

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 675 Health Insurance Marketing Materials

**SPONSOR(S):** Insurance & Banking; Ingram and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Cooper	Cooper
2) Health Innovation Subcommittee	12 Y, 0 N	McElroy	Shaw
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The Employee Health Care Access Act is intended to promote the availability of health insurance coverage to small employers, and establishes certain requirements to accomplish that purpose. The Act defines small employer as any person, sole proprietor, self-employed person, independent contractor, firm, association, or other business entity that is based in Florida, actively engaged in business, with at least one, and no more than 50 employees.

Among its many features, the Act requires carriers to offer any small employer, upon request, a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of health savings account plans. As a part of their offer, insurers must disclose certain information relating to health benefit mandates, managed care arrangements, and the plans' primary and preventive care features.

Current law also requires that each marketing communication that is to be used in the marketing of a health benefit plan be submitted for review by the Office of Insurance Regulation (OIR) prior to use. The law also requires such marketing communication to contain the disclosures referenced above.

The bill repeals an insurer's obligation to submit the marketing materials to OIR prior to use as well as the requirement that the marketing communication contain the specified disclosures. The bill does not repeal the mandate that the insurer present the disclosure statement to the small employer. Nor does the bill eliminate the ability of OIR to review the marketing communications and disclosure statements as part of complaint investigations or market conduct reviews. The bill also does not modify the current statutory authority of the Financial Services Commission to establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers.

The bill also addresses the regulation of advertising materials utilized by long-term care insurers. Long-term care insurance is insurance which covers the cost of certain health and personal services needed over a long period of time. Most of these benefits are not covered by traditional health insurance or Medicare. These include services in one's home such as assistance with Activities of Daily Living or Instrumental Activities of Daily Living as well as care in a variety of facility and community settings.

The bill deletes the current statutory requirement that insurers have to submit their advertising materials to OIR prior to their use. However, the bill still requires insurers to file the materials with OIR. The effect of this change is that insurers can immediately use their advertisements upon filing and the opportunity for OIR to disapprove before their use is removed. The bill retains the office's authority to disapprove an advertisement at any time and to enter an immediate order for the insurer to stop its use.

The bill should have a minimal positive fiscal impact on OIR. The bill may have a small positive fiscal impact for insurers. The bill provides an effective date of July 1, 2013.

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0675c.HIS

DATE: 3/19/2013

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Employee Health Care Access Act**

In 1992, the Florida Legislature created the Employee Health Care Access Act to promote the availability of health insurance coverage to small employers and to establish certain requirements to accomplish that purpose.<sup>1</sup> Small employer is defined as any person, sole proprietor, self-employed person, independent contractor, firm, association, or other business entity that is based in Florida, actively engaged in business, with at least one, and no more than 50 employees.<sup>2</sup>

Among its many features, the Act requires carriers to offer any small employer, upon request, a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of health savings account plans.<sup>3</sup> The offer of coverage must include a statement disclosing the following:

- 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.<sup>4</sup>

Current law also requires that each marketing communication that is to be used in the marketing of a health benefit plan be submitted for review by the Office of Insurance Regulation (OIR) prior to use. The law also requires such marketing communication to contain the aforementioned disclosures.<sup>5</sup>

The bill repeals an insurer's obligation to submit the marketing materials to OIR prior to use as well the requirement that the marketing communication contain the specified disclosures. The bill does not repeal the mandate that the insurer present the disclosure statement to the small employer. Nor does the bill extinguish the ability of OIR to review the marketing communications and disclosure statements as part of complaint investigations or market conduct reviews. The bill also does not modify the current statutory authority of the Financial Services Commission (FSC) to establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers.

#### **Long-Term Care Insurance**

Long-term care insurance is insurance which covers the cost of certain health and personal services, most of which are not covered by traditional health insurance or Medicare. These include services in one's home such as assistance with Activities of Daily Living (ADL) as well as care in a variety of facility and community settings. Examples of ADLs include bathing, dressing, caring for incontinence, and eating. Other common long-term care services and supports are assistance to complete Instrumental Activities of Daily Living, which may include such activities as housework, taking medication, shopping for groceries or clothes, and the caring of pets.<sup>6</sup> Benefits may also be provided when the insured is experiencing cognitive impairment.

The regulatory framework in statute for long-term care insurance policies is ss. 627.9401-627.9408, F.S. In part, the law requires the FSC to adopt rules setting forth standards for the advertising, marketing, and sale of long-term care policies in order "to protect applicants from unfair or deceptive

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<sup>1</sup> Section 627.6699(2), F.S.

<sup>2</sup> Section 627.6699(3)(v), F.S.

<sup>3</sup> Section 627.6699(12)(b)1., F.S.

<sup>4</sup> Section 627.6699(12)(d)1., F.S.

<sup>5</sup> Section 627.6699(12)(d)4., F.S.

<sup>6</sup> [http://www.longtermcare.gov/LTC/Main\\_Site/Understanding/Definition/Index.aspx](http://www.longtermcare.gov/LTC/Main_Site/Understanding/Definition/Index.aspx) (last accessed: March 4, 2013).

sales or enrollment practices.” The law also states that an insurer shall file with OIR any long-term care insurance advertising material at least 30 days before the date of use of the advertisement in Florida. Within 30 days after receiving the material OIR is required to review and disapprove any advertisement it finds violates the law. The statute further authorizes OIR to disapprove an advertisement at any time and to order its use be discontinued if the office determines the advertisement violates the law.<sup>7</sup>

The bill deletes the requirement that insurers have to submit their advertising materials to OIR prior to their use. However, the bill still requires insurers to file the materials with OIR. The effect of this change is that insurers can immediately use their advertisements upon filing and the opportunity for OIR to disapprove before their use is removed. The bill adds a new provision permitting OIR to issue notices of disapproval of materials. The bill also retains the office’s authority to disapprove an advertisement at any time and to enter an immediate order for the insurer to stop its use.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 627.6699, F.S., relating to standard, basic, high deductible, and limited health benefit plans for the Employee Health Care Access Act.

**Section 2.** Amends s. 627.9407, F.S., relating to disclosure, advertising, and performance standards for long-term care insurance.

**Section 3.** Provides an effective date of July 1, 2013.

**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:**

By potentially streamlining the process for distributing marketing materials, the bill may a small positive impact on insurers.

**D. FISCAL COMMENTS:**

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<sup>7</sup> Section 627.9407, F.S.  
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According to OIR, “[t]here will be some reduction in staff time devoted to review of marketing material for health insurance, but the reduction would have no significant impact on resources otherwise allocated to health and life insurance form reviews.”<sup>8</sup>

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

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

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 6<sup>th</sup>, 2013, the Insurance and Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment provided that advertising materials for long-term care insurance may be used immediately by insurers upon filing without prior approval of OIR, but allowed OIR to disapprove subsequently.

The staff analysis has been updated to reflect the committee substitute.

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<sup>8</sup> Bill Analysis for HB 675, Florida Office of Insurance Regulation, February 21, 2013. On file with the Insurance & Banking Subcommittee.