

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 294

INTRODUCER: Senator Garcia

SUBJECT: Florida Kidcare Program

DATE: February 12, 2015

REVISED: 02/16/15

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	<b>Pre-meeting</b>
2.			AHS	
3.			AP	

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**I. Summary:**

SB 294 extends Medicaid and Children’s Health Insurance Program (CHIP) eligibility to a “lawfully residing child” who meets other eligibility qualifications of Medicaid or CHIP, as applicable. The federal programs permit states to cover this population group, those in a 5-year waiting period, if the state elects to do so.

The bill defines “lawfully residing child” which conforms to the federal program eligibility requirements and deletes references to “qualified alien.” The bill specifies that the statutory changes do not extend Kidcare program eligibility or Medicaid eligibility to undocumented immigrants.

The fiscal impact for the 2015-2016 fiscal year for recurring state General Revenue costs is \$4,838,745.

**II. Present Situation:**

**The Medicaid Program**

The Florida Medicaid Program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services. The plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies.

The program is administered by the Agency for Health Care Administration (AHCA) and financed with federal and state funds. Over 3.7 million Floridians are current enrolled in

Medicaid and the program's estimated expenditures for the 2014-2015 fiscal year are \$23.3 billion.<sup>1</sup>

Eligibility for the Medicaid program is based on a number of factors, including age, household or individual income, and assets. State Medicaid eligibility payment guidelines are provided in statute under s. 409.903, F.S., (Mandatory Payments for Eligible Persons) and s. 409.904, F.S., (Optional Payments for Eligible Persons). Minimum coverage thresholds are established in federal law for certain population groups, such as children.

### **Florida Kidcare Program**

The Florida Kidcare Program (the program) was created in 1998 by the Florida Legislature in response to the federal enactment of the Children's Health Insurance Program (CHIP) in 1997.<sup>2</sup> Initially authorized for 10 years and then re-authorized<sup>3</sup> through 2019 with federal funding through September 30, 2015, CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who have family incomes under 200 percent of the federal poverty level (FPL) and meet other eligibility criteria.

Federal funding for CHIP has not been authorized beyond September 30, 2015. As of February 12, 2015, no separate federal legislation extending funding has been filed; however, Senator Sherrod Brown (D-Ohio) introduced an amendment during a January U.S. Senate committee markup to H.R. 22, *Hire More Heroes Act of 2015*, that would extend funding through federal fiscal year 2019.<sup>4</sup> Senator Brown has announced intentions to also file a separate CHIP extension bill.<sup>5</sup>

The state statutory authority for the program is found under part II of ch. 409, ss. 409.810 through 409.821, F.S. The program includes four operating components: Medicaid for children, Medikids, the Children's Medical Services Network, and the Florida Healthy Kids Corporation (FHKC). The following chart illustrates the different program components and funding sources:<sup>6</sup>

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<sup>1</sup> Office of Economic and Demographic Research, *Social Services Estimating Conference Medicaid Caseloads and Expenditures, June 27, July 22, and August 4, 2014 Executive Summary* <http://edr.state.fl.us/Content/conferences/medicaid/medsummary.pdf> (last visited Feb. 4, 2015).

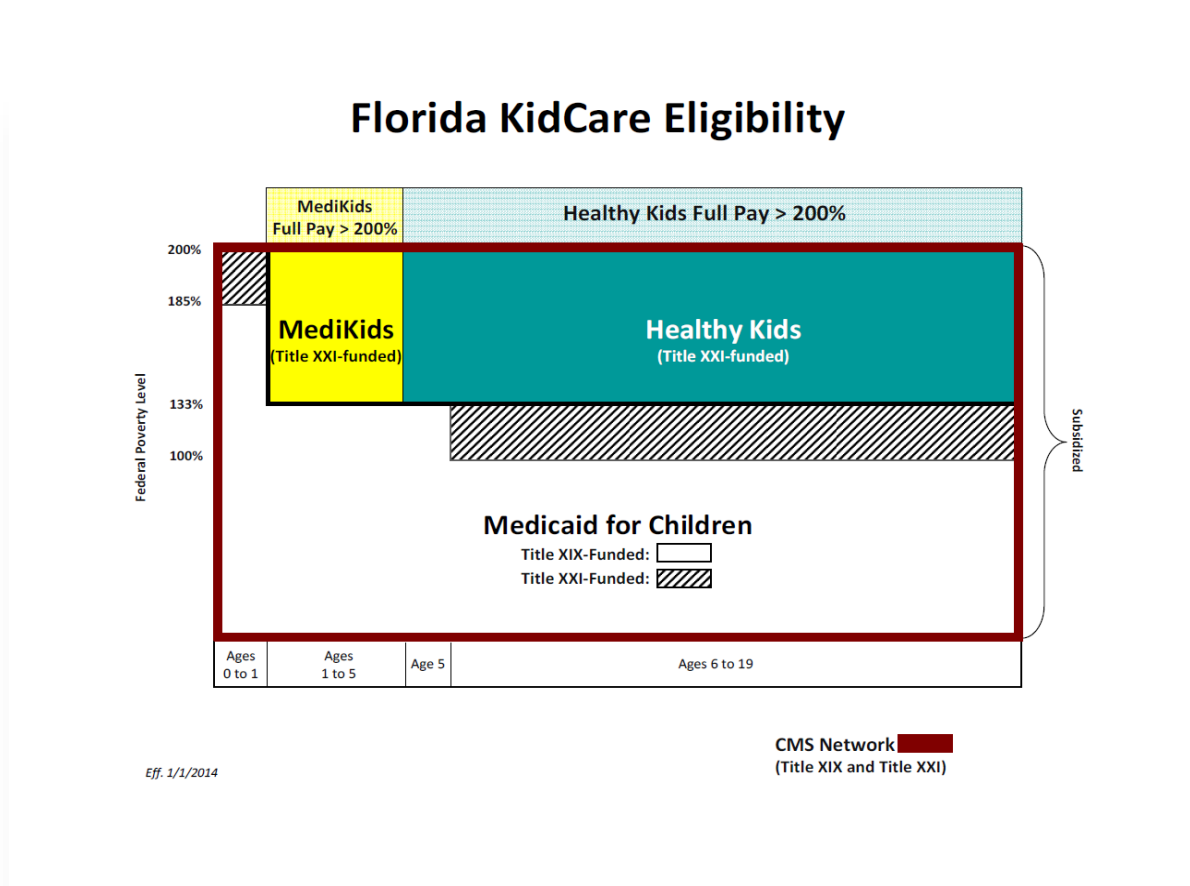
<sup>2</sup> Social Security Administration, *Title XXI - State Children's Health Insurance Program*, [http://www.ssa.gov/OP\\_Home/ssact/title21/2100.htm](http://www.ssa.gov/OP_Home/ssact/title21/2100.htm) (last visited Jan. 15, 2015).

<sup>3</sup> Children's Health Insurance Re-Authorization Act of 2009, Pub. Law 2009-3, <http://www.gpo.gov/fdsys/pkg/PLAW-111publ3/pdf/PLAW-111publ3.pdf> (last visited Jan. 15, 2015).

<sup>4</sup> U.S. Senate Finance Committee, Amendment List to H.R. 22: The Hire More Heroes Act of 2015, <http://www.finance.senate.gov/imo/media/doc/Amendments%20to%20H.R.%2022.pdf> (last visited Feb. 12, 2015).

<sup>5</sup> Mollie Warner, *Senator Hopes to Extend CHIP Funding*, TIMESLEADER ONLINE.COM, Jan. 29, 2015, [http://www.timesleaderonline.com/page/content\\_detail/id/570566.html](http://www.timesleaderonline.com/page/content_detail/id/570566.html) (last visited Feb. 12, 2015).

<sup>6</sup> Department of Health - Florida Kidcare, *Florida Kidcare Eligibility Chart*, <http://www.floridahealth.gov/AlternateSites/KidCare/images/data/2014KidCareFlag.pdf> (last visited Jan. 15, 2015).



Coverage for the non-Medicaid program components are funded through Title XXI of the federal Social Security Act. Title XIX of the Social Security Act (Medicaid), state funds and family contributions also provide funding for the different components. Family contributions under the Title XXI component are based on family size, household incomes, and other eligibility factors. Families above the income limits for premium assistance or who are not otherwise eligible for premium assistance are offered the opportunity to participate in the program at a non-subsidized rate (full pay). Currently, the income limit for premium assistance is 200 percent of the FPL.

Several state agencies and the FHKC share responsibilities for the program. The Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), the Department of Health (DOH), and the FHKC have specific duties under Kidcare as detailed in part II of ch. 409, F.S. The DCF determines eligibility for Medicaid. The FHKC receives all Kidcare applications and screens for Medicaid eligibility and determines eligibility for all Title XXI programs, referring applications to the DCF, as appropriate, for a complete Medicaid determination.

To enroll in Kidcare, families may apply online or use a paper application that determines health care coverage eligibility for multiple programs, including Medicaid and a CHIP, for the entire family. Applications are available in English, Spanish, and Creole. Eligibility for premium assistance is determined first 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 2014-2015 General Appropriations Act appropriated \$493,561,069 for the Title XXI (CHIP) components.<sup>7</sup> As of January 1, 2015 a total of 2,263,369 children enrolled in Kidcare.<sup>8</sup>

<b>PROGRAM</b>	<b>ENROLLMENT</b>
Medicaid - Title XIX funded	1,936,397
Medicaid - Title XXI funded	107,646
Healthy Kids - Total	180,791
Children’s Medical Services Network	14,641
Medikids	23,894
<b>Total Florida Kidcare Enrollment:</b>	<b>2,263,369</b>

Under s. 409.814, F.S., the program’s eligibility guidelines are described in conformity with current Title XIX and Title XXI terminology and requirements for each funding component. A child who is an alien, but does not meet the definition of a qualified alien in the United States, is specifically excluded from eligibility from Title XXI premium assistance.

**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>9</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.<sup>10</sup>

Generally, under the INA, an alien is not eligible for any state or local public benefit, including health benefits, unless the alien is:<sup>11</sup>

- A qualified alien;<sup>12</sup>
- A nonimmigrant alien;<sup>13</sup> or,
- An alien who is paroled into the United States under the INA.<sup>14</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>15</sup>

<sup>7</sup> 2014-2015 General Appropriation Act, ch 2014-51, ss. 174-179, Laws of Fla.

<sup>8</sup> Agency for Health Care Administration, *Florida Kidcare Enrollment Report - January 2015*, on file with the Senate Committee on Health Policy. An additional 5,205 are enrolled in Full Pay (non-subsidized) for Medikids.

<sup>9</sup> See 8 U.S.C. s. 1101(a)(3).

<sup>10</sup> See 8 U.S.C. s. 1101(a)(21) and (22).

<sup>11</sup> See 8 U.S.C. s. 1621(a).

<sup>12</sup> See 8 U.S.C. s.1641(b) and (c). There are nine classes of qualified aliens.

<sup>13</sup> See 8 U.S.C. s. 1101(a)(15). There are 22 classes of nonimmigrant aliens identified in this section.

<sup>14</sup> See 8. U.S.C. s. 1182(d)(5).

<sup>15</sup> See 8 U.S.C. s. 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 eligible, but only through the enactment of a state law which affirmatively provides for such eligibility.<sup>16</sup>

The enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193), placed limitations on federal funding for health care 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.<sup>17</sup> 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. The PRWORA did not affect eligibility of undocumented aliens and these individuals remain ineligible for services, except for emergency services under Medicaid.

The Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (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 CHIP, notwithstanding certain provisions under PRWORA. States may elect to cover these groups under Medicaid only or under both Medicaid and CHIP. The law does not permit states to cover these new groups only in CHIP, without also extending the option to Medicaid children.<sup>18</sup>

Prior to the enactment of the CHIPRA provisions, the term "lawfully residing" had not been used to define eligibility for either Medicaid or CHIP; however, the term has been used by the United States Department of Agriculture (USDA) and the Social Security Administration (SSA). The federal Centers for Medicare and Medicaid Services utilized existing regulations from these agencies to define a lawful presence for Medicaid and CHIP through a July 1, 2010 "Dear State Health Official" letter.<sup>19</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, if the state elects the 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 PRWORA;
- An alien in non-immigrant 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 United States pursuant to section 212(d)(5) of the INA 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:
  - Temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. s. 1160 or 1255a, respectively);

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<sup>16</sup> See 8 U.S.C. s. 1621(d).

<sup>17</sup> Section 403 of Pub. L No. 104-193, H.R. 3734, 104th Congress (Aug. 22, 1996).

<sup>18</sup> See 42 U.S.C. s. 1397gg(e).

<sup>19</sup> Centers for Medicare and Medicaid Services, *Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women*, State Health Official Letter, CHIPRA#17 (July 1, 2010), <http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO10006.pdf> (last visited Jan. 15, 2015).

- Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. s. 1254a), and pending applicants for TPS who have been granted employment authorization under 8 C.F.R. s. 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
- Family Unity beneficiaries pursuant to section 301 of Public Law 101-649, as amended;
- Deferred Enforced Departure (DED) pursuant to a decision made by the President;
- Deferred action status; or,
- Visa petition has been approved and has a pending application for adjustment of status.
- A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. s. 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. s. 1231) or under the Convention Against Torture, who has been guaranteed 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. s. 1101 (a)(27)(J));
- An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. s. 1806(e); or,
- An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

As of March 24, 2014, 21 states cover lawfully residing children in both Medicaid and CHIP and 29 states, including Washington, D.C., cover these children in Medicaid only.<sup>20</sup>

### III. Effect of Proposed Changes:

**Section 1** amends definitions under s. 409.811, F.S., to permit certain non-citizen children to receive federal financial premium assistance (medical care) under Medicaid or CHIP.

The definition of a “lawfully residing child” is added as a child who:

- Is present in the United States as defined under 8 C.F.R. s. 103.12(a);
- Meets Medicaid or Children’s Health Insurance Program (CHIP) residency requirements, and,
- May be eligible for federal financial premium assistance under s. 214 of CHIPRA and related federal regulations.

The definition of a “resident” is amended to substitute a “lawfully residing child” rather than a “qualified alien.”

The definition for a “qualified alien” is deleted from s. 409.811, F.S.

**Section 2** amends s. 409.814, F.S., to replace a reference to “qualified alien” with “lawfully residing child” when referring to children who are not eligible for Title XXI funded premium

<sup>20</sup> Centers for Medicare and Medicaid Services, *Medicaid and CHIP Coverage of Lawfully Residing Children and Pregnant Women*, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Outreach-and-Enrollment/Lawfully-Residing.html> (last visited Jan. 15, 2015).

assistance. The bill also clarifies that Kidcare program eligibility is not being extended to undocumented immigrants.

**Section 3** amends s. 409.904, F.S., relating to optional Medicaid payments, to designate that a child younger than 19 years of age who is a lawfully residing child as defined in s. 409.811, F.S., is eligible for Medicaid under s. 409.903, F.S. The bill also clarifies that Medicaid program eligibility is not being extended to undocumented immigrants.

**Section 4** amends s. 624.91, F.S., the Florida Healthy Kids Corporation Act, to conform to changes made under the act and update references to modified or deleted terms.

**Section 5** provides an effective date of July 1, 2015.

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

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

None.

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

None.

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

None.

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

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

None.

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

Expanding eligibility to additional children who may currently be uninsured may have a positive impact on health care providers that currently provide health care services to this population without compensation or at a discount. Accordingly, uncompensated care costs by the health care system may be reduced with increased insured rates.

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

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

The total state funds required for the 2015-2016 fiscal year for recurring and non-recurring state costs is related to enrollment of 22,602 children in Medicaid and an additional 2,077 children per month in CHIP. Section 214 of the federal CHIPRA legislation allows states to claim the CHIP enhanced federal match rate for both CHIP and Medicaid children during their 5-year waiting period.

During SFY 2015-16, under Title XXI (CHIP) the break out is:

Total Additional Cost	\$ 4,617,745
Less Federal Funds under Title XXI (84.08%)	\$ 3,882,536
Less: Grants & Donation Trust Fund (6.11%)	\$ 282,260
State General Revenue Requires (9.81%)	\$ 452,950

During SFY 2015-2016, under Title XIX (Medicaid) the break out is:

Total Additional Cost	\$ 41,979,373
Less Federal Funds under Title XXI (84.08%)	\$ 37,593,578
Less: Grants & Donation Trust Fund (6.11%)	\$ 0
State General Revenue Requires (9.81%)	\$4,385,795

The total General Revenue impact is \$4,838,745.<sup>21</sup>

Both a Medicaid and CHIP State Plan Amendment will need to be submitted for federal approval to implement the changes proposed in SB 294.

***Department of Children and Families***

In addition to the enrollment costs above, the DCF estimates SB 294 will generate administrative costs for workload increases related to additional enrollment and non-recurring costs for programming changes to the eligibility system. These costs are indeterminate and will be absorbed within existing resources.<sup>22</sup>

***Florida Healthy Kids Corporation***

The Florida Healthy Kids Corporation reports no additional impact. Enrollment in the Children’s Medical Services Network component is incorporated in the Title XXI and Title XIX projections.

**VI. Technical Deficiencies:**

In a prior year’s legislation which included the same language, AHCA interpreted s. 409.904, F.S., as not extending eligibility for optional Medicaid services to immigrant children lawfully residing in the United States. This interpretation would also require CHIP enrollees to wait as Federal law does not allow a state to extend eligibility to CHIP enrollees without also extending coverage to Medicaid enrollees.<sup>23</sup>

<sup>21</sup> Agency for Health Care Administration, *Senate Bill 294 Analysis* (Jan. 9, 2015) (on file with the Senate Committee on Health Policy).

<sup>22</sup> Department of Children and Families, *Senate Bill 294 Analysis* (Jan. 21, 2015) (on file with the Senate Committee on Health Policy).

<sup>23</sup> See 42 U.S.C. s.1397gg(e)(1)(J).



The AHCA suggests the provision be re-written to clarify that these lawfully-residing children are eligible for Medicaid *goods and services* to correct any ambiguity of eligibility.<sup>24</sup>

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 409.811, 409.814, 409.904, and 624.91 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.

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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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<sup>24</sup> Agency for Health Care Administration, *House Bill 7 Agency Analysis* (Jan. 21, 2014) (on file with Senate Committee on Health Policy). Conversation via telephone with Gail Hansen, Agency staff, confirming that SB 282 contains similar conflict on Mar. 20, 2014.