HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB APC 13-09 Health Benefits for Other-Personal-Services Employees
SPONSOR(S): Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Delaney	Leznoff

SUMMARY ANALYSIS

The Patient Protection and Affordable Care Act (PPACA) imposes penalties on large employers who do not provide a defined level of health insurance coverage to all of its “full-time” employees. Under PPACA, a “full-time” employee is an employee who works on average of at least 30 hours a week, subject to certain requirements. Additionally, a large employer is subject to penalties if the employee’s share of the premium is more than 9.5% of the employee’s income.

The state of Florida is considered a large employer under PPACA. Currently, all categories of state and university employees, except those classified as other-personal-services (OPS) employees, may participate in the State Group Insurance Program (Program). Current data indicates that there are currently several thousand OPS employees who have been working at least 30 hours a week and would likely be considered full-time under PPACA. Consequently, the state must offer health insurance benefits to such OPS employees or be subject to a $2,000 fine for each employee covered under the plan, which could potentially exceed $321.8 million annually.

The bill allows participation in the Program by OPS employees who meet the definition of a full-time employee under the provisions of PPACA and applicable regulations.

The bill requires the Program to offer a separate benefit plan for full-time OPS employees. The Program is directed to contract for either a fully insured health benefit plan or develop a self-insured plan for full-time OPS employees, effective January 1, 2014, that meets the minimum essential coverage requirements under PPACA. Premiums for the 2014 plan year are established in the General Appropriations Act.

The bill conforms the laws to the proposed House of Representatives FY 2013-14 General Appropriations Act (GAA) as employer and employee premium contributions are set in the GAA.

The fiscal impact of the bill is indeterminate but will likely have a negative fiscal impact on the state and state university system. The expected maximum fiscal impact is $3.9 million in General Revenue and $13.3 million in trust funds. See Fiscal Impact comments for more detail.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Patient Protection and Affordable Care Act

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (“PPACA”)[1] into law, as amended by the Health Care and Education Reconciliation Act of 2010[2]. The law contains comprehensive changes to the entire health care system in the United States. Most of the PPACA provisions take effect in 2014; however, many changes are phased in, starting from the day the bill was signed on March 23, 2010 and continuing through 2019.

Specifically, PPACA:

- Requires most U.S. citizens and legal residents to obtain health insurance coverage or pay a penalty;
- Substantially expands Medicaid;
- Establishes new requirements on employers and health plans;
- Restructures the private health insurance market;
- Creates health insurance exchanges for individuals and employers to obtain coverage;
- Sets minimum standards for health coverage offered in a health insurance exchange; and
- Provides premium tax credits and cost-sharing subsidies for eligible individuals who obtain coverage through a health insurance exchange**.**

Individual Mandate

Effective in 2014, PPACA provides that health insurance coverage will be mandatory for almost all U.S. citizens.[3] Individuals who are required to file a tax return, but do not have “minimal essential coverage”, will pay a tax[4] to the U.S. government. The Internal Revenue Service is charged with enforcement.[5] “Minimal essential coverage” includes: Medicaid, Medicare, CHIP, and certain other government programs; employer-sponsored plans; and individual market plans.[6]

The annual tax for failure to have minimal essential coverage will be the greater of:

- a flat dollar amount per individual; or
- a percentage of the individual’s taxable income.[7]

The tax increases over time: $95 or 1% in 2014; $325 or 2% in 2015 and $695 or 2.5% in 2016. After 2016, the tax is indexed to inflation and rounded to the next lowest multiple of $50.[8] The tax for a child is one half of the adult tax.

Exemptions for mandatory health insurance coverage will be granted for American Indians, in cases of extreme financial hardship, for those objecting to the mandatory provision for religious reasons, individuals without health insurance for less than three months, and individuals in prison.[9]

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[1] P.L. 111-148, 124 Stat. 119 (2010)
[2] P.L. 111-152, 124 Stat. 1029 (2010)
[3] 26 U.S.C. s. 5000A
[4] 26 U.S.C. s. 5000A(b)(1) refers to the payment as a “penalty” ; however, the Supreme Court of the United States has found the payment to be a tax. *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012).
[5] 26 U.S.C. s. 5000A(b)(1)
[6] 26 U.S.C. s. 5000A(f)(1)
[7] 26 U.S.C. s. 5000A(c)
[8] Id.
[9] 26 U.S.C. s. 5000A(e)

Employer Responsibility

Effective in 2014, PPACA requires that "large employers", defined as an employer with at least 50 full-time employees[10], must provide "minimum essential coverage" that is "affordable" to its employees or be subject to penalties.[11] To be considered "minimum essential coverage", the plan's share of the total allowed costs of benefits provided under the plan must be at least 60 percent of those costs.[12][13] To be considered "affordable", the employee portion of the self-only premium for the employer's lowest cost coverage may not exceed 9.5 percent of the employee's household income.[14] Additionally, under PPACA, a "full-time employee" means an employee who is employed an average of at least 30 hours per week.[15]

PPACA imposes two types on penalties on employers: a coverage penalty and an affordability penalty[16]. If the employer does not offer coverage to all of its full-time employees, and one or more full-time employees receive a premium credit or cost-sharing subsidy through the exchange, the penalty is $2,000[17] per year per full-time employee, less the first 30 full-time workers.

PPACA also imposes a penalty if an employer offers minimum essential coverage, but the coverage is not considered "affordable" and one or more full-time employee receives a premium credit or cost-sharing subsidy through the exchange.[18] The penalty is $3,000 per employee who receives a premium credit or cost-sharing subsidy. The maximum amount of the penalty cannot exceed $2,000 per full-time employee, excluding the first 30 full-time employees. For example, if an employer has 300 employees and 30 receive a premium credit, the penalty would be (30 x $3,000) or $90,000, the lesser of ($2,000 x 270) or $540,000.

For both types of penalties, the Internal Revenue Service (IRS) is proposing to create "safe harbors" for employers to use to ensure they do not incur a penalty.[19] Since most employers do not know an employee's total household income, the IRS is proposing is that a premium will be considered affordable if the employee's share does not exceed 9.5% of the employee's income reported on their W-2 form.

The IRS is also proposing a safe harbor for coverage. The proposed rule provides that a large employer will be treated as offering coverage to all of its employees if the employer offers coverage to all but 5% or 5 of its employees, whichever is greater. Comments on the proposal were due March 18, 2013 and a public hearing is scheduled for April 23, 2013.

The State of Florida is a large employer under PPACA and is subject to the provisions of PPACA, including the employer responsibility provisions.

State Group Insurance Program

Overview

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[10] 26 U.S.C. s. 4980H(c)(2)
[11] 26 U.S.C. s 4980H
[12] 26 U.S.C. s. 36B and Department of Treasury, 78 Fed. Reg. 217 (proposed on January 2, 2013) *Shared Responsibility for Employers Regarding Health Coverage* (to be codified at 26 CR Parts 1, 54 and 301).
[13] In layman's terms, the plan roughly must pay at least 60% of the medical costs of the standard population enrolled in the plan (i.e., have a 60% actuarial value). Since plans have limits on cost sharing, an insured with a major medical event likely would not have to pay 40% of the costs.
[14] 26 U.S.C. s. 36B
[15] 26 U.S.C. 4980H(c)(4)(A)
[16] 26 U.S.C. 4980H
[17] The average annual premiums in 2012 are $5,615 for single coverage and $15,745 for family coverage. The Kaiser Family Foundation, *2012 Employer Health Benefits Survey*, available at: http://ehbs.kff.org/?page=abstract&id=1 (last viewed 2/10/13).
[18] 26 U.S.C. 4980H
[19] Department of Treasury, 78 Fed. Reg. 217 (proposed on January 2, 2013) *Shared Responsibility for Employers Regarding Health Coverage* (to be codified at 26 CR Parts 1, 54 and 301).

The State Group Insurance Program (program) is created by s. 110.123, F.S., and is administered by the Division of State Group Insurance (DSGI) within the Department of Management Services (DMS).

The program is an optional benefit for state employees including all state agencies, state universities, the court system, and the Legislature. The program includes health, life, dental, vision, disability, and other supplemental insurance benefits.

The health insurance benefit for active employees has premium rates for single, spouse, or family coverage regardless of plan selection. The state contributes approximately 90% toward the total annual premium for active employees ($1.41 billion out of the total premium of $1.57 billion for FY 2012-13[20].)

The program provides several options for employees to choose as their health plans. The preferred provider organization (PPO) plan is the statewide, self-insured health plan administered by Blue Cross Blue Shield of Florida. The administrator is responsible for processing health claims, providing access to a Preferred Provider Care Network, and managing customer service, utilization review, and case management functions. The standard health maintenance organization (HMO) plan is an insurance arrangement in which the state has contracted with multiple statewide and regional HMOs.

<u>High Deductible Health Plans (HDHP) with Health Savings Accounts (HSA)</u>

Additionally, the program offers two high-deductible health plans (HDHP) with health savings accounts[21]. To qualify as a high-deductible plan, the annual deductible must be at least $1,200 for single coverage and $2,400 for family coverage. The state's Health Investor PPO Plan is a statewide, high deductible health plan with an integrated health saving account. It is also administered by Blue Cross Blue Shield of Florida. The Health Investor HMO Plan is also a high deductible health plan with an integrated health saving account. The state has contracted with multiple state and regional HMOs as providers. The state makes a $500 per year contribution to the health savings account for single coverage and a $1,000 per year contribution for family coverage. The employee may make additional annual contributions[22] up to a limit of $6,450 for single coverage and $12,500 for family coverage. Both the employer and employee contributions are not subject to federal income tax. Unused funds roll over automatically every year. A health savings account is owned by the employee and is portable.

<u>Cafeteria Plans</u>

A cafeteria plan is a plan that offers flexible benefits under the Internal Revenue Code Section 125. Employees choose from a "menu" of benefits. The plan can provide a number of selections, including medical, accident, disability, vision, dental and group term life insurance.

A cafeteria plan reduces both the employer's and the employee's tax burden. Contributions by the employer are not subject to the employer social security taxes. Contributions made by the employee are not subject to federal income or social security taxes.

The employer chooses the range of benefits it wishes to offer in a cafeteria plan. The plan can range from just health insurance to full flex plans, which offer a wide variety of benefits and choices, are more often offered by large employers and allow for more consumer directed consumption of benefits. In some full flex plans, the employee is offered the choice between receiving additional compensation in lieu of benefits.

The state program qualifies as a cafeteria plan.[23]

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[20] Fiscal information provided by DSGI.

[21] Internal Revenue Code, 26 U.S.C. sec. 223

[22] The IRS annually sets the contribution limit as adjusted by inflation.

[23] Sec. 125 I.R.C. requires that a cafeteria plan allow its members to choose between two or more benefits "consisting of cash and qualified benefits." The proposed regulations define "cash" to include a "salary reduction arrangement" whereby salary is deducted pre-tax to pay the employee's share of the insurance premium. Since the state program allows a "salary reduction arrangement", the program qualifies as a cafeteria plan. 26 C.F.R. ss. 1.125-1, et seq.

Employer and Employee Contributions

The state program is considered employer-sponsored since the state contracts with providers and third party administrators and contributes a substantial amount on behalf of the employee toward the cost of the insurance premium. The employer contribution is part of a state employee's overall compensation package. The employee pays a set monthly premium for either a single or family plan and the state pays the remainder of the premium.

The following chart shows the monthly contributions[24] towards employee health insurance premiums. (Premiums will increase by approximately 7 percent on May 1, 2013.)

		Standard Plan PPO/HMO			Health Investor Health Plan PPO/HMO		
Category	**Coverage**	**Employer**	**Enrollee**	**Total**	**Employer***	**Enrollee**	**Total**
Career Service	Single	499.80	50.00	549.80	499.80	15.00	514.80
	Family	1,063.34	180.00	1,243.34	1,063.34	64.30	1,127.64
	Spouse	1,243.32	30.00	1,273.32	1,097.64	30.00	1,127.64
Select Exempt and Senior Mgt. Service	Single	541.46	8.34	549.80	506.46	8.34	514.80
	Family	1,213.34	30.00	1,243.34	1,097.64	30.00	1,127.64

*Includes employer tax-free HSA contribution - $500 per year for single coverage and $1,000 per year for family coverage.

Each year, the Legislature specifies the state program benefit design and the employer and employee premium contributions in the General Appropriations Act.

State of Florida Employees

The State of Florida has four classifications of employees. The following three classes participate in the State Group Insurance Program as part of their compensation package:

- **Career Service:** Florida has a civil service system for public employees not deemed to be executive or managerial. The State Constitution mandates such a system be created by the Legislature[25] and authorizes a system for the collective bargaining of wages, hours, and terms or conditions of employment by public employees with their public employer.[26] Part II of chapter 110, F.S., establishes the Career Service System.

- **Senior Management Service:** Part III of chapter 110, F.S., establishes the Senior Management Service System, which is a separate system of personnel administration for positions in the executive branch. The duties and responsibilities are primarily and essentially policymaking or managerial in nature.[27] The DMS is charged with adopting rules that provide for a system for employing, promoting, or reassigning managers that is responsive to organizational or program needs.[28]

- **Selected Exempt Service:** Part V of chapter 110, F.S., creates the Selected Exempt Service System (SES). The SES is a separate system of personnel administration that includes those positions that are exempt from the Career Service System. Employees in the SES serve at the

[24] State Employees' Group Health Self-Insurance Trust Fund, Report on the Financial Outlook, January 4, 2012.
[25] *See* art. III, s. 14 of the Fla. Const.
[26] *See* art. I, s. 6 of the Fla. Const.
[27] *See* s. 110.402, F.S.
[28] *See* s. 110.403, F.S.

pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.[29]

Other-Personal-Services (OPS)

The Other-Personal-Services (OPS) classification was created as a classification for temporary employees. Prior to 2012, OPS employees were restricted to work no more than 1,040 hours annually without a recommendation by the agency head and approval by the Executive Office of the Governor for an extension.[30] In 2012, s. 110.131(2), F.S., was amended to eliminate the annual hourly cap and the corresponding requirement that agencies seek approval for extensions. Instead, agencies must review and document the mission-critical need for any continuing OPS position by June 30 of each year.

Unless specifically provided by law, OPS employees are not eligible for any form of paid leave, paid holidays, a paid personal day, participation in state group insurance or retirement benefits, or any other state employee benefit.[31]

State agencies and the university system[32] both employ individuals in the OPS classification. The following is the average number of OPS employees per fiscal year for state agencies:[33]

FY 2009-10	9,965
FY 2010-11	10,053
FY 2011-12	9,089

The number of OPS employees varies greatly among state agencies, with the Department of Health consistently having the highest average of OPS employees (2,290 in FY 2011-12). For FY 2012-13, the agencies were appropriated $45,898,707 in recurring General Revenue and $214,647,050 in recurring trust funds for a total of $260,545,757 in the OPS appropriation category. The agencies were also allocated $656,832 in nonrecurring trust funds. Salaries and duties for OPS employees vary greatly. OPS positions range from low-skill clerical to high-skill medical doctors and the hourly wage varies accordingly. The Legislature provides the appropriation to the agencies to hire OPS employees and the agency has discretion over the number of OPS employees hired as well as the duties and salaries.

On February 28, 2013, the Self-Insurance Estimating Conference estimated that there are 3,015 OPS state agency employees and 5,722 OPS university employees who would be considered full-time employees under PPACA. The conference further estimated the numbers of employees likely to accept insurance coverage, if offered, and the cost to the state if the OPS employees were offered the current plan. The estimates for participation and costs to the state, **under the current,** plan are as follows:

	FY 2013-14 (6-months)		FY 2014-15		FY 2015-16	
	Individual	Family	Individual	Family	Individual	Family
State	1,581	608	1,581	608	1,581	608
Universities	2,722	1,153	2,722	1,153	2,722	1,153
Total	**4,303**	**1,761**	**4,303**	**1,761**	**4,303**	**1,761**
Costs	**$29.1 million**		**$54.9 million**		**$60.4 million**	

[29] *See* s. 110.604, F.S.
[30] *See* s. 110.131, F.S. (2011).
[31] S. 110.131(3), F.S.
[32] Historical information on OPS employees hired by the state universities is not available.
[33] Fiscal Year 2011-12 Annual Workforce Report, Florida Department of Management Services, available at: http://www.dms.myflorida.com/human_resource_support/human_resource_management/for_state_hr_practitioners/reports (last viewed March 3, 2013).

The Division of State Group Insurance requested that a consultant, Milliman, develop an illustrative health plan that would meet the minimal coverage and affordability requirements of PPACA.[34] Using the number of eligible OPS employees projected by the Self-Insurance Estimating Conference who would elect coverage, Milliman estimated that the state could provide coverage that meets the minimum requirements of PPACA for $34.3 million in FY 2014-15.[35] The total monthly premium for individual coverage was projected at $413.69, with an employee share of $96.00.[36] The total monthly premium for family coverage was projected to be $1,009.7. For consistency they set the employee's share at $136.74.[37]

The conference estimates that if the state does not offer health insurance to OPS employees who are considered full-time under PPACA, the state and universities could be subject to a penalty exceeding $321.8 million annually.

State of Florida's Compliance with PPACA

The Program has implemented, and plans to continue to implement, subject to the direction of the Legislature, the applicable provisions of PPACA.

The major provisions of PPACA that have been implemented, or are in the process of being implemented, include:

- Elimination of overall lifetime plan maximums;
- Removal of annual limits for essential health benefits;
- Elimination of pre-existing condition exclusions for children under age 19;
- Patient-centered outcome research institute fees (phased in at $1 to $2 per participant); and
- Extended coverage for employees' adult children to age 26 without regard to dependency.

Major changes, effective January 1, 2014, include:

- Imposition of pass-through fees relating to the pharmaceutical industry; 2.3% excise tax on medical devices; and reinsurance, risk corridors, and risk adjustment; and
- Elimination of all pre-existing condition limitations.

The Self-Insurance Estimating Conference estimates complying with these provisions will cost the state $38.7 million in FY 2013-14, $64.7 million in FY 2014-15 and $70.1 million in FY 2015-16.

Effects of the Bill

The bill amends s. 110.131, F.S., (OPS Employees) to define "full-time other personal services employees" as those who are classified as such under PPACA and applicable regulations.

Also, amends s. 110.123, F.S., (State Group Insurance Program) to allow participation in the State Group Insurance Program by full-time OPS employees of branches and agencies of state government and the university system and authorizes the Division to develop and offer a separate benefit to such employees.

In addition, the bill provides specific rule-making authority to the Department of Management Services to implement the classification of full-time employees as defined under PPACA and corresponding regulations.

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[34] Letter dated March 8, 2013, from Milliman to the Division of State Group Insurance regarding OPS Employee Insurance Plan Design, on file with the House Select Committee on PPACCA.

[35] Id.

[36] A $96.00 per month premium would be affordable to the state's lowest paid OPS employee.

[37] Milliman assumed that the state would pay the same percentage share of premium for OPS employees for family coverage as the state currently pays for Career Service employees. That percentage share is 13.54%.

The bill directs the State Group Insurance Program (Program) to develop a separate benefit plan for full-time OPS employees. The Program is directed to either contract for a fully insured health benefit plan for full-time OPS employees, or to develop a self-insured plan, that meets the minimum essential coverage and affordability requirements of PPACA.

B. SECTION DIRECTORY:

Section 1: Amends s.110.123, F.S., relating to state group insurance program.
Section 2: Amends s.110.131, F.S., relating to other-personal-services employment
Section 3: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Based on the illustrative analysis performed by Milliman, the estimated cost to the state to provide a health benefit plan that covers minimal essential benefits, with affordable premiums to full-time other-personal-services employees, would be approximately $17.2 million for FY 2013-14 and $34.3 for FY 2014-15. Applying the fund split between General Revenue and trusts funds appropriated in Fiscal Year 2012-13 in the OPS appropriation category and splits from the universities, the General Revenue cost would be approximately $3.9 million in FY 2013-14, and $7.8 million in FY 2014-15.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Division of Management Services is provided very specific rule-making authority to implement the definition of full-time as prescribed by PPACA and related regulations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES