

**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.)

Prepared By: The Professional Staff of the Health Policy Committee

BILL: SB 2684

INTRODUCER: Senator Crist

SUBJECT: Optional Payments for Medical Assistance

DATE: April 12, 2008                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner	Wilson	HP	<b>Favorable</b>
2.			CF	
3.			HA	
4.				
5.				
6.				

**I. Summary:**

The bill establishes new Medicaid “buy-in” coverage for working disabled individuals aged 16 through 64 who would be eligible for Supplemental Security Income (SSI) if earnings equal to 250 percent of the Federal Poverty Level (FPL) were disregarded, and if the individuals unearned income does not exceed 88 percent of the FPL. Individuals must also pass an asset test that specifies that after disregarding \$8,000 in assets for an individual and \$9,000 for a couple, the remaining countable assets must be within the \$2,000 SSI asset limit (\$3,000 for a couple). An additional car exclusion applies if there is a spouse.

The bill also requires the Agency for Health Care Administration (AHCA) to seek amendments to existing Medicaid waiver coverage groups that would allow those who are eligible under the proposed Medicaid buy-in to be eligible to receive services provided under a disabled waiver program.

This bill amends s. 409.904, F.S., and creates an undesignated section of law.

**II. Present Situation:**

**Florida Medicaid Program**

Florida’s Medicaid Program is jointly funded by the federal, state, and county governments to provide medical care to eligible individuals. Florida implemented its Medicaid program on January 1, 1970, to provide medical services to indigent people. The AHCA is the single state agency responsible for the Florida Medicaid Program. The statutory provisions for the Medicaid program appear in ss. 409.901 through 409.9205, F.S.

Some Medicaid services are mandatory services that must be covered by any state participating in the Medicaid program pursuant to federal law.<sup>1</sup> Other services are optional. A state may choose to include optional services in its state Medicaid plan, but if included, such services must be offered to all individuals statewide who meet Medicaid eligibility criteria as though they are mandatory benefits.<sup>2</sup> Similarly, some eligibility categories are mandatory<sup>3</sup> and some are optional.<sup>4</sup> Payments for services to individuals in the optional eligibility categories are subject to the availability of monies and any limitations established by the General Appropriations Act or chapter 216, Florida Statutes.

For FY 2008-09, the Florida Medicaid Program is projected to cover 2.25 million people<sup>5</sup> at an estimated cost of \$15.8 billion.<sup>6</sup>

### **Medicaid Buy-In Programs**

Legislation enacted by Congress in 1999, provided states the option and flexibility regarding the ability of people with disabilities to join the workforce without loss of their Medicaid coverage, and allowed individuals with disabilities who work to “buy in” to a state’s Medicaid program. This Medicaid buy-in program is based on the Ticket to Work and Work Incentives Improvement Act (TWWIIA). The working disabled or disabled persons who desire to attempt employment have limits on the amount of income they may earn in order to maintain their Medicaid benefits. This may create a disincentive to employment. The legislation also permits states to set more liberal income and asset limits for eligibility purposes.

Under Public Law 106-170, states may permit working individuals with earnings above 250 percent of the FPL (FPL) to purchase Medicaid coverage (buy-in). Under Medicare, coverage is also provided for those working people with disabilities with extended Part A premium-free hospital insurance coverage for at least four and one-half years beyond the previous limit of four years, making it a total of eight and one-half years. Individuals must continue to have a medical impairment but may work in spite of the impairment.

### **Florida’s Medicaid Buy-In Program**

Florida has had variations of Medicaid buy-in programs for several years. Florida established the Assistance for the Uninsured program in 1991.<sup>7</sup> The program required the department [then that Department of Health and Rehabilitative Services or HRS] to use its claims payment systems, utilization control systems, cost control systems, case management systems, and other systems and controls that it has developed for the management and control of the Medicaid program to assist other agencies and private entities to solve problems of lack of insurance, underinsurance, or uninsurability in the general population.

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<sup>1</sup> These mandatory services are codified in s. 409.905, F.S.

<sup>2</sup> Optional services covered under the Florida Medicaid Program are codified in s. 409.906, F.S.

<sup>3</sup> S. 409.903, F.S.

<sup>4</sup> S. 409.904, F.S.

<sup>5</sup> <http://edr.state.fl.us/conferences/medicaid/medcases.pdf> (last visited on April 12, 2008).

<sup>6</sup> <http://edr.state.fl.us/conferences/medicaid/medhistory.pdf> (last visited on April 12, 2008)

<sup>7</sup> S. 409.914, F.S.

In 1993, the department [HRS] was charged with seeking federal authority to implement a Medicaid buy-in program to provide medical assistance to persons ineligible for Medicaid because of current income and categorical restrictions. The agency was required to use funds provided by the Robert Wood Johnson Foundation to assist in developing the buy-in program, including, but not limited to: the determination of eligibility and service coverages; cost sharing requirements; managed care provisions; and changes needed to the Medicaid program's claims processing, utilization control, cost control, case management, and provider enrollment systems to operate a buy-in program. The buy-in program was charged with providing medical assistance coverage for persons with incomes up to 250 percent of the FPL. However, the agency was prohibited from implementing a buy-in program until it received necessary federal authorization and state appropriations. No funds were allocated and the program was not implemented, even though it is still in statute.

In 2002, Florida opted to fund and implement a Medicaid "buy-in" program effective April 1, 2002, for disabled individuals who had earned income, after established disregards, that did not exceed 250 percent of the FPL and who met other existing factors of eligibility. The program was eliminated effective July 1, 2002 as a result of the 2002 Special Legislative Session. The total enrollment for the program during this 3-month period was 19. This low enrollment may have been attributed to the fact that potentially eligible individuals were informed upfront that the benefits would only be provided for a three-month period.

### **Medicaid Home and Community-Based-Services Waiver Programs**

In 1981, the U.S. Congress approved the use of Medicaid home and community-based-services (HCBS) waiver programs to allow states to provide certain Medicaid services in the home for persons who would otherwise require institutional care in a hospital, nursing facility, or intermediate care facility. These programs are federally-approved Medicaid initiatives authorized by Title XIX of the Social Security Act, Section 1915.

States may offer a variety of services to consumers under an HCBS waiver program and the number of services that can be provided is not limited. These programs may provide a combination of both traditional medical services (i.e., dental services, skilled nursing services, etc.) as well as non-medical services (i.e., respite care, case management, environmental modifications, etc.). Family members and friends may be providers of waiver services if they meet the specified provider qualifications. The HCBS waiver programs are initially approved for 3 years and may be renewed at 5-year intervals.<sup>8</sup> If a state terminates an HCBS waiver, federal law requires that recipients receive continued services in an amount that does not violate the comparability of service requirements established in the Social Security Act.<sup>9</sup> In effect, the state has to transition recipients into programs with comparable services. Florida currently operates the following home and community-based-services waiver programs:<sup>10</sup>

- Adult Cystic Fibrosis;

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<sup>8</sup> U.S. Centers for Medicare and Medicaid Services. Found at: [http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/05\\_HCBSWaivers-Section1915\(c\).asp](http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/05_HCBSWaivers-Section1915(c).asp) (last visited on April 12, 2008).

<sup>9</sup> 42 C.F.R. 441.356.

<sup>10</sup> Found at: [http://www.fdhc.state.fl.us/Medicaid/hcbs\\_waivers/index.shtml](http://www.fdhc.state.fl.us/Medicaid/hcbs_waivers/index.shtml) (last visited on April 12, 2008).

- Aged/Disabled Adult Services;
- Adult Day Health Care;
- Assisted Living for the Elderly;
- Alzheimer's Disease;
- Channeling Services for the Frail Elderly;
- Consumer Directed Care Plus;
- Developmental Disabilities;
- Familial Dysautonomia;
- Family and Supported Living Model;
- Nursing Home Diversion;
- Project AIDS Care (PAC); and
- Traumatic Brain Injury and Spinal Cord Injury.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 409.904, F.S., specifying that, subject to federal authorization, a person may be eligible for Medicaid services as part of a Medicaid buy-in program established under s. 409.914(2), F.S., specifically designed to accommodate those persons made eligible for such a buy-in by Title II of Pub. L. No. 106-170, if the person:

- Is determined to be disabled and who, but for earnings, would be considered eligible for supplemental security income;
- Has countable earnings, taking into account supplemental security income and earned income disregards, which do not exceed 250 percent of the FPL and whose unearned income does not exceed 88 percent of the most current FPL; and,
- Has attained 16 years of age but is younger than 65 years of age.

A participant in the Medicaid buy-in program must be charged a premium based on a sliding scale once the participant's earned income exceeds 100 percent of the FPL. Assets excluded, in addition to those excluded under the supplemental security income program, are as follows:

- Cash assets in the amount of \$8,000 for a single individual and \$9,000 for a couple;
- Any retirement account recognized by the Internal Revenue Service; and,
- A second vehicle for a couple.

**Section 2.** Creates an undesignated section of law that requires the AHCA to seek amendments to Medicaid waivers serving persons with disabilities to provide that persons who are eligible for Medicaid under a Medicaid buy-in program authorized under s. 409.904(10), F.S., may be eligible for services under waivers if they otherwise meet the level of care qualifications for services under such a waiver.

**Section 3.** Provides that this bill takes effect July 1, 2008.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

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

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill would require modifications to: the FLORIDA system to create a new program coverage category code; the Florida Medicaid Information Management System (FMMIS); and the DCF reporting module. The estimated cost of these system modifications would be \$74,362.56.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:****Department of Children and Families**

- The bill allows for exclusion of IRAs; however, the federal Deficit Reduction Act of 2005 dictates how the states will treat certain types of retirement accounts, specifically annuities. It is not known if the intent of the bill is to only exclude work-related retirement funds.
- The bill also refers to the exclusion of “cash assets in the amount of \$8,000 or \$9,000.” It is not known if the intent is to only allow the exclusion to apply to bank accounts, certificates

of deposit (CDs), etc., and not to other assets the person may own that are not considered “cash.”

- It is not clear who will collect the premium, and who will develop the sliding scale. If it is determined to be the responsibility of the DCF, there would be a substantial fiscal impact.
- Section 2 of the bill requires the AHCA to seek amendments to existing Medicaid waiver coverage groups that would allow those who are eligible under the proposed Medicaid buy-in to be eligible to receive services provided under a disabled waiver program. Waivers currently cover specified eligibility groups and no separate application for a waiver is required if the person is already in a covered Medicaid category. Under this provision, waiver coverage would extend to the developmentally disabled and other disabled individuals who currently do not qualify for special waiver services because their income or assets are too high.

#### **VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.