

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 1006

INTRODUCER: Health Policy Committee; Senators Baxley, Perry, Rouson, and others

SUBJECT: Coverage for Hearing Aids for Children

DATE: February 12, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Kibbey</u>	<u>Brown</u>	<u>HP</u>	<b>Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1006 requires an individual market health insurance policy that provides coverage on an expense-incurred basis for a family member of the insured to provide coverage for hearing aids, as defined in the bill, for children from birth through 21 years of age who have been diagnosed with hearing loss by a licensed physician or a licensed audiologist. The bill requires such policies to provide a minimum coverage limit of \$3,500 per ear within a 24-month period.

The insured remains responsible for the cost of hearing aids and related services which exceed the coverage limit provided for in their policy. If, however, a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not, or cannot, meet the needs of the child, the bill requires that a new 24-month period must begin with full benefits and coverage.

If the child diagnosed with hearing loss is under 18 years of age, then the covered hearing aids must be prescribed, fitted, and dispensed by a licensed physician or a licensed audiologist. For children ages 18 through 21, covered hearing aids must be fitted and dispensed by a licensed physician, a licensed audiologist, or a licensed hearing aid specialist.

The bill requires that its provisions apply to a health insurance policy that is issued or renewed on or after January 1, 2021, and the bill provides an effective date of that same date.

## II. Present Situation:

### Hearing Loss in Children

One in eight people in the United States (13 percent, or 30 million) aged 12 years or older has hearing loss in both ears, based on standard hearing examinations.<sup>1</sup> About two or three out of every 1,000 children in the United States are born with a detectable level of hearing loss in one or both ears.<sup>2</sup>

#### *Florida Newborn Hearing Screening Program*

Since October 1, 2000, Florida has had a universal newborn hearing screening program.<sup>3</sup> Unless a parent objects to the screening, all Florida-licensed facilities that provide maternity and newborn care are required to screen all newborns prior to discharge for the detection of hearing loss. All test results, including recommendations for any referrals or follow-up evaluations by a licensed audiologist, a physician licensed under chs. 458 or 459, F.S., or other newborn hearing screening providers in the hospital facility, must be placed in the newborn's medical records within 24 hours after the completion of the screening procedure.<sup>4</sup> For babies born in a facility other than a hospital, the parents are to be instructed on the importance of having a screening conducted, information must be provided, and assistance given to make an appointment within three months.<sup>5</sup>

The initial newborn screening and any necessary follow-up and evaluation are covered insurance benefits reimbursable by Medicaid, health insurers, and health maintenance organizations, with some limited exceptions.<sup>6</sup> Newborns and children found to have a permanent hearing loss may take advantage of the state's Part C program of the Individuals with Disabilities Education Act<sup>7</sup> and Children's Medical Services' Early Intervention Program, Early Steps.<sup>8</sup>

### Insurance Coverage for Hearing Aids

#### *Private Health Insurance*

According to the Office of Insurance Regulation, two carriers in the individual market and four carriers in the small group market covered hearing aids during 2019.<sup>9</sup>

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<sup>1</sup> See National Institutes for Health, National Institute on Deafness and Other Communication Disorders at <https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing> (last visited Feb. 6, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> See s. 383.145, F.S.

<sup>4</sup> Section 383.145(3)(e), F.S.

<sup>5</sup> Section 383.145(3)(i), F.S.

<sup>6</sup> Section 383.145(3)(j), F.S.

<sup>7</sup> See Pub. Law No. 108-446. The federal Part C program provides benefits and services for infants and toddlers from birth to age 36 months. Florida's Part C program is known as Early Steps and is administered by the Department of Health's Children's Medical Services.

<sup>8</sup> The Early Steps program services infants and children from age birth to age 36 months with disabilities, developmental delays, or children with a physical or mental condition known to create a risk of a developmental delay. See [http://www.cms-kids.com/families/early\\_steps/early\\_steps.html](http://www.cms-kids.com/families/early_steps/early_steps.html) (last visited Feb. 6, 2020).

<sup>9</sup> Email from Office of Insurance Regulation staff to Committee staff dated March 18, 2019 (on file with the Senate Committee on Banking and Insurance).

Twenty-four states appear to mandate health benefit plans to provide coverage for hearing aids for children.<sup>10</sup> Coverage requirements range from requiring a hearing aid every 24 months to every five years. Many states include caps on the amount the insurer must pay. These caps range from \$1,000 to \$4,000.<sup>11</sup>

### ***Hearing Aid Coverage in Public Insurance Programs***

Medicare does not cover hearing aids or hearing exams. Some Medicare Advantage Plans offer hearing coverage.<sup>12</sup> The Veterans Administration provides hearing aids for veterans in some circumstances.<sup>13</sup>

For adults, Florida's Medicaid program covers hearing aids.<sup>14</sup> For recipients who have moderate hearing loss or greater, the program includes the following services:

- One new, complete, (not refurbished) hearing aid device per ear, every three years, per recipient;
- Up to three pairs of ear molds per year, per recipient; and
- One fitting and dispensing service per ear, every three years, per recipient.

Medicaid also covers repairs and replacement of both Medicaid and non-Medicaid provided hearing aids, up to two hearing aid repairs every 366 days, after the one-year warranty period has expired.<sup>15</sup>

For children, Florida Medicaid covers services that are medically necessary to any eligible recipient under the age of 21 to correct or ameliorate a defect, condition, or a physical, or mental illness under the Early Periodic Screening and Diagnostic Testing (EPSDT) standard. Within this coverage standard, Medicaid recipients under the age of 21 receive all diagnostic services, treatment, equipment, supplies, and other measures that are described under 42 U.S.C. 1396d(a).<sup>16</sup> In addition to the coverage described above, Medicaid recipients under age 21 have coverage for the following relating to hearing services:

- For recipients who have documented, profound, severe hearing loss in one or both ears as follows:
  - Implanted device for recipients age five years and older;
  - Non-implanted soft band device for recipients under age five.
- Cochlear implants for recipient age 12 months and older who have documented, profound to severe, bilateral sensorineural hearing loss.
- One hearing assessment every three years for the purposes of determining hearing aid candidacy and the most appropriate hearing aid.

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<sup>10</sup> See information gathered by the American Speech-Language-Hearing Association at [https://www.asha.org/advocacy/state/issues/ha\\_reimbursement.htm](https://www.asha.org/advocacy/state/issues/ha_reimbursement.htm) (last visited Feb. 6, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> See <https://www.medicare.gov/coverage/hearing-aids> (last visited Feb. 6, 2020).

<sup>13</sup> See <https://www.military.com/benefits/veterans-health-care/va-health-care-hearing-aids.html> (last visited Feb. 6, 2020).

<sup>14</sup> See Rule 59G-4.110, F.A.C. The hearing services coverage policy from the Agency for Health Care Administration is available at [http://ahca.myflorida.com/medicaid/review/specific\\_policy.shtml](http://ahca.myflorida.com/medicaid/review/specific_policy.shtml) (last visited Feb. 6, 2020).

<sup>15</sup> *Id.*

<sup>16</sup> Agency for Health Care Administration, *Hearing Services Coverage Policy* (June 2016), available at [http://ahca.myflorida.com/medicaid/review/specific\\_policy.shtml](http://ahca.myflorida.com/medicaid/review/specific_policy.shtml) (last visited Feb. 6, 2020).

- Up to two newborn screenings for recipients under the age of 12 months. A second screening may be conducted only if the recipient did not pass the test in one or both ears.
- Hearing screenings on the same date as a child health check-up.<sup>17</sup>

### ***Title XXI – State Children’s Health Insurance Program***<sup>18</sup>

The Children’s Health Insurance Program (CHIP) was created in 1997 through the 1997 Federal Balanced Budget Act legislation, and it enacted Title XXI of the Social Security Act as a joint state-federal funding partnership to provide health insurance to children in low to moderate income households.<sup>19</sup> The Florida Healthy Kids Corporation<sup>20</sup> is one component of Florida’s Title XXI program, known as Florida KidCare, which was enacted by the Florida Legislature in 1998<sup>21</sup> and is the only program component utilizing a non-Medicaid benefit package. The other program components, Medicaid for children, Medikids, and Children’s Medical Services Network, follow the Medicaid benefit package.<sup>22</sup>

Under s. 409.815(2)(a), F.S., in order for health benefits coverage to qualify for premium assistance payments, KidCare enrollees must receive hearing screenings as a covered, preventative health service. Additionally, under s. 409.815(2)(h), F.S., describing the benefits for durable medical equipment, covered services include:

*...equipment and devices that are medically indicated to assist in the treatment of a medical condition and specifically prescribed as medically necessary, with the following limitations:*

...

*3. Hearing aids shall be covered only when medically indicated to assist in the treatment of a medical condition.*

There are no out of pocket costs for the well-child hearing screening and the provision of hearing aids for subsidized Title XXI eligible children.<sup>23</sup>

### **Mandated Health Insurance Coverages**

Florida law does not require that health insurance policies cover hearing aids for adults or children.

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal which would mandate a health coverage or the offering of a health coverage by an insurance carrier, to submit to the Agency for Health Care Administration and the legislative committees having jurisdiction, a report that assesses the social and financial impacts

<sup>17</sup> 42 U.S.C. ss. 1397aa-1397mm.

<sup>18</sup> *Id.*

<sup>19</sup> The Balanced Budget Act of 1997, Pub. Law 105-33. 111 Stat. 251, enacted August 5, 1997.

<sup>20</sup> See s. 624.91-624.915, F.S.

<sup>21</sup> See ss. 409.810-409.821, F.S.

<sup>22</sup> See s. 409.815(2)(a), F.S., and s. 391.0315, F.S.

<sup>23</sup> Florida Healthy Kids Corporation, *Medical Benefits* <https://www.healthykids.org/benefits/medical/> (last visited Feb. 6, 2020).

of the proposed coverage.<sup>24</sup> Proponents have provided information to staff which indicates that less than 4,371 children under the age of 21 in Florida are deaf.<sup>25</sup> Hearing aids and the services to properly prescribe, evaluate, fit, and manage children with hearing loss generally cost an average of \$3,500 per ear depending on the technology and enhancements selected by the audiologist based on the individual needs of the child.<sup>26</sup>

The Patient Protection and Affordable Care Act (PPACA)<sup>27</sup> does not require that health insurance policies cover hearing aids for adults or for children. Under PPACA, individuals and small businesses can shop for health insurance coverage on the federal marketplace. All non-grandfathered plans<sup>28</sup> must include minimum essential coverage (MEC),<sup>29</sup> including an array of services that includes the 10 essential health benefits (EHBs). These 10 EHBs are further clarified or modified each year through the federal rulemaking process and are open for public comment before taking effect. The 10 general categories for the EHBs are:

- Ambulatory services (outpatient care);
- Emergency services;
- Hospitalization (inpatient care);
- Maternity and newborn care.
- Mental health and substance abuse disorder services;
- Prescription drugs.
- Rehabilitative services and rehabilitative services and devices;
- Laboratory services;
- Preventive care and chronic disease management; and
- Pediatric services, including oral and vision care.<sup>30</sup>

States are free to modify the EHBs offered in their states by adding coverage; however, because of concerns that federal funds would be used on costly mandated coverages that were not part of the required EHBs, PPACA contains a provision requiring that, starting in 2016, the states would have to pay for the cost of the coverage. As a result, the State of Florida may be required to

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<sup>24</sup> AHCA has not yet received such a report. *See* E-mail from Deputy Director of Legislative Affairs to Senate Staff dated January 17, 2020 (on file with the Senate Committee on Banking and Insurance).

<sup>25</sup> Florida Coalition for Spoken Language Options, *Impact of Senate Bill 1006: Insurance Coverage for Hearing Aids for Children*. (on file with the Senate Committee on Banking and Insurance).

<sup>26</sup> *Id.*

<sup>27</sup> H.R. 3590 – 111<sup>th</sup> Congress: Patient Protection and Affordable Care Act (March 27, 2009).

<https://www.govtrack.us/congress/bills/111/hr3590> (last visited Feb. 6, 2020).

<sup>28</sup> A “grandfathered health plan” are those health plans, both individual and employer plans, that maintain coverage that were in place prior to the passage of the PPACA or in which the enrollee was enrolled on March 23, 2010 while complying with the consumer protection components of the PPACA. If a group health plan enters a new policy, certificate, or contract of insurance, the group must provide the new issuer the documentation from the prior plan so it can be determined whether there has been a change sufficient to lose grandfather status. *See* 26 U.S.C. 7805 and 26 C.F.R. s. 2590.715-1251(a).

<sup>29</sup> To meet the individual responsibility provision of the PPACA statute, a benefit plan or coverage plan must be recognized as providing minimum essential coverage (MEC). Employer based coverage, Medicaid, Medicare, CHIP (i.e.: Florida KidCare), and TriCare would meet this requirement.

<sup>30</sup> 42 U.S.C. s. 18022(b)(1)(A)-(J).

defray the costs of any additional benefits beyond the required EHBs put in place after 2011.<sup>31</sup> Florida has not enacted any mandated benefits since 2011.<sup>32</sup>

Examples of health insurance benefits mandated under Florida law include:

- Coverage for certain diagnostic and surgical procedures involving bones or joints of the jaw and facial region (s. 627.419(7), F.S.);
- Coverage for bone marrow transplants (s. 627.4236, F.S.);
- Coverage for certain cancer drugs (s. 627.4239, F.S.);
- Coverage for any service performed in an ambulatory surgical center (s. 627.6616, F.S.);
- Diabetes treatment services (s. 627.6408, F.S.);
- Osteoporosis (s. 627.6409, F.S.);
- Certain coverage for newborn children (s. 627.641, F.S.);
- Child health supervision services (s. 627.6416, F.S.);
- Certain coverages related to mastectomies (s. 627.6417, F.S.);
- Mammograms (s. 627.6418, F.S.); and
- Treatment of cleft lip and cleft palate in children (s. 627.64193, F.S.).

### III. Effect of Proposed Changes:

**Section 1** of the bill creates s. 627.6413, F.S., to require an individual market health insurance policy that provides coverage on an expense-incurred basis for a family member of the insured to provide coverage for hearing aids, as that term is defined in 21 C.F.R. s. 801.420(a)(1), for children from birth through 21 years of age who have been diagnosed with hearing loss by a licensed physician or a licensed audiologist. Such policies are required to provide a minimum coverage limit of \$3,500 per ear within a 24-month period. 21 C.F.R. s. 801.420(a)(1) defines the term hearing aid as “any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.”

The bill indicates that the insured remains responsible for the cost of hearing aids and related services which exceed the coverage limit provided for in their policy. However, if a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not or cannot meet the needs of the child, the bill requires that a new 24-month period must begin with full benefits and coverage.

If the child diagnosed with hearing loss is under 18 years of age, then the covered hearing aids must be prescribed, fitted, and dispensed by a licensed physician or a licensed audiologist. For children ages 18 through 21, covered hearing aids must be fitted and dispensed by a licensed physician, a licensed audiologist, or a licensed hearing aid specialist.

The bill applies to an applicable policy that is issued or renewed on or after January 1, 2021.

**Section 2** provides an effective date of January 1, 2021.

<sup>31</sup> See 42 U.S.C. s. 18031(d)(3)(B)(ii).

<sup>32</sup> Centers for Medicare and Medicaid Services, *Florida – State Required Benefits*, [https://downloads.cms.gov/ccio/State%20Required%20Benefits\\_FL.pdf](https://downloads.cms.gov/ccio/State%20Required%20Benefits_FL.pdf) (last visited Feb. 6, 2020).

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to proponents of CS/SB 1006 (the Florida Coalition for Spoken Language Options), approximately 1,709 children will benefit from the mandated coverage, and the resulting increases in insurance premiums are estimated to be between \$0.056 and \$0.68 per member, per month.<sup>33</sup>

C. Government Sector Impact:

Federal law may require the State of Florida to assume the cost of additional benefits that it requires of insurance companies.<sup>34</sup>

According to proponents of the bill, the proposed mandate is not expected to have a significant impact on the total cost of healthcare in the state of Florida.

- Total estimated number hearing aids:
  - Binaural (2) hearing aids: 1,623
  - Monaural (unilateral hearing loss) hearing aids: 85

<sup>33</sup> Florida Coalition for Spoken Language Options, Impact of Senate Bill 1006: *Insurance Coverage for Hearing Aids for Children* (on file with the Senate Committee on Banking and Insurance).

<sup>34</sup> See 42 U.S.C. s. 18031(3)(B)(ii).

- Costs at \$3500 per ear
  - Binaural \$11,363,173
  - Monaural \$ 299,031
  - Total costs \$11,662,204
  - 2-year benefit \$ 5,831,102<sup>35</sup>

This bill does not directly impact the Florida Department of Management Services.<sup>36</sup>

**VI. Technical Deficiencies:**

The bill provides that if the child is under 18 years of age, the hearing aids must be prescribed, fitted, and dispensed by a licensed physician or a licensed audiologist. However, if the child is 18 to 21 years of age, the bill only requires that the hearing aids be fitted or dispensed by a licensed physician, a licensed audiologist, or a licensed hearing aid specialist. The bill does not specify who may or must prescribe hearing aids for a child aged 18-21 years. If the intent is to require a prescription for hearing aids from a licensed physician or a licensed audiologist for all children, it may be necessary to amend the bill to clarify this point.

The bill does not provide a definition for “significant and unexpected change” in hearing, nor does it specify who may determine whether an existing hearing aid meets the child’s needs, what criteria will be used to make that determination, and whether the determination is subject to appeal. It may be necessary to provide clarification in the bill or to provide the Office of Insurance Regulation with rulemaking authority.

**VII. Related Issues:**

Generally, insurance policies are issued with a one-year duration. It may be difficult to implement a coverage requirement that lasts for two years, as proposed in the bill.

**VIII. Statutes Affected:**

This bill creates section 627.6413 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Health Policy on February 11, 2020:**

The CS:

- Defines the term “hearing aids” as that term is defined in 21 C.F.R. s. 801.420(a)(1).
- Specifies that coverage must be provided to children who are diagnosed with hearing loss by a licensed physician or a licensed audiologist

<sup>35</sup> Florida Coalition for Spoken Language Options, *Impact of Senate Bill 1006: Insurance Coverage for Hearing Aids for Children*. (on file with Senate Banking and Insurance Committee).

<sup>36</sup> Letter from Department of Management Services dated January 8, 2020, (on file with the Senate Committee on Banking and Insurance).



- Specifies that the coverage of hearing aids for children younger than 18 years of age must require the hearing aid to be prescribed, fitted, and dispensed by a licensed physician or a licensed audiologist.
- Specifies that the coverage of hearing aids for children between 18 and 21 years of age must require the hearing aid to be fitted and dispensed by a licensed physician, a licensed audiologist, or a licensed hearing aid specialist.

**B. Amendments:**

None.