

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

**BILL:** CS/CS/CS/SB 1022

**INTRODUCER:** Policy and Steering Committee on Ways and Means; Health Regulation Committee; Banking and Insurance Committee; Senator Altman and others

**SUBJECT:** Medicare Supplement Policies

**DATE:** April 21, 2009      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.	Bell	Wilson	HR	Fav/CS
3.	Frederick	Kelly	WPSC	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill requires insurers that provide Medicare supplement policies (Medigap) to issue such policies on a guaranteed-issue basis to persons in Florida who are: under 65 years of age and eligible for Medicare due to a disability determination or diagnosis of end-stage renal disease (ESRD). Qualified Medicare beneficiaries must be enrolled in Medicare Part B and must purchase Medigap coverage within 6 months after initial Medicare eligibility or within 2 months following termination of coverage under a group health insurance policy.

The bill allows Medigap insurers to make rate changes to implement the requirements in the bill.

This bill has no fiscal impact.

The bill substantially amends s. 627.62741, F.S.

## II. Present Situation:

### Medicare Coverage

Medicare was established in 1965 under Title XVIII of the Social Security Act, as a social insurance program to provide health and financial security for individuals age 65 and older. The program was expanded in 1972 to include individuals under the age of 65 with permanent disabilities and people suffering from ESRD. In 2001, Medicare eligibility was expanded further to cover people with amyotrophic lateral sclerosis.

Medicare consists of four parts, each covering different benefits. Medicare Part A provides coverage for most inpatient care provided by hospitals, skilled nursing facilities, and hospice care. Medicare Part B provides coverage for physician, hospital outpatient, home health, and preventive services. Medicare Part C allows beneficiaries to enroll and receive their Medicare benefits through a private health insurance plan. Medicare Part D provides insurance coverage for prescription drugs delivered through private plans that contract with Medicare. Medicare beneficiaries must pay a portion of their medical bills. Medicare supplemental insurance policies, or Medigap policies, are sold by private insurers to help Medicare beneficiaries pay the coinsurance, copayments, and deductibles.

In 2007, approximately 3.1 million persons had Medicare coverage in Florida; 2,699,180 were 65 and older and 429,344 were disabled.<sup>1</sup> In the same year, the U.S. Census Bureau, reported that Medicare provided coverage for 485,000 persons in Florida under the age of 65 and that 161,000 of those persons had private secondary insurance (33 percent).<sup>2</sup> There were 108,000 persons under age 65 who had Medicare and secondary coverage with Medicaid.

Generally, in order to be eligible for Medicare under age 65, a person with ESRD must have initiated dialysis or transplantation and be eligible for Social Security or the spouse or dependent of an eligible person.<sup>3</sup> Medicare eligibility for ESRD is not determined by financial need.

### Medicare Supplement Insurance Policies

The laws governing Medicare supplement policies, also called Medigap policies, in Florida are codified in ss. 627.671-627.675, F.S. The provisions in Florida law include: minimal filing standards, cancellation requirements, marketing standards, and loss ratio standards for Medicare supplement policies. There are twelve standard Medicare benefit plans in Florida that specify the core benefits of each type of plan, as specified by rule 690-156.008, Florida Administrative Code. According to the Office of Insurance Regulation (OIR), seven insurers currently sell Medigap policies to disabled Medicare beneficiaries under the age of 65.

Under federal and state law, Medicare beneficiaries age 65 and older are guaranteed the right to purchase a Medicare supplement policy during an open enrollment period. The open enrollment period lasts for six months, beginning on the first day of the month in which the beneficiary is

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<sup>1</sup> Medicare Aged and Disabled by State and County, as of July 1, 2007. Found at: <[www.cms.hhs.gov](http://www.cms.hhs.gov)> (Last visited on March 28, 2009.)

<sup>2</sup> *Income, Poverty, and Health Insurance Coverage in the United States: 2007*, U.S. Census Bureau.

<sup>3</sup> See <[www.kidney.org/patients/plu/plu\\_manag/x.cfm](http://www.kidney.org/patients/plu/plu_manag/x.cfm)> (Last visited on March 28, 2009.)

age 65 or older and enrolled in Medicare Part B.<sup>4</sup> Federal law does not preclude states from making Medigap insurance available to beneficiaries under the age of 65. Currently, Florida law does not mandate an open enrollment for Medicare beneficiaries under the age of 65 who qualify for coverage based on a disability or ESRD diagnosis.

At present, 28 states mandate that insurance companies offer at least one type of Medigap policy to Medicare beneficiaries who are under the age of 65 and disabled or diagnosed with ESRD.<sup>5</sup> Of these states, California, Massachusetts, and Vermont exclude coverage for ESRD and Delaware limits coverage to only beneficiaries diagnosed with ESRD.<sup>6</sup>

### **Social Security Disability**

To be deemed disabled by the Social Security Administration, a person must be unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that is expected to result in death or has lasted, or can be expected to last, for a continuous period of 12 months. Social Security pays disability benefits under two programs:

- Social Security Disability Insurance (SSDI) for insured workers, their disabled surviving spouses, and children (disabled before age 22) of disabled, retired, or deceased workers.<sup>7</sup>
- Supplemental Security Income (SSI) for the aged, the blind, and people who have disabilities and very low income. If a person is receiving SSI, the person will also most likely qualify for food stamps and Medicaid.<sup>8</sup>

### **End-Stage Renal Disease in Florida**

According to the United States Renal Data System, 406,812 persons had ESRD in the U.S. in December, 2005.<sup>9</sup> In Florida, 23,465 persons had ESRD in the same time period.<sup>10</sup> The 2005 Florida ESRD population included: 17,184 persons under the age of 65 and 10,689 persons age 65 and older.<sup>11</sup>

Medical expenses associated with ESRD are significant. The ESRD-related medical expenses were \$23 billion in 2006 and represented 6.4 percent of the total Medicare budget. The cost of treating ESRD increased 103 percent from 1996 to 2006. The Medicare ESRD-related kidney dialysis treatment cost was \$4,300 per-member per-month in 2006. The average cost of a single kidney transplant was \$246,400, in 2007, which includes the medical cost for procurement,

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<sup>4</sup> s. 627.6741, F.S.

<sup>5</sup> *Medigap Expansion Study*, Florida Renal Coalition, Jessica Cabness, Assistant Professor of Social Work, University of South Florida and Richard B. Smith, Assistant Professor of Economics, University of South Florida, 2009.

<sup>6</sup> *2009 Choosing a Medigap Policy: A guide to Health Insurance for People with Medicare*, Centers for Medicare and Medicaid Services and the National Association of Insurance Commissioners.

<sup>7</sup> See <<http://www.cms.hhs.gov/apps/firststep/content/ssdi-qa.html>>. (Last visited on March 28, 2009.)

<sup>8</sup> See <<http://www.ssa.gov/pubs/11000.html>> (Last visited on March 28, 2009.)

<sup>9</sup> The United States Renal Data System (USRDS), funded by the National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, is the national data registry that collects, analyzes, and distributes information on the end-stage renal disease (ESRD) population in the U.S., including treatments and outcomes.

<sup>10</sup> ESRD patients, regardless of insurance coverage and age, are included in the USRDS database.

<sup>11</sup> U.S. Renal Data System, *USRDS 2008 Annual Data Report: Atlas of Chronic Kidney Disease and End-Stage Renal Disease in the United States*, National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Bethesda, MD, 2008.

hospital, physician, evaluation, follow-up, and immune-suppressants.<sup>12</sup> The medical costs for ESRD patients are substantially higher than other Medicare patients, as reflected in the chart below.<sup>13</sup>

Age	Non-ESRD Medicare Patients	ESRD Medicare Patients*
20-44	\$5,470	\$49,678
45-54	6,701	56,891
55-64	6,993	
65-74	6,009	66,280
75+	9,766	75,006

\*Primary payor and primary diagnosis only.

Secondary health insurance that supplements Medicare coverage is provided by various sources including Medicaid coverage and employer provided coverage. If a Medicare beneficiary is unable to work, the supplemental coverage options are more limited. The chart below depicts the health insurance coverage in the ESRD nationwide population, by percentage.<sup>14</sup>

Age	Medicaid	Medicare	DVA*	Employer	Other	None	Medicare Advantage	Applying for Medicare
0-19	45.2	3.9	0.2	33.4	21.3	9.0	0.1	87.6
20-44	32.5	13.7	0.5	32.3	12.8	20.3	0.2	87.1
45-64	28.2	27.3	2.0	33.7	17.4	11.7	0.5	84.3
65-74	22.1	85.2	1.5	16.4	36.8	1.8	2.0	68.7
75+	17.3	88.7	1.2	13.9	46.3	1.2	2.3	66.3

\*U.S. Department of Veterans' Affairs

Medicaid is the state and federal partnership that provides health coverage for selected categories of people including categorically needy (pregnant women, children in families below the Federal poverty level, other families, qualified Medicare beneficiaries and individuals receiving Social Security Income) and the medically-needy. Medicaid can pay Medicare premiums, deductibles, coinsurance, and some costs Medicare does not cover. According to the Agency for Health Care Administration, in FY 2007-2008, there were 6,482 individuals dually enrolled in Medicaid and Medicare with ESRD, and 4,117 of them were under 65 years of age.

<sup>12</sup> *Financing a Transplant: The Costs*. Found at: < <http://www.transplantliving.org/beforethetransplant/finance/costs.aspx> > (Last visited on March 28, 2009.)

<sup>13</sup> U.S. Renal Data System, *USRDS 2008 Annual Data Report: Atlas of Chronic Kidney Disease and End-Stage Renal Disease in the United States*, National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Bethesda, MD, 2008.

<sup>14</sup> U.S. Renal Data System, *USRDS 2008 Annual Data Report: Atlas of Chronic Kidney Disease and End-Stage Renal Disease in the United States*, National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Bethesda, MD, 2008.

### III. Effect of Proposed Changes:

The bill amends s. 627.6741, F.S., to require insurers issuing Medicare supplement policies in Florida to offer guaranteed-issue supplement insurance to Medicare beneficiaries under the age of 65 who meet the following criteria:

- Qualify for Medicare because of being disabled or being diagnosed with ESRD;
- Request coverage within 6 months after they become eligible for Medicare; and
- Are enrolled in Medicare Part B.

An individual who is under age 65 and qualifies for Medicare because of disability or ESRD must also be offered a guaranteed-issue Medicare supplement policy during a 2-month period following termination of coverage under a group health insurance policy.

The bill specifies that upon becoming law, insurers must offer the coverage provided in the bill beginning **October 1, 2009**.

The bill allows Medigap insurers that already offer coverage to Medicare beneficiaries under the age of 65 a process to make a one time rate schedule change without activating the 5-year lockout period required in s. 627.410(6)(e)2., F.S. The authorized rate change allows insurers to address problems in the premium relativities between the premium class, which includes the under age 65 and the balance of the block, by redefining the age bands of the premium classes.

The second rate change in the bill allows an insurer to address problems in the premium relativities between the premium class, which includes the under age 65 individual, and the balance of the block, in the first rate filing in 2012. This provision is intended to allow a company to consider the experience data for the premium class, including the under age 65 individuals, on a much more credible basis than the current rules authorize. First, the credibility is measured by the number of Florida policies. If a block of policy forms has 1,250 or more policies, full or 100 percent credibility applies to the experience. If there are less than 1,250 policies in the under age 65 class, the insurer could take a credibility-weighted average with their nationwide business in that age class. After 2012, experience could be pooled throughout the block as authorized in the OIR's current rating rules. That is, Medigap policyholders over the age of 65 could incur a premium increase attributable to the Medigap policyholders under 65 years of age.

The effective date of the bill is October 1, 2009.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

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

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

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

**C. Trust Funds Restrictions:**

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

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

None.

**B. Private Sector Impact:**

The bill provides that approximately 17,000 Medicare beneficiaries under age 65 with ESRD would be eligible to purchase Medigap policies. The amount of pent-up demand for the coverage and affordability of such coverage is unknown. Based on U.S. Census data on the under-age 65 Medicare population in Florida, approximately 33 percent of this population already has secondary coverage with a private insurer and 25 percent of this population was dually enrolled in Medicaid. The number of Medicare beneficiaries under the age of 65 with ESRD who would purchase Medigap insurance, as a result of the provisions in the bill, is indeterminate.

In Florida, there are an estimated 430,000 persons under the age of 65 with a disability. The median household income for this group, ages 18-64, was \$28,400 in 2007. The anticipated number of Medigap enrollees under 65 years of age is not expected to increase significantly because disability determination includes maximum income thresholds and medical condition severity. For example, if an employed person's earnings averaged more than \$980 a month, a person generally would not be eligible for disability in 2009.

To the extent that expanding eligibility for Medicare supplement insurance for those with ESRD and disability increases overall claims costs for an insurer, these costs may be passed through to policyholders in the form of premium increases.

**C. Government Sector Impact:**

The Agency for Health Care Administration and the Office of Insurance Regulation indicate the bill has no fiscal impact on either entity.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to the proponents of the bill, transplant centers generally require persons without secondary insurance coverage (through an employer, federal government, Medicaid, or other source) to pay \$1,000 to \$5,000 in order to be placed on the transplant waiting list. The bill would provide a mechanism for those under age 65 with Medicare and no secondary coverage to purchase such insurance.

**VIII. Additional Information:**

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

**CS by Policy and Steering Committee on Ways and Means on April 21, 2009:**  
The CS changes the 6 month enrollment window date for Medicare Part B to be consistent with the effective date of the bill.

**CS by Health Regulation on April 1, 2009:**  
The CS changes the effective date of the bill to October 1, 2009.

**CS by Banking and Insurance on March 17, 2009:**  
The CS requires insurers offering Medigap or Medicare supplement policies in Florida to issue these policies on a guaranteed-issue basis to any person who is under age 65, is eligible for Medicare due to a disability or end-stage renal disease (ESRD), and is enrolled in Medicare, within 6 months after becoming eligible for Medicare. The original bill limited the under age 65 guaranteed issue to persons with end-stage renal disease only.

The CS creates two additional rating provisions related to Medigap policies.

- B. **Amendments:**  
None.