

STORAGE NAME: h0911.ccc.doc
DATE: March 1, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS

BILL #: HB 911
RELATING TO: Mandated Health Insurance Benefits
SPONSOR(S): Representative Farkas
TIED BILL(S): None.

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

- (1) INSURANCE YEAS 15 NAYS 0
- (2) HEALTH REGULATION YEAS 6 NAYS 0
- (3) COUNCIL FOR COMPETITIVE COMMERCE
- (4)
- (5)

I. SUMMARY:

Various statutory provisions impose health benefit mandates requiring health insurance policies and health maintenance organization (HMO) contracts to include specific coverages for particular treatments, conditions, persons, or providers. Mandates affect plans covering an estimated 33 percent of all Floridians, and 40 percent of insured Floridians.

Florida law now imposes 51 health benefit mandates, which constitute one of the most extensive sets of required benefits in the nation. Of these 51 mandates, 35 have been enacted since 1987, when the Legislature adopted a requirement that an impact analysis accompany any proposal for a new mandate. An impact analysis was submitted for only 4 of these post-1987 mandates. The 2001-2002 General Appropriations Act included \$200,000 for the Office of Legislative Services to fund the study of proposed health benefit mandates. As of January 25, 2002, none of these funds had been spent.

HB 911 requires that an unspecified "portion" of these funds in the 2001-2002 appropriation be used by the Office of Legislative Services to contract for the completion of a report assessing the impact of a list of eighteen existing mandated health benefits and three proposed mandated health benefits. The review must address compliance with the current statutory guidelines and the extent to which the mandated coverage is part of other types of plans and the subject of judicial or administrative rulings. The review also must consider the nature of services used by those with a health coverage benefit, the effect of any benefit caps, and utilization guidelines for the coverage.

Traveling amendments: There is **one amendment by the Insurance Committee** traveling with the bill. This amendment limits the study to proposed mandates for substance abuse, contraceptives and fertility, medical nutrition therapy, occupational therapy, and specified mental health services. There are also **three amendments by the Health Regulation Committee** traveling with the bill. These amendments: add expansion of the current mandate for certain pharmaceuticals to the list of proposed mandates to be studied pursuant to the Insurance Committee amendment, provide additional requirements as to the content and method of the study, and require that the study be conducted in coordination with the Agency for Health Care Administration.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Mandated Health Coverages

State laws frequently require private health insurance policies and health maintenance organization (HMO) contracts to include specific coverages for particular treatments, conditions, persons, or providers. These are commonly referred to as mandated health coverages. When the Legislature mandates a new benefit, it covers only an estimated 33 percent of all Floridians and 40 percent of insured Floridians. Nearly one-half of all Floridians are either uninsured or covered under Medicare or Medicaid, and are therefore not affected. Self-funded plans provided by employers also are similarly unaffected because the federal Employee Retirement Income Security Act of 1974 (ERISA) [29 U.S.C. s. 1001, et. seq.] generally preempts state regulation of these plans.

Statutory Review Process

Recognizing that most mandated coverages contribute to the cost of health insurance while also acknowledging the social and health benefits of many of these mandates, the Legislature, in 1987, enacted section 624.215, F.S., calling for a "systematic review of current and proposed" mandated coverages. At that point, the Legislature had approved 16 mandated benefits. In the 13 years since, the Legislature has approved an additional 35 mandated benefits. With a total of 51 mandated health benefits applicable either to private insurer or HMO health plans, Florida now has one of the nation's most extensive set of coverage requirements.¹ Of the 51 mandated benefits, 40 apply to either private individual or group policies provided by insurers. Individual policies are subject to 34 and group policies to 39. Health maintenance organizations must comply with 39 mandated benefits.

The lone procedural requirement established for reviewing mandated benefits – that proponents submit an impact analysis for any proposed mandated benefit prior to consideration – has been largely ignored. Staff could confirm only 4 instances since 1987 in which the required study was completed for a mandated benefit. Section 624.215, F.S., sets forth a process for assessing the

¹ It is not always apparent in statute which health plans are subject to which state-mandated health benefits. The statutes can be inconsistent and confusing. For instance, the statute may refer to "an insurer," but then, in describing those covered, refer to "subscriber," a term associated with HMOs. Also, since there are no universal criteria for qualifying a given benefit as a mandate, different individuals could arrive at different totals.

impact of mandated health coverages. Subsection (2) of this law specifies guidelines for the review. These include an assessment of the extent to which:

- The treatment or service is used by a significant portion of the population;
- The insurance coverage is generally available;
- Any general lack of availability of coverage causes persons to forego necessary treatment;
- Any general lack of availability of coverage results in unreasonable financial hardship;
- There is public demand for the treatment or service;
- The coverage is included in collective bargaining negotiations;
- Cost increase or decrease result from the treatment or service;
- Coverage will increase the appropriate uses of the treatment or service;
- The coverage will be a substitute for a more expensive treatment or service;
- The coverage will increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders; and
- The coverage will impact the total cost of health care.

The Cost of Mandated Health Benefit Coverages

The Legislature has recognized in legislative intent in s. 624.215(1) that "most mandates contribute to the increasing cost of health insurance premiums." By stating that "most" mandates increase costs, that same legislative intent recognizes that some mandates may not increase premium costs. These could be of at least two types: one, a preventative care mandate, such as mammogram screening or well-child care; and two, a mandated treatment or provider substituting for a more expensive alternative. Certain mandated coverages may not necessarily reduce premium costs but may reduce the costs borne by the general public.

Calculating the cost of mandated health coverages can be difficult. Cost determinations are complicated by a lack of reported data, difficulty in calculating costs avoided, and failure to account for the cost of mandated coverages which would today be provided in the absence of a specific mandate.

Staff could not identify any comprehensive study of the cumulative cost of mandated health coverages undertaken in Florida. Several states have calculated the costs of their own particular set of mandated benefits. Costs vary based on the number and type of mandated benefits.

In 1992, the Legislature created the Florida Employee Health Care Access Act [s. 627.6699, F.S.], which authorized insurers and HMOs to offer "basic" and "standard" small employer group plans and exempted these two plan types from mandated coverages not expressly made applicable to these plans in law.

Appropriations to Fund Mandates Study

In the 2001-02 General Appropriations Act, the Legislature included \$200,000 in Specific Appropriation 2556 under the Office of Legislative Services to fund the study of proposed health benefit mandates. As of January 25, 2002, none of these funds had been spent.

C. EFFECT OF PROPOSED CHANGES:

This bill would require that unspecified "portion" of the funds appropriated to the Office of Legislative Services in Specific Appropriation 2556 of the 2001-02 General Appropriations Act for the purpose of studying the cost of proposed mandated health benefits be used by the Office of Legislative Services to contract for the completion of a report assessing the impact of eighteen specifically-identified existing mandated health benefit coverages and three specifically-identified proposed mandated health benefit coverages. The proposed mandated benefits that would be the subject of the review would be substance abuse, contraceptives and infertility, and mental health services. Autism would be included under mental health services.

The review would cover the elements specified in s. 624.215, F.S., and the extent to which the coverage is part of other types of plans (e.g., self-funded, large and small group) and the subject of judicial or administrative rulings. The review also must consider the nature of services used by those with mandated health benefit coverages, the effect of any benefit caps, and utilization guidelines for the coverage.

The bill provides an effective date of upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Please see Effect of Proposed Changes above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. No additional appropriation of funds would be required since the bill would be funded out of a specific Appropriation in the 2001-02 budget and no specific dollar amount is specified.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 a city or county to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Insurance Committee amendment: On January 30, 2002, the Committee on Insurance approved the bill with one amendment which is traveling with the bill. This amendment limits the scope of the impact study to only the proposed mandated health benefits identified (substance abuse, contraceptives and infertility, medical nutrition therapy, occupational therapy, and mental health services for persons with a serious mental illness).

Health Regulation Committee amendments: On February 21, 2002, the Committee on Health Regulation adopted three amendments. Amendment 1b amends the Insurance Committee amendment to correct a drafting error and to add the off-label use of FDA-approved pharmaceuticals for the treatment of life-threatening, chronic, or disabling conditions to the list of proposed mandates to be studied.

Amendment 2 by Health Regulation requires insurers and persons or organizations proposing mandates to provide the data and information necessary to complete the study and specifies the time and manner in which the report is to be presented to the Legislature. Amendment 3 requires the study to be performed in coordination with the Agency for Health Care Administration (according to Health Regulation Committee staff, this amendment is for the purpose of drawing down federal dollars to supplement the state-appropriated money).

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VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Stephen T. Hogge

Staff Director:

Stephen T. Hogge

AS REVISED BY THE COMMITTEE ON HEALTH REGULATION:

Prepared by:

Wendy Smith Hansen

Staff Director:

Lucretia Shaw Collins

AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

Leonard Schulte

Council Director:

Matthew M. Carter II