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DATE: April 10, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS**

BILL #: HB 687
RELATING TO: The Employee Health Care Access Act
SPONSOR(S): Representatives Farkas and Greenstein
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE SERVICES YEAS 15 NAYS 0
 - (2) INSURANCE YEAS 15 NAYS 1
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

In 1992, the Legislature enacted the Employee Health Care Access Act (Act) for the express purpose of promoting "the availability of health insurance coverage to small employers regardless of their claims experience or their employees' health status." One of the primary components of this Act is the requirement that a small employer's premiums be determined through "modified community rating." Community rating is a rating approach based on the medical costs in the community or area to be covered instead of on the characteristics of the persons insured. Florida's version is "modified" in that certain characteristics -- age, gender, family composition, tobacco usage, and geographic area -- may be considered.

The modified community rating method would be revised in this bill to allow small employer carriers to further adjust a small employer's premium based on the claims experience, health status, and duration of coverage, subject to the following limitations: Per employer - Up to 15% deviation from the carrier's approved rate; up to 10% change annually on renewal; and must be applied uniformly to all employees and dependents; All employers - Up to 5% deviation (in the aggregate) from carrier's approved rate.

A carrier would also be allowed to credit a small employer's premiums based on administrative savings realized by the carrier. The bill would also:

- for employers with less than two employees, require carriers to offer basic or standard plans during a 31-day open enrollment period in August;
- for employers with two employees, require carriers to offer, not only basic and standard plans, but also all small employer health plans offered by the carrier;
- define a single eligible employee as a person, his or her spouse, and his or her minor children if such person and spouse are employed by the same employer;
- allow carriers to use rating methodologies that include separate rating categories for different numbers of dependent children; and
- specify that certain rating law procedures apply to health insurance companies and health maintenance organizations that offer small employer coverage.

The bill will have an indeterminate, but insignificant, fiscal impact on the Department of Insurance.

On March 28, 2000, the Committee on Insurance adopted 3 amendments. See Amendments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

HB 687 requires the Department of Insurance semiannually to collect premium information from small employer carriers and monitor the premiums charged to employers.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Florida's Small Group Insurance Reform -- The Employee Health Care Access Act

In 1992, the Legislature enacted reforms to the small group insurance market, called the Employee Health Care Access Act (the Act). An express purpose of the Act is to promote the availability of health insurance coverage to small employers regardless of their claims experience or their employees' health status. The Act has three key components. These are:

- *Modified Community Rating* - Community rating is a method of developing health insurance rates which takes into account the medical and hospital costs in the entire community or area to be covered. Individual characteristics of the insured employer are not considered. Florida utilizes a variation on this method, which allows carriers to consider a limited set of individual characteristics relating to the individuals actually covered. These factors include age, gender, family composition, tobacco usage, and geographic location.¹ Florida's "modified community rating" method does not allow carriers to adjust premiums for an employer based on any other factors, including an employee's claims experience or health status.
- *Guarantee-Issue Requirements* - Under the Act, carriers are required to offer and renew certain health insurance plans, including basic and standard plans, for small employers regardless of claims experience or health status. For employers with one or two employees, Florida law requires carriers to offer, at a minimum, "standard" and "basic" plans. 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 "basic" policy includes certain standard policy benefits with certain restrictions on the benefits and utilization, as well as other features designed to lower the cost of this coverage. For employers with 3 to 50

¹ Section 627.6699(3)(n), F.S.

employees, Florida law requires each carrier to offer, not only the standard and basic plans, but any other small employer group plans sold by that carrier.²

- *Exemption from Mandates* - Certain small employer policies are exempt from "mandated health benefits" (i.e., laws which require private insurer and HMO health plans to provide certain coverages) unless made applicable by the Legislature.³

Non-Elderly Uninsured Rate: Florida vs. U.S., 1989 - 1997

According to the Employee Benefit Research Institute,⁴ the uninsured rate within Florida's non-elderly population (ages 0-64) is higher in 1997 than it was in 1989. Florida's non-elderly uninsured rate also exceeds the national average.

	<u>1989</u>	<u>1993</u>	<u>1997</u>
Florida	20.5%	23.1%	23.7%
United States	15.7%	17.3%	18.2%

Carriers Offering Small Group Insurance in Florida

According to the Department of Insurance, as of the first quarter of 2000, there are 59 carriers offering small employer health benefit plans. This number reflects a continuing drop in recent years in the number of carriers offering small employer benefit plans. In 1997 there were 116 carriers, and in 1998 there were 90 carriers, offering small employer benefit plans in Florida.

C. EFFECT OF PROPOSED CHANGES:

Modified Community Rating

The "modified community rating" component of the Act would be revised to permit small employer carriers to adjust premium rates based on additional factors such as employees' claims experience, health status, or duration of coverage. Rate adjustments made pursuant to these factors would be subject to the following limitations.

<u>Per employer</u>	Up to 15% deviation from carrier's approved rate;
	Up to 10% change annually on renewal; and
	Must be applied uniformly to all employees and dependents

² In addition to the basic and standard plans, small employer carriers typically offer additional plans with variations such as higher benefit levels or additional coverages.

³ Since this bill focuses on the components relating to community rating and guaranteed availability of coverage, the issue of mandated health benefits will not be addressed in the Present Situation.

⁴ Established in 1978, the Employee Benefit Research Institute is a nonprofit, nonpartisan organization which conducts policy research on economic security and employee benefits.

All employers

Up to 5% deviation (in the aggregate) from carrier's approved rate

Small employer carriers would also be permitted to credit a small employer's premiums based on certain administrative and acquisition expense savings realized by the carrier.

Instead of being required to use one rating category for all dependent children, small employer carriers would be permitted to use rating methodologies that include separate rating categories depending on the number of dependent children.

Guarantee-Issue Requirements

The guarantee-issue requirements of the Act would also be revised so that, instead of needing 3 employees, employers with only 2 employees would have access to all small employer health plans offered by small employer carriers. For employers with only one employee, carriers would only be required to offer the basic and standard plans during a one-month open enrollment period in August. A person, his or her spouse, and his or her dependent children would count as a single employee if such person and spouse are employed by the same employer.

For a more detailed discussion of the effects of this bill, see section II., D., the Section-By-Section Analysis.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 627.6699, F.S., relating to the Employee Health Care Access Act. The following subsections and paragraphs of this section are amended:

Paragraph (3)(n) amends the definition of "modified community rating" which currently allows carriers to adjust premium rates based on age, gender, family composition, tobacco usage, and geographic areas, to also include health status, claims history, and duration of coverage in premium determination calculations.

Paragraph (5)(c) is amended as follows:

- Instead of the current requirement of three employees, small employer carriers would be required to offer small employer health benefits on a guaranteed-issue basis to employers with two employees.
- Small employer carriers would be required to offer and issue basic and standard small employer health benefit plans to employers with one employee in a 31-day open enrollment period in August of each year. This requirement would not apply to small employers which are formed primarily for the purpose of buying health insurance. Coverage would begin on October 1 of the same year as the date of enrollment, unless the small employer carrier and the small employer agree to a different date. For purposes of this provision, a person, his or her spouse, and his or her dependent children would constitute a single eligible employee if such person and spouse are employed by the same small employer.

Paragraph (6)(b), which provides restrictions relating to premium rates, is amended as follows:

- Small employer carriers would be authorized to adjust the premium for each small employer as permitted by the newly created subparagraphs 6. and 7. [See "Other Comments," section V.,C. of the analysis]
- Small employer carriers would be permitted to adjust rates for claims experience, health status, and duration of coverage subject to the following limitations and requirements:

Per employer

Up to 15% deviation from carrier's approved rate;

Up to 10% change annually on renewal; and

Must be applied uniformly to all employees and dependents

All employers

Up to 5% deviation (in the aggregate) from carrier's approved rate

- Small group carriers would be required to report premium information on forms adopted by rule by the Department of Insurance on a semiannual basis to enable the Department to monitor the adjusted premiums actually charged by small employer carriers to ensure they do not exceed the 5% threshold.
- A new subparagraph 6., would be created to provide that a small employer carrier may provide a credit to a small employer's premium based on administrative and acquisition expense differences resulting from the size of the group. Administrative and acquisition expense factors would be developed by each carrier to reflect the carrier's experience and would be subject to Department approval.
- A new subparagraph 7., would be created to provide that a small employer carrier rating methodology may include separate rating categories for 1 dependent child, for 2 dependent children, and for 3 or more dependent children for family coverage of employees having a spouse and dependent children or employees having dependent children only. A small employer would be permitted to have fewer, but not greater, numbers of categories for dependent children, than specified in the subparagraph.
- A new subparagraph 8. would be created to prohibit small employer carriers from using a composite rating methodology to rate a small employer with fewer than 10 employees. "Composite rating methodology" would be defined as a rating methodology that averages the impact of the rating factors for age and gender in the premiums charged to all of the employees of a small employer.

Amends paragraph (6)(d), relating to applicability, to limit the application of this section, s. 627.410, F.S. (relating to the filing and approval of forms), and s. 627.411, F.S. (relating to grounds for disapproval by the Department of Insurance), to a small employer carrier that is an insurer. Applies this section and s. 641.31, F.S. (relating to HMO contracts), to any health benefit provided by a small employer carrier that is a health maintenance organization.

Section 2. Provides for an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The fiscal impact of this bill on the Department of Insurance is indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires small employer carriers to semiannually report premium information to the Department of Insurance on forms adopted by the Department. Small employer carriers could incur costs in complying with this reporting requirement.

D. FISCAL COMMENTS:

The bill requires small employer carriers to semiannually report information to the Department of Insurance for the purpose of monitoring the premiums charged to employers. The Department of Insurance could incur increased costs in collecting this information and monitoring premiums charged by small employer carriers. The exact amount of these costs is unknown.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill requires small employer carriers to report premium information to the Department of Insurance for the purpose of monitoring the relationship between the adjusted premium rates charged to employers and the premiums that would have been charged under the carrier's approved modified community rates. The bill grants rulemaking authority to the Department of Insurance to adopt forms by rule for the purpose of collecting this premium information.

C. OTHER COMMENTS:

Legislative Intent and Purpose

The stated Legislative intent of the Employee Health Care Access Act is to promote the availability of health insurance to small employers:

regardless of their claims experience or their employees' health status.
...⁵

This bill, however, revises current law so that claims experience and health status may be considered in setting premium rates for small employer health insurance coverage. Despite the fact that the bill limits the extent to which these factors may affect a rate, the bill does appear to run counter to the Legislature's clear expression of intent that the availability of health insurance be promoted "*regardless*" of claims experience or health status. To avoid a conflict, the sponsor may wish to amend the Legislative intent section of the Act.

Adjustment of Premiums

On page 3, line 21, the bill provides that carriers may adjust premiums "as permitted by subparagraphs 6. and 7." Since subparagraph 5. deals with adjustment of premiums and subparagraph 7. does not, the reference on page 3, line 21 would seem more appropriate if it read "as permitted by subparagraphs 5. and 6."

⁵ Section 627.6699(2), F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 28, 2000, the Committee on Insurance adopted three amendments which are traveling with the bill.

Amendment 1 by Farkas (page 1, lines 25 through 30): would revise the definition of "modified community rating" to clarify that age, gender, family composition, tobacco usage, and geographic location are "rating factors" that are embodied in the carrier's base rate, as opposed to after-the-fact adjustments based on the characteristics of an individual employer (such as the adjustments proposed in the bill for claims experience, health status, and duration of coverage). This amendment conforms the definition of "modified community rating" to other sections of existing law.

Amendment 2 by Farkas (page 3, line 21): is a technical amendment that would correct a cross-reference error made in the bill.

Amendment 3 by Farkas (page 3, line 2): would revise the proposed language in the bill which treats a person and their spouse as a "single eligible employee" for purposes of the guarantee-issue requirements. The amendment would narrow the application of this proposed language so that it would apply only to situations where either the person or their spouse works fewer than 25 hours in a normal work week.

VII. SIGNATURES:

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