HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1317 Interstate Purchase of Health Insurance
SPONSOR(S): Miller
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	7 Y, 5 N	Peterson	Luczynski
2) Appropriations Committee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill allows any insurer authorized to engage in the sale of health insurance in any state, district, territory, or commonwealth of the United States, other than Florida, to sell individual health insurance in this state. An insurer selling such insurance is exempted from the provisions of the Florida Insurance Code, but must meet the following requirements:

- The insurer must have a valid certificate of authority to engage in the sale of individual health insurance in the state under which laws the insurer was formed, known as the insurer's domicile.
- A health insurance product offered for sale must comply with all applicable laws of the insurer's domicile.
- A health insurance product offered for sale in Florida must also be offered for sale in the insurer's domicile.
- An application for individual health insurance and the insurance product itself must include a conspicuous, boldfaced disclosure statement, in at least 12-point font, which informs the consumer that:
  - The health insurance product is being offered by an insurer based in another state;
  - The product is subject to the laws of that state; and
  - The product is not subject to the insurance laws of Florida, including state-mandated benefits.
- The disclosure statement must advise the consumer to review the terms and conditions of the insurance product carefully, including exclusions and coverage limitations, and advise the consumer to consult his or her insurance agent to determine the Florida state-mandated benefits that are excluded under the product.
- The insurer must establish a grievance procedure for residents of Florida who purchase health insurance policies under this section.

The bill also requires each foreign insurer selling health insurance to annually report to the Office of Insurance Regulation (OIR) the following information:

- The foreign insurer's state of domicile.
- The number of individual health insurance products sold.
- Each county where at least one such individual health insurance product was sold.
- The number of persons covered by such individual health insurance products.
- The total premium collected on such individual health insurance products.

The OIR is required to post the report from each foreign insurer to its website.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Health Insurance Regulation in Florida

Insurance products are regulated under chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., collectively referred to as the Florida Insurance Code, by the Office of Insurance Regulation (OIR). Health insurance products are specifically regulated under the following chapters:

- Chapter 627, F.S.
  - Part VI - Health Insurance Policies
  - Part VII - Group, Blanket, and Franchise Health Insurance Policies
  - Part VIII - Medicare Supplement Policies
- Chapter 631, F.S.
  - Part III - Life and Health Insurance Guaranty of Payments
  - Part IV - Health Maintenance Organization Consumer Assistance Plan
- Chapter 636, F.S.
  - Part I - Prepaid Limited Health Service Organizations
  - Part II - Discount Medical Plan Organizations
- Chapter 641, F.S.
  - Part I - Health Maintenance Organizations
  - Part II - Prepaid Health Clinics
  - Part III - Health Care Services
- Chapter 651, F.S. - Continuing Care Contracts

The OIR is responsible for regulating all insurers and other risk bearing entities doing business in the state. These responsibilities include authorizing domestic, foreign, and alien insurers to transact insurance in the state; the review of company rate and form filings across regulated lines of insurance; monitoring the financial strength, solvency, and risk of insurance companies; and ensuring that insurance contract provisions remain current with legal and market conditions.

Interstate Purchase of Health Insurance - Federal Efforts

In general, states regulate the business of insurance within their borders.[1] The federal government in recent years has enacted or proposed laws that create frameworks for specific types of health insurance product to be sold across state lines.

Multi-State Plans

Section 1334 of the Patient Protection and Affordable Care Act (PPACA)[2] established the Multi-State Plan (MSP) Program, which directs the federal Office of Personnel Management (OPM)[3] to contract with private health insurers in each state to offer at least two multi-state qualified health plans through the Health Insurance Marketplace in each state.[4] MSP options are available to individuals and small

[1] The Patient Protection and Affordable Care Act (PPACA) imposes many insurance requirements including required benefits, rating and underwriting standards, required review of rate increases, reporting of medical loss ratios and payment of rebates, covering adult dependents, internal and external appeals of adverse benefit determinations, and other requirements. These requirements preempt any state insurance provisions that prevent the implementation of PPACA and expand federal regulation of health insurance within states' borders.

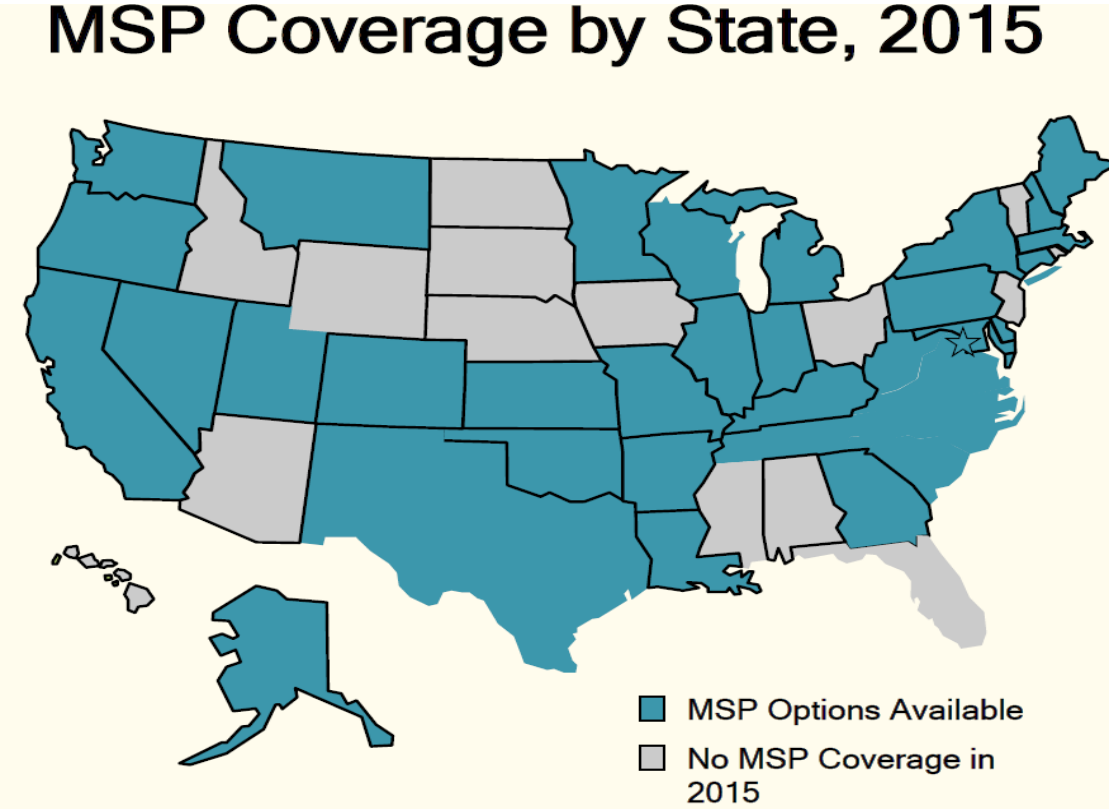
[2] Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148. On March 30, 2010, PPACA was amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

[3] Formerly the responsibility of the now-defunct Civil Service Commission, the OPM is responsible for personnel management of the civil service of the federal government. The OPM also administers the health plan for federal government employees, the Federal Employees Health Benefits program.

[4] 42 U.S.C. §18054(a)(1).

businesses.[5] MSPs offer coverage for essential health benefits and offer bronze, silver, and gold levels of coverage, in addition to catastrophic coverage. [6]

In the 2014 plan year, the OPM contracted with the Blue Cross and Blue Shield Association (BCBS) to offer more than 150 MSP options in 31 states, including the District of Columbia.[7] Approximately 371,000 individuals enrolled in an MSP option for the 2014 plan year.[8] For the 2015 plan year, the OPM contracted with the BCBS and a group of CO-OPs[9] to offer more than 200 MSPs in 36 states and the District of Columbia.[10] There were approximately 450,000 MSP enrollees for the 2015 plan year.[11] The map below shows the availability of MSPs for the 2015 plan year.[12]



PPACA requires MSPs to extend coverage offerings to all 50 states by 2017.[13]

Interstate Health Compacts

PPACA permits a state to enter into an agreement, called a "health care choice compact," with one or more other states to offer health insurance plans across state lines, subject to approval of the Secretary of the federal Department of Health and Human Services.[14] States must pass a law allowing their participation in a compact.[15]

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[5] *Id.*
[6] 42 U.S.C. § 18054(c)(1)(A) and (B).
[7] U.S. Office of Personnel Management, National Healthcare Operations, Healthcare & Insurance, *An Overview of the Multi-State Plan Program*, slide 7 (on file with the House Insurance & Banking Subcommittee).
[8] *Id.*
[9] PPACA established the Consumer Operated and Oriented Plan (CO-OP) Program, which facilitated the creation of qualified nonprofit health insurance issuers to offer competitive health plans in the individual and small group markets. For more information on CO-OPs, *see* https://www.cms.gov/CCIIO/Programs-and-Initiatives/Insurance-Programs/Consumer-Operated-and-Oriented-Plan-Program.html.
[10] *Supra* note 7, at slide 9.
[11] *Id.*
[12] *Id.* at slide 8.
[13] 42 U.S.C. § 18054(e).
[14] PPACA §§1333(a) and 1331(b)(3)(B). PPACA also authorizes states to negotiate regional compacts with other states to cover low income individuals not eligible for Medicaid in "standardized health plans."
[15] PPACA § 1333(a)(2).

Interstate plans offered through the compact are subject to the market conduct rules, network adequacy requirements, unfair trade standards, and consumer protection requirements of the state where the purchaser of the plan resides.[16] Insurers are required to be licensed in all states participating in the compact and to file plan forms for review in each state in which a plan will be offered through the compact.[17] Also, insurers must clearly notify consumers that a policy may not be subject to all the laws and regulations of the purchaser's state.[18]

PPACA required the Secretary of the federal Department of Health and Human Services, in consultation with National Association of Insurance Commissioners, to issue regulations for interstate health care choice compacts, which can be entered into beginning in 2016.[19] However, no regulations have been issued to date.

Health Care Choice Act of 2015

The Health Care Choice Act of 2015 (Act), filed in the U.S. House of Representatives by Rep. Blackburn (TN) and in the U.S. Senate by Sen. Cruz (TX) includes, among other provisions, an amendment to the Public Health Service Act[20] to provide for the interstate purchase of health insurance.[21] The Act would allow a health insurance company to designate a "primary state," the laws of which would apply to individual health insurance offered by that company in the primary state and in any other state, known as "secondary states."[22] A health insurance company would be exempt from any law of a secondary state prohibiting or regulating the company's operations in that state.[23] The primary state would have jurisdiction over enforcing its own laws on a health insurance company in both the primary and secondary states.[24]

The Act was referred to committees in both the House and Senate in April 2015. No further has action occurred since that time.

Interstate Purchase of Health Insurance - State Efforts

Several states have enacted laws permitting the sale of health insurance across state lines, or providing for a study of the sale of health insurance across state lines. Kentucky, Rhode Island, and Washington passed laws directed at researching and evaluating the feasibility of allowing the sale of policies across state lines or forming interstate compacts. Georgia, Maine, and Wyoming passed laws that permit, to varying degrees, the interstate sale of health insurance.

Georgia

In 2011, Georgia passed a law requiring the state insurance commissioner to approve individual health policies for sale in the state by a Georgia-licensed insurer if the policies were approved in other states.[25] The insurance commissioner promulgated regulations to implement the law, providing insurers with operational guidance and filing requirements.[26] To date, no insurer has sought approval to sell out-of-state individual health policies in Georgia.

Maine

[16] PPACA § 1333(a)(1)(B)(i).
[17] PPACA § 1333(a)(1)(B)(ii).
[18] PPACA § 1333(a)(1)(B)(iii).
[19] PPACA § 1333(a)(1).
[20] 42 U.S.C. § 300gg et seq.
[21] Health Care Choice Act of 2015, H.R. 543, 114th Cong. §3 (2015).
[22] *Id.* at § 5.
[23] *Id.*
[24] *Id.*
[25] Official Code of Ga. Ann. § 33-29A-30 et. seq.
[26] Ga. Admin. Code § 120-2-99-.01 et. seq.

In 2011, Maine passed a law, similar to Georgia's law, which expressly exempts certain insurers from the state's health insurance licensing process and allows those insurers to sell out-of-state individual health policies in Maine. [27] The law requires the insurers to be licensed to sell individual market health insurance in Connecticut, Massachusetts, New Hampshire, or Rhode Island.[28] The law became effective January 1, 2014. Since that time, there has been no interest from insurers in selling out-of-state policies in Maine pursuant to this law.

Wyoming

Wyoming law allows out-of-state insurers to offer their health insurance plans in the state if the state where the insurer is licensed has insurance regulations that are consistent with those of Wyoming. [29] Since the law passed, Wyoming officials reported a lack of interest from insurers with no inquiries about selling out-of-state policies in the state.[30]

Kentucky

Kentucky's legislation did not require the state to conduct a study, but instead expressed the state's intent to "explore the feasibility" of entering into an interstate reciprocal health benefit plan compact with contiguous states.[31] The insurance commissioner sent letters to the insurance commissioners of Kentucky's seven contiguous states – Missouri, Illinois, Indiana, Ohio, West Virginia, Virginia, and Tennessee – to determine interest in joining in a compact.[32] After discussions with these states, officials concluded that there were significant roadblocks to the implementation of a compact. [33] Kentucky has taken no further action regarding the interstate purchase of health insurance.

Rhode Island

In 2008, the Rhode Island General Assembly passed Senate Bill 2286, Substitute B, requiring the health insurance commissioner to submit a report, by March 1, 2009, identifying what legislative and regulatory changes were necessary to allow health insurers licensed in other New England states to do business in Rhode Island without further licensure by the state.[34] The intent of the law was to establish a regional health insurance market, and the report was the first step in determining if such a regional market was feasible.

The report was not completed. State officials indicated stakeholders had expressed no interest in the option.[35] In fact, a regional health insurer based in Massachusetts indicated only minimal interest in the legislation, noting that Rhode Island's regulatory requirements were a low priority in deciding whether to enter the market.[36] To date, Rhode Island officials have not been contacted by any insurer about the issue and have taken no further action.

Washington

The Washington state Department of Insurance was required to complete a feasibility study, which was submitted to the legislature in 2008.[37] The study concluded that a multi-state compact for the regulation of health insurance was not viable. Specifically, the study noted that:

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[27] Me. Rev. Stat. Ann. tit. 24-A, §405-A (2011).
[28] *Id.* at §405-A(1.).
[29] Wyo. Stat. Ann. §26-18-302(a).
[30] *Supra note* 25, at 10.
[31] 2012 Ky. Acts, 166, §10.
[32] Corlette, S., Monahan, C., et al., *Selling Health Insurance Across State Lines: An Assessment of State Laws and Implications for Improving Choice and Affordability of Coverage*, Georgetown University Health Policy Institute-The Center on Health Insurance Reforms, Oct. 2012, at 7, *available at* http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf401409 (last visited Jan. 28, 2016).
[33] *Id*.
[34] R.I. Gen. Laws §27-67-4 (2008).
[35] *Supra* note 32.
[36] *Id.*
[37] Washington State Office of the Insurance Commissioner, *Feasibility Study on the Use of an Interstate Compact to Provide Individual Health Insurance*, Dec. 1, 2008, *available* at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKEwixvOLbls3KAhVFXR4KHZUOBaAQFggoMAI&url=http

- There was not sufficient consensus among states to make a health insurance compact feasible, primarily due to the varying approaches to health insurance regulation.
- A compact would require leveling the diversity in costs of health care goods and services that exist in each state and in various markets within each state and, because health care costs are impacted by local issues like the availability of providers and population demographics, a compact could not accomplish the leveling of prices.[38]

The study also concludes that the administrative costs needed to create a compact outweigh the potential benefits of the compact.[39]

Florida Health Insurance Mandates

A mandate is usually defined as required health coverage for specific types of treatments, benefits, providers, or categories of dependents.[40] In Florida, health insurance coverage mandates are found throughout the insurance code, depending on the coverage type and insurance product. In addition, some types of health insurance coverage are exempt from state mandates, such as self-funded or ERISA plans. Florida has at least 52 different mandates across the small group, individual, or large group health insurance market, including health maintenance organizations.

Effect of Proposed Changes

The bill creates s. 627.6325, F.S., which allows any insurer authorized to engage in the sale of health insurance in any state, district, territory, or commonwealth of the United States, other than Florida (foreign insurer), to sell individual health insurance in this state. Foreign insurers are limited to selling major medical insurance under the provisions of the bill. Individual health insurance, for the purposes of the bill, does not include products such as dental, vision, long-term care, or other supplemental insurance.

An insurer selling such products in the state is exempted from the provisions of the Florida Insurance Code,[41] including rate and form reviews by the OIR, solvency and risk requirements, and all other state regulations, but must meet the following requirements:

- The insurer must have a valid certificate of authority to engage in the sale of individual health insurance in the state under which laws the insurer was formed, known as the insurer's domicile.[42]
- A health insurance product offered for sale under s. 627.6325, F.S., must comply with all applicable laws of the insurer's domicile.
- A health insurance product offered for sale must be offered for sale in the insurer's domicile.
- An application for health insurance and the health insurance product itself must include a conspicuous, boldfaced disclosure statement, in at least 12-point font, which informs the consumer that:
    - The health insurance product is being offered by an insurer based in another state;
    - The product is subject to the laws of that state; and
    - The product is not subject to any insurance laws of Florida, including state-mandated benefits.
- The disclosure statement must advise the consumer to review the terms and conditions of the product carefully, including exclusions and coverage limitations, and advise the consumer to

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[38] *Supra* note 32, at pg. 8.

[39] *Id.*

[40] NATIONAL CONFERENCE OF STATE LEGISLATURES, *Mandated Health Insurance Benefits and State Laws* (last updated Jan. 2014) http://www.ncsl.org/issues-research/health/mandated-health-insurance-benefits-and-state-laws.aspx (last visited Jan. 28, 2016).

[41] s. 624.01, F.S.

[42] s. 624.07(4), F.S.

consult his or her insurance agent to determine the Florida state-mandated benefits that are excluded.
- The insurer must establish a grievance procedure for residents of Florida who purchase health insurance products under this section.

The bill also requires each foreign insurer selling health insurance pursuant to s. 627.6325, F.S., to annually report to the OIR the following information:

- The foreign insurer's state of domicile.
- The number of individual health insurance products sold.
- Each county where at least one such individual health insurance product was sold.
- The number of persons covered by such individual health insurance products.
- The total premium collected on such individual health insurance products.

The OIR is required to post the report from each foreign insurer to its website.

The bill may provide consumers with more options for health coverage that fit their individual needs. The products that may be offered under these provisions will not be required to include all of the health benefits and services mandated in Florida law. In addition, foreign insurers will not be subject to the same administrative requirements as authorized insurers. As a result, premiums for these plans may be lower, thereby benefiting consumers, but potentially harming admitted carriers who are subject to all of Florida's licensing requirements and mandated benefits.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Creates s. 627.6235, F.S., relating to interstate purchase of individual health insurance.
Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill provides that unlicensed foreign insurers are not subject to any insurance laws or rules of Florida. As such, these insurers would not be subject to Florida laws that require the payment of premium taxes, filing fees, or assessments. The reduction in premium taxes, fees, or fines is unknown and would depend on the number of insurers choosing to operate as an unlicensed foreign insurer.[43]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[43] Florida Office of Insurance Regulation, Agency Analysis of 2016 House Bill 1317, p. 3 (Jan. 27, 2016).

Florida consumers may be able to choose from a wider array of health insurance products that fit their individual needs for coverage without including coverage for products that they will not use, thereby lowering the cost of insurance coverage to the individual. However, it is uncertain how the federal government will treat health insurance products sold to Florida citizens that do not meet Florida benchmark requirements, even though such products are authorized for sale in another state under that state's benchmark requirements.

Foreign insurers would not be required to include any of Florida's statutorily required health benefits nor would the premium for those policies be subject to any regulatory approval. Insurers licensed in Florida would still be required to comply with Florida's mandated health benefit statutes and other provisions of Florida law and, as a result, would be put at a competitive disadvantage.[44]

Florida's solvency laws would not apply to foreign insurers. Thus, the OIR would have no ability to oversee solvency or financial regulation. As a result, consumers may be at risk of financial harm from foreign insurers domiciled in states with low capital and surplus requirements. These insurers do not meet the definition of "member insurer" for purposes of inclusion in the Florida Life and Health Insurance Guaranty Association Act. As a result, if one of these foreign insurers were to become insolvent, the fund would not be available to compensate consumers or practitioners with claims owed.[45]

The bill allows foreign insurers to sell policies within the state that are not subject to state regulation. While this limits administrative requirements that may be adding to the cost of health insurance sold in Florida, it eliminates consumer protections that are part of Florida's licensing law. Foreign insurers would be required to have a grievance procedure to address consumer concerns, however, the Division of Consumer Services within the Department of Financial Services would not have authority to act on any complaint.[46]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable. The adoption of rules is not necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The notice requirement directs consumers to contact their insurance agent to determine what state-mandated benefits may be omitted in a policy sold by a foreign insurer. The OIR notes that insurance agents are prohibited under Florida law from marketing policies for unlicensed insurers. The OIR further

[44] *Id.* at 5.
[45] *Id.*
[46] *Id.*

questions whether an agent would know all of Florida's mandated coverages and, as a result, be able to identify those that are not part of a policy sold by a foreign insurer.[47]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[47] *Id.*