

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1428  
 SPONSOR: Senators Posey and Clary  
 SUBJECT: State Group Insurance Program  
 DATE: March 27, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill provides that the Department of Management Services may not prohibit or limit any insurer, health maintenance organization, prepaid limited health services organization, or insurance agent from competing for any insurance product or plan provided by the department on the basis of the compensation arrangement used by the insurer for its agents.

This bill substantially amends the following sections of the Florida Statutes: 110.123, and 287.022.

**II. Present Situation:**

**State of Florida State Employees' Group Health Insurance Program**

Pursuant to the provisions of s. 110.123(3)(a), F.S., it is the intent of the Legislature to offer a health insurance benefit package for state employees, and to provide the coverage in the most cost-efficient manner. Employees have a choice of joining the self-insurance plan or a health maintenance organization (HMO).

The Division of State Group Insurance (division) within the Department of Management Services offers active employees the opportunity to participate in a number of optional "employee-pay-all" Supplemental Insurance plans and to have the premium payments for these plans deducted on a pre-tax basis. These are employee-pay-all plans; the State does not contribute any portion of the premium for these plans. There are two types of supplemental plans, those that are endorsed by division and other supplemental plans. Division-endorsed plans are supplemental benefit plans that meet the following criteria:

1. They have been specifically designed by division staff working with nationally recognized employee benefit consultants.
2. They have been selected by a competitive procurement process.
3. They have contractual performance guarantees, backed by financial penalties, to ensure high levels of service to State employees.

There are currently two supplemental plans that are endorsed by the division. A number of other supplemental plans are also available that are not endorsed by the division. These plans did not result from a competitive procurement process, they are not based upon a division benefit design, and the division does not have the authority to regulate these plans by means of contractual performance guarantees similar to those of the endorsed plans. The following supplemental insurance products are offered by various supplement insurance companies; accident and accident/disability insurance, cancer and cancer/intensive care insurance, dental insurance, and hospitalization insurance.

Participation by individuals in the program is available to all state officers, full-time state employees, and part-time employees. Such participation is voluntary. For fiscal year 1999 - 2000, the division estimated that the average number of participants (active employees and retirees) in the self-insurance program is approximately 95,000 and the average number of enrollees in the HMOs is 67,000. There are approximately 375,000 covered lives in the program (active employees, retirees, spouses, dependents, continuation coverage eligible individuals).

In April 1999, the division issued a Request for Proposals (RFP) for managed dental benefits from companies offering both an exclusive provider plan and dental preferred provider coverage. Five proposals were submitted to the division. A proposal from one company was not considered because it was deemed by the DSGI to violate section 2.10 of the Request for Proposal, which prohibited a vendor from employing or retaining a person to solicit or secure this contract for a commission, percentage, or contingent fee, unless specifically authorized by law and not paid directly or indirectly by the State or its employees.

In response to an inquiry regarding the Request for Proposal provision prohibiting agent commissions and the use of servicing insurance agency and the compensation of such an agency, the division stated that eligibility and enrollment would be handled by state staff and the division would expect there to be a claims processing unit located within the dental plan company, so there was no need for, and the RFP did not anticipate the need for, independent insurance brokers or agents. The division stated that a salaried agent, or a company executive who was also licensed as an agent, may issue the product requested by the RFP. The division indicated that the State would not pay agent commissions or brokerage fees, and to the extent that a company believed it must pay such fees, it should absorb them as a cost of doing business and pass them through the premiums to be paid by State enrollees.

Dental insurance may be sold by a health insurer authorized under chapter 624 or by a prepaid limited health plan licensed under chapter 636. Under the provisions of s. 636.044(1), F.S., "a person may not, unless licensed and appointed as health insurance agent in accordance with the applicable provision of the insurance code solicit contracts or procure applications or engage or hold herself or himself out as engaging in the business of analyzing . . . prepaid limited health services contracts or of counseling or advising or giving opinions to persons relative to such

contracts other than as a consulting actuary advising such a plan or as a salaried full-time employee so counseling and advising the employer relative to the coverage for the employer and her or his employees.”

Sections 626.051, and 626.062, F.S., include a limited exception to the requirement that a solicitation must be performed by licensed agents. An individual employed by a life or health insurer as an officer or other salaried representative may solicit and effect contracts of life insurance or annuities or of health insurance, without being licensed as an agent, when and only when he or she is accompanied by and solicits for and on behalf of a licensed agent.

According to an opinion issued by the Department of Insurance, dated August 6, 1999, which addressed whether the Division of State Group Insurance was required to use licensed agents with respect to a prepaid limited health service contract, the Department of Insurance stated that “...salaried employees of an insurer, HMO, or prepaid health service organization who are responsible for answering questions of prospective insureds at the time of enrollment or assisting group insureds with coverage or other questions after an insurance contract is effectuated are not engaged in the business of counseling, advising, or giving opinions relative to insurance contracts because such activities merely constitute explaining the position of their employer with regard to the insurance contract.” However, the Department of Insurance also opined, “If an insurer, HMO, or prepaid limited health services organization contracts with an outside third party to carry out these responsibilities, it is the department’s view that such individuals would require licensure because they would be engaged in the business...”

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 110.123, F.S., to provide that the Department of Management Services may not prohibit or limit any insurer, health maintenance organization, prepaid limited health services organization, or insurance agent from competing for any insurance product or plan provided by the department on the basis of the compensation arrangement used by the insurer for its agents.

**Section 2.** Amends s. 287.022, F.S., relating to procurement of insurance by the State, to provide to that the Department of Management Services may not prohibit or limit any insurer, health maintenance organization, prepaid limited health services organization, or insurance agent from competing for any insurance product or plan provided by the department on the basis of the compensation arrangement used by the insurer for its agents.

**Section 3.** Provides that this act takes effect upon becoming a law.

### IV. Constitutional Issues:

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Insurers, health maintenance organizations, prepaid limited health services organizations, that provide for the compensation for agents in their proposal would benefit from the prohibition on the Division of State Group from excluding these entities from the insurance procurement process based upon such arrangements with agents. Agents involved in such arrangements would benefit from the change in the procurement process. The effect of the bill on the total cost of insurance plans to state employees is unknown.

**C. Government Sector Impact:**

The State may experience some indeterminate costs for contracts, if the Division of State Group Insurance cannot exclude a vendor's proposal because the vendor includes compensation for insurance agents in the proposal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.