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 2086

SPONSOR: Banking and Insurance Committee and Senator King

SUBJECT: Small Employer Health Alliances

DATE: April 4, 2000 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Deffenbaugh	BI	Favorable/CS
2.	Carter	Wilson	HC	Favorable
3.				
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 2086 repeals the laws that establish the Community Health Purchasing Alliances (CHPAs) in ss. 408.70-408.706, F.S. In 1993, the Florida Legislature established CHPAs as state-chartered, nonprofit private organizations, intended to pool purchasers of health care together in organizations that broker health plans. The number of persons insured through CHPAs has steadily decreased from about 94,000 at the end of 1998 to about 35,000 in February 2000. Only seven insurance carriers are currently actively participating in CHPAs, as compared to 25 carriers that participated in 1998.

The bill authorizes a health insurer to issue a group policy to a small employer health alliance organized as a not-for-profit corporation under chapter 617, F.S. This would include former CHPAs that continue to operate as a not-for-profit corporation, or any other alliance so organized. The alliance may be formed for purposes of obtaining insurance. Currently, s. 627.654, F.S., authorizes a group policy to be issued to an association or labor union, which has a constitution and bylaws, has at least 25 members, and which has been organized and maintained in good faith for a period of 1 year for purposes *other* than that of obtaining insurance.

The group policy issued to the alliance may insure a small employer, as defined in s. 627.6699, F.S., which is an employer with 1 to 50 employees, including sole proprietors and self-employed individuals. The policy may cover the employer's eligible employees and the spouses and dependents of such employees.

The bill amends s. 627.6699, F.S., to: (1) allow rates for a policy issued to an alliance or association to reflect a premium credit for expense savings attributable to administrative activities being performed by the group association; (2) allow an insurer to modify the rate one time prior to 12 months after the initial issue date for a small employer who enrolls under a previously issued group policy that has a common anniversary date for all employers; and (3) delete the provision that allows carriers that participate in CHPAs to apply a different community rate to business written in that program.

This bill substantially amends the following sections of the Florida Statutes (F.S.): 240.2995, 240.2996, 240.512, 381.0406, 395.3035, 408.7056, 627.4301, 627.654, 627.6571, and 627.6699. The bill repeals the following sections of the Florida Statutes: 408.70(3), 408.701, 408.702, 408.703, 408.704, 408.7041, 408.7042, 408.7045, 408.7055, and 408.706.

II. Present Situation:

In 1993, the Florida Legislature established community health purchasing alliances (CHPAs) as state-chartered, nonprofit private organizations, intended to pool purchasers of health care together in organizations that broker health plans at the lowest price and enable consumers to make informed selections of health plans. *See* chapter 93-129, *Laws of Florida*, codified as ss. 408.70-408.706, F.S. Community health purchasing alliances make available health insurance plans to small employers, as that term is defined in s. 627.6699, F.S., who have 1 to 50 employees, including sole proprietors and self-employed individuals.

The Agency for Health Care Administration (AHCA) is responsible for implementation and oversight of the statewide system of CHPAs, including technical and legal assistance, liaison functions, and designation of accountable health partnerships. In order for an insurance plan to be offered through the CHPA, the plan must qualify as an accountable health partnership (AHP), which must be formed by an insurer or health maintenance organization (HMO) authorized by the Department of Insurance. The law also authorizes CHPAs to provide coverage to Medicaid recipients and state employees, but that authority has never been exercised, as the Legislature has never taken the steps needed to fully implement this aspect of the law.

The law created eleven CHPAs, one for each of AHCA's eleven health service planning districts. There are now seven individual CHPAs, due to merger of certain districts. Each CHPA operates under the direction of an appointed 17-member board of directors. The original law that provided for appointment of members by designated public officials was repealed (due to a Sunset provision and failure of the Legislature to reenact). The repeal allows the boards, as nonprofit associations, to provide for appointment of board members in their articles of incorporation and bylaws. At this time, all of the CHPA boards' articles and bylaws continue to provide for appointment of members in the manner that was statutorily directed. The boards appoint executive directors who serve as the CHPAs' chief operating officers. In addition to the executive director, each CHPA employs from one to three full-time staff and all but one contract with a third-party administrator.

Community health purchasing alliances act as clearing-houses for health insurance plans that qualify as AHPs. Community health purchasing alliances choose AHPs via requests for proposals. The CHPAs offer several benefit plans. Within these plans an individual can choose different types of coverage, such as an HMO or a preferred provider plan. All CHPA plans are sold through authorized insurance agents.

As of February 2000, approximately 35,000 persons (including employees and their dependents) were insured through CHPAs, which represents about 13,000 small employer groups. This represents a drop from the 94,090 persons who were insured through CHPAs in December 1998. Only seven insurance carriers remain as active AHPs in the CHPAs, and some of those are active

only in certain districts. Eighteen carriers have discontinued their participation as AHPs in some or all of the CHPA districts.

The legislative Office of Program Policy Analysis and Government Accountability (OPPAGA) has issued reports on CHPAs and their activities. OPPAGA's report, *The Follow-Up Report on the Status of Community Health Purchasing Alliances in Florida*, Report No. 98-14, October 1998, states that the CHPAs continue to have a small impact in reducing the number of uninsured Floridians. Limitations cited in the report include:

- The CHPAs inability to negotiate or select health plans that offer the most competitive products and prices; and
- The CHPAs dependence on agents designated by health plans to sell CHPA products, and to further improve access to affordable health care coverage.

The OPPAGA report recommended that the Legislature should consider the following policy options, including:

- Allow CHPAs to negotiate with competing health plans and select those that offer the most competitive products and prices.
- Reduce AHCA's responsibilities to minimal oversight and coordination among CHPAs.
- Enable CHPAs to appoint their agents.

Other aspects of current law that are affected by this bill are addressed in the section-by-section analysis, below.

III. Effect of Proposed Changes:

The bill repeals the laws that establish CHPAs and authorizes a health insurer to issue a group policy to a small employer health alliance organized as a not-for-profit corporation under chapter 617, F.S. See the section-by-section analysis below for further details.

Section 1. Amends s. 408.7056, F.S., relating to the Statewide Provider and Subscriber Assistance Program, to move the definitions of the terms "agency," "department," "grievance," and "health care provider" or "provider" from s. 408.701, F.S. Currently, s. 408.701, F.S., contains definitions that are applicable to ss. 408.70-408.706, F.S. This is a conforming change to the repeal of s. 408.701 in section 11 of the bill. No changes are made to the definitions.

Section 2. Amends s. 627.654, F.S., relating to labor union and association groups, to add small employer health alliances. Currently, part VII of chapter 627, F.S., establishes requirements for each of the types of groups to which a health insurer may issue a group policy. A health insurer may not issue a policy to a group to cover members of that group unless it meets the requirements of one of the statutorily authorized groups. Currently, s. 627.654, F.S., authorizes a group policy to be issued to an association, including a labor union, which has a constitution and bylaws, at

least 25 members, *and which has been organized and maintained in good faith for a period of 1 year for purposes other than that of obtaining insurance*.

The bill authorizes a new type of association policy, to be issued to a small employer health alliance (alliance) that is organized as a not-for-profit corporation under chapter 617, F.S. The alliance, itself, may be formed for purposes of obtaining insurance because there is no requirement otherwise (as there is for the current association group). But, the alliance must establish conditions of participation in the alliance by a small employer, including assurance that the small employer is not formed for the purpose of securing health benefit coverage, and that the employees have not been added for the purpose of securing health benefit coverage.

The group policy issued to the alliance may insure a small employer, as defined in s. 627.6699, F.S., which is an employer with 1 to 50 employees, including sole proprietors and self-employed individuals. The policy may cover the employer's eligible employees and the spouses and dependents of such employees. If a small employer expands to more than 50 and less than 75 eligible employees, the small employer may purchase renewal coverage for not more than one additional year.

A policy issued to an alliance must allow all small employer members of the alliance, or all of any class, to be eligible and acceptable to the insurer at the time of issuance of the policy.

The current law allows policies issued to labor union or association groups to insure the spouse or dependent children without the member being insured. (An insurer may allow this, but is not required to do so.) The current law is maintained, but not extended to a small employer alliance policy.

The bill allows a single master policy issued to an association, labor union, or small employer health alliance to include more than one health plan from the same insurer or affiliated insurer group, as alternatives for an employer, employee, or member to select.

Section 3. Amends s. 627.6571, F.S., relating to guaranteed renewability of coverage. Currently, group health insurance policies must be guaranteed renewable, with certain exceptions. One exception is that if health insurance coverage is made available only through one or more *bona fide associations*, the insurer may discontinue coverage for an employer if its membership in the association ceases. *Bona fide association* is defined as including a requirement that the association be formed for purposes other than obtaining insurance. Since a small employer health alliance may be formed for the purpose of obtaining insurance, it would not meet the definition of a bona fide association. The bill provides a similar exception to the guaranteed-renewability requirements, by allowing an insurer to discontinue coverage for a small employer whose membership in the alliance ceases. Other similar changes are made in this section to apply the same requirements to an insurer relative to an alliance, as currently apply to the insurer relative to a bona fide association.

Section 4. Amends s. 627.6699, F.S., the Employee Health Care Access Act. This is the current law that applies to all health insurance plans that are sold to a small employer, with 1 to 50 employees, including sole proprietors and self-employed individuals. The current law requires guaranteed-issuance of coverage to all small employers, regardless of health condition. It also

requires that rates be based on a "modified community rating" methodology, which prohibits insurers from basing rates on the health condition or claims experience of any person insured under a small group policy. Rates for a small employer policy may be based only on the following five factors: age, gender, geographic location, tobacco usage, and family composition (size).

The bill does not specifically address whether the modified community rating provisions of s. 627.6699, F.S., would apply to a group policy issued to an alliance. However, these small group rating provisions would apply, due to current s. 627.6699(4), F.S., which states that the section "applies to a health benefit plan that provides coverage to a small employer in this state, unless the policy is marketed directly to the individual employee, and the employer does not participate in the collection or distribution of premiums or facilitate the administration of the policy in any manner." Also, s. 627.6699(6)(d), F.S., provides that the section applies "to any health benefit plan provided by a small employer carrier that provides coverage to one or more employees of a small employer regardless of where the policy, certificate, or contract is issued or delivered, if the health benefit plan covers employees or their covered dependents who are residents of this state."

The bill makes three changes to the rates that may be charged for small group policies, which would apply to small group policies sold to an association or alliance. First, the bill provides an additional factor that may be utilized in establishing rates, similar to a current rule adopted by the Department of Insurance. The bill allows rates for a policy issued to a group association or alliance that reflect a premium credit for expense savings attributable to administrative activities being performed by the association or alliance, if these savings are specifically documented in the carrier's rate filing and are approved by the department. Any such credit may not be based on any factor related to the health status of the group. The bill clarifies that these provisions do not exempt an alliance or association from licensure for any activities which require licensure under the Insurance Code.

The second change is an exception to the prohibition against small group carriers modifying the rates for a small employer for 12 months from the initial issue date or renewal date, unless the composition of the group changes or benefits are changed. The bill would allow an insurer to modify the rate one time prior to 12 months after the initial issue date for a small employer who enrolls under a previously issued group policy that has a common anniversary date for all employers. This is intended to allow for master policies to be issued to an association or alliance that has a common anniversary date, but which allows small employers to enroll during the year. The insurer would be required to disclose in a clear and conspicuous manner the date of the first renewal and the fact that the premium may increase on that date. The insurer would also be required to demonstrate to the department that efficiencies in administration are achieved and reflected in the rates.

The third change is to delete the current provision that allows small group carriers who participate in CHPAs to apply a different community rate to business written in that program. This is a conforming change to the repeal of the CHPAs in section 11 of the bill. It is also worth noting that this provision is not retained and applied to the small employer health alliance or any other association group. This allowance to separately pool the experience of CHPA enrollees, apart from the carrier's other small group business, can result in either better or worse experience and, therefore, lower or higher rates, respectively, than for the carrier's small employer policies issued

outside of CHPAs. The bill would not allow such separate pooling for policies issued to an alliance or association. The insurer would be required to pool all of its small group business for rating purposes, both inside and outside of alliances and associations.

The bill requires a carrier issuing a group health insurance policy to a small employer health alliance or other group association to allow any of its licensed and appointed agents to sell that policy and to pay such agent the insurer's usual and customary commission paid to any agent selling the policy.

Sections 5-10. Amend ss. 240.2995, F.S., relating to university health services support organizations; 240.2996, F.S., providing for confidentiality of information held by university health services support organizations; 240.512, F.S., establishing the H. Lee Moffitt Cancer Center and Research Institute; 381.0406, F.S., providing for rural health networks; 395.3035, F.S., relating to confidentiality of certain hospital records and meetings; and 627.4301, F.S., relating to genetic information for insurance purposes. All of these sections are amended to delete cross-references to sections that are repealed by section 11 of the bill. The cross-reference is either to the definition of *managed care* contained in s. 408.701, F.S., or to an *accountable health partnership* as provided in s. 408.706, F.S.

Additionally, ss. 240.2996, 240.512, and 395.3035, F.S., providing for exemptions from the public records laws, are amended to add a definition of *managed care*, which is the same definition that is currently incorporated by cross-reference to s. 408.701, F.S., which is repealed by section 11 of the bill.

Section 11. Repeals ss. 408.70(3), 408.701, 408.702, 408.703, 408.704, 408.7041, 408.7042, 408.7045, 408.7055, and 408.706, F.S., establishing and relating to CHPAs and AHPs. The legislative authority and requirements for the operations of the CHPAs, AHPs, and regulation of such entities by the Agency for Health Care Administration, would be repealed. The bill does not repeal subsections 408.70(1)-(2), which provide legislative findings related to the current health care system and legislative intent that a structured health care competition model, known as "managed competition," be implemented throughout the state to improve the efficiency of the health care market. Also, the bill does not repeal s. 408.7056, F.S., relating to the Statewide Provider and Subscriber Assistance Program.

As not-for-profit corporations formed under chapter 617, the current CHPAs would be authorized to continue to operate in that status, pursuant to their constitution and bylaws and the provisions of chapter 617, F.S. As not-for-profit corporations with members who are small employers, these alliances would be authorized by section 2 of the bill to be issued a group health insurance policy insuring its small employer members.

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 this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 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. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Participation by insurers and small employers in CHPAs is declining, making it unlikely that all CHPAs will continue to be viable entities. Small employers would still be able to obtain coverage on a guaranteed-issue, modified community-rated basis outside of CHPAs, but most employers are experiencing significant rate increases. The bill is intended to more effectively pool groups of individuals employed by small employers (with 1 to 50 employees) and their dependents, into larger groups in order to facilitate a program of affordable group health insurance coverage. The bill does not provide any specific legal advantage to the former CHPAs that could be issued an alliance group policy, as compared to other alliance or association groups, such as a local Chamber of Commerce association, but the bill may provide an effective method of providing affordable group health insurance to small employers due to the following factors: the nonprofit nature of an alliance, the potential bargaining power generated by small employer participation, the allowance for one master policy to be issued to an alliance which may negotiate on behalf of its members, administrative cost savings that may be provided by the alliance, and the expertise of existing CHPA boards that may form an alliance. See Related Issues, below, for further discussion.

The bill provides some degree of economic protection to insurance agents, by requiring a carrier issuing a group health insurance policy to an alliance or other group association to allow any of its licensed and appointed agents to sell that policy and to pay the agent the insurer's usual and customary commission paid to any agent selling the policy.

C. Government Sector Impact:

The Agency for Health Care Administration currently has 10 FTE employees assigned to the CHPA program, but all of these positions are deleted in the Governor's recommended budget and in both the current Senate and House budget bills, with a total reduction of $634,709 in salaries and expenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under this bill, negotiations on the rates for a policy issued to a small employer health alliance would reflect only administrative savings, including savings from activities performed by the alliance. However, a separate bill that has been filed, SB 1300, would allow for small group rates to reflect an adjustment of up to plus or minus 15 percent based on health status or claims experience.

VIII. Amendments:

None.