

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1367 Public Assistance

**SPONSOR(S):** Tomkow

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 4 N	Grabowski	Brazzell
2) Appropriations Committee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments 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 (DCF), the Department of Health, the Agency for Persons with Disabilities, and the Department of Elder Affairs. At present, the Florida Medicaid program does not impose any work requirements on beneficiaries.

Current federal and state law requires recipients of benefits under the Temporary Cash Assistance (TCA) program to engage in work or education activities as a condition for program eligibility, unless they qualify for an explicit exemption from those activities. DCF may sanction TCA recipients who fail to meet work activity requirements by withholding cash assistance for a specified minimum time or until the participant complies, whichever is later.

HB 1367 directs AHCA to request federal approval to require certain Medicaid enrollees to engage in work activities to maintain eligibility for Medicaid.

The bill increases the penalties for the first three instances of noncompliance with the TCA work requirements to align with the food assistance program's sanctions and creates a fourth sanction. The bill:

- Increases the first sanction from 10 days to one month, and permits child-only TCA during the first month of sanction.
- Increases the second sanction from one month or until compliance, whichever is later, to three months or until compliance, whichever is later; and limits child-only TCA to the first three months of the sanction period.
- Increases the third sanction from three months or until compliance, whichever is later, to six months or until compliance, whichever is later; and limits child-only TCA to the first six months of the sanction period.
- Creates a fourth sanction of twelve months or until compliance, whichever is later, and requires that the participant must reapply to the program; and limits child-only TCA to the first twelve months of the sanction period.

The bill requires DCF to refer sanctioned participants to appropriate free and low-cost community services, including food banks. Additionally, the Department of Economic Opportunity (DEO), with DCF and CareerSource Florida, must work with the participant to develop strategies on how to overcome barriers to compliance with the TCA work requirements that the recipient faces through the participant's individual responsibility plan (IRP).

The bill also requires DEO to develop rules for how Local Workforce Development Boards (LWDBs) implement sanctions for failure to comply with work requirements. DEO must report on TCA participation statistics as part of the annual report it submits to the Governor, the House of Representatives, and the Senate.

The bill also prohibits the use of electronic benefits transfer (EBT) cards at certain retailers and requires EBT cardholders to pay a penalty for the fifth and every subsequent EBT card requested within a 12-month span.

The bill will have a significant negative fiscal impact on DCF, and if federal approval is received an insignificant negative fiscal impact on AHCA.

The bill provides an effective date of July 1, 2020.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1367a.CFS

**DATE:** 2/4/2020

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments 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 (DCF), which makes eligibility determinations.

The structure of each state's Medicaid program varies, but what states must pay for is largely determined by the federal government, as a condition of receiving federal funds.<sup>1</sup> Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections. The entitlement means that two parts of the Medicaid cost equation – people and utilization – are largely predetermined for the states. The federal government sets the minimum mandatory populations to be included in every state Medicaid program. The federal government also sets the minimum mandatory benefits to be covered in every state Medicaid program. These benefits include physician services, hospital services, home health services, and family planning.<sup>2</sup> States can add benefits, with federal approval. Florida has added many optional benefits, including prescription drugs, ambulatory surgical center services, and dialysis.<sup>3</sup>

Florida Medicaid does not cover all low-income Floridians. The maximum income limits for programs are illustrated below as a percentage of the federal poverty level (FPL).

Current Medicaid and CHIP Eligibility Levels in Florida <sup>4</sup> (With Income Disregards and Modified Adjusted Gross Income)						
Children's Medicaid			CHIP (KidCare) Age 0-18	Pregnant Women	Parents Caretaker Relatives	Childless Adults (non-disabled)
Age 0-1	Age 1-5	Age 6-18				
206% FPL	140% FPL	133% FPL	210% FPL	191% FPL	28% FPL	0% FPL

The Florida Medicaid program covers approximately 3.9 million low-income individuals.<sup>5</sup> Medicaid is the second largest single program in the state, behind public education, representing approximately one-third of the total FY 2019-2020 state budget.<sup>6</sup>

##### Medicaid Waivers

<sup>1</sup> Title 42 U.S.C. §§ 1396-1396w-5; Title 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).

<sup>2</sup> S. 409.905, F.S.

<sup>3</sup> S. 409.906, F.S.

<sup>4</sup> U.S. Centers for Medicare and Medicaid Services, Medicaid.gov, Florida, <http://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-eligibility-levels/index.html> (last accessed Feb. 1, 2020). For calendar year 2020, the federal poverty level (FPL) is \$25,750 for a family of 4 residing in Florida.

<sup>5</sup> Agency for Health Care Administration, Florida Statewide Medicaid Monthly Enrollment Report, December 2019, available at [https://ahca.myflorida.com/medicaid/Finance/data\\_analytics/enrollment\\_report/index.shtml](https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml) (last accessed Feb. 1, 2020).

<sup>6</sup> Ch. 2019-115, L.O.F. See also *Fiscal Analysis in Brief: 2019 Legislative Session*, available at [http://flsenate.gov/UserContent/Committees/Publications/FiscalAnalysisInBrief/2019\\_Fiscal\\_Analysis\\_In\\_Brief.pdf](http://flsenate.gov/UserContent/Committees/Publications/FiscalAnalysisInBrief/2019_Fiscal_Analysis_In_Brief.pdf) (last accessed November 4, 2019).

States have some flexibility in the provision of Medicaid services. Section 1915(b) of the Social Security Act provides authority for the Secretary of the U.S. Department of Health and Human Services to waive requirements to the extent that he or she “finds it to be cost-effective and efficient and not inconsistent with the purposes of this title.” Also, Section 1115 of the Social Security Act allows states to use innovative service delivery systems that improve care, increase efficiency, and reduce costs.

States may also ask the federal government to waive federal requirements to expand populations or services, or to try new ways of service delivery. For example, Florida has a Section 1115 waiver to use a comprehensive managed care delivery model for primary and acute care services, the Statewide Medicaid Managed Care (SMMC) Managed Medical Assistance (MMA) program.<sup>7</sup>

### *MMA Program*

The MMA program provides acute health care services through managed care plans contracted with AHCA in the 11 regions across the state. Specialty plans are also available to serve distinct populations, such as the Children’s Medical Services Network for children with special health care needs, or those in the child welfare system. Medicaid recipients with HIV/AIDS, serious mental illness, dual enrollment with Medicare, chronic obstructive pulmonary disease, congestive heart failure, or cardiovascular disease may also select from specialized plans.

Most Medicaid recipients must be enrolled in the MMA program. Those individuals who are not required to enroll, but may choose to do so, are:

- Recipients who have other creditable coverage, excluding Medicare;
- Recipients who reside in residential commitment facilities through the Department of Juvenile Justice or mental health treatment facilities;
- Persons eligible for refugee assistance;
- Residents of a developmental disability center;
- Enrollees in the developmental disabilities home- and community-based waiver or those waiting for waiver services; and
- Children in a prescribed pediatric extended care center.<sup>8</sup>

Other Medicaid enrollees are exempt from the MMA program and receive Medicaid services on a fee-for-service basis. Exempt enrollees are:

- Women who are eligible for family planning services only;
- Women who are eligible only for breast and cervical cancer services; and
- Persons eligible for emergency Medicaid for aliens.

### Medicaid Work Requirements

Current federal and Florida Medicaid law do not require participation in work or work-related activities as a condition of program eligibility. However, various states now impose such a requirement.

To date, ten states have been granted authority to establish work requirements for selected portions of their Medicaid populations: Arkansas, Arizona, Indiana, Kentucky, Michigan, New Hampshire, Ohio, South Carolina, Utah, and Wisconsin.<sup>9</sup> This authority was granted by the U.S. Centers for Medicare and Medicaid Services (CMS) under Section 1115 of the Social Security Act as Medicaid demonstration waivers.

However, only one of the ten states granted waiver authority for Medicaid work requirements currently enforces those requirements (Indiana). In three states (Arkansas, Kentucky, and New Hampshire),

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<sup>7</sup> S. 409.964, F.S.

<sup>8</sup> S. 409.972, F.S.

<sup>9</sup> Henry J. Kaiser Family Foundation, “Medicaid Waiver Tracker: Approved and Pending Section 1115 Waivers by State,” December 16, 2019. Available at <https://www.kff.org/medicaid/issue-brief/medicaid-waiver-tracker-approved-and-pending-section-1115-waivers-by-state/> (last accessed December 18, 2019).

Medicaid work requirements were invalidated by federal court decisions, and are currently under appeal. Two other states (Michigan and Indiana) are currently awaiting consideration of class action lawsuits challenging their Medicaid work requirements. Five other states have received federal permission to implement work requirements (Arizona, Ohio, South Carolina, Utah, and Wisconsin), but all have chosen to temporarily or permanently postpone implementation of those work requirements in light of the federal court decisions rendered to date.<sup>10</sup>

### Temporary Aid for Needy Families

Under the federal welfare reform legislation of 1996, the Temporary Aid for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children, the Job Opportunities and Basic Skills Training program, and the Emergency Assistance program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides federal funds to states, territories, and tribes each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized by the Deficit Reduction Act of 2005. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program.

#### *Florida's Temporary Cash Assistance Program*

Florida's temporary cash assistance (TCA) program is one of several programs funded with TANF block grant funds. The purpose of the TCA program is to help families with children become self-supporting while allowing children to remain in their own homes. It provides cash assistance to families that meet the technical, income, and asset requirements.<sup>11</sup> In September 2019, 8,952 adults and 51,098 children received TCA.<sup>12</sup>

Various state agencies and entities work together through a series of contracts or memoranda of understanding to administer the TCA program. DCF receives the federal TANF block grant and administers the TCA program, monitoring eligibility and disbursing benefits. The Department of Economic Opportunity (DEO) is responsible for financial and performance reporting to ensure compliance with federal and state measures, and for providing training and technical assistance to Local Workforce Development Boards (LWDBs). LWDBs provide information about available jobs, on-the-job training, and education and training services within their respective areas and contract with one-stop career centers.<sup>13</sup> CareerSource Florida has planning and oversight responsibilities for all workforce-related programs.

#### *Full-Family and Child-Only TCA*

Florida law specifies two categories of families who are eligible for TCA: those families that are work-eligible and may receive TCA for the full-family, and those families who are eligible to receive child-only TCA. Within the full-family cases, the parent or parents are required to comply with work requirements to receive TCA for the parent(s) and child(ren). There were 8,647 families receiving TCA through full-family cases containing an adult, 206 of which were two-parent families; these families are subject to work requirements.<sup>14</sup>

The majority of cash assistance benefits are child-only, through the Relative Caregiver Program, or to work-eligible cases where the adult is ineligible due to sanction for failure to meet TCA work

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<sup>10</sup> Id.

<sup>11</sup> Children must be under the age of 18, or under age 19 if they are full time secondary school students. Parents, children and minor siblings who live together must apply together. Additionally, pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.

<sup>12</sup> Department of Children and Families, Monthly Flash Report Caseload Data: September 2019. <http://www.dcf.state.fl.us/programs/access/reports/flash2005.xlsx> (last accessed December 16, 2019)

<sup>13</sup> Workforce Investment Act – Workforce Innovation and Opportunity Act Annual Report for 2015-2016 Program Year, CareerSource Florida, Inc., available at [https://careersourceflorida.com/wp-content/uploads/2016/10/161003\\_AnnualReport.pdf](https://careersourceflorida.com/wp-content/uploads/2016/10/161003_AnnualReport.pdf) (last accessed December 16, 2019).

<sup>14</sup> Id.

requirements. In September 2019, 29,446 of the 38,093 families receiving TCA were child-only cases; many of these families are not subject to work requirements, by virtue of having an approved exemption.<sup>15</sup>

### *Administration*

Various state agencies and entities work together through a series of contracts or memorandums of understanding to administer the TCA Program. DCF is the recipient of the federal TANF block grant. DCF monitors eligibility and disburses benefits. CareerSource Florida, Inc., the state's workforce policy and investment board, has planning and oversight responsibilities for all workforce-related programs. DEO implements the policy created by CareerSource.<sup>16</sup> DEO submits financial and performance reports ensuring compliance with federal and state measures and provides training and technical assistance to the LWDBs. LWDBs provide a coordinated and comprehensive delivery of local workforce services. The LWDBs focus on strategic planning, policy development and oversight of the local workforce investment system within their respective areas, and contracting with one-stop career centers. The contracts with the LWDBs are performance- and incentive-based.

### *Eligibility Determination*

An applicant must meet all eligibility requirements to receive TCA benefits. To be eligible, an applicant's gross family income must be 185 percent or less of the federal poverty level.<sup>17</sup> The applicant may not have more than \$2,000 of counted liquid and nonliquid resources.<sup>18</sup> DCF processes the initial application for TANF. The applicant may submit his or her application in person, online or through the mail. DCF then determines an applicant's eligibility. To be eligible for full-family TCA, applicants must participate in work activities unless they qualify for an exemption.

Exemptions from the work requirement are available for:

- An individual who receives benefits under the Supplemental Security Income program or the Social Security Disability Insurance program.
- An adult who is not defined as a work-eligible individual under federal law.
- A single parent of a child under three months of age, except that the parent may be required to attend parenting classes or other activities to better prepare for raising a child.
- An individual who is exempt from the time limitations of TCA because of a hardship exemption.

If no exemptions from work requirements apply, DCF refers the applicant to DEO.<sup>19</sup> Upon referral, the participant must complete an intake application and undergo assessment by LWDB staff which includes:

- Identifying barriers to employment.
- Identifying the participant's skills that will translate into employment and training opportunities.
- Reviewing the participant's work history.
- Identifying whether a participant needs alternative requirements due to domestic violence, substance abuse, medical problems, mental health issues, hidden disabilities, learning disabilities or other problems which prevent the participant from engaging in full-time employment or activities.

Once the assessment is complete, the staff member and participant create an individual responsibility plan (IRP). The IRP includes:

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<sup>15</sup> Agency for Health Care Administration, *SMMC MMA Enrollment by County by Plan* (as of October 2019), available at [https://ahca.myflorida.com/medicaid/Finance/data\\_analytics/enrollment\\_report/index.shtml](https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml) (last accessed December 16, 2019).

<sup>16</sup> S. 445.007(13), F.S.

<sup>17</sup> S. 414.085(1)(a), F.S.

<sup>18</sup> Licensed vehicles with a combined value of \$8,500 are excluded. S. 414.075, F.S.

<sup>19</sup> This is an electronic referral through a system interface between DCF's computer system and DEO's computer system. Once the referral has been entered into the DEO system, the information may be accessed by any of the LWDBs or One-Stop Career Centers.

- The participant’s employment goal;
- The participant’s assigned activities;
- Services provided through program partners, community agencies and the workforce system;
- The weekly number of hours the participant is expected to complete; and
- Completion dates and deadlines for particular activities.

DCF does not disburse any benefits to the participant until DEO or the LWDB confirms that the participant has registered and attended orientation.

#### TCA Income Limit and Maximum Benefit<sup>20</sup>

Household Size	Maximum Monthly Income (185% FPL)	Maximum Monthly Benefit, If Shelter Obligation > \$50	Maximum Monthly Benefit, If Shelter Obligation ≤ \$50	Maximum Monthly Benefit, If No Shelter Obligation
1	\$1,926	\$180	\$153	\$95
2	\$2,607	\$241	\$205	\$158
3	\$3,289	\$303	\$258	\$198
4	\$3,970	\$364	\$309	\$254

#### TCA Work Requirement

To be eligible for full-family TCA, applicants must participate in work activities in accordance with s. 445.024, F.S., unless they qualify for an exemption.<sup>21</sup>

When Congress created TANF in 1996, it allowed states to use their TANF funding in any manner “reasonably calculated to accomplish the purposes of TANF. States were given broad flexibility to determine methods of assistance, benefit levels, and eligibility requirements.”<sup>22</sup>

Florida law recognizes that certain participants are not immediately able to engage in work activities for medical reasons. If an individual cannot participate in assigned work activities due to a medical incapacity, the individual may be excused from the activity for a specific period of time.<sup>23</sup> To be excused from the work activity requirements, the participant’s medical incapacity must be verified by a physician, in accordance with the procedures established by DCF.<sup>24</sup>

Individuals receiving TCA who are not otherwise exempt from work activity requirements must participate in work activities for the maximum number of hours allowable under federal law.<sup>25</sup> The number of required work activity hours is determined by calculating the value of the cash benefits and then dividing that number by the hourly minimum wage amount. Federal law requires individuals to participate in work activities for at least:

- 20 hours per week (or attend a secondary school or the equivalent or participate in education directly related to employment) for those under the age of 20 and married or single head-of-household;
- 20 hours per week for single parents with a child under the age of six;
- 30 hours per week for all other single parents;
- 35 hours per week, combined, for two-parent families not receiving subsidized child care; or

<sup>20</sup> Email from Lindsey Zander, Deputy Legislative Affairs Director, Department of Children and Families, RE: Updated Information (Mar. 13, 2019) (on file with Children, Families, and Seniors Subcommittee staff); Access Florida Program Policy Manual, Appendix A-5, Temporary Cash Assistance Income Standards, available at [https://www.myflfamilies.com/service-programs/access/docs/esspolicymanual/a\\_05.pdf](https://www.myflfamilies.com/service-programs/access/docs/esspolicymanual/a_05.pdf) (accessed Feb. 2, 2020).

<sup>21</sup> S. 414.095(1), F.S.

<sup>22</sup> P.L. 104-193, *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*.

<sup>23</sup> S. 414.065(4)(d), F.S.

<sup>24</sup> Rule 65A-4.206(2),(3), F.A.C.

<sup>25</sup> S. 445.024(2), F.S.

- 55 hours per week, combined, for two-parent families receiving subsidized child care.

Pursuant to federal rule<sup>26</sup> and state law,<sup>27</sup> job search, on-the-job training, education, and subsidized and unsubsidized employment, among other things, may be used individually or in combination to satisfy the work requirements for a participant in the TCA program.

LWDBs currently have discretion to assign an applicant to a work activity, including job search, before receiving TCA.<sup>28</sup> Currently, Florida's TANF Work Verification Plan<sup>29</sup> requires participants to record each on-site job contact and a representative of the employer or LWDB provider staff to certify the validity of the log by signing each entry. If the applicant conducts a job search by phone or internet, the activity must be recorded on a job search report form and include detailed, specific information to allow follow-up and verification by the LWDB provider staff.<sup>30</sup>

### *Sanctions for Noncompliance*

LWDBs can sanction TANF recipients who fail to comply with the work requirements by withholding cash assistance for a specified time, which lengthens with repeated lack of compliance.<sup>31</sup> Sanctions for non-compliant participants involve processes at both DEO and DCF. Because DEO administers the work programs, the LWDB first becomes aware of participants' noncompliance and then notifies DCF to request a sanction; DCF then applies the sanctions.<sup>32</sup>

When a participant fails to comply with a mandatory work activity, the LWDB records the non-compliance in DEO's tracking system and sends the recipient a notice of adverse action; the recipient then has 10 days to contact DEO to show good cause<sup>33</sup> for missing the requirement.<sup>34</sup> During the 10-day period, the LWDB must make both oral and written attempts to contact the participant to:<sup>35</sup>

- Determine if the participant had good cause for failing to meet the work requirement;
- Refer to or provide services to the participant, if appropriate, to assist with the removal of barriers to participation;
- Counsel the participant on the consequences for failure to comply with work or alternative requirement plan activity requirements without good cause;
- Provide information on transitional benefits if the participant subsequently obtained employment; and,
- Make sure the participant understands that compliance with work activity requirements<sup>36</sup> during the 10-day period will avoid the imposition of a sanction.

If the recipient complies within 10 days, the LWDB does not request a sanction. However, if the recipient does not show good cause to the LWDB and does not comply, the LWDB sends DCF a sanction request.<sup>37</sup> Once DCF receives the sanction request from the LWDB, it then sends the recipient

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<sup>26</sup> 45 C.F.R. § 261.30.

<sup>27</sup> This information is not required as part of CareerSource Florida's annual report to the Legislature and Governor. See, s. 445.024, F.S.

<sup>28</sup> Department of Children and Families, *Temporary Assistance for Needy Families: 2018 Annual Report on TANF and State MOE Programs*, available at <https://www.myflfamilies.com/service-programs/access/docs/Florida%20ACF204%20Report-2018.pdf> (last accessed December 16, 2019).

<sup>29</sup> Department of Children and Families Economic Self-Sufficiency Program Office, *Temporary Assistance for Needy Families State Plan Renewal October 1, 2017 – September 30, 2020*, available at <https://www.myflfamilies.com/service-programs/access/docs/TANF-Plan.pdf> (last accessed December 16, 2019).

<sup>30</sup> Department of Children and Families, Agency Analysis of 2016 House Bill 563 (Nov. 20, 2015)(on file with staff of the Children and Families Subcommittee).

<sup>31</sup> Office of Program Policy Analysis & Government Accountability, *Mandatory Work Requirements for Recipients of the Food Assistance and Cash Assistance Programs*, page 4, (Jan. 8, 2018)(on file with the staff of the Children and Families Subcommittee).

<sup>32</sup> Id.

<sup>33</sup> Id. DCF captures limited information regarding good-cause for noncompliance in three categories: temporary illness, household emergency, and temporary transportation unavailable.

<sup>34</sup> Id. at 11, see also rule 65A-4.205(3), F.A.C.

<sup>35</sup> Rule 65A-4.205(3), F.A.C.

<sup>36</sup> The LWDB designee must provide the participant with another work activity within the 10-day period if it is impossible for the participant to comply with the original assigned activity.

<sup>37</sup> *Supra*, note 31. DCF only receives a request for sanction and not the reasons for the sanction. See also rule 65A-4.205(4), F.A.C.

a notice of intent to sanction.<sup>38</sup> If the recipient does not show good cause within 10 days, the recipient is sanctioned by DCF, and DCF notifies DEO.<sup>39</sup>

Section 414.065(4), F.S., allows for noncompliance related to the following to constitute exceptions to the penalties for noncompliance with work participation requirements:

- Unavailability of child care in certain circumstances;<sup>40</sup>
- Treatment or remediation of past effects of domestic violence;
- Medical incapacity;
- Outpatient mental health or substance abuse treatment; and
- Decision pending for Supplemental Security Income or Social Security Disability Income.

Section 414.065(4)(g), F.S., grants rulemaking authority to DCF to determine other situations that would constitute good cause for noncompliance with work participation requirements. It specifies that these situations must include caring for a disabled family member when the need for the care has been verified and alternate care is not available.<sup>41</sup> DCF adopted rules stating that other good causes for noncompliance include the temporary inability to participate due to circumstances beyond the participant's control, such as:

- A family emergency due to the inability to find suitable child care for a sick child under age 12;
- Hospitalization, medical emergency or death of an immediate family member;
- Natural disaster;
- Lack of transportation; and
- Court appearance.<sup>42</sup>

In its database, DEO classifies the reasons for sanctions for noncompliance in the following categories:<sup>43</sup>

- Failure to respond to a mandatory letter.<sup>44</sup> Typically, this is the letter recipients receive from DEO upon referral from DCF requiring them to register with DEO.
- Failure to attend a work activity.
- Failure to turn in a timesheet.
- Failure to attend training.
- Failure to turn in necessary documentation.

The consequences of sanctions are as follows:<sup>45</sup>

- First noncompliance - cash assistance is terminated for the full-family for a minimum of 10 days or until the individual complies.
- Second noncompliance - cash assistance is terminated for the full-family for one month or until the individual complies, whichever is later.
- Third noncompliance - cash assistance is terminated for the full-family for three months or until the individual complies, whichever is later.

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<sup>38</sup> Id. at 11.

<sup>39</sup> Id., see also rule 65A-4.205(4), F.A.C

<sup>40</sup> Specifically, if the individual is a single parent caring for a child who has not attained 6 years of age, and the adult proves to the LWDB an inability to obtain needed child care for one or more of the following reasons, as defined in the Child Care and Development Fund State Plan required by 45 C.F.R. part 98: (1) the unavailability of appropriate child care within a reasonable distance from the individual's home or worksite; (2) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or (3) the unavailability of appropriate and affordable formal child care arrangements. S. 414.065(4)(a), F.S.

<sup>41</sup> S. 414.065(4)(g), F.S.,

<sup>42</sup> Rule 65A-4.205(2), F.A.C.

<sup>43</sup> *Supra*, note 31, at 19.

<sup>44</sup> Id. at 18. For work-eligible individuals with at least one sanction in FFY 2017, over half the sanctions were for failure to respond to a mandatory letter in 14 of 24 LWDBs.

<sup>45</sup> S. 414.065(1), F.S.



For the second and subsequent instances of noncompliance, the TCA for the child or children in a family who are under age 16 may be continued (i.e. the case becomes a child-only case). Any such payments must be made through a protective payee, and under no circumstances may temporary cash assistance or food assistance be paid to an individual who has not complied with program requirements.<sup>46</sup>

From November 2017 through October 2018, the number of TCA families sanctioned for noncompliance with the work requirements breaks down as follows:

- 13,709 families were sanctioned for a first instance of non-compliance; 4,252, or 31 percent, of those families complied with work requirements to be reinstated in the program.<sup>47</sup>
- 3,637 families were sanctioned for a second instance of non-compliance; 1,477, or 40.6 percent, of those families complied with the work requirements to be reinstated in the program. An estimated 784 children continued to receive benefits through child-only cases.<sup>48</sup>
- 2,316 families were sanctioned for a third instance of non-compliance; 813, or 35.1 percent, of those families complied with the work requirements to be reinstated in the program. An estimated 435 children in these families continued to receive benefits through child-only cases.<sup>49</sup>

However, if a previously-sanctioned participant fully complies with work activity requirements for at least six months, the participant must be reinstated as being in full compliance with program requirements for the purpose of sanctions imposed under this section.<sup>50</sup> Once the participant has been reinstated, a subsequent instance of noncompliance would be treated as the first violation.

#### *TCA Sanctions Compared to Supplemental Nutrition Assistance Program Sanctions*

The Food Assistance Program, Supplemental Nutrition Assistance Program (SNAP), formerly called food stamps, also contains similar sanctions for failure to comply with its Employment and Training Program. However, the SNAP sanctions are a longer duration. For the first instance of noncompliance, food assistance benefits are terminated for one month or until compliance, whichever is later; for the second instance, food assistance benefits are terminated for three months or until compliance, whichever is later; and for the third instance, food assistance benefits are terminated for six months or until compliance, whichever is later.<sup>51</sup>

#### Electronic Benefits Transfer Card Program

Electronic benefits transfer (EBT) is an electronic system that allows a recipient to authorize transfer of their government benefits, including from the SNAP and TCA programs, to a retailer account to pay for products received.<sup>52</sup> The EBT card program is administered on the federal level by the Food and Nutrition Service (FNS) within the United States Department of Agriculture and at the state level by DCF.

In Florida, benefits are deposited into a TCA or SNAP account each month; the benefits in the TCA or SNAP account are accessed using the Florida EBT Automated Community Connection to Economic Self Sufficiency (ACCESS) card.<sup>53</sup> Even though the EBT card is issued in the name of an applicant, any

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<sup>46</sup> S. 414.065(2), F.S.

<sup>47</sup> Email from Lindsey Zander, Deputy Legislative Affairs Director, Department of Children and Families, RE: Information on Noncompliance w Work Requirements (Mar. 11, 2019).

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> S. 414.065(1), F.S.

<sup>51</sup> Rule 65A-1.605(3), F.A.C.

<sup>52</sup> U.S. Department of Agriculture, *Electronic Benefit Transfer (EBT)*, available at <https://www.fns.usda.gov/sso/electronic-benefits-transfer-ebt> (last accessed January 27, 2020).

<sup>53</sup> Department of Children and Families, *Welcome to EBT*, available at <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/welcome-ebt> (last accessed January 27, 2020).

eligible member of the household is allowed to use the EBT card.<sup>54</sup> Additionally, recipients may designate an authorized representative as a secondary cardholder who can receive an EBT card and access the food assistance account. Authorized representatives are often someone responsible for caring for the recipient. The ACCESS Florida system allows recipients to designate one authorized representative per household.

### *Prohibited Usage*

The Middle Class Tax Relief and Job Creation Act of 2012 required states receiving TANF to create policies and practices as necessary to prevent assistance provided under the program from being used in any EBT transaction in the following establishments:

- Any liquor store;
- Any casino, gambling casino, or gaming establishment; or
- Any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.<sup>55</sup>

In 2013, Florida enacted legislation<sup>56</sup> that prohibits EBT cards from being accepted at the following locations or for the following activities:

- The purchase of an alcoholic beverage as defined in s. 561.01, F.S., and sold pursuant to the Florida Beverage Law.
- An adult entertainment establishment, as defined in s. 847.001, F.S.;
- A pari-mutuel facility, as defined in s. 550.02, F.S.;
- A slot machine facility, as defined in s. 551.102, F.S.;
- A commercial bingo facility that operates outside the provisions of s. 849.0931, F.S.; and A casino, gaming facility, or Internet café, including gaming activities authorized under part II of chapter 285.<sup>57</sup>

### *EBT Card Replacement*

When a recipient loses an EBT card, he or she must call the EBT vendor's customer service telephone number to request a replacement EBT card.<sup>58</sup> The vendor then deactivates the card, and sends the household a new card.<sup>59</sup> Federal regulations allow recipients to request an unlimited number of replacement EBT cards.<sup>60</sup> While states cannot limit the number of replacement cards, frequent requests for replacement cards can be an indicator of EBT card fraud, such as trafficking, which occurs when an EBT card containing benefits is exchanged for cash. FNS and DCF consider multiple replacement cards a preliminary indicator of trafficking.

FNS aims to preserve food assistance access for vulnerable populations (e.g., mentally ill and homeless people) who are at risk of losing their cards but who are not committing fraud,<sup>61</sup> while preventing others from trafficking and replacing their EBT cards. In the interest of preventing fraud, FNS regulations require states to monitor all client requests for EBT card replacements and send a notice upon the fourth request in a 12-month period alerting the household that its account is being monitored for potential suspicious activity.<sup>62</sup>

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<sup>54</sup> 7 C.F.R. § 273.2(n)(3).

<sup>55</sup> P.L. 112-96. Section 4004.

<sup>56</sup> S. 1, chapter 2013-88, Laws of Florida.

<sup>57</sup> S. 402.82(4), F.S.

<sup>58</sup> The Florida Legislature's Office of Program Policy Analysis & Government Accountability, *Supplemental Nutrition Assistance Program: DCF Has Mechanisms in Place to Facilitate Eligibility, Verify Participant Identity, and Monitor Benefit Use*, Dec. 3, 2015, p. 8 (research memorandum on file with staff of the Children and Families Subcommittee).

<sup>59</sup> *Id.*

<sup>60</sup> 7 C.F.R. § 276.4.

<sup>61</sup> 7 C.F.R. § 274.6(b)(5)(iii).

<sup>62</sup> 7 C.F.R. § 274.6(b)(6); in Florida, after the EBT vendor provides a fourth replacement card to a household within a 12-month span, DCF sends a letter to the household.

In Fiscal Year 2014-15, DCF sent 13,967 letters to households that had requested four or more cards.<sup>63</sup> The letter informs the recipient that the card does not need to be replaced each month and that it is important to keep track of the card.<sup>64</sup> The letter also informs the recipient that this number of replacement requests is not normal and that the household's EBT behavior is being monitored.<sup>65</sup> Additionally, in Fiscal Year 2014-15, less than one-third of the households who requested four cards (4,653 households) requested yet another replacement card after receiving the letter, and the DCF Office of Public Benefits Integrity referred these cases to the Department of Financial Services Division of Public Assistance Fraud (DPAF) for potential fraud investigation.<sup>66</sup>

Federal regulations allow states to charge recipients for the cost to replace an excessive<sup>67</sup> number of cards. FNS allows states to charge for the cost of the EBT card after four replaced cards. In 2018, under DCF's EBT contract, the vendor reported that replacements cost \$3.50 per card.<sup>68</sup> A number of other states charge for replacement cards. Those states charge between \$2.00 to \$5.00<sup>69</sup> per replacement card with some exceptions for good cause or financial hardship.

## Effect of Proposed Changes

### Medicaid

HB 1367 requires AHCA to request approval from the federal government to impose work requirements as condition of eligibility for Medicaid and enrollment in a MMA plan. The work requirements and the criteria regarding Medicaid recipients subject to them must be consistent with those in the TANF TCA program.

Under the bill, the work requirements would apply to MMA enrollees. Assuming the federal government approves work requirements for Medicaid recipients consistent with those applicable to TCA, the work requirements would not apply to:

- Children;
- An elderly or disabled individual who receives SSI or SSDI benefits;
- An adult who is not defined as a work-eligible individual under federal law<sup>70</sup>;
- A single parent of a child under 3 months, except that the parent may be required to attend parenting classes or other activities to better prepare for the responsibilities of raising a child; or
- An individual who is exempt based on hardship, pursuant to s. 414.105, F.S.<sup>71</sup>

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<sup>63</sup> *Supra*, note 58.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Defined by federal regulation as in excess of four cards within a 12-month span.

<sup>68</sup> *Supra*, note 58.

<sup>69</sup> By way of example, Louisiana and Maryland charge \$2.00, New Mexico charges \$2.50, and Massachusetts charges \$5.00.

<sup>70</sup> 45 CFR 261.2(n):

(1) Work-eligible individual means an adult (or minor child head-of-household) receiving assistance under TANF or a separate State program or a non-recipient parent living with a child receiving such assistance unless the parent is:

(i) A minor parent and not the head-of-household;

(ii) A non-citizen who is ineligible to receive assistance due to his or her immigration status; or

(iii) At State option on a case-by-case basis, a recipient of Supplemental Security Income (SSI) benefits or Aid to the Aged, Blind or Disabled in the Territories.

(2) The term also excludes:

(i) A parent providing care for a disabled family member living in the home, provided that there is medical documentation to support the need for the parent to remain in the home to care for the disabled family member;

(ii) At State option on a case-by-case basis, a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits; and

(iii) An individual in a family receiving MOE-funded assistance under an approved Tribal TANF program, unless the State includes the Tribal family in calculating work participation rates, as permitted under §261.25.

<sup>71</sup> S. 414.105, F.S., provides hardship exemptions for individuals who have diligently participated in activities but have an inability to obtain employment or extraordinary barriers to employment, victims of domestic violence, individuals subject to a time limitation under

Work requirements would apply to able-bodied adults with and without children, who meet the current income eligibility requirements and do not qualify for an exemption. Medicaid recipients who are also TCA beneficiaries are already subject to TANF work requirements. The application of work activities consistent with the TCA requirements would require an estimated 501,554 Medicaid recipients to be subject to work requirements.<sup>72</sup>

Because the bill requires the Medicaid work requirements to be consistent with those for TCA, the medical exception in the TCA program would apply. A participant who cannot participate in assigned work activities due to a medical incapacity may be excepted from the activity for a specific period of time. The participant is required to comply with the course of treatment necessary for the participant to resume participation. The participant's medical incapacity must be verified by a licensed physician, in accordance with the DCF rule.

If approved by the federal government, MMA enrollees would be required to submit proof to DCF of work activities for no more than 40 hours per week, consistent with federal TCA requirements. Assuming the federal government approves work activities consistent with those applicable to TCA, work activities may be in the following categories:

- Unsubsidized employment;
- Subsidized private sector or public sector employment;
- On-the-job training;
- Community service programs;
- Work experience;
- Job search and job readiness assistance;
- Vocational educational training;
- Job skills training directly related to employment;
- Education directly related to employment;
- Satisfactory attendance at a secondary school or in a course of study leading to a high school equivalency diploma; or
- Providing child care services.<sup>73</sup>

### Temporary Cash Assistance

#### *Sanctions for Noncompliance*

HB 1367 increases the sanctions for TCA recipients subject to work requirements for the first three instances of noncompliance and creates a sanction for the fourth instance of noncompliance. The bill amends s. 414.065(1) and (2), F.S., to:

- Increase the first sanction from 10 days to one month or until compliance, whichever is later; and allows child-only TCA during the first month of this sanction.
- Increase the second sanction from one month or until compliance, whichever is later, to three months or until compliance, whichever is later; and allows child-only TCA for a minor child in the family during the first three months of the sanction period even if the participant takes longer to comply.
- Increase the third sanction from three months or until compliance, whichever is later, to six months or until compliance, whichever is later; and allows child-only TCA for a minor child in the family during the first six months of the sanction period even if the participant takes longer to comply.

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the Family Transition Act of 1993, individuals who receive SSI or SSDI, and individuals who are totally responsible for the care of a disabled family member.

<sup>72</sup> Department of Children and Families, Agency Analysis of 2020 House Bill 1367 (January 13, 2020)(on file with the Children and Families Subcommittee).

<sup>73</sup> S. 445.024(1), F.S.

- Create a fourth sanction of twelve months or until compliance, whichever is later, and require that the individual reapply to the program to resume receiving benefits; and allows child-only TCA for a minor child in the family during the first twelve months of the sanction period even if the participant takes longer to comply.

Because the bill limits the period when a family can receive child-only TCA following noncompliance, it may provide an additional incentive for noncompliant households to comply with work activities once they have served the minimum penalty period.

The bill aligns the sanctions for the first through third occurrences of noncompliance with TCA work requirements with the sanctions for noncompliance with the SNAP program's Employment and Training Program.

The bill also requires DEO to adopt rules that establish uniform standards for compliance with work activity requirements and submitting requests for sanctions for noncompliance with work requirements for TCA and SNAP pursuant to DCF. DEO must also ensure that LWDBs implement sanctions for noncompliance with work activity requirements uniformly.

Additionally, when a participant is sanctioned, the bill requires DCF to refer that person to appropriate free and low-cost community services, including food banks. Additionally, the bill allows participants to comply with the work activity requirements before the end of the minimum penalty period.

#### *Work Plan*

The bill requires that, prior to receipt of TCA, DEO, DCF, or CareerSource must inform the participant, in plain language, and have the participant agree to, in writing:

- What is expected of the applicant to continue to receive benefits;
- Under what circumstances the applicant would be sanctioned and what constitutes good cause for noncompliance; and
- Potential penalties for noncompliance with work requirements, including how long benefits would not be available to the applicant.

The bill also requires that, prior to receipt of TCA, DEO, DCF, or CareerSource must work with the participant to develop strategies on how to overcome barriers to compliance with the TCA work requirements that the recipient faces through the IRP. The bill specifies that the IRP must be developed jointly by the participant and the participant's case manager pursuant to an initial assessment of, at a minimum, the participant's skills, prior work experience, employability, and barriers to employment. The IRP must:

- Seek to move the participant towards self-sufficiency
- Establish employment goals and a plan to move the participant into unsubsidized employment.
- Place the participant into highest level of employment he or she is capable of, increasing over time the participant's responsibilities and amount of work.
- Clearly state in sufficient detail the participant's obligations; activity requirements; and any services the local workforce development board will provide to enable the participant to satisfy his or her obligations and activity requirements, including, but not limited to, child care and transportation, where available.
- Be specific, sufficient, feasible, and sustainable in response to the realities of any barriers to compliance with work activity requirements that the participant faces, including but not limited to, substance abuse, mental illness, physical or mental disability, domestic violence, a criminal record affecting employment, significant job-skill or soft-skill deficiencies, and lack of child care, stable housing or transportation.

The bill requires LWDBs to provide recipients of TCA a list of local providers of publicly-funded behavioral health services if such services would assist the recipient in complying with work

requirements. A LWDB will receive such information from the managing entity contracted by DCF to oversee behavioral health services in its service area.

### Reporting Requirements

The bill requires DEO to collect and report on participation statistics and employment outcomes for mandatory workers in SNAP and TCA as a part of the annual report it submits to the Governor, the House of Representatives, and the Senate. For the mandatory work participants in TCA and SNAP served by LWDBs in the prior fiscal year, the report must cover:

- The number of participants referred by DCF who received workforce services; the total time participants received services and, if available, the length of any gaps in services as a result of sanction or program ineligibility; and the number who were referred but did not receive workforce services, with an explanation for why services were not received, if applicable.
- Activities participated in and whether such activities satisfied the work requirements for participants' receipt of TCA or SNAP.
- Participants' barriers to employment identified by the case managers in individual responsibility plans; the services offered to address such barriers; and whether participants availed themselves of such services, with an explanation of why participants did not avail themselves, if applicable.
- A description and summary of information included in the Department of Education's Florida Education and Training Placement Information Program report, including but not limited to the number and percentage of participants securing employment; job sector in which employment was secured and whether full-time or part-time; whether the employment was above minimum wage; whether the participant continued to receive temporary cash assistance or food assistance after securing employment or exited programs due to employment; and any other employment outcomes.
- Number and percentage of participants sanctioned for noncompliance with work requirements; the action or inaction giving rise to the noncompliance; whether the participant identified barriers related to noncompliance; and services offered to prevent future noncompliance.

Additionally, the bill requires the DEO to report on the effectiveness of its communication with participants, options for improving such communication, and any costs associated with such improvements; and the degree to which additional manual registration processes are used by local workforce development boards, a description of such processes, the impact of such processes on sanction rates for noncompliance with work activities, and the benefits and disadvantages of such processes in the first report, which is due December 1, 2020.

### EBT Cards

#### *Prohibited Usage*

The bill expands the locations where EBT cards may not be used to include:

- Medical marijuana treatment centers or dispensing organizations;
- Cigar stores and stands, pipe stores, smoke shops and tobacco shops; and
- Business establishments primarily engaged in the practice of body piercing, branding or tattooing.

#### *Replacement Penalty*

The bill requires EBT cardholders to pay a penalty for the fifth and all subsequent EBT replacement cards requested within a 12-month span. DCF currently sends a letter with the fourth replacement card informing the cardholder that his or her case is being monitored for potential trafficking activity. By charging the penalty beginning with the fifth card, DCF may inform the cardholder in the letter that it sends with the fourth replacement card about the replacement penalty for subsequent new cards.

The bill allows DCF to deduct the penalty from the cardholder's benefits and provides for a waiver of the penalty upon a showing of good cause, such as that the card malfunctioned or the penalty would cause extreme financial hardship.

The bill provides an effective date of July 1, 2020.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 394.9082, F.S., relating to behavioral health managing entities.
- Section 2:** Amends s. 414.065, F.S., relating to noncompliance with work requirements.
- Section 3:** Amends s. 445.024, F.S., relating to work requirements.
- Section 4:** Amends s. 445.025, F.S., relating to other support services.
- Section 5:** Amends s. 402.82, F.S., relating to electronic benefits transfer program.
- Section 6:** Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.
- Section 7:** Provides an appropriation.
- Section 8:** Provides an effective date of July 1, 2019.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill increases the length of time during which TCA recipients are ineligible for benefits when not meeting the program's work requirements. The bill expands three existing penalty periods and creates a new fourth period. It is expected that these provisions will decrease recurring state expenditures for TCA in the amount of \$1,584,979.

One-time programming modifications to DCF's public benefits disbursement system are estimated to cost \$3,362,076 including an approximate cost of \$1,863,696 in non-recurring funds needed for DCF to modify its Medicaid eligibility determination process, which includes making changes to its data and eligibility determination information technology systems. The bill contains an appropriation of \$952,360 for making all the necessary programming changes.

The bill would have an operational impact on AHCA, but could be supported using existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DCF may charge the costs of replacement cards against an EBT cardholder's benefits. The cardholder's benefits will be reduced by the cost to replace his or her EBT card. Assuming a replacement cost of \$5.00 per card, the estimated card replacement penalties recouped could approach \$206,270 based on replacing 41,254 cards. Penalty collections could diminish as the new process affects customer behaviors.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the DEO with rule-making authority to implement the revised TCA noncompliance sanctions. AHCA and DCF have sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES