

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 Budget Committee

BILL: CS/CS/SB 1414

INTRODUCER: Budget Committee, Banking and Insurance Committee, and Senator Wise

SUBJECT: Health Insurance

DATE: April 18, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	Favorable
2.	Johnson	Burgess	BI	Fav/CS
3.	Betta	Meyer, C.	BC	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, as amended by the Reconciliation Act, P.L. 111-152, was signed into law on March 23, 2010. The PPACA is a broad-based, national approach to reform various aspects of the health care system. It creates exchanges for obtaining public and private coverage and permits states to prohibit plans participating in an exchange from providing coverage for abortions.¹ Exchange plans that choose to offer coverage for abortions may not use federal funds to provide the coverage, except in cases of rape or incest or in cases where a woman suffers from a physical disorder, physical illness, or physical injury, including a life endangering physical condition caused by or arising from the pregnancy that would, as certified, place the woman in danger of death.

This bill prohibits any individual, group, or out-of-state group health insurance policy or health maintenance contract, purchased with state or federal funds through an exchange, from providing coverage for an abortion unless the pregnancy is the result of an act of rape or incest or in cases where a woman suffers from a physical disorder, physical illness, or physical injury, including a

¹ 42 U.S.C. s. 18023.

life endangering physical condition caused by or arising from the pregnancy that would, as certified, place the woman in danger of death.

The bill provides that such coverage is deemed to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied to the policy. The bill does not prohibit the purchase of separate coverage for abortion if that separate coverage is not purchased with any state or federal funds. The bill defines “state” to mean the State of Florida or any political subdivision of the state.

This bill substantially amends sections 627.6515 and 627.6699, Florida Statutes.

The bill creates the following sections of the Florida Statutes: 627.64995, 627.66995, and 641.31099.

II. Present Situation:

The Federal Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, as amended by the Reconciliation Act, P.L. 111-152, was signed into law on March 23, 2010. The PPACA is a broad-based, national approach to reform various aspects of the health care system. The PPACA requires most U.S. citizens and legal residents to obtain health insurance by January 1, 2014. Those without coverage pay a tax penalty of \$695 per year, up to a maximum of three times that amount (\$2,085) per family, or 2.5 percent of household income, whichever is greater.

The PPACA also establishes new requirements on employers and health plans; restructures the private health insurance market; and creates exchanges for individuals and employers to obtain coverage; sets minimum standards for health coverage offered in the exchanges; and provides premium tax credits and cost-sharing subsidies for eligible individuals that obtain coverage through exchanges. An exchange is not an insurer; however, it would provide eligible individuals and businesses with access to insurers’ plans.

If a state decides to establish an exchange, such exchange must be a governmental agency or nonprofit entity. A state may establish a single exchange or multiple subsidiary exchanges if each serves a distinct geographic area. Exchanges may contract with entities in the individual and small group markets and in benefits coverage if the entity is not an insurer, or with the state Medicaid agency. By 2015, exchanges must be self-sufficient and may charge assessments or user fees. If the U.S. Health and Human Services (HHS) determines by January 1, 2013, that a state has opted out of operating an exchange or that it will not have an exchange operational by January 1, 2014, the HHS shall operate an exchange, either directly or through agreement with a non-profit entity.

Effective January 1, 2014, individual coverage will be available through an “American Health Benefit Exchange” and small businesses with 100 or fewer employees can purchase coverage through a “Small Business Health Options Program” (SHOP) exchange. However, a state may merge the individual and small business exchanges into a single exchange. Businesses with more than 100 employees can purchase coverage in an exchange beginning in 2017.

The PPACA contains a number of measures that attempt to make coverage more affordable and accessible. The PPACA provides premium tax credits and cost-sharing subsidies to make exchange coverage more affordable. Details include:

- Plans in exchanges will be required to offer specified essential benefits. Insurers will offer four levels of coverage that vary based on premiums, out-of-pocket costs, and benefits beyond the minimum required, plus a catastrophic coverage plan.
- Premium subsidies will be provided to families with incomes between 100-400 percent of the federal poverty level (\$29,327 to \$88,200 for a family of four in 2009) to help them purchase insurance through the exchanges. These subsidies will be offered on a sliding scale basis and will limit the cost of the premium to between 2 percent of income for those up to 133 percent of the poverty level and 9.5 percent of income for those between 300-400 percent of the poverty level.
- Cost-sharing subsidies will also be available to individuals with incomes between 100-400 percent of the federal poverty level to limit out-of-pocket spending. Additional cost-sharing subsidies (i.e., reductions in copayments and deductibles) if necessary, will be provided to ensure that a plan covers a specified percentage of allowed health care expenses.

Abortion Coverage under PPACA Exchanges

The PPACA contains specific provisions permitting states to prohibit plans participating in an exchange from providing coverage for abortions.² Exchange plans that choose to offer coverage for abortions beyond coverage for which federal funds are permitted (to save the life of the woman and in cases of rape or incest) are required to create funding accounts for segregating premium payments for coverage of abortion services from premium payments for coverage for all other services. This requirement is intended to ensure that no federal premium or cost-sharing subsidies are used to pay for the additional abortion coverage. Plans must also estimate the actuarial value of covering abortions by taking into account the cost of the abortion benefit (valued at no less than \$1 per enrollee per month) and cannot take into account any savings that might be realized because of abortions. The PPACA prohibits exchange plans from discriminating against any provider because of unwillingness to provide, pay for, provide coverage of, or refer for abortions.

Abortion in Florida Law

Section 390.011, F.S., defines the term, “abortion,” to mean the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus. “Viability” means that stage of fetal development when the life of the unborn child may, with a reasonable degree of medical probability, be continued indefinitely outside the womb.³ Induced abortion can be elective (performed for nonmedical indications) or therapeutic (performed for medical indications). Abortion can be performed by surgical or medical means (medicines that induce a miscarriage).⁴ An abortion in Florida must be performed by a physician licensed to practice

² 42 U.S.C. s. 18023.

³ Section 390.0111, F.S.

⁴ Suzanne R. Trupin, M.D., *Elective Abortion*, December 21, 2010, available at: <http://www.emedicine.com/med/TOPI3312.HTM> (Last visited on March 11, 2011).

medicine or osteopathic medicine who is licensed under ch. 458, F.S., ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.⁵ No person who is a member of, or associated with, the staff of a hospital, or any employee of a hospital or physician in which, or by whom, the termination of a pregnancy has been authorized or performed, who states an objection to the procedure on moral or religious grounds is required to participate in the procedure. The refusal to participate may not form the basis for any disciplinary or other recriminatory action.⁶

The Hyde Amendment

The Hyde Amendment is the common name for a provision in the annual federal appropriations act for the U.S. Departments of Labor, Health and Human Services (HHS), and Education, which prevents Medicaid and any other programs under these departments from funding abortions, except in the following limited situations:

- If the pregnancy is the result of an act of rape or incest; or
- In the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician place the woman in danger of death unless an abortion is performed.⁷

The Hyde Amendment is not perpetually effective. By the nature of appropriations acts, which expire with each federal fiscal year unless extended temporarily, the provisions of the Hyde language must be reenacted with each annual federal budget in order to remain in effect. The Hyde Amendment has been enacted into law in various forms since 1976, during both Democratic and Republican administrations.

In 1980, the U.S. Supreme Court affirmed the constitutionality of the Hyde Amendment in *Harris v. McRae*.⁸ In *Harris*, the Court determined that funding restrictions created by the Hyde Amendment did not violate the U.S. Constitution's Fifth Amendment, and therefore, did not contravene the liberty or equal protection guarantees of the Due Process Clause of the Fifth Amendment. The court opined that although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those obstacles that are not created by the government (in this case indigence). The court further opined that although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all.⁹

In Florida, based on the Hyde Amendment, Medicaid reimburses for abortions for one of the following reasons:

⁵ Section 390.0111(2), F.S.

⁶ Section 390.0111(8), F.S.

⁷ Sections 507 and 508 of P.L. 111-8.

⁸ 448 U.S. 297 (1980). See also *Rust v. Sullivan*, 500 U.S. 173 (1991) and *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), upholding *Harris v. McRae*.

⁹ *Harris*, 448 U.S. at 316-317.

- The woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed;
- When the pregnancy is the result of rape (sexual battery) as defined in s. 794.011, F.S.; or
- When the pregnancy is the result of incest as defined in s. 826.04, F.S.¹⁰

In such cases, the state Medicaid program requires an Abortion Certification Form to be completed and signed by the physician who performed the abortion. The form must be submitted with the facility claim, the physician's claim, and the anesthesiologist's claim. The physician must record the reason for the abortion in the physician's medical records for the recipient.¹¹

III. Effect of Proposed Changes:

Sections 1, 2, and 3 create ss. 627.64995, 627.66995, and 641.31099, F.S., respectively, relating to individual health insurance policies, large group health insurance policies, and health maintenance organization contracts, respectively, to prevent coverage issued under those sections that is purchased with any state or federal funds through an exchange created under the PPACA from providing coverage for an abortion unless the pregnancy is the result of an act of rape or incest or in cases where a woman suffers from a physical disorder, physical illness, or physical injury, including a life endangering physical condition caused by or arising from the pregnancy that would, as certified, place the woman in danger of death. The bill deems coverage to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied to the policy.

The bill provides that such policies are allowed to provide separate coverage for an abortion if that separate coverage is not purchased with any state or federal funds.

The bill defines "state" to mean the state of Florida or any political subdivision of the state.

Section 4 amends s. 627.6515, F.S., relating to out-of-state policies, to provide that part VII of ch. 627, F.S., relating to group, blanket, and franchise health insurance policies, does not apply to a group health insurance policy issued or delivered outside of Florida under which a Florida resident is provided coverage if the policy complies with the provisions of s. 627.66995, F.S. Therefore, if an out-of-state group policy provides separate coverage for abortion that is not purchased with any state or federal funds, then part VII of ch. 627, F.S., would not apply to that policy.

Section 5 amends s. 627.6699, F.S., relating to small group policies (employers with 50 or fewer employees), to prevent coverage purchased with any state or federal funds through an exchange created under the PPACA from providing coverage for an abortion, unless the pregnancy is the result of an act of rape or incest or in cases where a woman suffers from a physical disorder,

¹⁰ Agency for Health Care Administration, *Florida Medicaid: Ambulatory Surgery Center Services Coverage and Limitations Handbook*, January 2005, available at:

http://www.baccinc.org/medi/CD_April_2005/Provider_Handbooks/Medicaid_Coverage_and_Limitations_Handbooks/Ambulatory_Surgical_Center_Updated_January_2005.pdf (Last visited on March 11, 2011).

¹¹ *Id.*

physical illness, or physical injury, including a life endangering physical condition caused by or arising from the pregnancy that would, as certified, place the woman in danger of death. The bill deems coverage to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied to the policy.

The bill provides that such policies are allowed to provide separate coverage for an abortion if that separate coverage is not purchased with any state or federal funds.

The bill defines “state” to mean the state of Florida or any political subdivision of the state.

Section 6 provides that the bill is effective July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If health plans offer coverage through a PPACA exchange and those plans operate a separate account for coverage paid for with any state or federal funds and coverage not paid for with any state or federal funds, the health plans could incur some indeterminate amount of additional administrative cost to set up the different accounts.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget on April 14, 2011:

The committee substitute provides clarifying changes allowing for abortions in cases where a woman suffers from a physical disorder, physical illness, or physical injury, including a life endangering physical condition caused by or arising from the pregnancy that would, as certified by a physician, place the woman in danger of death.

CS by Banking and Insurance Committee on March 22, 2011:

The CS provides technical and conforming changes.

B. Amendments:

None.