eligible to be served, the types of services available, the definition of service coordination activities, and use of service coordinators.

Subpart D of Part 303 provides for a statewide system of early intervention services. This system must include a public awareness program; a comprehensive "child find" system that includes

¹ s. 391.302, F.S.

² 34 *Code of Federal Regulations* Part 303

³ *Id.*

⁴ Office of Program Policy Analysis & Government Accountability. Florida Legislature, Early Steps Has Revised Reimbursement Rates but Needs to Assess Impact of Expanded Outreach on Child Participation, Report No. 08-44, (July 2008) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0844rpt.pdf>.

⁵ Department of Health, presentation to the Senate Appropriations Subcommittee on Health and Human Services, October 7, 2015, available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/AHS/MeetingRecords/MeetingPacket_3169.pdf (last visited Dec. 11, 2015).

⁶ See Specific Appropriation 530, s. 3, ch. 2015-232, Laws of Florida.

⁷ U.S. Department of Education, Office of Special Education (OSEP), *Grants for Infants and Families, Part C of IDEA, Grants for Infants and Toddlers*, <http://www2.ed.gov/programs/osepeip/index.html> (last visited: Nov. 16, 2015).

⁸ U.S. Department of Education, *36th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2014*, pg. 261, <http://www2.ed.gov/about/reports/annual/osep/2014/parts-b-c/36th-idea-arc.pdf> (last visited: Nov. 16, 2015).

referral procedures; and procedures and timelines for comprehensive, multidisciplinary evaluations of children and an identification of family needs. States must also develop policies and procedures for individualized family support plans (IFSP). Early Steps lead agencies must ensure the IFSP is developed and implemented for each eligible child.

Federal law allows for early intervention services for an eligible child and the child's family to begin before the completion of the evaluation and assessment, under certain conditions. While each agency or person involved in the provision of early intervention services is responsible for making good-faith efforts to assist the eligible child in achieving the outcomes in the IFSP, the law states that any agency or person cannot be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

States must establish qualifications for personnel providing early intervention services to eligible children and families.⁹ States must have standards to ensure that necessary personnel carry out the purposes of the program and are appropriately and adequately prepared and trained.¹⁰ Parents must give written consent before the Early Steps program may evaluate, assess, and provide early intervention services to a child.¹¹ In the event parents do not give consent, reasonable efforts should be made to ensure the parent is aware of the nature of the evaluation, assessment, and services available, and understands that without consent, the child will not be able to receive the evaluation, assessment, or services.¹²

Federal regulations require that service providers give written notice to parents before the provider initiates or changes the identification, evaluation, or placement of the child, or provides the appropriate early intervention services to the child and the child's family.¹³ Procedures to resolve disputes through a mediation process, at a minimum, must be available whenever a parent requests a hearing.¹⁴ The mediation process is voluntary, must be conducted by a qualified mediator, and cannot be used to deny or delay a parent's right to a due process hearing.¹⁵ Mediation must be timely scheduled. Any agreement reached by the parties to the dispute must be in writing, and discussions that occur during mediation are confidential and cannot be used as evidence in any subsequent proceeding.¹⁶ The state must bear the cost of the mediation process.¹⁷ During the mediation, the child must continue to receive early intervention services currently being provided.¹⁸ If the complaint involves an application for initial services, the child must receive any services that are not in dispute.¹⁹

State policy must specify which functions and services will be provided at no cost to all parents and which will be subject to a system of payments.²⁰ The inability of parents of an eligible child

⁹ 34 CFR. s. 303.361

¹⁰ *Id.*

¹¹ 34 CFR. s 303.404

¹² *Id.*

¹³ 34 CFR s. 303.403

¹⁴ 34 CFR s. 303.419

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 34 CFR s. 303.425

¹⁹ *Id.*

²⁰ 34 CFR s. 303.520

to pay for services must not result in a denial of services to the child or the child's family.²¹ States may establish a schedule of sliding fees for early intervention services but some functions such as evaluation, assessment, and service coordination are not subject to fees.²²

Funds provided by the federal grant may be used only for early intervention services for an eligible child who is not entitled to these services under any other federal, state, local or private source.²³ Interim payments to avoid delay in providing needed services to an eligible child are allowed but the agency that has ultimate responsibility for the payment must reimburse the program.²⁴

Each State that receives financial assistance for the program must establish a State Interagency Coordinating Council (council). The council must be appointed by the Governor and membership must reasonably represent the population of the state.²⁵ The council is to advise and assist the lead agency in:

- The development and implementation of the policies that constitute the statewide system;
- Achieving the full participation, coordination, and cooperation of all appropriate public agencies in the state; and
- The integration of services for infants and toddlers with disabilities and at-risk toddlers and their families regardless of whether at-risk infants and toddlers are eligible for early intervention services.²⁶

Eligible infants and toddlers are identified through referrals from hospitals, healthcare providers, and childcare staff who may interact on a regular basis with infants and toddlers. Parents may also contact the state's program directly for an evaluation and assessment. Before any evaluation can be conducted, parental consent is required. Evaluations and assessments must be completed within 45 days of the referral.²⁷

Early intervention skills for this population focus on five areas:

- Physical (reaching, rolling, crawling, and walking);
- Cognitive (thinking, learning, and solving problems);
- Communication (talking, listening, and understanding);
- Social/emotional (playing and feeling secure and happy); and
- Adaptive/self-help (eating and dressing).²⁸

States must have various components under 20 U.S.C. 1435, which broadly covers administrative, oversight, and regulatory functions, such as:

²¹ *Id.*

²² 34 CFR s. 303.521

²³ 34 CFR s.303.527

²⁴ *Id.*

²⁵ 34 CFR s. 303.600

²⁶ 34 CFR s. 303.650

²⁷ Center for Parent Information and Resources, *Basics of the Early Intervention Process under Part C of the IDEA - Handout I*, http://www.parentcenterhub.org/wp-content/uploads/repo_items/legacy/partc/handout1.pdf (last visited: Nov. 16, 2015).

²⁸ Center for Parent Information and Resources, *Overview of Early Intervention - What is Early Intervention?* <http://www.parentcenterhub.org/repository/ei-overview/> (last visited: Nov. 16, 2015).

- Policies to ensure appropriate delivery of early intervention services to infants, toddlers, and their families;
- Individualized family service plans (IFSP) for each infant or toddler with a disability;
- A properly functioning administrative structure that identifies eligible infants and toddlers using a rigorous definition of “developmental delay,” makes referrals, centrally collects information, provides a directory of services and resources, incorporates data, and has a comprehensive system for personnel development;
- A single line of responsibility in a lead agency designated by the Governor, including financial responsibility, provision of services, resolution of disputes, and development of procedures to ensure timeliness of services; and
- A state interagency coordination council.

The IDEA requires that early intervention services be provided, to the maximum extent appropriate, in natural environments²⁹ such as the child’s home.³⁰ Florida has increased the delivery of services in the home or community based setting since 2008 but still falls below the national average for home-based services.³¹

III. Effect of Proposed Changes:

Section 1 amends s. 383.141, F.S., to provide additional direction to the information clearinghouse administered by the Department of Health (DOH). The bill requires the clearinghouse to provide comprehensive information to educate parents and providers of early intervention services. The DOH is directed to refer to children with developmental disabilities or delays as children with “unique abilities” whenever possible in the clearinghouse. The DOH is to provide education and training to parents and providers through the clearinghouse. The clearinghouse is to promote public awareness of intervention services available to parents of children with unique abilities.

The bill deletes from Florida Statutes the requirement for the DOH to establish access to clearinghouse information on its Internet website. The program is already subject to similar requirements under federal regulations.

Section 2 amends s. 391.025, F.S., to rename the Florida Infants and Toddlers Early Intervention Program under the Children’s Medical Services program as the Early Steps program.

Section 3 amends s. 391.026, F.S., to add to the DOH’s responsibilities the administration of the Early Steps program.

²⁹ A “natural environment” includes the child’s home or a community setting where children would typically be participating if they did not have a disability. See “Program Description,” U.S. Department of Education, available at <http://www2.ed.gov/programs/osepeip/index.html> (last visited Dec. 11, 2015).

³⁰ U.S. Department of Education, Office of Special Education (OSEP), *Grants for Infants and Families, Part C of IDEA, Grants for Infants and Toddlers*, <http://www2.ed.gov/programs/osepeip/index.html> (last visited: Nov. 16, 2015).

³¹ U.S. Department of Education, *36th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2014*, pg. 120-121, <http://www2.ed.gov/about/reports/annual/osep/2014/parts-b-c/36th-idea-arc.pdf> (last visited: Nov. 16, 2015).

Section 4 amends s. 391.301, F.S., to update the legislative intent of the Early Steps program and to establish goals for the program. Under the bill, the program must:

- Integrate information and coordinate services with other programs serving infants and toddlers;
- Enhance the development of infants and toddlers with disabilities and delays;
- Increase the awareness among parents, health care providers, and the public of the importance of the first three years of life for the development of the brain;
- Maintain the importance of the family in early intervention services;
- Provide comprehensive and coordinated services;
- Ensure timely evaluation of infants and toddlers and provide individual planning for intervention services;
- Improve the capacity of health care providers to serve children with unique needs; and
- Ensure programmatic and financial accountability through the establishment of a high-capacity data system, active monitoring of performance indicators, and ongoing quality improvement.

Section 5 amends s. 391.302, F.S., to add definitions for “developmental delay,” “developmental disability,” “habilitative services and devices,” “local program office,” and “rehabilitative services and devices” for the Early Steps program. The bill also deletes the definitions of “in-hospital intervention services” and “parent support and training.”

Section 6 amends s. 391.308, F.S., to provide additional structure and guidance for the Early Steps program. The bill establishes performance standards for the program relating to services and referrals, individualized family support plans, and outcomes for infants and toddlers served.

The bill provides new duties to the DOH for the Early Steps program. The bill requires the DOH to:

- Develop a statewide plan for the program;
- Ensure that local program offices educate hospitals providing Level II and Level III neonatal intensive care about the program and the referral process for evaluation and intervention services;
- Establish standards and qualifications for service providers used by the program;
- Develop uniform procedures to determine eligibility for the program;
- Provide a statewide format for individualized family support plans;
- Promote interagency cooperation with the Medicaid program, the Department of Education, and programs providing child screening;
- Provide guidance to local program offices for coordinating Early Step program benefits with other programs such as Medicaid and private insurance;
- Provide a mediation process and, if necessary, an appeals process under ch. 120, F.S., for parents whose infant or toddler is determined not to be eligible for developmental evaluation or early intervention services or who were denied financial support for such services;
- Competitively procure local offices to administer the Early Steps program;
- Establish performance measures and standards to evaluate local Early Step offices; and
- Provide technical assistance to local Early Step offices.

The bill establishes eligibility criteria for the Early Steps program. The eligibility criteria are based on federal law with the underlying premise that infants and toddlers are eligible for an evaluation to determine the presence of a developmental disability or the risk of a developmental delay based on a physical or medical condition. The DOH is directed to apply specified criteria to determine eligibility for post-evaluation services if funding is provided in the General Appropriations Act. Infants and toddlers meeting the following criteria will be determined eligible:

- Having a developmental delay based on a standardized evaluation instrument that results in a score that is 1.5 standard deviations from the mean in two or more of the following domains: physical, cognitive, communication, social or emotional, and adaptive;
- Having a developmental delay based on a standardized evaluation instrument that results in a score that is 2.0 standard deviations from the mean in one of the following domains: physical, cognitive, communication, social/emotional, and adaptive;
- Having a developmental delay based on informed clinical opinion; or
- Being at risk of developmental delay based on an established condition known to result in developmental delay, or a physical or mental condition known to create a risk of developmental delay.

The bill provides duties to the Early Steps offices. These offices must:

- Evaluate a child within 45 days after referral;
- Notify parents if the child is eligible for services and provide an appeal process to those parents whose child is found ineligible;
- Make interagency agreements with local school districts;
- Provide services directly or procure early intervention services;
- Provide services in a natural environment to the extent possible;
- Develop an individualized family support plan for each child served in the program;
- Assess the progress of the child in meeting the goals of the individualized family support plan;
- Provide service coordination to ensure that assistance for families is properly managed, regardless of whether the program provides the services directly or through referral to other service providers;
- Make agreements with local Medicaid managed care organizations;
- Make agreements with local private insurers; and
- Provide data required by the DOH to assess the performance of the program.

The bill requires the DOH to report to the Governor and Legislature on the performance of the Early Steps program December 1st each year.

The bill designates the Florida Interagency Coordinating Council for Infants and Toddlers as the state interagency coordination council required under federal law.

The bill provides requirements to the local Early Steps offices to improve the transition to the local school district after age three if the child may need special education or related services.

Section 7 amends s. 413.092, F.S., relating to the Blind Babies program to conform the name change of the Florida Infants and Toddlers Early Intervention Program to the Early Steps program.

Section 8 amends s. 1003.575, F.S., relating to assistive technology devices for special education to conform the name change of the Florida Infants and Toddlers Early Intervention Program to the Early Steps program.

Section 9 repeals s. 391.303, F.S., relating to program requirements of the Florida Infants and Toddlers Early Intervention Program.

Section 10 repeals s. 391.304, F.S., relating to program coordination of the Florida Infants and Toddlers Early Intervention Program.

Section 11 repeals s. 391.305, F.S., relating to program standards for the Florida Infants and Toddlers Early Intervention Program.

Section 12 repeals s. 391.306, F.S., relating to funding and contracts for the Florida Infants and Toddlers Early Intervention Program.

Section 13 repeals s. 391.307, F.S., relating to program reviews under the Florida Infants and Toddlers Early Intervention Program.

Section 14 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional guidance provided for the administration of the Early Steps program may result in additional opportunities for private providers of early childhood intervention services.

The Department of Health (DOH) reports that local Early Steps agencies under contract with the DOH might experience an increased workload associated with additional duties under the bill. Such an effect, if any, has an indeterminate cost.³²

C. Government Sector Impact:

The DOH reports that eligibility criteria created under the bill, if applied, will result in at least 1,000 children becoming eligible for Early Steps who would not otherwise qualify, at a cost of \$1,317,000 recurring general revenue.³³ However, the bill directs the DOH to apply the new eligibility criteria “as authorized in the General Appropriations Act” (GAA), and the GAA might or might not include such authorization.

The DOH also reports that, under the bill.³⁴

- The requirements for new hotlines specific to Down syndrome and other prenatally diagnosed developmental disabilities, the expansion of the clearinghouse database, and the accompanying duties to revise the DOH website, will cost \$130,988 in general revenue, \$3,999 of which is nonrecurring, which includes funding for a new full-time equivalent (FTE) position;
- An additional FTE for an attorney position will be required to handle appeals and hearings under ch. 120, F.S., at a cost of approximately \$90,652 in general revenue, \$3,999 of which is nonrecurring; and
- The DOH might experience a recurring, but indeterminate, increase in workload associated with other duties that existing DOH resources cannot absorb.

VI. Technical Deficiencies:

Section 6 of the bill amends s. 391.308, F.S., to provide eligibility criteria for the Early Steps program. One of the criteria (at lines 424-425) specifies infants and toddlers with a developmental delay based on “informed clinical opinion.” However, neither the bill nor existing law in ch. 391, F.S., defines the term “informed clinical opinion.”

VII. Related Issues:

The Department of Health (DOH) reports that:

³² Department of Health, *2016 Agency Legislative Bill Analysis, SB 7034*, Nov. 23, 2015, on file with the Appropriations Subcommittee on Health and Human Services.

³³ *Id.*

³⁴ *Id.*

- The bill’s requirement for the DOH to provide an appeals process under ch. 120, F.S., is in conflict with federal regulations that provide the right to file a due process complaint, along with specific resolution procedures;³⁵ and
- The bill’s requirements for posting public information do not meet the federal requirements for stakeholder input and that a more realistic implementation date for the bill’s changes to eligibility criteria would be December 2016 or January 2017.³⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 383.141, 391.025, 391.026, 391.301, 391.302, 391.308, 413.092, 1003.575,

This bill repeals the following sections of the Florida Statutes: 391.303, 391.304, 391.305, 391.306, and 391.307.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Health and Human Services on January 13, 2016:

The proposed CS:

- Requires the Early Steps program to coordinate services with other programs serving infants and toddlers, as opposed to coordinating services with other early intervention programs as in the underlying bill;
- Deletes from statute the definitions of “in-hospital intervention services” and “parent support and training;”
- Requires the Department of Health (DOH) to educate certain hospitals about the Early Steps program, as opposed to ensuring that those hospitals provide certain services as in the underlying bill;
- Requires the DOH to provide a mediation process and, if necessary, an appeals process under ch. 120, F.S., to applicants found ineligible for services or who are denied financial support, as opposed to the underlying bill, which does not include the provision for a mediation process;
- Removes from the bill the requirement for local Early Steps offices to secure and maintain contracts with Medicaid managed care plans; and
- Changes all references in the bill to “Medicaid managed care entities” to “Medicaid managed care organizations,”

- B. **Amendments:**

None.

³⁵ *Id.*

³⁶ Testimony before the Senate Appropriations Subcommittee on Health and Human Services from Cassandra Pasley, Division Director of Children’s Medical Services at the Department of Health, January 13, 2016.

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