

STORAGE NAME: h2071.hcs

DATE: March 29, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE SERVICES
ANALYSIS**

BILL #: HB 2071

RELATING TO: Health Insurance

SPONSOR(S): Committee on Health Care Services and Rep. Peaden

COMPANION BILL(S): CS/SB 312 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) HEALTH CARE SERVICES YEAS 17 NAYS 0

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I. SUMMARY:

HB 2071 limits the right of an insurance company or health maintenance organization (HMO) to retroactively cancel a group health insurance policy due to nonpayment of premium by the employer and protects the employee's right to elect a conversion health insurance policy in this event. Specifically, the bill prohibits an insurer or HMO from retroactively canceling a group health insurance contract, due to nonpayment of premium by the employer, prior to the date the notice of cancellation is mailed to the employer *unless* the notice is mailed within 45 days after the date the premium was due. Should an employee's health insurance coverage be terminated due to nonpayment of premium by the employer and written notice of cancellation by the insurer or HMO was not provided to the employee by the employer, the 63-day period within which the employee must apply for an individual conversion policy would *not* begin to run until the date the insurer or HMO mails the cancellation notice to the employee. Additionally, the premium for the conversion policy would be set at the previous group rate for the time period *prior* to the date the insurer or HMO mails the notice to the employee. For the period of coverage after such date, the premium for the converted policy would be subject to the requirements of current law which provides that such premium may not exceed 200 percent of the standard risk rate as established by the Department of Insurance.

The bill also clarifies current law to allow group insurers to contract with another insurer to issue conversion contracts on its behalf, provided that the other insurer is authorized in Florida and the policy has been approved by the Department of Insurance.

The bill has no direct fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Under Florida law, group health insurers are *not* required to provide advance notice to the group policyholder (the employer) or the certificate-holder (employee) that their insurance is canceled due to nonpayment of premium (s. 627.6645, F.S.). For other reasons, however, insurers must give the policyholder at least 45 days' advance notice of cancellation, expiration, non-renewal, or a change in rates of a policy. Upon receiving such notice, the policyholder must forward the notice to each certificate-holder covered under the policy. Insurers who bill certificate-holders directly for premiums must provide the 45 days' notice described above directly to each certificate-holder. If insurers fail to provide the 45 days' notice, the coverage shall remain in effect at the existing rate until 45 days after the notice is given or until the effective date of replacement coverage is obtained by the insured, whichever occurs first.

Health maintenance organizations have similar notice provisions to group health insurers under s. 641.3108, F.S. Health maintenance organizations are *not* required to provide advance notice to either the group contract holder (employer), or the subscriber (employee) that their coverage is canceled due to nonpayment of premium or termination of eligibility. However, for cancellation due to other reasons, HMOs, who contract directly with group contract holders, must provide these entities with 45 days' advance notice in writing prior to cancellation, expiration, or non-renewal of a contract and request that the notification be forward to all subscribers. All HMO contracts must contain the 45 days' notice requirements and the notice must contain the reasons for the cancellation, expiration, or non-renewal. Pursuant to s. 641.31, F.S., HMOs must provide 30 days' notice to contract holders of a change in health insurance rates and the contract must allow a grace period of at least 10 days after the premium date, during which time the contract must stay in force. Health maintenance organizations who contract directly with subscribers must provide the notices as described above directly to each subscriber.

In January 1998, the Department of Insurance filed an administrative action against AvMed Health Plan (an HMO) for *retroactively* canceling the group health insurance coverage of employees who worked for a company which failed to pay its group HMO premiums. According to the petition filed by the department, the employer had fallen behind on paying the HMO for its group health contract, but during a 2 to 3 month period, the HMO continued to authorize doctors and hospitals to treat the employees. In August 1997, the HMO terminated the group coverage retroactively to May when the last premiums were paid. Employees were not provided written notification by the HMO prior to the contract being canceled. The HMO has billed employees for medical care provided after the May cancellation date. The Department of Insurance alleges that because the HMO failed to provide any of the employees with written notice of termination of their health insurance coverage as specified in their member handbook, the employees were illegally denied the opportunity to request continued health insurance coverage through a converted contract under s. 641.3922, F.S. Additionally, due to the fact that the HMO continued to authorize and preauthorize medical visits, the department contends that employees were misled into believing that they had health insurance.

Presently, insurers and HMOs issuing group policies in Florida must offer individual conversion policies or contracts to an employee or member whose eligibility for the group coverage terminates, as required by s. 627.6675, F.S., for insurers, and by s. 641.3922, F.S., for HMOs. The maximum premium for the policy is 200 percent of the *standard risk rate* as determined by the department.

Failure of an employee to obtain notice of cancellation of a group policy may result in the employee incurring medical bills that are not covered. It may also compromise the employee's ability to obtain an individual conversion policy or other replacement coverage, due to the fact that an employee has only 63 days after the date of termination of eligibility for group coverage to apply for an individual conversion policy (s. 627.6675, F.S., for group health insurance, and s. 641.3922, F.S., for group HMO contracts).

B. EFFECT OF PROPOSED CHANGES:

The bill would limit the right of an insurance company or health maintenance organization to retroactively cancel a group health insurance policy due to nonpayment of premium by the employer and protect the employee's right to elect a conversion health insurance policy in this event.

The bill would also clarify current law to allow group insurers to contract with another insurer to issue conversion contracts on its behalf, provided that the other insurer is authorized in Florida and the policy has been approved by the Department of Insurance.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 627.6645, 627.6675, 641.3108, 641.3922, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 627.6645(1), F.S., relating to notification of cancellation or non-renewal of group health insurance policies and time limits thereof, to prohibit a group health insurer from retroactively canceling a group contract, due to nonpayment of premium, *prior* to the date the notice of cancellation is mailed by the insurer to the employer, *unless* the notice is mailed within 45 days after the date the premium was due. Such notice must be mailed to the policyholder's (employer's) last address as shown by the records of the insurer.

Section 2. Amends s. 627.6675, F.S., relating to conversion of group health insurance policies. If termination of an employee's health insurance coverage under a group policy is due to nonpayment of premium by the employer (policyholder) and written notice of cancellation from the insurer was not provided to the employee (certificate-holder) by the employer, the following requirements apply:

-The 63-day time period within which the employee must apply for an individual conversion policy would *not* begin to run until the date the insurer mails notice of cancellation to the employee at the employee's last address as shown by the record of the insurer.

-The premium for the conversion policy would be at the previous group rate for the time period prior to the date the insurer mails notice to the employee. For the period of coverage after such date, the premium for the converted policy would be subject to the requirements of current law which provide that such premium may not exceed 200 percent of the standard risk rate as established by the Department of Insurance.

The bill also clarifies current law to allow group insurers to contract with another insurer to issue conversion contracts on its behalf, provided that the other insurer is authorized in Florida and the policy has been approved by the Department of Insurance pursuant to s. 627.410, F.S.

Section 3. Amends s. 641.3108, F.S., relating to notification of cancellation of health maintenance contracts, to prohibit an HMO from retroactively canceling a group contract, due to nonpayment of premium, *prior* to the date the notice of cancellation is mailed by the HMO to the subscriber, *unless* the notice is mailed within 45 days after the date the premium was due. Such notice must be mailed to the subscriber's (employer's) last address as shown by the records of the HMO. For group contracts issued to an employer, the notice requirements of this section are satisfied by providing notice to the employer [subsection (3)].

Section 4. Amends s. 641.3922(1), F.S., relating to HMO conversion contracts and time limits thereof, to specify that if termination of an employee's health insurance coverage is due to nonpayment of premium by the employer (group contract holder) and written notice of cancellation from the HMO was not provided to the employee by the employer, the following requirements apply:

-The 63-day time period within which the employee must apply for an individual conversion contract would *not* begin to run until the date the HMO mails notice of

cancellation to the employee at the employee's last address as shown by the records of the HMO.

-The premium for the conversion contract would be at the previous group rate for the time period prior to the date the HMO mails notice to the employee. For the period of coverage after such date, the premium for the converted policy would be subject to the requirements of current law which provide that such premium may not exceed 200 percent of the standard risk rate as established by the Department of Insurance.

Section 5. Provides for an effective date of October 1, 1999, and provides that the provisions of the bill apply to policies and contracts issued or renewed on or after that date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Insurance will need to update its filing review process to ensure insurance and HMO compliance with the provisions of this act.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Insurers and HMOs would be required to expend funds and allocate administrative resources to meet the notice requirements imposed under the bill. These entities would need to continually maintain a current listing of all employees under the group plan with their addresses should employee notification of contract cancellation become necessary.

2. Direct Private Sector Benefits:

Employees who are members of group health plans would benefit from the provision that protects their right to elect a conversion insurance policy under certain circumstances. Additionally, employees would be protected by the provision that limits the right of insurers and HMOs to retroactively cancel a group health insurance policy due to nonpayment of premium by an employer.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties and municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

There are at least two concerns that can be raised regarding the provisions of this bill. First, insurers and HMOs are unlikely to allow an employer to be more than 45 days late in paying a past due premium, before canceling the coverage, because the bill would prohibit retroactive cancellation after such time.

Secondly, under current law, employees who are not notified of cancellation of their group policy may incur medical bills that are not covered. The bill may compromise the employee's ability to obtain an individual conversion policy or other replacement coverage, due to the fact that an employee has only 63 days after the date of termination of eligibility for group coverage to apply for an individual conversion policy (s. 627.6675, F.S., for group health insurance and s. 641.3922, F.S., for group HMO contracts).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

Staff Director:

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