

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1117 Interstate Health Insurance Policies

**SPONSOR(S):** Wood and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1566

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	10 Y, 5 N	Poche	Schoolfield
2) Insurance & Banking Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

House Bill 1117 creates s. 624.122, F.S., to permit the solicitation and sale of an "interstate health insurance policy" (IHIP) in Florida. An IHIP is defined as a health insurance policy governed by the law of any state, district, or commonwealth in the U.S. Health insurance agents licensed under Chapter 626, F.S., are permitted to market, sell, and deliver IHIPs in Florida. IHIPs are exempt from form approval, rate approval, underwriting restrictions, guaranteed availability, or coverage mandates required by the Florida Insurance Code (Code). The bill does subject IHIPs to specific provisions of the Code regarding unfair trade practices, unfair competition, civil remedies, cease and desist orders, cancellation or non-renewal of policies, and other similar provisions.

The bill requires clear and conspicuous language to be included in any application for insurance or policy of insurance advising the consumer that the policy is not governed by the laws of Florida, that the consumer should carefully consider the purchase of an interstate health insurance policy, and contact a health insurance agent or the Department of Financial Services for more information.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Regulation of Health Insurance Policies in Florida

Health plans are regulated at both the state and federal level. At the federal level, the Employee Retirement Income and Security Act (ERISA) regulates the operation of voluntary employer-sponsored benefits including pension plans and health plans. Congress also has enacted several laws that regulate the operation of all health benefits regardless of the method of insurance, including the Health Insurance Portability and Accountability Act of 1996; the Newborns' and Mothers' Health Protection Act of 1996; the Mental Health Parity Act of 1996; and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. ERISA provides an explicit exemption from state regulation for health plans that are self-funded. State regulations apply to health benefits purchased through private health insurance plans and health maintenance organizations (HMOs).

In Florida, the Office of Insurance Regulation (OIR) is responsible for regulating health insurance companies and the sale of insurance products within the state.<sup>1</sup>

##### Health Insurance Mandates in Florida

A health insurance mandate is a legal requirement that an insurance company or health plan cover services by particular health care providers, specific benefits, or specific patient groups. Mandated offerings, on the other hand, do not mandate that certain benefits be provided. Rather, a mandated offering law can require that insurers offer an option for coverage for a particular benefit or specific patient groups, which may require a higher premium and which the insured is free to accept or reject. A mandated offering law in the context of mental health can: require that insurers offer an option of coverage for mental illness, which may require a higher premium and which the insured is free to accept or reject; or, require that if insurers offer mental illness coverage, the benefits must be equivalent to other types of benefits.

Florida currently has at least 49 mandates.<sup>2</sup> The Council for Affordable Health Insurance estimates that mandated benefits currently increase the cost of basic health coverage from a little less than 20 percent to perhaps 50 percent, depending on the number of mandates, the benefit design and the cost of the initial premium.<sup>3</sup> Each mandate adds to the cost of a plan's premiums, in a range of less than 1 percent to 10 percent, depending on the mandate.<sup>4</sup> Higher costs resulting from mandates are most likely to be experienced in the small group market since these are the plans that are subject to state regulations. The national average cost of insurance for a family of four is \$13,375, an increase of 3 percent over the cost for 2009.<sup>5</sup>

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<sup>1</sup> OIR is responsible for enforcement of applicable provisions of the Florida Insurance Code under Chapter 624, F.S., and enforcement of statutes, and related administrative rules, governing insurance rates and contracts under Chapter 627, F.S.

<sup>2</sup> Office of Insurance Regulation list of state health insurance mandates on file with Health and Human Services Access Subcommittee staff; and "Health Insurance Mandates in the States 2010," Council for Affordable Health Insurance; available at: [http://www.cahi.org/cahi\\_content/resources/pdf/MandatesintheStates2010.pdf](http://www.cahi.org/cahi_content/resources/pdf/MandatesintheStates2010.pdf) (last viewed March 20, 2011).

<sup>3</sup> "Health Insurance Mandates in the States 2010," Council for Affordable Health Insurance; available at: [http://www.cahi.org/cahi\\_content/resources/pdf/MandatesintheStates2010.pdf](http://www.cahi.org/cahi_content/resources/pdf/MandatesintheStates2010.pdf) (last viewed March 20, 2011).

<sup>4</sup> *Id.*

<sup>5</sup> Kaiser Family Foundation, Employer Health Benefits 2010 Annual Survey, available at: <http://ehbs.kff.org/pdf/2010/8085.pdf> (last viewed March 20, 2011).

## Existing Interstate Health Insurance Markets

In 2008, Rhode Island amended the state's Health Insurance Market Expansion Act<sup>6</sup> to direct the state health insurance commissioner to submit a report to the General Assembly addressing the steps necessary to allow health insurers licensed in other New England states to do business in Rhode Island without requiring those insurers to obtain a separate license in Rhode Island. The goal for the state was to create a regional health insurance market. As of the date of this analysis, it does not appear that the report was delivered to the General Assembly.

No other state permits the solicitation or sale of health insurance policies governed by laws of other states, districts or commonwealth within its borders.

### **Effect of Proposed Changes**

The bill creates s. 624.122, F.S., which allows interstate health insurance policies (IHIPs), and applications for IHIPs, to be solicited and sold in Florida by a licensed health insurance agent<sup>7</sup> and underwritten by an admitted insurer, which is subject to the Code. The bill defines "interstate health insurance policies" as a health insurance policy providing credible coverage<sup>8</sup> that is offered to an individual in the state of Florida and is governed by the laws of any other state, district or commonwealth in the United States. The bill expands the market of health insurance to allow health insurance policies from any other jurisdiction in the United States to be offered for sale in Florida. The bill intends to create competition within the Florida health insurance market and provide affordable health insurance options for Floridians.

The bill requires specific language, in specific and conspicuous size and font, to be included in all IHIPs and applications for IHIPs that advises the consumer that the policy is governed by the laws of a jurisdiction not Florida, that the policy does not comply with the Code, and cautioning the consumer to read the policy carefully, choose to purchase the policy after careful consideration, and to contact an insurance agent or the Department of Financial Services for more information.

The bill exempts IHIPs from form and rate approval requirements, meaning the OIR will not have the authority to approve application and policy documents or the rates charged for IHIPs. IHIPs are also exempt from underwriting restrictions, guaranteed availability requirements and coverage mandates of the Code. In fact, IHIPs are exempted from most provisions of the Code, except for the following statutory sections:

- S. 624.155, F.S., relating to civil remedies;
- S. 624.316, F.S., relating to the examination of insurers by the OIR;
- S. 624.3161, F.S., relating to market conduct examinations by the OIR;
- S. 626.951, F.S., relating to declaration of purpose, unfair insurance trade practices;
- S. 626.9511, F.S., relating to the definition of trade practices and unfair competition;
- S. 626.9521, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices prohibited;
- S. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined;
- S. 626.9551, F.S., relating to favored agent or insurer, coercion of debtors;
- S. 626.9561, F.S., relating to examinations regarding unfair competition;
- S. 626.9571, F.S., relating to defined practices; hearings, witnesses, appearances, production of books and service of process;

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<sup>6</sup> See R.I.Gen.L. ch. 27, s. 67-2, -3, and -4.

<sup>7</sup> Health insurance agents are licensed under Part I of Chapter 626, F.S.

<sup>8</sup> S. 627.6561(5)(a)2., F.S., defines "credible coverage" as health insurance coverage consisting of medical care, provided directly, through insurance or reimbursement, or otherwise and including terms and services paid for as medical care, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance contract offered by a health insurance issuer.

- S. 626.9581, F.S., relating to cease and desist and penalty orders;
- S. 626.9591, F.S., relating to appeals from the department or the office;
- S. 626.9601, F.S., relating to penalty for cease and desist violations;
- S. 627.413, F.S., relating to content of policy, in general; identification;
- S. 627.4145, F.S., relating to readability of language in insurance policies;
- S. 627.428, F.S., relating to attorney fee; and
- S. 627.6043, F.S., relating to notice of cancellation, non-renewal or change in rates.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 624.122, F.S., relating to interstate health insurance policies; notice; exemption.

**Section 2:** Provides an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will open the Florida health insurance market to any health insurance policy offered in any state, district or commonwealth in the United States. Health insurers will face increased competition for covered lives and accompanying premium dollars at a level not previously seen within the state. The increased competition will result in lower premium prices for Florida consumers.

**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:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Office of Insurance Regulation (OIR) expressed concern that the bill will allow insurers to enter the Florida health insurance market with products that are minimally regulated by other states and which do not meet the actuarial soundness requirements established by Florida.<sup>9</sup>

OIR expresses a concern that it has no authority to regulate the actions of an out-of-state insurer offering health insurance products within the state.

OIR is also concerned that out-of-state insurers could offer policies within the state to only healthy individuals, leaving an uneven risk pool for Florida insurers.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>9</sup> Florida Office of Insurance Regulation Bill Analysis for HB 1117/SB 1566, March 15, 2011, at page 3, on file with Health and Human Services Access Subcommittee.