

**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 Appropriations Subcommittee on Health and Human Services

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BILL: SB 348

INTRODUCER: Senator Bean

SUBJECT: Florida Kidcare Program

DATE: December 10, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kibbey</u>	<u>Brown</u>	<u>HP</u>	<b>Favorable</b>
2.	<u>McKnight</u>	<u>Kidd</u>	<u>AHS</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 348 repeals the \$1 million lifetime benefit maximum on covered expenses for a child enrolled in the Florida Healthy Kids (Healthy Kids) program.

The bill has an estimated fiscal impact of \$1.55 million to the Healthy Kids program. Of this amount, \$0.35 million is General Revenue, and \$1.2 million is federal funding. See Section V.

This bill takes effect upon becoming a law.

**II. Present Situation:**

**The Federal State Children’s Health Insurance Program**

The State Children’s Health Insurance Program (CHIP), enacted as part of the Balanced Budget Act of 1997, created Title XXI of the federal Social Security Act and provides health insurance to uninsured children in low-income families either through a Medicaid delivery system, a separate children’s health program, or a combination of both.<sup>1</sup> The CHIP was designed as a federal and state partnership, similar to Medicaid, with the goal of expanding health insurance to children whose families earn too much income to be eligible for Medicaid, but not enough money to purchase private, comprehensive health insurance.

The CHIP is administered by states, according to federal requirements. The program is funded jointly by states and the federal government. On January 22, 2018, Congress passed a six-year extension of CHIP funding through September 30, 2023.<sup>2</sup>

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<sup>1</sup> National Conference of State Legislatures, *Children’s Health Insurance Program Overview*, (January 10, 2017) available at <http://www.ncsl.org/research/health/childrens-health-insurance-program-overview.aspx> (last visited Oct. 29, 2019).

<sup>2</sup> Kaiser Family Foundation, *Summary of the 2018 CHIP Funding Extension*, (January 24, 2018) available at <https://www.kff.org/medicaid/fact-sheet/summary-of-the-2018-chip-funding-extension/> (last visited Oct. 29, 2019).

## The Florida KidCare Program

The Florida KidCare (KidCare) program was established in 1998 as a combination of Medicaid delivery systems and public and private partnerships, with a wrap-around delivery system serving children with special health care needs.<sup>3</sup> The KidCare program, codified in ss. 409.810-409.821, F.S., encompasses four government-sponsored health insurance programs serving Florida's children: MediKids, Florida Healthy Kids (Healthy Kids), Children's Medical Services Network (CMSN), and Medicaid for children.<sup>4</sup>

Three of the four programs, MediKids, Healthy Kids, and the CMSN, directly receive federal CHIP funding and constitute Florida's CHIP program. However, CHIP funding is also used to enhance the match rate for some children in Medicaid. More specifically:

- *MediKids* is a Medicaid “look-alike” program administered by the Agency for Health Care Administration (AHCA) for children ages 1 through 4 who are at or below 200 percent of the federal poverty level (FPL).<sup>5</sup> Families whose income exceeds 200 percent of the FPL can elect to participate in the MediKids full-pay premium option.<sup>6</sup>
- *Healthy Kids* is for children ages 5 through 18 and administered by the Florida Healthy Kids Corporation (FHKC). Children in families with income between 133 percent and 200 percent of the FPL (\$33,383 and \$50,200 for a family of four) are eligible for subsidized coverage through the Healthy Kids program.<sup>7</sup> Families whose income exceeds 200 percent of the FPL can elect to participate in the Healthy Kids full-pay option.<sup>8</sup>
- *Children's Medical Services Network* (CMSN) is a program for children from birth through age 18 with special health care needs.<sup>9</sup> The Department of Health (DOH) operates the program which is open to all children who meet the clinical eligibility criteria that are Medicaid or Title XXI eligible.<sup>10</sup>
- *Medicaid* eligibility is determined by the Department of Children and Families (DCF) and provides Title XIX coverage to infants from birth to age 1 who are at or below 200 percent of the FPL and children ages 1 through 18 who are at or below 133 percent of the FPL.<sup>11</sup>

Families who receive Medicaid are not responsible for paying premiums or co-payments. Families with children that qualify for other KidCare program components are responsible for paying monthly premiums and co-payments for certain services. The total monthly family payment for CHIP enrollees is \$15 or \$20 for families with incomes between 133 percent and

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<sup>3</sup> Chapter 1998-288, Laws of Fla.

<sup>4</sup> Florida KidCare, <https://www.floridakidcare.org/> (last visited Oct. 29, 2019).

<sup>5</sup> Section 409.8132(6), F.S.

<sup>6</sup> Agency for Health Care Administration, Florida Kidcare, *Welcome to Medikids*, [https://ahca.myflorida.com/medicaid/Policy\\_and\\_Quality/Policy/program\\_policy/FLKidCare/PDF/FLORIDA\\_MEDIKIDS\\_INFORMATION\\_2019.pdf](https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/program_policy/FLKidCare/PDF/FLORIDA_MEDIKIDS_INFORMATION_2019.pdf) (last visited Oct. 29, 2019).

<sup>7</sup> Florida Healthy Kids Corporation, *Subsidized Premiums/Copays*, <https://www.healthykids.org/cost/subsidized/> (last visited Oct. 29, 2019).

<sup>8</sup> *Id.*

<sup>9</sup> *See* ch. 391, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Florida Healthy Kids, *Florida Kidcare Health and Dental Insurance 2019 General Annual Income Guidelines*, [https://www.healthykids.org/kidcare/eligibility/Florida\\_KidCare\\_Income\\_Guidelines.pdf](https://www.healthykids.org/kidcare/eligibility/Florida_KidCare_Income_Guidelines.pdf) (last visited Oct. 29, 2019).

200 percent of the FPL.<sup>12</sup> The per-child monthly premium rate is \$157 for full-pay MediKids coverage and \$230 for full-pay Healthy Kids coverage, including dental coverage.<sup>13</sup>

As of November 2019, 31,428 children are enrolled in subsidized MediKids; 8,815 children are enrolled in MediKids under the full-pay option; 195,286 children are enrolled in subsidized Healthy Kids; 16,373 children are enrolled in Healthy Kids under the full-pay option; 13,452 children are enrolled in the CMSN; and 2,053,565 children are enrolled in the Medicaid program.<sup>14</sup>

The KidCare program is jointly administered by the AHCA, the FHKC, the DOH, the DCF, and the Office of Insurance Regulation. The general KidCare program responsibilities of each agency are outlined in the table below:

<b>Entity</b>	<b>Responsibilities</b>
Agency for Health Care Administration <sup>15</sup>	<ul style="list-style-type: none"> <li>• Administration of the state Medicaid program that serves individuals eligible for Medicaid under Title XIX.</li> <li>• Administration of the MediKids program that serves Title XXI children from age 1 through age 4.</li> <li>• The Title XXI state contact with the federal Centers for Medicare &amp; Medicaid Services.</li> <li>• Distribution of federal funds for Title XXI programs.</li> <li>• Management of the contract with the FHKC.</li> <li>• Development and maintenance of the Title XXI Florida KidCare State Plan.</li> </ul>
Department of Children and Families <sup>16</sup>	<ul style="list-style-type: none"> <li>• Processing Medicaid applications and determining children’s eligibility for Medicaid.</li> </ul>
Department of Health <sup>17</sup>	<ul style="list-style-type: none"> <li>• Administration of the CMSN that offers a range of services to Title XIX and XXI children from birth through age 18 who have special health care needs.</li> <li>• Chair of the Florida KidCare Coordinating Council.</li> <li>• In consultation with the FHKC and the DCF, establishment of a toll-free telephone line to assist families with questions about the program.</li> </ul>
Florida Healthy Kids Corporation <sup>18</sup>	<ul style="list-style-type: none"> <li>• Under a contract with the AHCA, perform the administrative KidCare functions including eligibility determination, premium billing and collection, refunds, and customer service.</li> <li>• Administration of the Florida Healthy Kids program for Title XXI children from age 5 through age 18.</li> </ul>

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Agency for Health Care Administration, Florida KidCare, *Florida KidCare Enrollment Report, November 2019* (on file with the Senate Appropriations Subcommittee on Health and Human Services).

<sup>15</sup> See part II of ch. 409, F.S.

<sup>16</sup> Section 409.818(1), F.S.

<sup>17</sup> See ch. 391 and s. 409.818(2), F.S.

<sup>18</sup> Section 624.91, F.S.

Office of Insurance  
Regulation<sup>19</sup>

- Certification that health benefits coverage plans seeking to provide services under the KidCare program, aside from services provided under Healthy Kids and CMSN, meet, exceed, or are equivalent to the benchmark benefit plan and that the health insurance plans will be offered at an approved rate.

### **Florida KidCare Program Administration and Eligibility**

The Healthy Kids program component of KidCare is administered by the nonprofit Florida Healthy Kids Corporation (FHKC), established in s. 624.91, F.S. The FHKC contracts with managed care plans throughout the state for the provision of health care coverage.

The KidCare application is a simplified application that serves applicants for both the Title XXI KidCare program and Title XIX Medicaid. Pursuant to federal law, each application is screened for the child's eligibility for Title XIX Medicaid. Children who appear to be eligible for Medicaid are referred to the DCF for Medicaid eligibility determination, and children who appear to have a special health care need are referred to the CMSN within the DOH for evaluation.

If eligible for Medicaid, the child is enrolled immediately into that program. If the child is not eligible for Medicaid, the application is processed for Title XXI, and if the child is eligible under Title XXI, the child is enrolled into the appropriate KidCare program component.

### **Healthy Kids Lifetime Maximum**

Florida Healthy Kids is the only Kidcare program that has a lifetime benefit maximum. Since the inception of Florida's CHIP program in 1998, the state has had the lifetime benefit maximum in place.<sup>20</sup> The FHKC has removed children from the state program upon reaching the \$1 million threshold. The FHKC determined that between October 1, 2015 through September 20, 2019, 12 enrollees reached the lifetime limit.<sup>21</sup> As the chart below indicates, at the time the twelve enrollees exceeded the lifetime benefit maximum<sup>22</sup> and, therefore, were terminated from the Healthy Kids program, three became enrolled in Medicaid, eight were enrolled in the CMSN, and one was deceased.<sup>23</sup>

<sup>19</sup> Section 409.818(4), F.S.

<sup>20</sup> Chapter 1998-288, s. 40, Laws of Fla.

<sup>21</sup> Email from the Florida Healthy Kids Corporation (October 4, 2019) (on file with the Senate Committee on Health Policy).

<sup>22</sup> The FHKC's managed care organizations (MCOs) are only made aware that the limit is reached upon receipt of claims for payment submitted by health care providers, and claims may be submitted after the limit is reached. The MCOs negotiate claims payments with providers once the claims amount exceeds \$1 million to minimize the exposure, thereby some health care providers may not receive their contracted rate. The MCOs are paid on a fully-capitated basis and bear the full risk any time an enrollee exceeds the \$1 million lifetime benefit maximum. *See* email from the Florida Healthy Kids Corporation (December 9, 2019) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

<sup>23</sup> *Supra* note 21.

Age at Healthy Kids Termination	Year	Approximate Time to Reach \$1M in Paid Claims	Primary Driver(s)	Medical Claims Paid Amount	Pharmacy Claims Paid Amount	Total Paid Claims by Carriers	Status at Healthy Kids Termination
16	2016	8 months	Lymphoma	\$988,050.32	\$20,774.47	\$1,008,824.79	CMS
10	2016	21 months	Stem Cell Transplant	\$809,187.25	\$202,918.10	\$1,012,105.35	Medicaid
9	2017	23 months	Hemophilia	\$1,857.32	\$1,252,669.62	\$1,254,526.94	Medicaid
18	2017	85 months	Cystic Fibrosis	\$874,158.33	\$213,415.30	\$1,087,573.63	Deceased
17	2017	30 months	Hemophilia	\$6,927.27	\$1,329,201.46	\$1,336,128.73	CMS
17	2018	7 months	Extensive Burns	\$1,003,967.34	\$-	\$1,003,967.34	Medicaid
9	2018	17 months	Cancer	\$1,396,343.49	\$68,322.61	\$1,464,666.10	CMS
9	2018	39 months	Cancer	\$1,158,818.10	\$34,354.96	\$1,193,173.06	CMS
12	2018	19 months	Auto-Immune Disease	\$293,403.55	\$807,430.01	\$1,100,833.56	CMS
14	2018	31 months	Cystic Fibrosis	\$386,605.27	\$727,398.50	\$1,114,003.77	CMS
17	2018	16 months	Cancer	\$976,566.67	\$93,525.43	\$1,070,092.10	CMS
11	2018	28 months	Car Accident	\$997,822.20	\$7,483.75	\$1,005,305.95	CMS

**State Plan Requirements**

On November 13, 2018, the federal Centers for Medicare & Medicaid Services (federal CMS) within the federal Department of Health and Human Services notified the AHCA that Florida’s imposition of the lifetime benefit maximum for Healthy Kids is not set out in Florida’s approved CHIP plan.<sup>24</sup> Because the lifetime benefit maximum affects utilization controls and state disenrollment policies which are required to be set out in each state plan, the federal CMS determined that Florida’s plan was not in compliance with federal CHIP regulations.<sup>25</sup> The federal CMS further clarified that if Florida intends to continue imposing the lifetime benefit maximum, the state needs to submit, and the federal CMS must approve, a state plan amendment (SPA) setting out an approvable lifetime limit policy.<sup>26</sup>

Because the lifetime benefit maximum is not included in the state plan and because federal regulations at 42 CFR 457.65(b) prohibit amendments that eliminate or restrict eligibility or benefits from being in effect for longer than a 60-day period before the submission of the SPA, the federal CMS has requested that account balances for all children currently enrolled in

<sup>24</sup> Correspondence from the federal Centers for Medicare & Medicaid Services (November 13, 2018) (on file with the Senate Committee on Health Policy).

<sup>25</sup> *Id.* See also 42 CFR 457.90 and 42 CFR 457.305(b).

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

Healthy Kids be reset to \$0.<sup>27</sup> The AHCA has agreed to reset all account balances of children currently enrolled in Healthy Kids to \$0 on January 1, 2020, and will not disenroll a child for reaching the lifetime maximum until the SPA is enacted on that same date.<sup>28</sup> Only services received after January 1, 2020, will count toward the aggregate lifetime limit.

### **Continuous Eligibility**

The federal CMS also noted that disenrolling children who hit a lifetime benefit maximum is inconsistent with the state's continuous eligibility policy and federal regulations.<sup>29</sup> Because this is not an approved exception to continuous eligibility as listed in 42 CFR 457.342 and 42 CFR 435.926(d), the federal CMS indicated it would approve the SPA only if the plan retained children who reach the lifetime benefit maximum in coverage through their annual redetermination date, unless a child meets an approved exception to continuous eligibility such as reaching the age of 19 or ceasing to be a Florida resident.<sup>30</sup>

### **Sufficient Notice to Parents or Caretakers**

Federal regulations in 42 CFR 457.340(e)(1)(iii) require a state to provide sufficient notice to enable the child's parent or caretaker to take appropriate actions to allow coverage to continue without interruption. The FHKC's policies were updated in May 2017 to require the managed care organizations to notify the FHKC when an enrollee exceeds \$700,000 in benefits.<sup>31</sup> The updates include steps that the FHKC will take to remind families of the lifetime limit and inform them of alternative coverage options.<sup>32</sup>

### **Opportunity to Review Suspension or Termination of Enrollment**

Federal regulations at 42 CFR 457.1130(a)(3) require a state to ensure that an applicant or enrollee has an opportunity for review of a suspension or termination of enrollment. Further, 42 CFR 457.1170 requires a state to ensure the opportunity for continuation of enrollment until the review of suspension or termination of enrollment is completed. Florida law does not provide the opportunity for review of the termination of enrollment of an enrollee who reaches the lifetime maximum.<sup>33</sup> Because there is no opportunity for such a review, there is no opportunity for the continuation of enrollment through the completion of the review.<sup>34</sup> The AHCA wrote that it will implement a process to provide impacted enrollees with a notice of adverse benefit determination when the enrollee reaches the lifetime maximum and that it will provide an enrollee the opportunity to dispute and seek review of any claims denials as a result of reaching

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<sup>27</sup> Correspondence from the federal Centers for Medicare & Medicaid Services (March 6, 2019) (on file with the Senate Committee on Health Policy).

<sup>28</sup> Correspondence from the Agency for Health Care Administration (June 7, 2019) (on file with the Senate Committee on Health Policy).

<sup>29</sup> *Supra* note 24.

<sup>30</sup> *Id.*

<sup>31</sup> Correspondence from the Agency for Health Care Administration (February 11, 2019) (on file with the Senate Committee on Health Policy).

<sup>32</sup> *Id.*

<sup>33</sup> *Supra* note 24.

<sup>34</sup> *Id.*

the limit through the claim-denial process administered by the FHKC's contracted managed care organizations.<sup>35, 36</sup>

### **Corrective Action Plan**

On July 26, 2019, the federal CMS approved a corrective action plan that addressed all of the following:<sup>37</sup>

- The intended submission of an SPA implementing the lifetime benefit maximum; the SPA becomes effective on January 1, 2020.
- The reenrollment of children disenrolled because they reached the lifetime limit. The State of Florida has confirmed that none of the previously disenrolled children will need to be reenrolled as they are no longer eligible for coverage, and therefore, no further action is necessary.
- The resetting of all account balances of children currently enrolled in Healthy Kids to \$0. Only services received after January 1, 2020, will count toward the lifetime benefit maximum.
- The State of Florida has demonstrated that the FHKC is notified by the health plan when an enrollee exceeds \$700,000 in aggregated claims.<sup>38</sup> In addition, a collaboration between the federal CMS, the State of Florida, and the FHKC will continue during the SPA review process to ensure that families are properly notified of the lifetime benefit maximum and to ensure families are not retroactively terminated from coverage.
- An enrollee who reaches the lifetime limit will receive a notice of adverse benefit determination should the child reach the lifetime limit and provide for a right to review (appeals) process. The federal CMS will continue to work with the State of Florida and the FHKC during the SPA review process to ensure compliance with federal regulations.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 409.815(2), F.S., to repeal the lifetime benefit maximum of \$1 million on covered expenses per child enrolled in the Healthy Kids program. Under the bill, no child will be disenrolled from the Healthy Kids program because he or she has reached the lifetime benefit maximum.

This section of the bill also conforms a cross-reference.

**Section 2** provides that the bill shall take effect upon becoming a law.

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<sup>35</sup> *Supra* note 31.

<sup>36</sup> *Supra* note 28.

<sup>37</sup> Correspondence from the federal Centers for Medicare & Medicaid Services (July 26, 2019) (on file with the Senate Committee on Health Policy).

<sup>38</sup> This includes the FHKC's contracted managed care organizations (MCOs) providing the name, address, and aggregate claims amounts for medical and pharmacy claims separately once a child hits \$700,000. The MCOs are also required to notify the FHKC if a child has a catastrophic incident, such as an automobile accident, that could result in the child quickly reaching or exceeding the \$700,000. At that time, the FHKC begins to identify other health insurance options that may be available once the child reaches the \$1 million lifetime benefit maximum and work with the child's family to transition to the new insurance. *See* email from the Florida Healthy Kids Corporation (December 9, 2019) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

**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:

None.

## C. Government Sector Impact:

According to an actuarial review performed by Mercer Government Human Services Consulting (Mercer) on behalf of the FHKC, the estimated cost of repealing the \$1 million lifetime benefit maximum of paid health benefit claims per child provided under the Healthy Kids program is shown in the table below:<sup>39</sup>

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<sup>39</sup> Correspondence from Mercer Government Human Services Consulting (August 16, 2019) (on file with the Senate Committee on Health Policy).



**Cost Estimates for Eliminating the Lifetime Cap on Healthy Kids Benefits**

<b>State Fiscal Year</b>	<b>General Revenue</b>	<b>Federal Match</b>	<b>Total</b>
2019-2020*	\$45,239	\$247,189	\$292,428
2020-2021	\$304,401	\$956,854	\$1,261,255
<b>Total</b>	<b>\$349,640</b>	<b>\$1,204,043</b>	<b>\$1,553,683</b>

\*4<sup>th</sup> quarter of State Fiscal Year 2019-2020

Mercer’s estimate is based upon the most recent Social Services Estimating Conference forecasts and estimates: July 17, 2019 KidCare Caseload, July 31, 2019 KidCare Expenditures, and August 6, 2019 Federal Medical Assistance Percentage (FMAP). Based on these estimates, the recurring General Revenue cost is likely to continue increasing in subsequent years.<sup>40</sup>

The AHCA has confirmed these estimates.<sup>41</sup>

The DOH and the DCF reported the bill will have no fiscal impact.<sup>42,43</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 409.815 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.)

None.

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<sup>40</sup> *Id.*

<sup>41</sup> Agency for Health Care Administration, *Senate Bill 348 Agency Analysis* (October 31, 2019) (on file with the Senate Committee on Health Policy).

<sup>42</sup> Department of Health, *Senate Bill 348 Agency Analysis* (October 7, 2019) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

<sup>43</sup> Department of Children and Families, *Senate Bill 348 Agency Analysis* (October 1, 2019) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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