

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 445 Wellness or Health Improvement Programs  
**SPONSOR(S):** Health & Human Services Quality Subcommittee, Ingram  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Poche	Calamas
2) Insurance & Banking Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

House Bill 445 permits group or individual health insurers to offer a voluntary health or wellness improvement program to insureds. The bill also permits rewards and incentives to be offered for participation in the program, including, but not limited to, merchandise, premium discounts or rebates, and modifications to copayment, deductible, or coinsurance amounts.

The bill allows insurers to request verification of a member's inability to participate in a voluntary health or wellness improvement program due to a medical condition. Verification may be in the form of a statement from the member's treating physician concluding that it is difficult or inadvisable for the member to participate in a health or wellness improvement program.

The bill does not appear to have a fiscal impact.

The bill is effective upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

Chapters 626 and 627, Florida Statutes, 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.<sup>1</sup> Chapter 627 regulates insurance rates and contracts.<sup>2</sup>

#### Incentives for Participating in Health Wellness, Maintenance or Improvement Program<sup>3</sup>

Insurers are permitted to provide for a rebate of premiums paid on an individual health insurance policy when a covered individual enrolls in and maintains participation in a health wellness, maintenance or improvement program approved by the insurer.<sup>4</sup> To qualify for any rebate offered by the insurer, a covered individual must provide evidence of improvement of the individual's health status.<sup>5</sup> The measurement of improvement of the individual's health status 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.<sup>6</sup> 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 no longer enrolled in the approved wellness program.<sup>7</sup>

For group health plans, an appropriate rebate of premiums paid during the preceding year, not to exceed 10 percent of paid premiums, is provided to members of the plan when the majority of members have enrolled in and maintained participation in any health wellness, maintenance, or improvement program offered by the group policyholder and health plan.<sup>8</sup> 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.<sup>9</sup> The group or health insurer may contract with a third party administrator to gather the necessary information regarding enrollees' health status and provide

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<sup>1</sup> See ss. 626.011, F.S., through 626.99296, F.S.

<sup>2</sup> See ss. 627.011, F.S., through 627.987, F.S.

<sup>3</sup> The Health Insurance Portability and Accountability Act of 1996 (HIPAA) generally prohibits group health plans from charging individuals similarly situated different premiums or requiring other additional payments on the basis of a health factor. An exception exists for plans that offer rewards or incentives for member participation in health or wellness programs – if the receipt of a reward or incentive is not conditioned on the individual satisfying a standard related to a health factor, or if no reward or incentive is offered for participation, then the health or wellness program satisfies the antidiscrimination provisions of HIPAA. However, if the group health plan offers a reward or incentive for member participation in a health or wellness program that is based on the individual satisfying a health factor standard, then the health or wellness program must meet five requirements according to rule:

- The total reward or incentive is limited, generally to no more than 20% of the cost of coverage under the plan to the individual or family.
- The program must be reasonably designed to promote health and prevent disease.
- The program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year.
- The reward or incentive must be available to all individuals similarly situated and must allow a reasonable alternative standard for obtaining the reward to any individual for whom it is unreasonably difficult due to a medical condition, or medically inadvisable, to satisfy the standard.
- The plan must disclose in all materials describing the terms of the program the availability of a reasonable alternative standard.

See [http://www.dol.gov/ebsa/faqs/faq\\_hipaa\\_ND.html](http://www.dol.gov/ebsa/faqs/faq_hipaa_ND.html) for more information.

<sup>4</sup> S. 627.6402(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> S. 627.6402(2), F.S.

<sup>8</sup> S. 627.65626(1), F.S.

<sup>9</sup> *Id.*

the necessary report to the insurer.<sup>10</sup> The premium rebate 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.<sup>11</sup>

### Unfair Competition and Deceptive Acts or Practices

Unfair methods of competition and deceptive acts or practices in the sale of insurance policies and the operation of insurance companies are defined by statute.<sup>12</sup> Certain acts are prohibited, including, but not limited to, the following:

- Unlawful rebates
- Misrepresentations and false advertising of insurance policies
- Defamation
- Boycott, coercion and intimidation
- Unfair claim settlement practices
- Illegal dealings in premiums, including excess or reduced charges for insurance
- Refusal to insure on the basis of race, color, creed, marital status, or sex
- Misrepresentation of agent qualifications

### **Effect of Proposed Changes**

To encourage participation in the wellness or health improvement program, the bill permits a health insurer to offer incentives or rewards, such as merchandise, premium rebates or savings, or modifications to copayment, deductible, or coinsurance amounts. The bill does not limit other forms of incentives or rewards that may be offered to health plan members by the insurer for adherence to a wellness or health improvement program that may otherwise be available by state or federal law. The bill expressly states that the incentives and rewards offered by insurers to enrollees in wellness or health improvement programs do not constitute unfair methods of competition or deceptive acts or practices and do not, therefore, violate s. 626.9541, F.S.

A health insurer may request documentation from a health plan member to verify that the member has a medical condition that makes it difficult or inadvisable for the member to participate in a voluntary wellness or health improvement program. Documentation may be in the form of a statement from the member's treating physician.

Health insurers are not required by the bill to offer wellness or health improvement programs. The decision to do so is voluntary. Participation in a wellness or health improvement program by a health plan member is also voluntary. The bill does not penalize a health plan member for non-participation in a wellness or health improvement program.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 626.9541(4), F.S., related to wellness or health improvement programs.

**Section 2:** Provides the bill effective upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>10</sup> *Id.*

<sup>11</sup> S. 627.65626(2), F.S.

<sup>12</sup> S. 626.9541, F.S.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 8, 2011, the Health and Human Services Quality Subcommittee adopted one amendment to House Bill 445.

The amendment deletes the phrase “an insurance benefit or”, to state that a reward or incentive offered under the subsection created by the bill is not a violation of s. 626.9541, F.S., if the reward or incentive is disclosed in the insurance policy or certificate. A reward or incentive could be considered in the calculation of a carrier’s medical loss ratio under federal health care law. The amendment also renders the effective date immediate upon becoming law.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.