

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 97 Health Insurance

**SPONSOR(S):** Health & Human Services Access Subcommittee, Gaetz and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	10 Y, 5 N, As CS	Prater	Schoolfield
2) Insurance & Banking Subcommittee	10 Y, 4 N	Barnum	Cooper
3) Health & Human Services Committee		Prater	Gormley

### SUMMARY ANALYSIS

Under the Patient Protection and Affordable Care Act (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 United States Secretary of Health and Human Services, the Secretary will establish and operate the exchange. The exchange will provide an insurance market place whereby individuals and small business can purchase health insurance. Under the PPACA, most citizens will be required to purchase health insurance, or will be required to pay a tax penalty. Certain individuals who meet certain income thresholds will be given premium tax credits and cost sharing subsidies to help them purchase their health insurance.

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.

According to the 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.

Under the 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. Additionally, the 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.

CS/HB 97 makes substantial changes to the insurance code and creates sections 627.64995, 641.31099, and 627.66996, and amends section 627.6515 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 PPACA.

The bill provides exceptions for abortions in situations of rape or incest, or if a physician certifies in writing that the abortion is necessary to save the life 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:

##### Abortion Statistics

In 2008, there were 1.21 million abortions nationwide.<sup>1</sup> This same year, 22 percent of all pregnancies (excluding miscarriages) resulted in abortion.<sup>2</sup> According to the most recent statistics available, in 2008, there were 94,360 abortions in Florida<sup>3</sup>, while there were 231,657 live births.<sup>4</sup> This amounts to approximately 2 abortions for every 5 births.

##### The Patient Protection and Affordable Care Act (PPACA)

The PPACA was signed into law by President Obama on March 23, 2010.<sup>5</sup> Under the 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 United States Secretary of Health and Human Services, the Secretary will establish and operate the exchange.<sup>6</sup> The exchange will provide an insurance market place whereby individuals and small business can purchase health insurance. Under the 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>7</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>8</sup>

According to the 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>9</sup>

Under the 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>10</sup> Additionally, the 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> The Guttmacher Institute, Abortion Incidence and Access to Services in the United States, 2008.

<sup>2</sup> *Id.*

<sup>3</sup> The Guttmacher Institute, Abortion Incidence and Access to Services in the United States, 2008.

<sup>4</sup> Florida Department of Health, Department of Vital Statistics, 2008.

<sup>5</sup> See Constitutional Notes.

<sup>6</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, Section 1321 (c)

<sup>7</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>8</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, Section 1401 & 1402

<sup>9</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, section 1303(b) (2) (B) (i)

<sup>10</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, section 1303 (a) (1)

## The Hyde Amendment

The Hyde Amendment is a rider to the annual appropriations bill for the U.S. Departments of Labor and Education, which prevents Medicaid and any other programs under these departments from funding abortions, except in limited cases. The amendment is named after Rep. Henry J. Hyde (R-IL), who, as a freshman legislator, first offered the amendment. The Hyde Amendment has been enacted into law in various forms since 1976, during both Democratic and Republican administrations. In 1980, the U.S. Supreme Court affirmed the constitutionality of the Hyde Amendment in *Harris v. McRae*.<sup>11</sup>

The current language of the Hyde Amendment, contained in the U.S. Departments of Labor, Health and Human Services, and Education, and related agencies Appropriations Act of 2010 is as follows:

SEC. 507. (a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.

(b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion.

(c) the term “health benefits coverage” means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

SEC. 508 (a) The limitations established in the preceding section shall not apply to an abortion—

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.<sup>12</sup>

In Florida, based on the Hyde Amendment, Medicaid reimburses for abortions for one of the following reasons:

- The woman suffers from a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed;
- When the pregnancy is the result of rape (sexual battery) as defined in s. 794.011, F.S.; or
- When the pregnancy is the result of incest as defined in s. 826.04, F.S.<sup>13</sup>

An Abortion Certification Form must be completed and signed by the physician who performed the abortion for the covered procedures. The form must be submitted with the facility claim, the physician's claim, and the anesthesiologist's claim. The physician must record the reason for the abortion in the physician's medical records for the recipient.<sup>14</sup>

In 2009-2010, Florida Medicaid paid for 4 abortions at a cost of \$534.60.<sup>15</sup>

## Proposed Changes

This bill creates three new sections and amends one section of law to prohibit the sale of insurance policies covering abortions, offered through a health insurance exchange created by the PPACA. This

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<sup>11</sup> 448 U.S. 297 (1980). See also *Rust v. Sullivan*, 500 U.S. 173 (1991), and *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), upholding *Harris v. McRae*.

<sup>12</sup> P.L. 111-117 (2009).

<sup>13</sup> Agency for Health Care Administration, *Florida Medicaid: Ambulatory Surgery Center Services Coverage and Limitations Handbook*, January 2005, available at

[http://www.baccinc.org/medi/CD\\_April\\_2005/Provider\\_Handbooks/Medicaid\\_Coverage\\_and\\_Limitations\\_Handbooks/Ambulatory\\_Surgical\\_Center\\_Updated\\_January\\_2005.pdf](http://www.baccinc.org/medi/CD_April_2005/Provider_Handbooks/Medicaid_Coverage_and_Limitations_Handbooks/Ambulatory_Surgical_Center_Updated_January_2005.pdf) (last visited Mar. 17, 2011).

<sup>14</sup> *Id.*

<sup>15</sup> Email from AHCA legislative staff, April 14, 2011 (on file with the Committee).

applies to policies purchased in whole or in part with federal or state subsidies.<sup>16</sup> The bill provides an exception that health insurance coverage may be provided in cases of rape, incest, or if a physician certifies in writing that the abortion is necessary to save the life 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, Chapter 627, Part VII, relating to Group, Blanket, and Franchise Health Insurance Policies and Chapter 641, Part I, relating to Health Maintenance Organizations; and amends s. 627.6515, F.S., relating to out-of-state group insurance policies.

**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. 627.66996, F.S., relating to restrictions on use of funds for state exchanges.  
**Section 3.** Creates s. 641.31099, F.S., relating to restrictions on use of funds for state exchanges.  
**Section 4.** Amends s. 627.6515, F.S., relating to out-of-state groups.  
**Section 5.** 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:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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<sup>16</sup> s. 390.011(1), F.S., defines “Abortion” to mean the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

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>17</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 Appeals for the Eleventh Judicial Circuit on March 8, 2011.<sup>18</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>19</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2011, the Health and Human Services Access Committee adopted one amendment to HB 97.

The amendment made the following changes:

Removed one of the exceptions in which an abortion can be provided through a health care plan created pursuant to the PPACA. The original bill included an exception to save the physical health of the mother. The amendment provides an exception only if a physician certifies in writing that an abortion is necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

The amendment applied the bill language to the section of statute relating to group, franchise, or blanket health insurance as well as the section of statute relating to insurance policies issued outside of this state.

The bill was reported favorably as a Committee Substitute.

The analysis is drafted to the Committee Substitute.

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<sup>17</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>18</sup> Case No. 11-11021-HH

<sup>19</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).