

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1445 OGSR/Dependent Eligibility Information/DMS
SPONSOR(S): State Affairs Committee; Government Operations Subcommittee; Giallombardo
TIED BILLS: SB 7026 **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 111 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1445 passed the House on March 4, 2022, as amended, and subsequently passed the Senate on March 9, 2022.

The Open Government Sunset Review Act requires the Legislature to review each public record exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

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 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 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the substantive provisions related to the dependent eligibility verification process and to remove provisions that were outdated.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.

SB 7026, to which this bill is linked, authorizes dependent eligibility verification to occur on an ongoing basis and repeals statutory language relating to the audit conducted in 2018. It 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 extends the scheduled repeal date of the public record exemption to October 2, 2027; thereby, maintaining the public record exemption for documents submitted by SGI Program subscribers to DMS or its vendor for dependent eligibility verification services for an additional five years. The bill also provides a public necessity statement, as required by the Florida Constitution.

The bill was approved by the Governor on May 3, 2022, ch. 2022-86, L.O.F., and will become effective on the same date that SB 7026 or similar legislation takes effect.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ 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.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

State Group Insurance Program

Overview

The State Group Insurance Program (SGI Program)⁵ 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 state employees employed by state agencies, state universities, the court system, and the Legislature.⁶ 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.⁷

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Section 110.123, F.S.

⁶ See s. 110.123(2)(b), F.S.

⁷ These are provided by 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).

- The high deductible HMO.⁸

Pharmacy Benefit

The SGI Program also has a pharmacy benefit for members of the plan. 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.⁹

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.¹⁰

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 at least 30 hours per week during the person’s measurement period (which is 12 consecutive months¹¹ of employment).¹²

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.

⁸ Department of Management Services, myBenefits, Health Insurance Plans, https://www.mybenefits.myflorida.com/health/health_insurance_plans (last visited February 20, 2022).

⁹ Department of Management Services, myBenefits, Prescription Drug Plan, https://www.mybenefits.myflorida.com/health/health_insurance_plans/prescription_drug_plan (last visited February 6, 2022).

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

¹¹ Section 110.123(13)(d), F.S.

¹² Section 110.123(2)(c)2., F.S.

- 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.¹³

Dependents may be added as covered dependents during the open enrollment period each year or in the event of a qualifying status change.

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.¹⁴ DSGI was required to provide notice to all subscribers by September 1, 2017 regarding the eligibility rules for dependents.¹⁵ DSGI notified subscribers through the People First Service Center and thereafter the vendor began requesting subscribers to provide documents 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.¹⁶ DSGI was required to hold subscribers harmless for past claims of ineligible dependents if the dependents were removed from the subscribers plan before December 1, 2017.¹⁷ The dependent eligibility verification audit was conducted in 2018.¹⁸ All documentation collected by the vendor for verification of dependent eligibility was to be retained until July 1, 2019, and destroyed as soon as practicable thereafter.¹⁹

Public Record Exemption under Review

In 2017, the Legislature made documents submitted to DMS or the vendor pursuant to the dependent eligibility verification audit confidential and exempt²⁰ from public record requirements.²¹

The 2017 public necessity statement²² for the public record exemption provides:

Eligibility verification can require state employees to produce a variety of documentation, including proof of marriages and divorces, child custody, children's education status, as well as the mental and medical records related to their children with disabilities. Absent the public records exemption, state employees subject to the verification process may be hesitant or less cooperative in producing documents or information out of fear that they or their families would be exposed to public ridicule or humiliation because the details of their personal lives would be subject to public disclosure. Personnel may also be uncooperative if they are

¹³ Department of Management Services, myBenefits, Dependent Eligibility Verification, https://www.mybenefits.myflorida.com/health/dependent_eligibility_verification (last visited February 20, 2022).

¹⁴ 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.

¹⁵ Section 110.12301(2)(a)1., F.S.

¹⁶ Section 110.12301(2)(b), F.S.

¹⁷ *Supra*, note 15.

¹⁸ Department of Management Services, *2022 Agency Legislative Bill Analysis – HB 1443*, pg. 2 (2022), on file with the State Affairs Committee.

¹⁹ *Supra*, note 16.

²⁰ 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).

²¹ Chapter 2017-128, L.O.F.

²² Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

concerned that they or their families may be exposed to public scorn or be subject to legal action for inappropriately or mistakenly claiming ineligible dependents. Protecting such information helps to protect state employees and their families from criminal or inappropriate use of their personal information. Enrollees and their families would be at increased risk of identity theft and fraud if the public had unfettered access to documents requested by the Department of Management Services to verify dependent eligibility.²³

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2022, unless reenacted by the Legislature.²⁴

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.²⁵

SB 7026 (2022)

SB 7026, to which this bill is linked, 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.

Effect of the Bill

The bill extends the scheduled repeal date of the public record exemption from October 2, 2022, to October 2, 2027; thereby, maintaining the public record exemption for documents submitted by SGI Program subscribers to DMS or its vendor for dependent eligibility verification services for an additional five years. The bill also provides a public necessity statement as required by the Florida Constitution.

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:

²³ Chapter 2017-128, L.O.F.

²⁴ *Supra*, note 1.

²⁵ Open Government Sunset Review Questionnaire, DMS/Dependent Eligibility Verification Services, on file with the Government Operations Subcommittee.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.