

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government --- Medicare supplement plans issued in Florida and offered by employers or employer groups to employees or former employees would be subject to a lesser number of provisions of the Florida Insurance Code. Such plans issued outside of Florida which cover Florida residents would be exempt from any regulation by this state.

B. EFFECT OF PROPOSED CHANGES:

Background

Medicare Supplement Policies

Part VIII of Chapter 627, F.S., is the "Florida Medicare Supplement Reform Act," which regulates Medicare supplement insurance. A "Medicare supplement policy" is defined in s. 627.672(1), F.S., as a health insurance policy or other health benefit plan offered by a private entity to reimburse the policyholder for expenses incurred but not reimbursable under Medicare.

The policies are also known as Medigap coverage.¹ This coverage is available to persons who have both Medicare Part A (hospital insurance) and Part B (medical insurance), that is, persons age 65 and over. Plans which are marketed as Medigap policies must comply with extensive federal regulations relating to marketing, standardized benefit schedules, and disclosure requirements, among others. Importantly, Medigap policies are guaranteed renewable, which means the insurer must automatically renew or continue coverage as long as the premiums are continuously paid and the insured has not committed fraud.

Premiums for Medigap policies may be set using one of three methods:

- Community-rated (or no-age rated) --- Every policyholder pays the same premium regardless of age; premiums may increase because of inflation
- Issue-age rated --- The premium is based on the age of the policyholder at initial purchase, so younger persons pay less; premiums may increase because of inflation
- Attained-age rated --- The premium is based on the policyholder's current (attained) age, so premiums increase each year; premiums may also increase because of inflation

Out-of-state insurers that issue Medicare supplement policies to Florida residents are required to file a master copy of the policy and any certificate used in the state with the Office of Insurance Regulation (OIR). In-state insurers issuing this type of policy are required to report to the OIR every policy and certificate number and the date of issuance; must file with the OIR rates and rating schedules; and must demonstrate compliance with the loss ratio standards set forth in s. 627.6745, F.S.

Other Health Insurance Coverage for Persons with Medicare

Medicare supplement policies are not the only kinds of health insurance available to persons with Medicare. Medicare Advantage Plans, Medicare Health Plans, PACE, COBRA coverage, employer and union plans, Tricare, and Veterans' benefits also provide coverage secondary to Medicare.²

Retirees of many larger employers receive health insurance coverage which coordinate Medicare in two ways. Some employers are self-insured, and those plans are exempt from state regulation as an

¹ The discussion of Medigap coverage derives from *2006 Choosing a Medigap Policy: A Guide to Health Insurance for People with Medicare*, developed jointly by the Centers for Medicare & Medicaid Services (CMS) and the National Association of Insurance Commissioners (NAIC), available online at <http://www.medicare.gov/Publications/Pubs/pdf/02110.pdf>

² These plans are not the subject of the provisions of this bill.

employee benefit by operation of ERISA.³ Other employers offer retiree health plans, which plans are exempt from regulation as Medicare supplement policies pursuant to s. 627.673(3), F.S.

Legislative History

Prior to 1988, Florida's definition of Medicare supplement policy contained a specific exemption for such policies provided by employer groups or labor organizations, thus making those Medicare supplement insurance policies exempt from state regulation. The exemption reportedly was removed⁴ because a model act recommended by the National Association of Insurance Commissioners (NAIC) contained no such exclusion.

The current NAIC Medicare Supplement Insurance Minimum Standards Model Act now includes an exemption for policies issued by employer groups or labor organizations.⁵ The NAIC Model Act, including this definition, has been adopted by 38 other states.

The Social Security Act definition of "Medicare supplement policy", 42 U.S.C. s.1395ss, subpart (g)(1), contains an exemption for policies issued by employer groups or labor organizations.

In 2000, the Florida Legislature exempted labor organizations from the definition of Medicare supplement policy.⁶

Effect of Proposed Legislation

HB 97 would exclude Medicare Supplement Insurance offered by employers or employer groups to employees or former employees from the definition of "Medicare supplement policy." The bill would have the effect of conforming the Florida definition of Medicare supplement policy to that in federal law, NAIC Model acts, and the laws of 38 other states which have adopted the NAIC Model.

Policies issued in Florida would still be subject to provisions of the Insurance Code other than Part VIII of Chapter 627, F. S. Medicare supplement policies issued outside of Florida which cover Florida residents would be exempt from any regulation by the state of Florida, and OIR would have no authority to assist Florida insureds who have problems with or complaints about the insurer. However, the latter policies would be regulated by applicable federal law and the law of the state where the policy was issued.

C. SECTION DIRECTORY:

Section 1: Amends s. 627.672(1), F.S., to exclude policies or plans of employers from the definition of Medicare supplement policy.

Section 2: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

³ Employment Retirement Income Security Act of 1974. ERISA is a federal law setting minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in those plans.

⁴ Section 1, Chapter 88-338, Laws of Florida.

⁵ NAIC 650-1, *Medicare Supplement Insurance Minimum Standards Model Act*, s. 2.B. (National Association of Insurance Commissioners). [The exemption is expressed as part of the applicability and scope of regulation of Medicare supplement policies, not as an exemption as part of a definition of Medicare supplement insurance.]

⁶ Chapter 2000-202, Laws of Florida

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill allows employers and employer groups the same exemption afforded labor organizations relating to the provision of health insurance to their employees and retirees on Medicare. Proponents of the bill note that employers could negotiate group coverage on a nationwide basis without being required to have a Florida-specific Medigap standard policy. The premiums would be based on the benefit levels they choose to offer their retirees and the price the employer can afford to pay. As the cost of retiree health insurance escalates, more employers are cutting back on or eliminating this coverage as a retirement benefit. It is expected that the exemption authorized in this bill will provide more affordable options for employers wishing to offer this benefit.

The Office of Insurance Regulation and the Division of Consumer Services in the Department of Financial Services raise concerns that this exemption will result in consumer protections being lost for consumers obtaining policies through an employer group --- policies that are similar but not identical to Medicare supplement policies. These policies would not be required to meet form requirements, rate regulation that provides stability of premium costs, or be subject to marketing protections found in current Florida law. They advise that this change could also allow fictitious employer groups to form solely for the purpose of providing insurance benefits to a market that is not currently accessible to the non-Medicare supplement market carriers.⁷

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

⁷ Reference is made to a product called "Senior Choice" sold here in 2002. It was offered by an insurer under the mistaken assumption that an employer group exemption was in effect at the time. Agents of the company enrolled nursing home residents and other seniors by convincing them that work the senior had performed in the past (e.g., lawn mowing) qualified him or her as an employer or employer group. The policies they were sold were limited health benefit products, which provided substantially less coverage than the Medicare supplement policies they relinquished. The Division of Consumer Services took action in May 2002 to stop the sale of the product in Florida.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR:

This legislation will greatly enhance the access to healthcare for Florida's senior citizens.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES