

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1071 Medicaid Coverage for Former Foster Youth

**SPONSOR(S):** Children, Families & Seniors Subcommittee, Roth

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Facilities Subcommittee	16 Y, 1 N	Grabowski	Lloyd
2) Children, Families & Seniors Subcommittee	16 Y, 0 N, As CS	Grabowski	Brazzell
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect. Florida's child welfare system is administered by the Department for Children and Families (DCF), which works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of Florida's children. When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for children. Foster care can be an appropriate setting for many children, but is also associated with greater needs for certain services.

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 and financed by federal and state funds.

While in foster care, nearly all children are eligible for Medicaid under mandatory eligibility pathways. This means that states must provide coverage because these children receive assistance under the federal Title IV-E foster care program, are disabled, or meet other eligibility criteria. Young adults who age out of the foster care system at age 18 continue to be eligible for Medicaid coverage until age 26, but they have traditionally been required to apply for continued Medicaid coverage when aging out.

The bill requires DCF to develop a program that facilitates the Medicaid enrollment of former foster youth. DCF may collaborate with community-based care organizations to implement the program, which must include:

- Notifying eligible or prospectively eligible young adults, caregivers, group homes, and residential programs about the eligibility and options for enrollment.
- Providing technical assistance to eligible young adults in enrolling.
- Publicizing options for Medicaid enrollment for young adults who have lived in foster care.

The bill modifies Medicaid eligibility standards for former foster youth, consistent with changes to federal law. Under the bill, former foster youth would maintain Medicaid eligibility until reaching age 26. The bill also directs DCF to allow for presumptive eligibility for former foster youth, as required under federal law. DCF is already compliant with the federal requirements codified by the bill.

The bill has a significant, negative recurring fiscal impact to the Medicaid program and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Department of Children and Families

The Department of Children and Families (DCF) mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.<sup>1</sup> DCF must develop a strategic plan to fulfill its mission and establish measureable goals, objectives, performance standards, and quality assurance requirements to ensure the department is accountable to taxpayers.<sup>2</sup>

Under s. 20.19(4), F.S., DCF must provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

DCF must also deliver services by contract through private providers to the extent allowed by law and funding.<sup>3</sup> These private providers include managing entities delivering behavioral health services and community-based care lead agencies (CBCs) delivering child welfare services.

##### Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect. Florida's child welfare system is administered by DCF, which works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of Florida's children.<sup>4</sup>

DCF contracts for case management, out-of-home care, and related services with lead agencies, also known as CBCs. The model of using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.<sup>5</sup>

CBCs are responsible for providing foster care and related services. These services include, but are not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.<sup>6</sup> The CBC must give priority to services that are evidence-based and trauma informed.<sup>7</sup> CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.<sup>8</sup>

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<sup>1</sup> S. 20.19(1), F.S.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> S. 39.001, F.S.

<sup>5</sup> Department of Children and Families, *Community-Based Care*, <https://www.myflfamilies.com/service-programs/community-based-care/overview.shtml> (last accessed March 18, 2021).

<sup>6</sup> Id.

<sup>7</sup> S. 409.988, F.S.

<sup>8</sup> Department of Children and Families, *Community Based Care Lead Agency Map*, <https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml> (last accessed March 18, 2021).

## *Title IV-E Funding for Child Welfare*

While states bear primary responsibility for child welfare, Congress appropriates funds to states through a variety of funding streams for services to children who have suffered maltreatment. One of these funding streams is established in Title IV-E of the Social Security Act (SSA).<sup>9</sup> Title IV-E supports foster care, adoption assistance, and (at state option) guardianship assistance to children who meet federal IV-E eligibility rules. The program may be used for kinship navigator programs meeting IV-E evidence standards, and states may opt to provide selected evidence-based foster care prevention services.<sup>10</sup>

Under IV-E, states must provide foster care and adoption aid to eligible children, and the federal government is committed to paying a part of the cost of that aid (50% to 83%, depending on the state); and a part of the cost of administering the program (50% in all states) and for training (75% in all states). States may opt to provide IV-E guardianship aid under this same cost-sharing structure. Nationally, an estimated 703,000 children received Title IV-E support in an average month during federal fiscal year 2019, including adoption aid (504,000), foster care (163,000), or guardianship aid (35,000).<sup>11</sup>

In general, states must only spend IV-E dollars on children who meet federal eligibility criteria. Rules vary by type of aid. For foster care, they include an income test (applied to the home the child is removed from), removal requirements (typically, a judge must find that a home is “contrary to the welfare” of the child and that “reasonable efforts” to prevent foster care were made), placement in a licensed foster family home or other eligible facility, and age requirements.<sup>12</sup>

### *Foster Care*

When children cannot safely remain at home with parents, Florida’s child welfare system finds safe out-of-home placements for children. After a placement assessment to determine the most appropriate out-of-home placement, a child may be placed with a relative, fictive kin, licensed foster parent, in a group home or residential setting.<sup>13</sup> When a child is placed in foster care, DCF has placement care and responsibility and may move a child at any time and often without court approval.

Young adults who age out of the foster care system have trouble achieving self-sufficiency. When compared to young adults without foster care involvement, young adults who age out of the foster care system are less likely to earn a high school diploma or GED and have lower rates of college attendance.<sup>14</sup> They suffer more from mental health problems, have a higher rate of involvement with the criminal justice system, and are more likely to have difficulty achieving financial independence.<sup>15</sup> These young adults also have a higher need for public assistance and are more likely to experience housing instability, including homelessness.<sup>16</sup>

In Federal Fiscal Year 2017, nationally about 189,000 teens and young adults spent at least one day in foster care.<sup>17</sup> Of those who left care during that year, more than 19,000 aged out of care.<sup>18</sup> This generally means youth reached a state’s legal age of adulthood without having reached permanency.

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<sup>9</sup> 42 U.S.C. § Ch. 7, Subch. IV, Pt. E.

<sup>10</sup> Congressional Research Service, *Child Welfare: Purposes, Federal Programs, and Funding*, March 17, 2021, <https://crsreports.congress.gov/product/pdf/IF/IF10590> (last accessed March 25, 2021).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> R. 65C-28.004, F.A.C.

<sup>14</sup> Gypen, L., Vanderfaellie, J., et al., “Outcomes of Children Who Grew Up in Foster Care: Systematic-Review”, *Children and Youth Services Review*, vol. 76, pp. 74-83, <http://dx.doi.org/10.1016/j.childyouth.2017.02.035> (Last accessed March 22, 2021).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Congressional Research Services, *John H. Chafee Foster Care Program for Successful Transition to Adulthood* (January 15, 2019) <https://fas.org/sqp/crs/misc/IF11070.pdf> (last accessed March 19, 2021).

<sup>18</sup> *Id.*

In State Fiscal Year (SFY) 2019-20, 1,043 young adults 17 years of age were in Florida's foster care system.<sup>19</sup> Of those, 866 (83%) aged out of care at the age of 18.<sup>20</sup> A foster youth who ages out of care at 18 can elect to enter Florida's extended foster care program by meeting certain requirements. Of the 866 young adults who aged out at age 18, 487 entered extended foster care and were eligible to receive foster care services until the age of 21, or 22 with a disability.<sup>21</sup>

However, certain young adults who were in foster care may choose to participate in the Postsecondary Education Services and Supports (PESS) program instead of extended foster care. Young adults in the PESS program receive a monthly stipend of \$1,256 per month to pay for housing, utilities, and living expenses.<sup>22</sup> The PESS program is available to:

- Young adults who turned 18 while in foster care and who spent a total of at least six months in licensed out-of-home care before turning 18; or
- Young adults who are at least 18 and were adopted from foster care after age 16 or were placed with a court-approved guardian after spending at least 6 months in licensed foster care within the 12 months immediately preceding such adoption or placement and have earned a high school diploma or its equivalent and are attending a college or vocational school that is Florida Bright Futures eligible.

In SFY 2018-19, there were 1,221 young adults in the PESS program.<sup>23</sup>

### Florida Medicaid Program

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 DCF, which makes eligibility determinations.

The structure of each state's Medicaid program varies, but what states must pay for is largely determined by the federal government, as a condition of receiving federal funds.<sup>24</sup> 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.<sup>25</sup> States can add benefits, with federal approval. Florida has added many optional benefits, including prescription drugs, ambulatory surgical center services, and dialysis.<sup>26</sup>

The Florida Medicaid program covers approximately 4.5 million low-income individuals.<sup>27</sup> Medicaid is the second largest single program in the state, behind public education, representing approximately one-third of the total FY 2020-2021 state budget.<sup>28</sup>

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<sup>19</sup> Email from John Paul Fiore, Legislative Specialist, Florida Department of Children and Families, RE: Data Request from H. CFS, (Feb. 25, 2021)(on file with Children, Families, and Seniors Subcommittee staff).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Florida Department of Children and Families, Independent Living, Postsecondary Education Services and Supports, <https://www.myflfamilies.com/service-programs/independent-living/postsecondary-education-services.shtml> (last accessed March 25, 2021).

<sup>23</sup> Florida Department of Children and Families, *Independent Living Annual Report* (Jan 31, 2021), <https://www.myflfamilies.com/service-programs/independent-living/postsecondary-education-services.shtml> (last accessed March 25, 2021).

<sup>24</sup> Title 42 U.S.C. §§ 1396-1396w-5; Title 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).

<sup>25</sup> S. 409.905, F.S.

<sup>26</sup> S. 409.906, F.S.

<sup>27</sup> Agency for Health Care Administration, *Florida Statewide Medicaid Monthly Enrollment Report*, December 2020, available at [https://ahca.myflorida.com/medicaid/Finance/data\\_analytics/enrollment\\_report/index.shtml](https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml) (last accessed March 18, 2021).

## *Medicaid for Current Foster Youth*

While in foster care, nearly all children are eligible for Medicaid under mandatory eligibility pathways. This means that states must provide coverage because these children receive assistance under the Title IV-E foster care program, are disabled, or meet other eligibility criteria. Under the Title IV-E program, states must inform foster youth within 90 days prior to emancipation about their future options for health care. Title IV-E also directs states to provide these youth with health information and official documentation that they were previously in care. Such documentation may be necessary to determine eligibility for some former foster youth who later apply for Medicaid.<sup>29</sup>

## *Medicaid for Former Foster Youth*

Former foster youth are also eligible for Medicaid under current law. This includes a young adult who is eligible under Title IV-E of the SSA for subsidized board payments, foster care, or adoption subsidies, or a child for whom the state has assumed temporary or permanent responsibility and who does not qualify for Title IV-E assistance but is in foster care, shelter or emergency shelter care, or subsidized adoption. Current law requires DCF or a CBC to document that current and former foster youth are enrolled in Medicaid.<sup>30</sup>

The federal Patient Protection and Affordable Care Act<sup>31</sup> (PPACA, as amended; P.L. 111-148) required states, as of January 1, 2014, to provide Medicaid coverage to former foster youth until their 26th birthday. It parallels another PPACA requirement that health insurance companies provide coverage of children up to age 26 under their parents' private health care plans. There is no income limit for eligibility and the young adult must not be eligible for another Medicaid coverage type. However, the individual must make application for this coverage with ACCESS Florida, the state's platform for managing social services eligibility.<sup>32</sup> This requirement is key, as many former foster youth who are eligible for Medicaid never complete the application process.

In 2018, Congress supplemented PPACA requirements by adopting the SUPPORT Act.<sup>33</sup> The Act requires states to provide former foster care youth with Medicaid coverage up to age 26, regardless of what state they lived in when they aged out of the foster care system, by calendar year 2023. Currently, Medicaid must cover youth up to age 26 within the state the youth aged out of foster care, and states have the option to cover youth who age out of another state's foster care system.

In addition, the SUPPORT Act requires states to streamline the process by which former foster youth are covered under Medicaid.<sup>34</sup> In compliance with this requirement, DCF implemented automatic enrollment for former foster youth beginning in January 2021.<sup>35</sup> This means foster youth who age out of care after January 1, 2021, no longer need to apply for coverage through ACCESS Florida.

## **Effect of Proposed Changes**

The bill requires DCF to develop a program that facilitates the Medicaid enrollment of former foster youth. DCF may collaborate with the CBCs in the implementation of the program, which must include:

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<sup>28</sup> Ch. 2020-111, L.O.F. See also *Fiscal Analysis in Brief: 2020 Legislative Session*, [https://flsenate.gov/UserContent/Committees/Publications/FiscalAnalysisInBrief/2020\\_Fiscal\\_Analysis\\_In\\_Brief.pdf](https://flsenate.gov/UserContent/Committees/Publications/FiscalAnalysisInBrief/2020_Fiscal_Analysis_In_Brief.pdf) (last accessed March 18, 2021).

<sup>29</sup> *Id.*

<sup>30</sup> S. 409.1451(10), F.S.

<sup>31</sup> P.L. 111-148, 42 USC 1396a(a)(10)(IX).

<sup>32</sup> The DCF, CFOP 170-15, Chapter 2 Medicaid, 2-9.a., available at <https://www.myflfamilies.com/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-15%20%20Federal%20and%20State%20Funding%20Eligibility/CFOP%20170-15,%20%20Chapter%202002,%20Medicaid.pdf> (last accessed March 19, 2021).

<sup>33</sup> P.L. 115-271. The full title of the legislation is the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act. The former foster youth provisions are in section 1002 of the Act.

<sup>34</sup> *Id.* See also 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

<sup>35</sup> Department of Children and Families, *Agency Bill Analysis for HB 1071 of 2021*, March 8, 2021 (on file with Finance & Facilities Subcommittee staff).

- Notifying eligible or prospectively eligible young adults, caregivers, group homes, and residential programs about the eligibility and options for enrollment.
- Providing technical assistance to eligible young adults in enrolling.
- Publicizing options for Medicaid enrollment for young adults who have lived in foster care.

Since January 1, 2021, DCF ensures that foster children are automatically enrolled in Medicaid as they age out of the program consistent with federal requirements. The bill will result in an active enrollment effort focused on those youths that aged out of foster care prior to January 1, 2021. That population will shrink each year, until the last such youths have attained the age of 26.

The bill modifies Medicaid eligibility standards for former foster youth, consistent with changes to federal law. Under the bill, former foster youth would maintain Medicaid eligibility until reaching age 26. The bill also directs DCF to allow for presumptive eligibility for former foster youth, as required under PPACA. DCF is already compliant with the federal requirements codified by the bill.

The bill has an effective date of July 1, 2021.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 409.1451, F.S.; relating to the Road-to-Independence program.

**Section 2:** Amends s. 409.903, F.S.; relating to mandatory payment for eligible persons.

**Section 3:** Provides an effective date of July 1, 2021.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

AHCA reports that 1,730 young adults (ages 18-26) aged out of foster care prior to January 1, 2021, but did not enroll in Medicaid. The DCF outreach program under the bill would be targeted at this population, and AHCA provided the following information regarding the costs of enrolling these Medicaid-eligible young adults:

	Estimated Fiscal Impact			
	100%	75%	50%	25%
<b>Estimated Number of Individuals</b>	1730	1298	865	433
<b>Rate (average expenditures per member 7/1/19-12/31/19)</b>	\$379.36	\$379.36	\$379.36	\$379.36
<b>Total Computable</b>	\$7,875,522	\$5,906,641	\$3,937,761	\$1,968,880
<b>General Revenue</b>	\$3,050,977	\$2,288,233	\$1,525,489	\$762,744

The percentages in the table reflect the number of eligible young adults enrolled because of outreach efforts. For example, if 50% of the eligible population were enrolled in Medicaid, AHCA would pay an additional \$3.9 million per year in payments to MMA plans for that coverage (\$1.5 million general revenue; \$2.4 million federal match). These costs would decline over time and eventually reach \$0, since DCF has implemented automatic enrollment for former foster youths.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

DCF and AHCA have sufficient rule-making authority to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2021, the Children, Families & Seniors Subcommittee adopted an amendment to the bill. The adopted amendment corrects a drafting error that would have eliminated statutory Medicaid eligibility for certain youth under the Road-to-Independence Program. The amendment ensures that all former foster youth ages 18-26 are eligible for Medicaid, consistent with federal law.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Children, Families & Seniors Subcommittee.