

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: SB 1364

INTRODUCER: Senator Bradley

SUBJECT: Employee Health Care Access Act

DATE: March 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Favorable
2.			CM	
3.			BI	

I. Summary:

SB 1364 modifies the definition of an “eligible employee” under the Employee Health Care Access Act to mean a full-time employee whose normal workweek is 30 or more hours, rather than the current 25 or more hours.

The effective date of the act is July 1, 2014.

II. Present Situation:

Employee Health Care Access Act

Enacted in 1992, the Employee Health Care Access Act (act) requires health insurers and health maintenance organizations (carriers) in the small group market to offer coverage to all small employers on a guaranteed-issue basis.¹ The carriers offer a standard 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. A small employer carrier that offers coverage to a small employer must offer to all of the employer’s eligible employees and their dependents.²

Under the act, an “eligible employee” is defined as an employee who works full time and has a normal workweek of 25 or more hours.³

¹ s. 627.6699, F.S.

² s. 637.6699(5)(h)5, F.S.

³ s. 627.6699(3)(h), F.S.

Federal definitions and requirements for individual or group health insurance coverage can vary based on when coverage was in effect. For a grandfathered plan⁴ in Florida, a “small employer” means any person, sole proprietor, self-employed individual, independent contractor, firm, corporation, partnership, or association that is actively engaged in business, has its principal place of business in this state, and employs an average of at least one but not more than 50 “eligible employees.”⁵

For a non-grandfathered plan,⁶ as defined in s. 627.402, F.S., a “small employer” means any employer that has its principal place of business in this state and employs an average of at least one employee but not more than 50 employees.⁷ Employees, for a non-grandfathered plan, have the same definition as under section 3 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. s. 1002.

Patient Protection and Affordable Care Act - Shared Responsibility Payments

The federal Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010.⁸ Among its sweeping changes to the United States health care system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on health related factors.

Another component of the PPACA includes a requirement that employers employing a certain number of employees, generally 50 fulltime employees, will be subject to the employer shared responsibility payment provision.⁹ For purposes of the employer shared responsibility payment, the definition of a full-time employee is based on whether or not the employee averaged at least 30 hours of service per week.^{10,11}

Beginning in 2014, the Small Business Health Options Program (SHOP) Marketplace provides coverage to small business with 50 or fewer fulltime employees, defined in the same manner as under the shared responsibility provision. The total fulltime employees’ calculation consider the employers total fulltime-equivalencies so the hours of all non-seasonal employees are included.¹²

⁴ s. 627.6699(3)(j)

⁵ s. 627.6699(3)(w)1, F.S.

⁶ A grandfathered health plan is health plan coverage that is individual or group coverage in which an individual was enrolled on March 10, 2010. Grandfathered health plans are exempt from many of the insurance requirements of the Patient Protection and Affordable Care Act but may lose this status if certain changes are made to the plan.

⁷ s. 627.66993(3)(w)2, F.S.

⁸ P.L. 111-148. On March 30, 2010, PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010.

⁹ Internal Revenue Service, *Questions and Answers on Employer Shared Responsibility*,

<http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act#Identification> (last visited Mar. 7, 2014).

¹⁰ Internal Revenue Service, *Questions and Answers on Employer Shared Responsibility*,

<http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act#Identification> (last visited Mar. 7, 2014).

¹¹ Federal Register, Vol. 79, No. 29, Final Rule 26 CFR 54.4980H-1(a)(21), published Feb. 12, 2014.

¹² Centers for Medicare and Medicaid Services, *Key Facts about the Small Business Health Options Program Marketplace* <http://marketplace.cms.gov/getofficialresources/publications-and-articles/key-facts-about-shop.pdf> (last visited Mar. 9, 2014).

Under SHOP, the small business owner enrolls through an agent, broker or insurance company. Once enrolled, the agent, broker or insurance company assists the small business and its employees into the plan selected by the small business owner. To be eligible, the business owner must offer coverage to all fulltime employees and at least 70 percent of the eligible employees must enroll in the plan. For most states in 2014, only one plan may be offered to employees. A SHOP Marketplace for employers with up to 100 employees will be available by January 1, 2016.¹³ Open enrollment periods for the SHOP Marketplaces are determined by the employer.

Employees not eligible for coverage under the SHOP may seek individual or family coverage under the Health Insurance Marketplace during an open enrollment period. The 2014 open enrollment period ends March 31, 2014. The proposed 2015 open enrollment period is November 15, 2014 through January 15, 2015.

The employer shared responsibility provision requires affected employers to offer affordable health care coverage with a minimum level of benefits to their fulltime employees and dependents or incur a possible payment if that employee receives a premium tax credit for purchasing coverage through one of the Marketplaces under PPACA. Assessments will not be made until 2015 for larger firms (over 100 fulltime employees) and not until 2016 for those with over 50 employees.¹⁴ There is no employer shared responsibility requirement under PPACA for employers with less than 50 fulltime employees.¹⁵

III. Effect of Proposed Changes:

Section 1 changes the definition of an “eligible employee” under the “Employee Health Care Access Act” to an employee who works fulltime having a normal workweek of 30 or more hours. The current definition defines a fulltime employee as having a normal workweek of 25 or more hours.

This change would more closely align the definition of a fulltime employee to federal regulation under the PPACA for the employer shared responsibility provisions.¹⁶

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹³ Healthcare.gov, *What if my business has 50 or more employees?* <https://www.healthcare.gov/what-do-large-business-owners-need-to-know/> (Last visited: Mar. 9, 2014).

¹⁴ U.S. Treasury Department, *Fact Sheet - Final Regulations Implementing Employer Shared Responsibility Under the Affordable Care Act*, <http://www.treasury.gov/press-center/press-releases/Documents/Fact%20Sheet%20021014.pdf> (last visited Mar. 7, 2014).

¹⁵ See definition of “applicable large employer,” Federal Register, Vol. 79, No. 29, Final Rule 26 CFR 54.4980H-1(a)(4), published Feb. 12, 2014.

¹⁶ See *supra* note 11.

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:

Changing the definition of an “eligible employee” under the Employee Health Access Act could impact the number of small employers that are eligible for small group coverage. By increasing the number of hours needed to be designated as a fulltime employee, it may reduce the total fulltime employees of the employer thereby qualifying the business for small group coverage rather than large group.

It may also impact the number of employees eligible for coverage under employment based coverage if the employee works less than 30 hours per work. These employees would no longer be considered an eligible employee for small group coverage under the Employee Health Access Act. Impacted employees could seek coverage through the Health Insurance Marketplace.

C. Government Sector Impact:

The Office of Insurance Regulation (OIR) would be required to update its rules and administrative processes to conform to the new definitions. The OIR has not submitted any fiscal or administrative impact statements related to this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.6699.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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