

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** SB 2526 Health

**SPONSOR(S):** Appropriations

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

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**FINAL HOUSE FLOOR ACTION:** 107 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

SB 2526 passed the House on March 14, 2022, as amended by the Conference Committee.

The bill conforms statute to the 2022-2023 General Appropriations Act. The bill:

- Provides that the "Tobacco Settlement Clearing Trust Fund" shall be referred to as the "Lawton Chiles Trust Fund";
- Authorizes a pharmacist or wholesaler employed by or under contract with a forensic facility managed by the Agency for Persons with Disabilities to import prescription drugs from an eligible Canadian supplier for dispensing to clients;
- Renames the "Florida Consortium of National Cancer Institute Centers Program" to the "Casey DeSantis Cancer Research Program";
- Requires the Department of Children and Families (DCF) to make contracts with managing entities available in a publicly accessible format on DCF's website;
- Requires DCF to conduct a comprehensive, multiyear review of the revenues, expenditures, and financial positions of managing entities covering the most recent two consecutive fiscal years and submit the review to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of every other year, beginning in 2023;
- Requires managing entities to provide notice to a provider prior to removing the provider from the managing entity's comprehensive provider network;
- Provides a new eligibility category for the Title XXI State Children's Health Insurance Program for continued coverage for the duration of a pregnancy and the extended postpartum period consisting of the 12-month period beginning on the last day of pregnancy, if such pregnancy or postpartum period begins prior to the child reaching 19 years of age, and if the child is ineligible for Medicaid; and
- Requires the Agency for Health Care Administration to base Medicaid Nursing Home rates of payment in accordance with the minimum wage requirements as provided in the General Appropriations Act.

Except for Section 2 of the bill which related to an appropriation to the H. Lee Moffit Cancer Center and Research Institution (Lines 78 through 93), which was line item vetoed, the bill was approved by the Governor on June 2, 2022, ch. 2022-150, L.O.F., and will become effective on July 1, 2022.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **The Tobacco Settlement Clearing Trust Fund**

##### Background

Created within the Department of Financial Services (DFS), the Tobacco Settlement Clearing Trust Fund is the central depository of payments received by the state from the settlement of *State of Florida v. American Tobacco Co.*, No. 95-1466AH. DFS disburses these funds, by nonoperating transfer, from the Tobacco Settlement Clearing Trust Fund to the tobacco settlement trust funds of the various agencies or to the Biomedical Research Trust Fund within the Department of Health (DOH), as appropriate, in amounts equal to the annual appropriations made from those agencies' trust funds in the General Appropriations Act.

##### Effect of the Bill

The bill amends s. 17.41(1), F.S., to provide that the "Tobacco Settlement Clearing Trust Fund" shall be referred to as the "Lawton Chiles Trust Fund."

#### **Canadian Prescription Drug Importation Program**

##### Background

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; and
- Ensure program participant compliance with Title II of the federal Drug Quality and Security Act.

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:

- 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.

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 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.

##### Effect of the Bill

The bill expands the list of eligible pharmacists or wholesalers who can import drugs under the Program to include pharmacists or wholesalers employed by or under contract with a forensic facility managed by the APD.

## **Florida Consortium of National Cancer Center Institute Programs**

### Background

The National Cancer Institute (NCI) is the federal government's principal agency for cancer research and training. In 2014, the Legislature established the Florida Consortium of National Cancer Institute Centers Program (NCI Program) to enhance the quality and competitiveness of cancer care in Florida, further a statewide biomedical research strategy directly responsive to the health needs of Florida's citizens, and capitalize on the potential educational opportunities available to students. Under the NCI Program, DOH makes quarterly distributions to Florida-based cancer centers that are NCI-designated cancer centers or comprehensive cancer centers, as well as cancer centers working toward achieving designation. DOH calculates allocations on tier-allocated weights for distributing funds to participating cancer centers. The tier-allocated weights are based on the NCI status:

- Tier 1: NCI-designated comprehensive cancer centers.
- Tier 2: NCI-designated cancer centers.
- Tier 3: Cancer centers seeking designation as either an NCI-designated cancer center or NCI-designated comprehensive cancer center.

Three cancer centers participate in the NCI Program:

- Moffitt Cancer Center, which is an NCI-designated a comprehensive cancer center;
- Sylvester Comprehensive Cancer Center at the University of Miami, which is an NCI-designated a cancer center; and
- The University of Florida Health Cancer Center, which is pursuing an NCI designation.

### Effect of the Bill

The bill renames the "Florida Consortium of National Cancer Institute Centers Program" as the "Casey DeSantis Cancer Research Program."

## **Managing Entities**

### Background

The Department of Children and Families (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.

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

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., and

- Thriving Mind South Florida.

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

#### Effect of the Bill

The bill amends s. 394.9082, F.S., to require the DCF to make contracts with MEs available in a publicly accessible format on DCF's website.

The bill requires DCF to conduct a comprehensive, multiyear review of the revenues, expenditures, and financial positions of the MEs covering the most recent two consecutive fiscal years. The review must include a comprehensive system-of-care analysis. DCF must submit the review to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of every other year, beginning in 2023.

The bill also requires MEs to provide notice to a provider prior to removing the provider from the ME's comprehensive provider network.

### **Medicaid Postpartum Eligibility**

#### Background

Chapter 2021-41, Laws of Florida, provides Medicaid coverage to pregnant women for their entire pregnancy and twelve months after. Prior to this law, Medicaid only covered pregnant women during their pregnancy and 60 days after. Medicaid pays for approximately 50% of Florida's births and provides health care coverage for just under half the state's children. About 700 women die each year in the United States as a result of pregnancy or delivery complications. The extension of full Medicaid benefits to these women for twelve months, improves access to care, leads to better health outcomes, and combats maternal mortality.

In order to implement the twelve month postpartum period for the Medicaid program, the federal Centers for Medicare and Medicaid Services (CMS) indicated that the state must extend postpartum eligibility coverage for the state's Children's Health Insurance Program (CHIP) beneficiaries who are pregnant.

Florida's CHIP program covers children through the age of 18 in families with incomes up to 200% of the federal poverty level and covers maternal and newborn care services, including prenatal and postnatal care in accordance with s. 409.815(2)(d), F.S. However, CHIP does not currently provide for a postpartum eligibility period for those who would otherwise lose CHIP eligibility due to age, income, or other factors.

#### Effect of the Bill

The bill creates s. 409.804(4), F.S., to provide a new eligibility category for the Title XXI State Children's Health Insurance Program for continued coverage for the duration of a pregnancy and the extended postpartum period consisting of the 12-month period beginning on the last day of pregnancy, if such pregnancy or postpartum period begins prior to the child reaching 19 years of age, and if the child is ineligible for Medicaid.

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

#### Background

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 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.

## **Florida Minimum Wage**

### Background

The State Constitution establishes the amount of the minimum wage and the procedure for calculating increases in the minimum wage. 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. 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. 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.

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). 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 that 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 care groupings (FFS and managed care). Milliman used research and data from the Occupational Employment and Wage Statistics, and the United States Bureau of Labor Statistics. They also extrapolated and eliminated non-wage related expenses such as overhead and benefits to estimate the impact of wage changes for each grouping.

### Effect of the Bill

The bill amends s. 409.908(2), F.S., to require the AHCA to base Medicaid Nursing Home rates of payment in accordance with the minimum wage requirements as provided in the General Appropriations Act.

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

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The GAA for Fiscal Year 2022-2023 appropriates \$212.8 million, of which \$84.5 million is General Revenue, to Medicaid nursing homes for the purpose of raising wages of employees of nursing home providers to at least \$15.00 per hour.

The bill requires the DCF to post its contracts with MEs on its website, which will have a negative, insignificant impact which can be absorbed within existing resources.

The bill has a potential 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 indeterminate.

The bill may have a negative fiscal impact by creating a new eligibility category for the state's CHIP Program; however, the fiscal impact is indeterminate, but likely insignificant.

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Employees of nursing homes will have their wages raised to a minimum of \$15 per hour.

**D. FISCAL COMMENTS:**

None.