

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 675	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Regulatory Affairs Committee; Insurance & Banking Subcommittee; Ingram and others	103 Y's	11 N's
COMPANION BILLS:	(CS/SB 648)	GOVERNOR'S ACTION: Approved	

SUMMARY ANALYSIS

CS/CS/HB 675 passed the House on May 1, 2013 as CS/SB 648. The bill addresses issues relating to disclosure of certain information to health insurance consumers.

The Employee Health Care Access Act is intended to promote the availability of health insurance coverage to small employers, and establishes certain requirements to accomplish that purpose. The Act defines small employer as any business entity with at least one, and no more than 50 employees. Among its many features, the Act requires carriers to offer any small employer specified health benefit plans. As a part of their offer, insurers must disclose certain information relating to health benefit mandates, managed care arrangements, and the plans' primary and preventive care features. Current law also requires that each marketing communication that is to be used in the marketing of a health benefit plan be submitted for review by the Office of Insurance Regulation (OIR) prior to use.

The bill repeals an insurer's obligation to submit the marketing materials to OIR prior to use as well as the requirement that the marketing communication contain specified disclosures. The bill does not repeal the mandate that the insurer present a disclosure statement to the small employer. Nor does the bill eliminate the ability of OIR to review the marketing communications and disclosure statements as part of complaint investigations or market conduct reviews. The bill also does not modify the current statutory authority of the Financial Services Commission (FSC) to establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers.

The bill also addresses the regulation of advertising materials utilized by long-term care insurers. Long-term care insurance is insurance which covers the cost of certain health and personal services needed over a long period of time. Most of these benefits are not covered by traditional health insurance or Medicare. The bill deletes the current statutory requirement that insurers have to submit their advertising materials to OIR prior to their use. However, the bill still requires insurers to file the materials with OIR. The bill retains the office's authority to disapprove an advertisement at any time and to order for the insurer to stop its use.

CS/SB 1842, which passed the 2013 Legislature, addresses issues relating to the federal Patient Protection and Affordable Care Act (PPACA). Among its many provisions, the bill requires insurers and HMOs, based upon a rule adopted by the FSC, to provide a one-time notice to policyholders of nongrandfathered plans that describes or illustrates the estimated impact of PPACA on monthly premiums. CS/CS/HB 675 creates an exemption from ratification by the Legislature of the FSC's rules to specify the format of the notice by insurers to their policyholders specifying the impact of PPACA on monthly premiums.

The bill should have a minimal positive fiscal impact on OIR. The bill may have a small positive fiscal impact for insurers.

The bill was approved by the Governor on June 14, 2013, ch. 2013-174, L.O.F., and will become effective on July 1, 2013.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0675z1.IBS

DATE: July 16, 2013

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Employee Health Care Access Act

In 1992, the Florida Legislature created the Employee Health Care Access Act to promote the availability of health insurance coverage to small employers and to establish certain requirements to accomplish that purpose.¹ Small employer is defined as any person, sole proprietor, self-employed person, independent contractor, firm, association, or other business entity that is based in Florida, actively engaged in business, with at least one, and no more than 50 employees.²

Among its many features, the Act requires carriers to offer any small employer, upon request, a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of health savings account plans.³ The offer of coverage must include a statement disclosing the following:

- a) An explanation of those mandated benefits and providers that are not covered by the policy or contract;
- b) An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and
- c) An explanation of the primary and preventive care features of the policy or contract.⁴

Current law also requires that each marketing communication that is to be used in the marketing of a health benefit plan be submitted for review by the Office of Insurance Regulation (OIR) prior to use. The law also requires such marketing communication to contain the aforementioned disclosures.⁵

The bill repeals an insurer's obligation to submit the marketing materials to OIR prior to use as well the requirement that the marketing communication contain the specified disclosures. The bill does not repeal the mandate that the insurer present the disclosure statement to the small employer. Nor does the bill extinguish the ability of OIR to review the marketing communications and disclosure statements as part of complaint investigations or market conduct reviews. The bill also does not modify the current statutory authority of the Financial Services Commission (FSC) to establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers.

Long-Term Care Insurance

Long-term care insurance is insurance which covers the cost of certain health and personal services, most of which are not covered by traditional health insurance or Medicare. These include services in one's home such as assistance with Activities of Daily Living (ADL) as well as care in a variety of facility and community settings. Examples of ADLs include bathing, dressing, caring for incontinence, and eating. Other common long-term care services and supports are assistance to complete Instrumental Activities of Daily Living, which may include such activities as housework, taking medication, shopping for groceries or clothes, and the caring of pets.⁶ Benefits may also be provided when the insured is experiencing cognitive impairment.

¹ Section 627.6699(2), F.S.

² Section 627.6699(3)(v), F.S.

³ Section 627.6699(12)(b)1., F.S.

⁴ Section 627.6699(12)(d)1., F.S.

⁵ Section 627.6699(12)(d)4., F.S.

⁶ http://www.longtermcare.gov/LTC/Main_Site/Understanding/Definition/Index.aspx (last accessed: March 4, 2013).

The regulatory framework in statute for long-term care insurance policies is ss. 627.9401-627.9408, F.S. In part, the law requires the FSC to adopt rules setting forth standards for the advertising, marketing, and sale of long-term care policies in order “to protect applicants from unfair or deceptive sales or enrollment practices.” The law also states that an insurer shall file with OIR any long-term care insurance advertising material at least 30 days before the date of use of the advertisement in Florida. Within 30 days after receiving the material OIR is required to review and disapprove any advertisement it finds violates the law. The statute further authorizes OIR to disapprove an advertisement at any time and to order its use be discontinued if the office determines the advertisement violates the law.⁷

The bill deletes the requirement that insurers have to submit their advertising materials to OIR prior to their use. However, the bill still requires insurers to file the materials with OIR. The effect of this change is that insurers can immediately use their advertisements upon filing. The bill adds a new provision permitting OIR to issue notices of disapproval of materials. The bill also retains the office’s authority to disapprove an advertisement at any time and to enter an immediate order for the insurer to stop its use.

Provisions Relating to CS/SB 1842

CS/SB 1842, which passed the 2013 Legislature, addresses issues relating to the federal Patient Protection and Affordable Care Act (PPACA). The federal Act imposes extensive requirements on health insurers and health insurance policies including required benefits, rating and underwriting standards, required review of rate increases, and other requirements.

Among its many provisions, the Senate bill requires that insurers and HMOs (insurers) provide a notice to policyholders of nongrandfathered plans that describes or illustrates the estimated impact of PPACA on monthly premiums. This notice will be required one time, when the policy is issued or renewed on or after January 1, 2014. The notice must also be submitted to OIR for informational purposes by September 1, 2013, and OIR, in consultation with DFS, must develop a summary of the estimated impact of PPACA on monthly premiums as contained in the notices. The summary must be available on their respective websites by October 1, 2013.

The notice must be in a format established by rule by the Financial Services Commission. The information in the notice must be based on the statewide average premium for the various health plan offerings and provide an estimate of specified effects of certain PPACA requirements. The FSC is authorized to allow for variations from these requirements in order to provide a more accurate and meaningful disclosure of the estimated impact of PPACA on monthly premiums.

Sections 120.541 and 120.54(3) F.S., govern the requirements for an agency to prepare a statement of estimated regulatory costs (SERC) relating to proposed rules. The SERC must include an economic analysis projecting a proposed rule’s adverse effect on specified aspects of the state’s economy or increase in regulatory costs.

The economic analysis mandated for each SERC must analyze a rule’s potential impact over the 5 year period from when the rule goes into effect. First is the rule’s likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment. Next is the likely adverse impact on business competitiveness, productivity, or innovation. Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs. If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature.

Because the disclosure provisions relating to PPACA need to be implemented before the 2014 Legislature convenes, CS/CS/HB 675 creates an exemption from ratification by the Legislature of the FSC’s rules to specify the format of the notice by insurers to their policyholders specifying the impact of PPACA on monthly premiums.

⁷ Section 627.9407, F.S.

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:

By potentially streamlining the process for distributing marketing materials, the bill may have a small positive impact on insurers.

D. FISCAL COMMENTS:

According to OIR, “[t]here will be some reduction in staff time devoted to review of marketing material for health insurance, but the reduction would have no significant impact on resources otherwise allocated to health and life insurance form reviews.”⁸

⁸ Bill Analysis for HB 675, Florida Office of Insurance Regulation, February 21, 2013. On file with the Insurance & Banking Subcommittee.