

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/HB 7053	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Appropriations Committee; Education Committee; O'Toole and others	114 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/CS/HB 1125 CS/SB 7058	<b>GOVERNOR'S ACTION:</b>	Pending

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### SUMMARY ANALYSIS

CS/HB 7053 passed the House on February 11, 2016. The bill was amended by the Senate on February 24, 2016, and subsequently passed the House on March 11, 2016. The bill includes portions of CS/HB 943.

Florida's Office of Early Learning (OEL) administers the Child Care and Development Fund (CCDF) and provides state-level administration for the school readiness program. In 2014, the Child Care and Development Block Grant (CCDBG) Act was signed into law reauthorizing the CCDF. The new law requires that parents and the public have better information about available child care choices and establishes health and safety requirements for school readiness program providers.

The bill implements the requirements of the CCDBG by increasing public information on, and background screening of, child care providers, aligning eligibility requirements with the grant, and requiring pre-service and in-service training for personnel of School Readiness program providers.

In 1975, the Individuals with Disabilities Education Act (IDEA) was enacted to ensure that children with disabilities receive appropriate public education. In 2011, the U.S. Department of Education (U.S. DOE) released its final implementing regulations for Part C of the IDEA, which were adopted to help improve outcomes for infants with disabilities. Part C of the IDEA (the Early Steps Program) provides services to families and children from birth to age three who are at risk of having developmental delays. The federal government created grants to assist states in providing early intervention programs under Part C of the IDEA.

Florida's Early Steps Program, is administered by the Department of Health (DOH). The DOH contracts with hospitals and non-profit organizations across the state to screen children for eligibility and to deliver services.

The bill repeals outdated sections of statute, includes other revisions and updates to conform to the U.S. DOE's implementing regulations, provides program goals, defines terms, provides eligibility requirements, assigns duties to DOH, and provides procedures for the successful transition of children from the Early Steps Program to the local school district.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2016

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Child Care and Development Block Grant (CCDBG)**

##### *Present Situation*

The Office of Child Care (OCC) of the United States Department of Health and Human Services supports low-income working families by providing access to affordable, high-quality early care and afterschool programs. OCC administers the Child Care and Development Fund (CCDF) and works with state, territory and tribal governments to provide support for children and their families to promote family economic self-sufficiency and to help children succeed in school and life through affordable, high-quality early care and afterschool programs.<sup>1</sup>

Florida's Office of Early Learning (OEL)<sup>2</sup> is the designated lead agency for purposes of administering the CCDF Block Grant Trust Fund and provides state-level administration for the School Readiness program. The School Readiness program is a state-federal partnership between OEL and the Office of Child Care of the United States Department of Health and Human Services.<sup>3</sup> The School Readiness program receives funding from a mixture of state and federal sources, including the federal CCDF, the federal Temporary Assistance for Needy Families (TANF) block grant, general revenue and other state funds.<sup>4</sup> The school readiness program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.

The program utilizes a variety of providers to deliver program services, such as licensed and unlicensed child care providers and public and nonpublic schools.<sup>5</sup> The Florida Department of Children and Families' Office of Child Care Regulation (DCF), as the agency responsible for the state's child care provider licensing program, regulates child care providers that provide early learning programs.<sup>6</sup> The program is administered at the county or regional level by early learning coalitions (ELC).<sup>7</sup>

In order to be eligible to deliver the School Readiness program, a provider must be:

- a licensed child care facility;

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<sup>1</sup> Office of Child Care, *What We Do*, at <http://www.acf.hhs.gov/programs/occ/about/what-we-do> (last visited Nov. 13, 2015).

<sup>2</sup> In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE). The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the School Readiness program and the Voluntary Prekindergarten Education Program. Section 1, 2013-252, L.O.F., *codified as* s. 1001.213, F.S.

<sup>3</sup> Part VI, ch. 1002, F.S.; 42 U.S.C. ss. 618 & 9858-9858q.

<sup>4</sup> Specific Appropriation 88, s. 2, ch. 2014-51, L.O.F.

<sup>5</sup> Section 1002.88(1)(a), F.S.

<sup>6</sup> *See* ss. 402.301-319, F.S., and Part VI, ch. 1002, F.S.

<sup>7</sup> Sections 1002.83-1002.85, F.S. There are currently 30 ELCs but 31 is the maximum permitted by law. Section 1002.83(1), F.S.; *see* Florida's Office of Early Learning, *Early Learning Coalition Directory* (Feb. 5, 2014), <http://www.floridaeearlylearning.com/sites/www/Uploads/files/Parents/CoalitionDirectory.pdf>.

- a licensed or registered family day care home (FDCH);
- a licensed large family child care home (LFCCH);
- a public school or non-public school;
- a license-exempt faith-based child care provider;
- a before-school or after-school program; or
- an informal child care provider authorized in the state's CCDF plan.<sup>8</sup>

On November 19, 2014, the Child Care and Development Block Grant (CCDBG) Act of 2014 was signed into law reauthorizing the CCDF for the first time since 1996. The new law prescribes health and safety requirements for School Readiness program providers and requires better information to parents and the general public about available child care choices.<sup>9</sup>

While Florida's school readiness programs meet many of the new federal requirements, there are specific requirements of the grant that will necessitate changes to Florida law which include:

- Screening for child care staff to include searches of the National Sex Offender Registry, as well as searches of state criminal records, sex offender registry and child abuse and neglect registry of any state in which the child care personnel resided during the preceding 5 years.<sup>10</sup>
- Posting of monitoring and inspection reports through electronic means.<sup>11</sup>
- Providing parents and the general public, information, via a website, regarding:
  - The availability of child care services to promote informed child care choices;
  - The process for licensing child care providers, including background screening of personnel;
  - The monitoring and inspection of child care providers; and
  - The offenses that would prevent individuals and entities from serving as child care providers in the state.<sup>12</sup>
- Inspecting license-exempt providers receiving CCDBG funds for compliance with health, safety, and fire standards.<sup>13</sup>
- Requiring a disaster preparedness plan to include procedures for staff and volunteer emergency preparedness training and practice drills.<sup>14</sup>
- Certifying in the state plan, compliance with the child abuse reporting requirements of the Child Abuse Prevention and Treatment Act.<sup>15</sup>

### *Effect of the Bill*

Under current law all child care personnel must be of good moral character based upon screening conducted pursuant to chapter 435 using the level 2 standards.<sup>16</sup> The level 2 screening standards include "a statewide criminal history records check through the Department of Law Enforcement, national criminal history checks through the Federal Bureau of Investigation, and may include local criminal records check through local law enforcement agencies."<sup>17</sup> The screening also includes a search of the National Crime Information Center database<sup>18</sup> which consists of 21 files, including the

<sup>8</sup> Section 1002.88(1)(a), F.S. Generally speaking, informal child care is care provided by a relative. See Florida's Office of Early Learning, *Florida's Child Care and Development Fund State Plan FFY 2014-15*, at 71 (Oct. 1, 2013), available at [http://www.floridaeearlylearning.com/sites/www/Uploads/files/Oel%20Resources/2014-2015\\_CCDF\\_Plan\\_%20Optimized.pdf](http://www.floridaeearlylearning.com/sites/www/Uploads/files/Oel%20Resources/2014-2015_CCDF_Plan_%20Optimized.pdf).

<sup>9</sup> Office of Child Care, *CCDF Reauthorization*, at <http://www.acf.hhs.gov/programs/occ/ccdf-reauthorization> (last visited Nov. 13, 2015).

<sup>10</sup> Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658H(b).

<sup>11</sup> Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(C).

<sup>12</sup> Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(C).

<sup>13</sup> Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(K).

<sup>14</sup> Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(U).

<sup>15</sup> Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(L).

<sup>16</sup> Section 402.305(2)(a), F.S.

<sup>17</sup> Section 435.04(1)(a), F.S.

<sup>18</sup> Letter, Florida Department of Law Enforcement, Criminal Justice Information Center (April 20, 2015).

National Sex Offender Registry.<sup>19</sup> To implement the federal requirements of the grant, the bill clarifies that screenings for child care providers must include employment history checks over the previous five years and searches of the state criminal records, the sex offender registry, and the child abuse and neglect registry of any state in which the individual resided during the preceding five years. The bill also provides the Office of Early Learning with access to records of the child abuse, abandonment, or neglect registry for employment screening and approval of providers who receive school readiness funding. Each child care facility, family day care home, and large family day care home must annually submit an affidavit of compliance with s. 39.201, F.S., regarding the mandatory reporting of child abuse, abandonment or neglect.

A provider who receives school readiness funding may not employ a person who has been convicted of:

- Any felony offense relating to:
  - Domestic violence;
  - Murder;
  - Manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child or aggravated manslaughter of an officer, firefighter, an emergency medical technician or paramedic;
  - Aggravated assault;
  - Aggravated battery;
  - Kidnapping;
  - Luring or enticing a child;
  - Leading, taking, enticing or removing a minor beyond state limits; or concealing the location of a minor, with criminal intent pending custody proceedings, pending dependency proceeding or proceeding concerning alleged abuse or neglect of a minor;
  - Sexual battery;
  - Sexual activity with, or solicitation of, a child by a person in familial or custodial authority;
  - Unlawful sexual activity with certain minors;
  - Female genital mutilation;
  - Arson;
  - Incest;
  - Child abuse, aggravated child abuse or neglect of a child;
  - Contributing to the delinquency or dependency of a child;
  - Sexual performance by a child;
  - Child pornography; or
  - Sexual misconduct in juvenile justice programs.
- Any misdemeanor offense related to:
  - Battery of a minor;
  - Luring or enticing a child; or
  - Child pornography.
- Any criminal act committed in another state or under federal law which, if committed in Florida, constitutes an offense listed above.

Similar legislation (HB 1125) passed during the 2016 Session imposes these same employment restrictions on all current and prospective child care personnel, which includes all owners, operators, employees and volunteers working in a child care facility.<sup>20</sup> The legislation also requires all child care personnel employed as of July 1, 2016, and who have been granted an exemption to be rescreened no later than August 1, 2016.

To increase public information on available child care options, DCF and local licensing agencies must include within their current dissemination of information on child care:

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<sup>19</sup> See Federal Bureau of Investigation, *National Crime Information Center*, <https://www.fbi.gov/about-us/cjis/ncic> (last visited November 24, 2015).

<sup>20</sup> See Section 402.302(3), F.S.

- Health and safety standards for school readiness providers;
- Monitoring and inspection reports;
- Location and contact information for school readiness providers;
- Data on the number of deaths, serious injuries, and instances of substantiated child abuse in the child care setting;
- Research and best practices in child development; and
- Resources regarding social and emotional development, parent and family engagement, healthy eating and physical activity.

Currently, child care providers must provide basic health and safety information of its premises and facilities and compliance with requirements for age-appropriate immunizations of children. Licensed providers may satisfy this requirement through compliance with current licensing standards for child care facilities, large family child care homes or family day care homes. Faith-based child care providers, informal child care providers and nonpublic schools exempt from licensure satisfy this requirement by posting a health and safety checklist adopted by OEL.

Under the grant, all school readiness program providers must meet a minimum level of health and safety and receive at least one annual inspection. Consequently, the bill authorizes OEL to enter into a memorandum of understanding (MOU) with DCF and local licensing agencies to conduct inspections and verify compliance with requirements of the federal grant by all providers who receive school readiness funding. DCF, or the local licensing agency, as applicable, will conduct inspections to determine compliance with the school readiness program provider standards through exercise of their discretionary power to enforce compliance with the laws. The authority to inspect includes access to facilities, personnel and records. A school readiness program provider that refuses entry or inspection shall have its provider contract terminated.

School readiness providers must:

- Provide more information to the public to promote informed child care choices.
- Provide training on child care development research and best practices and cardiopulmonary resuscitation training.
- Provide an appropriate group size as well as an appropriate staff-to-child ratio.
- Employ child care personnel who have satisfied the screening requirements of chapter 402 and fulfilled the training requirements of OEL.

The OEL must:

- Establish pre-service and in-service training requirements that, at a minimum, address:
  - School Readiness child development standards;
  - Health and safety standards; and
  - Social-emotional behavior intervention models.
- Establish standards for emergency preparedness plans for school readiness providers.
- Develop and implement strategies to increase the supply and improve the quality of child care services for children in underserved and impoverished areas along with areas where children have disabilities and require care during non-traditional hours.
- Establish group sizes.

- Establish staff-to-child ratios that do not exceed those defined<sup>21</sup> in current statute for licensing standards of child care facilities.<sup>22</sup>
- Establish eligibility criteria for the school readiness program consistent with state and federal law.
- Establish a sliding fee scale that provides for a parent copayment that is not a barrier to families receiving school readiness program services.

Once a child is determined eligible for the school readiness program, the child remains eligible for a period of 12 months. Consequently, the bill repeals the requirement that each early learning coalition redetermine eligibility twice per year for an additional 50 percent the coalition's enrollment.

A parent of a child enrolled in the school readiness program must notify the coalition within 10 days of any change in employment status or failure to maintain attendance at a job training or educational program in accordance with program requirements. If a child from a working family becomes ineligible due to a parent's unemployment or nonattendance at a job training or education program, the parent has 90 days to reestablish employment or resume attendance at a job training or education program. The child remains eligible during the 90 day period. In addition, the bill authorizes coalitions to temporarily waive the copayment for a child whose family income is at or below the federal poverty level.

### **Infant and Toddlers Early Intervention Program (Early Steps Program)**

#### *Present Situation*

Florida's Infants and Toddlers Early Intervention Program (Early Steps Program), is administered by Children's Medical Services within the Department of Health (DOH).<sup>23</sup> DOH contracts with hospitals and non-profit organizations across the state for coordination and delivery of services.<sup>24</sup>

The Office of Program Policy Analysis & Government Accountability has recently examined Florida's Early Steps Program, including program eligibility, service provision, issues related to payment, and recent administrative changes.<sup>25</sup> The conclusions of that research are as follows:

- Following a series of public hearings in 2010, DOH refined and narrowed the program's eligibility criteria. However, recent research findings suggest that considerable variation exists across the state in the percentage of children determined eligible. Stakeholders also have expressed concern that Florida's eligibility criteria may not capture some children who would benefit from early intervention services.
- Federal guidelines for early intervention services emphasize quality and timeliness of services. Various factors can influence timeliness and quality, including family circumstances, service delivery requirements, service coordination caseloads, provider availability, and transition planning.
- Federal rules require the Early Steps Program to be the payor of last resort. However, research has shown that the Local Early Steps (LES) offices use Early Steps Program funds to pay claims for children with insurance.
- In the spring of 2015, DOH modified the Early Steps Program in response to a \$6.9 million funding deficit. Changes included restructuring LES contracts and other administrative efficiencies, including staffing reductions and elimination of the program's third party

<sup>21</sup> See Sections 402.302(8) and (11), F.S.

<sup>22</sup> See Section 402.305(4), F.S.

<sup>23</sup> Section 391.308, F.S.

<sup>24</sup> Office of Program Policy Analysis & Government Accountability. Florida Legislature, *Early Steps Has Revised Reimbursement Rates but Needs to Assess Impact of Expanded Outreach on Child Participation*, Report No. 08-44, (July 2008) <http://www.opaga.state.fl.us/MonitorDocs/Reports/pdf/0844rpt.pdf>.

<sup>25</sup> Office of Program Policy Analysis & Government Accountability, Florida Legislature, *Florida's Early Steps Program* (November 3, 2015)(on file with Health Quality Subcommittee staff).

administrator. LES offices perceive a lack of communication and direction from the program office due to these recent staff reductions.<sup>26</sup>

Florida was determined by the U.S. Secretary of Education to need assistance for 2014 and 2015 with implementation of the Early Steps Program. Florida has not met the 100% standard for any of the compliance indicators for those reporting years.<sup>27</sup> However, DOH officials established an action plan, and are currently in year two of implementation to improve the timely delivery of Early Steps Program services.

### DOH Clearinghouse

Bright Expectations is the name of DOH's clearinghouse, which is a website that provides resources and information on developmental disabilities for pregnant women, health care providers, parents and families. More specifically, this website provides information on evaluation and intervention services, support programs for families, resources for health care providers and other important information on developmental disabilities as directed in s. 383.141, F.S.<sup>28</sup>

The Information Clearinghouse on Developmental Disabilities Advisory Council, which consists of nine members who are health care providers or caregivers and who perform health care services for persons who have developmental disabilities, advises DOH on the resources to be included in the Bright Expectations website.<sup>29</sup>

### *Effect of the Bill*

The bill repeals the state's early intervention program statutes to create new standards, eligibility criteria and responsibilities under the program. The bill renames the Florida Infants and Toddlers Early Intervention Program the Early Steps Program. The bill makes DOH the lead agency in the administration of the Early Steps Program.

The bill amends s. 391.301, F.S., to update the legislative intent of the Early Steps Program and to establish goals for the program. The program must:

- provide services to enhance the development of infants and toddlers;
- expand the recognition by the public of significant brain development that occurs during the first three years of life;
- maintain the importance of the family in early intervention services;
- provide comprehensive and coordinated services;
- ensure timely evaluation of infants and toddlers and provide individual planning for intervention services;
- improve the capacity of health care providers to serve children with unique needs; and
- ensure program and financial accountability.

The bill provides the definition for “developmental delay” which is a condition, identified and measured through appropriate instruments and procedures, which may delay physical, cognitive, communication, social or emotional, or adaptive development. The bill provides the definition for “developmental disability” which is a condition, identified and measured through appropriate instruments and procedures, which may impair physical, cognitive, communication, social or emotional or adaptive development. The bill also adds definitions for “habilitative services and devices” and “local program office.”

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Florida Department of Health, *About Bright Expectations*, available at: <http://www.floridahealth.gov/programs-and-services/people-with-disabilities/bright-expectations/about.html> (last accessed January 17, 2016).

<sup>29</sup> The Information Clearinghouse on Developmental Disabilities Advisory Council is established in s. 383.141, F.S.

The bill increases DOH's responsibilities in administering the Early Steps Program. The bill requires DOH to:

- develop a statewide plan for the program;
- ensure that screening is continued at hospitals providing Level II and Level III neonatal intensive care;
- establish standards and qualifications for service providers used by the program;
- develop uniform procedures to determine eligibility for the program;
- provide a statewide format for individualized family service plans;
- promote interagency cooperation with the Medicaid program and the Department of Education;
- provide guidance to LES offices for coordinating Early Steps Program benefits with other programs such as Medicaid and private insurance;
- provide an appeals procedure, to include mediation, for parents whose infant or toddler is determined not to be eligible for Early Steps Program services;
- competitively procure LES to administer the Early Steps Program;
- establish performance measures and standards to evaluate LES offices; and
- provide technical assistance to LES offices.

The bill establishes eligibility for the Early Steps Program “if specific funding is provided and the associated applicable eligibility criteria are identified in the General Appropriations Act.”<sup>30</sup> However, the 2016-2017 General Appropriations Act did not establish the associated applicable eligibility criteria.<sup>31</sup>

The bill expands the responsibilities of LES offices. These offices must:

- Evaluate a child within 45 days after referral;
- Notify parents if the child is eligible for services and provide an appeal process to those parents whose child is found ineligible;
- Make interagency agreements with local school districts and local service areas;
- Provide services directly or procure early intervention services;
- Provide services in the child's natural environment to the extent possible;
- Develop an individualized family service plan for each child served in the program;
- Assess the progress of the child in meeting the goals of the individualized family service plan;
- Provide service coordination to ensure that assistance for families is properly managed whether the program provides the services directly or through referral to other service providers;
- Make agreements with local Medicaid managed care organizations;
- Make agreements with local private insurers;
- Provide data required by DOH to assess the performance of the program; and
- Improve a child's transition to the local school district where the child may need special education or related services.

The bill designates the Florida Interagency Coordinating Council for Infants and Toddlers as the state interagency coordination council required under Part C of the IDEA.<sup>32</sup>

### DOH Clearinghouse

The bill amends s. 383.141, F.S., to provide additional direction to DOH in administering its information clearinghouse. The clearinghouse must provide comprehensive information to educate parents and providers of early intervention services. DOH must refer to children with developmental disabilities or delays as children with “unique abilities” whenever possible in the clearinghouse. DOH must provide education and training to parents and providers through the clearinghouse. The clearinghouse promotes public awareness of intervention services available to parents of children with developmental disabilities or delays.

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<sup>30</sup> CS/HB 7053, s. 9, at 19, l. 489 (2016).

<sup>31</sup> Specific Appropriation 197 and 547 of Ch. 2016-66, L.O.F.

<sup>32</sup> 20 U.S.C. 1435(a)(15).



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The federal draw-down of the CCDBG for the 2015 federal fiscal year is estimated to be \$273,745,303. Due to the overlap in the state and federal fiscal years, budget authority for the CCDBG in the 2015-2016 General Appropriations Act is higher than the federal draw-down amount, totaling \$374,111,331.

#### 2. Expenditures:

The 2016-2017 General Appropriations Act provided \$614,755 in budget authority from the Federal Grants Trust Fund to implement the additional licensure, background screening, and public awareness requirements of the reauthorized grant. The reauthorization defines health and safety requirements for child care providers, outlines eligibility practices and provides transparent information about child care choices to the general public. The budget authority funds nine Other Personal Services positions including seven Family Services Counselors, one Family Services Counselor Supervisor, and one Senior Attorney to support the increased workload associated with the new requirements of the bill.

The portions of the bill related to the Early Steps Program increase the workload for DOH. DOH estimates a \$100,000 recurring impact (website design, phone and staff including benefits) to meet the requirements of the bill pertaining to the clearinghouse database and website. Due to the ch. 120, F.S., appeal process, DOH also anticipates the need for an attorney at \$60,000 (including fringe benefits), recurring.<sup>33</sup>

The bill creates new eligibility criteria for infants or toddlers needing Early Steps Program services if specific funding is provided and the associated applicable eligibility criteria are identified in the General Appropriations Act. DOH estimates that 1,000 additional children would be eligible for services in the Early Steps Program under such criteria, which would cost approximately \$1,317,000 annually. However, the 2016-2017 General Appropriations Act did not establish the associated applicable eligibility criteria and did not provide an appropriation for this purpose.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

There may be a potential impact on local school districts to comply with new transitional requirements.

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

Additional guidance provided for the administration of the Early Steps Program may result in additional opportunities for private providers of early childhood interventions.

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<sup>33</sup> Florida Department of Health, 2016 Agency Legislative Bill Analysis: HB 943, Dec. 16, 2015, (on file with Health Quality Subcommittee staff).

#### D. FISCAL COMMENTS:

The bill creates new eligibility criteria for infants or toddlers needing Early Steps Program services if specific funding is provided and the associated applicable eligibility criteria are identified in the General Appropriations Act. DOH estimates that 1,000 additional children would be eligible for services in the Early Steps Program under such criteria, which would cost approximately \$1,317,000 annually. However, the 2016-2017 General Appropriations Act did not establish the associated applicable eligibility criteria.