Health Innovation Subcommittee

Wednesday, January 10, 2018
12:30 PM – 1:30 PM
Mashburn Hall (306 HOB)

Richard Corcoran
Speaker

MaryLynn Magar
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health Innovation Subcommittee

Start Date and Time:	Wednesday, January 10, 2018 12:30 pm
End Date and Time:	Wednesday, January 10, 2018 01:30 pm
Location:	Mashburn Hall (306 HOB)
Duration:	1.00 hrs

Consideration of the following bill(s):

HB 289 Provision of Pharmaceutical Services by Raschein
HB 293 Florida Kidcare Program by Duran
CS/HB 551 Pub. Rec./Health Care Facilities by Oversight, Transparency & Administration Subcommittee, Burton

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, January 9, 2018.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 9, 2018.

NOTICE FINALIZED on 01/08/2018 4:04PM by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 289 Provision of Pharmaceutical Services
SPONSOR(S): Raschein
TIED BILLS: **IDEN./SIM. BILLS:** SB 492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee		Grabowski	Crosier
2) Insurance & Banking Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Mail order pharmacy is a service used by insurers and employers to reduce prescription drug costs. Current state law does not prohibit an insurer from requiring insureds to use mail order pharmacy, or prohibit insurers from incentivizing its use by charging higher copayments to use a retail pharmacy.

HB 289 prohibits an insurer or health maintenance organization (HMO) from requiring an insured living with a chronic illness to use mail-order pharmacy, except for certain excluded drugs. The bill defines "chronic illness," as human immunodeficiency virus infection (HIV), epilepsy, hypertension, or diabetes.

In addition, the bill prohibits insurers and HMOs from requiring different copayments or conditions to use a retail pharmacy, if the pharmacy agrees to the same terms, conditions, and reimbursement amounts applicable to a mail order pharmacy. The bill requires insurers and HMOs to provide insureds with a chronic illness an explanation of the payment or reimbursement method and charges applicable to a mail order pharmacy and a comparison of such method and charges applicable to other providers of pharmaceutical services.

The bill requires mail order pharmacy contracts with insurers or HMOs to include a contract provision requiring the mail-order pharmacy to disclose to an insured living with a chronic illness the availability of pharmaceutical services from retail pharmacies and that the exclusive use of a mail order pharmacy is not required.

The bill has no impact on state government, but may have an indeterminate negative impact on local government employee health plans.

The bill has an effective date of January 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

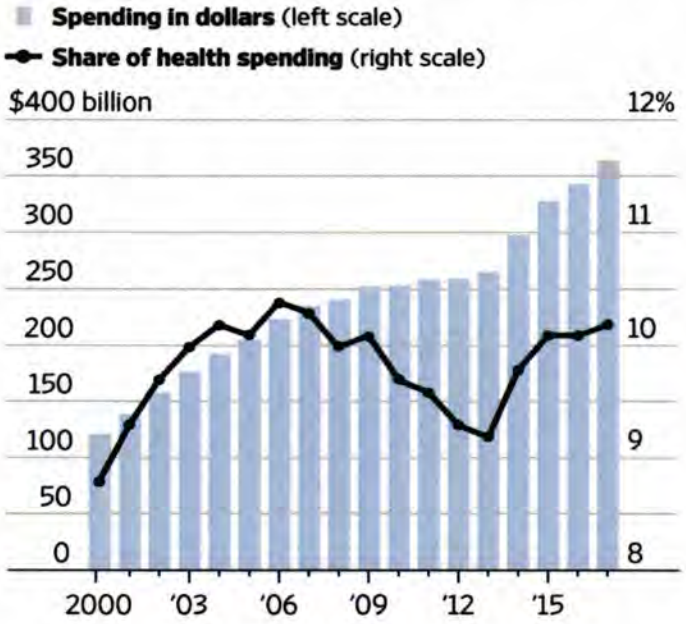
A. EFFECT OF PROPOSED CHANGES:

Background

Prescription Drug Costs

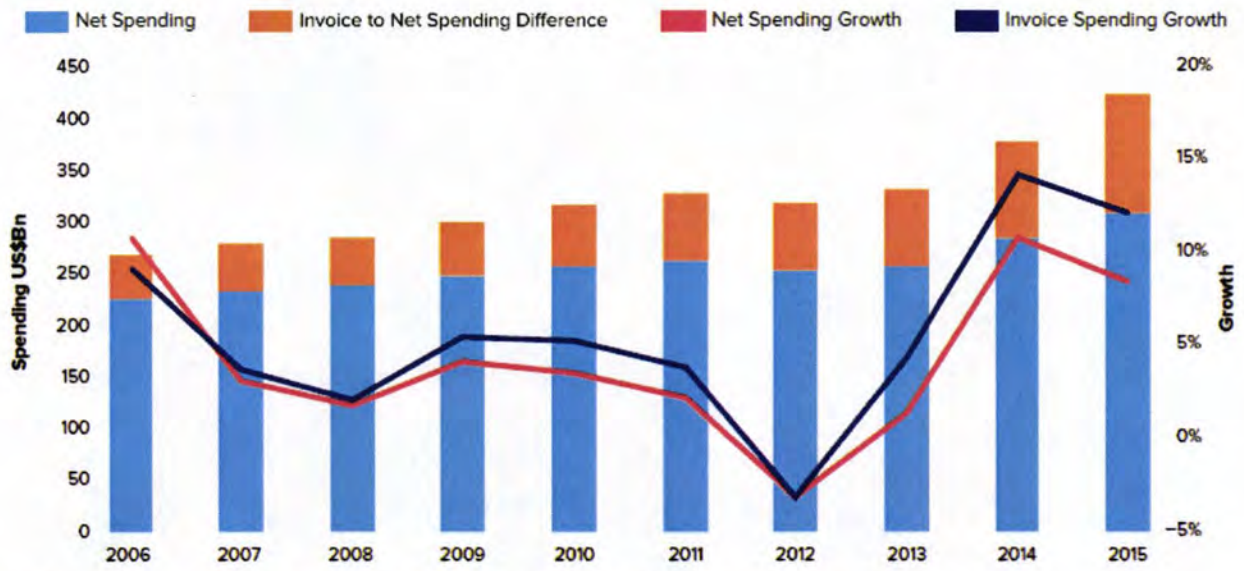
Spending on prescription drugs has risen sharply in the United States over the past few years.[1] From 2013 to 2015, out-of-pocket costs for prescription drugs rose 20 percent,[2] to an average cost of $44 per brand name prescription drug.[3] Additionally, prescription drug prices increased an average of almost 10 percent from June 2015 to May 2016.[4] Specialty prescription drug prices are projected to increase 18.7 percent in 2017, accounting for 35 percent of the prescription drug spending trend even though they account for less than one percent of prescriptions.[5] Recent increases in prescription drug prices are not only an increase in spending in terms of dollars, but also as a percentage of total healthcare spending.[6]

Prescription Drug Spending as a Share of Health Spending 2000-2017[7]



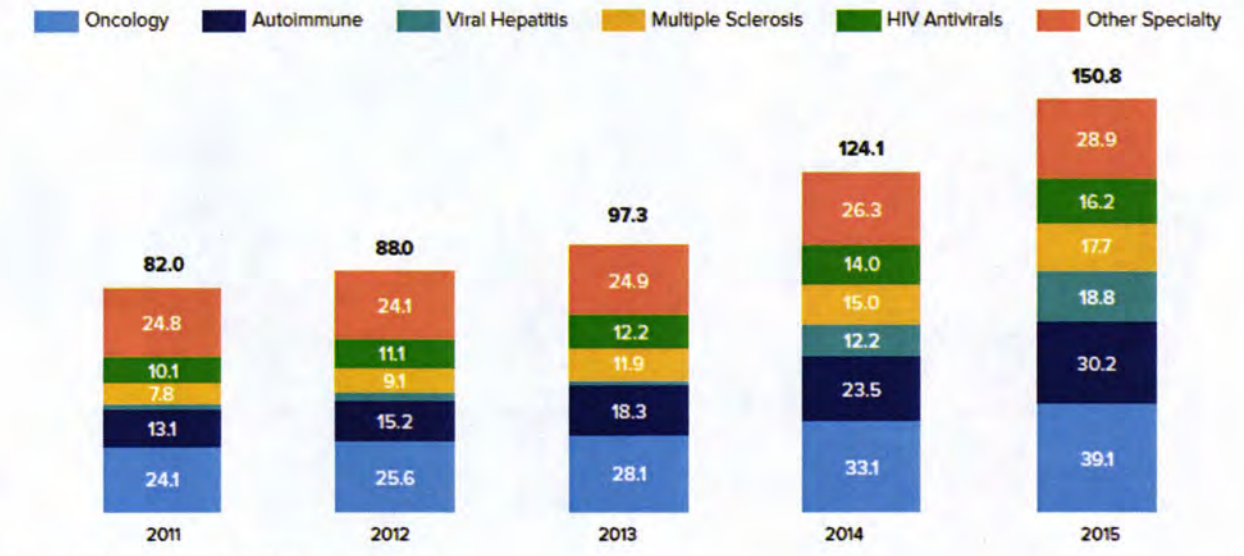
[1] Ameet Sarpatwari, Jerry Avorn, and Aaron S. Kesselheim, *State Initiatives to Control Medication Costs — Can Transparency Legislation Help?*, N. ENGL. J. MED. 2016; 374:2301-2304 Jun. 16, 2016, http://www.nejm.org/doi/full/10.1056/NEJMp1605100#t=article (last visited March 13, 2017).
[2] Troy Parks, *Drug pricing needs transparency, physicians say*, AMA WIRE, Jan. 26, 2017, https://wire.ama-assn.org/ama-news/drug-pricing-needs-transparency-physicians-say (last visited March 10, 2017).
[3] 2017 Segal Health Plan Cost Trend Survey, *available at*, https://www.segalco.com/media/2716/me-trend-survey-2017.pdf (last visited March 13, 2017)
[4] TRUVERIS, *Americans faced double digit increases in prescription drug prices in 2014, according to Truveris National Drug Index*, https://truveris.com/press-releases/ndi-americans-faced-double-digit-increases-in-prescription-drug-prices-in-2014/ (last visited March 13, 2017)
[5] *Supra*, note 3. Specialty drugs are high-cost prescription medications used to treat complex, chronic conditions and often require special handling and administration.
[6] CENTERS FOR MEDICARE AND MEDICAID SERVICES, *National Health Expenditures by Type of Service and Source of Funds: Calendar Years 1960 to 2015*, .zip file available at, https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical.html (Last visited March 13, 2017).
[7] Jonathan D. Rockoff, *How Do We Deal With Rising Drug Costs?*, THE WALL STREET JOURNAL, Apr. 10, 2016, https://www.wsj.com/articles/how-do-we-deal-with-rising-drug-costs-1460340357 (last visited March 13, 2017).

Total U.S. Spending on Prescription Drugs, 2015[8]



Source: IMS Health, National Sales Perspectives, Jan 2016; U.S. Census Bureau; U.S. Bureau of Economic Analysis

Total U.S. Spending on Specialty Prescription Drugs, 2015[9]



Source: IMS Health, National Sales Perspectives, Jan 2016

[8] *Medicines Use and Spending in the U.S. – A Review of 2015 and Outlook to 2020,* QUINTILESIMS, APR. 2016, http://www.imshealth.com/en/thought-leadership/quintilesims-institute/reports/medicines-use-and-spending-in-the-us-a-review-of-2015-and-outlook-to-2020 (last visited March 13, 2017).

[9] Id.

Prescription Drug Benefits

The federal Patient Protection and Affordable Care Act[10] (PPACA) requires qualified health plans to cover of essential health benefits (EHBs), meet cost-sharing limits, and meet actuarial value requirements.[11] The law directs that EHBs cover at least 10 specified categories, one of which is prescription drugs.

Health insurers and employers increasingly work with pharmacy benefit managers (PBMs) to provide a range of services related to the acquisition and distribution of prescription drugs.[12] PBMs negotiate with drug manufacturers to purchase drugs at reduced prices or with the promise of additional rebates. This negotiation process often involves the development of drug formularies that incentivize the use of some drugs over others.[13] PBMs also establish pharmacy networks for insurers and employers, which involves negotiating with pharmacies to set reimbursement amounts for prescription drugs dispensed to patients.

Mail-Order Pharmacy

PBMs often encourage the use of mail order programs to manage clients' rising prescription drug expenditures. This promotion is often coupled with copayment incentives and sometimes with benefit mandates for use of mail order pharmacy. For most major PBMs, mail order is an important component of the business model and represents a significant portion of overall profitability.[14]

PBMs and other proponents of mail order pharmacy argue that mail order options offer consumers both convenience and the potential for savings, relative to what would be paid at traditional retail pharmacies. Most mail order prescriptions are for maintenance-type medications, and they are typically dispensed in a 90-day supply via mail order versus 30-day dispensing that is common at retail pharmacies.[15] Mail order use improves medication adherence – a term that refers to situations in which a patient take his or her medication as directed by a physician.[16] One recent study examined a large cohort of diabetes patients and found that patients using mail order pharmacy demonstrated significantly higher rates of adherence than those who filled their anti-diabetic medications at a traditional pharmacy.[17]

Proponents of traditional retail pharmacies have identified drawbacks associated with the use of mail order pharmacy programs. Some consumers may benefit from face-to-face interactions with pharmacists when filing prescriptions that may prevent medication errors. Others may be less likely to fully utilize primary care when they can obtain 90-day medication supplies without follow-up from their physicians.[18]

---

[10] Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148. On March 30, 2010, PPACA was amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

[11]

[12] The term "pharmacy benefit manager" is defined in S. 465.1862(b), F.S.

[13] Academy of Managed Care Pharmacy (AMCP). *Formulary Management*. Available at http://www.amcp.org/WorkArea/DownloadAsset.aspx?id=9298 (last accessed December 20, 2017).

[14] Khandelwal, Nikhil, et al. "Community Pharmacy and Mail Order Cost and Utilization for 90-Day Maintenance Medication Prescriptions." *J Manag Care Spec Pharm*, 2012 Apr;18(3):247-255. Available at http://www.jmcp.org/doi/10.18553/jmcp.2012.18.3.247 (last accessed January 6, 2018).

[15] Visante, Inc. "Mail-Service and Specialty Pharmacies to Save $1.8 Billion for California Consumers, Employers, and Other Payers in 2015." Prepared on behalf of the Pharmaceutical Care Management Association (PCMA). June 2014. Available at https://www.pcmanet.org/wp-content/uploads/2016/10/visante-pcma-ca-mail-specialty-savings.pdf (last accessed January 7, 2018).

[16] Sabaté E, editor., ed. *Adherence to Long-Term Therapies: Evidence for Action*. Geneva, Switzerland: World Health Organization; 2003. Available at http://apps.who.int/iris/bitstream/10665/42682/1/9241545992.pdf (last accessed January 7, 2018).

[17] Zhang, Linua, et al. "Mail-order pharmacy use and medication adherence among Medicare Part D beneficiaries with diabetes." *J Med Econ.* 2011;14(5):562-7. Available at https://www.ncbi.nlm.nih.gov/pubmed/21728913 (last accessed January 7, 2018).

[18] Schmittdiel, Julie A., et al. "The Safety and Effectiveness of Mail Order Pharmacy Use in Diabetes Patients." *The American Journal of Managed Care* 19.11 (2013): 882–887. Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4278640/ (last accessed January 7. 2018).

The federal Centers of Medicare and Medicaid Services (CMS) documents and periodically releases complaints related to mail order pharmacy made by Medicare Part D members. Among the complaints reported by CMS were the following:

- A patient received the wrong medication and encountered difficulty in returning the medication;
- A patient received a brand-name drug, but had previously utilized a lower-cost generic drug;
- A patient incurred a higher copayment using mail order than he/she previously incurred at a retail pharmacy;
- A patient was dissatisfied with the shipping of a medication by a retail pharmacy.[19]

Federal Law

Federal regulations implementing PPACA limit the use of mail order pharmacy. For plan years beginning on or after January 1, 2017, a health plan subject to PPACA requirements must allow enrollees to obtain prescription drug benefits at in-network retail pharmacies, unless:

- The drug is subject to restricted distribution by the U.S. Food and Drug Administration; or
- The drug requires special handling, provider coordination, or patient education that cannot be provided by a retail pharmacy.[20]

The PPACA rule allows plans to encourage mail order use by charging a different cost-sharing amount for drugs obtained at a network retail pharmacy versus those obtained via mail order.[21]

State Law

The Florida Insurance Code contains no provisions regulating the use of mail order pharmacy. However, Florida law does address its use for purposes of the state employee group health insurance program.

The Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group health insurance program pursuant to ss. 110.123-110.1239, F.S..[22] To administer the program, DMS contracts with third party administrators for self-insured health plans, insured health maintenance organizations (HMOs), and a PBM for the self-insured prescription drug program.[23]

Under s. 110.12315, F.S., DMS must allow members to use any licensed pharmacy that accepts the same contractual terms, conditions, and reimbursement as the mail order pharmacy for up to a 90-day supply of all non-specialty maintenance medications. These retail pharmacies may be participating in either the PBM's retail pharmacy network or the State of Florida specific "maintenance 90 at retail" pharmacy network. Copayments and conditions for a 90-day supply at retail are the same as for mail order.[24]

---

[19] U.S Department of Health and Human Services, Centers for Medicare and Medicaid Services. "Sample of Beneficiary Complaints Relating to Mail Order." 2013. Available at https://www.cms.gov/medicare/prescription-drug-coverage/prescriptiondrugcovcontra/downloads/sampleofbeneficiarycomplaintsmailorder.pdf (last accessed January 7, 2018).
[20] Title 45 C.F.R. §156.122 (2016). Dept. of Health and Human Services, *Final HHS Notice of Benefit and Payment Parameters for 2016, available at* http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/2016-PN-Fact-Sheet-final.pdf (last accessed January 5, 2018).
[21] Title 45 C.F.R. § 156.122(e).
[22] Title 26 U.S.C. § 125.
[23] S. 110.12315, F.S.
[24] Department of Management Services, 2016 Agency Legislative Bill Analysis, HB 583, p. 2.

Effect of Proposed Changes

The bill amends the insurance code to limit the use of mail order pharmacy. Consistent with the PPACA rule, the bill prohibits insurers and HMOs from requiring the exclusive use of mail order pharmacy to obtain prescription drugs. The prohibition does not apply to an "excluded drug", which the bill defines as a drug subject to restricted distribution by the United States Food and Drug Administration or a drug that requires special handling, provider coordination, or patient education and cannot be provided by a retail pharmacy, consistent with the PPCA rule. In addition, the prohibition only applies to patients with a "chronic illness" when obtaining drugs to treat that illness. The bill defines "chronic illness" as human immunodeficiency virus (HIV) infection, epilepsy, hypertension, or diabetes.

In contrast to the PPACA rule, the bill prohibits insurers and HMOs from imposing different copayments or conditions for drugs for chronic illness when the insured elects to use a retail pharmacy not imposed when the insured uses a mail order pharmacy; if the retail pharmacy agrees to the same terms, conditions and payment amounts applicable to a mail order pharmacy.

The bill requires a health insurer or HMO that issues a health insurance policy that provides coverage for prescription drugs through a mail order pharmacy to disclose in the outline of coverage that an insured may obtain prescription drugs for the treatment of these certain chronic illness from a retail pharmacy and that the exclusive use of a mail order pharmacy is not required unless the drug is an excluded drug.

The bill expressly exempts grandfathered health plans and certain non-health care and limited benefit insurance policies from these provisions.

The bill has an effective date of January 1, 2018.

B. SECTION DIRECTORY:

Section 1: Creates s. 627.6442, F.S., relating to access to prescription drugs.
Section 2: Creates s. 627.6572, F.S., relating to access to prescription drugs.
Section 3: Amends s. 641.31, F.S., relating to health maintenance contracts.
Section 4: Provides an effective date of January 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. The bill appears to have no impact on drug expenditures incurred by the state employee group health insurance program, as copayments and other conditions for prescription drugs are the same whether obtained through a retail pharmacy or by mail order.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

To the extent that local government employee health plans use differential copayments and other conditions to encourage use of mail order for drugs to chronic illness, as defined by the bill, the bill may reduce savings achieved by those methods.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could result in an increase in drug expenditures incurred by private health insurers, HMOs and employers. These insurers often benefit from mail order pharmacy discounts arranged by PBMs, and could forego certain discounts if patients transition prescriptions from mail order pharmacy to retail pharmacies. Insurers and employers could shift cost increases to consumers in the form of higher premiums.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill, as filed, has an effective date of January 1, 2018. The effective date may implicate Art. 1 Sec. 10 of the Florida Constitution related to impairment of contracts. This issue may be addressed by amending the bill to make its provisions applicable to contracts executed or renewed after July 1, 2018, and making the effective date of the bill July 1, 2018.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the provision of pharmaceutical services; creating ss. 627.6442 and 627.6572, F.S.; defining terms; providing that an insured may not be required to obtain a prescription drug for the treatment of a chronic illness exclusively from a mail order pharmacy; providing an exception for excluded drugs; prohibiting the imposition of copayments or certain conditions on an insured who elects to obtain certain drugs from a retail pharmacy rather than a mail order pharmacy if the retail pharmacy meets certain requirements; requiring certain health insurers to disclose in the outline of coverage that an insured may obtain certain prescription drugs from a retail pharmacy; providing an exception for excluded drugs; providing applicability; amending s. 641.31, F.S.; defining terms; providing that a health maintenance organization subscriber may not be required to obtain a prescription drug for the treatment of a chronic illness exclusively from a mail order pharmacy; providing an exception for excluded drugs; prohibiting the imposition of copayments or certain conditions on a subscriber who elects to obtain certain drugs from a retail pharmacy rather than a mail order pharmacy if the retail pharmacy

meets certain requirements; requiring certain health maintenance organizations to disclose in the outline of coverage that a subscriber may obtain certain prescription drugs from a retail pharmacy; providing an exception for excluded drugs; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.6442, Florida Statutes, is created to read:

627.6442 Access to prescription drugs.—

(1) As used in this section:

(a) "Chronic illness" means human immunodeficiency virus infection, epilepsy, hypertension, or diabetes.

(b) "Excluded drug" means a drug subject to restricted distribution by the United States Food and Drug Administration or a drug that requires special handling, provider coordination, or patient education and cannot be provided by a retail pharmacy.

(2) A health insurance policy issued, delivered, or renewed in this state which provides prescription drug coverage may not require an insured to obtain a prescription drug for the treatment of a chronic illness exclusively from a mail order pharmacy, unless the prescription drug is an excluded drug.

(3) An insured who elects not to use a mail order pharmacy to obtain a prescription drug, other than an excluded drug, prescribed for the treatment of a chronic illness may not be required to pay a copayment or satisfy other conditions that are not imposed on an insured who uses a mail order pharmacy if the retail pharmacy used by the insured:

(a) Agrees to the same terms and conditions, including credentialing, applicable to a mail order pharmacy; and

(b) Accepts payment or reimbursement from the insurer which is no more than the amount that would be paid to a mail order pharmacy for the same prescription drugs for the treatment of a chronic illness.

(4) A health insurer that issues a health insurance policy that provides coverage for prescription drugs through a mail order pharmacy shall disclose in the outline of coverage that an insured may obtain prescription drugs for the treatment of a chronic illness from a retail pharmacy, and that the exclusive use of a mail order pharmacy is not required unless the drug is an excluded drug.

(5) This section does not apply to grandfathered health plans as defined in s. 627.402 or to benefits set forth in s. 627.6562(3)(b), (c), (d), and (e).

Section 2. Section 627.6572, Florida Statutes, is created to read:

627.6572 Access to prescription drugs.—

(1) As used in this section:

(a) "Chronic illness" means human immunodeficiency virus infection, epilepsy, hypertension, or diabetes.

(b) "Excluded drug" means a drug subject to restricted distribution by the United States Food and Drug Administration or a drug that requires special handling, provider coordination, or patient education and cannot be provided by a retail pharmacy.

(2) A health insurance policy issued, delivered, or renewed in this state which provides prescription drug coverage may not require an insured to obtain a prescription drug for the treatment of a chronic illness exclusively from a mail order pharmacy, unless the prescription drug is an excluded drug.

(3) An insured who elects not to use a mail order pharmacy to obtain a prescription drug, other than an excluded drug, prescribed for the treatment of a chronic illness may not be required to pay a copayment or satisfy other conditions that are not imposed on an insured who uses a mail order pharmacy if the retail pharmacy used by the insured:

(a) Agrees to the same terms and conditions, including credentialing, applicable to a mail order pharmacy; and

(b) Accepts payment or reimbursement from the insurer which is no more than the amount that would be paid to a mail order pharmacy for the same prescription drugs for the treatment of a chronic illness.

(4) A health insurer that issues a policy that provides coverage for prescription drugs through a mail order pharmacy shall disclose in the outline of coverage that an insured may obtain prescription drugs for the treatment of a chronic illness from a retail pharmacy, and that the exclusive use of a mail order pharmacy is not required unless the drug is an excluded drug.

(5) This section does not apply to grandfathered health plans as defined in s. 627.402 or to benefits set forth in s. 627.6562(3)(b), (c), (d), and (e).

Section 3. Subsection (45) is added to section 641.31, Florida Statutes, to read:

641.31 Health maintenance contracts.—

(45)(a) As used in this subsection:

1. "Chronic illness" means human immunodeficiency virus infection, epilepsy, hypertension, or diabetes.

2. "Excluded drug" means a drug subject to restricted distribution by the United States Food and Drug Administration or a drug that requires special handling, provider coordination, or patient education and cannot be provided by a retail pharmacy.

(b) A health maintenance contract issued, delivered, or renewed in this state which provides prescription drug coverage may not require a subscriber to obtain a prescription drug for the treatment of a chronic illness exclusively from a mail order

pharmacy, unless the prescription drug is an excluded drug.

(c) A subscriber who elects not to use a mail order pharmacy to obtain a prescription drug, other than an excluded drug, prescribed for the treatment of a chronic illness may not be required to pay a copayment or satisfy other conditions that are not imposed on a subscriber who uses a mail order pharmacy if the retail pharmacy used by the subscriber:

1. Agrees to the same terms and conditions, including credentialing, applicable to a mail order pharmacy; and

2. Accepts payment or reimbursement from the health maintenance organization which is no more than the amount that would be paid to a mail order pharmacy for the same prescription drugs for the treatment of a chronic illness.

(d) A health maintenance organization that issues a health maintenance contract that provides coverage for prescription drugs through a mail order pharmacy shall disclose in the outline of coverage that a subscriber may obtain prescription drugs for the treatment of a chronic illness from a retail pharmacy, and that the exclusive use of a mail order pharmacy is not required unless the drug is an excluded drug.

(e) This subsection does not apply to grandfathered health plans as defined in s. 641.313(1)(c) or to benefits set forth in s. 627.6562(3)(b), (c), (d), and (e).

Section 4. This act shall take effect January 1, 2018.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health Innovation Subcommittee

Representative Raschein offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Section 627.6442, Florida Statutes, is created to read:

627.6442 Access to prescription drugs.—

(1) As used in this section:

(a) "Chronic illness" means human immunodeficiency virus infection.

(b) "Excluded drug" means a drug subject to restricted distribution by the United States Food and Drug Administration or a drug that requires special handling, provider coordination,

or patient education and cannot be provided by a retail pharmacy.

(2) A health insurance policy issued, delivered, or renewed in this state which provides prescription drug coverage may not require an insured to obtain a prescription drug for the treatment of a chronic illness exclusively from a mail order pharmacy, unless the prescription drug is an excluded drug.

(3) An insured who elects not to use a mail order pharmacy to obtain a prescription drug, other than an excluded drug, prescribed for the treatment of a chronic illness may not be required to pay a copayment or satisfy other conditions that are not imposed on an insured who uses a mail order pharmacy if the retail pharmacy used by the insured:

(a) Agrees to the same terms and conditions, including credentialing, applicable to a mail order pharmacy; and

(b) Accepts payment or reimbursement from the insurer which is no more than the amount that would be paid to a mail order pharmacy for the same prescription drugs for the treatment of a chronic illness.

(4) A health insurer that issues a health insurance policy that provides coverage for prescription drugs through a mail order pharmacy shall disclose in the outline of coverage that an insured may obtain prescription drugs for the treatment of a chronic illness from a retail pharmacy, and that the exclusive

use of a mail order pharmacy is not required unless the drug is an excluded drug.

(5) This section does not apply to grandfathered health plans as defined in s. 627.402 or to benefits set forth in s. 627.6562(3)(b), (c), (d), and (e).

Section 2. Section 627.6572, Florida Statutes, is created to read:

627.6572 Access to prescription drugs.—

(1) As used in this section:

(a) "Chronic illness" means human immunodeficiency virus infection.

(b) "Excluded drug" means a drug subject to restricted distribution by the United States Food and Drug Administration or a drug that requires special handling, provider coordination, or patient education and cannot be provided by a retail pharmacy.

(2) A health insurance policy issued, delivered, or renewed in this state which provides prescription drug coverage may not require an insured to obtain a prescription drug for the treatment of a chronic illness exclusively from a mail order pharmacy, unless the prescription drug is an excluded drug.

(3) An insured who elects not to use a mail order pharmacy to obtain a prescription drug, other than an excluded drug, prescribed for the treatment of a chronic illness may not be required to pay a copayment or satisfy other conditions that are

not imposed on an insured who uses a mail order pharmacy if the retail pharmacy used by the insured:

(a) Agrees to the same terms and conditions, including credentialing, applicable to a mail order pharmacy; and

(b) Accepts payment or reimbursement from the insurer which is no more than the amount that would be paid to a mail order pharmacy for the same prescription drugs for the treatment of a chronic illness.

(4) A health insurer that issues a policy that provides coverage for prescription drugs through a mail order pharmacy shall disclose in the outline of coverage that an insured may obtain prescription drugs for the treatment of a chronic illness from a retail pharmacy, and that the exclusive use of a mail order pharmacy is not required unless the drug is an excluded drug.

(5) This section does not apply to grandfathered health plans as defined in s. 627.402 or to benefits set forth in s. 627.6562(3)(b), (c), (d), and (e).

Section 3. Subsection (45) is added to section 641.31, Florida Statutes, to read:

641.31 Health maintenance contracts.—

(45)(a) As used in this subsection:

1. "Chronic illness" means human immunodeficiency virus infection.

2. "Excluded drug" means a drug subject to restricted distribution by the United States Food and Drug Administration or a drug that requires special handling, provider coordination, or patient education and cannot be provided by a retail pharmacy.

(b) A health maintenance contract issued, delivered, or renewed in this state which provides prescription drug coverage may not require a subscriber to obtain a prescription drug for the treatment of a chronic illness exclusively from a mail order pharmacy, unless the prescription drug is an excluded drug.

(c) A subscriber who elects not to use a mail order pharmacy to obtain a prescription drug, other than an excluded drug, prescribed for the treatment of a chronic illness may not be required to pay a copayment or satisfy other conditions that are not imposed on a subscriber who uses a mail order pharmacy if the retail pharmacy used by the subscriber:

1. Agrees to the same terms and conditions, including credentialing, applicable to a mail order pharmacy; and

2. Accepts payment or reimbursement from the health maintenance organization which is no more than the amount that would be paid to a mail order pharmacy for the same prescription drugs for the treatment of a chronic illness.

(d) A health maintenance organization that issues a health maintenance contract that provides coverage for prescription drugs through a mail order pharmacy shall disclose in the

outline of coverage that a subscriber may obtain prescription drugs for the treatment of a chronic illness from a retail pharmacy, and that the exclusive use of a mail order pharmacy is not required unless the drug is an excluded drug.

(e) This subsection does not apply to grandfathered health plans as defined in s. 641.313(1)(c) or to benefits set forth in s. 627.6562(3)(b), (c), (d), and (e).

Section 4. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 293 Florida Kidcare Program
SPONSOR(S): Duran
TIED BILLS: **IDEN./SIM. BILLS:** SB 108

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee		Royal	Crosier
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Florida Kidcare Program (Kidcare or Program) was created by the Florida Legislature in 1998 in response to the federal enactment of the State Children's Health Insurance Program in 1997, later known more simply as the Children's Health Insurance Program (CHIP). The CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. The state statutory authority for the Program is found in part II of ch. 409, F.S.

Kidcare encompasses four programs: Medicaid for children the Medikids program, the Children's Medical Services Network and the Florida Healthy Kids program. Kidcare coverage is funded by state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the federal Social Security Act. Kidcare is administered jointly by the Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), the Department of Health (DOH), and the Florida Healthy Kids Corporation (FHKC). Each entity has specific duties and responsibilities under Kidcare as detailed in part II of ch. 409, F.S. The DCF determines eligibility for Medicaid, and the FHKC processes all Kidcare applications and determines eligibility for the CHIP, which includes a Medicaid screening and referral process to the DCF, as appropriate.

HB 293 creates the Kidcare Operation Efficiency and Health Care Improvement Workgroup (Workgroup). The bill establishes the Workgroup for the purpose of maximizing the return on investment and streamlining and enhancing the operational efficiencies of the Program to provide improved health services to children.

The bill requires DOH to administratively house the Workgroup and the FHKC to convene and staff the Workgroup. The bill requires the Workgroup to examine successful and innovate models that provide improved value and health care outcomes and provide recommendations to create greater efficiency in the Program. The bill also requires the Workgroup to submit a report on its findings and recommendations to the Governor, President of the Senate and Speaker of the House by December 31, 2018.

The bill does not have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Kidcare Program

The Florida Kidcare Program (Kidcare or Program) was created by the Florida Legislature in 1998 in response to the federal enactment of the State Children's Health Insurance Program in 1997, later known more simply as the Children's Health Insurance Program (CHIP). The federal authority for the CHIP is located in Title XXI of the Social Security Act. Initially authorized for 10 years, the program was re-authorized through 2019, but the funding portion of the program expired September 30, 2017.[1] The CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. The state statutory authority for the Program is found in part II of ch. 409, F.S.

Kidcare encompasses four programs:

- Medicaid for children;
- The Medikids program;
- The Children's Medical Services Network; and
- The Florida Healthy Kids program.

Kidcare coverage is funded by state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the federal Social Security Act. Families also contribute to the monthly premium cost of the coverage under the Title XXI-funded components of Kidcare based on their household size, income, and other eligibility factors. For families with incomes above the income limits for monthly premium assistance or who do not otherwise qualify for assistance, Kidcare also offers an option under the Healthy Kids component and the Medikids component for the family to obtain coverage for their children by paying the full premium.
Eligibility for the Program components that are funded by Title XXI is determined in part by age and household income as follows:

- Medicaid for Children: Title XXI funding is available from birth until age 1 for family incomes between 185 percent and 200 percent of the Federal Poverty Level (FPL).
- Medikids: Title XXI funding is available from age 1 until age 5 for family incomes between 133 percent and 200 percent of the FPL.
- Healthy Kids: Title XXI funding is available from age 5 until age 6 for family incomes between 133 percent and 200 percent of the FPL. For age 6 until age 19, Title XXI funding is available for family incomes between 100 percent and 200 percent of the FPL.
- Children's Medical Services Network: Title XXI and Title XIX funds are available from birth until age 19 for family incomes up to 200 percent of the FPL for children with special health care needs. The Department of Health assesses whether children meet the program's clinical requirements.

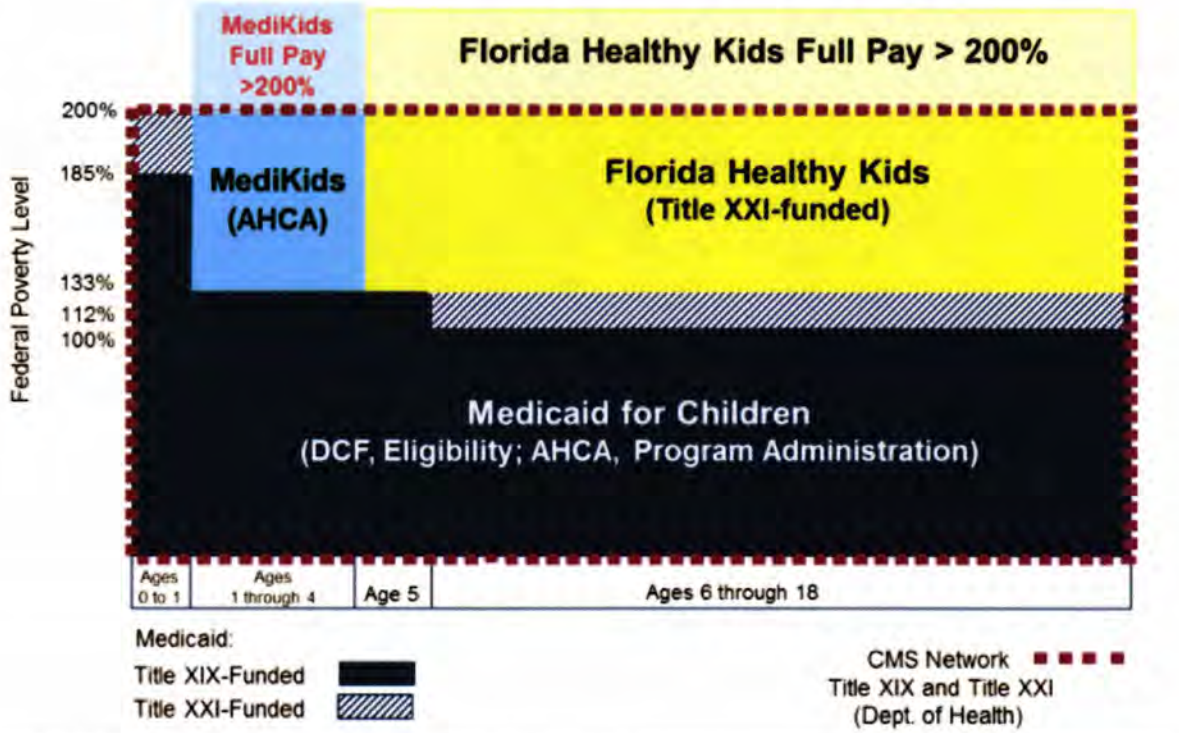
Kidcare is administered jointly by the Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), the Department of Health (DOH), and the Florida Healthy Kids Corporation (FHKC). Each entity has specific duties and responsibilities under Kidcare as detailed in part II of ch. 409, F.S. The DCF determines eligibility for Medicaid, and the FHKC processes all Kidcare applications and determines eligibility for the CHIP, which includes a Medicaid screening and referral process to the DCF, as appropriate.

[1] Pub. L. No. 114-10, s. 301.

To enroll in Kidcare, families utilize a form that is both a Medicaid and CHIP application. Families may apply using the paper application or an online application. Both formats are available in English, Spanish, and Creole. Income eligibility is determined through electronic data matches with available databases or, in cases where income cannot be verified electronically, through submission of current pay stubs, tax returns, or W-2 forms. Children are then determined to be eligible or ineligible for the appropriate Program component based on the applicable income standards. Currently 2.4 million Florida children are enrolled in Kidcare.[2]

Currently, FHKC receives all KidCare applications and screens for Medicaid eligibility. Families can apply for Medicaid for children or the Title XXI programs using the KidCare application. Families may also apply for Medicaid using the DCF form, Request for Assistance. The DCF Request for Assistance form cannot be used to apply for the Title XXI programs. Families can apply for both programs online. KidCare applications for children potentially eligible for Medicaid are electronically sent to the DCF for a complete Medicaid eligibility determination. If the child is not eligible for Medicaid, FHKC is notified to continue the Title XXI eligibility determination. FHKC determines eligibility for all of the Title XXI programs.

The following chart summarizes eligibility and funding for Kidcare.[3]



Florida Kidcare Coordinating Council

Per Section 409.818(2)(b), F.S., the DOH chairs the Florida KidCare Coordinating Council (Council), which reviews and makes recommendations concerning the implementation and operation of the Florida KidCare program. Council membership includes representatives from the Department of Health, the Department of Children and Families, the Agency for Health Care Administration, the Florida Healthy Kids Corporation, the Office of Insurance Regulation of the Financial Services Commission,

[2] Healthy Kids, *What is Florida KidCare?*, available at: https://www.healthykids.org/kidcare/what/ (last visited December 1, 2017).
[3] Institute for Child Health Policy at University of Florida, *Florida KidCare Program Evaluation 2015*, available at http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/program_policy/FLKidCare/PDF/2015_Florida_Kidcare_Evaluation_Report.pdf (last viewed December 15, 2017).

local government, health insurance companies, health maintenance organizations, health care providers, families participating in the program, and organizations representing low-income families. The Council has not met since 2013 and does not have any future meetings scheduled.[4]

Effect of the Bill

HB 293 creates the Kidcare Operation Efficiency and Health Care Improvement Workgroup (Workgroup). The bill establishes the Workgroup for the purpose of maximizing the return on investment and streamlining and enhancing the operational efficiencies of the Program to provide improved health services to children.

The bill requires DOH to administratively house the Workgroup and the FHKC to convene and staff the Workgroup. Membership in the Workgroup is voluntarily and must consist of:

- The President of the Florida Chapter of the American Academy of Pediatrics or his or her designee.
- The State Health Officer or his or her designee.
- The Secretary of AHCA or his or her designee, who must have a background in children's health policy.
- The assistant secretary for child welfare of the DCF or his or her designee.
- A representative of directors of the FHKC.
- A representative of the Florida Association of Children's Hospitals, Inc.
- A representative of the Florida Covering Kids and Families Coalition.
- A representative of the Florida Association of Health Plans.
- A representative of the Florida Children's Council with a background in children's health policy.
- A representative of the Florida Dental Association.
- The Director of Children's Medical Services or his or her designee.
- A parent of a child enrolled in the Florida Kidcare program.

The bill requires the Workgroup to examine successful and innovate models that provide improved value and health care outcomes and provide recommendations to create greater efficiency in the Program. The bill also requires the Workgroup to submit a report on its findings and recommendations to the Governor, President of the Senate and Speaker of the House by December 31, 2018.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section relating to Kidcare Operation Efficiency and Health Care Improvement Workgroup.
Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[4] Email correspondence with DOH. (On file with the Health Innovation Subcommittee)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

FHKC may experience increased expenditures associated with convening and staffing the Workgroup.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not affect local government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Florida Kidcare program; establishing the Kidcare Operational Efficiency and Health Care Improvement Workgroup as a task force administratively housed in the Department of Health to maximize the return on investment and enhance the operational efficiencies of the Florida Kidcare program; providing for duties and membership of the workgroup; requiring a report to the Governor and Legislature by a specified date; providing for expiration of the workgroup; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Kidcare Operational Efficiency and Health Care Improvement Workgroup.—The Kidcare Operational Efficiency and Health Care Improvement Workgroup, a task force as defined in s. 20.03, Florida Statutes, is established to maximize the return on investment and streamline and enhance the operational efficiencies of the Florida Kidcare program to provide improved health care services to children. The workgroup shall be administratively housed in the Department of Health. Members of the workgroup shall serve on a voluntary basis.

(1) The workgroup shall be convened and staffed by the

Florida Healthy Kids Corporation and shall consist of the following members:

(a) The President of the Florida Chapter of the American Academy of Pediatrics or his or her designee.

(b) The State Health Officer or his or her designee.

(c) The Secretary of Health Care Administration or his or her designee, who must have a background in children's health policy.

(d) The assistant secretary for child welfare of the Department of Children and Families or his or her designee.

(e) A representative of directors of the Florida Healthy Kids Corporation.

(f) A representative of the Florida Association of Children's Hospitals, Inc.

(g) A representative of the Florida Covering Kids and Families Coalition.

(h) A representative of the Florida Association of Health Plans.

(i) A representative of the Florida Children's Council with a background in children's health policy.

(j) A representative of the Florida Dental Association.

(k) The Director of Children's Medical Services or his or her designee.

(l) A parent of a child enrolled in the Florida Kidcare program.

(2) The workgroup shall:

(a) Examine successful and innovative models to provide improved value and health care outcomes.

(b) Develop recommendations to streamline and unify the program to provide greater operational efficiencies, including recommendations for a single benefits package, a single set of performance measures, and a single third-party administrator.

(c) Provide any necessary transition plans.

(d) Provide recommendations regarding federal waivers for children's health care to the Agency for Health Care Administration, which shall obtain specific legislative authorization before seeking, applying for, accepting, or renewing any federal waiver.

(3) The workgroup shall submit a report on its findings and recommendations for streamlining the Florida Kidcare program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2018.

(4) This section expires December 31, 2018.

Section 2. This act shall take effect July 1, 2018.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 293 (2018)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health Innovation Subcommittee

Representative Duran offered the following:

Amendment

Remove lines 24-27 and insert:

the workgroup shall serve on a voluntary basis and shall not be compensated.

(1) The workgroup shall be convened and staffed by the Florida Healthy Kids Corporation and shall consist of the following members:

(a) A representative of the Department of Health Policy and Management, College of Public Health at the University of South Florida who shall serve as chair.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 551 Pub. Rec./Health Care Facilities
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Burton
TIED BILLS: **IDEN./SIM. BILLS:** SB 906

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	11 Y, 0 N, As CS	Hoffman	Harrington
2) Health Innovation Subcommittee		Royal	Crosier
3) Government Accountability Committee			

SUMMARY ANALYSIS

Current law provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency. Although health care facilities are required to submit similar building plans and related documents to agencies, there is not appear a public record exemption for these building plans.

The bill expands the public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final forms, which depict the internal layout and structural elements to include health care facilities. Specifically, the bills provides that such plans for a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled are exempt from public disclosure.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill may have a minimal fiscal impact on the state and local governments. *See* Fiscal Comments.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption for building plans and related documents; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The State Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.[1] The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.[2] The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.[3] A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.[4]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose.[5] In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.[6]

Public Record Exemption for Building Plans and Related Documents

Current law provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency.[7] Such information is exempt from public disclosure.[8] This exemption does not apply to comprehensive plans or site plans which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

Health Care Facilities

Health care facilities require review of methods of proposed construction by the Agency for Health Care Administration.[9] The Agency ensures compliance with health care rules, codes and standards to

---

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(c).
[3] *Id.*
[4] *Id.*
[5] Section 119.15, F.S.
[6] Section 119.15(6)(b), F.S.
[7] Section 119.071(3)(c), F.S.
[8] There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).
[9] Section 408.035(h), F.S.

provide protection of public health and safety.[10] Schematics, preliminary plans and construction documents received by the Agency and other government agencies for hospitals, ambulatory surgical centers, nursing homes and intermediate care facilities for the developmentally disabled are public record and subject to release upon request.[11] These plans include building floor plans, communication systems, medical gas systems, electrical systems, emergency generators, and other physical plant and security details.[12]

Recent security threats have been shared by state and federal security and emergency preparedness officials that describe the targeting of health care facilities by terrorists.[13] Because architectural and engineering plans reviewed and held by government agencies include information regarding emergency egress, locking arrangements, critical life safety systems and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities and aid in the planning, training and execution of criminal activities.[14]

Effect of the Bill

This bill expands the public records exemption for building plans and other related documents for an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency. Specifically, this bill expands this exemption to include health care facilities. The public record exemption is retroactive and applies to records held before, on, or after the effective date of this bill.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2023, unless saved from repeal through reenactment by the Legislature.

This bill provides a public necessity statement as required by the Florida Constitution, which states that the building plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. In addition, information contained in the documents could aid in the planning, training, and execution of criminal actions including infant abduction, cyber-crime, arson, and terrorism.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to public record exemptions for building plans for health care facilities.

Section 2 provides a public necessity statement.

Section 3 provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state revenues.

---

[10] Agency for Health Care Administration, Agency Analysis of 2018 House Bill 551, p. 2 (Nov. 16, 2017).
[11] *Id.*
[12] *Id.*
[13] *Id*; Department of Homeland Security, *Terrorists Call for Attacks on Hospitals, Healthcare Facilities* (Feb. 8, 2017) *available at:* http://www.arkhospitals.org/Misc.%20Files/AttacksHospitalsHCFacilities.pdf.
[14] Agency for Health Care Administration, Agency Analysis of 2018 House Bill 551, p. 2 (Nov. 16, 2017).

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the expansion of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   Vote Requirement
   Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands an existing public record exemption; thus, it requires a two-thirds vote for final passage.

   Public Necessity Statement
   Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands an existing public record exemption; thus, it includes a public necessity statement.

   Breadth of Exemption
   Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands an existing public record exemption for access to building plans, blueprints, schematic drawings and diagrams for healthcare facilities. The expansion of the public record exemption seeks to prevent criminals and terrorists from accessing information that could aid the conduct of criminal activity targeting health care facilities.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Oversight, Transparency & Administration Subcommittee adopted one amendment and reported the bill favorably with a committee substitute. The amendment conformed the public necessity statement to the bill by clarifying that the information is exempt only, rather than confidential.

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for building plans, blueprints, schematic drawings, and diagrams held by an agency which depict the internal layout or structural elements of certain health care facilities; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (3) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(3) SECURITY.—

(c)1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development, which records are held by an agency are exempt from

s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to any such records held by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to the owner or owners of the structure in question or the owner's legal representative; or upon a showing of good cause before a court of competent jurisdiction.

4. This paragraph does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

5. As used in this paragraph, the term:

a. "Attractions and recreation facility" means any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

(I) For single-performance facilities:

(A) Provides single-performance facilities; or

(B) Provides more than 10,000 permanent seats for spectators.

(II) For serial-performance facilities:

(A) Provides parking spaces for more than 1,000 motor

vehicles; or

(B) Provides more than 4,000 permanent seats for spectators.

b. "Entertainment or resort complex" means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex.

c. "Industrial complex" means any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership that:

(I) Provides onsite parking for more than 250 motor vehicles;

(II) Encompasses 500,000 square feet or more of gross floor area; or

(III) Occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal

onsite with the general public.

d. "Retail and service development" means any retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite and is operated under one common property ownership, development plan, or management that:

(I) Encompasses more than 400,000 square feet of gross floor area; or

(II) Provides parking spaces for more than 2,500 motor vehicles.

e. "Office development" means any office building or park operated under common ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area.

f. "Health care facility" means a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled.

g.~~f.~~ "Hotel or motel development" means any hotel or motel development that accommodates 350 or more units.

6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the building plans, blueprints, schematic

drawings, and diagrams of a health care facility should be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to ensure the safety of the health care facility's staff, patients, and visitors. The Agency for Health Care Administration reviews the building plans of proposed health care facility construction to ensure compliance with health care rules, codes, and standards in order to protect the public health and safety. Schematics, preliminary plans, and construction documents received by the agency and other government agencies for hospitals, ambulatory surgical centers, nursing homes, hospices, and intermediate care facilities for the developmentally disabled are currently subject to release as public records and subject to release upon request. These plans include building floor plans, communication systems, medical gas systems, electrical systems, emergency generators, and other physical plant and security details. Recent security threats have been shared by state and federal security and emergency preparedness officials that describe the targeting of health care facilities by terrorists. Because architectural and engineering plans reviewed and held by government agencies include information regarding emergency egress, locking arrangements, critical life safety systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. Information contained in these documents could aid in the planning,

training, and execution of criminal actions including infant abduction, cyber-crime, arson, and terrorism. Consequently, the Legislature finds that the public records exemption created by this act is a public necessity to reduce exposure to security threats and protect the public.

Section 3. This act shall take effect upon becoming a law.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health Innovation Subcommittee

Representative Burton offered the following:

Amendment

Remove lines 104-116 and insert:

health care facility's staff, patients, and visitors. Building plans, blueprints, schematic drawings, diagrams, preliminary plans, and construction documents received by the agency and other government agencies, which depict the internal layout or structural elements of hospitals, ambulatory surgical centers, nursing homes, hospices, and intermediate care facilities for the developmentally disabled are currently subject to release as public records and subject to release upon request. The Agency for Health Care Administration reviews the building plans of proposed health care facility construction to ensure compliance

with health care rules, codes, and standards in order to protect the public health and safety. These building plans include diagrams and schematics of building floor plans, communication systems, medical gas systems, electrical systems, and other physical plant and security details, which depict the internal layout and structural elements of health care facilities. Recent security threats