

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 97 Health Insurance

**SPONSOR(S):** Gaetz and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Prater	Schoolfield
2) Insurance & Banking Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

This bill makes substantial changes to the insurance code and creates sections 627.64995 and 641.31099, Florida Statutes.

This bill prohibits the use of state or federal funds to provide coverage for abortions in health insurance policies purchased through health insurance exchanges created under the Federal Patient Protection and Affordable Care Act (PPACA).

The bill provides exceptions for abortions in situations of rape or incest, or in cases to save the life or physical health of the mother.

The bill clarifies that it does not prohibit insurance plans from providing separate coverage for abortion, as long as that coverage is not purchased in whole or in part with any federal or state funds.

The bill appears to have no fiscal impact on state or local governments.

The effective date for the bill is July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The Federal Patient Protection and Affordable Care Act (PPACA) was signed into law by President Obama on March 23, 2010.<sup>1</sup>

Under PPACA, the state is required to create an insurance exchange by 2014. If the state does not take the necessary steps to create the exchange, as determined by the Secretary of the United States Health and Human Services (HHS) the exchange will be created by the Secretary and the Federal HHS Agency.<sup>2</sup> The exchange will provide an insurance market place whereby individuals and small business can purchase health insurance. Under PPACA, most citizens will be required to purchase health insurance, or will be required to pay a tax penalty of the greater of \$695 per year up to a maximum of three times that amount (\$2,085) per family or 2.5% of household income. Certain individuals who meet certain income thresholds will be given premium tax credits and cost sharing subsidies to help them purchase their health insurance.<sup>3</sup> Any household earning between 133% and 400% of the federal poverty level (\$29,326 to \$88,200 annual income for a family of 4) will be eligible for the premium tax credits and cost sharing subsidies<sup>4</sup>.

##### Federal Funding of Abortions

The Hyde Amendment, first passed by Congress in 1976, prevents federal funds from being used to pay for abortion under the joint federal-state Medicaid programs. Exceptions are provided for rape, incest and to save the life of the mother.<sup>5</sup> The Hyde Amendment is a rider to the annual Labor/Health and Human Services/Education appropriations bill which has to be approved by Congress each year. The specific language of Hyde can vary each year.

According to PPACA, states are permitted to prohibit plans participating in the insurance exchange from providing coverage for abortions. Without such prohibition, plans are permitted to offer insurance providing abortion coverage but must provide for a separate accounting mechanism. The plan must collect from each enrollee, two separate payments; one specifically for the abortion coverage and the other for all the other services provided. All individuals enrolled in the plan providing abortion coverage would be required to pay the separate abortion fee (without regard to the enrollee's age, sex, or family status).<sup>6</sup>

Under PPACA, states are given the express right to prohibit abortion coverage for any health plans offered through an exchange if the state enacts a law to provide for such prohibition.<sup>7</sup> Additionally, PPACA specifies that the Act shall not preempt or have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions.

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<sup>1</sup> See Constitutional Notes.

<sup>2</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, Section 1321 (c)

<sup>3</sup> A premium tax credit is an amount taken out of the taxes you paid the previous year and given back to the payer. For tax credits given by the Patient Protection and Affordable Care Act, the credits will be sent directly to the issuer of the health insurance plan from the federal government. A cost sharing reduction is a reduction in out of pocket expenses paid by the health plan member such as co-pays.

<sup>4</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, Section 1401 & 1402

<sup>5</sup> Departments of Labor, Health and Human Services and Education and Related Agencies Appropriations Act of 2010, HR 3293, 111th Cong., 1st session

<sup>6</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, section 1303(b) (2) (B) (i)

<sup>7</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, section 1303 (a) (1)

## Abortion Statistics

- In 2008, there were 1.21 million abortions nationwide.<sup>8</sup>
- 22% of all pregnancies (excluding miscarriages) resulted in abortion nationwide.<sup>9</sup>
- In Florida, there were 94,360 abortions in 2008<sup>10</sup> and 231,657 live births<sup>11</sup>, which is approximately 2 abortions for every 5 births.

## Proposed Changes

This bill creates two new sections of law that prohibit the sale of insurance policies covering abortions, offered through a health insurance exchange created by PPACA. This applies to policies purchased in whole or in part with federal or state subsidies.<sup>12</sup> The bill provides an exception that health insurance coverage may be provided in cases of rape, incest, or to save the life or physical health of the mother.

The bill does not prevent any person from purchasing separate coverage for abortion through an insurance exchange as long as that coverage is not purchased in whole or in part with state or federal funds. The bill provides that state and federal funds would include any tax credit or cost sharing reductions applied. The bill defines “state funds” to include both state and local funds.

The proposed changes in the bill create new sections of statute in Chapter 627, Part VI, relating to Health Insurance Policies and Chapter 641, Part I, relating to Health Maintenance Organizations.

### B. SECTION DIRECTORY:

**Section 1** Creates s. 627.64995, F.S., relating to restrictions on use of funds for state exchanges.

**Section 2** Creates s. 641.31099, F.S., relating to restrictions on use of funds for state exchanges.

**Section 3** Provides an effective date of July 1, 2011.

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

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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<sup>8</sup> The Guttmacher Institute, Abortion Incidence and Access to Services in the United States, 2008

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

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

<sup>11</sup> Florida Department of Health, Department of Vital Statistics, 2008

<sup>12</sup> s. 390.011(1), F.S., defines “Abortion” means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

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 any 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:

Florida and 25 other states brought an action in the United States District Court for the Northern District of Florida challenging the constitutionality of the Act. On January 31, 2011, Judge Roger Vinson found the Act unconstitutional.<sup>13</sup> On March 3, 2011 Judge Vinson granted a stay of his order on the condition that the federal government seek an immediate appeal and seek an expedited review. The federal government filed the appeal and motion for expedited review to the United States Court of Appeal for the Eleventh Circuit on March 8, 2011.<sup>14</sup> Florida and the other plaintiffs have filed a motion requesting a more condensed briefing and oral argument schedule than requested by the federal government. The Eleventh Circuit responded on March 11, 2011 setting the briefing schedule beginning on April 4, 2011 and ending May 25, 2011.<sup>15</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It appears from the wording in the bill at section 627.94995(1), that this law is intended to apply to group health insurance policies. However, In order to apply this provision to group policies, the same language in s.627.94995, would need to be added to Part VII of Chapter 627 relating to Group, Blanket, and Franchise Insurance Policies.

In addition, to apply this provision to out of state group policies, a cross reference citing the new section in part VII of Chapter 627, needs to be added to s. 627.6515 (2) (c).

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<sup>13</sup> State of Florida, et al. v. United States Department of Health and Human Services, et al., --- F.Supp.2d ----, 2011 WL 285683 (N.D.Fla.)

<sup>14</sup> Case No. 11-11021-HH

<sup>15</sup> State of Fla., et al. v. U.S. Dept. of Health & Human Serv., Nos. 11-11021-HH & 11-11067-HH, Order on Appellants' Mtn. to Expedite Appeal (11<sup>th</sup> Cir. March 11, 2011).

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