

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5201 PCB HCA 19-01 Medicaid
SPONSOR(S): Health Care Appropriations Subcommittee, Magar
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Care Appropriations Subcommittee	5 Y, 4 N	Nobles	Clark
1) Appropriations Committee	19 Y, 6 N	Nobles	Pridgeon

SUMMARY ANALYSIS

The bill conforms statutes to the funding decisions related to the Medicaid Program included in the House proposed General Appropriations Act (GAA) for Fiscal Year 2019-2020. The bill:

- Requires that if the Agency for Persons with Disabilities (APD) runs a deficit during the 2018-2019 fiscal year, the APD must work in conjunction with the Agency for Health Care Administration (AHCA) to develop a plan to redesign the waiver program. Provides for a report to House, Senate, and Governor's Office. Requires monthly status update of redesign. Provides that implementation of redesigned program must be approved by Legislature and shall occur no later than July 1, 2020;
- Continues the policy of retroactive Medicaid eligibility for non-pregnant adults to the first day of the month in which an application for Medicaid is submitted;
- Repeals the expiration of section 19 in the 2018-2019 Implementing Bill so that reimbursement language related to County Health Departments will continue beyond July 1, 2019;
- Amends statute to include the Low Income Pool (LIP) program to conform to the other program's due dates that rely on Intergovernmental Transfers (IGTs) for funding. Requires that Letters of Agreement for LIP be received by AHCA by October 1 and the funds outlined in the Letters of Agreement be received by October 31;
- Updates the years of audited Florida Hospital Uniform Reporting System (FHURS) data to be used for the DSH calculations;
- Requires the Florida Healthy Kids Corporation to validate and calculate a refund amount for Title XXI providers who achieve a Medical Loss Ratio below 85 percent. These refunds shall be deposited into the General Revenue Fund, unallocated.

The bill provides for an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid is a federal and state partnership established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Children and Families, the Department of Health (DOH), the Agency for Persons with Disabilities, and the Department of Elderly Affairs (DOEA).

The Florida Medicaid program covers approximately 3.8 million low-income individuals, including approximately 2.6 million, or 57.5%, of the children in Florida.¹ Medicaid is the second largest single program in the state, behind public education, representing 31.7 percent of the total FY 2018-19 budget.

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities.² A developmental disability is defined in chapter 393, F.S., as “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”³ Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.⁴ APD provides an array of home and community based services through contract providers, as well as services in Developmental Disabilities Centers and Forensic program services. APD administers home and community based services through 14 area offices that are responsible for day to day operations.

The 2010 Legislature directed APD in consultation with AHCA to develop and implement individual budgets (also known as iBudget) as the basis for allocating funds to people enrolled in Medicaid waiver programs. The iBudget system uses an algorithm to allocate funds to individuals based on client characteristics and acuity which are reliable predictors of need. The iBudget sets a cap on each person’s spending for a 12 month period. Exceptions to the capped expenditures are available for extraordinary needs. AHCA received approval to implement the iBudget system from federal CMS on March 4, 2011 with an effective date of March 15, 2011. The APD was also instructed to work with AHCA to resolve any deficits resulting from the iBudget by dates certain. These dates certain are now many years out of date.

During the 2017-2018 fiscal year, the APD experienced a deficit of approximately \$56.6 million (\$22.0 million General Revenue) in the Medicaid Home and Community Based program. Pursuant to s. 393.0661(9), F.S., the APD is required to submit quarterly status updates concerning the financial status of the home and community based services, including information concerning the actual and projected costs compared to the amount of the appropriation available to the program and any projected surpluses or deficits. If at any time APD indicates the cost of the program will exceed the appropriation, the APD is required to submit a plan to the Legislature describing the actions required to

¹ Agency for Health Care Administration, *Florida Statewide Medicaid Monthly Enrollment Report*, February 2019, available at http://www.fdhc.state.fl.us/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last accessed March 13, 2019).

² s. 20.197(3), F.S.

³ s. 393.063(12), F.S.

⁴ “High-risk child” is defined in s. 393.063(23) F.S.

remain with the amount appropriated. On February 27, 2019, the APD submitted a surplus/deficit report estimating that during the 2018-2019 fiscal year, they will experience a deficit of approximately \$115.1 million (\$44.8 million General Revenue)⁵. Additionally, the APD submitted a Corrective Action Plan to the House of Representatives, the Senate, and the Governor's Office. The recommended action proposed by the APD was for the Legislature to appropriate additional funding for the waiver program, as opposed to recommending adjustments to the algorithm, fees or reimbursement rates, adjusting services or length of stays, or limiting waiver enrollment.⁶

Medicaid Retroactive Eligibility

The Social Security Act provides the requirements under which state Medicaid programs must operate. Federal law directs state Medicaid programs to cover, and provides federal matching funds for, medical bills up to three months prior to a recipient's application date.⁷ The federal Medicaid statute requires that Medicaid coverage for most eligibility groups include retroactive coverage for a period of 90 days prior to the date of the application for medical assistance, however, this requirement can be waived pursuant to federal regulations.

An initial analysis by the AHCA indicated that approximately 39,000 non-pregnant adults were made retroactively eligible under the 90-day requirement of federal regulations in State Fiscal Year 2015-2016.⁸ A more recent AHCA analysis corrects the erroneous counting of duplicate months of coverage for such recipients and indicates that 11,466 distinct individuals were granted such retroactive eligibility and utilized services during their retroactive period during State Fiscal Year 2017-2018.⁹

In compliance with the federal requirement for 90 days of retroactive eligibility, the Florida Medicaid State Plan previously provided that "[c]overage is available beginning the first day of the third month before the date of application if individuals who are aged, blind or disabled, or who are AFDC-related,¹⁰ would have been eligible at any time during that month, had they applied." These provisions had been applicable to the Florida Medicaid State Plan since at least October 1, 1991.¹¹

In 2018, the Florida Legislature, via the General Appropriations Act (GAA)¹² and the Implementing Bill accompanying the GAA¹³, approved a measure to direct the AHCA to seek a waiver from federal CMS to eliminate the 90-day retroactive eligibility period for non-pregnant adults aged 21 and older. For these adults, eligibility would become retroactively effective on the first day of the month in which their Medicaid application was filed, instead of the first day of the third month prior to the date of application. Since this directive was enacted into law in the 2018 budget implementing bill, it is only applicable in the fiscal year for which it was enacted, State Fiscal Year 2018-2019, and does not have ongoing applicability beyond June 30, 2019.

⁵ Agency for Persons with Disabilities, January 2019, *APD Corrective Action Plan – Jan. 2019*, A Report to the Governor, the Senate President, and the House Speaker, (on file with House Health Care Appropriations Subcommittee).

⁶ Agency for Persons with Disabilities, January 20, 2019, *Home and Community Based Services (HCBS) Waiver Monthly Surplus-Deficit Report for Waiver Program Expenditures*, A Report to the Governor, the Senate President, and the House Speaker, (on file with House Health Care Appropriations Subcommittee).

⁷ 42 U.S.C. s. 1396a.

⁸ See Agency for Health Care Administration, Florida's 1115 Managed Medical Assistance (MMA) Prepaid Dental Health Program (PDHP), Low Income Pool (LIP), and Retroactive Eligibility Amendment Request (March 28, 2018), Power Point presentation, available at: http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/MMA_PDHP_LIP-Retro_Elig_amendment_presentation_032818.pdf (last visited March 6, 2019).

⁹ Agency for Health Care Administration, *Senate Bill 192 Analysis* (February 27, 2019) (on file with Senate Committee on Health Policy).

¹⁰ Aid to Families with Dependent Children (AFDC) was a federal assistance program in effect from 1935 to 1996 created by the Social Security Act and administered by the United States Department of Health and Human Services that provided financial assistance to children whose families had low or no income.

¹¹ See Florida Medicaid State Plan, page 373 of 431, available at http://www.fdhc.state.fl.us/medicaid/stateplanpdf/Florida_Medicaid_State_Plan_Part_I.pdf (last visited March 6, 2019).

¹² See Specific Appropriation 199 of the General Appropriations Act for Fiscal Year 2018-2019, Chapter 2018-9, Laws of Florida, available at <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=62808> (last visited March 6, 2019).

¹³ See section 20 of the Implementing bill for Fiscal Year 2018-2019, Chapter 2018-10, Laws of Florida, available at <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=62809> (last visited March 6, 2019).

The waiver request that included the retroactive eligibility item was submitted to federal CMS by AHCA on April 27, 2018, and was approved by federal CMS on November 30, 2018 to be effective February 1, 2019. The waiver included the stipulation that waiver authority ends on June 30, 2019 and that AHCA must timely submit a letter to CMS by May 17, 2019 if legislative approval is granted to continue the waiver past June 30, 2019.¹⁴

County Health Departments

Section 19 of the 2018 General Appropriations Act Implementing Bill, Ch. 2018-10, L.O.F., amended s. 409.908(23), F.S., to provide that Nursing Home Medicaid reimbursement would no longer be held to a rate freeze, but rather be based upon a prospective payment system. This change left only the county health departments subject to the rate freeze.

Low Income Pool

The terms and conditions of Florida's Medicaid reform 1115 waiver created a Low Income Pool (LIP) to be used to provide supplemental payments to providers who provide services to Medicaid and uninsured patients. This pool constituted a new method for such supplemental payments, different from the prior program called Upper Payment Limit. The LIP program also authorized supplemental Medicaid payments to provider access systems, such as federally qualified health centers, county health departments, and hospital primary care programs, to cover the cost of providing services to Medicaid recipients, the uninsured and the underinsured. The current LIP pool is authorized for \$1.5 billion and has federal approval to operate through the 2021-2022 fiscal year.

The LIP is funded through county and other local tax dollars that are transferred to the state and used to draw federal match. Local dollars transferred to the state and used in this way are known as "intergovernmental transfers" or IGTs. The local taxing authorities commit to sending these funds to the state in the form of an executed Letter of Agreement with the AHCA. In order for AHCA to make timely payments to hospitals, AHCA must know which local governments will be submitting IGTs and the amount of the funds prior to using the funds to draw the federal match. Current law requires local governments who participate in IGT-funded programs, to submit to AHCA the final executed letter of agreement containing the total amount of the IGTs authorized by the entity, no later than October 1 of each year. Additionally, the local governments are required to transfer the actual IGT funds to AHCA by October 31. There is currently no requirement for local governments to comply with these date requirements for the participation in the LIP program.

Disproportionate Share Hospital Program

The Medicaid Disproportionate Share Hospital (DSH) Program funding distributions are provided to hospitals that provide a disproportionate share of the Medicaid or charity care services to uninsured individuals. Each year, the Legislature delineates how the funds will be distributed to each eligible facility either through statutory formulas or other direction in the implementing bill or proviso.

Florida Healthy Kids Corporation

The Florida Healthy Kids Corporation was created in 1990 by the Florida Legislature as a public-private effort to improve access to health insurance for the state's uninsured children. The program came about as a result of an article published in the March 31, 1988, *New England Journal of Medicine* by Steve A. Freedman, Ph.D., F.A.A.P., then-Director of the Institute for Child Health Policy at the University of Florida.

Since its beginning, Healthy Kids has covered millions of children in Florida. Identified as one of three state programs that was grandfathered into the original Children's Health Insurance Program (CHIP)

¹⁴ See the November 30, 2018, CMS letter and waiver approval document, including waiver Special Terms and Conditions, available at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/fl-mma-ca.pdf> (last visited March 6, 2019).

legislation in 1997. Healthy Kids was joined with two other existing state health care programs for children (Medicaid and Children's Medical Services) and a new program (Medikids) to create Florida's KidCare program in 1998.¹⁵

In s. 624.91, F.S., Florida Healthy Kids Corporation is mandated to purchase goods and services in the most cost-effective manner consistent with the delivery of quality medical care to un-/under-insured children through contracts with health care providers. These contracted health care providers are mandated to maintain a minimum medical loss ratio (MLR) of 85 percent and maximum administrative costs of 15 percent.

Effect of Proposed Changes

Agency for Persons with Disabilities

The bill amends s. 393.0661, F.S., to update the referenced fiscal year for deficits to 2018-2019, which would require the APD to develop a plan to redesign the waiver program. It also updates the waiver redesign plan due date to the House Speaker and Senate President to September 30, 2019 and updates the due dates of the monthly plan progress and development reports to the House Speaker and Senate President to July 31, 2019 and August 31, 2019. Additionally, the bill updates the implementation date of the redesigned program as no later than July 1, 2020, and requires Legislative approval.

Medicaid Retroactive Eligibility

The bill amends s. 409.904, F.S., to continue the policy begun in the 2018-2019 Implementing Bill by providing payments for Medicaid eligible services for eligible non-pregnant adults retroactive to the first day of the month in which an application for Medicaid is submitted. Eligible children and pregnant women will continue to have retroactive Medicaid eligibility for a period of no more than 90 days before the month in which an application for Medicaid is submitted.

County Health Departments

The bill amends s. 409.908(23), F.S., to reenact the language in Section 19 of the 2018 General Appropriations Act Implementing Bill, Ch. 2018-10, L.O.F., that is applicable to the reimbursement of county health departments, thereby keeping the county health departments subject to the rate freeze.

Low Income Pool

The bill amends s. 409.908(26), F.S., to include the Low Income Pool program among the other programs that rely on IGTs to be provided to AHCA. Local governments, on behalf of providers participating in the LIP program, will be required to submit a final, executed Letter of Agreement to AHCA no later than October 1, which will delineate the amount of funds the local government will submit. Additionally, the funds pledged in the Letter of Agreement on behalf of a provider participating in the LIP program, must be transferred to AHCA no later than October 31, unless an alternative plan is approved by AHCA.

Disproportionate Share Hospital Program

The bill amends s. 409.911, F.S., to update existing law to provide payments for the 2019-2020 fiscal year related to hospitals in the Disproportionate Share Hospital (DSH) Programs and Medicaid DSH based upon the average of the 2011, 2012, and 2013 audited disproportionate share data to determine each hospital's Medicaid days and charity care.

¹⁵ Florida Healthy Kids Corporation History, 2019, retrieved from <https://www.healthykids.org/healthykids/history/> (last visited March 13, 2019).

Florida Healthy Kids Corporation

The bill amends s. 624.91, F.S., to require the Florida Healthy Kids Corporation to validate and calculate a refund amount for Title XXI authorized insurers and providers of health care services who achieve a MLR below 85 percent. These refunds shall be deposited into the General Revenue Fund, unallocated.

This bill provides for an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 393.0661, F.S., relating to Home and Community Based Services Waiver.

Section 2: Amends s. 409.904, F.S., relating to Medicaid Eligibility.

Section 3: Amends s. 409.908(23), F.S., relating to provider reimbursement.

Section 4: Amends s. 409.908(26), F.S., relating to Low Income Pool.

Section 5: Amends s. 409.911, F.S., relating to Disproportionate Share Program.

Section 6: Amends s. 624.91, F.S., relating to Florida Healthy Kids Corporation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

In order for providers to earn matching federal dollars for LIP, local governments and other local political subdivisions will be required to provide to AHCA an executed letter of agreement by October 1 of each fiscal year and the transfer of all funds as pledged in the LIP IGT agreement letter, no later than October 31 of each fiscal year, unless an alternative plan is approved by AHCA.

Mercer, the contracted actuary for FHKC, estimates for the contract year 2016-2017 refunds due to not meeting the 85% MLR mandate at \$18.1 million. In future periods, the refunds will be transferred to the General Revenue Fund, unallocated. It is indeterminate at this time whether the refunds will continue at the same level as the 2016-2017 contract year, or whether adjusted premiums, increased services, or other approaches will mitigate the refund amounts.

2. Expenditures:

A deficit is anticipated for APD's Home and Community Based Waiver in the 2018-2019 fiscal year to be \$115.1 million (\$44.8 million General Revenue). Should APD realize the forecast deficit in the 2018-2019 fiscal year, APD in conjunction with AHCA will re-design the iBudget program and have the re-designed iBudget implemented by July 1, 2020 to eliminate the APD operating at a deficit in the out-years.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

In order for providers to earn matching federal dollars for LIP, local governments and other local political subdivisions will be required to provide to AHCA an executed letter of agreement by October 1 of each fiscal year and the transfer of all funds as pledged in the LIP IGT agreement letter, no later than October 31 of each fiscal year, unless an alternative plan is approved by AHCA.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES