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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
INSURANCE
ANALYSIS

BILL #: HB 903

RELATING TO: The Employee Health Care Access Act

SPONSOR(S): Rep. Albright

COMPANION BILL(S): SB 1294 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE SERVICES YEAS 14 NAYS 1
(2) INSURANCE
(3) GENERAL GOVERNMENT APPROPRIATIONS
(4)
(5)

I. SUMMARY:

HB 903 expands the definition of "modified community rating" to include health status, claims experience, and duration of coverage as factors that an insurer may use in setting rates for small employers. The bill provides that rate adjustments for claims experience, health status, or duration of coverage must be applied uniformly to rates charged all employees of the business and cannot be charged to individual employees or dependents or result in a rate for the employer that deviates more than 25 percent from the carrier's approved rate. The carrier may adjust the renewal premium up to 15 percent annually based on these additional factors. In addition, HB 903:

- Authorizes small employer carriers to adjust small employer premiums based on administrative and acquisition expense differences resulting from the size of the group, subject to review and approval of the Department of Insurance; and
- Provides that small employer carrier rating methodologies may include separate rating categories for one, two, or three or more dependent children for family coverage of an employee with a spouse and dependent children or an employee with dependent children only.

In addition, sole proprietors and self-employed individuals are removed from the definition of "small employer." The definition of "small employer" is expanded to include requirements that a majority of the employees employed by the small employer are employed within this state, the small employer business must not have been formed primarily for purposes of buying health insurance, and a bona fide employer-employee relationship exists. Sole proprietors, independent contractors, and self-employed individuals are eligible for coverage after July 1, 1999, only for renewal purposes. Language extending guaranteed-issue requirements to small employers with one or two eligible employees, beginning April 15, 1994, is deleted.

Finally, HB 903 clarifies that the additional rating law procedures of ss. 627.410 and 627.411, F.S., apply to health insurance companies and that the rating law procedures of s. 641.31, F.S., apply to health maintenance organizations that offer small employer coverage.

There may be a fiscal impact to this bill which would include costs incurred by the Department of Insurance in reviewing and approving small group rate filings.

Amendments:

On March 18, 1999, five amendments were adopted in the Committee on Health Care Services. They are traveling with the bill. See the Amendments section of the analysis.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida's Employee Health Care Access Act

The Florida Legislature enacted small-group market reforms in a series of steps from 1992 to 1994. In 1992, the Employee Health Care Access Act (Act) was enacted to require insurers in the small group market to guarantee the issuance of coverage to any small employer that applies for coverage, regardless of the health condition of the employees. This law is codified in s. 627.6699, F.S. In 1993, the Act was expanded to cover sole proprietors and self-employed individuals.

The Act further requires that policies issued to small employers have premiums established on a "modified community rating" basis. Rates may be based only on age, gender, family composition, tobacco usage, and geographic location (s. 627.6699(3)(n), F.S.). Rates may not be based on the health status or claims experience of any individual or group, or any other factor.

An insurer that writes small group policies in Florida (a "small employer carrier") must elect to either be a risk-assuming carrier and assume all risk or be a reinsuring carrier and have the option of reinsuring identified high-risk individuals or groups with a reinsurance pool (s. 627.6699(9), F.S.). A reinsurance pool is established and funded through premiums and assessments on insurers, governed by an appointed board of the Florida Small Employer Health Reinsurance Program. A reinsuring carrier is able to cede any covered life it determines as a high risk into the program and seek reimbursement from the program for claims paid for the risk. A reinsuring carrier must pay, for reinsuring a single employee, a reinsurance premium equal to 5 times the standard rate determined by the board. If the reinsuring carrier reinsures an entire small employer unit, the premium is equal to 1.5 times the standard rate. Risk-assuming carriers are not subject to losses in the reinsurance pool (s. 627.6699(11), F.S.).

The Florida Small Employers Health Reinsurance Program is a nonprofit entity created to facilitate the guaranteed issuance of standard health benefit plans and basic health benefit plans to all small employers, by providing optional reinsurance coverage to small employer carriers. The program is governed by a nine-member board, including the Insurance Commissioner, or his designee, and eight additional members who are representatives of carriers.

Under s. 627.6699, F.S., small group carriers are required to offer a "standard" and "basic" policy to small employers. The "standard" policy is generally intended to be comparable to a major medical policy typically sold in the group market, with cost containment features intended to make the policy affordable. The statute specifies certain mandated benefits that apply to both the standard and basic policy, and a Health Benefit Plan Committee is created to develop and modify the standard and basic benefit plans. Small group carriers are required to offer all health benefit plans (not just the basic and standard plans) on a "guaranteed-issue basis," but additional or increased benefits may be added to the standard health benefit plan by rider and such riders may be medically underwritten.

"Small employer" is defined in s. 627.6699, F.S., to mean, "in connection with a health benefit plan with respect to a calendar year and a plan year, any person, sole proprietor, self-employed individual, independent contractor, firm, corporation, partnership, or association that is actively engaged in business, has its principal place of business in this state, employed an average of at least 1 but not more than 50 eligible employees on business days during the preceding calendar year, and employs at least 1 employee on the first day of the plan year. For purposes of this section, a sole proprietor, an independent contractor, or a self-employed individual is considered a small employer only if all of the conditions and criteria established in this section are met." (s. 627.6699(3)(v), F.S.)

Section 627.6699, F.S., defines the term "self-employed individual" to mean "an individual or sole proprietor who derives his or her income from a trade or business carried on by the individual or sole proprietor which results in taxable income as indicated on IRS Form 1040, schedule C or F, and which generated taxable income in one of the 2 previous years." (s. 627.6699(3)(u), F.S.)

According to information provided by the Agency for Health Care Administration in its Analysis and Economic Impact Statement for HB 903, since small group health insurance coverage was extended to include one and two person groups in 1993, "small group coverage has soared to include an estimated two million people who were not previously insured."

Overview of Federal Law

In 1996, the federal Health Insurance Portability and Accountability Act (HIPAA) was enacted to provide guaranteed availability and renewability of health insurance coverage for certain employees and individuals, and to increase portability through the limitation on preexisting condition exclusions. These provisions amended the Public Health Services Act. In a separate federal act, insurance provisions relating to maternity coverage, also amending the Public Health Services Act, were addressed.

Group plans are regulated, in part, by the federal government, under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code, and to the extent the plans purchase insurance, in part, by the states under state insurance laws and regulations. Policies sold in the individual market are regulated by the individual states.

HIPAA allows each state the option to enact and enforce the federal provisions or fall back to federal enforcement. HIPAA specifies that the federal provisions pertaining to health insurers in the individual market generally do not preempt state regulation of individual insurers. However, if the state's statutory provisions prevent the application of a federal requirement, HIPAA preempts the statutes and the federal requirements prevail. At a minimum, each state must ensure that its provisions comport with HIPAA and do not diminish the federal requirements. However, each state is permitted to adopt provisions that expand or provide more favorable treatment for the individual. HIPPA requires small employer carriers to guarantee the issuance of coverage to small employers with 2 to 50 employees.

Individual and Group Health Insurance Policies

Under current Florida law, section 627.6045, F.S., prohibits *individual* health insurance policies from excluding coverage for a preexisting condition for any period longer than 24 months, based upon a condition that had manifested itself during the previous 24-month period in such a manner as would cause an ordinarily prudent person to seek medical advice or treatment. Insurers are also required to provide credit for preexisting conditions for the time a person was covered under previous coverage that was similar to or exceeded the coverage under the new policy, if such previous coverage was effective within the 62 days prior to the effective date of new coverage.

By comparison, under current Florida Law, *group* policies may not exclude coverage for longer than 1 year, based on a condition manifesting itself during the previous 6 months; and credit must be provided for time covered under previous coverage that was effective within 30 days prior to the new coverage, under s. 627.6561, F.S. Small group policies with 3-50 employees may also impose a 1-year exclusion on preexisting conditions. For small groups with 1 or 2 employees, a 24-month exclusion and 24-month look-back is permitted, under s. 627.6699(5), F.S. Limitations for preexisting conditions do not apply to out-of-state group policies covering Florida residents. Presently, insurers in Florida are allowed to consider pregnancy as a preexisting condition.

Evaluation of Health Insurance Market Reforms

General conclusions of the results of insurance reform laws are difficult to make. Many components of insurance reform laws interact with other components of insurance regulation and many times the market and social conditions effect the outcome. Recently, two academic research studies were done which examined the impact of insurance reform laws. One study was performed in 1998 by the Center for Risk Management and Insurance Research at Georgia State University and funded by the Health Insurance Association of America, while the second study, which was published in February 1999, was performed by the Wake Forest University School of Medicine and funded by the Robert Wood Johnson Foundation. The conclusion of the two studies with regard to insurance reform results on the small-group market were somewhat contrasting.

The Georgia State study found that "the two types of state regulation that have had the greatest effect on the structure of local health insurance markets are coverage mandates and small group reforms." One major conclusion of the study was that "small-group community rating, in conjunction with a guaranteed issue requirement, is associated with a significantly increased probability that an individual will lack health insurance. The use of small-group rating bands coupled with guaranteed issue is also associated with an increased probability that an individual will lack health insurance,

raising the probability by 15.8 percent." The Georgia State study relied on analyses of the March 1998 supplement to the Census Bureau's Current Population Survey. In March of each year, the Census Bureau surveys approximately 57,000 households across the nation, receiving information on about 140,000 individuals.

The Wake Forest study relied on in-depth interviews and insurance data analysis from each of the seven states it studied to make its conclusions. Findings were reported separately for each state's data, but as a whole the findings indicated that "small-group reform laws have had a significant positive impact on the ability of very small 'micro' groups of 5 or fewer workers to obtain group coverage. However, most insurers continue to resist selling to groups this size because of greater administrative cost and adverse selection concerns."

In its separate analysis of the results of insurance reform laws in Florida only, the Wake Forest study concluded that Florida insurance reform laws "have not produced a huge influx of new subscribers....Only increased enrollment for micro groups, which has been especially notable, can be clearly attributed to the law, although even there the small-group enrollment gains may come partly or mostly at the expense of enrollment losses in the individual market. At least it can be said that the deterioration on the small-group market that preceded these laws has been halted, and possibly reversed. In addition, coverage is now readily available for high-risk groups."

The Wake Forest Study of Florida also concluded that small-group insurance availability in Florida appears to be hampered "by practices such as covert field underwriting and explicit reduction in agent commissions to discourage enrollment of micro groups. These and some other more isolated practices appear to constitute manipulation, circumvention, or perhaps outright violation of the law. Their aggregate impact is undetermined, however, and may be significantly blunted by the ready ability to obtain coverage through CHPA."

With regard to affordability of insurance in Florida, the Wake Forest study concluded that "small-group reform has not had a strong negative impact on affordability in Florida. The market is intensely price competitive. Despite some dramatic price increases for a number of insurers and subscribers, and despite fluctuations in price in different years, the overall trend of price in Florida appears to be moderate."

B. EFFECT OF PROPOSED CHANGES:

Health insurance carriers would be authorized to consider health status, claims experience, and duration of coverage as factors when setting rates for small employers. Rate adjustments for claims experience, health status, or duration of coverage would be applied uniformly to rates charged all employees of the business and will not be charged to individual employees or dependents or result in a rate for the employer that deviates more than 25 percent of the carrier's approved rate. Carriers would be permitted to adjust the renewal premium up to 15% annually based on health status, claims experience, and duration of coverage.

Small employer carriers would be authorized to adjust small employer premiums based on administrative and acquisition expense differences resulting from the size of the group, subject to review and approval of the Department of Insurance, and small employer carrier rating methodologies would be permitted to include separate rating categories for one, two, or three or more dependent children for family coverage of an employee with a spouse and dependent children or an employee with dependent children only.

Sole proprietors and self-employed individuals would be removed from the definition of "small employer" and forced to seek individual coverage. Sole proprietors, independent contractors, and self-employed individuals would be eligible for coverage after July 1, 1999, only for renewal purposes. Small employers with one or two employees, would no longer be eligible for guaranteed-issue requirements.

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?

      No.

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

      The Department of Insurance will be responsible for review of additional rate factors.

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

      No.

   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?

   No.

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

   No.

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

   No.

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

   No.

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

   No.

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?

No.

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

No.

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?

No.

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:

Section 627.6699, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 627.6699, F.S., relating to the Employee Health Care Access Act. The following subsections and paragraphs of this section are amended:

Subsection (3)(n) is amended to expand the definition of "modified community rating" to include health status, claims experience, and duration of coverage as factors that an insurer may use in setting rates for small employers.

Subsection (3)(v) is amended to remove sole proprietor and self-employed individuals from the definition of "small employer," and to add to the definition that a majority of the employees employed by the small employer must be employed within this state, and the small employer business was not formed primarily for purposes of buying health insurance, and a bona fide employer-employee relationship exists. Sole proprietors, independent contractors, and self-employed individuals are eligible for coverage after July 1, 1999, only for renewal purposes.

Subsection (5)(b) is amended to remove language that extended guaranteed-issue requirements to small employers with one or two eligible employees, beginning April 15, 1994.

Subsection (6)(b) is amended to:

- Specify that rate adjustments for claims experience, health status, or duration of coverage must be applied uniformly to rates charged all employees of the business and cannot be charged to individual employees or dependents or result in a rate for the employer that deviates more than 25 percent from the carrier's approved rate. The carrier may adjust the renewal premium up to 15 percent annually based on these additional factors;

- Allow a small employer carrier to adjust small employer premiums based on administrative and acquisition expense differences resulting from the size of the group, subject to review and approval of the Department of Insurance; and

- Allow small employer carrier rating methodology to include separate rating categories for one, two, or three or more dependent children for family coverage of an employee with a spouse and dependent children or an employee with dependent children only.

Subsection (6)(d) is amended to clarify that the additional rating law procedures of ss. 627.410 and 627.411, F.S., apply to health insurance companies and that the rating law procedures of s. 641.31, F.S., apply to health maintenance organizations that offer small employer coverage.

Section 2. Provides for an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   Unknown.

2. Recurring Effects:

   The Department of Insurance may be required to expend additional resources reviewing and approving small group rate filings.

3. Long Run Effects Other Than Normal Growth:

   Unknown.

4. Total Revenues and Expenditures:

   Unknown.

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:

   Small employers who employ persons who have health problems or who experience higher than average medical claims may pay up to 25 percent higher rates than those small employers who employ persons who have fewer health problems and who experience lower than average medical claims. Small businesses with employees who have adverse health history may find it too expensive for them to provide health insurance due to increases in rates. In addition, one-person businesses will be ineligible for coverage under small-group guarantee issue provisions and will need to seek individual coverage, which can be costly and difficult to obtain.

2. Direct Private Sector Benefits:

   Health insurance carriers will benefit through their ability to increase rates for small employer policies due to claims experience, health status, or duration of coverage. Flexibility in the rating system may provide insurance carriers with the ability to offer lower rates to groups with lower claims experience.

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

   One person businesses will no longer be eligible for coverage under small-group guarantee issue provisions and will need to seek individual coverage, which can be costly and difficult to obtain. With regard to employment markets, employers with healthier than average employees who make fewer claims will pay comparatively lower premiums than small employers with greater than average claims costs. As a result, small employers may be deterred from hiring seniors, women of child-bearing years, or employees with perceived adverse health histories.

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 expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues.

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 18, 1999, the Committee on Health Care Services passed the following amendments:

Amendment #1 (offered by Rep. Sublette): On page 1, lines 14-27: This amendment removes the provision of the bill which expands the definition of "modified community rating" to include health status, claims experience, and duration of coverage as factors that an insurer may use in setting rates for small employers.

Amendment #2 (offered by Rep. Wasserman Schultz): On page 4, line 12: This amendment provides that rate adjustments for claims experience, health status, or duration of coverage must be applied uniformly to rates charged all employees of the business and cannot be charged to individual employees or dependents or result in a rate for the employer that deviates more than 20 percent from the carrier's approved rate (rather than 25 percent as proposed in the bill).

Amendment #3 (offered by Rep. Wasserman Schultz): On page 4, line 17: This amendment authorizes the carrier to adjust the renewal premium up to 10 percent annually based on claims experience, health status, or duration of coverage factors (rather than 15 percent as proposed in the bill).

Amendment #4 (offered by Rep. Wasserman Schultz): On page 2, line 29: This amendment provides that beginning July 1, 1999, at least once annually, every small employer carrier must offer and issue all sole proprietors or self-employed individuals basic and standard small employer health benefit plans on a guaranteed-issue basis to any eligible such employer that elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan.

Amendment #5 (offered by Rep. Boyd): On page 5, between lines 2 and 3: This amendment provides that small employer carriers may not utilize a composite rating methodology to rate a small employer with less than 10 employees.

The amendments as adopted are not consistent with each other and create inconsistencies with remaining provisions of the bill.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:	Staff Director:
Amy K. Guinan	Phil E. Williams

AS REVISED BY THE COMMITTEE ON INSURANCE:

Prepared by:	Staff Director:
Robert E. Wolfe, Jr.	Stephen Hogge