

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 619 Consolidation of Medicaid Waiver Programs
SPONSOR(S): Health Innovation Subcommittee, Pigman
TIED BILLS: **IDEN./SIM. BILLS:** SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	13 Y, 0 N, As CS	Tuszynski	Poche
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Health and Department of Elder Affairs (DOEA).

States have some flexibility in the provision of Medicaid services. Section 1915(b) of the Social Security Act provides authority for the Secretary of the U.S. Department of Health and Human Services to waive requirements to the extent that he or she “finds it to be cost-effective and efficient and not inconsistent with the purposes of this title.” Also, Section 1115 of the Social Security Act allows states to use innovative service delivery systems that improve care, increase efficiency, and reduce costs.

States may also ask the federal government to waive federal requirements to expand populations or services, or to try new ways of service delivery. Florida has a Section 1115 waiver to use a comprehensive managed care delivery model for primary and acute care services, the Statewide Medicaid Managed Care Managed Medical Assistance (MMA) program. In addition, Florida also has a waiver under Sections 1915(b) and (c) of the Social Security Act to operate the Medicaid Managed Care Long-term Care (LTC) program. The LTC program provides services for elderly and disabled individuals who require long-term nursing facility level of care.

Florida also operates multiple Home and Community Based Services (HCBS) waivers to provide services, not otherwise available through Medicaid, intended to prevent or delay institutional placement. The HCBS waivers vary: some waivers are limited to persons with specific diseases or physical conditions (such as cystic fibrosis); others serve broader groups (such as persons who are elderly and/or have disabilities).

HB 619 requires the consolidation of individuals enrolled in three HCBS waivers into the LTC program by January 1, 2018: the Project AIDS Care (PAC) waiver, Adult Cystic Fibrosis (ACF) waiver, and Traumatic Brain Injury and Spinal Cord Injury waiver. The bill requires AHCA to seek federal approval to terminate those waivers once all eligible Medicaid beneficiaries have transitioned into the LTC program.

The bill expands eligibility requirements for the MMA and LTC programs to accommodate the PAC and ACF waiver populations and deletes language relating to waiver consolidation that would be obsolete upon passage. The bill also deletes the requirement for AHCA to operate a prescription drug management program that has become duplicative of services available in the Medicaid managed care model.

The bill does not appear to have a significant fiscal impact on state or local agencies.

The bill provides for an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Children and Families, the Department of Health (DOH), the Agency for Persons with Disabilities, and the Department of Elderly Affairs (DOEA).

The structure of each state's Medicaid program varies and what states must pay for is largely determined by the federal government, as a condition of receiving federal funds.¹ Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections. The entitlement means that two parts of the Medicaid cost equation – people and utilization – are largely predetermined for the states. The federal government sets the minimum mandatory populations to be included in every state Medicaid program. The federal government also sets the minimum mandatory benefits to be covered in every state Medicaid program. These benefits include physician services, hospital services, home health services, and family planning.² States can add benefits, with federal approval. Florida has added many optional benefits, including prescription drugs, adult dental services, and dialysis.³

The Florida Medicaid program covers approximately 4 million low-income individuals, including approximately 2.3 million, or 58.6%, of the children in Florida.⁴ Medicaid is the second largest single program in the state, behind public education, representing 31 percent of the total FY 2016-2017 budget. Medicaid expenditures represent over 19 percent of the total state funds appropriated in FY 2016-2017. Florida's program is the 4th largest in the nation by enrollment, and the 6th largest in terms of expenditures.⁵

Medicaid Waivers

States have some flexibility in the provision of Medicaid services. Section 1915(b) of the Social Security Act provides authority for the Secretary of the U.S. Department of Health and Human Services to waive requirements to the extent that he or she “finds it to be cost-effective and efficient and not inconsistent with the purposes of this title.” Also, Section 1115 of the Social Security Act allows states to use innovative service delivery systems that improve care, increase efficiency, and reduce costs.

States may also ask the federal government to waive federal requirements to expand populations or services, or to try new ways of service delivery. For example, Florida has a Section 1115 waiver to use a comprehensive managed care delivery model for primary and acute care services, the Statewide Medicaid Managed Care (SMMC) Managed Medical Assistance (MMA) program.⁶ In addition to the

¹ Title 42 U.S.C. §§ 1396-1396w-5; Title 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).

² S. 409.905, F.S.

³ S. 409.906, F.S.

⁴ Agency for Health Care Administration, *Florida Statewide Medicaid Monthly Enrollment Report*, February 2017, available at http://www.fdhc.state.fl.us/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last accessed February 28, 2017).

⁵ The Henry J. Kaiser Family Foundation, *State Health Facts, Total Medicaid Spending FY 2015 and Total Monthly Medicaid and CHIP Enrollment Nov. 2016*, available at <http://kff.org/statedata/> (last viewed March 3, 2017).

⁶ S. 409.964, F.S.

Section 1115 waiver for the MMA program, Florida also has a waiver under Sections 1915(b) and (c) of the Social Security Act to operate the SMMC Long-term Care (LTC) program.⁷

Approximately 82% of the Medicaid population in Florida is enrolled in the MMA and LTC programs.⁸

Florida's Medicaid Managed Care Long-term Care Program

The LTC program provides long-term care services to eligible Medicaid beneficiaries. Individuals must enroll in the LTC program if they are age 65 or older and eligible for Medicaid, age 18 or older and eligible for Medicaid by reason of a disability, or determined by the Comprehensive Assessment and Review of Long-term Care Services (CARES) unit⁹ at DOEA to need nursing facility level of care¹⁰ and also meets one or more established criteria, such as receiving TANF or enrolled in hospice care.¹¹

The LTC program also allows individuals who are eligible for various other Home and Community-based Services (HCBS) waivers¹² to enroll. Such waivers include:

- Developmental Disabilities Waiver (iBudget);
- Traumatic Brain and Spinal Cord Injury Waiver;
- Project AIDS Care Waiver; and
- Adult Cystic Fibrosis Waiver.¹³

The following chart details the minimum covered services available to individuals enrolled in the LTC program:

LTC Program Minimum Covered Services ¹⁴		
Adult Companion Care	Home accessibility adaptation	Nursing facility
Adult day health care	Home-delivered meals	Nutritional assessment / risk reduction
Assisted living	Homemaker	Personal care

⁷ Id.

⁸ Supra, FN 4.

⁹ CARES is a federally mandated pre-admission screening program to assess each individual who requests Medicaid reimbursement for nursing facility placement, or who seeks to receive home and community-based services through other Medicaid waivers.

¹⁰ S. 409.985(3), F.S.; "Nursing facility care" means the individual:

(a) Requires nursing home placement as evidenced by the need for medical observation throughout a 24-hour period and care required to be performed on a daily basis by, or under the direct supervision of, a registered nurse or other health care professional and requires services that are sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse because of a mental or physical incapacitation by the individual;

(b) Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and care and the constant availability of medical and nursing treatment and requires services on a daily or intermittent basis that are to be performed under the supervision of licensed nursing or other health professionals because the individual is incapacitated mentally or physically; or

(c) Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and care and the constant availability of medical and nursing treatment and requires limited services that are to be performed under the supervision of licensed nursing or other health professionals because the individual is mildly incapacitated mentally or physically.

¹¹ Agency for Health Care Administration, Statewide Medicaid Managed Care, *Long-term Care Program Snapshot*, December 6, 2016, available at https://ahca.myflorida.com/Medicaid/statewide_mc/pdf/LTC/SMMC_LTC_Snapshot.pdf (last accessed February 27, 2017).

¹² Infra, FN 16; Medicaid HCBS waivers are authorized by Section 2176 of the Omnibus Budget Reconciliation Act of 1981 and incorporated into Title XIX of the Social Security Act as Section 1915(c). States can use this authority to offer a broad array of services not otherwise available through Medicaid that are intended to prevent or delay institutional placement. Florida's HCBS waivers vary on a number of dimensions. Some waivers are limited to persons with specific diseases or physical conditions (such as cystic fibrosis); others serve broader groups (such as persons who are elderly and/or have disabilities). Waivers also differ with respect to the number and types of services provided, payment method, and whether waiver services are available statewide or limited to a few counties.

¹³ Supra, FN 11.

¹⁴ Id.

LTC Program Minimum Covered Services ¹⁴		
Assistive care services	Hospice	Personal emergency response system
Attendant nursing care	Intermittent and Skilled Nursing	Respite care
Behavioral management	Medical equipment and supplies	Occupational, physical, respiratory and speech therapy
Care coordination / Case management	Medication administration	Non-emergency Transportation
Caregiver training	Medication Management	

LTC plan providers also cover some expanded benefits, such as dental, emergency financial assistance, non-medical transportation, over-the-counter medications/supplies, and vision services.¹⁵

Traumatic Brain and Spinal Cord Injury Waiver

The Traumatic Brain and Spinal Cord Injury (TB/SCI) waiver is an HCBS waiver operated by DOH that provides services for individuals with traumatic brain injuries and spinal cord injuries.¹⁶ For purposes of the waiver, “traumatic brain injury” is an injury that produces an altered state of consciousness or anatomic, motor, sensory, or cognitive/behavioral deficits and “spinal cord injury” is an injury that has significant involvement of two of the following: motor deficit, sensory deficit, or bowel and bladder dysfunction.¹⁷ To be eligible, individuals must be 18 years of age or older, be Medicaid eligible, have one of the conditions previously described, and meet nursing home level of care as determined by CARES.¹⁸

The TB/SCI waiver includes services such as assistive technologies, attendant care, adult companion, counseling, personal care, and support coordination. Currently, the TB/SCI waiver has approximately 350 individuals enrolled with 350 on the waitlist.¹⁹

Adult Cystic Fibrosis Waiver

The Adult Cystic Fibrosis (ACF) waiver is an HCBS waiver operated by DOH that provides services for individuals with a diagnosis of cystic fibrosis; a chronic, progressive, and terminal genetic disorder that affects a person’s lungs and digestive system.²⁰ To be eligible, individuals must 18 years of age or older, be Medicaid eligible, have a diagnosis of cystic fibrosis, and meet nursing home level of care as determined by CARES.²¹

The ACF waiver includes services such as case management, counseling, personal care, prescription drugs, respite care, and respiratory therapy. Currently, the ACF waiver has approximately 140 individuals enrolled with none on the waitlist.²²

Project AIDS Care Waiver

The Project AIDS Care (PAC) waiver is an HCBS waiver operated by AHCA that provides services for individuals with a diagnosis of acquired immune deficiency syndrome (AIDS). To be eligible, individuals

¹⁵ Id.
¹⁶ Office of Program Policy Analysis and Government Accountability, *Profile of Florida’s Medicaid Home and Community-Based Services Waivers*, Report No. 13-07, March 2013, available at <http://www.opaga.state.fl.us/MonitorDocs/Reports/pdf/1307rpt.pdf> (last accessed February 27, 2017).
¹⁷ Id.
¹⁸ Id.
¹⁹ Agency for Health Care Administration, Agency Analysis of 2017 House Bill 619, p. 3 (Feb. 6, 2017).
²⁰ Supra, FN 16.
²¹ Id.
²² Supra, FN 19
STORAGE NAME: h0619a.HIS
DATE: 3/9/2017

must be Medicaid eligible, have a diagnosis of AIDS, have an AIDS-related opportunistic infection, be at risk for hospitalization, meet income eligibility requirements of the Social Security Administration for SSI,²³ and not be enrolled in the MMA or LTC programs.²⁴ To meet SSI income requirements, an individual must not earn more than \$2,205 per month, or 300% of the Federal Benefits Rate (FBR).²⁵

The PAC waiver includes services such as case management, home-delivered meals, personal care, restorative massage, specialized medical equipment, and skilled nursing. Currently, the PAC waiver has approximately 7,800 individuals enrolled with none on the waitlist.

Medication Therapy Management Program

Section 409.912(8)(a)11., F.S., requires AHCA to implement a Medicaid prescription drug management system that determines appropriate practice patterns and clinical guidelines to improve prescribing, dispensing, and use of prescription drugs for certain Medicaid beneficiaries. The system must improve quality of care and prescribing practices using best practice guidelines to improve patient adherence to medication plans, reduce clinical risk, and lower prescribed drug costs.²⁶

AHCA contracts with the University of Florida College Of Pharmacy to administer the Medication Therapy Management (MTM) program. The MTM program uses a delivery model that allows pharmacists to work collaboratively with the patient and his or her health care provider to develop treatment plans and optimize drug treatment and therapeutic outcomes.²⁷ The MTM program uses telephonic follow-up assessments, customized interventions, member engagement, and intermediary services to connect patients, pharmacists, and providers.²⁸

To be eligible for MTM services, a recipient must not be enrolled in a health plan and receive their prescribed drug and other medical care through the Medicaid fee-for-service delivery system. The MTM program has an annual capacity of 250 individuals. Currently, the program has 50 individuals enrolled.

Effect of Proposed Bill

HB 619 requires PAC, ACF, and TB/SCI waiver beneficiaries to transition to the LTC program by January 1, 2018. Once all eligible Medicaid beneficiaries have transitioned, AHCA must seek federal approval to terminate the waivers. Waiver consolidation removes administrative burdens on AHCA and DOH by transferring Medicaid beneficiaries from these HCBS waivers into the LTC program. Similar services, and in some cases expanded services, are available to the waiver beneficiaries in the LTC program as were available through the waivers.

Project AIDS Care Waiver Consolidation

The bill transfers approximately 7,800 individuals from the PAC waiver to the LTC program.

The bill amends eligibility requirements, subject to federal approval, for individuals who would otherwise be eligible for the PAC waiver but do not meet the eligibility requirements for the LTC program. The bill

²³ SSI is the Supplemental Security Income program, a federal income supplement program designed to help aged, blind, and disabled people with little to no income by providing cash to meet basic needs such as food, clothing and shelter; See Social Security Administration, Supplemental Security Income Home Page – 2016 Edition, *What is Supplemental Security Income?*, available at <https://www.ssa.gov/ssi/> (last accessed February 27, 2017).

²⁴ Supra, FN 16.

²⁵ Current FBR is \$735 per month; Department of Children and Families, *SSI-Related Programs – Financial Eligibility Standards*, available at http://www.dcf.state.fl.us/programs/access/docs/esspolicymanual/a_09.pdf (last accessed February 26, 2017).

²⁶ S. 409.912(8)(a)11.b., F.S.

²⁷ University of Florida College of Pharmacy, Services, *Medication Therapy Management*, available at <http://mmc.pharmacy.ufl.edu/services/mtm/> (last accessed February 28, 2017).

²⁸ University of Florida College of Pharmacy, Services, *Performance Improvement Interventions*, available at <http://mmc.pharmacy.ufl.edu/services/mtm/> (last accessed March 2, 2017).

makes those individuals with a diagnosis of AIDS, an AIDS-related opportunistic infection, at risk of hospitalization as determined by AHCA, and income at or below 300% of the FBR eligible for Medicaid. This change in the eligibility requirement would allow an individual otherwise eligible for the PAC waiver, who does not meet the nursing home level of care requirement for the LTC program, to be eligible for the MMA program.

The LTC program offers similar services to those offered under the PAC waiver. Some services will not be available, such as massage therapy, but other services available under the LTC program will replace those services.²⁹

Adult Cystic Fibrosis Waiver Consolidation

The bill transfers approximately 140 individuals from the ACF waiver to the LTC program.

The bill amends CARES screening requirements to include “hospital level of care” for individuals diagnosed with cystic fibrosis. Currently, to meet LTC eligibility requirements, CARES must determine an individual requires “nursing facility care.” This change will allow those individuals diagnosed with cystic fibrosis who do not meet the nursing facility level of care requirement to be eligible for the LTC program.

The LTC program offers similar services to those offered under the ACF waiver, but certain services are not available, such as nutritional supplements and the amount of sterile saline needed by individuals with ACF. AHCA will require LTC program plans to cover over-the-counter benefits to fill the gap in available services.³⁰

Traumatic Brain Injury and Spinal Cord Injury Waiver

The bill transfers approximately 350 individuals from the TB/SCI waiver to the LTC program, and 350 individuals from the TB/SCI waiver waitlist to the LTC program waitlist. It is likely those individuals transferred onto the LTC waitlist will transition into the LTC program faster than they would have moved into the TB/SCI waiver due to their high level of acuity and the large number of people enrolled per year from the waitlist into the LTC program.

The LTC program offers services similar to those available through the TB/SCI waiver and expanded benefits will be available to individuals who transfer.

Medication Therapy Management Program

The bill removes the requirement for AHCA to operate a prescription drug management program, and ends the MTM program. Approximately 50 individuals will be impacted. Most Medicaid eligible individuals are already enrolled in the MMA or LTC programs. There are very few individuals eligible for the MTM program that do not otherwise have coverage in the SMMC program and enrolling those who are eligible in the MTM would duplicate services. The evaluation component of the MTM has become less reliable and not statistically significant due to the low participation numbers.³¹

AHCA uses the MTM program to satisfy a federally required research and demonstration component of another Medicaid waiver, the MEDS-AD waiver.³² In the absence of the MTM program, AHCA will use

²⁹ Supra, FN 19 at pg. 4.

³⁰ Supra, FN 19 at pg. 5.

³¹ Supra, FN 19 at pg. 6.

³² The MEDS-AD waiver is another Section 1115 demonstration waiver which serves elderly or disabled individuals with incomes at or below 88% of the Federal Poverty Level and is designed to prevent premature institutionalization by providing access to health care services and medication therapy management. The waiver is limited to those individuals in hospice, home and community based services, or institutional care services that are not eligible for Medicare. See Agency for Health Care Administration, *Florida MEDS-AD Waiver Annual Report, Demonstration Year 9*, available at https://ahca.myflorida.com/medicaid/MEDS-AD/docs/FINAL_MEDS-AD_ANNUAL_RPT-DY9_Jan-Dec_2014.pdf (last accessed February 28, 2017).

its current authority under the MMA program Section 1115 waiver to comply with the research and demonstration requirement of the MEDS-AD waiver.³³

The bill also deletes s. 409.906(13)(b), F.S., a section of law that allows AHCA to consolidate certain waiver programs that will become obsolete upon passage of the bill.

The bill provides for an effective date of July 1, 2017.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 409.904, F.S., relating to optional payments for eligible persons.
- Section 2:** Amends s. 409.906, F.S., relating to optional Medicaid services.
- Section 3:** Amends s. 409.912, F.S., relating to cost-effective purchasing of health care.
- Section 4:** Amends s. 409.979, F.S., relating to eligibility.
- Section 5:** Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill will require a transfer of General Revenue funds from DOH to AHCA relating to the TB/SCI and ACF waivers. DOH has worked with AHCA on this requirement and has not identified any issues with the transfer of General Revenue funds for this purpose.³⁴

³³ Supra, FN 19 at pg. 6. AHCA uses this authority to satisfy similar requirements for the Healthy Start and Hemophilia programs.

³⁴ Email from Paul Runk, Director of Legislative Planning, Department of Health, RE: HB 619, (February 28, 2017)(on file with Health Innovation Subcommittee staff).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2017, the Health Innovation Subcommittee adopted an amendment to HB 619. The amendment made a technical change, removing the unnecessary phrase "or its designee" in reference to certain action taken by AHCA.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.