

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 348

INTRODUCER: Senator Crist

SUBJECT: Medicaid Buy-in for Persons with Disabilities

DATE: March 10, 2009 REVISED: 03/11/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bell	Wilson	HR	Fav/1 amendment
2.			CF	
3.			HA	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill establishes new Medicaid “buy-in” coverage for working disabled individuals aged 16 through 64 who would be eligible for Supplemental Security Income (SSI) if earnings equal to 250 percent of the Federal Poverty Level (FPL) were disregarded, and unearned income did not exceed 88 percent of the FPL. A participant in the Medicaid buy-in program must be charged a premium based on a sliding scale once the participant’s earned income exceeds 100 percent of the FPL. Assets excluded, in addition to SSI, are: cash assets in the amount of \$10,000 for a single individual and \$15,000 for a couple; any retirement account recognized by the Internal Revenue Service; and, a second vehicle for a couple.

The bill also requires the Agency for Health Care Administration (AHCA) to seek amendments to existing Medicaid waiver coverage groups that would allow those who are eligible under the proposed Medicaid buy-in program to be eligible to receive services provided under Medicaid waivers serving persons with disabilities.

This bill amends s. 409.904, F.S., and creates an undesignated section of law.

II. Present Situation:

Florida Medicaid Program

Florida's Medicaid Program is jointly funded by the federal, state, and county governments to provide medical care to eligible individuals. Florida implemented its Medicaid program on January 1, 1970, to provide medical services to indigent people. The AHCA is the single state agency responsible for the Florida Medicaid Program. The statutory provisions for the Medicaid program appear in ss. 409.901 through 409.9205, F.S.

Some Medicaid services are mandatory services that must be covered by any state participating in the Medicaid program pursuant to federal law.¹ Other services are optional. A state may choose to include optional services in its state Medicaid plan, but if included, such services must be offered to all individuals statewide who meet Medicaid eligibility criteria as though they are mandatory benefits.² Similarly, some eligibility categories are mandatory³ and some are optional.⁴ Payments for services to individuals in the optional eligibility categories are subject to the availability of monies and any limitations established by the General Appropriations Act or chapter 216, Florida Statutes.

For FY 2009-10, the Florida Medicaid Program is projected to cover 2.6 million people⁵ at an estimated cost of \$16.3 billion.⁶

Medicaid Buy-In Programs

Legislation enacted by Congress in 1999 provided states the option and flexibility to allow people with disabilities to join the workforce without loss of their Medicaid coverage, and allow individuals with disabilities who work to "buy in" to a state's Medicaid program. This Medicaid buy-in program is based on the Ticket to Work and Work Incentives Improvement Act (TWWIIA or Public Law 106-170). The working disabled or disabled persons who desire to attempt employment have limits on the amount of income they may earn in order to maintain their Medicaid benefits. This may create a disincentive to employment. The legislation also permits states to set more liberal income and asset limits for eligibility purposes.

Under Public Law 106-170, states may permit working individuals with earnings above 250 percent of the FPL to purchase Medicaid coverage (buy-in). Under Medicare, coverage is also provided for those working people with disabilities with extended Part A premium-free hospital insurance coverage for at least four and one-half years beyond the previous limit of four years, making it a total of eight and one-half years. Individuals must continue to have a medical impairment but may work in spite of the impairment.

¹ These mandatory services are codified in s. 409.905, F.S.

² Optional services covered under the Florida Medicaid Program are codified in s. 409.906, F.S.

³ s. 409.903, F.S.

⁴ s. 409.904, F.S.

⁵ <http://edr.state.fl.us/conferences/medicaid/medcases.pdf> (last visited on March 9, 2009).

⁶ <http://edr.state.fl.us/conferences/medicaid/medhistory.pdf> (last visited on March 9, 2009).

In 2006, 32 states were operating a Medicaid buy-in program and 97,491 individuals were enrolled at some point during that year.⁷

Florida's Medicaid Buy-In Program

Florida has had variations of Medicaid buy-in programs for several years. Florida established the Assistance for the Uninsured program in 1991.⁸ The program required the department [then the Department of Health and Rehabilitative Services or HRS] to use its claims payment systems, utilization control systems, cost control systems, case management systems, and other systems and controls that it has developed for the management and control of the Medicaid program to assist other agencies and private entities to solve problems of lack of insurance, underinsurance, or uninsurability in the general population.

In 1993, the department [HRS] was charged with seeking federal authority to implement a Medicaid buy-in program to provide medical assistance to persons ineligible for Medicaid because of current income and categorical restrictions. The agency was required to use funds provided by the Robert Wood Johnson Foundation to assist in developing the buy-in program, including, but not limited to: the determination of eligibility and service coverages; cost sharing requirements; managed care provisions; and changes needed to the Medicaid program's claims processing, utilization control, cost control, case management, and provider enrollment systems to operate a buy-in program. The buy-in program was charged with providing medical assistance coverage for persons with incomes up to 250 percent of the FPL. However, the agency was prohibited from implementing a buy-in program until it received necessary federal authorization and state appropriations. No funds were allocated and the program was not implemented, even though it is still authorized in s. 409.914(2), F.S.

In 2002, Florida chose to fund and implement a Medicaid "buy-in" program effective April 1, 2002, for disabled individuals who had earned income, after established disregards, that did not exceed 250 percent of the FPL and who met other existing factors of eligibility. The program was eliminated effective July 1, 2002, as a result of the 2002 Special Legislative Session. The total enrollment for the program during this 3-month period was 19 individuals. This low enrollment may have been attributed to the fact that potentially eligible individuals were informed upfront that the benefits would only be provided for a 3-month period.

Medicaid Home and Community-Based-Services Waiver Programs

In 1981, the U.S. Congress approved the use of Medicaid home and community-based-services (HCBS) waiver programs to allow states to provide certain Medicaid services in the home for persons who would otherwise require institutional care in a hospital, nursing facility, or intermediate care facility. These programs are federally-approved Medicaid initiatives authorized by Title XIX of the Social Security Act, Section 1915.

States may offer a variety of services to consumers under an HCBS waiver program and the number of services that can be provided is not limited. These programs may provide a

⁷ The Three E's: Enrollment, Employment, and Earnings in the Medicaid Buy-In Program, 2008. Found at: http://www.mathematica-mpr.com/publications/pdfs/EEE_FinalReport_Apr2008.pdf (last visited March 9, 2009).

⁸ s. 409.914, F.S.

combination of both traditional medical services (i.e., dental services, skilled nursing services, etc.) and non-medical services (i.e., respite care, case management, environmental modifications, etc.). Family members and friends may be providers of waiver services if they meet the specified provider qualifications. The HCBS waiver programs are initially approved for 3 years and may be renewed at 5-year intervals.⁹ If a state terminates an HCBS waiver, federal law requires that recipients receive continued services in an amount that does not violate the comparability of service requirements established in the Social Security Act.¹⁰ In effect, the state has to transition recipients into programs with comparable services. Florida currently operates the following home and community-based-services waiver programs:¹¹

- Adult Cystic Fibrosis;
- Aged/Disabled Adult Services;
- Adult Day Health Care;
- Assisted Living for the Elderly;
- Alzheimer's Disease;
- Channeling Services for the Frail Elderly;
- Consumer Directed Care Plus;
- Developmental Disabilities;
- Familial Dysautonomia;
- Family and Supported Living Model;
- Nursing Home Diversion;
- Project AIDS Care (PAC); and
- Traumatic Brain Injury and Spinal Cord Injury.

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing all services provided to persons with developmental disabilities under chapter 393, Florida Statutes, including the operation of all state institutional programs and the programmatic management of Medicaid waivers established to provide services to persons with developmental disabilities.¹²

Since January 2006, Florida has received funding each year from the Centers for Medicaid and Medicare through a Medicaid Infrastructure Grant, and APD has been the state agency administering the grant. The purpose of the grant is to support the State's efforts to enhance employment options for people with disabilities by building Medicaid infrastructure. Funding may be used to develop a Medicaid buy-in program, increase availability of Personal Assistance Services, plan a Demonstration to Maintain the Independence and Employment Program, or for State-to-State technical assistance.¹³ In addition, States may use funding to develop a comprehensive approach to bridge Medicaid services with other key supports and programs used by employed people with disabilities.

⁹ U.S. Centers for Medicare and Medicaid Services. Found at: [http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/05_HCBSWaivers-Section1915\(c\).asp](http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/05_HCBSWaivers-Section1915(c).asp) (last visited on March 9, 2009).

¹⁰ 42 C.F.R. 441.356.

¹¹ Found at: http://www.fdhc.state.fl.us/Medicaid/hcbs_waivers/index.shtml (last visited on May 9, 2009).

¹² s. 20.197, F.S.

¹³ CMS MIG: Found at: http://www.cms.hhs.gov/TWWIIA/03_MIG.asp (last visited on May 9, 2009).

In Florida, the Medicaid Infrastructure Grant funding has been used to collaborate with other agencies and organizations in an attempt to pass a Medicaid buy-in program to make health insurance available for purchase for workers with disabilities, to conduct studies and report on conditions that affect the ability of Floridians with disabilities to work, and to fund other projects that support employment within the scope of the grant.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 409.904, F.S., to specify that, subject to federal authorization, a person may be eligible for Medicaid services as part of a Medicaid buy-in program specifically designed to accommodate those persons made eligible for such a buy-in program by Title II of Pub. L. No. 106-170, if the person:

- Is determined to be disabled and who, but for earnings, would be considered eligible for supplemental security income;
- Has countable earnings, taking into account supplemental security income and earned income disregards, which do not exceed 250 percent of the FPL and whose unearned income does not exceed 88 percent of the most current FPL; and
- Has attained 16 years of age but is younger than 65 years of age.

A participant in the Medicaid buy-in program must be charged a premium based on a sliding scale once the participant's earned income exceeds 100 percent of the FPL. Assets excluded, in addition to those excluded under the supplemental security income program, are as follows:

- Cash assets in the amount of \$10,000 for a single individual and \$15,000 for a couple;
- Any retirement account recognized by the Internal Revenue Service; and
- A second vehicle for a couple.

The bill requires the AHCA to seek amendments to Medicaid waivers serving persons with disabilities to provide that persons who are eligible for Medicaid under a Medicaid buy-in program authorized under s. 409.904(10), F.S., may be eligible for services under waivers if they otherwise meet the level of care qualifications for services under such a waiver.

The effective date of the bill is July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

¹⁴ More information on MIG can be found online at: <http://apd.myflorida.com/mig/> (last visited March 9, 2009).

C. Trust Funds Restrictions:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The finding and purposes section of the TWWIIA states that, “for individuals with disabilities, the fear of losing health care and related services is one of the greatest barriers keeping the individuals from maximizing their employment, earning potential, and independence.”¹⁵ The bill creates a Medicaid buy-in program that may encourage more disabled Medicaid recipients to enter the workforce.

C. Government Sector Impact:

The DCF, responsible for Medicaid eligibility and enrollment, would incur costs to create a new program coverage category in the FLORIDA system and reprogram the DCF reporting module. The DCF reports that the administrative costs of these system modifications would be \$78,356 in nonrecurring funds for FY 2009-10.

The bill does not specify which state agency or other entity would be responsible for developing the sliding scale, collecting the premiums, and providing customer service for enrollees. The APD has estimated that, if it was directed to administer the buy-in program, its administrative costs would total \$39,259 for FY 2009-10. This amount is for one position that would be responsible for program start up, development of policies, regulations, and waiver amendments.

The bill requires the AHCA to amend its Medicaid waivers that serve persons with disabilities to allow those who are eligible under the proposed Medicaid buy-in program to be eligible to receive services under a disabled waiver program if they meet the waiver’s level of care qualifications. This provision extends waiver eligibility to disabled individuals who do not qualify for waiver services because their income or assets are too high. The expansion of Medicaid eligibility would increase costs to the Medicaid program if more individuals enrolled.

AHCA Estimated Cost to the Medicaid Program

The AHCA estimates that the cost of Medicaid services provided to individuals made eligible for Medicaid in the bill would include:

¹⁵ 42 U.S.C. 1320-19.

- The estimated average cost to the Medicaid program per recipient without including the Medicaid buy-in premium collection is \$862.20 per month or \$10,346.40 per year.¹⁶
- The estimated average Medicaid buy-in monthly premium is \$79.00 based on an average between \$10,830 (100 percent of the FPL) and \$27,075 (250 percent of the FPL), or \$18,953, times 5 percent (limit on premiums) divided by 12 to arrive at the monthly premium. The AHCA created the chart below to estimate Medicaid buy-in premiums.¹⁷

Persons in Household	FPL - Income Guideline	250% of FPL	Average of FPL and 250%	5% of Average	Monthly Premium
1	\$10,830	\$27,075	\$18,953	\$948	\$79.00
2	\$14,570	\$36,425	\$25,498	\$1,275	\$106.25
3	\$18,310	\$45,775	\$32,043	\$1,602	\$133.50
4	\$22,050	\$55,125	\$38,588	\$1,929	\$160.75
5	\$25,790	\$64,475	\$45,133	\$2,257	\$188.08
6	\$29,530	\$73,825	\$51,678	\$2,584	\$215.33
7	\$33,270	\$83,175	\$58,223	\$2,911	\$242.58
8	\$37,010	\$92,525	\$64,768	\$3,238	\$269.83

- The AHCA estimates that a thousand or fewer persons would participate. If an additional 1,000 individuals enrolled in Medicaid as a result of the bill, the total Medicaid cost per year would be \$10,346,400 minus the total premiums collected (\$948,000) or \$9,398,400 for fiscal year 2009-10. Assuming a 5 percent increase for fiscal year 2010-11, the total would be \$9,868,320. Of these totals, \$4,229,280 would come from General Revenue (using 45 percent blended rate) in FY 2009-10 and \$4,440,744 in FY 2010-11.

Many states have had trouble estimating buy-in participation.¹⁸ Participation generally varies based on current Medicaid eligibility, the cost of buy-in premiums, and Medicaid buy-in enrollee requirements.

VI. Technical Deficiencies:

None.

¹⁶ The average cost per Medicaid patient does not include Institutional, Home and Community Based, Special Medicaid Payments, or Disproportionate Share Hospital payments.

¹⁷ See the 2009 Health and Human Services Poverty Guidelines. Found at: < <http://aspe.hhs.gov/poverty/09poverty.shtml> > (last visited March 9, 2009).

¹⁸ Developing Fiscal Estimates for a Medicaid Buy-in Program: Using Data from the Early Implementer States, Center for Health Services Research and Policy George Washington University. Found online at: www.uiowa.edu/~lhpdc/work/II_Policies/Estimating_Fiscal_Impact.doc (last visited on March 9, 2009).

VII. Related Issues:**Administration of the Medicaid buy-in Program**

The bill does not specify which state agency is responsible for the administration of the program. The AHCA, as the state Medicaid agency, would work in partnership with any agency responsible for administering the program.

The agency or entity responsible for administering the Medicaid buy-in program would need the necessary rule-making authority to develop the program.

Medicaid Waivers

According to the AHCA, the bill requires the AHCA to amend 11 HCBS waivers that provide services to disabled persons. This would expand eligibility for all 11 waivers and most of the HCBS waivers have a waiting list. It is unclear how the Medicaid buy-in program would interface with the other 11 HCBS programs.

The bill would require the AHCA to amend its Medicaid state plan to expand Medicaid eligibility but does not provide the necessary authority.

VIII. Additional Information:

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

None.

- B. **Amendments:**

Barcode 104114 by Health Regulation on March 11, 2009:

Requires the AHCA, in consultation with the APD and the DCF, to develop a Medicaid buy-in program for individuals eligible for Medicaid under s. 409.904(10), F.S., by July 1, 2010; specifies that the APD will be responsible for administering the Medicaid buy-in program; and provides the APD with rule-making authority to administer the Medicaid buy-in program. (WITH TITLE AMENDMENT)