

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 1522

INTRODUCER: Health Regulation Committee and Senator Gaetz

SUBJECT: Wellness or Health Improvement Programs

DATE: April 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	Fav/CS
2.	Matiyow	Burgess	BI	Pre-meeting
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill specifies that an insurer or health maintenance organization (HMO) issuing a group or individual health benefit plan may offer a voluntary wellness or health improvement program and may encourage participation in the program by way of authorizing rewards or incentives. The bill provides that any advertisement of the wellness or health improvement program by insurers is not subject to certain statutory limitations. The bill authorizes insurers and HMOs to require a plan member to provide verification that the member’s medical condition inhibits participation in the wellness or health improvement program. The bill requires that the reward or incentive must be disclosed in the insurance policy or certificate and that the bill does not prohibit insurers or HMOs from offering other incentives or rewards for adherence to a wellness or health improvement program otherwise authorized by state or federal law. The bill amends statutes that currently allow insurance rebates for healthy lifestyles in individual and group health insurance policies and health maintenance contracts to conform to provisions created by the bill.

This bill substantially amends the following section of the Florida Statutes: 626.9541, 627.6402, 627.65626, 641.31, 641.3903.

II. Present Situation:

Chapters 626 and 627, F.S., regulate health insurance and health insurers within the state of Florida. Chapter 626 governs the practices of insurance agents and the operations of insurance companies.¹ Chapter 627 regulates insurance rates and contracts.²

¹ See ss. 626.011 through 626.99296, F.S.

² See ss. 627.011 through 627.987, F.S.

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

Section 626.9541, F.S., defines unfair methods of competition and unfair or deceptive acts or practices. The section specifies 32 different acts that qualify under the definition.³ Among the prohibited acts relating to rates that may be charged to policyholders are: “unfair discrimination,” which is defined as knowingly making an unfair discrimination between individuals of the same actuarially supportable class in the amount of premium charged for a policy, or in the benefits payable under the contract, or in the terms and conditions of the contract;⁴ and “unlawful rebates,” which prohibits paying, directly or indirectly, any valuable consideration or inducement not specified in the contract.⁵

Insurance Rebates for Healthy Lifestyles

In 2004, the Legislature required health insurers offering group or individual policies and health maintenance organizations (HMOs), when filing rates, rating schedules, or rating manuals with the Office of Insurance Regulation (OIR), to provide for premium rebates based on participation in health wellness, maintenance, or improvement programs, based on certain parameters.⁶

Insurers issuing individual health insurance policies may provide for a rebate on premiums when a covered individual enrolls in and maintains participation in a health wellness, maintenance or improvement program approved by the health plan. To qualify for a rebate, a covered individual must provide evidence of maintenance or improvement of the individual’s health status. The measurement is accomplished by assessing health status indicators, agreed upon in advance by the individual and the insurer, such as weight loss, decrease in body mass index, and smoking cessation. The premium rebate is effective for the covered individual on an annual basis, unless the individual fails to maintain his or her health status while participating in the wellness program or evidence shows that the individual is not participating in the approved wellness program. The rebate may not exceed 10 percent of paid premiums.⁷

For group health plans, a rebate may be provided when the majority of members of the health plan are enrolled in and have maintained participation in any health wellness, maintenance, or improvement program offered by the group policyholder and health plan. Evidence of maintenance or improvement of the enrollees’ health status is achieved through assessment of health status indicators similar to those included for individual health policies. The group or health insurer may contract with a third party administrator to gather the necessary information regarding enrollees’ health status and provide the necessary report to the insurer. The premium rebate, which may not exceed 10 percent of paid premiums, is effective for an insured on an annual basis unless the number of participating members in the health wellness, maintenance or improvement program becomes less than the majority of total members eligible for participation in the program.⁸

For HMO coverage, a rebate may be provided when the majority of members of a group health plan are enrolled in and have maintained participation in any health wellness, maintenance, or

³ See s. 626.9541(1)(a) through (ff), F.S.

⁴ See s. 626.9541(1)(g), F.S.

⁵ See s. 626.9541(1)(h), F.S.

⁶ See ss. 32 through 34, ch. 2004-297, Laws of Florida.

⁷ See s. 627.6402, F.S.

⁸ See s. 627.65626, F.S.

improvement program offered by the group contract holder. Evidence of maintenance or improvement of the enrollees' health status is achieved through assessment of health status indicators similar to those included for individual and group health policies. The premium rebate, which may not exceed 10 percent of paid premiums, is effective for a subscriber on an annual basis unless the number of participating members in the health wellness, maintenance or improvement program becomes less than the majority of total members eligible for participation in the program. In addition to group contracts, HMOs are also allowed to offer a premium rebate on individual contracts for a healthy lifestyle program, consistent with the parameters for group contracts.⁹

The Patient Protection and Affordable Care Act

In 2010, President Obama signed into law The Patient Protection and Affordable Care Act (PPACA or the Act). The Act was part of sweeping overhauls pertaining to the nation's healthcare system. Pursuant to the Act,¹⁰ insurers are allowed to offer wellness and prevention programs in an effort to address:

- Smoking cessation
- Weight management
- Stress management
- Physical fitness
- Nutrition
- Heart disease prevention
- Healthy lifestyle support
- Diabetes prevention

PPACA requires the Secretary of Health and Human Services to promulgate regulations pertaining to the criteria for the reimbursement structure of such programs.¹¹ Further, insurers offering such wellness programs must report their cost savings to Congress within 180 days after the regulations are promulgated.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices by health insurers to specify that rewards or incentives offered by insurers relating to participation in wellness or health improvement programs are authorized despite the statute's prohibition against certain other practices that constitute unfair or deceptive acts, some of which are related to reduced charges for insurance.¹³ The bill provides that any advertisement of such program is not subject to limitations set forth in s. 626.9541(1)(m), F.S.¹⁴

⁹ See s. 641.31(40), F.S.

¹⁰ PPACA & HCERA, Pub. L. No. 111-148 & 111-152, SEC. 2717(b)

¹¹ PPACA & HCERA, Pub. L. No. 111-148 & 111-152, SEC. 2717(d)

¹² PPACA & HCERA, Pub. L. No. 111-148 & 111-152, SEC. 2717(e)

¹³ See s. 626.9541(1)(o), F.S.

¹⁴ Section 626.9541(1)(m), F.S., provides that certain prohibitions created by s. 626.9541(1), F.S., do not prohibit a licensed insurer or its agent from giving to insureds, prospective insureds, and others, for the purpose of advertising, any article of merchandise having a value of \$25 or less.

The bill creates subsection (4) of s. 626.9541, F.S., and specifies that an insurer issuing group or individual health benefit plans may offer a voluntary wellness or health improvement program and may encourage participation in the program by way of authorizing rewards or incentives. Such rewards or incentives could include, but are not limited to, merchandise, gift cards, debit cards, premium discounts or rebates, contributions to a member's health savings account, or modifications to copayment, deductible, or coinsurance amounts.

The bill authorizes insurers to require a plan member to provide verification that the member's medical condition inhibits participation in the wellness or health improvement program in order for that nonparticipant to receive the reward or incentive. The bill requires an insurer to disclose in the policy or certificate any reward or incentive offered by the program and that s. 626.9541(4), F.S., does not prohibit insurers from offering other incentives or rewards for adherence to wellness or health improvement programs otherwise authorized by state or federal law.

Section 2 amends s. 627.6402, F.S., relating to insurance rebates for healthy lifestyles in individual health insurance policies, to conform to the provisions of s. 626.9541(4), F.S.

Section 3 amends s. 627.65626, F.S., relating to insurance rebates for healthy lifestyles in group health insurance policies, to conform to the provisions of s. 626.9541(4), F.S.

Section 4 amends subsection (40) of s. 641.31, F.S., relating to rebates for health management contracts for healthy lifestyles, and replaces the current provisions of that subsection by providing that HMOs issuing individual or group contracts may offer a reward or premium rebate pursuant to s. 626.9541(4), F.S., for a healthy lifestyle program.

Section 5 amends s. 641.3903, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices by HMOs, by creating subsection (15), which provides an exception to the prohibitions against unfair methods of competition and unfair or deceptive acts by allowing HMOs to offer rewards or incentives for participation in wellness or health improvement programs.

The bill provides authorization for HMOs to offer a voluntary wellness or health improvement program and to encourage participation in the program by way of authorizing rewards or incentives identical to those authorized for individual and group insurance policies.

The bill authorizes HMOs to require a plan member to provide verification that the member's medical condition inhibits participation in the wellness or health improvement program. The bill provides that a reward or incentive offered under s. 641.3903(15), F.S., is not a violation of s. 641.3903, F.S., if the program is disclosed in the contract or certificate and that s. 641.3903(15), F.S., does not prohibit an HMO from offering other incentives or rewards for adherence to a wellness or health improvement program otherwise authorized by state or federal law.

Section 6 provides an effective date for the bill of July 1, 2011.

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 the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 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. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

To the extent that wellness or health improvement programs are implemented under the bill, and to the extent that insurers and HMOs provide gift cards, debit cards, premium discounts or rebates not already provided under existing law, contributions to health savings accounts, or modifications to copayments, deductibles, or coinsurance amounts, participants in such wellness or health improvement programs could have an indeterminate amount of increased monetary resources at their disposal. And, to the extent that insurers and HMOs pay for such rewards, they could experience an indeterminate amount of financial costs; however, those costs could be offset by a reduction in the insurer's or HMO's medical expenses due to having a healthier pool of covered individuals.

C. Government Sector Impact:

The OIR advises that under the bill, insurers would need to revise their health insurance contracts and submit the forms for review and approval by the OIR's Life and Health Product Review staff. Each time the rewards or incentive programs are changed, new filings would be necessary. OIR indicates that this additional increase in workload can be absorbed within current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Regulations promulgated by the Secretary of Health and Human Services, as required by PPACA, could impact how Wellness Programs are administered.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on March 22, 2011:

Instead of authorizing new rewards and incentives for wellness or health improvement programs independent of existing law authorizing insurance premium rebates for similar programs, the CS reconciles the new rewards and incentives, which may include rebates in addition to other rewards and incentives, with those of existing law. The CS authorizes the new rewards and incentives for health maintenance contracts, which were omitted in the bill as filed. The CS also replaces existing law relating to HMO rebates for healthy lifestyles in favor of the bill's provisions relating to rewards and incentives for wellness or health improvement programs.

- B. **Amendments:**

None.