

**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: SB 348

INTRODUCER: Senator Bean

SUBJECT: Florida Kidcare Program

DATE: November 5, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kibbey	Brown	HP	<b>Favorable</b>
2.			AHS	
3.			AP	

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**I. Summary:**

SB 348 removes the lifetime maximum cap of \$1 million on covered expenses for a child enrolled in the Florida Healthy Kids Program.

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 program is Florida's CHIP program. Florida KidCare 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 Florida KidCare program, codified in ss. 409.810-409.821, F.S., is an "umbrella" program. The components described below include Medicaid for children, the Florida Healthy Kids program, MediKids, and the Children's Medical Services Network:<sup>4</sup>

- *MediKids* is a Medicaid "look-alike" program 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 participate in the MediKids full-pay premium option.<sup>6</sup>
- *Healthy Kids* is for children ages 5 through 18. 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> Children in families whose income exceeds 200 percent of the FPL can 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 the end of age 18 who have 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* 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 age 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 Florida KidCare program components are responsible for paying monthly premiums and co-payments for certain services. The total monthly family payment for Title XXI enrollees is \$15 or \$20 for families with incomes between 133 percent and 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>

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<sup>3</sup> Chapter 1998-228, 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).

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

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

As of October 2019, 32,231 children are enrolled in subsidized MediKIDS; 8,755 children are enrolled in MediKIDS under the full-pay option; 195,020 children are enrolled in subsidized Healthy Kids; 16,190 children are enrolled in Healthy Kids under the full-pay option; 13,134 children are enrolled in the CMSN; and 1,289,840 children are enrolled in the Medicaid program.<sup>14</sup>

The KidCare program is jointly administered by the Agency for Health Care Administration (AHCA), the Florida Healthy Kids Corporation, the Department of Health, the Department of Children and Family Services, 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>• Distributes federal funds for Title XXI programs.</li> <li>• Manages the contract with the Florida Healthy Kids Corporation.</li> <li>• Develops and maintains the Title XXI Florida KidCare State Plan.</li> </ul>
Department of Children and Family Services <sup>16</sup>	<ul style="list-style-type: none"> <li>• Responsible for 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>• Chairs the Florida KidCare Coordinating Council.</li> <li>• In consultation with the Florida Healthy Kids Corporation and the Department of Children and Families, establish 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 contract with the AHCA to 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>
Office of Insurance Regulation <sup>19</sup>	<ul style="list-style-type: none"> <li>• Certifies that health benefits coverage plans seeking to provide services under the KidCare program, aside from services</li> </ul>

<sup>14</sup> Florida Healthy Kids, *Florida Kidcare Health and Dental Insurance 2019 General Annual Income Guidelines*, <https://www.healthykids.org/data/> (last visited Oct. 30, 2019).

<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.

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

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 Florida 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 Florida 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 Department of Children and Family Services for Medicaid eligibility determination, and children who appear to have a special health care need are referred to 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 Florida 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 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 were terminated from the Healthy Kids program, three became enrolled in Medicaid, eight were enrolled in the CMSN, and one became deceased.<sup>22</sup>

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<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> *Id.*

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
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
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

### 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 Florida Healthy Kids which was not set out in Florida's approved CHIP plan.<sup>23</sup> Because the lifetime maximum affects utilization controls and state disenrollment policies which are required to be set out in each state plan, federal CMS declared that Florida's plan was not in compliance with federal CHIP regulations.<sup>24</sup> If Florida intended to continue imposing the lifetime benefit maximum, the state would need to submit and federal CMS would need to approve a state plan amendment (SPA) setting out an approvable lifetime limit policy.<sup>25</sup>

Because the lifetime maximum was not represented 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, federal CMS has requested the FHKC to reset the account balances for all children currently enrolled in Healthy Kids to \$0.<sup>26</sup> The AHCA has agreed to reset all account balances of children

<sup>23</sup> Correspondence from the Centers for Medicare and Medicaid Services (November 13, 2018) (on file with the Senate Committee on Health Policy).

<sup>24</sup> *Id.* See also 42 CFR 457.90 and 42 CFR 457.305(b).

<sup>25</sup> *Id.*

<sup>26</sup> Correspondence from the Centers for Medicare and Medicaid Services (March 6, 2019) (on file with the Senate Committee on Health Policy).

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>27</sup> Only services received after January 1, 2020 would count towards the aggregate lifetime limit.

### **Continuous Eligibility**

Federal CMS noted that disenrolling children who hit a lifetime maximum is inconsistent with the state's continuous eligibility policy and federal regulations.<sup>28</sup> Because this is not an approved exception to continuous eligibility as listed in 42 CFR 457.342 and 42 CFR 435.926(d), federal CMS declared it would approve the state plan amendment only if the plan retained children who reach the lifetime 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 resident of this state.<sup>29</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 notify FHKC when an enrollee exceeds \$700,000 in benefits.<sup>30</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>31</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>32</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>33</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 Agency for Health Care Administration (June 7, 2019) (on file with the Senate Committee on Health Policy).

<sup>28</sup> Correspondence from the Centers for Medicare and Medicaid Services (November 13, 2018) (on file with the Senate Committee on Health Policy).

<sup>29</sup> *Id.*

<sup>30</sup> Correspondence from the Agency for Health Care Administration (February 11, 2019) (on file with the Senate Committee on Health Policy).

<sup>31</sup> *Id.*

<sup>32</sup> Correspondence from the Centers for Medicare and Medicaid Services (November 13, 2018) (on file with the Senate Committee on Health Policy).

<sup>33</sup> *Id.*

the limit through the claim-denial process administered by the FHKC's contracted managed care organizations.<sup>34, 35</sup>

### **Corrective Action Plan**

On July 26, 2019, federal CMS approved a corrective action plan that addresses all of the following:<sup>36</sup>

- The submission of an SPA effectuating the lifetime maximum which becomes effective on January 1, 2020.
- The lack of a need for the reenrollment of disenrolled children at that time because none of those children remained eligible for Healthy Kids.
- The resetting of all account balances of children currently enrolled in Healthy Kids to \$0 so that only services received after January 1, 2020, will count toward the lifetime maximum.
- A continued collaboration between federal CMS, this state, and the FHKC during the SPA review process to ensure that families are properly notified of the lifetime maximum and to ensure families are not retroactively terminated from coverage.
- Ensuring that an enrollee who reaches the lifetime limit receives a notice of adverse benefit determination.
- Providing for a right to review (appeals) process. Federal CMS will continue to work with the state 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 delete the lifetime maximum cap of \$1 million on covered expenses per child enrolled in the Florida Healthy Kids program. Under the bill, no child will be disenrolled from the Healthy Kids program because he or she has reached the lifetime maximum.

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

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

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

<sup>34</sup> Correspondence from the Agency for Health Care Administration (February 11, 2019) (on file with the Senate Committee on Health Policy).

<sup>35</sup> Correspondence from the Agency for Health Care Administration (June 7, 2019) (on file with the Senate Committee on Health Policy).

<sup>36</sup> Correspondence from the Centers for Medicare and Medicaid Services (July 26, 2019) (on file with the Senate Committee on Health Policy).

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 by Mercer Government Human Services Consulting on behalf of the FHKC, the costs for the Kidcare program associated with eliminating the lifetime cap on Healthy Kids benefits are estimated in the table below.<sup>37</sup>

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

State Fiscal Year	General Revenue	Federal Match	Total
2019-20*	\$45,239	\$247,189	\$292,428
2020-21	\$304,401	\$956,854	\$1,261,255
2021-22	\$379,255	\$1,040,052	\$1,419,307

\*4<sup>th</sup> quarter of SFY 2019-20

Based on these estimates, the recurring general revenue cost is likely to continue increasing in subsequent years.<sup>38</sup> The AHCA has confirmed these estimates.<sup>39</sup>

The Department of Health and the Department of Children and Families have both reported no fiscal impact under SB 348.

<sup>37</sup> Correspondence from Mercer Government Human Services Consulting (August 16, 2019) (on file with the Senate Committee on Health Policy).

<sup>38</sup> *Id.*

<sup>39</sup> Agency for Health Care Administration, *Senate Bill 348 Agency Analysis* (October 31, 2019) (on file with the Senate Committee on Health Policy).



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following section of the Florida Statutes: 409.815

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.