

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Rules Committee

**BILL:** CS/CS/SB 1522

**INTRODUCER:** Banking and Insurance Committee, Health Regulation Committee, and Senator Gaetz

**SUBJECT:** Wellness or Health Improvement Programs

**DATE:** April 13, 2011                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Stovall</u>	<u>HR</u>	<u>Fav/CS</u>
2.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	<u>Fav/CS</u>
3.	<u>Matiyow</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill specifies that an insurer or health maintenance organization (HMO) issuing a group or individual health benefit plan may offer a voluntary wellness or health improvement program and may encourage participation in the program by way of authorizing rewards or incentives. The bill authorizes insurers and HMOs to require a plan member to provide verification that the member's medical condition inhibits participation in the wellness or health improvement program. The bill requires that the reward or incentive must be disclosed in the insurance policy or certificate and that the bill does not prohibit insurers or HMOs from offering other incentives or rewards for adherence to a wellness or health improvement program otherwise authorized by state or federal law.

This bill substantially amends the following section of the Florida Statutes: 626.9541 and 641.3903.

## II. Present Situation:

Chapter 626 governs the practices of insurance agents and the operations of insurance companies.<sup>1</sup>

### *Unfair Methods of Competition and Unfair or Deceptive Acts or Practices*

Section 626.9541, F.S., defines unfair methods of competition and unfair or deceptive acts or practices. The section specifies 32 different acts that qualify under the definition.<sup>2</sup> Among the prohibited acts relating to rates that may be charged to policyholders are: “unfair discrimination,” which is defined as knowingly making an unfair discrimination between individuals of the same actuarially supportable class in the amount of premium charged for a policy, or in the benefits payable under the contract, or in the terms and conditions of the contract;<sup>3</sup> and “unlawful rebates,” which prohibits paying, directly or indirectly, any valuable consideration or inducement not specified in the contract.<sup>4</sup>

Chapter 641 governs the practices of health maintenance organizations (HMO).<sup>5</sup>

### *Unfair Methods of Competition and Unfair or Deceptive Acts or Practices*

Section 641.3903, F.S., defines unfair methods of competition and unfair or deceptive acts or practices by an HMO. Similar to the limitations of insurers in ch. 626, this section specifies the different acts an HMO is prohibited from engaging in.

### *The Patient Protection and Affordable Care Act*

In 2010, President Obama signed into law The Patient Protection and Affordable Care Act (PPACA or the Act). The Act was part of sweeping overhauls pertaining to the nation’s healthcare system. Pursuant to the Act,<sup>6</sup> insurers are allowed to offer wellness and prevention programs in an effort to address:

- Smoking cessation
- Weight management
- Stress management
- Physical fitness
- Nutrition
- Heart disease prevention
- Healthy lifestyle support
- Diabetes prevention

PPACA requires the Secretary of Health and Human Services to promulgate regulations pertaining to the criteria for the reimbursement structure of such programs.<sup>7</sup> Further, insurers

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<sup>1</sup> See ss. 626.011 through 626.99296, F.S.

<sup>2</sup> See s. 626.9541(1)(a) through (ff), F.S.

<sup>3</sup> See s. 626.9541(1)(g), F.S.

<sup>4</sup> See s. 626.9541(1)(h), F.S.

<sup>5</sup> See ss. 641.17 through 641.3923, F.S.

<sup>6</sup> PPACA & HCERA, Pub. L. No. 111-148 & 111-152, SEC. 2717(b)

<sup>7</sup> PPACA & HCERA, Pub. L. No. 111-148 & 111-152, SEC. 2717(d)

offering such wellness programs must report their cost savings to Congress within 180 days after the regulations are promulgated.<sup>8</sup>

### III. Effect of Proposed Changes:

The bill creates additional wellness incentive programs that can be offered by insurers<sup>9</sup> and HMOs.<sup>10</sup> The new wellness incentive and reward programs are separate from current wellness programs that may only allow premium rebates as an incentive for participation.<sup>11</sup>

**Section 1** amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices by health insurers to specify that rewards or incentives offered by insurers relating to participation in wellness or health improvement programs are authorized despite the statute's prohibition against certain other practices that constitute unfair or deceptive acts, some of which are related to reduced charges for insurance.<sup>12</sup> The bill provides that any advertisement of such program is not subject to limitations set forth in s. 626.9541(1)(m), F.S.<sup>13</sup>

The bill creates subsection (4) of s. 626.9541, F.S., and specifies that an insurer issuing group or individual health benefit plans may offer a voluntary wellness or health improvement program and may encourage participation in the program by way of authorizing rewards or incentives. Such rewards or incentives could include, but are not limited to, merchandise, gift cards, debit cards, premium discounts, contributions to a member's health savings account, or modifications to copayment, deductible, or coinsurance amounts.

The bill authorizes insurers to require a plan member to provide verification that the member's medical condition inhibits participation in the wellness or health improvement program in order for that nonparticipant to receive the reward or incentive. The bill requires an insurer to disclose in the policy or certificate any reward or incentive offered by the program and that s. 626.9541(4), F.S., does not prohibit insurers from offering other incentives or rewards for adherence to wellness or health improvement programs otherwise authorized by state or federal law.

**Section 2** amends s. 641.3903, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices by HMOs, by creating subsection (15), which provides an exception to the prohibitions against unfair methods of competition and unfair or deceptive acts by allowing HMOs to offer rewards or incentives for participation in wellness or health improvement programs.

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<sup>8</sup> PPACA & HCERA, Pub. L. No. 111-148 & 111-152, SEC. 2717(e)

<sup>9</sup> Section 626.9541, F.S.

<sup>10</sup> Section 641.3903, F.S.

<sup>11</sup> Sections 627.6402, F.S., 627.65626, F.S. and 641.31, F.S.

<sup>12</sup> See s. 626.9541(1)(o), F.S.

<sup>13</sup> Section 626.9541(1)(m), F.S., provides that certain prohibitions created by s. 626.9541(1), F.S., do not prohibit a licensed insurer or its agent from giving to insureds, prospective insureds, and others, for the purpose of advertising, any article of merchandise having a value of \$25 or less.

The bill provides authorization for HMOs to offer a voluntary wellness or health improvement program and to encourage participation in the program by way of authorizing rewards or incentives identical to those authorized for individual and group insurance policies.

The bill authorizes HMOs to require a plan member to provide verification that the member's medical condition inhibits participation in the wellness or health improvement program. The bill provides that a reward or incentive offered under s. 641.3903(15), F.S., is not a violation of s. 641.3903, F.S., if the program is disclosed in the contract or certificate and that s. 641.3903(15), F.S., does not prohibit an HMO from offering other incentives or rewards for adherence to a wellness or health improvement program otherwise authorized by state or federal law.

**Section 3** provides an effective date for the bill of July 1, 2011.

#### **IV. Constitutional Issues:**

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

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

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

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

To the extent that wellness or health improvement programs are implemented under the bill, and to the extent that insurers and HMOs provide gift cards, debit cards or premium discounts not already provided under existing law, contributions to health savings accounts, or modifications to copayments, deductibles, or coinsurance amounts, participants in such wellness or health improvement programs could have an indeterminate amount of increased monetary resources at their disposal. And, to the extent that insurers and HMOs pay for such rewards, they could experience an indeterminate amount of financial costs; however, those costs could be offset by a

reduction in the insurer's or HMO's medical expenses due to having a healthier pool of covered individuals.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

Regulations promulgated by the Secretary of Health and Human Services, as required by PPACA, could impact how wellness programs are administered.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the CS.)

**CS/CS by Banking and Insurance on April 12, 2011:**

The CS/CS removed premium rebates as one of the rewards offered for participation in the new wellness programs. The CS/CS removed sections 2, 3 and 4 of the bill leaving the statutes dealing with current rebate incentives for participation in certain wellness programs unchanged.<sup>14</sup>

The CS/CS added 641.3903(15)(c) *Disclosure requirement*. - A reward or incentive offered under this subsection shall be disclosed in the policy or certificate.

The CS/CS added 641.3903(15)(d) *Other incentives*. - This subsection does not prohibit health maintenance organizations from offering other incentives or rewards for adherence to a wellness or health improvement program if otherwise authorized by state or federal law.

**CS by Health Regulation on March 22, 2011:**

Instead of authorizing new rewards and incentives for wellness or health improvement programs independent of existing law authorizing insurance premium rebates for similar programs, the CS reconciles the new rewards and incentives, which may include rebates in addition to other rewards and incentives, with those of existing law. The CS authorizes the new rewards and incentives for health maintenance contracts, which were omitted in the CS as filed. The CS also replaces existing law relating to HMO rebates for healthy lifestyles in favor of the CS's provisions relating to rewards and incentives for wellness or health improvement programs.

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<sup>14</sup> Sections 627.6402, F.S., 627.65626, F.S. and 641.31, F.S.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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