

**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 Health Regulation Committee

**BILL:** CS/SB 1294

**INTRODUCER:** Health Regulation Committee and Senator Garcia

**SUBJECT:** Florida Kidcare Program

**DATE:** February 16, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill removes the exclusion from eligibility for the Florida Kidcare program of children who are aliens (not a citizen or national of the United States) and who are lawfully present in the United States. Currently, only children who are “qualified aliens” are eligible for Kidcare. Under the bill, any child who is an alien who is lawfully present in the United States would be eligible for Kidcare, if he or she meets the other eligibility requirements (primarily age, income, and residency) for the program.

The bill makes an immigrant or noncitizen child who is 18 years of age or younger and who is lawfully present in the United States eligible for Medicaid, if he or she meets the Medicaid eligibility requirements.

The bill adds one member to the Board of Directors of the Florida Healthy Kids Corporation. The additional member will be appointed by the Governor from among three nominees submitted by the Florida Dental Association.

This bill substantially amends the following sections of the Florida Statutes: 409.814, 409.903, and 624.91.

## II. Present Situation:

### Florida Kidcare Program

The Kidcare program was created by the Florida Legislature in 1998 in response to the federal enactment of the State Children's Health Insurance Program in 1997, later known more simply as the Children's Health Insurance Program (CHIP). The federal authority for the CHIP is located in Title XXI of the Social Security Act.<sup>1</sup> Initially authorized for 10 years and then recently re-authorized<sup>2</sup> through 2019 with federal funding through 2015, the CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. Florida's statutory authority for Kidcare is found in part II of ch. 409, F.S.

Kidcare encompasses four programs: Medicaid for children, the Medikids program, the Children's Medical Services Network, and the Florida Healthy Kids program. Kidcare coverage is funded by state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the federal Social Security Act. Families also contribute to the cost of the coverage under the Title XXI-funded components of Kidcare based on their household size, income, and other eligibility factors. For families with incomes above the income limits for premium assistance or who do not otherwise qualify for assistance, Kidcare also offers an option under the Healthy Kids component and the Medikids component for the family to obtain coverage for their children by paying the full premium.

Eligibility for the Kidcare components that are funded by Title XXI is determined in part by age and household income as follows:<sup>3</sup>

- Medicaid for Children: Title XXI funding is available from birth until age 1 for family incomes between 185 percent and 200 percent of the Federal Poverty Level (FPL).
- Medikids: Title XXI funding is available from age 1 until age 5 for family incomes between 133 percent and 200 percent of the FPL.
- Healthy Kids: Title XXI funding is available from age 5 until age 6 for family incomes between 133 percent and 200 percent of the FPL. For age 6 until age 19, Title XXI funding is available for family incomes between 100 percent and 200 percent of the FPL.
- Children's Medical Services Network: Title XXI and Title XIX funds are available from birth until age 19 for family incomes up to 200 percent of the FPL for children with special health care needs. The Department of Health assesses whether children meet the program's clinical requirements.

Kidcare is administered jointly by the Agency for Health Care Administration, the Department of Children and Families, the Department of Health, and the Florida Healthy Kids Corporation. Each entity has specific duties and responsibilities under Kidcare as detailed in part II of ch. 409,

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<sup>1</sup> Title XXI – State Children's Health Insurance Program. Found at: <[http://www.ssa.gov/OP\\_Home/ssact/title21/2100.htm](http://www.ssa.gov/OP_Home/ssact/title21/2100.htm)> (Last visited on February 3, 2012).

<sup>2</sup> Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111-3. Found at: <[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_public\\_laws&docid=f:publ003.111.pdf%20](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ003.111.pdf%20)> (Last visited on February 3, 2012).

<sup>3</sup> Florida Kidcare Eligibility. Found at: <<http://www.doh.state.fl.us/alternatesites/kidcare/images/data/FKC-eligibilityflag-accessible.pdf>> (Last visited on February 3, 2012).

F.S. The Department of Children and Families determines eligibility for Medicaid, and the Florida Healthy Kids Corporation processes all Kidcare applications and determines eligibility for the CHIP, which include a Medicaid screening and referral process to the Department of Children and Families, as appropriate.

To enroll in Kidcare, families utilize a form that is both a Medicaid and CHIP application. Families may apply using the paper application or an online application. Both formats are available in English, Spanish, and Creole. Income eligibility is determined through electronic data matches with available databases or, in cases where income cannot be verified electronically, through submission of current pay stubs, tax returns, or W-2 forms.

The 2011-2012 General Appropriations Act appropriated \$520,962,322 for Kidcare, including \$61,436,037 in General Revenue.<sup>4</sup> The Social Services Estimating Conference convened on December 12, 2011, to adopt a caseload and expenditure forecast for Kidcare through June 2015. For the current fiscal year the program is projected to end the year with a surplus of \$39.4 million with \$12.8 million of the surplus being General Revenue.<sup>5</sup> For FY 2012-2013, the projected expenditures for General Revenue are \$6.2 million below the current year appropriation.

### **Eligibility of Alien Children for Medicaid and the CHIP**

The Immigration and Nationality Act (INA) was created in 1952 to consolidate a variety of statutes governing immigration law. The INA has been amended numerous times since 1952. The INA defines the term “alien” as “any person not a citizen or national of the United States.”<sup>6</sup> Nationals of the United States are citizens of the United States, or persons who, though not a citizen of the United States, owe permanent allegiance to the United States. Nationals who are not citizens include persons born in American Samoa or Swain’s Island after December 24, 1952, and residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

Generally, under the INA, an alien is not eligible for any State or local public benefit, including health benefits, unless the alien is:<sup>7</sup>

- A qualified alien<sup>8</sup>,
- A nonimmigrant alien<sup>9</sup> under the INA, or
- An alien who is paroled into the United States under the INA.<sup>10</sup>

There are limited exceptions to the ineligibility for public benefits for treatment of emergency medical conditions, emergency disaster relief, immunizations, and services such as soup kitchens, crisis counseling and intervention, and short-term shelter.<sup>11</sup>

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<sup>4</sup> See ch. 2011-69, L.O.F., line item 151.

<sup>5</sup> Social Services Estimating Conference – Kidcare Program, December 12, 2011. Found at: <http://edr.state.fl.us/Content/conferences/kidcare/index.cfm> (Last visited on February 3, 2012).

<sup>6</sup> See 8 U.S.C. §1101(a)(3).

<sup>7</sup> See 8 U.S.C. §1621(a).

<sup>8</sup> See 8 U.S.C. §1641(b) There are nine classes of qualified aliens.

<sup>9</sup> See 8 U.S.C. §1101(a)(15) There are 22 classes of nonimmigrant aliens identified in this section.

<sup>10</sup> See 8 U.S.C. §1182(d)(5).

<sup>11</sup> See 8 U.S.C. §1621(b).

The INA gives states the authority to provide that an alien who is not lawfully present in the United States is eligible for any state or local public benefit for which the alien would otherwise be ineligible, but only through the enactment of a state law which affirmatively provides for such eligibility. The term “lawfully present” includes immigrants or noncitizens who have been inspected and admitted into the United States and not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigrant Services to stay or live in the U.S.

The enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) placed limitations on Federal funding for health coverage of immigrant families. The law imposed a 5-year waiting period on certain groups of qualified aliens, including most children and pregnant women who were otherwise eligible for Medicaid. Medicaid coverage for individuals subject to the 5-year waiting period and for those who do not meet the definition of qualified alien was limited to treatment of an emergency medical condition. The 5-year waiting period also applies to children and pregnant women under the CHIP.

When Florida enacted Kidcare in 1998, s. 409.814, F.S., excluded children who are aliens, except for children who are qualified aliens.

The Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3, permits states to cover certain children and pregnant women who are “lawfully residing in the United States” in both Medicaid and the CHIP, notwithstanding certain provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. States may elect to cover these groups under Medicaid only or under both Medicaid and the CHIP. The law does not permit states to cover these new groups only in the CHIP, without also extending the option to Medicaid.<sup>12</sup> According to the Centers for Medicare and Medicaid Services, 24 states provide Medicaid coverage for children and 14 states provide CHIP coverage for children under the CHIPRA option.<sup>13</sup>

On July 1, 2010, the Centers for Medicare and Medicaid Services sent a letter to state health officials regarding Medicaid and CHIP coverage for lawfully residing children and pregnant women.<sup>14</sup> The letter states that children and pregnant women who fall into one of the following categories will be considered lawfully present. These individuals are eligible for Medicaid and CHIP coverage, if the state elects the new option under CHIPRA, and the child or pregnant woman meets the state residency requirements and other Medicaid or CHIP eligibility requirements.

- A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. §1641).

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<sup>12</sup> See 42 U.S.C. §1397gg(e).

<sup>13</sup> Email dated February 13, 2012 from the Centers for Medicaid, CHIP and Survey and Certification – on file with the Senate Health Regulation Committee.

<sup>14</sup> Letter to State Health Officials dated July 1, 2010, from the Center for Medicaid, CHIP and Survey and Certification, U.S. Department of Health and Human Services, regarding Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women, SHO #10-006, CHIPRA #17. Found at: <<https://www.cms.gov/smdl/downloads/SHO10006.pdf>> (Last visited on February 3, 2012).

- An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.
- An alien who has been paroled into the U.S. pursuant to section 212(d)(5) of the INA (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings.
- An alien who belongs to one of the following classes:
  - Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
  - Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
  - Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
  - Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;
  - Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
  - Aliens currently in deferred action status; or
  - Aliens whose visa petition has been approved and who have a pending application for adjustment of status.
- A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. §1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. §1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days.
- An alien who has been granted withholding of removal under the Convention Against Torture.
- A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. §1101(a)(27)(J)).
- An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. §1806(e).
- An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

Because “children who are lawfully residing in the U.S.” is a new eligibility group, claims paid on their behalf may be matched at the enhanced Title XXI match rate, regardless of whether the child is covered through Medicaid or a separate CHIIP program. Medicaid eligible children for whom a state receives the enhanced Title XXI match rate and who would be subject to the 5-year waiting period must be claimed at the regular Medicaid match rate once these children have met the 5-year waiting period. For children ages 19 to 21, who are not eligible for CHIP, the regular Medicaid match rate is available. There would be no federal match for services provided through Medicaid or CHIP for alien children who are not lawfully residing in the U.S.

### **Florida Healthy Kids Corporation**

The Florida Healthy Kids Corporation is created in s. 624.91, F.S., to offer health insurance for children ages 5 through 18. The Corporation is one of four Florida KidCare partners. The Healthy Kids program is designed to provide quality, affordable health insurance for families not eligible for Medicaid. The program provides comprehensive health care services through

contracts with both managed care and dental pre-paid plans. Federal and state funding provides subsidies for children in families with incomes below 200 percent of the Federal Poverty Level. Most families pay just \$15 or \$20 per month. Full-pay options are also available, making every Florida child ages 5 through 18 eligible.

The Corporation operates under the supervision and approval of a 12-member Board of Directors chaired by the Chief Financial Officer or his or her designee. Subsection (6) of s. 624.91, F.S., specifies the membership of the Board of Directors and the appointing authorities.

The 2009 Legislature enacted two laws amending the membership of the Board of Directors for the Florida Healthy Kids Corporation, both by creating a subparagraph 11. Chapter 2009-41, Laws of Florida (L.O.F.) added one member, appointed by the Governor, from among three members nominated by the Florida Dental Association. Chapter 2009-113, L.O.F., added the Secretary of Children and Family Services, or his or her designee. According to the rules of statutory construction found in the preface to the Florida Statutes, when amendatory acts are irreconcilable, the “last passed” version is placed in the text, absent legislative intent to the contrary. As a result, the dental representative was not included in the statutory list of members of the Board of Directors of the Florida Healthy Kids Corporation. The 2010 and 2011 Legislatures failed to pass legislation resolving this issue.

Despite the lack of a clear statutory requirement for a representative of the Florida Dental Association to be on its Board of Directors, the Florida Healthy Kids Corporation has recognized the importance of having the expertise and experience of a representative of the Florida Dental Association on the board. The Florida Dental Association has appointed a pediatric dentist representative who has been an active member at both board and committee meetings.

### **III. Effect of Proposed Changes:**

The bill removes the exclusion from eligibility for the Florida Kidcare program of children who are nonqualified aliens who are lawfully present in the United States. Children who are qualified aliens are currently eligible for Kidcare.

Aliens who are not currently eligible for Kidcare, but who would be made eligible by this bill, include:

- Immigrant children who are currently required to wait 5 years after entry into the United States before they can be eligible for Kidcare; and
- Nonqualified aliens (noncitizens who are lawfully present in the U.S. and are not included in the definition of qualified aliens).
  - Citizens of Marshall Islands, Micronesia or Palau.
  - Immigrants paroled into the U.S. for less than one year.
  - Immigrants granted temporary protected status.
  - Nonimmigrants who are allowed entry into the U.S. for a specific purpose and usually for a limited time.

The bill also makes immigrant or noncitizen children who are 18 years of age or younger and lawfully present in the United States eligible for Medicaid, if they meet the Medicaid eligibility requirements.

The bill amends s. 624.91(6), F.S., to add a member, appointed by the Governor from among three nominees submitted by the Florida Dental Association, to the Board of Directors of the Florida Healthy Kids Corporation. This corrects a technical problem in the statutes which resulted from the passage of two bills in the 2009 Session dealing with the membership of the Board of Directors of the Florida Healthy Kids Corporation.

The effective date of the bill is July 1, 2012.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Families of children made eligible for Kidcare would benefit from the availability of subsidized health insurance for their children.

##### **C. Government Sector Impact:**

###### **Agency for Health Care Administration**

The Agency for Health Care Administration estimates that 5,430 additional children will be covered by Title XXI subsidized Kidcare coverage at a total additional cost of \$10,874,555. Of that amount, \$3,028,687 would be from State General Revenue funds.

The Agency for Health Care Administration estimates that 15,120 additional children will be covered by Medicaid at a total additional cost of \$47,399,386. Of that amount, \$20,035,720 would be from State General Revenue funds.

The total fiscal impact on the Agency for Health Care Administration for both Title XXI and Title XIX in state FY 2012-2013 will be \$58,273,941, with \$23,064,407 being the General Revenue impact.

**Department of Children and Families**

The Department of Children and Families estimates that the bill will have a \$608,928 fiscal impact on the department during FY 2012-2013 for personnel to process new applications as well as conduct eligibility determinations for current assistance groups. Systems design will require that all “newly eligible” children be tracked for the State to claim enhanced Medicaid Federal Financial Participation for both Medicaid and CHIP-funded expansions.

**Florida Healthy Kids Corporation**

The Florida Healthy Kids Corporation will incur programming costs for its third party administrator to accommodate the changes in eligibility for premium subsidy. The estimated one-time programming costs for these changes would be \$1.5 million. The state share of those costs would be \$461,550 and the federal share would be \$1,038,450.

Since the Florida Healthy Kids Corporation has already recognized the representative of the Florida Dental Association, there will be no fiscal impact from the bill. The addition of the representative of the Florida Dental Association as an *official* board member will make that member eligible for travel reimbursement and per diem. These expenses can be absorbed utilizing existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS by Health Regulation on February 16, 2012:**

The CS makes immigrant or noncitizen children who are lawfully present in the United States and who meet other eligibility requirements eligible for the Florida Kidcare program. The CS also makes immigrant or noncitizen children who are 18 years of age or less and lawfully present in the United States eligible for Medicaid if they meet other eligibility requirements. The bill no longer makes illegal or undocumented aliens eligible for the Kidcare program.

The CS adds one member representing dentists to the Board of Directors of the Florida Healthy Kids Corporation.



B. Amendments:

None.

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

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