

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1294

SPONSOR: Commerce and Economic Opportunities Committee and Senator Holzendorf

SUBJECT: Employee Health Care Access Act

DATE: March 18, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Joseph</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute amends the “Employee Health Care Access Act,” which entitles small employers to have access to group health insurance coverage. The committee substitute eliminates the prohibition that rates will not be based on the health status or claims experience of any individual or group and allows limited use of such factors. The committee substitute also revises the definition of small employer to exclude sole proprietors and self-employed individuals from the law’s requirements.

This committee substitute substantially amends section 627.6699, Florida Statutes, 1988 Supp.

II. Present Situation:

Florida’s Employee Health Care Access Act

In 1992, the Employee Health Care Access Act (act) was enacted to require insurers in the small group market to guarantee the issue of coverage to any small employer that applies for coverage, regardless of the health condition of the employees. This law is codified in s. 627.6699, F.S. In 1993, the act was expanded to cover sole proprietors and self-employed individuals.

The act further requires that policies issued to small employers have premiums established on a “modified community rating” basis. Rates may be based only on age, gender, family composition, tobacco usage, and geographic location (s. 627.6699(3)(n), F.S.). Rates may not be based on the health status or claims experience of any individual or group, or any other factor.

An insurer that writes small group policies in Florida (a “small employer carrier”) must elect to either be a risk-assuming carrier and assume all risk or be a reinsuring carrier and have the option of reinsuring identified high-risk individuals or groups with a reinsurance pool (s. 627.6699(9), F.S.). A reinsurance pool is established and funded through premiums and assessments on insurers, governed by an appointed board of the Florida Small Employer Health Reinsurance

Program. Risk-assuming carriers are not subject to losses in the reinsurance pool (s. 627.6699(11), F.S.).

Under s. 627.6699, F.S., small group carriers are required to offer a “standard” and “basic” policy to small employers. The “standard” policy is generally intended to be comparable to a major medical policy typically sold in the group market, with cost containment features intended to make the policy affordable. The statute specifies certain mandated benefits that apply to both the standard and basic policy, and a Health Benefit Plan Committee is created to develop and modify the standard and basic benefit plans. Small group carriers are required to offer all health benefit plans (not just the basic and standard plans) on a “guaranteed-issue basis,” but additional or increased benefits may be added to the standard health benefit plan by rider and such riders may be medically underwritten.

The act defines the term “small employer” to mean, “in connection with a health benefit plan with respect to a calendar year and a plan year, any person, sole proprietor, self-employed individual, independent contractor, firm, corporation, partnership, or association that is actively engaged in business, has its principal place of business in this state, employed an average of at least 1 but not more than 50 eligible employees on business days during the preceding calendar year, and employs at least 1 employee on the first day of the plan year. For purposes of this section, a sole proprietor, an independent contractor, or a self-employed individual is considered a small employer only if all of the conditions and criteria established in this section are met.” (s. 627.6699(3)(v), F.S.)

The act defines the term “self-employed individual” to mean “an individual or sole proprietor who derives his or her income from a trade or business carried on by the individual or sole proprietor which results in taxable income as indicated on IRS Form 1040, schedule C or F, and which generated taxable income in one of the 2 previous years.” (s. 627.6699(3)(u), F.S.)

Overview of Federal Law

In 1996, the federal Health Insurance Portability and Accountability Act (HIPAA) was enacted to provide guaranteed availability and renewability of health insurance coverage for certain employees and individuals, and to increase portability through the limitation on preexisting condition exclusions. These provisions amended the Public Health Services Act. In a separate federal act, insurance provisions relating to maternity coverage, also amending the Public Health Services Act, were addressed.

Group plans are regulated, in part, by the federal government, under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code, and to the extent the plans purchase insurance, in part, by the states under state insurance laws and regulations. Policies sold in the individual market are regulated by the individual states.

HIPAA allows each state the option to enact and enforce the federal provisions or fall back to federal enforcement. HIPAA specifies that the federal provisions pertaining to health insurers in the individual market generally do not preempt state regulation of individual insurers. However, if the state’s statutory provisions prevent the application of a federal requirement, HIPAA preempts the statutes and the federal requirements prevail. At a minimum, each state must ensure that its

provisions comport with HIPAA and do not diminish the federal requirements. However, each state is permitted to adopt provisions that expand or provide more favorable treatment for the individual. HIPAA requires small employer carriers to guarantee the issuance of coverage to small employers with 2 to 50 employees.

III. Effect of Proposed Changes:

This committee substitute amends s. 627.6699 F.S., 1998 Supp., the Employee Health Care Access Act, to:

- Remove sole proprietor and self-employed individuals from the definition of “small employer.” Since 1993, small group coverage in Florida increased to include an estimated two million people who were not previously insured.¹ Elimination of sole proprietors and self-employed individuals from coverage under the act puts Florida at the minimum standard required by the Federal HIPAA Small Group Insurance Laws.
- Add health status, claims experience, and duration of coverage to the definition of “modified community rating” as factors the insurer may utilize in setting rates for small employers.
- Specify that rate adjustments for claims experience, health status, or duration of coverage must be applied uniformly to rates charged all employees of the business, and that the carrier may adjust a small employer’s rate by plus or minus the renewal premium up to 15 percent annually, for a total of 25 percent of the carrier’s approved rate, based on these additional factors. This section would allow for up to a 50 percent difference in premium rates between an employer with healthier than average workers versus an employer with workers who have less than average health.
- Allow administrative and acquisition expenses as factors for health insurance carriers to use in setting rates for small groups.
- Allow and limit rating categories to be separate for one dependent child, two dependent children, or three or more dependent children for employees having a spouse and dependent children or employees having dependent children only.
- Prohibit small employer carriers from using a composite rating methodology to rate small employers with less than 10 employees.
- Clarify that the additional rating law procedures of ss. 627.410 and 627.411, F.S., apply to health insurance companies and that the rating law procedures of s. 641.31, F.S., apply to health maintenance organizations, that sell small employer coverage.

This committee substitute provides that the act shall take effect July 1, 1999.

¹ Information provided by the Agency for Health Care Administration, 1999 Bill Analysis and Economic Impact Statement.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Since 1993, small group coverage in Florida increased to include an estimated two million people who were not previously insured.² This committee substitute substantially amends the Employee Health Care Access Act and may slowly reverse or halt that trend. The question is whether eliminating one-person groups and allowing surcharges and credits based on health status will increase or decrease the total number of small employers and employees covered.

Self-employed individuals and sole proprietors will be ineligible for new coverage under small-group guarantee issue provisions now in effect. Elimination of sole proprietors and self-employed individuals from coverage under the act puts Florida at the minimum standard required by the Federal HIPAA Small Group Insurance Laws.

Small employers who employ persons who have health problems or who experience higher than average medical claims may pay up to 50 percent higher rates than those small employers whose claims experience is lower than average.

Employers with healthier than average employees who make fewer claims will not necessarily pay a lower premium; however, they will pay comparatively lower premiums than small employers with greater than average claims costs.

² Information provided by the Agency for Health Care Administration, 1999 Bill Analysis and Economic Impact Statement.

C. Government Sector Impact:

The Department of Insurance may be required to expend additional resources reviewing and approving small group rate filings.

VI. Technical Deficiencies:

On page 2, line 29, of the committee substitute, it appears that the reference in current statute to small employers with 3 employees should be changed to 2 employees, in order to be consistent with other revisions proposed for the Employee Health Care Access Act.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
