

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 Health Regulation Committee

BILL: SB 1522

INTRODUCER: Senator Gaetz

SUBJECT: Wellness or Health Improvement Programs

DATE: March 16, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	Pre-meeting
2.	_____	_____	BI	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends s. 626.9541, F.S., which is entitled “Unfair methods of competition and unfair or deceptive acts or practices defined.” The bill specifies that an insurer issuing a group or individual health benefit plan may offer a voluntary wellness or health improvement program and may encourage participation in the program by way of authorizing rewards or incentives. The bill authorizes insurers to require a plan member to provide verification that the member’s medical condition inhibits participation in the wellness or health improvement program. The bill specifies that a reward or incentive authorized under the subsection does not violate s. 626.9541, F.S., if the reward or incentive is disclosed in the policy or certificate and that the subsection does not prohibit any other incentives or rewards that are otherwise allowed by state or federal law.

This bill substantially amends the following section of the Florida Statutes: 626.9541.

II. Present Situation:

Chapters 626 and 627, F.S., regulate health insurance and health insurers within the state of Florida. Chapter 626 governs the practices of insurance agents and the operations of insurance companies.¹ Chapter 627 regulates insurance rates and contracts.²

¹ See ss. 626.011 through 626.99296, F.S.

² See ss. 627.011 through 627.987, F.S.

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

Section 626.9541, F.S., defines unfair methods of competition and unfair or deceptive acts or practices. The section specifies 32 different acts that qualify under the definition.³ Among the prohibited acts relating to rates that may be charged to policyholders are: “unfair discrimination,” which is defined as knowingly making an unfair discrimination between individuals of the same actuarially supportable class in the amount of premium charged for a policy, or in the benefits payable under the contract, or in the terms and conditions of the contract;⁴ and “unlawful rebates,” which prohibits paying, directly or indirectly, any valuable consideration or inducement not specified in the contract.⁵

Insurance Rebates for Healthy Lifestyles

In 2004, the Legislature required health insurers offering group or individual policies and health maintenance organizations (HMOs), when filing rates, rating schedules, or rating manuals with the Office of Insurance Regulation (OIR), to provide for premium rebates based on participation in health wellness, maintenance, or improvement programs, based on certain parameters.⁶

Insurers issuing individual health insurance policies may provide for a rebate on premiums when a covered individual enrolls in and maintains participation in a health wellness, maintenance or improvement program approved by the health plan. To qualify for a rebate, a covered individual must provide evidence of maintenance or improvement of the individual’s health status. The measurement is accomplished by assessing health status indicators, agreed upon in advance by the individual and the insurer, such as weight loss, decrease in body mass index, and smoking cessation. The premium rebate is effective for the covered individual on an annual basis, unless the individual fails to maintain his or her health status while participating in the wellness program or evidence shows that the individual is not participating in the approved wellness program. The rebate may not exceed 10 percent of paid premiums.⁷

For group health plans, a rebate may be provided when the majority of members of the health plan are enrolled in and have maintained participation in any health wellness, maintenance, or improvement program offered by the group policyholder and health plan. Evidence of maintenance or improvement of the enrollees’ health status is achieved through assessment of health status indicators similar to those included for individual health policies. The group or health insurer may contract with a third party administrator to gather the necessary information regarding enrollees’ health status and provide the necessary report to the insurer. The premium rebate, which may not exceed 10 percent of paid premiums, is effective for an insured on an annual basis unless the number of participating members in the health wellness, maintenance or improvement program becomes less than the majority of total members eligible for participation in the program.⁸

For HMO coverage, a rebate may be provided when the majority of members of a group health plan are enrolled in and have maintained participation in any health wellness, maintenance, or

³ See s. 626.9541(1)(a) through (ff), F.S.

⁴ See s. 626.9541(1)(g), F.S.

⁵ See s. 626.9541(1)(h), F.S.

⁶ See ss. 32 through 34, ch. 2004-297, Laws of Florida.

⁷ See s. 627.6402, F.S.

⁸ See s. 627.65626, F.S.

improvement program offered by the group contract holder. Evidence of maintenance or improvement of the enrollees' health status is achieved through assessment of health status indicators similar to those included for individual and group health policies. The premium rebate, which may not exceed 10 percent of paid premiums, is effective for a subscriber on an annual basis unless the number of participating members in the health wellness, maintenance or improvement program becomes less than the majority of total members eligible for participation in the program. In addition to group contracts, HMOs are also allowed to offer a premium rebate on individual contracts for a healthy lifestyle program, consistent with the parameters for group contracts.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices to specify that rewards or incentives offered by insurers relating to participation in wellness or health improvement programs do not constitute unfair or deceptive acts, despite the statute's prohibition against certain other practices that *do* constitute unfair or deceptive acts, some of which are related to reduced charges for insurance.¹⁰

The bill creates subsection (4) of s. 626.9541, F.S., and specifies that an insurer issuing group or individual health benefit plans may offer a voluntary wellness or health improvement program and may encourage participation in the program by way of authorizing rewards or incentives. Such rewards or incentives could include, but are not limited to, merchandise, gift cards, debit cards, premium discounts or rebates, contributions to a member's health savings account, or modifications to copayment, deductible, or coinsurance amounts.

The bill authorizes insurers to require a plan member to provide verification that the member's medical condition inhibits participation in the wellness or health improvement program. The bill specifies that a reward or incentive authorized under the subsection does not violate s. 626.9541, F.S., if the reward or incentive is disclosed in the policy or certificate, and that the subsection does not prohibit any other incentives or rewards that are otherwise allowed by state or federal law. The bill penalizes neither the insurer nor the insured for opting not to offer or take part in wellness or health improvement programs.

Section 2 provides an effective date for the bill of 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.

⁹ See s. 641.31(40), F.S.

¹⁰ See s. 626.9541(1)(o), F.S.

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:

To the extent that wellness or health improvement programs are implemented under the bill, and to the extent that insurers provide gift cards, debit cards, premium discounts or rebates not already provided under existing law, contributions to health savings accounts, or modifications to copayments, deductibles, or coinsurance amounts, participants in such wellness or health improvement programs could have an indeterminate amount of increased monetary resources at their disposal. And, to the extent that insurers pay for such rewards, they could experience an indeterminate amount of financial costs; however, those costs could be offset by a reduction in the insurer's medical expenses due to having a healthier insured population.

C. Government Sector Impact:

The OIR advises that under the bill, insurers would need to revise their health insurance contracts and submit the forms for review and approval by the OIR's Life and Health Product Review staff. Each time the rewards or incentive programs are changed, new filings would be necessary. OIR indicates that this additional increase in workload can be absorbed within current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Existing law allows for premium rebates relating to participation in health wellness programs, but does not allow for the other rewards and incentives specified in this bill (merchandise, gift cards, etc.) The OIR advises that, to avoid potential statutory ambiguity, the provisions of this bill should be reconciled with existing law relating to insurance rebates or be amended into those existing statutory provisions.

The OIR also advises that the bill does not apply to HMO coverage under ch. 641, F.S.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial 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.
