

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 Committee on Banking and Insurance

BILL: SB 1268

INTRODUCER: Senator Baxley

SUBJECT: Coverage for Hearing Aids for Children

DATE: March 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Pre-meeting
2.			HP	
3.			AP	

I. Summary:

SB 1268 requires an individual health insurance policy or individual health maintenance organization (HMO) contract that provides major medical coverage for a dependent child of an insured or subscriber, respectively, to provide hearing aid coverage for children from birth through age 18 who have been diagnosed with hearing loss by a licensed physician or a licensed audiologist. The term “hearing aid” means any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for impaired hearing, and includes ear molds. The term does not include cochlear implants.

The bill requires such policies or contracts to provide a minimum coverage limit of \$3,500 per ear within a 24-month period. The insured or subscriber remains responsible for the additional cost of hearing aids that exceed the coverage limit provided for in their policy or contract. If a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the prescription for the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not, or cannot, meet the needs of the child, the bill requires that a new 24-month period must begin with full benefits and coverage.

The bill applies to individual policies or contracts issued on or after January 1, 2022. The provisions of the bill do not apply to the State Group Insurance program, thus there is no fiscal impact to the program.

II. Present Situation:

One in eight people in the United States (13 percent, or 30 million) age 12 years or older has hearing loss in both ears, based on standard hearing examinations.¹ Hearing loss is one of the most common birth defects² in the United States, with approximately two or three out of every 1,000 children in the United States are born with a detectable level of hearing loss in one or both ears.³

Many people who are deaf or hard-of-hearing have some hearing. In some instances, a hearing aid may help a child with hearing loss to make the most of their residual hearing.⁴ Hearing aids make sounds louder and can be worn by people of any age, including infants. Babies with hearing loss may understand sounds better using hearing aids. There are many styles of hearing aids. They can help many types of hearing losses. A young child is usually fitted with behind-the-ear style hearing aids because they are better suited to growing ears.⁵

Hearing loss may be in one ear (unilateral loss) or in both ears (bilateral loss). The degree of hearing loss can range from mild to profound, as described below:⁶

- Mild Hearing Loss (26-40 decibels). A person with a mild hearing loss may hear some speech sounds, but soft sounds are hard to hear.
- Moderate Hearing Loss (41-70 decibels). A person with a moderate hearing loss may hear almost no speech when another person is talking at a normal level.
- Severe Hearing Loss (71-90 decibels). A person with severe hearing loss will hear no speech when a person is talking at a normal level and only hear some loud sounds.
- Profound Hearing Loss (91 decibels or more). A person with a profound hearing loss will not hear any speech and only hear very loud sounds.⁷

Hearing loss can affect a child's ability to develop communication, language, and social skills. Early detection of hearing loss can help infants and children with learning and reaching developmental milestones, according to recent research. In the United States, researchers have reported that children have more favorable language outcomes, such as greater vocabulary and reading abilities, when hearing loss is identified sooner and the child receives hearing aids and

¹ See National Institutes for Health, National Institute on Deafness and Other Communication Disorders at <https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing> (last visited Feb. 6, 2021).

² Florida Newborn Screening, Early Hearing and Intervention Program at <https://floridanewbornscreening.com/hearing/early-hearing-and-intervention-programs/> (last visited Feb. 25, 2021).

³ *Id.*

⁴ Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disorders (Jun. 8, 2020) at <https://www.cdc.gov/ncbddd/hearingloss/treatment.html> (last visited Feb. 20, 2021). The amount of hearing a deaf or hard-of-hearing person has is referred to as "residual hearing."

⁵ *Id.* A plastic ear mold is connected to a behind-the-ear hearing aid and is fitted for the child's ear. It directs sound from the hearing aid into the ear canal. Each person's ear is shaped differently, and a child's ear will change as he or she grows. An audiologist uses a soft material to make a copy of the child's outer ear canal. This is used to make an ear mold that will fit the child. As the child grows, new ear molds can be made and attached to the same hearing aid.

⁶ Florida Department of Health and Children's Medical Services, A Florida Parent's Guide to Hearing, (Apr. 2020 Edition) available at <http://floridanewbornscreening.com/wp-content/uploads/Hearing-Guide-English-FINAL-1.pdf> (last visited Feb. 12, 2021).

⁷ See Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disorders (Jun. 8, 2020), at <https://www.cdc.gov/ncbddd/hearingloss/types.html> (last visited Feb. 20, 2021).

interventions at an earlier age.⁸ A second study similarly found that children who received hearing aids and cochlear implants earlier had better language outcomes, comparing language skills with the provision of a hearing aid at three months compared to 24 months.⁹ The authors state:

The younger the child received intervention, the better the language outcome. In addition, more substantial benefits of earlier access to useful HAs (hearing aids) and CI (cochlear implants) were obtained by those with worse hearing. Earlier intervening, rather than access to UNHS (universal newborn screening), improved outcomes.¹⁰

Florida Newborn Hearing Screening Program

Florida has a universal newborn hearing-screening program¹¹ that requires all Florida-licensed facilities that provide maternity and newborn care to screen, or refer for screening, all newborns prior to discharge for hearing loss, unless a parent objects to the screening.¹² All test results, including recommendations for any referrals or follow-up evaluations by a licensed audiologist, a physician licensed under chs. 458 or 459, F.S., or other newborn hearing screening providers in the hospital facility, must be placed in the newborn's medical records within 24 hours after the completion of the screening procedure.¹³ For babies born in a facility other than a hospital, the parents are to be instructed on the importance of having a screening conducted, information must be provided, and assistance given to make an appointment within three months.¹⁴

The initial newborn screening and any necessary follow-up and evaluation are covered benefits reimbursable by Medicaid, health insurers, and health maintenance organizations, with some limited exceptions.¹⁵ For those newborns and children found to have a permanent hearing loss, the law also provides for referral to the state's Part C program of the federal Individuals with Disabilities Education Act¹⁶ and Children's Medical Services' Early Intervention Program, Early Steps.¹⁷

⁸ Christine Yoshinaga-Itano, Ph.D., et al. *Early Hearing Detection and Vocabulary of Children with Hearing Loss*, PEDIATRICS, (Aug. 2017, Vol. 140, No. 2), <https://pediatrics.aappublications.org/content/140/2/e20162964> (last visited Feb. 26, 2021).

⁹ Teresa Y.C. Ching, Ph.D., *Age at Intervention for Permanent Hearing Loss and 5-Year Language Outcomes*, Pediatrics, (Sept. 2017, Vol. 140, Issue 3), <https://pediatrics.aappublications.org/content/140/3/e20164274> (last visited Feb. 27, 2021).

¹⁰ *Id.*

¹¹ Florida's Early Hearing Detection and Intervention Program (EHDI) is Florida's newborn hearing-screening program at <https://floridanewbornscreening.com/hearing/early-hearing-and-intervention-programs/> (last visited Mar. 1, 2021).

¹² See s. 383.145, F.S.

¹³ Section 383.145(3)(e), F.S.

¹⁴ Section 383.145(3)(i), F.S.

¹⁵ Section 383.145(3)(j), F.S.

¹⁶ See Pub. L. No. 108-446. The Part C program provides benefits and services for infants and toddlers from birth to age 36 months. Florida's Part C program is known as Early Steps and is administered by the Children's Medical Services within the Department of Health.

¹⁷ The Early Steps program services children with disabilities, developmental delays, or children with a physical or mental condition known to create a risk of a developmental delay. See http://www.cms-kids.com/families/early_steps/early_steps.html (last visited Feb. 6, 2021).

Hearing Aid Coverage in Public Insurance Programs

Medicaid

Florida Medicaid provides hearing services for eligible recipients under the age of 21, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. This coverage includes diagnostic services, treatment, equipment, supplies, and other measures described in 42 U.S.C. 1396d(a).¹⁸ Medicaid recipients under the age of 21 have coverage for the following hearing related services:

- Recipients who have documented, profound, severe hearing loss in one or both ears have coverage for:
 - An implanted device for recipients age five years and older; or
 - A non-implanted (softband) device for recipients under age five.
- Cochlear implants for recipients age 12 months and older who have documented, profound to severe, bilateral sensorineural hearing loss.
- For recipients who have moderate hearing loss or greater, the coverage is:
 - One new, complete, (not refurbished) hearing aid device per ear, every three years, per recipient;
 - Up to three pairs of ear molds per year, per recipient; and
 - One fitting and dispensing service per ear, every three years, per recipient.
- A recipient under the age of 12 months may receive up to two newborn screenings. A second screening may be conducted only if the recipient did not pass the test in one or both ears.
- An eligible recipient may receive one hearing assessment every 3 years for the purposes of determining hearing aid candidacy and the most appropriate hearing aid.¹⁹

Medicaid also covers repairs and replacement of both Medicaid and non-Medicaid provided hearing aids, up to two hearing aid repairs every 366 days, after the one-year warranty period has expired.²⁰

State Children's Health Insurance Program²¹

The Children's Health Insurance Program (CHIP) was enacted as part of the Balanced Budget Act of 1997, and it created Title XXI of the federal Social Security Act as a joint state-federal funding partnership to provide health insurance to children in low to moderate income households.²² The Florida Healthy Kids Corporation²³ is one component of Florida's Title XXI program, known as Florida KidCare, and is the only program component utilizing a non-Medicaid benefit package.²⁴ The other program components, Medicaid for children, Medikids, and Children's Medical Services Network, follow the Medicaid benefit package.²⁵

¹⁸ See Rule 54G-4.110, Florida Administrative Code. The hearing services coverage policy from the Agency for Health Care Administration is <https://www.flrules.org/Gateway/reference.asp?No=Ref-06744> (last visited Feb. 6, 2021)

¹⁹ See Agency for Health Care Administration, *Hearing Services Coverage Policy* (June 2016), available at http://ahca.myflorida.com/medicaid/review/specific_policy.shtml (last visited Feb. 6, 2021).

²⁰ *Id.*

²¹ 42 U.S.C. 1397aa-1397mm.

²² Pub. L. No. 105-33, 111 Stat. 251 (1997).

²³ See ss. 624.91-624.915, F.S.

²⁴ See ss. 409.810-409.821, F.S.

²⁵ See s. 409.815(2)(a), F.S., and s. 391.0315, F.S.

In order for health benefits coverage to qualify for premium assistance payments, KidCare enrollees must receive hearing screenings as a covered, preventative health service.²⁶ Additionally, s. 409.815(2)(h), F.S., provides that the benefits for durable medical equipment include within covered services equipment and devices that are medically indicated to assist in the treatment of a medical condition, and specifically prescribed as medically necessary. Hearing aids are covered only when medically indicated to assist in the treatment of a medical condition. There are no out of pocket costs for the well-child hearing screening and the provision of hearing aids for subsidized Title XXI eligible children.²⁷

Hearing Aid Coverage in the Private Health Insurance Market

The Office of Insurance Regulation (OIR) is responsible for the regulation of all activities of insurers and other risk-bearing entities that do business in Florida.²⁸ Florida law does not require health insurance policies or HMO contracts to provide coverage for hearing aids. According to the OIR, some of the plans offered by UnitedHealthcare (All Savers, Neighborhood Health, etc.) cover hearing aids if recommended by a physician, and bone-anchored hearing aids are covered with some restrictions. Molina and Health First cover implant type hearing aids, if medically necessary.²⁹

Currently, 19 states appear to mandate health benefit plans to provide coverage for hearing aids for children only.³⁰ Coverage requirements range from authorizing coverage of a hearing aid every 24 months to every five years. Many states include caps on the amount the insurer must pay. These caps range from \$1,000 to \$4,000.³¹

State Mandated Health Insurance Coverage

Prior to 2012, the OIR identified 18 state mandated benefits.³² Subsequently, Florida has not enacted any mandated benefits. Examples of benefits mandated under Florida law include:

- Treatment for temporomandibular joint disorders;
- Coverage for bone marrow transplants;
- Coverage for certain cancer drugs;
- Diabetes treatment services;
- Osteoporosis;
- Certain coverage for newborn children;
- Child health supervision services; and

²⁶ Section 409.815(2)(a), F.S.,

²⁷ Florida Healthy Kids Corporation, *Medical Benefits* <https://www.healthykids.org/benefits/medical/> (last visited Feb. 6, 2021).

²⁸ The OIR is under the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which serves as the agency head of the commission. Section 20.121(3), F.S.

²⁹ Office of Insurance Regulation correspondence (Dec. 8, 2020) on file with Senate Banking and Insurance Committee.

³⁰ See information gathered by the American Speech-Language-Hearing Association at https://www.asha.org/advocacy/state/issues/ha_reimbursement/ (last visited Feb. 6, 2021). In addition, five states require coverage for adults and children.

³¹ *Id.*

³² Centers for Medicare and Medicaid Services, *Florida – State Required Benefits*, https://downloads.cms.gov/ccio/State%20Required%20Benefits_FL.pdf (last visited Feb. 26, 2021).

- Treatment of cleft lip and cleft palate in children.³³

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal, which would mandate a health coverage or the offering of a health coverage by an insurer, to submit to the Agency for Health Care Administration and the legislative committees having jurisdiction, a report that assesses the social and financial impacts of the proposed coverage. Proponents have submitted a report to Senate Banking and Insurance staff, which indicates that less than 7,200 children under the age of 18 in Florida are deaf.³⁴ Hearing aids and the services necessary to prescribe, evaluate, fit, and manage children with hearing loss generally cost an average of \$3,500 per ear depending on the technology and enhancements selected by the audiologist based on the individual needs of the child.³⁵ (See Section VB, Fiscal Impact Statement, Private Sector Impact of the Bill Analysis.)

Advocates of the bill note that untreated hearing loss may lead to tremendous expense for the taxpayer, as described below:

- Untreated pediatric hearing loss costs \$420,000 in special education costs per child and \$1 million over the lifetime of the individual.
- Longitudinal, peer-reviewed studies have shown that healthcare costs are significantly higher for individuals with untreated vs treated hearing loss.
- Increased costs are not confined to the medical bills in the studies. Medical providers must absorb (and pass on via increased overall costs) costs incurred from longer visit times due to communication difficulties, increased risk of malpractice lawsuits from communication difficulties, and necessary accommodations like interpreter services.
- Communication difficulties in deaf and hard of hearing patients, which would be mitigated by appropriate access to sound, result in more physician visits and overuse of emergency rooms and urgent care centers.
- Patients with untreated hearing loss are more likely to be misdiagnosed when visiting providers for unrelated health issues and are more difficult to treat due to communication difficulties.³⁶

Federal Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (PPACA)³⁷ does not require health insurance policies to cover hearing aids for adults or for children. Under PPACA, individuals and small businesses can obtain health insurance coverage on or off the federal marketplace exchanges.³⁸

³³ *Id.*

³⁴ Florida Coalition for Spoken Language Options, *SB 1268 Mandate Report* (on file with the Senate Committee on Banking and Insurance).

³⁵ *Id.*

³⁶ *Id.*

³⁷ The PPACA (Pub. Law No. 111-148) was enacted on March 23, 2010. On March 30, 2010, PPACA was amended by Pub. Law No. 111-152, the Health Care and Education Reconciliation Act of 2010. The two laws are collectively referred to as the “Patient Protection and Affordable Care Act” or “PPACA.”

³⁸ Exchanges are entities established under PPACA through which qualified individuals and qualified employers can purchase health insurance coverage in qualified health plans (QHPs). Many individuals who enroll in QHPs through individual market exchanges are eligible to receive a premium tax credit (PTC) to reduce their costs for health insurance premiums and to receive reductions in required cost-sharing payments to reduce out-of-pocket expenses for health care services. 42 U.S.C. s. 18031.

All non-grandfathered health plans³⁹ must offer qualified health plans meeting certain federal mandates, including the provisions of the following 10 essential health benefits (EHB):

- Ambulatory services (outpatient care);
- Emergency services;
- Hospitalization (inpatient care);
- Maternity and newborn care;
- Mental health and substance abuse disorder services;
- Prescription drugs;
- Rehabilitative services and rehabilitative services and devices;
- Laboratory services;
- Preventive care and chronic disease management; and
- Pediatric services, including oral and vision care.⁴⁰

States may modify the EHB offered in their states by mandating additional coverage. However, states must defray the associated costs such benefits imposed on qualified health plans coverage, and those costs should not be included in the percentage of premium attributable to the coverage of EHB for calculating the premium tax credit for eligible enrollees⁴¹ on the exchange.⁴² The State of Florida may be required to defray the costs of any additional benefits beyond the required EHB put in place after 2011.⁴³

Reporting of Additional State-Required Benefits and Cost Analysis

For plan years beginning on or after January 1, 2020, each state must identify and report to the federal Department of Health and Human Services (HHS) benefits mandated by state law, and identify which of those benefits are in addition to EHB. The first annual submission deadline for states to notify the HHS of their state-mandated benefits is July 1, 2021.⁴⁴ Each QHP issuer in the state must quantify cost attributable to each additional required benefit and then report this to the state.⁴⁵ In May 2020, HHS clarified existing rules to provide that it would also be permissible for issuers to choose to rely on another entity, such as the state, to produce the cost analysis, provided the issuer remains responsible for ensuring that the quantification complies with existing rules.⁴⁶ Further, the HHS noted that this calculation should be done prospectively to

³⁹ “Grandfathered health plans,” is a plan that maintains coverage that were in place prior to the passage of the PPACA or in which the enrollee was enrolled on March 23, 2010 while complying with the consumer protection components of the PPACA. If a group health plan enters a new policy, certificate, or contract of insurance, the group must provide the new issuer the documentation from the prior plan so it can be determined whether there has been a change sufficient to lose grandfather status. *See* s. 627.402, F.S.

⁴⁰ 42 U.S.C. s. 18022(b)(1)(A)-(J).

⁴¹ In Florida, 1,705,902 or 95 percent of the total marketplace exchange enrollees receive premium tax credits. KFF, Marketplace Effectuated Enrollment and Financial Assistance (2020) available at <https://www.kff.org/other/state-indicator/effectuated-marketplace-enrollment-and-financial-assistance/?currentTimeframe=0&selectedRows=%7B%22wrapups%22:%7B%22united-states%22:%7B%7D%7D,%22states%22:%7B%22florida%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Feb. 24, 2021).

⁴² HealthCare.gov, Subsidized Coverage, at <https://www.healthcare.gov/glossary/subsidized-coverage/> (last visited Feb. 20, 2021). Household income must be between 100% and 400% of the federal poverty level to qualify for a premium tax credit.

⁴³ *See* 42 U.S.C. s. 18031(d)(3)(B)(ii).

⁴⁴ CFR 156.111

⁴⁵ CFR 155.170(c)

⁴⁶ 85 Fed. Reg. 29218 (May 14, 2020)

allow for the offset of an enrollee's share of premium and for purposes of calculating the PTC and reduced cost sharing.⁴⁷

III. Effect of Proposed Changes:

Sections 1 and 2 create ss. 627.6413 and 641.31(48), F.S., respectively, to require an individual health insurance policy or individual HMO contract that provides major medical or similar coverage for a dependent child, age 18 or younger, of the insured or subscriber to provide coverage for hearing aids prescribed, fitted, and dispensed by a physician licensed under ch. 458 or 459, F.S., or an audiologist licensed under part I of ch. 468, F.S. The term, "hearing aid," is defined to include any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for impaired hearing, and includes ear molds. The term does not include cochlear implants.

The policy or contract is required to provide a minimum coverage limit of \$3,500 per ear within a 24-month period. The bill provides that the insured or subscriber remains responsible for the cost of hearing aids and related services that exceed the coverage limit provided for in their policy or contract.

The bill provides that, if a child experiences a significant and unexpected change in his or her hearing or a medical condition requiring an unexpected change in the prescription for the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not or cannot meet the needs of the child, the bill requires that a new 24-month period must begin with full benefits and coverage.

The bill applies to policies or contracts that are issued or renewed on or after January 1, 2022.

Section 3 provides an effective date of January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁴⁷ *Id.*

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Advocates of the Florida Coalition for Spoken Language Options provided the following analysis of the fiscal impact of SB 1268 on individual policies or contracts.⁴⁸ According to the Florida Coalition for Spoken Language Options, approximately 461 children will benefit from the mandated coverage, and the resulting increases in costs are estimated to be \$0.74 annually or .06 monthly per covered life, as described below:

Florida Population	21,477,737
Florida Population Under 0-18 (19.7%)	4,231,114
All Floridians with individual major medical plans ⁴⁹	1,765,807
19.7% of all covered lives on individual major medical plans are under 18	347,864
0.17% of children have hearing loss	7,193
0.17% of the children who have individual major medical plans	591
2% of .17% slight loss/no hearing aid needed	-12
30% of .17% severe to profound sensorineural or mixed loss/ cochlear implant candidate	-177
.17% of 16,170 Children Receiving Early Steps	-11
Impacted Hearing Aid Candidates	461
39% unilateral	180
61% bilateral	281
Cost per Unilateral (\$3500 per ear over 24 months)	\$630,000
Cost Per Bilateral (\$3500 per ear over 24 months)	\$1,967,000
Total Cost Over 24 Months	\$2,597,000
Cost per Year	\$1,298,500
Annual Cost per Plan (\$1,298,500 spread over 1,765,807 covered lives)	\$0.74
Cost Per Month Per Covered Life	\$0.06

⁴⁸ Florida Coalition for Spoken Language Options, *SB 1268 Mandate Report* (on file with Senate Banking and Insurance Committee).

⁴⁹ Office of Insurance Regulation correspondence (Dec. 8, 2020) (on file with Senate Banking and Insurance Committee).

C. Government Sector Impact:

None. The provisions of the bill do not apply to the State Group Insurance Program, since it does not mandate that group or employer coverage provide the benefit.

VI. Technical Deficiencies:

The bill does not define “significant and unexpected change” in hearing requiring an unexpected change in the prescription and what criteria will be used to make that determination. Defining this term in the bill or through rulemaking should reduce disputes over whether a change in hearing is “significant and unexpected.”⁵⁰

VII. Related Issues:

Generally, insurance policies and HMO contracts are issued with a one-year duration. It may be difficult to implement a coverage requirement that lasts for 24 months, as proposed in the bill.⁵¹

VIII. Statutes Affected:

This bill substantially amends section 641.31 of the Florida Statutes.

This bill creates section 627.6413 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.

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

⁵⁰ Office of Insurance Regulation, SB 1268 Analysis (Feb. 18, 2021) (on file with Senate Banking and Insurance Committee).

⁵¹ Office of Insurance Regulation, 2021 Legislative Session, SB 1268 (Feb. 18, 2021). On file with Senate Banking and Insurance Committee.