

CS/SB 34 by **JU, Diaz de la Portilla**; (Similar to H 3527) Relief of Asia Rollins by the Public Health Trust of Miami-Dade County

785138 A S RCS AHS, Richter Delete L.48: 03/05 12:04 PM

SB 340 by **Grimsley**; (Similar to CS/H 0079) Crisis Stabilization Services

SB 294 by **Garcia (CO-INTRODUCERS) Flores**; (Identical to H 0829) Florida Kidcare Program

SB 450 by **Benacquisto (CO-INTRODUCERS) Gaetz**; (Identical to H 4017) Pain Management Clinics

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND
HUMAN SERVICES
Senator Garcia, Chair
Senator Smith, Vice Chair

MEETING DATE: Wednesday, March 4, 2015
TIME: 10:00 a.m.—12:00 noon
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Garcia, Chair; Senator Smith, Vice Chair; Senators Abruzzo, Bean, Benacquisto, Grimsley, Richter, and Sobel

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|----------------------------|
| 1 | CS/SB 34 Judiciary / Diaz de la Portilla (Similar H 3527) | Relief of Asia Rollins by the Public Health Trust of Miami-Dade County; Providing an appropriation to compensate her for injuries and damages sustained as a result of the negligence of the Public Health Trust of Miami-Dade County; providing a limitation on the payment of fees and costs, etc. SM 01/27/2015 Recommendation: Fav/1 Amendment JU 02/03/2015 Fav/CS AHS 03/04/2015 Fav/CS AP | Fav/CS Yeas 7 Nays 0 |
| 2 | SB 340 Grimsley (Similar H 79, Compare H 1277) | Crisis Stabilization Services; Requiring the Department of Children and Families to develop standards and protocols for the collection, storage, transmittal, and analysis of utilization data from public receiving facilities; requiring a managing entity to require public receiving facilities in its provider network to submit certain data within specified timeframes, etc. CF 02/19/2015 Favorable AHS 03/04/2015 Favorable AP | Favorable Yeas 7 Nays 0 |
| 3 | SB 294 Garcia (Identical H 829) | Florida Kidcare Program; Providing eligibility for optional payments for medical assistance and related services for certain lawfully residing children; clarifying that undocumented immigrants are excluded from eligibility for optional Medicaid payments or related services, etc. HP 02/17/2015 Favorable AHS 03/04/2015 Favorable AP | Favorable Yeas 7 Nays 0 |
| 4 | SB 450 Benacquisto (Identical H 4017) | Pain Management Clinics; Deleting provisions relating to the future repeal of ss. 458.3265 and 459.0137, F.S., etc. HP 02/17/2015 Favorable AHS 03/04/2015 Favorable AP | Favorable Yeas 8 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Health and Human Services
Wednesday, March 4, 2015, 10:00 a.m.—12:00 noon

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---------------------------------|--|------------------|
| | Other Related Meeting Documents | | |



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

February 9, 2015

The Honorable Rene Garcia
Chair, Appropriations Subcommittee on Health and Human Services

Via email

Dear Chair Garcia:

My claims bill, SB 34, passed out of the Senate Judiciary Committee on February 3. The next committee of reference is the Appropriations Subcommittee on Health and Human Services.

I would appreciate it if you would agenda the bill at the next available committee meeting.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

Cc: Ms. Scarlett Pigott, Staff Director; Ms. Robin Auber, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

| DATE | COMM | ACTION |
|----------|------|-----------------|
| 12/31/15 | SM | Fav/1 amendment |
| 2/3/15 | JU | Fav/CS |
| 3/4/15 | AHS | Fav/CS |
| | AP | |

December 31, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/CS/SB 34** – Appropriations Subcommittee on Health and Human Services; Committee on Judiciary; Senator Miguel Diaz de la Portilla Relief of Asia Rollins

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EQUITABLE CLAIM FOR \$699,999, BASED ON A PRESUIT SETTLEMENT OF A MEDICAL MALPRACTICE CLAIM, AGAINST THE MIAMI-DADE PUBLIC HEALTH TRUST, WHICH OPERATES JACKSON MEMORIAL HOSPITAL. ASIA ROLLINS, THE CLAIMANT, HAS SEVERE BRAIN INJURIES AND IS DEPENDENT ON OTHERS FOR HER BASIC NEEDS BECAUSE THE HOSPITAL FAILED TO TIMELY INTUBATE HER.

FINDINGS OF FACT:

On October 26, 2011, 3 year old Asia Rollins, who had history of epileptic seizures, had a seizure at daycare. The daycare providers gave her medicine and sent her to Jackson Memorial Hospital by ambulance. Upon arrival at the hospital's emergency room, Asia was breathing poorly. To help Asia breathe, the hospital's physicians decided to intubate her.

The staff mal-intubated Asia three times with several minutes elapsing between intubations. The delays deprived Asia of oxygen for extended time periods. Eventually, Asia's oxygen levels and heart rate decreased until she went into asystole, meaning her heart stopped. By the time Asia was breathing

again, she had suffered a global ischemic brain injury,ⁱ which is a brain injury caused by the lack of blood flow.

Later, Asia's neurologist, Dr. Ian Miller of Miami Children's Hospital, diagnosed Asia as having hypoxic ischemic encephalopathy,ⁱⁱ a condition in which the brain does not receive enough oxygen. She was also diagnosed as having cortical blindness,ⁱⁱⁱ a type of blindness caused by a brain injury.

Currently, Asia is 6 years old and she is completely dependent on others.^{iv} She cannot dress herself, talk, or walk. She is wheelchair bound. She cannot feed herself and must be fed through a gastronomy tube. Asia's breathing must be monitored and her airways must be suctioned regularly to prevent the accumulation of mucus. Asia also receives regular physical therapy to prevent or minimize muscle stiffness.

Asia has many disabilities and few abilities. According to her mother's comments, which were recorded in Asia's medical records, Asia looks around when her name is called.^v She smiles, laughs, and enjoys petting her dog.

Asia's current condition is not likely to significantly improve, and she will need full-time care for the rest of her life.

CONCLUSIONS OF LAW:

Jackson Memorial Hospital is a public hospital that is operated by the Miami-Dade Public Health Trust.^{vi} Additionally, the hospital or trust, under the doctrine of *respondeat superior*, is responsible for the medical negligence of its doctors.^{vii}

Under Florida law, to establish the liability of a physician in a medical malpractice action, the plaintiff has a burden of proving that (1) the physician had a duty to the patient, (2) the physician breached the duty, and (3) the breach of the duty caused the plaintiff's damages.^{viii} The Florida Supreme Court has explained these elements as follows:

The duty element requires a physician to act within the standard of professional care. See § 766.102, Fla. Stat. (2013). The standard of professional care is a level of care, skill, and treatment that, in consideration of all surrounding circumstances, is recognized as acceptable and appropriate by similar and reasonably prudent health care providers. In short, it is to provide the care that a reasonably prudent physician would

provide. A physician breaches that duty when he or she does not provide the care that a reasonably prudent physician would provide. See § 766.102, Fla. Stat. (2013). Therefore, in a medical malpractice action, the burden is on the plaintiff to establish that the care provided by the physician was not that of a *reasonably prudent physician*.^{ix}

During the special master proceeding, the claimant proved the elements of its medical malpractice claim through the use of a Verified Medical Opinion by Dr. Anthony C. Mustalish.^x According to the opinion, Dr. Mustalish practices emergency medicine and, among other credentials related to the practice of emergency medicine, was certified by the American Board of Emergency Medicine in 1990 and 1999. The hospital had no objection to the opinion and did not offer any evidence contradicting the opinion.

According to the Verified Medical Opinion, the hospital deviated from the standard of care for reasonably prudent similar providers by:

- Failing to provide proper care and treatment to the patient;
- Failing to properly intubate the patient;
- Failing to properly have and maintain an adequate airway for the patient;
- Failing to properly insure the patient was properly oxygenated;
- Failing to timely recognize an inappropriate intubation;
- Failing to timely and properly correct an inappropriate intubation;
- Improperly allowing the patient to suffer a prolonged period of anoxia, which is oxygen deprivation;
- Improperly allowing the patient to suffer cardiac arrest; and
- Inappropriately causing the patient to suffer a severe hypoxic ischemic injury.

The Verified Medical Opinion concluded with a finding that “within a reasonable degree of medical certainty, the . . . deviations from the standard of care caused or contributed to Asia Rollins’ injuries.”^{xi}

As a result of s. 768.28(5), F.S., the hospital’s liability for medical malpractice claims or judgments is limited to \$200,000 per claim or judgment and \$300,000 for all claims or judgments arising out of the same incident. Amounts in

excess of these limits may be paid only if authorized by the Legislature in a claim bill. Thus, Asia Rollins will not receive the full amount of the settlement with the hospital unless the Legislature approves a claim bill for her benefit.

SETTLEMENT AGREEMENT:

The parties to the claim bill settled the claim without resorting to a lawsuit, pursuant to the presuit procedures in chapter 766, F.S.^{xii} Under the terms of the settlement, the parties agreed to settle the medical negligence claim for \$999,999. Of that amount, \$300,000^{xiii} has been paid and \$699,999 remains unpaid. The agreement further provides that the hospital supports a claim bill in the amount of \$699,999. The hospital will oppose a claim bill that exceeds the amount of the settlement.

Because the amount of the settlement in this matter exceeds certain statutory thresholds, the settlement agreement had to be approved by a court, and the court had to appoint a guardian *ad litem* to represent Asia's interests.^{xiv} Asia's guardian *ad litem*, attorney Stephen F. Cain, reviewed the settlement agreement and issued a report to the court recommending that the settlement be approved.^{xv} In its order approving the settlement, the court ordered that the funds from the settlement be deposited into a special needs trust for the benefit of Asia Rollins.

SPECIAL NEEDS TRUST:

A special needs trust is a mechanism authorized by federal law that prevents a beneficiary, like Asia Rollins, from being disqualified from government benefits like Medicaid.^{xvi} Thus, the funds in Asia's special needs trust will supplement, not supplant the government benefits she is receiving. However, federal law also requires that any funds remaining in a special needs trust after the death of the beneficiary be used to reimburse the state providing the benefits.

Typically, in claim bills for the benefit of individuals like Asia Rollins, the Legislature expressly requires that the proceeds of a claim bill be paid into a special needs trust.^{xvii} This claim bill, however, does not contain the typical requirement for a special needs trust. Instead, the bill requires that funds be paid directly to Asia Rollins. To avoid any argument that the court order approving the settlement agreement applies only to the amounts already paid by the hospital, the Legislature should amend the claim bill to

expressly require that the proceeds be placed in a special needs trust.

ATTORNEYS FEES:

Claim bills can raise several related attorney fee issues. The first issue is whether the claimant's attorney has complied with the 25 percent limit on attorney fees in s. 768.28(8), F.S., or will comply with the limit on attorney fees in the bill. In this matter, a closing statement submitted by Stuart Ratzan, the attorney for the claimant, shows that he or his firm was paid \$75,000 in attorney fees from the initial \$300,000 from Jackson Memorial Hospital. Thus, the payment for attorney fees is consistent with the 25 percent limit on attorney fees in s. 768.28(8), F.S. Additionally, Mr. Ratzan submitted an affidavit stating that the attorney fees related to the bill will be limited to 25 percent of the amount awarded.

The second issue relating to attorney fees is whether the claim bill contains a fee limitation and whether that limitation is appropriate. This issue arises in the underlying claim bill because it contains an unusual fee limitation. Since 2008, most claim bills passed by the Legislature expressly limit the amount of proceeds available to pay attorney fees, lobbying fees, and related costs to 25 percent of the proceeds. In contrast, if the facts of this claim bill related to a nongovernmental defendant, Florida Rule of Professional Conduct 4-1.5(f)(4)(B), would have limited the attorney fee to 33 1/3 percent of the proceeds.

This bill limits the amount of the proceeds available to pay attorney fees, lobbying fees, and related cost to 15 percent of the proceeds unless the claimant, meaning Asia's mother, executes a waiver agreeing to a 25 percent fee limit. Perhaps the Legislature should decide the appropriate fee limit instead of Asia's mother.

Weighing in favor of a lower amount of fees, the claim was settled without the time and expense of litigation, and Asia Rollins has suffered severe injuries and has great needs.^{xviii} Weighing in favor of the higher amount, the 25 percent fee limit is consistent with past practices of the Legislature and is significantly lower than the 33 1/3 percent authorized by The Florida Bar rule regulating contingency fees.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that Senate Bill 34 (2015) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

CS/CS by Appropriations Subcommittee on Health and Human Services on March 4, 2015:

The committee substitute provides for the proceeds of the claim bill to be paid into a special needs trust instead of directly to the claimant as had been provided in the underlying bill.

CS by Judiciary on February 3, 2015:

The underlying bill limits attorney fees, lobbying fees, and related costs to 15 percent of the amount awarded by the claim bill unless the claimant agrees to a 25 percent fee limit. The committee substitute replaces this fee limit with the customary fee limit for claim bills which limits attorney fees, lobbying fees, costs, and other similar expenses to 25 percent of the amount awarded by the claim bill.

ⁱ Columbia Neurosurgeons, Department of Neurosurgery, Columbia University Medical Center, *Cerebral Ischemia*, <http://www.columbianeurosurgery.org/conditions/cerebral-ischemia/> (last visited December 9, 2014).

ⁱⁱ Diana Kohnle, NYU Langone Medical Center, *Hypoxic Ischemic Encephalopathy*, <http://www.med.nyu.edu/content?ChunkIID=230598> (last editorial review May 2014).

ⁱⁱⁱ MedicineNet.com, *Definition of Cortical Blindness*, <http://www.medicinenet.com/script/main/art.asp?articlekey=23943> (last editorial review June 6, 2012).

^{iv} Asia was born in May 2008.

^v Sayed Naqvi, M.D., Neurology Note for Asia Rollins (June 16, 2014).

^{vi} *Bylaws of the Board of Trustees of the Public Health Trust of Miami-Dade, County, Florida*, available at <http://www.jacksonhealth.org/library/trust/public-health-trust-bylaws-2013.pdf>.

^{vii} *Roessler v. Novak*, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003).

^{viii} *Saunders v. Dickens*, 2014 WL 3361813, *6 (Fla. 2014).

^{ix} *Id.* (citations omitted).

^x Anthony Mustalish, M.D., Verified Medical Opinion (November 7, 2012). The opinion was likely prepared to show that the claimant conducted a presuit investigation of a medical negligence claim, which is a prerequisite to filing a medical malpractice lawsuit under chapter 766, F.S.

^{xi} *Id.*

^{xii} The presuit procedures in chapter 766, F.S., require claimants and prospective defendants to a medical malpractice action to investigate medical malpractice claims before the claimant may file a lawsuit.

^{xiii} If the matter in this claim bill proceeded to trial, there likely would have been two plaintiffs, Asia Rollins and her mother, Indya Marc. Each would have asserted a different injury resulting from the hospital's negligence. As such, the \$300,000 payment is consistent with the limits of \$200,000 per claim and \$300,000 per incident in s 768.28(5), F.S.

^{xiv} Sections 744.3025 and 744.387, F.S.

^{xv} Report of Guardian *Ad Litem*, In Re: Guardianship of Asia Rollins, No. 13-3642 (Fla. 11th Cir. Ct. December 3, 2013).

^{xvi} See 42 U.S.C. 1396p(d)(4).

^{xvii} A review of previously enacted claim bills shows that the Legislature occasionally requires all of the proceeds of a special needs trust to revert to the payor upon the death of the beneficiary. Such a requirement may make sense if the claim bill awards an unusually large amount of funds or the claimant's life expectancy or the cost of the claimant's future medical care is unknown or in dispute.

^{xviii} Asia's guardian *ad litem*, attorney Stephen F. Cain, explained the financial magnitude of Asia's damages as follows: "A reasonable estimate of the full damages in this case would likely exceed \$35,000,000." Report of Guardian *Ad Litem*, *supra* note xv.



785138

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/05/2015 | . | |
| | . | |
| | . | |
| | . | |

Appropriations Subcommittee on Health and Human Services
(Richter) recommended the following:

Senate Amendment

Delete line 48
and insert:

warrant in the sum of \$699,999, payable to the Supplemental
Care Trust for the Benefit of Asia Rose Rollins or other special
needs trust for the exclusive use and benefit of Asia Rollins.

THE FLORIDA SENATE
APPEARANCE RECORD

HHS-A 10:00am

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-4-15

Meeting Date

340

Bill Number (if applicable)

(W)

Topic CSU

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Legis Affairs Director

Address 28108 Mahan Dr

Phone 878 2196

Street

Tallahassee FL 32308

City

State

Zip

Email jill@fadaa.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Alcohol & Drug Abuse Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations Subcommittee on Health and Human Services

BILL: SB 340

INTRODUCER: Senator Grimsley

SUBJECT: Crisis Stabilization Services

DATE: March 3, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|------------|------------------|
| 1. | <u>Hendon</u> | <u>Hendon</u> | <u>CF</u> | Favorable |
| 2. | <u>Brown</u> | <u>Pigott</u> | <u>AHS</u> | Favorable |
| 3. | _____ | _____ | <u>AP</u> | _____ |

I. Summary:

SB 340 directs the Department of Children and Families (DCF) to develop, implement, and maintain standards under which behavioral health managing entities¹ must collect utilization data from public receiving facilities that are operating under DCF designation as crisis stabilization units where emergency mental health care is provided. Managing entities must comply with the bill's requirements for data collection by August 1, 2015.

The bill requires managing entities to collect specified utilization data in real time or at least daily. Managing entities must perform reconciliations monthly and annually to ensure data accuracy. After ensuring data accuracy, managing entities must submit data to the DCF on a monthly and annual basis. The DCF is required to create a statewide database for the purpose of analyzing the payments for and the use of state-funded crisis stabilization services on a statewide basis and on an individual public receiving facility basis.

The bill requires the DCF to adopt rules and submit a report by January 31, 2016, and annually thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives with details on the bill's implementation and an analysis of the data collected.

Implementation of the bill is subject to specific appropriations provided to the DCF in the General Appropriations Act.

The bill is effective upon becoming law.

¹ See s. 394.9082, F.S. A managing entity is a not-for-profit corporation organized in Florida and is under contract with the DCF on a regional basis to manage the day-to-day operational delivery of behavioral health services through an organized system of care and a network of providers who are contracted with the managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services related to behavioral health.

II. Present Situation:

Individuals experiencing severe emotional or behavioral problems often require emergency treatment to stabilize their situations before referral for outpatient services or inpatient services can occur. Emergency mental health stabilization services may be provided to voluntary or involuntary patients. Involuntary patients must be taken to one of the state's designated "receiving facilities." Receiving facilities are defined by the Florida Mental Health Act (ss. 394.451 – 394.4789, F.S., also known as the Baker Act) and are often referred to as Baker Act Receiving Facilities.²

The Florida Legislature enacted the Baker Act in 1971 to revise the state's mental health commitment laws. The Baker Act substantially strengthened the due process and civil rights of persons in mental health facilities and those alleged to be in need of emergency evaluation and treatment. A major intent of the Baker Act was to increase community care of persons with mental illnesses.³

The purpose of receiving facilities is to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. Law enforcement officers usually transport individuals requiring involuntary Baker Act examinations to the nearest receiving facility.⁴ However, involuntary examinations may be initiated by a court order, a certificate executed by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, clinical social worker, or by self-presentation.⁵ A facility must accept individuals brought by a law enforcement officer for involuntary examination, regardless of bed availability.⁶

Receiving facilities may be either public or private but only facilities that have a contract with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and that are receiving state funds for this purpose, are considered public receiving facilities.⁷ Transfers of individuals between two public facilities, from a public facility to a private facility, and from a private facility to a public facility are permitted.⁸ Funds appropriated solely for Baker Act services may pay for services to diagnostically and financially-eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalizations for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit for short-term services persons brought to the unit under the Baker Act as well as those who present themselves for services.⁹ CSUs provide services 24 hours a day, seven days a week, through a team of

² Section 394.455(25) (26), F.S.

³ Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011).

⁴ *Id.*

⁵ Section 394.4655(2), F.S.

⁶ Section 394.462, F.S.

⁷ Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011).

⁸ Section 394.4685, F.S.

⁹ Section 394.875, F.S.

mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs. Individuals often enter the public mental health system through CSUs.¹⁰

Managing entities have assumed the responsibility for purchasing, managing, and monitoring behavioral health services in the state. The DCF's contracts with managing entities are required to include payment methods that promote flexibility, efficiency, and accountability. Managing entities must follow current statutes and rules that require CSUs be paid for bed availability rather than utilization by clients.

For fiscal year 2014-2015, \$76.8 million is provided for CSUs, Baker Act, and Inpatient Crisis Services.¹¹ As of February 6, 2015, there were 63 public receiving facilities with 2,052 beds and 67 private receiving facilities with 3,371 beds.¹² Based on the Florida Mental Health Institute's Annual Report of Baker Act Data Summary for 2013, there were 171,744 involuntary examinations initiated in Florida.¹³

III. Effect of Proposed Changes:

Section 1 amends s. 394.9082, F.S., by creating a new subsection (10). The bill directs the DCF to develop, implement, and maintain standards under which a behavioral health managing entity must collect utilization data from all public receiving facilities within its geographic service area. For those purposes, the bill defines "public receiving facility" as an entity that meets the licensure requirements of and is designated by the DCF to operate as a public receiving facility under s. 394.875, F.S., and which is operating as a licensed crisis stabilization unit.

The bill requires the DCF to develop standards for managing entities and public receiving facilities to be used for data collection, storage, transmittal, and analysis. The standards must allow for compatibility of data and data transmittal. The DCF must require managing entities to comply with the bill's requirements for data collection by August 1, 2015.

A managing entity must require a public receiving facility within its provider network to submit data, in real time or at least daily, for:

- All admissions and discharges of clients receiving public receiving facility services who qualify as indigent as defined in s. 394.4787, F.S.; and
- Current active census of total licensed beds, the number of beds purchased by the DCF, the number of clients qualifying as indigent occupying those beds, and the total number of unoccupied licensed beds regardless of funding.

A managing entity must require a public receiving facility within its provider network to submit data on a monthly basis which aggregates the daily data previously submitted. The managing entity must reconcile the data in the monthly submission to the daily data to check for

¹⁰ Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011).

¹¹ Information received from the Department of Children and Families on February 10, 2015.

¹² *Id.*

¹³ Christy, A. (2014). Report of 2013 Baker Act Data. Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute.

consistency. If the monthly aggregate data is inconsistent with the daily data, the managing entity must consult with the public receiving facility to make corrections as necessary to ensure accurate data.

A managing entity must require a public receiving facility within its provider network to submit data on an annual basis which aggregates the monthly data previously submitted and reconciled. The managing entity must reconcile the data in the annual submission to the monthly data to check for consistency. If the annual aggregate data is inconsistent with the reconciled monthly data, the managing entity must consult with the public receiving facility to make corrections as necessary to ensure accurate data.

After ensuring accurate data, the managing entity must submit the data to the DCF on a monthly and annual basis. The DCF is required to create a statewide database for the purpose of analyzing the payments for and the use of crisis stabilization services funded by the Baker Act on a statewide basis and on an individual public receiving facility basis.

The DCF is required to adopt rules to administer the bill's provisions. The DCF is required to submit a report by January 31, 2016, and annually thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides details on the bill's implementation, including the status of the data collection process and a detailed analysis of the data collected.

The bill's implementation is subject to specific appropriations provided to the DCF under the General Appropriations Act.

Section 2 provides that the bill takes effect upon becoming a law.

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:

Public receiving facilities and managing entities may experience an indeterminate amount of costs to submit and reconcile data under the parameters created by SB 340.

C. Government Sector Impact:

The Department of Children and Families (DCF) reports that two managing entities currently have the information technology capable of performing the data reporting functions required under the bill, and the DCF estimates that approximately \$175,000 would be required to expand the data capabilities of the five remaining managing entities.¹⁴ The DCF may also experience an indeterminate amount of costs for establishing and maintaining the statewide database under the specified requirements and parameters of the bill. However, the bill provides that implementation is subject to specific appropriations in the General Appropriations Act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 394.9082 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.

¹⁴ The Department of Children and Families, *2015 Agency Legislative Bill Analysis, HB 79*, February 18, 2015.

By Senator Grimsley

21-00441-15

2015340__

1 A bill to be entitled
 2 An act relating to crisis stabilization services;
 3 amending s. 394.9082, F.S.; requiring the Department
 4 of Children and Families to develop standards and
 5 protocols for the collection, storage, transmittal,
 6 and analysis of utilization data from public receiving
 7 facilities; defining the term "public receiving
 8 facility"; requiring the department to require
 9 compliance by managing entities by a specified date;
 10 requiring a managing entity to require public
 11 receiving facilities in its provider network to submit
 12 certain data within specified timeframes; requiring
 13 managing entities to reconcile data to ensure
 14 accuracy; requiring managing entities to submit
 15 certain data to the department within specified
 16 timeframes; requiring the department to create a
 17 statewide database; requiring the department to adopt
 18 rules; requiring the department to submit an annual
 19 report to the Governor and the Legislature; providing
 20 that implementation is subject to specific
 21 appropriations; providing an effective date.
 22
 23 Be It Enacted by the Legislature of the State of Florida:
 24
 25 Section 1. Present subsections (10) and (11) of section
 26 394.9082, Florida Statutes, are renumbered as subsections (11)
 27 and (12), respectively, and a new subsection (10) is added to
 28 that section, to read:
 29 394.9082 Behavioral health managing entities.—

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00441-15

2015340__

30 (10) CRISIS STABILIZATION SERVICES UTILIZATION DATABASE.—
 31 The department shall develop, implement, and maintain standards
 32 under which a managing entity shall collect utilization data
 33 from all public receiving facilities situated within its
 34 geographic service area. As used in this subsection, the term
 35 "public receiving facility" means an entity that meets the
 36 licensure requirements of and is designated by the department to
 37 operate as a public receiving facility under s. 394.875 and that
 38 is operating as a licensed crisis stabilization unit.
 39 (a) The department shall develop standards and protocols
 40 for managing entities and public receiving facilities to use in
 41 the collection, storage, transmittal, and analysis of data. The
 42 standards and protocols must allow for compatibility of data and
 43 data transmittal between public receiving facilities, managing
 44 entities, and the department for the implementation and
 45 requirements of this subsection. The department shall require
 46 managing entities contracted under this section to comply with
 47 this subsection by August 1, 2015.
 48 (b) A managing entity shall require a public receiving
 49 facility within its provider network to submit data to the
 50 managing entity, in real time or at least daily, for:
 51 1. All admissions and discharges of clients receiving
 52 public receiving facility services who qualify as indigent, as
 53 defined in s. 394.4787; and
 54 2. Current active census of total licensed beds, the number
 55 of beds purchased by the department, the number of clients
 56 qualifying as indigent occupying those beds, and the total
 57 number of unoccupied licensed beds regardless of funding.
 58 (c) A managing entity shall require a public receiving

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00441-15

2015340__

59 facility within its provider network to submit data, on a
 60 monthly basis, to the managing entity which aggregates the daily
 61 data submitted under paragraph (b). The managing entity shall
 62 reconcile the data in the monthly submission to the data
 63 received by the managing entity under paragraph (b) to check for
 64 consistency. If the monthly aggregate data submitted by a public
 65 receiving facility under this paragraph is inconsistent with the
 66 daily data submitted under paragraph (b), the managing entity
 67 shall consult with the public receiving facility to make
 68 corrections as necessary to ensure accurate data.

69 (d) A managing entity shall require a public receiving
 70 facility within its provider network to submit data, on an
 71 annual basis, to the managing entity which aggregates the data
 72 submitted and reconciled under paragraph (c). The managing
 73 entity shall reconcile the data in the annual submission to the
 74 data received and reconciled by the managing entity under
 75 paragraph (c) to check for consistency. If the annual aggregate
 76 data submitted by a public receiving facility under this
 77 paragraph is inconsistent with the data received and reconciled
 78 under paragraph (c), the managing entity shall consult with the
 79 public receiving facility to make corrections as necessary to
 80 ensure accurate data.

81 (e) After ensuring accurate data under paragraphs (c) and
 82 (d), the managing entity shall submit the data to the department
 83 on a monthly and an annual basis. The department shall create a
 84 statewide database for the data described under paragraph (b)
 85 and submitted under this paragraph for the purpose of analyzing
 86 the payments for and the use of crisis stabilization services
 87 funded by the Baker Act on a statewide basis and on an

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00441-15

2015340__

88 individual public receiving facility basis.

89 (f) The department shall adopt rules to administer this
 90 subsection.

91 (g) The department shall submit a report by January 31,
 92 2016, and annually thereafter, to the Governor, the President of
 93 the Senate, and the Speaker of the House of Representatives
 94 which provides details on the implementation of this subsection,
 95 including the status of the data collection process and a
 96 detailed analysis of the data collected under this subsection.

97 (h) The implementation of this subsection is subject to
 98 specific appropriations provided to the department under the
 99 General Appropriations Act.

100 Section 2. This act shall take effect upon becoming a law.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

294

Bill Number (if applicable)

(W)

Meeting Date

Topic Kid Care

Amendment Barcode (if applicable)

Name Jessica Scher

Job Title Public Policy Director

Address 3250 SW 3rd Ave

Phone 305-366-6193

Street

Miami FL 33129

City

State

Zip

Email schraj@unitedwaymiami.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing United Way of Florida / Miami Dade

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/14/15
Meeting Date

SB 294
Bill Number (if applicable)

Topic FL Kid Care Program

(W)

Amendment Barcode (if applicable)

Name Ellen Anderson

Job Title V. P. State Advocacy

Address _____
Street

Phone _____

City

State

Zip

Email ellena@fha.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Hospital Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/4/15

Meeting Date

SB 294

Bill Number (if applicable)

Topic Florida KidCare Program

(W)

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Mudon Way

Phone 850 567-1202

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Tallahassee

FL

32309

Email watsn.strategies@comcast.net

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida CHAIN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

04 March 15

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

294

Meeting Date

Bill Number (if applicable)

Topic FL KID CARE PROGRAM

W

Amendment Barcode (if applicable)

Name MICHAEL MCQUONE (MCCUE-ONE)

Job Title ASSEC. DIRECTOR - HEALTH

Address 201 WEST PARK AVE

Phone (850) 284-9130

Street

TALLAHASSEE

FLORIDA

32301

Email mmequone@flacath.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA CONFERENCE OF CATHOLIC BISHOPS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/19/15

Meeting Date

294

Bill Number (if applicable)

Topic Kidcare Program

(W)

Amendment Barcode (if applicable)

Name FELY CURVA

Job Title Partner, Curva & Associates LLC

Address 1212 Piedmont Dr.

Street

Phone (850) 508-2256

Tallahassee

City

FL

State

32312

Zip

Email curva@mindspring.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL. IMPACT & the Council of Churches;
Budd Bell Clearinghouse on Human Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-4-15
Meeting Date

294
Bill Number (if applicable)

(W)

Topic Florida Kid Care

Amendment Barcode (if applicable)

Name Dawn Steward

Job Title Legislative Committee

Address 2130 Blossom Lane

Phone 407-645-0273

Winter Park FL 32789
City State Zip

Email stu2130@ad.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/4/2015

Meeting Date

SB 294

Bill Number (if applicable)

W

Topic Florida Kidcare Program

Amendment Barcode (if applicable)

Name Athena Smith Ford

Job Title Advocacy Director

Address 1617 Plymouth Ct.

Phone 570-760-1828

Street

Tallahassee

City

32301

State Zip

Email athena@floridachild.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Kidwell Coalition

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/4/15
Meeting Date

(W)

294
Bill Number (if applicable)

Topic Kidcare

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 1001 N. Monroe St
Street

Phone _____

Tall _____
City State Zip

Email douglas.bell@hipc.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Chapter American Academy of Pediatrics

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/4/15
Meeting Date

SB 294
Bill Number (if applicable)

W

Topic Florida Kidcare Program

Amendment Barcode (if applicable)

Name Amy Liem

Job Title

Address 2425 Torreya Dr

Phone 850-385-7900

Tallahassee FL 32303
City State Zip

Email amy@floridalegal.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Legal Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/4/15
Meeting Date

294
Bill Number (if applicable)

W

Topic Kid CARE

Amendment Barcode (if applicable)

Name MARGARITA ROMO

Job Title _____

Address 37240 Lock St

Phone 352-206-7763

Dade City FL 33523
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FARMERS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

W

294
Bill Number (if applicable)

Meeting Date _____

Topic Kidcare

Amendment Barcode (if applicable) _____

Name Karen Woodall

Job Title _____

Address 579 E. Call St.

Phone 850-321-9386

Tallahassee FL 32301
City State Zip

Email fctep@yahoo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Center for Fiscal & Economic Policy / Kidswell FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/4/15

Meeting Date

W

294

Bill Number (if applicable)

Topic KID CARE

Amendment Barcode (if applicable)

Name DIANA RAGBEER

Job Title DIRECTOR, PUBLIC POLICY

Address 3150 SW 3RD AVE, 8TH FLOOR Phone 305 571 5700

Street

MIAMI

City

FL

State

33129

Zip

Email

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing THE CHILDREN'S TRUST

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

W

3/4/15
Meeting Date

TAMMY Hernandez

SB294
Bill Number (if applicable)

Topic Kidcare Expansion
Amendment Barcode (if applicable)

Name Kidcare Expansion for lawfully Residing Immigrant Children

Job Title Legal Secretary

Address 7410 Venetian Way

Phone (561) 540-9090

Street W.P.B. FL 33406
City State Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Catholic Days @ the Capitol

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/3/15

Meeting Date

299
Bill Number (if applicable)

Topic Kid Care

Amendment Barcode (if applicable)

Name Phillis Oeters

Job Title V.P. Parent Relations Baptist Home Hq

Address 6855 Red Road

Phone 305-205-2487

Street

Coral Gables, FL

33143

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Volunteer Chair of the following
United Way, Greater Miami Chapter of Corporate

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

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 Appropriations Subcommittee on Health and Human Services

BILL: SB 294

INTRODUCER: Senator Garcia

SUBJECT: Florida Kidcare Program

DATE: March 3, 2015

REVISED: 3/5/15

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Lloyd | Stovall | HP | Favorable |
| 2. | Brown | Pigott | AHS | Favorable |
| 3. | | | AP | |

I. Summary:

SB 294 extends Medicaid and Children’s Health Insurance Program (CHIP) eligibility to a “lawfully residing child” who is not a citizen or national of the United States but meets other applicable eligibility qualifications of Medicaid or CHIP. The federal programs permit states to cover this population if states elect to do so.

The bill defines “lawfully residing child” to conform 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 recurring fiscal impact for the 2015-2016 fiscal year for state general revenue is estimated to be \$4,838,745.

The bill is effective July 1, 2015.

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 & Medicaid Services. The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

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

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

Eligibility for Florida Medicaid 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 (Kidcare) was created in 1998 by the Florida Legislature in response to the federal enactment of the Children's Health Insurance Program (CHIP) in 1997.² Initially authorized for 10 years and then re-authorized³ through 2019 with federal funding through September 30, 2015, CHIP provides subsidized health insurance 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 2019.⁴ Senator Brown has also filed a separate CHIP extension bill that would fund CHIP through 2019.⁵

Committee leaders in the U.S. House and U.S. Senate have released a joint discussion draft that would extend funding for CHIP and retain the current allotment formula for the states. The duration of the funding extension has not yet been determined as committee members seek stakeholder feedback on the appropriate length of time.⁶

The state statutory authority for Kidcare is found under part II of ch. 409, ss. 409.810 through 409.821, F.S. Kidcare includes four operating components: Medicaid for children, Medikids, the Children's Medical Services Network (CMS Network), and the Florida Healthy Kids

¹ 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/index.cfm> (last visited Feb. 23, 2015).

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

³ 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).

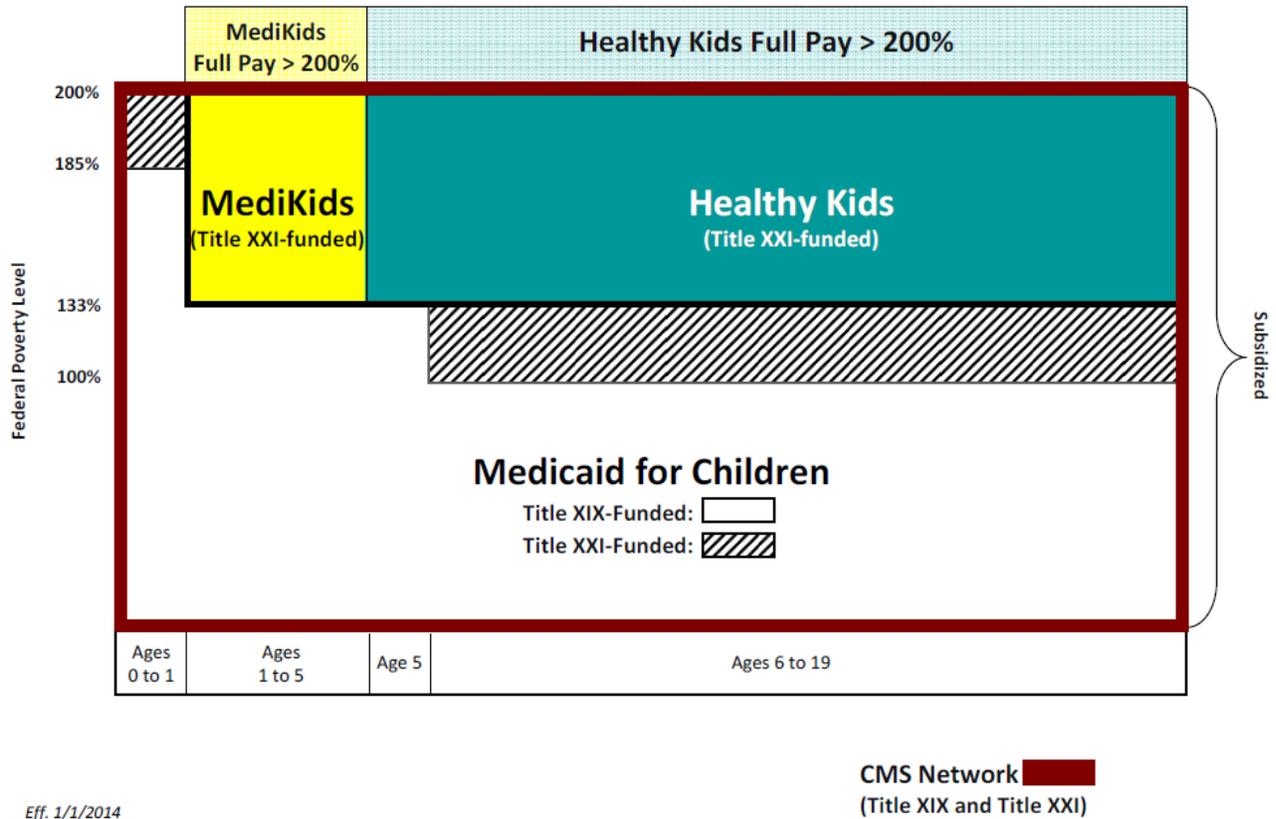
⁴ U.S. Senate Finance Committee, Amendment List to H.R. 22: The Hire More Heroes Act of 2015, <http://www.finance.senate.gov/imo/media/doc/Amendments%20to%20H.R.%2022.pdf> (last visited Feb. 12, 2015).

⁵ U.S. Senate Finance Committee, *Wyden Joins Brown, Casey and Stebenow on Legislation to Extend the Children's Health Insurance Program*, <http://www.finance.senate.gov/newsroom/ranking/release/?id=20c6ac77-77af-424f-bb3e-dc84a92af22d> (February 12, 2015) (last visited: Mar. 5, 2015).

⁶ U.S. House of Representatives, Energy and Commerce Committee, *House and Senate Leaders Release Draft Bill to Extend Funding for Children's Health Insurance*, <http://energycommerce.house.gov/press-release/house-and-senate-health-leaders-release-draft-bill-extend-funding-children%E2%80%99s-health> (February 24, 2015) (last visited: Mar. 5, 2015).

Corporation (FHKC). The following chart illustrates the different program components and funding sources:⁷

Florida KidCare Eligibility



Eff. 1/1/2014

Coverage for the non-Medicaid 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 Kidcare 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 Kidcare. The 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.

⁷ Department of Health - Florida Kidcare, *Florida Kidcare Eligibility Chart*, <http://www.floridahealth.gov/AlternateSites/KidCare/images/data/2014KidCareFlag.pdf> (last visited Jan. 15, 2015).

To enroll in Kidcare, families may apply online or use a paper application that determines eligibility for multiple programs, including Medicaid and 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.⁸ As of January 1, 2015 a total of 2,263,369 children were enrolled in Kidcare.⁹

| PROGRAM | ENROLLMENT |
|--|-------------------|
| 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 | 29,099 |
| Total Florida Kidcare Enrollment: | 2,263,369 |

Under s. 409.814, F.S., Kidcare’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.”¹⁰ 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.¹¹

Generally, under the INA, an alien is not eligible for any state or local public benefit, including health benefits, unless the alien is:¹²

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

⁸ Chapter 2014-51, ss. 174-179, Laws of Florida.

⁹ Agency for Health Care Administration, *Florida Kidcare Enrollment Report - January 2015*, (on file with the Senate Committee on Health Policy).

¹⁰ See 8 U.S.C. s. 1101(a)(3).

¹¹ See 8 U.S.C. s. 1101(a)(21) and (22).

¹² See 8 U.S.C. s. 1621(a).

¹³ See 8 U.S.C. s.1641(b) and (c). There are nine classes of qualified aliens.

¹⁴ See 8 U.S.C. s. 1101(a)(15). There are 22 classes of nonimmigrant aliens identified in this section.

¹⁵ See 8. U.S.C. s. 1182(d)(5).

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.¹⁶

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.¹⁷

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 five-year waiting period on certain groups of qualified aliens, including most children and pregnant women who were otherwise eligible for Medicaid.¹⁸ Medicaid coverage for individuals subject to the five-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 five-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 No. 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 in CHIP without also extending the option to Medicaid children.¹⁹

Prior to the enactment of the CHIPRA, the term "lawfully residing" had not been used to define eligibility for either Medicaid or CHIP; however, the term has been used by the U.S. Department of Agriculture (USDA) and the Social Security Administration (SSA). The federal Centers for Medicare & Medicaid Services utilized existing regulations from these agencies to define a lawful presence for Medicaid and CHIP through a letter to state health officials dated July 1, 2010.²⁰ 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;

¹⁶ See 8 U.S.C. s. 1621(b).

¹⁷ See 8 U.S.C. s. 1621(d).

¹⁸ Section 403 of Pub. L No. 104-193, H.R. 3734, 104th Congress (Aug. 22, 1996).

¹⁹ See 42 U.S.C. s. 1397gg(e).

²⁰ 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).

- An alien who has been paroled into the United States pursuant to section 212(d)(5) of the INA for less than one 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);
 - 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 of the United States;
 - 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 28 states plus Washington, D.C., cover these children in Medicaid only.²¹

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 under Medicaid or Children’s Health Insurance Program (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 CHIP residency requirements, and
- May be eligible for federal financial premium assistance under s. 214 of CHIPRA and related federal regulations.

²¹ Centers for Medicare and Medicaid Services, *Medicaid and CHIP Coverage of Lawfully Residing Children and Pregnant Women*, <http://www.medicare.gov/Medicare-CHIP-Program-Information/By-Topics/Outreach-and-Enrollment/Lawfully-Residing.html> (last visited Jan. 15, 2015).

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 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 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 bill 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 under SB 294 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 incurred by health care providers may be reduced if the insured population is increased.

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 an estimated 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 five-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 Required (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 Required (9.81%) | \$4,385,795 |

The total general revenue impact of the bill is estimated to be \$4,838,745.²²

Both a Medicaid and CHIP state plan amendment will need to be submitted for federal approval to implement the eligibility changes.

Department of Children and Families

In addition to the enrollment costs above, the DCF estimates the bill 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.²³

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.

²² Agency for Health Care Administration, *Senate Bill 294 Analysis* (Jan. 9, 2015) (on file with the Senate Committee on Health Policy).

²³ Department of Children and Families, *Senate Bill 294 Analysis* (Jan. 21, 2015) (on file with the Senate Committee on Health Policy).

VI. Technical Deficiencies:

None.

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.

By Senator Garcia

38-00163-15

2015294__

A bill to be entitled

An act relating to the Florida Kidcare program; amending s. 409.811, F.S.; defining the term "lawfully residing child"; deleting the definition of the term "qualified alien"; conforming provisions to changes made by the act; amending s. 409.814, F.S.; revising eligibility for the program to conform to changes made by the act; clarifying that undocumented immigrants are excluded from eligibility; amending s. 409.904, F.S.; providing eligibility for optional payments for medical assistance and related services for certain lawfully residing children; clarifying that undocumented immigrants are excluded from eligibility for optional Medicaid payments or related services; amending s. 624.91, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (17) through (22) of section 409.811, Florida Statutes, are redesignated as subsections (18) through (23), respectively, a new subsection (17) is added to that section, and present subsection (23) and subsection (24) of that section are amended, to read:

409.811 Definitions relating to Florida Kidcare Act.—As used in ss. 409.810-409.821, the term:

(17) "Lawfully residing child" means a child who is lawfully present in the United States, meets Medicaid or Children's Health Insurance Program (CHIP) residency

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

38-00163-15

2015294__

requirements, and may be eligible for medical assistance with federal financial participation as provided under s. 214 of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, and related federal regulations.

~~(23) "Qualified alien" means an alien as defined in s. 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Pub. L. No. 104-193.~~

(24) "Resident" means a United States citizen, or lawfully residing child ~~qualified alien~~, who is domiciled in this state.

Section 2. Paragraph (c) of subsection (4) of section 409.814, Florida Statutes, is amended to read:

409.814 Eligibility.—A child who has not reached 19 years of age whose family income is equal to or below 200 percent of the federal poverty level is eligible for the Florida Kidcare program as provided in this section. If an enrolled individual is determined to be ineligible for coverage, he or she must be immediately disenrolled from the respective Florida Kidcare program component.

(4) The following children are not eligible to receive Title XXI-funded premium assistance for health benefits coverage under the Florida Kidcare program, except under Medicaid if the child would have been eligible for Medicaid under s. 409.903 or s. 409.904 as of June 1, 1997:

(c) A child who is an alien, but who does not meet the definition of a lawfully residing child ~~qualified alien, in the United States. This paragraph does not extend eligibility for the Florida Kidcare program to an undocumented immigrant.~~

Section 3. Present subsections (8) and (9) of section 409.904, Florida Statutes, are redesignated as subsections (9)

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

38-00163-15

2015294__

59 and (10), respectively, and a new subsection (8) is added to
60 that section, to read:

61 409.904 Optional payments for eligible persons.—The agency
62 may make payments for medical assistance and related services on
63 behalf of the following persons who are determined to be
64 eligible subject to the income, assets, and categorical
65 eligibility tests set forth in federal and state law. Payment on
66 behalf of these Medicaid eligible persons is subject to the
67 availability of moneys and any limitations established by the
68 General Appropriations Act or chapter 216.

69 (8) A child who has not attained the age of 19 who,
70 notwithstanding s. 414.095(3), would be eligible for Medicaid
71 under s. 409.903, except that the child is a lawfully residing
72 child as defined in s. 409.811. This subsection does not extend
73 eligibility for optional Medicaid payments or related services
74 to an undocumented immigrant.

75 Section 4. Paragraph (b) of subsection (3) of section
76 624.91, Florida Statutes, is amended to read:

77 624.91 The Florida Healthy Kids Corporation Act.—

78 (3) ELIGIBILITY FOR STATE-FUNDED ASSISTANCE.—Only the
79 following individuals are eligible for state-funded assistance
80 in paying Florida Healthy Kids premiums:

81 (b) Notwithstanding s. 409.814, a legal ~~alien~~ ~~aliens~~ who ~~is~~
82 are enrolled in the Florida Healthy Kids program as of January
83 31, 2004, who does ~~de~~ not qualify for Title XXI federal funds
84 because he or she is ~~they are~~ not a lawfully residing child
85 qualified ~~aliens~~ as defined in s. 409.811.

86 Section 5. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

February 18, 2013

The Honorable Rene Garcia
Senate Health and Human Service Appropriations, Chair
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB450 – Relating to Pain Management Clinics

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 450, Relating to Pain Management Clinics, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

Cc: Scarlet Pigott

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(W)

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/4/15
Meeting Date

SB480
Bill Number (if applicable)

Topic Pain Management Clinics

Amendment Barcode (if applicable)

Name Christopher Nuland

Job Title _____

Address 1000 Riverside Avenue
Street

Phone _____

Jacksonville
City

FL
State

32204
Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Health Association, Florida Chapter American College of Physicians

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/04/15
Meeting Date

SB 0450
Bill Number (if applicable)

(W)

Topic Pain Management Clinics

Amendment Barcode (if applicable)

Name George Maddox

Job Title Lieutenant VCSD

Address 123 W. Indiana Ave.
Street

Phone 386-736-5961

Deland FL 32720
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Sheriff's Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-4-18

Meeting Date

450

Bill Number (if applicable)

Topic Pain Mgt. Clinics

W

Amendment Barcode (if applicable)

Name Paul Runk

Job Title Deputy Director - Legislative Planning

Address 2585 Merchants Row Blvd.

Phone 850-245-4004

Street

Tallahassee

FL

State

32399

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Department of Health

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(W)

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-4-15

Meeting Date

450

Bill Number (if applicable)

Topic Pain Management Clinics

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Legis Affairs Director

Address 28108 Mahan Dr

Phone 878 2196

Street

Tallahassee

FL

32308

Email Jill@fadaa.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Alcohol + Drug Abuse Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations Subcommittee on Health and Human Services

BILL: SB 450

INTRODUCER: Senators Benacquisto and Gaetz

SUBJECT: Pain Management Clinics

DATE: March 3, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Looke | Stovall | HP | Favorable |
| 2. | Brown | Pigott | AHS | Favorable |
| 3. | | | AP | |

I. Summary:

SB 450 prevents the regulation of pain management clinics from being repealed on January 1, 2016.

The bill has no fiscal impact.

The bill is effective upon becoming a law.

II. Present Situation:

Pain Management Clinics

A pain management clinic is any facility that either advertises pain management services or a facility where a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.¹ All pain management clinics must register with the Department of Health (DOH) and meet provisions concerning staffing, sanitation, recordkeeping, and quality assurance.² Clinics are exempt from these provisions if they are:

- Licensed as a hospital, ambulatory surgical center, or mobile surgical facility;
- Staffed primarily by surgeons;
- Owned by a publicly-held corporation with total assets exceeding \$50 million;
- Affiliated with an accredited medical school;
- Not involved in prescribing controlled substances for the treatment of pain;
- Owned by a corporate entity exempt from federal taxation as a charitable organization;

¹ “Chronic nonmalignant pain” is defined as pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery. See ss. 458.3265 and 459.0137, F.S.

² Sections 458.3265 and 459.0137, F.S. Chapter 458, F.S., is the Medical Practice Act, and Chapter 459, F.S., is the Osteopathic Medical Practice Act. The two sections regulating pain management clinics are substantively identical.

- Wholly owned and operated by board-eligible or board-certified anesthesiologists, psychiatrists, rheumatologists, or neurologists; or
- Wholly owned and operated by a physician multispecialty practice with physicians holding credentials in pain medicine and who perform interventional pain procedures routinely billed using surgical codes.

All clinics must be owned by at least one licensed physician or be licensed as a health care clinic under part X of ch. 400, F.S., to be eligible for registration as a pain management clinic. Pain management clinics must also designate a physician who is responsible for complying with all the registration and operation requirements designated in ss. 458.3265 or 459.0137, F.S. A pain management clinic may not be owned by, or have a contractual or employee relationship with, a physician who has had his or her Drug Enforcement Administration (DEA) license number revoked, has had his or her application for a license to practice using controlled substances denied by any jurisdiction, or has had any convictions or pleas for illicit drug felonies within the past 10 years.

The DOH is required to conduct an annual inspection of each pain management clinic. Through the inspection, the DOH ensures the following requirements are met:

- The pain management clinic is registered with the DOH and the DOH has been notified of the designated physician;
- Every physician meets the training requirements to practice at the clinic;
- The clinic, including its grounds, buildings, furniture, appliances and equipment, is structurally sound, in good repair, clean, and free from health and safety hazards;
- Storage and handling of prescription drugs complies with ss. 499.0121 and 893.07, F.S.;
- Physicians maintain control and security of prescription blanks and other methods for prescribing controlled substances and report in writing any theft or loss of prescription blanks to the DOH within 24 hours;
- Physicians are in compliance with the requirements for counterfeit-resistant prescription blanks; and
- The designated physician has reported all adverse incidents to the DOH as set forth in s. 458.351, F.S.³

The DOH may suspend or revoke clinic registration or impose administrative fines of up to \$5,000 per violation for any offenses against state pain management clinic provisions or related federal laws and rules. If the registration for a pain management clinic is revoked for any reason, the clinic must cease to operate immediately, remove all signs or symbols identifying the facility as a pain management clinic, and dispose of any medication on the premises. The DOH may impose an administrative fine of up to \$5,000 per day for a clinic that operates without a registration. No owner or operator of a pain management clinic that had its registration revoked may own or operate another pain clinic for five years after such revocation.⁴

These provisions expire on January 1, 2016.

³ Department of Health, *Senate Bill 450 Analysis*, (on file with the Senate Health Policy Committee).

⁴ Section 458.3265, F.S. Similar language is found in s. 459.0137, F.S. Related rules are found in Rules 64B8-9 and 64B15-14, F.A.C.

Pain Management Clinic Regulation and Closures between 2010 and 2015

In 2009, the Florida Legislature enacted ch. 2009-198, L.O.F., which, along with establishing the prescription drug monitoring database, required all pain management clinics to register with the DOH. The DOH began registering pain management clinics on January 1, 2010, and by September 2010, had registered 943 pain management clinics in the state.⁵

In 2010, the Florida Legislature enacted ch. 2010-211, L.O.F., which created ss. 458.3265 and 459.0137, F.S. The Legislature again enhanced regulation of pain management clinics in 2011, with the passage of ch. 2011-141, L.O.F., (CS/HB 7095) which specified requirements for facility and physical operations, infection control, health and safety requirements, quality assurance, and data collection and reporting. This act also added the expiration date for the sections relating to the regulation of pain management clinics.

Since 2010, the DOH has administratively closed a total of 1,261 pain management clinics.⁶ Also, the total number of pain management clinics registered in Florida has fallen from 941, at the end of Fiscal Year 2010-2011, to 359, at the end of Fiscal Year 2014-2015.⁷

Currently, registered pain management clinics have improved their policies and procedures to meet the standards set out in ss. 458.3625 and 459.0137, F.S. When conducting the annual inspection of a pain management clinic, the DOH is required to make a reasonable attempt to discuss each violation with the owner or designated physician of the pain management clinic before issuing a formal written notification. The number of pain management clinics passing the inspection the first time has increased from 53 percent in Fiscal Year 2012-2013 to 85 percent in Fiscal Year 2013-2014.⁸

Effectiveness of Prescription Drug Regulations in Florida

The increased regulation of pain management clinics and other controlled substance prescribing changes correspond with significant reductions in the number of drug overdose deaths in Florida. In 2010, Florida led the nation in diverted prescription drugs which resulted in seven Floridians dying every day, as well as the many more additional deaths across the nation.⁹ A Centers for Disease Control and Prevention report published on July 4, 2014, documents a 61 percent increase in drug overdose deaths in Florida from 2003 to 2010.¹⁰ Additionally, Florida had

⁵ Supra note 3.

⁶ Department of Health, Chart of pain management clinic disciplinary actions from FY 10-11 to FY 14-15, (on file with the Senate Committee on Health Policy) *Note: this number includes clinics that have voluntarily relinquished their registration or have closed without disciplinary action being taken.*

⁷ Id.

⁸ Supra note 3.

⁹ Office of the Attorney General of Florida, *Pill Mill Initiative (2012-2015)*, available at <http://myfloridalegal.com/pages.nsf/Main/AA7AAF5CAA22638D8525791B006A30C8>, (Last visited Feb. 13, 2015)

¹⁰ The Centers for Disease Control and Prevention, *Decline in Drug Overdose Deaths after State Policy Changes — Florida, 2010–2012*, July 4, 2014, available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6326a3.htm?s_cid=mm6326a3_w#Fig1 (Last visited Feb. 12, 2015).

become the primary destination for distributors and abusers of diverted prescription drugs through the proliferation of illegitimate pain management clinics known as pill mills.¹¹

However, instead of continuing the upward trend of the seven years between 2010 – when many of the current controlled substance prescribing regulations became effective – and 2012, drug overdose deaths in Florida fell by 16.7 percent. Also, during that period, deaths from prescription drugs declined by 23.2 percent and deaths from oxycodone declined by 52.1 percent.¹² Prescription drug deaths also continued to fall in 2013, when compared to 2012, with 8.3 percent fewer people dying with at least one prescription drug in their system that was identified as the cause of death.¹³ Additionally, the number of doctors in Florida who prescribed high volumes of narcotics fell from 98 in 2010 to 13 in 2012 and to zero in 2013.¹⁴

III. Effect of Proposed Changes:

The bill strikes the expiration date of January 1, 2016, from the regulation of pain management clinics under the Medical Practice Act in s. 458.3265, F.S., and under the Osteopathic Medical Practice Act in s. 459.0137, F.S.

The provisions in the bill are effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Supra note 9, Pill mills are pain management clinics that serve as a front for drug traffickers and can be identified through characteristics which include: taking only cash, not taking appointments, employing armed guards, keep little to no medical records, performing only grossly inadequate physical examinations, and prescribing large doses of narcotics that exceed the boundaries of acceptable medical care.

¹² Supra note 10.

¹³ Florida Department of Law Enforcement, *Medical Examiners Commission 2013 Annual Report*, p. i, published October 2014, available at <http://www.fdle.state.fl.us/Content/getdoc/05c6ff97-00cc-49b2-9ca5-5dacd4539b1a/2013-Annual-Drug-Report.aspx> (Last visited Feb. 13, 2015).

¹⁴ Sabrina Tavernise, *Prescription Overdose Deaths in Florida Plunge After Tougher Measures, Report Says*, THE NEW YORK TIMES, July 1, 2014, available at http://www.nytimes.com/2014/07/02/health/prescription-drug-deaths-in-florida-plunge-after-tougher-laws.html?_r=0, (last visited Feb. 12, 2015). Also see supra note 10.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

SB 450 continues the current regulation of private-sector pain management clinics.

C. Government Sector Impact:

The bill continues the current regulation of pain management clinics conducted by the Department of Health.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.3265 and 459.0137.

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.

By Senator Benacquisto

30-00718-15

2015450__

1 A bill to be entitled
2 An act relating to pain management clinics; amending
3 ss. 458.3265 and 459.0137, F.S.; deleting provisions
4 relating to the future repeal of those sections;
5 providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Subsection (6) of section 458.3265, Florida
10 Statutes, is amended to read:
11 458.3265 Pain-management clinics.-
12 ~~(6) EXPIRATION. This section expires January 1, 2016.~~
13 Section 2. Subsection (6) of section 459.0137, Florida
14 Statutes, is amended to read:
15 459.0137 Pain-management clinics.-
16 ~~(6) EXPIRATION. This section expires January 1, 2016.~~
17 Section 3. This act shall take effect upon becoming a law.

CourtSmart Tag Report

Room: SB 401

Case:

Type:

Caption: Appropriations Subcommittee on Health and Human Services

Judge:

Started: 3/4/2015 9:59:27 AM

Ends: 3/4/2015 10:13:14 AM

Length: 00:13:48

9:59:29 AM Called to Order
9:59:36 AM Roll Call
10:00:23 AM SB 450
10:00:30 AM Sen. Benacquisto
10:00:52 AM Public Testimony
10:00:56 AM Christopher Nuland, FPHA, FCACP waives in support
10:00:57 AM George Maddox, FSA waives in support
10:01:06 AM Paul Runk, FDH waives in support
10:01:24 AM Roll Call
10:01:47 AM Favorable
10:01:53 AM SB 34
10:03:19 AM 785138
10:03:57 AM Adopted
10:04:15 AM Roll Call
10:04:33 AM Favorable
10:04:36 AM TAB: 2
10:04:51 AM SB 340
10:05:34 AM Jill Gran, FADAA waives in support of SB 450
10:05:43 AM Roll Call
10:05:58 AM Favorable
10:06:02 AM TAB: 3
10:06:13 AM SB 294
10:08:42 AM Public Testimony
10:08:51 AM Jessica Scher, United Way FL waives in support
10:09:04 AM Ellen Anderson, FL Hospital Assoc. waives in support
10:09:10 AM Ron Watson, FL CHAIN waives in support
10:09:21 AM Michael McQuone, FCCB waives in support
10:09:40 AM Fely Curva, FICC; BBCHS waives in support
10:09:50 AM Dawn Steward, FL PTA waives in support
10:09:56 AM Athena Smith Ford, Kidwell Coalition waives in support
10:10:04 AM Doug Bell, FCAAP waives in support
10:10:09 AM Amy Liem, FLS waives in support
10:10:17 AM Margarita Romo, Farmworkers waives in support
10:10:24 AM Karen Woodall, FCFEP waives in support
10:10:34 AM Diana Ragbere, The Children's Trust waives in support
10:11:15 AM Tammy Hernandez, Catholic Days at the Capitol, waives in support
10:11:32 AM Closing Remarks
10:12:36 AM Roll Call
10:12:56 AM Favorable
10:13:08 AM Adjourn