

under the TRICARE program. Within 30 days after the federal TRICARE coverage terminates, the individual may elect to continue coverage under the group health plan for the remainder of the 18-month period.

The bill affects only insured employer plans with 20 or fewer employees. It does not affect employers with greater than 20 employees, self-insured plans, or state and local government health plans, all of which are covered under the federal COBRA law.

This bill substantially amends section 627.6692 of the Florida Statutes.

II. Present Situation:

Florida Health Insurance Coverage Continuation Act (“Mini-COBRA”)

Florida law (s. 627.6692, F.S.), enacted in 1996, enables employees of small employers with fewer than 20 employees to continue their group health coverage after it would otherwise terminate. This law is intended to cover those employees and dependents who are not protected by the federal COBRA law (below) which applies to employers with 20 or more employees. Under the Florida law, the right to continue coverage is triggered if a “qualifying event” results in loss of coverage, including termination of employment (voluntary or involuntary) or reduction of hours of employment, other than termination due to gross misconduct. Other qualifying events include the death or divorce of a covered spouse, and a dependent child reaching the limiting age under the plan. The right to continue coverage is afforded to the covered employee, the employee’s spouse, and dependent children, who are referred to as “qualified beneficiaries.”

Coverage under the group health plan must, at a minimum, be extended for 18 months. In the case of a beneficiary who is disabled, the coverage continues for an additional 11 months (29 months total). However, coverage may be terminated at an earlier date on which the qualified beneficiary becomes covered by another group health plan, the qualified beneficiary becomes eligible for Medicare, coverage ceases under the group plan due to non-payment of premium, or the employer terminates coverage under the group plan for all employees (subject to the right of the qualified beneficiary to become covered under any replacement group coverage).

The qualified beneficiary must give written notice to the insurance carrier within 30 days after a qualifying event. The qualified beneficiary must pay the entire premium, which may not exceed 115 percent of the premium under the employer’s group plan.

Federal COBRA

The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) enables employees and their families who lose group health coverage because of termination of employment, death, divorce, or certain other events to continue their coverage under the employer’s group health plan for limited periods of time.

The major differences between the federal COBRA and Florida “mini-COBRA” laws are: (1) COBRA applies to employers with 20 or more employees, including self-insured employers and state and local governments, while the Florida law applies to insurers and HMOs that issue group

policies to employers with fewer than 20 employees; (2) COBRA allows for coverage to be continued for 36 months for spouses and dependents, but the Florida law provides an 18-month period; (3) COBRA limits the premium to 102 percent of the applicable group premium, while the Florida law limits the premium to 115 percent of the group premium; and (4) COBRA requires employers to notify employees after a qualifying event of their right to continue coverage after a qualifying event, while the Florida law does not.

Federal Uniformed Services Employment and Reemployment Rights Act (USERRA)

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) prohibits all employers from discriminating against employees who take leave for military service and guarantees the right to reemployment, with full benefits, when they return. The law applies to all employers in the public and private sectors.

USERRA, like COBRA, provides that mobilized reservists may maintain their health insurance benefits as provided by their employers for up to 18 months and, also like COBRA, provides that reservists may be required to pay the entire premium cost, plus a 2 percent administrative fee. If the uniformed service is for 30 or fewer days, the person cannot be required to pay more than the normal employee share of any premium. On return from service, health insurance coverage must be reinstated without any waiting period or exclusion for preexisting conditions that would not have otherwise applied absent military service. Unlike COBRA, USERRA applies to all employers, not just employers with 20 or more employees.

Health Insurance for Military Reservists Called to Active Duty

An employer may choose to continue to provide full benefits to an employee who is in the military reserve or National Guard and is called to active duty. But, the employer is not legally required to do so, and must only meet the USERRA requirements, described above.

The Florida Chamber of Commerce recently surveyed its members regarding employer policies for military personnel called to active duty. Forty-two of the 104 members responded to the survey. In response to the question, “What amount of time will you continue to cover your employee and employee’s family for medical insurance?” —the employers gave the following responses, listed in order of highest percentage responses:

1. Medical coverage will continue during the duration of military leave provided premiums are paid by the employee (32% of respondents)
2. Medical coverage will continue for a period of up to 3 months (16%)
3. Medical coverage will continue for a period of up to 12 months (16%)
4. Medical coverage will continue for a period of up to 6 months (12%)
5. Employee benefits established by USERRA (8%)
6. Company benefits will continue for 80 hours (4%)
7. Benefits will continue for up to 2 years (4%)

If an employer does not voluntarily provide health insurance to an employee who takes a leave of absence from employment to perform military service, the leave is considered a qualifying event under COBRA or Florida’s “mini-COBRA” that entitles the employee to elect to continue

coverage under the group plan, at full cost to the employee. However, reservists or National Guard members called to active duty and their families are eligible for health care benefits under the U.S. government's TRICARE program. Eligibility begins on the first day of active duty if the orders are for a period of more than 30 consecutive days of active duty or for an indefinite period. No premium is required, but there are deductibles and co-insurance charges.

Upon being called to active duty, COBRA or mini-COBRA benefits may be elected, but an employee/reservist may instead elect to obtain coverage under the federal TRICARE program since no premium is required. Obtaining coverage under TRICARE would also allow the insurance carrier to terminate coverage under COBRA or mini-COBRA, because coverage may be terminated on the date a qualified beneficiary becomes covered under any other group health plan if there is not any exclusion or limitation because of a preexisting condition. Upon returning to work after the period of active duty ends, if employment is subsequently terminated, this would be a separate qualifying event that would entitle the employee to elect continuation of group coverage under either COBRA or mini-COBRA. The laws may not be explicit on this point, but federal and state officials state that more than one qualifying event can occur that triggers the right to continuation of coverage and that each event is subject to the minimum 18-month (or other applicable time period) extension period.

However, other situations may result in loss of the right to continue group coverage. If a reservist is terminated from his employment, either voluntarily or involuntarily, during a period of active duty, this would normally be a qualifying event that triggers the right to continue coverage. But this may not be the result if the employee is not covered under the group coverage at that time. Even if the employee is still covered under the group coverage, the employee may elect not to continue the coverage due to having TRICARE coverage while on active duty, and there would not be a second opportunity to continue the group coverage after the active duty period ends. Similarly, if an employee/reservist dies, or there is a divorce, or a dependent child reaches the limiting age under the employer's group coverage, the spouse or child may not have the right to continue coverage if that coverage was not then in effect.

Another example is an individual who has already been terminated from employment and has elected to continue coverage under COBRA or mini-COBRA, and is then called to active duty as a member of the reserves. If this individual chooses to drop their COBRA or mini-COBRA coverage in lieu of the federal TRICARE coverage, the individual would not be guaranteed the right to again continue the COBRA or mini-COBRA coverage after his or her period of active duty ends.

III. Effect of Proposed Changes:

The bill amends the Florida Health Insurance Coverage Continuation Act ("mini-COBRA") to address various situations that may detrimentally affect employees who are in the military reserve or National Guard and are called to active duty. By amending this Act, the bill affects only insured employer plans with 20 or fewer employees. It does not affect employers with greater than 20 employees, self-insured plans, or state and local government health plans, all of which are covered under the federal COBRA law.

The bill provides that if an employee is in the military reserve or National Guard and is called to active duty and is terminated from his job (voluntarily or involuntarily) during or after the period of active duty, the employee would be allowed to continue coverage under the employer's group plan for 18 months, beginning on the later of the date of termination of employment or the end of the active duty period. [Paragraph (5)(h)]

The bill further provides that if an employee who is called to active duty dies during the period of active duty, or if there is a divorce or legal separation, or if a dependent child reaches the age where they are no longer covered under the group policy, the spouse and dependent children would be entitled to elect continuation of coverage under the employer's group plan at the time of such event, whether or not the employee is covered under the employer's group coverage at that time. [Paragraph (5)(i)]

The bill also addresses the situation of an employee or other qualified beneficiary who has already elected to continue his or her group coverage after their employment was terminated (or due to any other qualifying event), and is thereafter called to active duty as a member of the military reserve or National Guard. The bill provides that if the group coverage is terminated by either the qualified beneficiary (by choice) or by the insurance carrier due to the qualified beneficiary becoming eligible for coverage under the federal TRICARE program, the 18-month period or other applicable time period (29 months for disabled individuals) is tolled during the time that he or she is covered under the TRICARE program. Within 30 days after the federal TRICARE coverage terminates, the qualified beneficiary may elect to continue coverage under the group health plan for the remainder of the 18-month period or other applicable period. The coverage would be retroactive to the date coverage terminated under TRICARE. [Paragraph (5)(j)]

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:

Employees of small employers who are called to active duty and their families will have additional options to continue their employer's group health insurance under certain circumstances that may not be available under current law, as described above.

Insurance carriers may experience additional administrative expenses in processing applications and determining eligibility for coverage. Any additional claims costs for persons who exercise the additional coverage options provided by this bill would presumably be covered by the premiums charged. Unless such claims costs were greater than average, premiums for small employers would not be affected.

C. Government Sector Impact:

State and local government health plans are subject to the federal COBRA law and are not affected by this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.