

THE FLORIDA SENATE
2013 SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

CS/SB 1842 — Health Insurance

by Appropriations Committee and Banking and Insurance Committee

The bill makes changes to the Florida Insurance Code related to the requirements of the federal Patient Protection and Affordable Care Act (PPACA) that apply to health insurers and health insurance policies. PPACA preempts any state law that prevents the application of a provision of the PPACA. Each state may enforce the requirements of the PPACA, but if the U.S. Department of Health and Human Services (HHS) determines that a state has failed to substantially enforce any provisions, HHS must enforce those provisions.

The bill makes the following changes to the Florida Insurance Code:

- Provides that a provision of the Florida Insurance Code (Code) or rule adopted pursuant to the Code applies unless such provision or rule prevents the application of a provision of PPACA. This is substantially the same preemption provision that is included in PPACA.
- Authorizes the Office of Insurance Regulation (OIR) to assist HHS in enforcing the provisions of the PPACA by reviewing policy forms and performing market conduct examinations or investigations for compliance with PPACA. OIR must first notify the insurer of any noncompliance and then notify HHS if the insurer does not take corrective action.
- Authorizes the Division of Consumer Services within the Department of Financial Services (DFS) to respond to complaints by consumers relating to requirements of PPACA, by performing its current statutory responsibilities to prepare and disseminate information to consumers as it deems appropriate, provide direct assistance and advocacy to consumers, and require insurers to respond, in writing, to a complaint, and further authorizes the division to report apparent or potential violations to OIR and to HHS.
- Temporarily suspends, for 2014 and 2015, the requirement that health insurers and HMOs (insurers) obtain approval from OIR for nongrandfathered health plans which, generally, are plans under which an individual was insured on March 23, 2010, and for which rates must be filed with HHS. Insurers will still be required to file rates and rate changes for such plans with OIR prior to use, but such rates may be used without OIR approval. For this 2-year period, the rates for nongrandfathered plans would be exempt from all rating requirements. These rating law changes are repealed on March 1, 2015. Under PPACA, insurers must file rate changes with HHS for nongrandfathered health plans, subject to review and determination of whether the rate increase is unreasonable. Grandfathered health plans are not subject to PPACA rate filing requirements and remain subject to the current Florida law requirements for filing rates for approval with OIR.
- Requires insurers to provide a notice to individual and small group policyholders of nongrandfathered health plans that describes or illustrates the estimated impact of PPACA on monthly premiums. This notice is required one time, when the policy is issued or renewed on or after January 1, 2014. The notice must be in a format established by rule by the Financial Services Commission. The OIR and DFS must develop a

summary of the estimated impact of PPACA on monthly premiums as contained in the notices, which must be available on their respective websites by October 1, 2013.

- Requires individuals acting as a “navigator” under PPACA to be registered with DFS, beginning August 1, 2013. Under PPACA, beginning on October 1, 2013, individuals and small businesses will be able to purchase private health insurance through Affordable Insurance Exchanges (Exchanges). Exchanges must certify qualified health plans (QHPs) offered by insurers through the Exchange. PPACA directs Exchanges to award grants to “navigators” that will facilitate enrollment in QHPs and exercise certain other duties.
- To be registered as a navigator under the bill, an individual must certify completion of federally-required training, submit fingerprints for a criminal background check, and pay a \$50 application fee (currently, there is a \$50.30 fingerprint processing fee for agents, so the total cost for a navigator would be \$100.30). Certain crimes would either permanently bar an individual from registration or disqualify an applicant for specified periods. A navigator will be prohibited from:
 - o Recommending the purchase of a particular health plan or represent that one health plan is preferable over any other;
 - o Recommending or assisting with the cancellation of insurance coverage purchased outside the Exchange;
 - o Receiving compensation or anything of value from an insurer, health plan, business, or consumer in connection with performing activities as a navigator, other than from the Exchange or an entity or individual who has received a navigator grant under the PPACA.
- Specifies grounds for suspension or revocation of registration and authorizes DFS to impose an administrative fine in lieu of, or in addition to suspension or revocation. Any person who acts as a navigator without registration is subject to an administrative penalty not to exceed \$1,500.
- Makes the following changes that allow or require insurers to take certain actions that would preserve the status of grandfathered health plans which, in general, are plans under which an individual was insured on March 23, 2010, and which are exempt from many of the requirements of PPACA:
 - o If a policy form covers both grandfathered health plans and nongrandfathered health plans, the bill allows an insurer to non-renew coverage only for all of the nongrandfathered health plans, subject to certain conditions.
 - o Requires that the claims experience for grandfathered health plans be separated from nongrandfathered health plans for rating purposes, as also required by PPACA.
 - o Allows an insurer to discontinue a policy form that does not comply with PPACA without being subject to the current prohibition on selling a new, similar policy form after a policy form is discontinued.
- Provides two different definitions of “small employer” – one for grandfathered health plans, which is the current law definition, and one for nongrandfathered health plans, which is the same as the federal definition used for PPACA (but capped at 50 employees, as allowed by PPACA). For nongrandfathered health plans, any state law that applies to small group coverage will apply to coverage for a small employer as defined under

PPACA and will no longer apply to an employer who is not a small employer under the federal definition.

- Requires the dissolution of the Florida Comprehensive Health Association (FCHA), which is the state's high risk pool for persons unable to obtain health insurance, by September 1, 2015. Coverage for current FCHA policyholders will be terminated by June 30, 2014. The FCHA is required to assist each policyholder in obtaining health insurance coverage, which is available to all persons on a guaranteed-issue basis under PPACA beginning October 1, 2013, with coverage beginning January 1, 2014.
- Specifies that health insurers and HMOs may nonrenew individual conversion policies if the individual is eligible for other similar coverage (which is available under PPACA).
- Repeals the statute that establishes the Florida Health Insurance Plan, which has never been implemented.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 25-6; House 78-36