

**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 Appropriations

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BILL: SPB 2526

INTRODUCER: For consideration by Appropriations Committee

SUBJECT: Health

DATE: February 8, 2022

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

ANALYST

McKnight

STAFF DIRECTOR

Sadberry

REFERENCE

ACTION

**Pre-meeting**

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**I. Summary:**

SPB 2526 conforms statutes to the funding decisions related to Health Care in the Senate proposed General Appropriations Act for Fiscal Year 2022-2023. The bill:

- Provides a \$20 million appropriation, beginning in Fiscal Year 2022-2023 through Fiscal Year 2052-2053, to the H. Lee Moffitt Cancer Center and Research Institute (Moffitt) for construction and development of Moffitt's Pasco County life sciences park.
- Authorizes a pharmacist or wholesaler employed by or under contract with a forensic facility managed by the Agency for Persons with Disabilities for dispensing to clients treated in such center to import prescription drugs from an eligible Canadian supplier.
- Requires the Department of Children and Families (DCF) to make contracts with managing entities available in a publicly accessible format on the DCFs website.
- Requires the DCF to conduct a comprehensive, biennial review of the revenues, expenditures, and financial positions of managing entities covering the most recent two consecutive fiscal years.
- Requires managing entities to provide notice to a provider before it may be removed from the managing entity's comprehensive provider network.
- Repeals the MyFloridaRx by removing the requirement that the Agency for Health Care Administration make available on its website data collected regarding retail prices charged by pharmacies for the 300 most frequently prescribed medicines from pharmacies licensed within the state.
- Requires the Agency for Healthcare Administration (AHCA) to base the rates of payments in accordance with the minimum wage requirements as provided in the General Appropriations Act.

The bill takes effect on July 1, 2022.

## II. Present Situation:

### H. Lee Moffitt Cancer Center

The H. Lee Moffitt Cancer Center (Moffitt) was established by the Legislature in 1981, and opened to patients on Oct. 27, 1986.<sup>1</sup> Moffitt began its research on cancer in 1993 and became a National Cancer Institute (NCI) designated cancer center in 1998. In 2001, Moffitt achieved an NCI Comprehensive Cancer Center designation, indicating that it is one of “the strongest institutions in the nation dedicated to scientific innovation and excellence; to interdisciplinary research, training and education; and to coordinated recognition and pursuit of new research opportunities.” Currently, Moffitt is the only NCI-designated Comprehensive Cancer Center based in Florida.<sup>2</sup>

Moffitt treats cancer patients and performs cancer research and is Florida’s largest multidisciplinary medical group practice that is dedicated to cancer care. The Moffitt Medical Group (MMG), based at the Moffitt Cancer Center, also provides services at other hospitals and clinics throughout the State of Florida and beyond. The MMG consists of 377 oncology specialists, including 221 board-certified physicians and 156 advanced practice professionals, as well as other staff who specialize in nearly 30 cancer programs and services.<sup>3</sup> Additionally, Moffitt employs about 800 research faculty scientists, career staff scientists, postdocs, graduate students, and support staff dedicated to cancer research.<sup>4</sup>

Through funding with proceeds from the Cigarette Tax Collection Trust Fund, the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute are authorized to secure financing to pay costs related to constructing, furnishing, equipping, operating, and maintaining cancer research and clinical and related facilities; furnishing, equipping, operating, and maintaining other leased or owned properties; and paying costs incurred in connection with purchasing, financing, operating, and maintaining such equipment, facilities, and properties.<sup>5</sup>

### Canadian Prescription Drug Importation Program

Section 381.02035, F.S., authorizes the Agency for Health Care Administration (AHCA) to establish the Canadian Prescription Drug Importation Program (Program) for the importation of safe and effective prescription drugs from Canada which have the highest potential for cost savings to the state. The AHCA is required to contract with a vendor to:

- Develop a wholesale Prescription Drug Importation List.
- Verify that Canadian suppliers meet all requirements of the program.
- Contract with eligible Canadian suppliers.
- Consider which prescription drugs will provide the greatest cost savings to the state.
- Maintain a list of registered importers that participate in the program.

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<sup>1</sup> See <https://moffitt.org/about-moffitt/our-story/> (last visited Feb. 2, 2022).

<sup>2</sup> See <https://moffitt.org/about-moffitt/nci-designation/> (last visited Feb. 2, 2022).

<sup>3</sup> *Id.*

<sup>4</sup> See <https://moffitt.org/about-moffitt/research/> (last visited Feb. 2, 2022).

<sup>5</sup> Section 210.201, F.S.

- Ensure program participant compliance with Title II of the federal Drug Quality and Security Act.<sup>6</sup>

Eligible importers must comply with federal tracking and tracing requirements and may not distribute, dispense, or sell prescription drugs imported under the Program outside of the state. A pharmacist or wholesaler, employed by or under contract with, the following entities may import prescription drugs from Canadian suppliers:<sup>7</sup>

- The DOH's central pharmacy, for distribution to a county health department or free clinic;
- Medicaid recipients;
- The Department of Corrections;
- A developmental disability center, as defined in s. 393.063, F.S.; and
- A treatment facility, as defined in s. 394.455, F.S.

### **Agency for Persons with Disabilities Developmental Disability Centers**

Section 393.063(11), F.S., defines “developmental disability center” as a state-owned and state-operated facility, formerly known as a “Sunland Center,” providing for the care, habilitation, and rehabilitation of clients with developmental disabilities. The Agency for Persons with Disabilities (APD) manages two developmental disability centers for people who need structured residential care 24 hours a day, Sunland in Marianna, Florida and Tacachale in Gainesville, Florida.

The APD also manages forensic developmental disability facilities<sup>8</sup> pursuant to chapter 916, F.S. These forensic facilities are secure residential treatment facilities for individuals with developmental disabilities who have been charged with a felony crime and who have been found incompetent to proceed. The APD provides treatment and competency training while clients are committed to a forensic facility.<sup>9</sup>

### **Managing Entities**

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally established priority populations.<sup>10</sup>

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<sup>6</sup> Pub. L. No. 113-54, the Drug Quality and Security Act.

<sup>7</sup> Section 381.02035(7), F.S.

<sup>8</sup> Section 906.106(10), F.S., defines a “forensic facility” as a separate and secure facility established within the department or agency to serve forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from nonforensic residents.

<sup>9</sup> Agency for Persons with Disabilities, *Long Range Program Plan (September 30, 2021)*, available at: <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23172&DocType=PDF> (last visited February 1, 2022).

<sup>10</sup> See chs. 394 and 397, F.S.

In 2001, the Legislature authorized the DCF to implement behavioral health managing entities (ME)<sup>11</sup> as the management structure for the delivery of local mental health and substance abuse services.<sup>12</sup> The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.<sup>13</sup> Full implementation of the statewide ME system occurred in 2013 and all geographic regions are now served by a managing entity.<sup>14</sup>

The DCF contracts with the following seven MEs below:

- Northwest Florida Health Network.
- Lutheran Services Florida.
- Central Florida Cares Health System.
- Central Florida Behavioral Health Network, Inc.
- Southeast Florida Behavioral Health.
- Broward Behavioral Health Network, Inc.
- Thriving Mind South Florida.<sup>15</sup>

The MEs in turn contract with local service providers for the delivery of mental health and substance abuse services.<sup>16</sup> In Fiscal Year 2020-21, the network service providers under contract with the MEs served 225,927 individuals.<sup>17</sup>

### **MyFloridaRx**

Since June 2005, the AHCA, in consultation with the Attorney General's Office, has published retail prices for select prescription drugs through a searchable consumer website, [www.MyFloridaRx.com](http://www.MyFloridaRx.com).<sup>18</sup> Currently, the AHCA is required to list on its website retail drug prices, by pharmacy, for a 30-day supply of the 300 most frequently prescribed medications from any pharmacy licensed in the state and to update the prices monthly.<sup>19</sup> Visitors to the website can search for pricing information by county, city, or name of the medication they need. The search output displays pharmacy name, address, and telephone number; pharmacy zip code; drug name and strength; most commonly dispensed quantity; and price.<sup>20</sup> There are also a number of private

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<sup>11</sup> The Florida Department of Children and Families (DCF), *Managing Entities*, at <https://www.myflfamilies.com/service-programs/samh/managing-entities/> (last visited Feb. 2, 2022)

<sup>12</sup> Chapter 2001-191, L.O.F.

<sup>13</sup> Chapter 2008-243, L.O.F.

<sup>14</sup> Florida Tax Watch, *Analysis of Florida's Behavioral Health Managing Entity Models*, p. 4, March 2015, available at <https://floridatxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/15758/Analysis-of-Floridas-Behavioral-Health-Managing-Entities-Model> (last visited Feb. 2, 2022).

<sup>15</sup> The DCF, *Assessment of Behavioral Health Services, Fiscal Year 2021-2022*, Dec. 1, 2021, p. 5, available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/Assessment%20of%20Behavioral%20Health%20Services%20FY%2021-22%20with%20Appendix%201.pdf> (last visited Feb. 2, 2022)(hereinafter cited as "The 2021-2022 Report").

<sup>16</sup> Managing entities create and manage provider networks by contracting with service providers for the delivery of substance abuse and mental health services.

<sup>17</sup> The 2021-2022 Report at p. 10.

<sup>18</sup> See <http://www.myfloridarx.com/>.

<sup>19</sup> Section 408.062(1)(h), F.S.

<sup>20</sup> Agency for Health Care Administration, Senate Bill 888 Analysis (Feb. 3, 2017) (on file with the Senate Appropriations Subcommittee on Health and Human Services).

companies that provide free, up-to-date consumer-friendly websites with the same services required of MyFloridaRx.

### **Florida Minimum Wage**

The State Constitution establishes the amount of the minimum wage and the procedure for calculating increases in the minimum wage.<sup>21</sup> On November 3, 2020, Florida voters approved Amendment 2, which amended the State Constitution to gradually increase the state's minimum wage to \$15.00 an hour by the year 2026.<sup>22</sup> Pursuant to the passage of Amendment 2, on September 30, 2021, Florida's minimum wage increased to \$10.00 per hour. Each year, thereafter, Florida's minimum wage will increase by \$1.00 until the minimum wage reaches \$15.00 per hour on September 30, 2026.<sup>23</sup> Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it has been since 2005.

The Fiscal Year 2021-2022 General Appropriations Act (GAA) directed each state agency to identify state contracts impacted by Amendment 2, and provide the estimated increased annual costs, provided incrementally and cumulatively, to implement the required minimum wage increases through calendar year 2026.<sup>24</sup>

### **Florida Medicaid Program**

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan approved by the federal Centers for Medicare and Medicaid Services (CMS). The state plan establishes groups of individuals covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements.

Florida's Medicaid program is administered by the AHCA and financed with federal and state funds. According to the most recently published estimates, approximately 5 million Floridians are currently enrolled in Medicaid,<sup>25</sup> and the program's projected expenditures for the 2022-2023 fiscal year are \$36.2 billion.<sup>26</sup>

In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups<sup>27</sup>) and gives states the flexibility to cover other population groups

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<sup>21</sup> FLA. CONST. art. X, s. 24(c).

<sup>22</sup> United States Department of State, Notice of Increase to State of Florida's Minimum Wage, available at <https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf> (last visited Feb. 1, 2022).

<sup>23</sup> Department of Economic Opportunity, Florida's Minimum Wage, available at [https://floridajobs.org/docs/default-source/business-growth-and-partnerships-for-employers/posters-and-required-notices/2021-minimum-wage/september-2021/florida-minimum-wage-september-2021-announcement.pdf?sfvrsn=c12151b0\\_4](https://floridajobs.org/docs/default-source/business-growth-and-partnerships-for-employers/posters-and-required-notices/2021-minimum-wage/september-2021/florida-minimum-wage-september-2021-announcement.pdf?sfvrsn=c12151b0_4) (last visited Feb. 1, 2022)

<sup>24</sup> Chapter 2021-36, Section 8, s. 9, Laws of Fla.

<sup>25</sup> Agency for Health Care Administration, *Monthly Eligible Report for December 2021*, available at [https://ahca.myflorida.com/Medicaid/Finance/data\\_analytics/eligibles\\_report/docs/program\\_cnty\\_2021-12-31.pdf](https://ahca.myflorida.com/Medicaid/Finance/data_analytics/eligibles_report/docs/program_cnty_2021-12-31.pdf) (last visited Feb. 1, 2022).

<sup>26</sup> See Social Services Estimating Conference, *Medicaid Caseloads and Expenditures, December 22, 2021 and January 4 and 10, 2022, Executive Summary*, available at <http://edr.state.fl.us/content/conferences/medicaid/execsummary.pdf> (last visited Feb. 1, 2022).

<sup>27</sup> Section 409.903, F.S.

(optional eligibility groups<sup>28</sup>). States set individual eligibility criteria within federal minimum standards. The AHCA may seek an amendment to the state plan as necessary to comply with federal or state laws or to implement program changes. States send state plan amendments to the federal CMS for review and approval.<sup>29</sup>

Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service (FFS) or managed care. Under FFS, health care providers are paid by the state Medicaid program for each service provided to a Medicaid enrollee. Under managed care, the AHCA contracts with private managed care plans for the coordination and payment of services for Medicaid enrollees. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan.

In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program.<sup>30</sup> The SMMC program has two components, the Managed Medical Assistance (MMA) program and the Long-term Care program which provides home and community-based services to help people live in their homes or in a community setting, such as an assisted living or nursing facility. Florida's SMMC offers a health care package covering both acute and long-term care.<sup>31</sup> The SMMC benefits are authorized by federal authority and are specifically required in ss. 409.973 and 409.98, F.S.

The AHCA contracts with managed care plans on a regional basis to provide services to eligible recipients. The MMA program, which covers most medical and acute care services for managed care plan enrollees, was fully implemented in August 2014, and the current contracts expire in 2024.<sup>32</sup>

### ***Nursing Home Prospective Payment System***

On October 1, 2018, Florida Medicaid nursing homes transitioned from facility-specific cost-based rates to the prospective rate reimbursement methodology, which determines rates in advance of payment. Section 409.908, F.S., provides the methodology and parameters for rate setting including reimbursement rates for direct care, indirect care, and operating costs.

Due to the COVID-19 Public Health Emergency, Florida Medicaid nursing homes are experiencing a decline in Medicaid occupancy rates thereby negatively impacting revenue. To assist Florida Medicaid nursing homes impacted by significant occupancy declines and a tight labor market with increasing wages and shortage of staff resources, the Florida Joint Legislative Budget Commission approved additional spending authority in November 2021, to provide a temporary, nonrecurring rate increase to Florida Medicaid nursing homes over a three-month

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<sup>28</sup> Section 409.904, F.S.

<sup>29</sup> Medicaid.gov, *Medicaid State Plan Amendments*, available at <https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html> (last visited Mar. 22, 2021).

<sup>30</sup> Medicaid.gov, *Medicaid State Plan Amendments*, available at <https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html> (last visited Mar. 22, 2021).

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

<sup>32</sup> Chapter 2020-156, s. 44, Laws of Fla.

period. The temporary increased reimbursement rates returned to the reimbursement rates in effect prior to the increase at the conclusion of the three-month period.<sup>33</sup>

### ***Impact of the Minimum Wage Increase***

Pursuant to the Fiscal Year 2021-2022 GAA, State of Florida agencies are required to review all agency contracts that may be impacted by the minimum wage increase and provide potential impacts by year through calendar year 2026.<sup>34</sup> The AHCA retained Milliman, Inc. (Milliman) to estimate the impact of the change in the minimum wage to the AHCA's expenditures over the next five state fiscal years (July to June) and rate years (October to September).<sup>35</sup>

Milliman calculated the estimated impact of the minimum wage increases by year assuming that the Medicaid fee schedules will be updated to reflect the estimated increases in direct care costs for services paid by the AHCA (FFS costs) or costs paid by capitated health plans the AHCA contracts with to provide services for certain populations (managed care plans). Milliman categorized expenditures into four broad categories of service to estimate the provider mix and resulting impact of wage changes (hospital services, professional services, home and community-based services, and nursing facility services) and into two managed care groupings (FFS and managed care).<sup>36</sup>

Milliman used research and data from the Occupational Employment and Wage Statistics, and the United States Bureau of Labor Statistics. They also extrapolated and pulled out non-wage related expenses such as overhead and benefits to estimate the impact of wage changes for each grouping.<sup>37</sup>

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

**Section 1** amends s. 201.201, F.S., to require that \$20 million be appropriated and transferred, beginning in the 2022-2023 fiscal year and annually through the 2052-2053 fiscal year, to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute for construction and development of Moffitt's Pasco County life sciences park. These funds may be used to secure financing to pay costs related to the construction and development of Moffitt's Pasco County life science park. Such financing may include the issuance of tax-exempt bonds or other forms of indebtedness by a local authority, municipality, or county pursuant to parts II and III of chapter 159.

**Section 2** amends s. 381.02035, F.S., to expand the list of eligible pharmacists or wholesalers who can import drugs under the Canadian Drug Importation Program to include a pharmacist or wholesaler employed by or under contract with a forensic facility, as defined in s. 916.106, F.S., that are managed by the Agency for Persons with Disabilities.

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<sup>33</sup> Florida Joint Legislative Budget Commission, *November 4, 2021 Meeting Packet, Agency for Health Care Administration EOG Number: B2022-0216*, available at <http://www.leg.state.fl.us/Data/Committees/Joint/JLBC/Meetings/Packets/110421.pdf> (last visited Feb. 2, 2022).

<sup>34</sup> Chapter 2021-36, Section 8, s. 9, Laws of Fla.

<sup>35</sup> Milliman, Inc., *State of Florida – Agency for Health Care Administration, Estimated Fiscal Impact of Florida Minimum Wage Increases*, November 17, 2021 (on file with the Senate Appropriations Subcommittee on Health and Human Services).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

**Section 3** amends s. 394.9082, F.S., to require the Department of Children and Families (DCF) to make contracts with managing entities available in a publicly accessible format on the DCF's website; to conduct a comprehensive, biennial review of the revenues, expenditures, and financial positions of managing entities covering the most recent two consecutive fiscal years; and to require managing entities to provide notice to a provider before it may be removed from the managing entity's comprehensive provider network.

**Section 4** amends s. 408.062, F.S., to repeal the MyFloridaRx by removing the requirement that the Agency for Health Care Administration (AHCA) make available on its website data collected regarding retail prices charged by pharmacies for the 300 most frequently prescribed medicines from pharmacies licensed within the state.

**Section 5** amends s. 409.908, F.S., to require the AHCA to base the rate of payments in accordance with the minimum wage requirements in the General Appropriations Act.

**Section 6** provides an effective date of July 1, 2022.

#### **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:

***Canadian Prescription Drug Importation Program***

Pharmacists and wholesalers who are employed by or under contract with certain forensic facilities that are managed by the Agency for Persons with Disabilities are eligible to participate as importers under the Canadian Prescription Drug Importation Program (Program) which they are not currently able to do. To the extent that such entities participate in the Program to import less expensive drugs, they may experience cost savings which may be passed along to entities that purchase those drugs in Florida.

***Managing Entities***

The bill may have an insignificant, yet indeterminate fiscal impact on the managing entities that are required to submit a report biannually to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

C. Government Sector Impact:

***H. Lee Moffitt Cancer Center and Research Institute***

The bill requires that \$20 million be appropriated and transferred, beginning in the 2022-2023 fiscal year and annually through the 2052-2053 fiscal year, to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute for construction and development of Moffitt's Pasco County life sciences park.

***Canadian Prescription Drug Importation Program***

The bill has the potential to bring savings to the APD's developmental disability defendant program through lowering the cost of prescription drugs to individuals served by the Program, however, the cost savings are currently indeterminate.

***Managing Entities***

The bill requires the Department of Children and Families to post its contracts with MEs on its website, which will have a positive, insignificant impact which likely can be absorbed with existing resources.

***MyFloridaRx***

Repealing MyFloridaRx may yield a significant positive net fiscal impact to the General Revenue Fund. The Agency for Health Care Administration estimates a fiscal impact of \$1 million in general revenue funds is needed to modernize MyFloridaRx.<sup>38</sup>

***Nursing Homes Minimum Wage Increase***

The estimated total fiscal impact on raising wages of employees of Medicaid nursing home providers who provide services under the Florida Medicaid program to at least \$15.00 per hour in Fiscal Year 2022-2023 is \$98 million, of which \$39 million is general

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<sup>38</sup> Agency for Health Care Administration, *Governor's Budget Recommendations, Fiscal Year 2022-2023* (on file with the Senate Appropriations Subcommittee on Health and Human Services).

revenue, and \$130.5 million, of which \$52 million is general revenue, for each recurring year.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 210.201, 381.02035, 394.9082, 408.062, and 409.908.

**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.

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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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<sup>39</sup> Milliman, Inc., *State of Florida – Agency for Health Care Administration, Estimated Fiscal Impact of Florida Minimum Wage Increases*, November 17, 2021 (on file with the Senate Appropriations Subcommittee on Health and Human Services).