

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1443 OGSR/Dependent Eligibility Information/DMS

SPONSOR(S): State Affairs Committee; State Administration & Technology Appropriations Subcommittee; Giallombardo

TIED BILLS: CS/CS/HB 1445 **IDEN./SIM. BILLS:** SB 7026

FINAL HOUSE FLOOR ACTION: 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1443 passed the House on March 4, 2022, as SB 7026 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 8, 2022.

The Department of Management Services (DMS) administers the State Group Insurance Program (SGI Program), which provides health care coverage to employees and retirees of state agencies and their eligible dependents. In 2017, DMS was directed by the Legislature to contract with a vendor for an audit to verify the eligibility of all dependents participating in the SGI Program. The documents requested by the vendor from SGI Program subscribers included tax transcripts from the Internal Revenue Service, marriage licenses, birth certificates, adoption documents, as well as any other documentation necessary to verify a dependent's eligibility. The dependent eligibility verification audit was conducted in 2018. All documentation collected by the vendor for verification of dependent eligibility was required to be retained until July 1, 2019, and then destroyed as soon as practicable thereafter.

Current law provides a public record exemption for documents submitted to DMS or its vendor for dependent eligibility verification services. The public record exemption is scheduled to repeal on October 2, 2022, unless reviewed and saved from repeal by the Legislature. During the 2021 interim, House staff reviewed the public record exemption and as part of that review process, recommendations were made to improve upon the substantive provisions related to the dependent eligibility verification process and to remove provisions that were outdated. This bill implements those recommendations as they relate to the substantive provisions of the dependent eligibility verification process.

The bill authorizes dependent eligibility verification to occur on an ongoing basis and repeals statutory language relating to the audit conducted in 2018. The bill also specifies the documents that may be submitted by SGI program subscribers to DMS or a vendor for the purpose of verifying dependent eligibility and requires the records be retained according to the general records retention schedule.

The bill may have an insignificant negative fiscal impact on the state, but no fiscal impact on local governments.

The bill was approved by the Governor on May 26, 2022, ch. 2022-145, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

State Group Insurance Program

Overview

The State Group Insurance Program (SGI Program)¹ is administered by the Division of State Group Insurance (DSGI) within the Department of Management Services (DMS). The SGI Program is an optional benefit for all state employees including those employed by state agencies, state universities, the court system, and the Legislature.² The SGI Program administers health, life, dental, vision, disability, and other supplemental insurance benefits.

State Health Insurance Plans

The SGI Program provides four options for employees and retirees to choose as their health plan:

- The standard Preferred Provider Organization (PPO) plan, administered by Florida Blue.
- The high deductible PPO plan, administered by Florida Blue.
- The standard health maintenance organization (HMO) services.³
- The high deductible HMO.⁴

Pharmacy Benefit

The SGI Program also has a pharmacy benefit for members of the plan.⁵ The SGI Program covers all federal legend drugs for covered medical conditions and employs very limited utilization review and clinical review for traditional or specialty prescription drugs. DMS contracts with CVS/Caremark, a pharmacy benefits manager, to administer the Prescription Drug Plan.⁶

Eligible Employees

The SGI Program is open to:

- All state officers.
- All state employees paid from “salaries and benefits” appropriation categories, regardless of the number of hours worked.
- Retired state officers and state employees.
- Surviving spouses of deceased state officers and state employees.
- Certain terminated state officers and state employees.
- Certain state employees paid from “other-personal-services” (OPS) appropriation categories.⁷

For OPS employees to be eligible to participate in the health insurance program, the employee must be reasonably expected to work an average of at least 30 hours per week, and have worked an average of

¹ Section 110.123, F.S.

² See s. 110.123(2)(b), F.S.

³ These are provided by Aetna, AvMed, Capital Health Plan, UnitedHealthcare, and Aetna. One of these HMO plans is offered in each county in the State of Florida. See Department of Management Services, myBenefits, https://www.mybenefits.myflorida.com/health/health_insurance_plans/health_plans_in_your_area (last visited February 21, 2022).

⁴ Department of Management Services, myBenefits, Health Insurance Plans, https://www.mybenefits.myflorida.com/health/health_insurance_plans (last visited February 20, 2022).

⁵ See s. 110.12315, F.S.

⁶ Department of Management Services, myBenefits, Prescription Drug Plan, https://www.mybenefits.myflorida.com/health/health_insurance_plans/prescription_drug_plan (last visited February 21, 2022).

⁷ Department of Management Services, myBenefits, Eligibility and Enrollment, https://www.mybenefits.myflorida.com/health/eligibility_and_enrollment (last visited February 20, 2022)

at least 30 hours per week during the person's measurement period (which is 12 consecutive months⁸ of employment).⁹

Dependent Eligibility

The SGI Program covers employees and retirees of state agencies and their eligible dependents.

An eligible dependent is defined as:

- A current spouse to whom the member is legally married.
- A biological child, child with a qualified medical support order, legally adopted child, or child placed in the home for the purpose of adoption in accordance with applicable state and federal laws, through the end of the calendar year in which the child turns age 26.
- A stepchild, for as long as the member remains legally married to the child's parent, through the end of the calendar year in which the child turns age 26.
- A foster child placed in the member's home by the Department of Children and Families Foster Care Program or the foster care program of a licensed private agency, through the end of the calendar year in which the child turns age 26.
- A child for whom the member has legal guardianship through the end of the calendar year in which the child turns age 26.
- An over-age dependent, after the end of the calendar year in which such dependent turns age 26, through the end of the calendar year in which the dependent turns age 30 if he or she is unmarried, has no dependents of his or her own, is a resident of Florida or a full- or part-time student, and has no other health insurance.
- An over-age dependent with a disability.
- A newborn dependent of a member's covered child for up to 18 months of age as long as the newborn's parent remains covered.
- A child of law enforcement, probation, or correctional officer killed in the line of duty, who is attending a college or university beyond his or her 18th birthday.
- A surviving spouse and dependents.¹⁰

Dependents may be added as covered dependents during the open enrollment period each year or in the event of a qualifying status change. Minimal information is collected by DMS to determine eligibility.

Dependent Eligibility Verification

During the 2017 Legislative Session, DSGI was directed to contract with a vendor for an audit to verify the eligibility of all dependents participating in the SGI Program.¹¹ DSGI was required to provide notice to all subscribers by September 1, 2017, regarding the eligibility rules for dependents.¹² DSGI notified subscribers through the People First Service Center and thereafter the vendor began requesting documents from subscribers as part of the dependent eligibility verification process. The documents requested by the vendor included tax transcripts from the Internal Revenue Service, marriage licenses, birth certificates, adoption documents, as well as any other documentation necessary to verify a dependent's eligibility.¹³ DSGI was required to hold subscribers harmless for past claims of ineligible dependents if the dependents were removed from the subscriber's plan before December 1, 2017.¹⁴

⁸ Section 110.123(13)(d), F.S.

⁹ Section 110.123(2)(c)2., F.S.

¹⁰ Department of Management Services, myBenefits, Dependent Eligibility Verification, https://www.mybenefits.myflorida.com/health/dependent_eligibility_verification (last visited February 20, 2022).

¹¹ Chapter 2017-127, L.O.F. Prior to 2017, DSGI was required to competitively procure a contingency-based contract for dependent eligibility verification services for the SGI Program. However, contract dates and terms were not specified in statute. *See* ch. 2010-150, L.O.F.

¹² Section 110.12301(2)(a)1., F.S.

¹³ Section 110.12301(2)(b), F.S.

¹⁴ *Supra*, note 12.

The dependent eligibility verification audit was conducted in 2018.¹⁵ All documentation collected by the vendor for verification of dependent eligibility was required to be retained until July 1, 2019, and destroyed as soon as practicable thereafter.¹⁶

The Legislature also made documents submitted to DMS or the vendor to verify dependent eligibility confidential and exempt¹⁷ from public record requirements.¹⁸ Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2022, unless reenacted by the Legislature.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act²⁰ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²¹

During the 2021 interim, the House Government Operations Subcommittee staff conducted an interview with staff from DMS as part of its review of the public record exemption for dependent eligibility verification information. DMS stated that the audit required by the Legislature was conducted in 2018 but DMS staff indicated that the department still contracts for dependent eligibility verification services and, as such, recommended that the exemption remain in effect. In addition, DMS responded to a follow-up questionnaire with a recommendation that obsolete language that appeared to indicate that the dependent eligibility verification audit was not authorized as an ongoing contract be repealed and that specific categories of documentation required to verify dependent eligibility be codified in law.²²

Effect of the Bill

This bill implements recommendations that were suggested, and removes outdated provisions that were discovered, during the Open Government Sunset Review process.

The bill directs DMS to contract for dependent eligibility verification services for the SGI Program on an ongoing basis and repeals statutory language relating to the audit conducted in 2018. The bill requires all documentation submitted by subscribers for purposes of dependent eligibility verification services for the SGI Program be retained according to the applicable records retention schedule.²³

¹⁵ Department of Management Services, *2022 Agency Legislative Bill Analysis – HB 1443*, pg. 2 (2022), on file with the State Affairs Committee.

¹⁶ *Supra*, note 13.

¹⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁸ Chapter 2017-128, L.O.F.

¹⁹ Section 744.211(5), F.S.

²⁰ Section 119.15, F.S.

²¹ Section 119.15(3), F.S.

²² Open Government Sunset Review Questionnaire, DMS/Dependent Eligibility Verification Services, on file with the State Affairs Committee.

²³ See *General Records Schedule GS1-SL for State and Local Government Agencies*, August 2020 (incorporated by reference in Rule 1B-24.003(1)(a), F.A.C.), available at <https://files.floridados.gov/media/703328/gsl-sl-2020.pdf> (last visited Feb. 21, 2022).

The bill authorizes DMS or its contractor to collect any of the following documents from SGI Program subscribers in order to verify dependent eligibility:

Dependent	Documentation
Spouse	An attestation of marriage by sworn affidavit consistent with s. 92.50, F.S., if a copy of a joint federal income tax return or governmental-issued marriage certificate cannot be produced.
Biological Child or Newborn Grandchild	An attestation of the subscriber-dependent relationship by sworn affidavit consistent with s. 92.50, F.S., if a copy of a birth certificate cannot be produced.
Adopted Child	An attestation of the subscriber-dependent relationship by sworn affidavit consistent with s. 92.50, F.S., if a copy of an adoption certificate or adoption placement agreement cannot be produced.
Child under Guardianship	A copy of the court order naming the subscriber or the subscriber's spouse as the child's legal guardian or custodian.
Foster Child	A copy of the records showing the subscriber or the subscriber's spouse as the dependent's foster parent.
Unmarried Child Age 26 to 30	<ul style="list-style-type: none"> • A copy of the child's birth or adoption certificate naming the subscriber or spouse as the child's parent or a court order naming the subscriber or spouse as the child's guardian or custodian; • A copy of completed Certification of Over-Age Dependent Eligibility Form; and • A document confirming the child's current enrollment as a student (including the name of the child, the name of the school, and the school term); or a bill or statement in the child's name which is dated within the past 60 days and is mailed to the child at a Florida address.
Disabled Child Age 26 or Older	<ul style="list-style-type: none"> • A copy of the child's birth or adoption certificate naming the subscriber or spouse as the child's parent, legal guardian, or legal custodian; and • A copy of a transcript of the subscriber's or spouse's most recently filed federal income tax return that includes the child's name and last four digit of the child's Social Security number and identifies the child as a dependent.

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:

None.

D. FISCAL COMMENTS:

None.