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 Committee on Health Policy

BILL:	CS/SB 648
INTRODUCER:	Banking and Insurance Committee and Senator Hukill
SUBJECT:	Health Insurance Marketing Materials
DATE:	April 4, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Burgess	BI	**Fav/CS**
2.	Lloyd	Stovall	HP	**Favorable**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 648 deletes the requirement that health insurers and health maintenance organizations submit marketing communications for small employer health plans to the Office of Insurance Regulation (OIR) for review. The bill also deletes the requirement that each marketing communication contain specific disclosures, but retains the requirement that such disclosure be provided to a small employer upon the offer of coverage.

The bill continues the requirement that insurers file with OIR any long-term care insurance advertising materials, but deletes the requirement to file such materials 30 days prior to use. The bill allows the insurer to immediately begin using such materials upon filing, subject to subsequent disapproval by OIR. The bill does not delete the authority of the Financial Services Commission to adopt rules establishing standards for the advertising, marketing, and sale of long-term care insurance policies.

Florida law would continue to prohibit persons involved in the business of insurance from knowingly publishing any advertising with respect to the business of insurance, which is untrue, deceptive, or misleading.

The effective date of the act is July 1, 2013.

CS/SB 648 substantially amends ss. 627.6699 and 627.9407, F.S.

II. Present Situation:

Small Employer Health Coverage

Florida Law - The Employee Health Care Access Act (s. 627.6699, F.S.), enacted in 1992, requires health insurers and health maintenance organizations (carriers) to offer a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of health savings account plans, to any small employer who applies for coverage, regardless of the health status of the employees ("guaranteed-issue"). In general, a small employer is defined as an employer with 1 to 50 eligible employees, including a sole proprietor. Carriers may also offer a "limited benefit policy" to a small employer, as well as additional benefits to the standard and basic health benefit plans.

The current law requires that upon offering coverage to a small employer of a standard health benefit plan, basic health benefit plan, or limited benefit policy, the carrier must provide the small employer with a statement disclosing, at a minimum, the following:[1]

a. An explanation of those mandated benefits and providers that are not covered by the policy or contract;
b. An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and
c. An explanation of the primary and preventive care features of the policy or contract.

The disclosure statement is required to be written in a clear and understandable form and be separate from the policy or certificate. The current law also requires that each marketing communication for small employer health benefit plans must be submitted by the carrier to the OIR for review prior to use. The law does not require prior approval by OIR and does not specify that OIR may disapprove the use of the marketing communication. The marketing communications must contain the disclosures specified above.

Federal Law - Effective January 1, 2014, the federal Patient Protection and Affordable Care Act[2] (PPACA) requires each health insurance issuer that offers health insurance coverage in the individual or group market to accept every individual and employer in the state that applies for such coverage.[3] Final regulations require that health insurance issuers offer to any individual or employer in the state all products that are approved for sale in the applicable market.[4] PPACA

[1] *See* specifically s. 627.6699(12)(d), F.S., for the disclosure statement requirements.
[2] Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).
[3] Section 1201, amending section 2701 of the Public Health Services Act (42 U.S.C. s.30066-1).
[4] 77 Fed. Reg. 70612, (December 7, 2012) http://www.gpo.gov/fdsys/pkg/FR-2012-12-07/html/2012-29184.htm (last visited: April 4, 2013).

also requires, effective January 1, 2014, that coverage offered in the individual and small group market include a specified category of "essential health benefits."[5]

Under PPACA, state insurance laws continue to apply except to the extent that they prevent the application of a provision of PPACA. Title I of PPACA, which includes the requirements summarized above, contains the following provision related to preemption of state insurance laws:

> *No Interference With State Regulatory Authority—Nothing in the title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.*[6]

Many of the provisions of PPACA, including those related to guaranteed-issuance of coverage, do not apply to a "grandfathered health plan," which is individual or group coverage in which an individual was enrolled on March 23, 2010.[7] Under federal regulations, plans lose grandfathered status if the insurer makes certain changes that reduce benefits or increase cost sharing.[8] A grandfathered health plan that is exempt from a provision of PPACA would remain subject to any comparable state insurance law, including the Employee Health Care Access Act.

It is not entirely clear which provisions of the Employee Health Care Act may be preempted by PPACA and which continue to apply. It appears that the Florida requirement for small employer carriers to offer a standard, basic, and high-deductible health plan will be preempted to the extent that carriers will be required under federal law to offer all plans approved for sale in the small group market and that such plans must include the essential health benefits. However, the disclosure requirement of state law and the requirement to submit marketing materials to OIR for review would appear not to be preempted. For grandfathered-health plans exempt from these requirements of PPACA, the current requirements of the Employee Health Care Access Act would continue to apply.

Long-Term Care Insurance

Long-term care insurance generally covers care in a nursing home and one or more lower levels of care such as home health care or assisted living. Coverage typically includes the cost of personal care and services that are not covered by traditional health insurance or a Medicare Supplement insurance policy, such as assistance with activities of daily living. Florida law imposes specific requirements on long-term care insurance policies in part XVIII of chapter 627 (ss. 627.9410 - 627.9408), F.S., designated as the Long-Term Care Insurance Act (Act).

The Act requires that an insurer must file with the OIR any long-term care insurance advertising material intended for use in Florida at least 30 days before the advertisement is used. Within this 30-day period, the OIR must disapprove any advertisement that, in its opinion, violates any provision of the Act, any rule adopted by the Financial Services Commission, or any provision of part IX of chapter 626 (Unfair Insurance Trade Practices). The Act further authorizes OIR to

[5] Section 1201, amending section 2707 of the Public Health Services Act (42 U.S.C. s. 300gg-6).
[6] Section 1321(d); 42 U.S.C. s. 18041(d).
[7] Section 1251; 42 U.S.C. s. 18011.
[8] 45 C.F.R.147.140.

disapprove an advertisement at any time and enter an immediate order requiring that it be discontinued if OIR determines that the advertisement violates any such provisions.[9]

The Act requires the Financial Services Commission to adopt rules establishing standards for the advertising, marketing, and sale of long-term care insurance policies, for the stated purpose of protecting applicants from unfair or deceptive sales or enrollment practices.[10] The rules for long-term care insurance policies cross-reference the advertising rules that apply to life and health insurance policies, generally, which include various form, content, and disclosure requirements.[11]

Related Requirements

Persons involved in the business of insurance are prohibited from engaging in specified unfair insurance trade practices, including knowingly making, publishing, or circulating any advertisement, announcement, or statement with respect to the business of insurance, which is untrue, deceptive, or misleading.[12]

The OIR is authorized to perform market conduct examinations on each authorized insurer as often as it deems necessary, for the purpose of ascertaining compliance with ch. 627, F.S., and other specified provisions of the Florida Insurance Code.[13]

III. Effect of Proposed Changes:

Section 1 of CS/SB 648 modifies s. 627.6699, F.S., to delete the requirement that health insurers and health maintenance organizations submit each marketing communication for small employer health plans to the OIR for review. The bill also deletes the requirement that each marketing communication contain the specific disclosures that carriers are required to provide to a small employer upon offering a standard benefit plan, basic benefit plan, or limited benefit policy. However, the bill does not delete the requirement that this disclosure be provided to a small employer.

Section 2 modifies s. 627.9407, F.S., which continues the requirement that insurers file with OIR any long-term care insurance advertising materials, but deletes the requirement to file such materials 30 days prior to use. The bill allows the insurer to immediately begin using such material upon filing, subject to subsequent disapproval by OIR. Following receipt of a notice of disapproval or a withdrawal of approval, the insurer must immediately cease use of the disapproved material. The bill does not delete the authority of the Financial Services Commission to adopt rules establishing standards for the advertising, marketing, and sale of long-term care insurance policies.

[9] Section 627.9407(2), F.S.
[10] Id.
[11] 69O-157.115, F.A.C., referencing 69O-150, F.A.C.
[12] Section 626.9541(1)(b), F.S.
[13] Section 624.3161, F.S.

Florida law would continue to prohibit persons involved in the business of insurance from knowingly publishing any advertisement with respect to the business of insurance, which is untrue, deceptive, or misleading.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 648 would reduce costs of insurers associated with filing marketing materials for small employer health plans.

C. Government Sector Impact:

There will be some reduction in OIR staff time devoted to review of marketing materials, but will not significantly impact OIR resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 20, 2013:
The CS clarifies that advertising materials for long-term care insurance policies, which the bill allows an insurer to begin using upon filing, are subject to subsequent disapproval by the office. The CS further clarifies that following receipt of a notice of disapproval or a withdrawal of approval, the insurer must immediately cease use of the disapproved material.

B. Amendments:

None.