

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Operations Committee

BILL: CS/CS/SB 930

INTRODUCER: Governmental Operations Committee, Health Policy Committee and Senator Dawson and others

SUBJECT: Florida Kidcare Program

DATE: March 30, 2007      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner	Wilson	HP	<b>Fav/CS</b>
2.	Rhea	Wilson	GO	<b>Fav/CS</b>
3.			HA	
4.				
5.				
6.				

**I. Summary:**

The bill creates a coordinating council, the Florida Council on Children’s Health, in the Executive Office of the Governor. The council consists of twelve members appointed by the Governor who are responsible for identifying and developing specific strategies for addressing issues related to children’s lack of access to high-quality and affordable health care services for and health care coverage for recommendation to the Governor and the Legislature. The bill also eliminates the coordinating council chaired by the Department of Health.

The bill creates the Division of Children’s Health Insurance and the Office of Child Health Coordination in the Department of Health (DOH), and specifies their responsibilities. The bill renames the Children’s Medical Services program to the Children’s Health program and requires it to consolidate and coordinate Florida Kidcare child health policy, develop pediatric benefit packages, develop budget and federal and state legislative issues, and develop pediatric quality assurance and access standards.

The bill also clarifies and adds definitions relating to the Florida Kidcare Program; revises the components of the program; allows certain persons to buy into the Medicaid program; changes eligibility criteria for children so they can participate in certain components; repeals penalties for voluntary cancellation of policies for non-payment of premiums; requires the Agency for Health Care Administration (AHCA) to estimate the number of uninsured children; expands Medicaid eligibility for a limited time to allow families to transition from Title XIX-funded Kidcare components to Title XXI-funded Kidcare components without a gap in coverage; eliminates contradictory eligibility criteria; extends eligibility for reasons of good cause for voluntary cancellation of employer-sponsored health coverage; extends premium assistance eligibility to

children who are dependents of state employees and non-qualified legal aliens; repeals the 10 percent limit on full-pay enrollees in Medikids and Florida Healthy Kids; requires health plans and other providers to be notified of their members losing Medicaid or Medikids eligibility so they may assist them in maintaining continuous coverage in the Florida Kidcare Program; requires eligibility information to be electronically verified to the extent possible; redefines the benchmark benefit package for the program; prohibits requiring children with special health care needs from paying premiums and copayments in certain situations; transfers and consolidates most administrative functions in the entire Florida Kidcare program under the DOH effective July 1, 2008; clarifies that parents and legal guardians have access to certain enrollment information; extends Medicaid coverage to certain pregnant women; extends Medicaid coverage to children between 6 and 19 years of age who have incomes between 100 and 133 percent of the federal poverty level; modifies the legislative intent related to the Medicaid managed care pilot program; and repeals the Florida Healthy Kids Corporation effective June 30, 2009.

This bill amends ss. 20.43, 391.011, 391.016, 391.021, 391.025, 391.026, 391.028, 391.029, 409.811, 409.812, 409.813, 409.8132, 409.8134, 409.814, 409.815, 409.816, 409.8177, 409.818, 409.821, 409.904, 409.91211 and 624.91, Florida Statutes. This bill repeals s. 409.820, Florida Statutes, and s. 624.91, Florida Statutes, effective June 30, 2009. This bill creates s. 14.35, Florida Statutes.

## II. Present Situation:

**Organizational Structure of the Executive Branch** – Article II, s. 3 of the State Constitution provides:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Additionally, Article IV, s. 6 of the State Constitution provides:

All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except:

- (a) When provided by law, confirmation by the senate or approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.
- (b) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.

The manner of appointment of statutory officers may not unconstitutionally infringe upon the authority of the Governor to appoint executive branch officers:

As the chief executive officer in whom the supreme executive power is vested, the Governor has direct supervision over all executive departments unless the legislature places that supervision in the hands of one of the following other executive officers: the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor. Inherent in that direct supervisory authority is the power to appoint executive officers to public office.<sup>1</sup>

Chapter 20, F.S., provides for the organizational structure of the executive branch.<sup>2</sup> Section 20.04, F.S., provides that the department is the principal administrative unit of the executive branch<sup>3</sup> and subdivides departments into divisions headed by division directors,<sup>4</sup> bureaus headed by bureau chiefs,<sup>5</sup> sections headed by administrators<sup>6</sup> and subsections headed by supervisors.<sup>7</sup>

The internal structure of all departments must adhere to standard terms, except for the Department of Financial Services, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation.<sup>8</sup> Pursuant to subsection (3) of the section, the principal unit of the department is the “division,” with each division headed by a “director.” The principal unit of the division is the “bureau,” with each bureau headed by a “chief.” No definition for “office” is provided in chapter 20, F.S.

Additionally, s. 20.03, F.S., establishes definitions for other entities within the executive branch. The section provides:

(7) “Council” or “advisory council” means an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

(8) “Committee” or “task force” means an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.

(9) “Coordinating council” means an interdepartmental advisory body created by law to coordinate programs and activities for which one department has primary responsibility but in which one or more other departments have an interest.

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<sup>1</sup> *Jones v. Chiles*, 638 So.2d 48 (Fla. 1994).

<sup>2</sup> Section 20.04, F.S.

<sup>3</sup> Section 20.04(1), F.S.

<sup>4</sup> Section 20.04(3)(a), F.S.

<sup>5</sup> Section 20.04(3)(b), F.S.

<sup>6</sup> Section 20.04(3)(c), F.S.

<sup>7</sup> Section 20.04(3)(d), F.S.

<sup>8</sup> Section 20.04(3), F.S.

(10) “Commission,” unless otherwise required by the State Constitution, means a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and *exercising limited quasi-legislative or quasi-judicial powers, or both, independently* of the head of the department or the Governor.

Section 20.052, F.S., establishes requirements that each advisory body, commission, board of trustees, or any other collegial body created by specific statutory enactment as an adjunct to an executive agency must be established, evaluated, or maintained.

### **State Children’s Health Insurance Program**

The State Children’s Health Insurance Program (SCHIP), enacted as part of the Balanced Budget Act of 1997, created Title XXI of the federal Social Security Act, which provides health insurance to uninsured children in low-income families either through a Medicaid expansion, a separate children’s health program, or a combination of both. The SCHIP was designed as a federal/state partnership, similar to Medicaid, with the goal of expanding health insurance to children whose families earn too much money to be eligible for Medicaid, but not enough money to purchase private insurance. The SCHIP is the single largest expansion of health insurance coverage for children since the initiation of Medicaid in the mid-1960s. The program is scheduled for federal reauthorization in 2007.

### **The Florida Kidcare Program**

The Florida Kidcare program was established in 1998 as a combination of Medicaid expansions and public/private partnerships, with a wrap-around delivery system serving children with special health care needs. The Florida Kidcare program is primarily targeted to uninsured children under age 19 whose family income is at or below 200 percent of the federal poverty level (\$40,000 for a family of four in 2006). The Florida Kidcare program is outlined in ss. 409.810 through 409.821, F.S.

As structured, Florida Kidcare is an “umbrella” program that currently includes the following four components: Medicaid for children; Medikids; the Florida Healthy Kids program; and the CMSN, which includes a behavioral health component. Family income level, age of the child, and whether the child has a serious health condition are the eligibility criteria that determine which component serves a particular child.

Enrollment in the Florida Kidcare program was initiated on October 1, 1998, and 1,388,520 children were enrolled in the various components of the Florida Kidcare program as of March 2007. Of this total, 207,626 children are Title XXI eligible, 26,906 children are non-Title XXI eligible, and 1,153,988 children are eligible under the Medicaid Title XIX program.

### **The Florida Kidcare Program Administration**

The Florida Healthy Kids program component of Kidcare is administered by the non-profit Florida Healthy Kids Corporation, established in s. 624.91, F.S. The Florida Healthy Kids program existed prior to the implementation of the federal Title XXI SCHIP. Florida was one of

three states to have the benefit package of an existing child health insurance program grandfathered in as part of the Balanced Budget Act of 1997, which created SCHIP.

The Florida Healthy Kids Corporation contracts with managed care plans throughout the state for the provision of health care coverage. The Florida Healthy Kids Corporation contracts with a fiscal agent to perform initial eligibility screening for the program and final eligibility determination for children who are not Medicaid eligible.

The Florida Kidcare application is a simplified application that serves applicants for both the Title XXI Kidcare program as well as Title XIX Medicaid. Pursuant to federal law, each application is screened for the child's eligibility for Title XIX Medicaid. The fiscal agent refers children who appear to be eligible for Medicaid to the Department of Children and Families (DCF) for Medicaid eligibility determination, and children who appear to have a special health care need to CMSN within the DOH for evaluation.

If eligible for Medicaid, the child is enrolled immediately into that program. If the child is not eligible for Medicaid, the application is processed for Title XXI and if the child is eligible under Title XXI, the child is enrolled into the appropriate Florida Kidcare program component. Medicaid for children and Medikids are administered by the AHCA. Medikids uses the Medicaid infrastructure, offering the same provider choices and package of benefits.

### **Interim Project Report 2007-131**

When the Florida Kidcare Program was established, the administrative structure adopted to implement the program allowed the state to link existing public and private components to implement provisions of the new SCHIP law and to begin receiving federal funds under Title XXI. However, children's advocates and some stakeholders have long argued that Kidcare's original administrative structure and the programmatic differences among components created barriers to the enrollment of eligible children in the program.

These groups point to the recent decline in Kidcare enrollment as a strong example of how substantive policy changes and on-going administrative barriers prevent eligible children from entering and remaining in the program. Specifically, stakeholders point to the decline in Title XXI enrollment from a high of 336,689 children in April 2004, to a low of 186,080 children in February 2006, as an indication of policy and administrative barriers.

In 2006, the Senate Health Care Committee conducted an interim project<sup>9</sup> to examine whether administrative simplification and organizational restructuring of the Florida Kidcare Program could help families gain access to and remain in the program. Staff reviewed several Kidcare program activities including: marketing and outreach; enrollment and eligibility determination processes; transitioning of children among components; retention efforts; and general program administration and oversight.

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<sup>9</sup> Interim Project Report 2007-131. "The Florida Kidcare Program: Organizational Streamlining and Administrative Simplification." Found at: [http://www.flsenate.gov/data/Publications/2007/Senate/reports/interim\\_reports/pdf/2007-131hp.pdf](http://www.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-131hp.pdf). (Last viewed on March 4, 2007.)

*Findings*

The interim report found that most of the administrative barriers identified by stakeholders and other studies have largely been addressed. However, over the last several years, policy changes that limited enrollment periods, tightened eligibility standards, and increased documentation requirements combined with complex administrative processes contributed to lower enrollment trends.

Of the remaining administrative and organizational barriers identified in the interim report, staff found that the most significant problems concerned the ability of:

- Stakeholders to conduct marketing and outreach within limited fiscal resources;
- Families to obtain accurate information about enrollment and eligibility policies, especially whether the program was accepting new enrollees;
- Families to complete the application process;
- Families to transition their children from one component of Florida Kidcare to another, usually from Medicaid to the Florida Healthy Kids program; and,
- Stakeholders to challenge policy changes through the administrative rule process.

*Recommendations*

The interim project provided two recommendations to address these findings. First, the Legislature should consider comprehensive consolidation of the administration of the Florida Kidcare program under the AHCA and the DCF, including: marketing and outreach; eligibility determination; contracting with managed care plans and fiscal agents; quality assurance; and financing.

The consolidation could be piloted in the counties where Medicaid reform is being implemented. The consolidation should occur after Medicaid reform has been implemented for at least one year and when existing Florida Healthy Kids and CMSN contracts are up for renewal. Also, the AHCA and the DCF should provide an assessment of resources needed to incorporate the administrative activities provided by the Florida Healthy Kids Corporation that are not being conducted by either entity at the current time (i.e., premium collection, etc.). The AHCA should be directed to conduct a fiscal analysis of consolidating the current benefit packages into a standard package that provides most services for most children and a “Kidcare Plus” package for children with special health care needs. The AHCA should be directed to identify where waivers of applicable federal law would be necessary to implement this consolidation. State statutes should be conformed to reflect this consolidation.

In lieu of comprehensive administrative consolidation, the entities that operate the Florida Kidcare program should continue their progress on implementing administrative improvements through information technology systems and continuous quality improvement. Under this alternative, the Legislature should:

- Continue or expand financing of marketing and outreach activities;
- Allow new partners to conduct marketing and outreach;

- Require the same eligibility information and documentation to be submitted by all applicants regardless of the Kidcare component for which the child may be eligible;
- Reduce or eliminate the gap in coverage when children transition between components by allowing Medicaid HMOs and other providers to identify their members losing eligibility and assist them in completing a Kidcare application;
- Determine if a waiver is necessary to expand Medicaid eligibility for a limited time to allow families transitioning from Medicaid to Healthy Kids to complete the application process; and,
- Require the program principals to adopt administrative rules for the entire Kidcare program, especially to clarify the policy authority governing the Florida Healthy Kids Corporation and its activities.

### III. Effect of Proposed Changes:

**Section 1.** Creates s. 14.35, F.S., establishing the Florida Council on Children’s Health, a “coordinating council” as defined in s. 20.3(9), F.S.

*Subsection (1)(a)* defines the term “health” to include physical, mental and dental health.

*Subsection (1)(b)* establishes the Florida Council on Children’s Health in the Executive Office of the Governor; specifying the council shall have 12 members with the Governor appointing twelve members; specifying terms of office; and prohibiting employees of the Florida Kidcare partner agencies, the Florida Healthy Kids Corporation, or other state agencies from serving on the council as voting members. The council is required to meet the provisions of s. 20.052, F.S., except as otherwise provided in law.

*Subsection (2)* specifies meeting frequency and the election of officers.

*Subsection (3)* specifies that members shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S.

*Subsection (4)* specifies that the council must identify and develop specific strategies for addressing issues related to children’s lack of access to high-quality and affordable health care services and health care coverage in this state and shall provide coordinated executive oversight of agencies and departments in the state in order to increase accountability regarding children’s health issues. The council’s duties are to:

- Provide recommendations for implementing the consolidation of the Florida Kidcare program.
- Study the barriers to children accessing high-quality and affordable health care services and health care coverage in this state.
- Submit an annual report to the Governor on the status of children’s health issues, including, but not limited to, an assessment of the following areas: the number of uninsured children, the health status of children in this state using public health indicators, the gaps in health care services for children with special health care needs, and the status of programs affecting children’s health in this state.

- Analyze the responsiveness of state government to the health needs of children and the appropriateness of the response. The council may submit a plan for recommended restructuring and change to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer at any time it deems appropriate.
- Receive quarterly updates from the DOH concerning the status of implementing policy changes to the programs affecting children's health and the implementation of the council's recommendations.
- Identify and provide recommendations for ways to improve the delivery of services for children.
- Review proposed federal and state legislation affecting children's health and providing recommendations to the Governor on appropriate actions pertaining to this section.
- Study and make recommendations to refine the eligibility determination process for the Florida Kidcare Program.

*Subsection (5)* requires executive agencies to cooperate with the council.

**Section 2.** Amends s. 20.43, F.S., renaming a DOH division as the "Division of Children's Medical Services Network and Specialty Programs;" and creating the Division of Children's Health Insurance and the Office of Child Health Coordination.

**Section 3.** Amends s. 391.011, F.S., renaming the Children's Medical Services Act to the "Children's Health Act."

**Section 4.** Amends s. 391.016, F.S., changing the Legislative intent relating to the Children's Medical Services program to broaden the scope of the Children's Health program and to state that the program should consolidate and coordinate Florida Kidcare child health policy, development of pediatric benefit packages, development of budget and federal and state legislative issues, and development of pediatric quality assurance and access standards.

**Section 5.** Amends s. 391.021, F.S., by expanding the definition of the "Children's Medical Services Network" to include health care providers, health care facilities, or entities licensed or certified to provide health services in this state that meet the pediatric access and quality standards established by the department, which provides Florida Kidcare Plus benefits as defined in s. 409.811, F.S.; adds a definition of "maximum income threshold" to have the same meaning as in s. 409.811, F.S.; adds a definition of "pediatric benefit" to mean a benefit that is determined to be medically necessary to treat a health condition (the scope, duration, and frequency of the service are based on medical-necessity criteria); and adding a definition of "Safety Net" to mean limited services provided to children with special health care needs who are uninsured or underinsured and do not qualify for Title XIX or Title XXI-funded health benefits coverage.

**Section 6.** Amends s. 391.025, F.S., specifying that the Division of Children's Health Insurance and the Office of Child Health Coordination are components of the Children's Health program; and clarifying that the Children's Medical Services Network shall not be deemed an insurer and is not subject to licensing requirements of the Florida Insurance Code or the rules adopted thereunder, when providing services to children who receive Kidcare coverage.



**Section 7.** Adds subsection (19) to s. 321.026, F.S., specifying that the DOH has a duty and responsibility to administer the provisions of the Florida Kidcare Act assigned to the department in ss. 409.810-409.820, F.S.

**Section 8.** Amends s. 391.028, F.S., specifying that the Division of Children’s Health Insurance shall be responsible for administering and coordinating the provisions of the Florida Kidcare Act assigned to the department in ss. 409.810-409.820, F.S.; and specifying that the Office of Child Health Coordination is responsible for child health services not directly related to Florida Kidcare health benefits coverage and shall be responsible for providing staff support to the children’s health coordinating council, and to the Florida Council on Children’s Health.

**Section 9.** Amends s. 391.029, F.S., requiring the DOH to establish clinical eligibility to determine if an applicant is eligible for Florida Kidcare Plus benefits; and specifying eligibility for the Children’s Medical Services Network, subject to the availability of funds.

**Section 10.** Amends s. 409.811, F.S., which provides definitions for the Florida Kidcare Act, to:

- Redefine the term “child with special health care needs” to align with other statutes (see s. 391.021(2), F.S.);
- Repeal the definition of “family;”
- Redefine “family income” to state family income is calculated using the budget methodologies authorized under Title XIX of the Social Security Act;
- Define the term “Florida Kidcare Plus” as the health plan benefits for children with special health care needs delivered through the Children’s Medical Services Network;
- Define the term “Healthy Kids” as a component of the Florida Kidcare Program of medical assistance for children who are 5 through 18 years of age and administered by the Florida Healthy Kids Corporation;
- Define “maximum income threshold” to mean a percentage of the current federal poverty level used to determine eligibility for certain program components, as approved by federal waiver or an amendment to the state plan (unless otherwise approved by a federal waiver or an amendment to the state plan, the maximum income threshold is 200 percent of the most recent federal poverty level);
- Define “pediatric benefit” to mean a benefit that is determined to be medically necessary to treat a health condition. The scope, duration, and frequency of the service are based on medical-necessity criteria; and
- Redefine the term “rural county.”

**Section 11.** Amends s. 409.812, F.S., modifying the purpose of the program by deleting a provision requiring that a child be previously uninsured in order to be eligible for the program.

**Section 12.** Amends s. 409.813, F.S., specifying that the various components of the Florida Kidcare program shall be marketed as the Florida Kidcare Program; revising the program components to align with the major sources of funding for children’s health care coverage; and requiring children with special health care needs with family incomes above the maximum income threshold to be afforded the opportunity to buy into the Medicaid program if the Family Opportunity Act is authorized.

**Section 13.** Amends s. 409.8132, F.S., specifying that effective July 1, 2009, age eligibility for Medikids will increase to children who are up to age 19 and who do not have special health care needs; repealing a provision that limits a child eligible for Medikids to participate in the Florida Healthy Kids Program only if the child has a sibling in the program; repealing a restriction on a child in Medikids from participating in MediPass; and repealing the requirement that the agency establish enrollment criteria that must include certain penalties for voluntary cancellation for nonpayment of premiums.

**Section 14.** Amends s. 409.8134, F.S., requiring the program to conduct enrollment continuously throughout the year for all components of Kidcare; clarifying certain requirements for financing enrollment; and requiring the agencies that administer the program to estimate the number of children in the state who are uninsured based on data from the most recent United States Census.

**Section 15.** Amends s. 409.814, F.S., changing income eligibility to the maximum income threshold and requiring applicants to the Children's Medical Services Network to have a clinical eligibility screening instead of medical or behavioral health screening.

Amends subsection (2) repealing a provision that limits a child eligible for Medikids from participating in the Florida Healthy Kids Program unless the child has a sibling in the program.

Amends subsection (3) allowing a Title XIX-funded child with special health care needs to opt out of Florida Kidcare Plus health benefits coverage and make another selection for the delivery of the child's health benefits coverage.

Creates a new subsection (4) extending eligibility for Kidcare coverage for 60 days for a child who becomes ineligible for Title XIX-funded coverage to allow for a transition to Title XXI-funded coverage.

Amends subsection (4) and renumbers it as subsection (5) clarifying that a child is eligible for Kidcare coverage when employer-sponsored coverage has been voluntarily canceled if the cost of participating in the employer-sponsored coverage is greater than 5 percent of the family's income; deleting obsolete provisions; reducing the length of time before a child is eligible for the program from 6 months to 60 days if the child was previously covered through an employer-sponsored health plan; and specifying good cause reasons to allow a child to enroll in Kidcare if his or her coverage in an employer-sponsored plan or a private health plan was voluntarily cancelled within less than 60 days of applying for the program.

Creates a new subsection (6) providing eligibility to, subject to a specific appropriation for this purpose, the following children to receive nonfederal premium assistance for health benefits coverage under the Florida Kidcare program if the child would otherwise qualify:

- A child who is eligible for coverage under a health benefit plan on the basis of a family member's employment with a public agency in the state; and
- A child who is an alien, but who does not meet the definition of a qualified alien, in the United States.

Amends subsection (5) and renumbers it as subsection (7) repealing the 10 percent limit on enrollment of full pay children in Medikids and Florida Healthy Kids.

Amends subsection (7) and renumbers it as subsection (9) requiring that when a child is no longer eligible for Title XIX-funded Florida Kidcare health benefits coverage, the child's health plan and other providers shall be notified at the same time the family is notified so that the health plans and providers may assist the family in maintaining continuous health care coverage in the Florida Kidcare program.

Amends subsection (8) and renumbers it as subsection (10) requiring that each applicant's family income be verified electronically to determine financial eligibility for the Florida Kidcare Program; and, requiring that written documentation, which may include wages and earning statements (pay stubs), W-2 forms, or a copy of the applicant's most recent federal income tax return, be required only if the electronic verification does not substantiate the applicant's income; and repealing certain documentation requirements.

**Section 16.** Amends s. 409.815, F.S., repealing and then redefining the Florida Kidcare benchmark benefits coverage so that it must be equivalent to the pediatric Medicaid benefit package and be based upon a standard and appropriate assessment of need for the services consistent with Early and Periodic Screening, Diagnosis, and Treatment requirements as specified in s. 409.905(2), F.S. and Title XIX of the Social Security Act. Waiver services provided to eligible Title XIX-funded children are expressly excepted.

**Section 17.** Amends s. 409.816, F.S., conforming cross-references; prohibiting the charging of premiums, fees, and copayments for families receiving Florida Kidcare Plus benefits if their income is below the maximum income threshold; and allowing the DOH to establish penalties and waiting periods of not more than 30 days for reinstatement of coverage upon cancellation for nonpayment of premiums.

**Section 18.** Amends s. 409.8177, specifying that effective July 1, 2008, the DOH shall assume responsibility for contracting for an evaluation of the Florida Kidcare Program.

**Section 19.** Amends s. 409.818, F.S., relating to the administration of the Florida Kidcare Program, as follows;

Amends subsection (1) requiring the DCF to establish and maintain the eligibility determination process under the program except as specified in subsections (2) and (4) of this section; requiring that by July 1, 2009, the DCF shall establish and maintain a process for determining non-Title XIX eligibility which shall be in accordance with administrative rules and policies established by the DOH; revising the redetermination process to once every 12 months; requiring, effective July 1, 2007, that a child who has not attained the age of 19 shall be eligible for coverage for 12 months without redetermination; and, requiring it to maintain a toll-free telephone line to assist families with questions about the program effective July 1, 2009.

Amends subsection (2) requiring the DOH to design an eligibility intake process and policies for non-Title XIX eligibility determination for the program; eliminates the state-level children's health coordinating council DOH was required to chair; requiring the DOH, in consultation with

the children's health coordinating council, to develop and implement a plan to publicize the Florida Kidcare Program, the eligibility requirements of the program, and the procedures for enrollment in the program and to maintain public awareness of and outreach for the Florida Kidcare Program; requiring the DOH to determine clinical eligibility for and administer Florida Kidcare Plus health benefits coverage; requiring the DOH, in consultation with the agency, to develop a minimum set of pediatric quality assurance and access standards, including reporting requirements, for the Florida Kidcare program; requiring the DOH, effective July 1, 2008, to coordinate non-Title XIX-funded Florida Kidcare administrative activities, including, but not limited to:

- Florida Kidcare policy development,
- Federal and state legislative and budget issue development, and
- Administrative rules as assigned by this act.

Requiring the DOH to develop, in consultation with the agency, pediatric benefit packages for Florida Kidcare enrollees.

Repealing a requirement to establish a toll-free telephone line to assist families; and repealing the requirement of the DOH to adopt rules.

Amends subsection (3) requiring the AHCA to monitor compliance with pediatric quality assurance and access standards developed by the DOH; requiring that the AHCA adopt all rules necessary to comply with or administer ss. 409.810-409.820, F.S., and all rules necessary to comply with federal requirements, including, at a minimum, rules specifying policies, procedures, and criteria for:

1. Calculating premium assistance payment levels,
2. Making premium assistance payments,
3. Monitoring access and quality assurance standards,
4. Investigating and resolving complaints and grievances,
5. Administering the Medikids program,
6. Approving health benefits coverage, and
7. Except for Title XIX-funded Florida Kidcare, determining application and enrollment requirements, including documentation requirements, eligibility determinations and redeterminations, enrollee premium payment requirements, cancellation of coverage, reinstatement of coverage, disenrollment procedures, applicant and enrollee notification requirements, application and enrollment time processing standards, and call center standards.

Requiring that, effective July 1, 2008, the DOH shall assume responsibility for administrative rulemaking activities specified in subparagraphs 3, 4, 6, and 7 of this subsection.

Repeals subsection (4) with the requirement that the Office of Insurance Regulation certify the actuarial equivalence of plans to the benchmark benefits in the Florida Kidcare program.

Amends subsection (5) and renumbers it as subsection (4) requiring that effective July 1, 2008, non-Title XIX funded Florida Kidcare eligibility determinations conducted by the Florida

Healthy Kids Corporation shall be conducted in accordance with administrative rules and policies established by the DOH; and specifying that the DOH, in consultation with the agency, the DCF, and the Florida Healthy Kids Corporation, is authorized to make program modifications that are necessary to overcome any objections of the United States Department of Health and Human Services to obtain approval of the state's child health insurance plan under Title XXI of the Social Security Act.

**Section 20.** Repeals s. 409.820, F.S., relating to standards for quality assurance and access, since the provisions of this section are transferred to s. 409.818, F.S.

**Section 21.** Amends s. 409.821, F.S., clarifying an exemption from the public-records law to permit an enrollee's parent or legal guardian to obtain certain information.

**Section 22.** Amends s. 409.904, F.S., specifying that a child who has not attained the age of 19 shall be eligible for coverage for 12 months without redetermination; expanding Medicaid optional payment coverage to pregnant women with income between 185 and 200 percent of the federal poverty level through the pregnancy and postpartum period as defined by federal law and rules; prohibiting a pregnant woman or child who has been deemed presumptively eligible for Medicaid from being enrolled in a managed care plan until full eligibility for Medicaid has been determined; expanding Medicaid coverage to children between the ages of 6 and 19 years of age with family incomes between 100 and 133 percent of the federal poverty level and specifying that in determining the eligibility of such child, an assets test is not required and that a child who is eligible for Medicaid under this subsection must be offered the opportunity, subject to federal rules, to be made presumptively eligible; and requiring the AHCA to submit a state plan amendment to the federal government to implement the provisions of the Family Opportunity Act, pursuant the Deficit Reduction Act of 2005.

**Section 23.** Amends s. 409.91211, F.S., modifying the Legislative intent that the Medicaid managed care pilot program (Medicaid reform) should provide, except for those enrolled in the Florida Kidcare program, recipients in Medicaid fee-for-service or the MediPass program a comprehensive and coordinated managed care system for all Medicaid health care services.

**Section 24.** Amends s. 624.91, F.S., repealing eligibility for state-only funded premium assistance as these persons are addressed in another section of this bill; specifying that the Florida Healthy Kids Corporation shall determine eligibility in accordance with administrative rules and policies established by the DOH effective July 1, 2008; requiring that the corporation shall contract with an authorized insurer, health maintenance organization, or third-party administrator to provide administrative services for Florida Kidcare in accordance with administrative rules and policies established by the DOH effective July 1, 2008; repealing the ability of the corporation to establish enrollment criteria which includes penalties or waiting periods for cancellations related to nonpayment of family premiums; specifying that the corporation contract with authorized insurers or any providers of health care services that meet quality assurance and access standards established by the DOH; requiring the corporation to maintain a toll-free telephone line to assist families with questions about the program which shall be performed in accordance with administrative rules and policies established by the DOH effective July 1, 2008; repealing the corporation's responsibility for marketing the program; requiring that no later than January 1, 2008, the health benefits coverage provided by the

corporation's authorized insurers and health maintenance organizations shall conform with the benchmark benefits specified in s. 409.815, F.S.; repealing the requirement that the corporation provide a report to the Governor and the Legislature; and repealing the requirement that the corporation establish benefit packages which conform to the provisions of the Florida Kidcare Program.

**Section 25.** Repeals s. 624.91, F.S., as amended by this act, effective June 30, 2009. This repeals the Florida Healthy Kids Corporation.

**Section 26.** Provides that except as otherwise expressly provided in this act, the bill takes effect July 1, 2007.

#### IV. Constitutional Issues:

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

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

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

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>10</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>11</sup>

On page 54, lines 8-13, the bill modifies s. 409.821, F.S., which makes any information identifying a Florida Kidcare program applicant or enrollee confidential and exempt. Under the exemption, such information may be disclosed to another governmental entity under certain circumstances but not to the parent or legal guardian of the applicant or enrollee. The bill *expands access* to the exempt information by expressly authorizing an enrollee's parent or legal guardian to access any record relating to the enrollee's application or coverage. This expansion of access to records does *not* create a new exemption requiring a separate bill under the requirements of Article I, Section 24 of the State Constitution.

##### C. Trust Funds Restrictions:

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

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<sup>10</sup> Attorney General Opinion 85-62.

<sup>11</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

#### D. Other Constitutional Issues:

Departments and other agencies are “creatures of statute” and only have those rights and privileges given to them by the Legislature in statute:<sup>12</sup>

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights of individuals.<sup>13</sup>

The formulation of public policy is the duty of the Legislature.<sup>14</sup> This power cannot be exercised by another branch of government.<sup>15</sup> An enabling statute may not provide unbridled authority to an administrative agency to decide what the law is.<sup>16</sup> An enabling statute must be complete in itself,<sup>17</sup> must declare the legislative policy or standard,<sup>18</sup> and must operate to limit the delegated power.<sup>19</sup>

The bill repeals a “state level coordinating council” that the DOH was required to chair pursuant to s. 409.818(2)(b), F.S. This provision also requires the council to include representatives of certain state agencies, local governments and other entities. The provision does not expressly create the entity as a coordinating council meeting the definition in s. 20.03, F.S., Neither does it make the coordinating council subject to the requirements of s. 20.052, F.S. Further, while the section requires certain agencies, local governments and other entities to have representation on the council, it does not establish who is responsible for appointing those council members.

The bill establishes a coordinating council in the Executive Office of the Governor, an agency created in s. 14.201, F.S. The head of the Executive Office of the Governor is the Governor pursuant to this section.<sup>20</sup> This coordinating council, called “the Florida Council on Children’s Health,” meets the definition of a “coordinating council” in s. 20.03(9), F.S., which is

<sup>12</sup> *Seaside Properties, Inc., v. State Road Department*, 190 So.2d 391 (3<sup>rd</sup> DCA 1966).

<sup>13</sup> *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (5<sup>th</sup> DCA 1985).

<sup>14</sup> *Carter v. City of Stuart*, 468 So.2d 955, 957 (Fla. 1985).

<sup>15</sup> *Smith v. State*, 537 So.2d 982, 985 (Fla. 1989).

<sup>16</sup> *State ex rel. Davis v. Fowler*, 114 So. 435, 437 (Fla. 1927).

<sup>17</sup> *Florida Beverage Corp. v. Wynne*, 306 So.2d 200, 202 (Fla. 1<sup>st</sup> DCA 1975).

<sup>18</sup> *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 268 (Fla. 1991).

<sup>19</sup> *City Council of N. Miami Beach v. Trebor Constr. Corp.*, 254 So.2d 51, 53 (Fla. 3<sup>d</sup> DCA 1971), cert denied, 260 So.2d 514 (Fla. 1972).

<sup>20</sup> The “Executive Office of the Governor” (EOG) should be distinguished from the “Office of the Governor” (OG). The former is created in law and meets the definition of a “department” under s. 20.03(2), F.S., whereas the latter is the constitutional office created in s.1, Art. IV of the State Constitution. The EOG is the repository of statutorily-delegated duties and responsibilities, whereas the OG is the repository of constitutionally-delegated duties and responsibilities, just as the Chief Financial Officer’s constitutionally-derived powers must be distinguished from the statutorily-derived powers delegated by the Legislature as head of the Department of Financial Services.

. . . an interdepartmental *advisory* body created by law to coordinate programs and activities for which one department has primary responsibility but in which one or more other departments have an interest [*emphasis added*].

Under the bill, the Governor appoints all council members. Council members must “. . . broadly represent the interests of children in obtaining necessary health care services and health care coverage. . . .”

The coordinating council expressly is made subject to the requirements of s. 20.052(5)(a), F.S., except as otherwise provided in the bill. That section provides that the private citizen members of a commission or board of trustees that is adjunct to an executive agency must be appointed by the Governor unless otherwise provided by law, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

This bill modifies current statutory language related to eligibility based on whether a child is covered by employer-sponsored health insurance. The amended statute would make it clear that children currently covered by employer-sponsored health insurance may drop that coverage and enroll in Florida Kidcare if such dependent coverage costs more than 5 percent of family income. Also, the bill removes the limit on the number of full-pay enrollees in the program, which could result in a large number of children leaving employer-covered health plans.

If a large number of children were to qualify under these provisions, it could increase private health insurance rates as children leave these risk pools. The number of children who may be eligible under these provisions is unknown.

### C. Government Sector Impact:

The bill contains three major groups of modifications and each has a fiscal effect.<sup>21</sup> First, the bill consolidates much of the administration of the non-Title XIX-funded Florida Kidcare program under the DOH, including, but not limited to, eligibility determination, rule-making, policy development, oversight activities, marketing and outreach activities. The DOH would also have some policy and benefit design oversight of the Title

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<sup>21</sup> All estimates were provided by the Kidcare Impact Conference held on March 29, 2007. The conference based estimates on the content of CS/SB 930 as passed out of the Senate Health Policy Committee on March 14, 2007. The Senate Governmental Operations Committee adopted another committee substitute on March 29, 2007. This fiscal analysis contains all the provisions that were retained in CS/CS/SB 930 as of March 29, 2007.



XIX-funded components. It also creates a Division of Children’s Health Insurance and Office of Child Health Coordination in the DOH with specific responsibilities.

Second, the bill requires a large number of policy changes in the program. These changes will require information technology changes, contract modifications, process modifications, and new ways of applying certain policies.

Finally, the bill expands Medicaid coverage to certain groups (i.e., pregnant women between 185 and 200 percent of the federal poverty level), extends premium assistance to dependents of state employees and non-qualified legal aliens (pursuant to appropriations), expands continuous eligibility, creates temporary eligibility for children transitioning from one funding source to another, and prevents requiring premiums and copays for children with special health care needs in certain situations.

<b>Issue</b>	<b>Family Contribution</b>	<b>State Share</b>	<b>Federal Share</b>	<b>Total</b>
Administrative cost of adding staff to DOH for new duties and responsibilities (14 FTEs) and new care coordinators to serve expansion of CMS eligibles (recurring cost upon full implementation of consolidation)	\$ 0	\$ 1,473,390	\$ 3,437,910	\$ 4,911,300
Two months of Title XIX continued coverage	0	8,698,527	11,488,353	20,186,880
Expand Title XIX to pregnant women up to 200% of FPL	0	2,329,276	3,076,331	5,405,608
Expand Title XIX to children ages 6 to 19 with income between 100% and 133% of FPL	0	7,893,884	10,425,642	18,319,526
Extend Title XIX coverage for family planning to women with income between 185% and 200% of FPL	0	1,066,685	9,600,164	10,666,849
Adopt provisions of Family Opportunity Act (children with special health care needs up to 300% of FPL)	0	660,493	941,091	1,601,584
Exempting Florida Kidcare children from Medicaid Reform	0	10,770,719	14,225,147	24,995,866
Moving Healthy Kids enrollees to the benefit package under Medicaid	0	(8,632,559)	(20,258,201)	(28,890,760)

Issue	Family Contribution	State Share	Federal Share	Total
Eliminating the premium payment for children with special health care needs	0	416,711	977,905	1,394,616
Expand non-Title XXI coverage to non-qualified legal aliens	866,901	12,257,356	0	13,124,257
Expand non-Title XXI coverage to state employees	603,625	8,700,613	0	9,304,238
Medikids participants may enroll in MediPass	0	123,204	284,486	407,690
Adopt Title XIX methodology when determining eligibility (would result in children leaving the program)	0	(747,018)	(1,753,043)	(2,500,062)
Reduce the Title XXI penalty for non-payment of premium from 60 to 30 days	458,847	1,976,200	4,637,589	7,072,636
Reduce Title XXI waiting period for applicants who voluntarily canceled health insurance from 6 to 2 months	71,886	309,605	726,556	1,108,046
<b>TOTAL</b>	<b>\$ 2,001,259</b>	<b>\$ 47,297,086</b>	<b>\$37,809,930</b>	<b>\$87,108,275</b>

**VI. Technical Deficiencies:**

In section 2 of the bill, the Office of Child Health Coordination is created in s. 20.43(3), F.S., which establishes divisions in the DOH. Section 6 of the bill places the Office of Child Health Coordination in the Children’s Health program. Line 4 on page 10 should be deleted.

**VII. Related Issues:**

**Organizational Structure** - Chapter 20, F.S., establishes the structure for statutorily-created entities within the executive branch. The bill creates an “office” within a department that is not exempt from the standard organizational structural requirements for agencies. Further, “office” is an undefined unit under current law. It is not clear why an “office” is being established instead of a “division,” a statutorily-defined unit with a statutorily-defined unit-head, especially as this department already is composed of divisions.

On page 66, lines 5-6, the bill repeals s. 624.91, F.S., effective June 30, 2009. This section creates the Florida Healthy Kids Corporation. This corporation was required to perform a number of functions (see, pages 59, lines 26 – page 62, lines 21). The bill expressly requires

these functions be performed pursuant to certain rules and “policies” of the Department of Health by July 1, 2008, but it is not clear that the responsibility for performing all the duties currently delegated to the corporation have been expressly reassigned to another entity post-June 20, 2009.

**Rulemaking** - Executive agencies play an important part in the development of public policy through the development of administrative rules. Executive agencies, however, do not have inherent rulemaking authority.<sup>22</sup> It is the prerogative of the Legislature to give agencies authority to adopt rules that implement, enforce, and interpret a statute.<sup>23</sup> Pursuant to s. 120.54(1)(a), F.S., rulemaking is not a matter of agency discretion. Each agency statement defined as a rule must be adopted as a rule. A rule is

. . . each agency statement of general applicability that implements, interprets, or prescribes *law or policy or describes the procedure or practice requirements of an agency and includes any form* which imposes any requirement or solicits any information not specifically required by statute or by an existing rule [*emphasis added*]. . . .

Under the bill, eligibility determinations for children seeking to participate in Title XXI-funded components of Florida Kidcare are to be performed, effective July 1, 2009, by the Department of Health. Further, the bill authorizes the Florida Healthy Kids Corporation to contract with an authorized insurer, HMO, or third-party administrator to provide administrative services for Florida Kidcare and, effective July 1, 2008, to perform the function in accordance with administrative rules and *policies* established by the Department of Health. Use of the word “policies” is redundant and unnecessary as a “policy” meets the definition of a “rule” under s. 120.52(15), F.S.

The definition of family income is changed. According to the AHCA, the result may be that up to 40,000 children in the Medikids program and the Florida Healthy Kids program may be required to pay additional premiums ranging from and additional \$5 to over \$100 per month.

The bill requires the agencies that administer the Florida Kidcare program components to collect and analyze data needed to project program enrollment issues including the estimated number of children in the state who are uninsured based on data from the most recent United States Census. The U.S. Census Bureau collects this information using the Current Population Survey and the Annual Social and Economic Supplement (ASES). The Census Bureau reports that these tools tend to underreport health insurance coverage (which results in over reports of the number of uninsured). According to the Census Bureau, this is particularly a problem with the ASES where “underreporting of health insurance coverage on the (ASEC) appears to be a larger problem than in other national surveys that ask about insurance.” Found at: <http://www.census.gov/prod/2006pubs/p60-231.pdf> (last visited on March 16, 2007)

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<sup>22</sup> *Grove Isle, Ltd. V. State Dep’t of Envtl. Reg.*, 454 So.2d 571, 573 (Fla. 1<sup>st</sup> DCA 1984).

<sup>23</sup> *State v. Atlantic C.L.R. Co.*, 47 So. 969 (1909).



## **VIII. Summary of Amendments:**

None.

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