

STORAGE NAME: h0687z.hcs

DATE: August 18, 2000

****AS PASSED BY THE LEGISLATURE****

CHAPTER #: 2000-268, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
HEALTH CARE SERVICES
FINAL ANALYSIS**

BILL #: HB 687 (Passed as CS/SB 1300)

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 YEAS 10 NAYS 0
- (4)
- (5)

I. SUMMARY:

Passed by the Legislature as CS/SB 1300. On June 14, 2000, CS/SB 1300 became Ch. 2000-268, Laws of Florida, with the Governor's signature.

HB 687 expands the definition of "modified community rating" to include health status, claims experience, and duration of coverage as factors that an insurer may use in setting rates for small employers. Beginning July 1, 2000, the bill also expands small employers health benefits on a guaranteed-issue basis to two person groups. In addition, beginning August 1, 2000, the bill specifies an annual 31-day open enrollment period of August 1 - August 31 of each year for offer and issue of basic and standard small employer health benefits on a guaranteed-issue basis to every small employer with a group size of one employee, subject to specified criteria, a coverage date of October 1. [Note: this date was changed to August 1, 2001 in CS/CS/HB 591.] HB 687 also allows a small employer carrier and a small employer to agree to a different effective date for coverage; and provides that a person, his or her spouse, and his or her dependent children constitute a single eligible employee, subject to specific criteria.

The bill allows for rate adjustments based on claims experience, health status, or duration of coverage; provides that such adjustments must be applied uniformly to rates charged all employees of the business and cannot be charged to individual employees or dependents or result in a rate for the employer that deviates more than 15 percent from the carrier's approved rate; allows carriers to adjust the renewal premium up to 10 percent annually based on these additional factors. Provides that in the event the aggregate of the adjustment exceeds the premium that would have been charged by the application of the approved modified community rate by 5 percent for the current reporting period, the carrier is limited to applying such adjustments to only minus adjustments beginning not more than 60 days after the report to the department, subject to specified criteria. Provides that for any subsequent reporting period, if the total aggregate adjusted premium actually charged does not exceed the premium that would have been charged by the application of the approved modified community rate by 5 percent, the carrier may apply both plus and minus adjustments. Allows a small carrier employer rating methodology to include separate rating categories, subject to specific criteria; prohibits small carriers from using a composite rating methodology to rate a small employer with fewer than 10 employees; and provides a definition for "composite rating methodology" for these purposes.

The bill clarifies that certain additional rating law procedures apply to health insurance companies and health maintenance organizations that offer small employer coverage.

The bill's effective date is July 1, 2000.

There may be a fiscal impact to this bill which would include costs incurred by the Department of Insurance in reviewing and approving small group rate filings.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

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 (s. 627.6699(3)(n), F.S.). 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 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. (In addition to the basic and standard plans, small employers typically offer additional plans with variations such as higher benefit levels or additional coverages.)

- *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. (Since this bill focuses on the components relating to community rating and guaranteed availability of coverage, the issue of mandated benefits are not addressed in the Present Situation).

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

According to the Employee Benefit Research Institute, a nonprofit, nonpartisan organization established in 1978, which conducts policy research on economic security and employee benefits, 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:

The bill, beginning July 1, 2000, expands the availability of offer and issue of all small employer health plans on a guaranteed-issue basis to eligible small employers with 3 to 50 eligible employees to include small employers with 2 eligible employees.

The bill, beginning August 1, 2000, expands the offer and issue of basic and standard small employer health benefit plans on a guaranteed-issue basis to every eligible small employer with less than two eligible employees, subject to specified criteria, during a 31-day open enrollment period of August 1 through August 31 of each year, with coverage beginning on October 1 of the year of enrollment, unless the small employer carrier and the small employer agree to a different date.

The bill modifies provisions relating to the availability of coverage, a person, his or her spouse, and his or her dependent children based on employer and employment status.

The "modified community rating" component of the Employee Health Care Access Act is revised to permit certain adjustments to premium rates based on additional factors and subject to specified limitations and applications.

The bill requires small employer carriers to report certain information to the Department of Insurance for monitoring aggregate adjusted premiums.

The bill allows the small employer carrier to provide a credit to the small employer's premium based on administrative and acquisition expense differences that resulted from the size of the group, based on the carrier's experience, subject to department review and approval.

The bill also authorizes the inclusion of separate rating categories based on the number of dependents.

The bill prohibits small employer carriers from using a composite rating methodology, as defined, to rate a small employer with fewer than 10 employees.

The bill expands the application of the Employee Health Care Access Act and related provisions for insurers and HMOs providing small employer coverage.

For a more detailed discussion of the effects of this bill, see 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) is amended to revise the definition of "modified community rating." The definition currently allows carriers to adjust premium rates based on age, gender, family composition, tobacco usage, and geographic areas. Added are adjustments for claims experience, health status, or duration of coverage in premium determination calculations and in specified administrative and acquisition expenses.

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

- Instead of the current requirement of three employees, small employer carriers are required to offer small employer health benefits on a guaranteed-issue basis to employers with two employees, beginning July 1, 2000.
- Small employer carriers are 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 beginning August 1, 2000. [Note: CS/CS/HB 591, which was subsequently passed changed this date to August 1, 2001. See "OTHER COMMENTS SECTION" of the analysis.] This requirement does not apply to small employers which are formed primarily for the purpose of buying health insurance. Coverage begins 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 effective date. For purposes of this provision, a person, his or her spouse, and his or her dependent children constitute a single eligible employee if such person and spouse are employed by the same small employer and either that person or spouse has a normal work week of less than 25 hours.
- Deletes directory language and corrects reference.

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

- Subparagraph 1. is amended to permit small employer carriers to adjust the premium for each small employer as permitted by the newly created subparagraphs 5. and 6. [See "OTHER COMMENTS SECTION" of the analysis.]
- Subparagraph 5. is created to provide for the following:
 - Any adjustments in rates for claims experience, health status, or duration of coverage may not be charged to individual employees or dependents.
 - Such adjustments may not result in a rate for the small employer which deviates more than 15 percent from the carrier's approved rate.
 - Any such adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.
 - A small employer may make an adjustment to a small employer's renewal premium, not to exceed 10 percent annually, due to the claims experience, health status, or duration of coverage of the employees or dependents of the small employer.
 - Semiannually, small group carriers must report information, on forms adopted by rule by the department, to enable the department to monitor the relationship of aggregate adjusted premiums actually charged policyholders by each carrier to the premiums that would have been charged by application of the carrier's approved modified community rates.
 - If the aggregate resulting from the application of such adjustment exceeds the premium that would have been charged by the application of the approved modified community rate by 5 percent for the current reporting period, the carrier must limit the application of such adjustments only to minus adjustments beginning not more than 60 days after the report is sent to the department.
 - For any subsequent reporting period, if the total aggregate adjusted premium actually charged does not exceed the premium that would have been charged by application of the approved modified community rate by 5 percent, the carrier may apply both the plus and minus adjustments.
 - Allows a small employer carrier to provide a credit to a small employer's premium based on administrative and acquisition expense differences resulting from the size of the group.
 - Allows group size administrative and acquisition expense factors to be developed by each carrier to reflect the carrier's experience and are subject to review and approval by the department.
- Subparagraph 6. is 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 is permitted to have fewer, but not greater, numbers of categories for dependent children, than specified in the subparagraph.

- A new subparagraph 7. is 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" is 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.

Paragraph (6)(d), is amended, 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:

During the 2000 Legislative Session, three bills were passed that addressed issues relating to s. 627.6699, F.S., the Employee Health Care Access Act: CS/CS/HB 591, CS/HB 2339, and CS/SB 1300. Two of the bills passed on the final day of session, CS/CS/HB 591 at 5:45 p.m. and CS/HB 2339 at 3:12 p.m. Although much of the language is identical or similar, there are some significant differences among the bills. In reviewing the changes in the law that these bills have made, it is important to remember that the rules of Statutory Construction require that "later in time" prevails. That is, the more recent legislation controls conflicting provisions of earlier acts even if the difference in the time of passage is minutes.

- **Open Enrollment for Groups of One**

- **CS/CS/HB 591** specifies a "transitional" period from **July 1, 2000** to **July 31, 2001**, as an extension of the re-enrollment period for *one-life groups that are eligible for guaranteed renewal and that meet other specified criteria.*

- **CS/CS/HB 591** provides for an annual 31-day open enrollment period for small employer coverage for *groups of one* beginning on **August 1, 2001** and provides that coverage begin on October 1 of the year of enrollment, unless the small employer carrier and the small employer agree to a different effective date for coverage.
- **CS/SB 1300 and CS/HB 2339** provide for an annual 31-day open enrollment period for small employer coverage for *groups of one* beginning **August 1, 2000**, and provide that coverage begin on October 1 of the year of enrollment, unless the small employer carrier and the small employer agree to a different effective date for coverage. [Note: CS/CS/HB 591 passed after CS/SB 1300 and CS/HB 2339 so the later date of August 1, 2001 contained in CS/CS/HB 591 should prevail.]
 - According to the ***Department of Insurance Bulletin 00-003***, issued June 30, 2000, the language contained in CS/CS/HB 591 providing the transitional 13 month open enrollment period applies to **every eligible small employer** who meet the specified criteria and not only to the currently enrolled groups of one.
 - The Florida Association of HMOs and others have filed a formal legal challenge to the department's interpretation.

Premium Rates:

CS/CS/HB 591 also contained additional revisions to s. 627.6699(6)(b), F.S., relating to restrictions to premium rates not contained in HB 687, CS/SB 1300, or CS/HB 2339. The CS/CS/HB 591 revision of premium rates, in addition to the revisions contained in HB 687, CS/SB 1300, and CS/HB 2339, also authorized a small employer 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 subject to specified conditions. In addition, CS/CS/HB 591 authorized a carrier to issue a group health insurance policy to a small employer health alliance or other group association with rates that reflect a premium credit for expense savings attributable to administrative activities being performed by the alliance or group association subject to specified conditions.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 16, 2000, HB 687 was reported favorable by the Committee on Health Care Services.

On March 28, 2000, the Committee on Insurance adopted three amendments to HB 687. One amendment revised 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). [Note: This amendment conforms the definition of "modified community rating" to other sections of existing law.] A technical amendment that corrected a cross-reference error made in the bill. A final amendment revised 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 narrowed the

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application of this proposed language so that it applies only to situations where either the person or their spouse works fewer than 25 hours in a normal work week.

On April 11, 2000, the General Government Appropriations Committee reported the bill favorably.

On May 5, 2000, HB 687 was taken up by the full House of Representatives. CS/SB 1300 was taken up in lieu of HB 687, and was reported favorably with no amendments.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

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Phil E. Williams

AS REVISED BY THE COMMITTEE ON INSURANCE:

Prepared by:

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**AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT
APPROPRIATIONS:**

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