STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA COMMUNITY HEALTH ACTION
AND INFORMATION NETWORK, INC.,
AND GREG MELLOWE,

Petitioners,

vs. Case No. 13-3116RP

FINANCIAL SERVICES COMMISSION,
THROUGH THE OFFICE OF INSURANCE
REGULATION,

Respondent.
_________________________________/

FINAL ORDER

Administrative Law Judge John G. Van Laningham conducted the final hearing in this rule challenge, which was brought pursuant to section 120.56(2), Florida Statutes, at the Division of Administrative Hearings in Tallahassee, Florida, on September 30, 2013.

APPEARANCES

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STATEMENT OF THE ISSUES

The ultimate issue in this case is whether Respondent's proposed Florida Administrative Code Rule 69O-149.022(3), which would incorporate by reference Form OIR-B2-2112, constitutes an invalid exercise of delegated legislative authority. Before that issue may be reached, however, it is necessary to determine whether Petitioners have standing to challenge the proposed rule.

PRELIMINARY STATEMENT

On August 16, 2013, Petitioners filed with the Division of Administrative Hearings ("DOAH") a Petition for Administrative Determination pursuant to section 120.56(2). Petitioners alleged that Respondent's proposed amendment to rule 69O-149.022, which adds language that adopts and incorporates by reference Form OIR-B2-2112, is an invalid exercise of delegated legislative authority.

The final hearing was held on September 30, 2013, as scheduled, with both parties present. In Petitioners' case, Mr. Mellowe testified on behalf of himself and his employer, Florida Community Health Action and Information Network, Inc. ("CHAIN"). Petitioners offered, in addition, seven exhibits, namely Petitioners' Exhibits 2, 5b, 5c, 7a, 7b, 15, and 16, which were received in evidence. In defense of the proposed rule, Respondent called its employees Eric D. Johnson and Susanne K. Murphy as witnesses. Joint Exhibits 1 through 4 were admitted.

Before adjourning the final hearing, and with the agreement of the parties, the undersigned established the deadline for filing proposed final orders, which was October 21, 2013, and a deadline for issuing the final order, i.e., November 11, 2013. The final hearing Transcript was filed on October 17, 2013. Each party filed a proposed final order.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2013 Florida Statutes.

FINDINGS OF FACT

1. The Financial Services Commission ("Commission") is a four-member collegial body consisting of the governor and cabinet. The Office of Insurance Regulation ("Office") is a structural unit of the Commission. Giving rise to this case, the Office initiated rulemaking and made recommendations to the Commission concerning an amendment to rule 69O-149.022, which would incorporate by reference Form OIR-B2-2112, titled "Consumer Notice [Regarding] The Impact of Federal Health Care Reform on Health Plan Costs" ("Form 2112"). Whenever the Commission or the Office engages in rulemaking, the members of the Commission serve as the agency head. The Commission thus has the ultimate responsibility for approving and adopting the proposed rule.

2. CHAIN is a nonprofit corporation which operates solely within the state of Florida. CHAIN is subject to the oversight of a voluntary board of directors. As a health-care advocacy

organization, CHAIN is exempt from taxation under section 501(c)(3) of the Internal Revenue Code and derives its income primarily from grants and contributions. CHAIN provides services to low- and moderate-income individuals who lack health insurance coverage or perceive their coverage to be unaffordable or inadequate.

3. CHAIN provides health insurance purchased through Florida's small-group health insurance market to each of its five full-time employees. Greg Mellowe is a full-time employee of CHAIN who receives health insurance coverage through such employment.

4. During the 2013 regular session, the Florida Legislature passed a bill, which the governor approved, enacting section 627.410(9), Florida Statutes. This section requires that insurers provide to policyholders of individual and small-group nongrandfathered plans a notice that describes the estimated impact of the federal Patient Protection and Affordable Care Act ("PPACA")——popularly and more commonly known as Obamacare——on monthly premiums.[1/] An insurer that issues a nongrandfathered plan must give this notice one time——when the policy is issued or renewed on or after January 1, 2014——on a form established by rule of the Commission. (A "nongrandfathered" plan is a health insurance plan that must comply with all of Obamacare's

requirements. For ease of reference, such plans will be referred to as "compliant plans.")

5. Having been directed to act, the Office commenced rulemaking to establish the form of the notice to be sent to persons insured under compliant, individual and small-group plans, eventually proposing to adopt Form 2112. The Commission approved this form at a hearing on August 6, 2013.

6. Form 2112 fills a single, one-sided page[2/] and looks like this:

Consumer Notice
The Impact of Federal Health Care Reform on Health Plan Costs*

Federal health care reform may change health plan benefits and costs. **After January 1, 2014**, health insurers and HMOs:

- Must offer new benefits.
- Must cover everyone even if they have preexisting medical conditions.
- Must pay new taxes and fees which add to health plan costs.
- Must charge same health plan costs to men and women.
- Must limit how much your age can affect health plan costs.

Below is an **example** using one of our company's most popular plans and the cost of a new plan showing the impact of federal health care reform. This is an example only and it does not show differences in co-payments and deductibles. Your health plan costs may not change in the same way. Your health plan costs may be reduced if you qualify for federal tax credits or subsidies.

This example compares the health plan monthly cost for {Name, most popular plan} before federal health care reform to the health plan monthly cost for the new {Name, new health care plan} health plan offered after health care reform.

	Ages 21-29		Ages 30-54		Ages 55-64	
	Males	Females	Males	Females	Males	Females
{Name, most popular plan} Monthly Health Plan Cost ***before*** Federal Health Care Reform	$ ***	$ ***	$ ***	$ ***	$ ***	$ ***
{Name, new health care plan} Monthly Health Plan Cost ***after*** Federal Health Care Reform	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!
Portion of Monthly Health Plan Cost due to federal health care reform:						
Cost of **new benefits** we must offer	$ ***	$ ***	$ ***	$ ***	$ ***	$ ***
Cost to **cover everyone**, *even those with preexisting medical conditions*	$ ***	$ ***	$ ***	$ ***	$ ***	$ ***
New taxes and fees we must pay	$ ***	$ ***	$ ***	$ ***	$ ***	$ ***
Cost to charge the same for **men and women** and to limit how **age** can affect plan costs	$ ***	$ ***	$ ***	$ ***	$ ***	$ ***
Dollar Difference in Health Plan Costs	$ -	$ -	$ -	$ -	$ -	$ -
Percentage Difference in Health Plan Costs	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!

**The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and regulations adopted pursuant to these acts.*

OIR-B2-2112 (New 9/13)
69O-149.022

7. CHAIN will receive the Obamacare notice when it renews its small-group health insurance plan, or purchases a new plan, on or after January 1, 2014.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has personal jurisdiction in this proceeding pursuant to sections 120.56, 120.569, and 120.57(1), Florida Statutes.

9. In administrative proceedings, standing is a matter of subject matter jurisdiction. Abbott Labs. v. Mylan Pharms., Inc., 15 So. 3d 642, 651 n.2 (Fla. 1st DCA 2009). To have standing to challenge the validity of an administrative rule in a proceeding before an administrative law judge, a person must be "substantially affected" by the rule in question. § 120.56(1)(a), Fla. Stat. ("Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.")

10. Generally speaking, the petitioner in a rule challenge proceeding must show that he or she will suffer an immediate "injury-in-fact" within the "zone of interest" protected by the enabling statute or by other related statutes. See, e.g., Fla. Medical Ass'n, Inc. v. Dep't of Prof'l Reg., 426 So. 2d 1112, 1114 (Fla. 1st DCA 1983). To satisfy the immediacy requirement,

an injury cannot be purely speculative or conjectural. Lanoue v. Fla. Dep't of Law Enf., 751 So. 2d 94, 97 (Fla. 1st DCA 1999). The petitioner need not actually have realized the injury, however, to have standing. In NAACP, Inc. v. Florida Board of Regents, 863 So. 2d 294, 300 (Fla. 2003), for example, the Florida Supreme Court held that student members of the NAACP who were genuine prospective candidates for admission to a state university were substantially affected by rules which eliminated certain affirmative action policies; thus, they had standing to challenge these rules without showing "immediate and actual harm" such as the rejection of an application for admission.

11. There is a difference, moreover, "between the concept of 'substantially affected' under section 120.56(1), and 'substantial interests' under section 120.57(1)." Dep't of Prof'l Reg., Bd. of Dentistry v. Fla. Dental Hygienist Ass'n, Inc., 612 So. 2d 646, 651 (Fla. 1st DCA 1993). Thus, "decisions in licensing and permitting cases[, which] have made it clear that a claim of standing by third parties based solely upon economic interests is not sufficient unless the permitting or licensing statute itself contemplates consideration of such interests, or unless standing is conferred by rule, statute, or based on constitutional grounds[,]" are not controlling in actions brought under section 120.56. Id.; see also Cole Vision Corp. v. Dep't of Bus. & Prof'l Reg., 688 So. 2d 404, 407

(Fla. 1st DCA 1997)("[T]his court has recognized that a less demanding standard applies in a rule challenge proceeding than in an action at law, and that the standard differs from the 'substantial interest' standard of a licensure proceeding.").

12. Potential injury to economic interests provides a basis for establishing standing in a proceeding brought under section 120.56, as the court made clear in Department of Professional Regulation, Board of Dentistry v. Florida Dental Hygienist Association, 612 So. 2d 646 (Fla. 1st DCA 1993). There, an association of Florida-licensed dental hygienists (the "hygienists") challenged a rule proposed by the Board of Dentistry (the "board") that would have made graduates of the Alabama Dental Hygiene Program (the "ADHP") eligible to take the licensure examination in Florida, even though the ADHP was not accredited by the American Dental Association. Id. at 647-48.

13. The issue of standing was contested. On appeal, the board argued that the hearing officer had erred in denying its motion to dismiss the hygienists' petition. The court disagreed, reasoning that, because the proposed rule would "diminish the value" of the hygienists' allegedly superior training by allowing "unqualified persons to enter the field," the hygienists had "a sufficient interest in maintaining the levels of education and competence required for licensing to afford them standing to

challenge an unauthorized encroachment upon their practice." Id. at 651.

14. In so ruling, the court accepted the premise that, if the proposed rule were adopted, ADHP-trained hygienists would take and pass the Florida licensure examination in such numbers as to substantially affect the petitioning hygienists. It wrote:

> It requires no flight of imagination to reason that if the rule would produce a flood of lesser-trained hygienists, presumably available for employment for less compensation, this would have an economic impact on the existing pool of more highly-trained individuals.

Id. at 649 (emphasis added).

15. The fact that the court did not consider the hygienists' anticipated economic injury to be too speculative teaches that, in a rule challenge context, the concept of injury-in-fact, at least as it relates to a plausible economic harm threatening licensees, is a relatively relaxed one. In addition, by ruling that dental hygienists have standing to challenge a proposed rule in order to protect their professional and economic interests against competition from less-qualified hygienists who might flood the market with offers of cheap and inferior services, the court opened the door for others to challenge rules that could similarly affect their professional and economic interests.[3/]

16. Reduced to a succinct legal principle, the Dental Hygienist case holds that an association of licensed professionals has standing to challenge a proposed rule that would have a reasonably foreseeable economic impact on existing licensees, if events were to unfold in a manner consistent with the petitioner's plausible concerns, especially where to deny standing would effectively shield the challenged rule from judicial scrutiny because then "virtually no one" would have standing.[4/]

17. Another example of economic interests being found sufficient to confer standing to challenge a rule is Abbott Laboratories v. Mylan Pharmaceuticals, Inc., 15 So. 3d 642, 651 n.2 (Fla. 1st DCA 2009), where it was held that a pharmaceutical company which makes a particular generic drug had standing to challenge a rule that prohibited pharmacists from freely substituting the generic drug for a brand-name version of the product, because the rule caused the petitioner to lose sales.

18. As this Final Order was being written, the First District Court of Appeal issued an opinion that seemingly reflects a more restrictive view of standing to challenge a rule than has informed previous decisions. In Office of Insurance Regulation v. Secure Enterprises, LLC., 2013 Fla. App. LEXIS 16231, 38 Fla. L. Weekly D 2159 (Fla. 1st DCA Oct. 11, 2013),[5/] the court reversed a final order invalidating certain

forms that the Office had adopted by rule, which prescribed the discounts, credits, or other reductions in the cost of homeowners insurance that insurers must make available to policyholders who take prescribed measures to protect their houses against windstorm damage. The opponent of the forms was the manufacturer of a product that buttresses garage doors, increasing their wind resistance. The forms at issue did not require insurers to give a premium discount to homeowners who strengthened their garage doors against storm damage. The manufacturer contended that the relevant statute mandates insurance price reductions for homeowners who upgrade their garage doors, and thus that the Office's rules and forms contravened the specific law being implemented. 2013 Fla. App. LEXIS 16231 at *3-*6.

19. As the basis for standing, the manufacturer maintained that the insurance credit, to which it believed its customers were statutorily entitled, effectively would lower the cost of garage door protection systems and thereby increase the demand for——and sales of——such products. Thus, it followed that the absence of such a subsidy was costing the manufacturer the sales that such a financial incentive would stimulate. Being denied the profits from such sales, the manufacturer argued, was an economic injury of sufficient immediacy to confer standing to challenge the forms at issue. Id. at *6-*7. The court disagreed.

20. As for the alleged lost sales, the court declared that such harm was not the result of economic competition, which in the court's view distinguished the manufacturer's situation from those of the association of dental hygienists and the pharmaceutical company, respectively, whose standing to challenge rules favoring competitors rested on threatened economic interests, as discussed above. Id. at *17. Moreover, reasoned the court, because an insurance credit had never been made available to purchasers of the manufacturer's product, the rules and forms at issue did not eliminate an existing credit and thus did not impair a protected economic right of the manufacturer. Id. Finally, the court determined that, unlike the situation in Televisual Communications, Inc. v. Department of Labor and Employment Security, 667 So. 2d 372, 374 (Fla. 1st DCA 1995), where standing was predicated on a proposed rule's collateral regulatory effect, the challenged rules regarding insurance credits did not in any way regulate the manufacturer's industry. Secure Enterprises, 2013 Fla. App. LEXIS 16231 at *18. Accordingly, the court concluded that the manufacturer did not have a cognizable injury-in-fact.

21. In addition, the court held that the manufacturer's alleged economic injury was not within the zone of interest protected by the statute in question, which was "clearly designed," the court explained, to protect homeowners and

insurers. Id. at *20. The court noted that while the provision of subsidies for the purchase of certain products presumably benefits the makers of such products, such a financial gain is not the type of interest that the statute at issue was intended to regulate or protect. Id. at *19-*20.

22. The facts of Secure Enterprises are dissimilar to the facts at hand. The logic behind Secure Enterprises, however, finds some application here. It was, to begin, highly important to the court in Secure Enterprises that no subsidy for the purchase of garage door protection systems had ever been provided. Indeed, that fact alone might have been dispositive, for the court observed that if the Office had eliminated an existing credit, then the manufacturer's argument on standing would have been "much stronger." Id. at *17. Yet, the manufacturer contended that the Office had done exactly that, i.e., taken away by rule a credit which the existing statute afforded. What the court seems to have concluded, therefore, is that a person cannot be actually injured, for purposes of standing, by the absence of something which he has never had (and thus, implicitly, upon which he has neither relied nor become dependent)——at least where the something in question is the gratuitous byproduct of governmental beneficence directed primarily toward others, which is how the court viewed the

presumed financial benefit a supplier might derive from subsidies for the purchase of garage door protection systems.

23. That the court deemed the subsidy a benefit intended to protect homeowners and insurers[6/]——but not manufacturers——was, as well, the key to its zone-of-interest analysis. As the court saw it, the insurance credits were supposed to stimulate consumer demand, not to increase suppliers' sales. Therefore, if some manufacturers benefited from the subsidies, that result was merely an incidental side effect falling outside the zone of interest which the statute was designed to protect.

24. In this case, in an effort to establish standing, CHAIN proved that, as an employer which provides health insurance to its employees under a nongrandfathered plan, it will receive Form 2112 if the proposed rule is adopted. CHAIN alleged that receipt of this form would substantially affect CHAIN because:

> [the information provided in Form 2112] will be cited by directors, employees, creditors, funders, and insurance agents as the [state-]sanctioned basis for evaluating whether or not Florida CHAIN should have retained coverage for its employees under its current plan and/or selected and purchased coverage under a new health plan . . . . Petitioner [CHAIN] would have no reasonably available access to a source of this information other than the Notice, or even any access to the methodology used to formulate the Notice. The ramifications of Florida CHAIN's reliance on the allegedly invalid Notice would carry over to its 2014 plan decision in 2015 as well.

CHAIN argues that, after receiving notice under Form 2112, its employees would need to spend significant time and energy defending or justifying its decisions to purchase or renew coverage, apparently because CHAIN's board of directors and other interested persons would rely upon the information contained in the notice to criticize or second-guess such decisions.

25. CHAIN contends that the widespread use of Form 2112 would cause CHAIN to expend substantial resources assisting individuals of low and moderate income who would contact CHAIN upon receiving the notice, apparently with questions about its meaning or accuracy.

26. CHAIN and Mellowe assert, as an additional and alternative basis for standing, that Form 2112 fails to contain all of the information specified in section 627.410(9), Florida Statutes——information that they, as policyholders, are allegedly entitled to receive. Thus, they argue that the form would deny them access to information the legislature intended them to have.

27. Mellowe alleges that he has standing in his own right as an employee of CHAIN who "stands to be directly substantially adversely affected" by "CHAIN's decision regarding [health] plan purchase" should such decision be influenced by the notice given under Form 2112.

28. For the most part, then, CHAIN and Mellowe maintain that they will be harmed by receiving the information regarding

the estimated impact of Obamacare on monthly premiums that Form 2112 would provide them. Thus, unlike the manufacturer in Secure Enterprises, Petitioners here are not (for the most part) claiming injury based upon the absence of something they want, but rather they claim that something they do not want, when provided in the near future as intended, will injure them. Like the insurance credits at issue in Secure Enterprises, however, the mandatory notice is a function of governmental beneficence, in that certain policyholders, including Petitioners, will receive something (information) for which they need not ask or pay, presumably because spreading the word about Obamacare's effects on premiums will be good for them, the public, or both. But the policyholders here, unlike the manufacturer whose customers would receive a credit, are the direct (and not merely incidental) beneficiaries of the informational gift, making them more akin to the homeowners in Secure Enterprises whose standing was not at issue as none was a party.

29. Nevertheless, Petitioners have failed to demonstrate that Form 2112 would impair a protected right not to receive notice——at no cost to them——illustrating the estimated impact of Obamacare on monthly insurance premiums. It is not the notice, after all, which will affect Petitioners; rather, Petitioners will be affected by Obamacare, whose impact on premiums is merely to be described in the notice. Moreover, receipt of the notice

will not require CHAIN or Mellowe, or any other policyholders to whom Form 2112 will be sent, to take any action in reliance upon, or as a result of, the notice. Recipients may disagree with, disregard, or discard the notice without reading it, if they choose. Form 2112 does not, in sum, regulate, control, or govern the conduct of any policyholders, either directly or indirectly, and passively receiving such notice one time, for free, will not cause a real and immediate injury.

30. To the extent Petitioners claim to worry about CHAIN's board or others relying upon the notice given under Form 2112 in making decisions about whether CHAIN should renew a policy or change plans or cease providing health insurance to its employees, such concerns are highly speculative at best. For one reason, the notice is to be given after the policyholder has purchased a new plan or, upon renewal of existing coverage, with the renewal premium notice, so Form 2112 generally would arrive after the decision to purchase a particular policy had been made.

31. Second, whatever the notice says about Obamacare, the costs, benefits, and coverage provisions of the recipient's plan will remain exactly the same. Nothing contained in the notice could possibly make a health plan cost (or cover) more or less than it would have cost (or covered) in the absence of the notice.

32. Finally, all compliant plans will necessarily reflect the impact of Obamacare on monthly premiums. Thus, no matter what the notice says, CHAIN——whose plan will be a compliant plan under all circumstances——cannot escape the impact of Obamacare on health plan costs by changing plans. Of course, CHAIN conceivably might elect not to purchase insurance for its employees, and by that expedient avoid Obamacare's impact on premiums. If that happens, however, the notice will not be to blame. This is because, when deciding which of the available health insurance policies are suitable and affordable, the relevant health plan cost comparison is not between what a plan costs today and what a comparable plan would have cost before Obamacare; the relevant comparison is between the costs of competing plans.

33. Petitioners' alternative argument in support of their standing, i.e., that Form 2112 would deprive them of the information required to be provided under section 627.410(9)(b), fails because, first, like the manufacturer in Secure Enterprises, Petitioners cannot suffer a real and immediate injury, for purposes of standing, as a result of the absence of something (in this instance, notice of Obamacare's impact on premiums) that has never been provided, where the thing at issue is essentially a free gift which can be accepted or ignored without obligation or penalty. Further, the self-evident purpose

of Form 2112 is to <u>provide</u> the statutorily indicated information, not to <u>deprive</u> the target audience of such information. This is not a situation where the agency has refused to develop the format for providing notice or deliberately has omitted required information from the notice.

34. Indeed, Petitioners' substantive complaints about Form 2112 are not premised on the notion that the notice is silent about the specific effects of Obamacare which section 627.410(9)(b) requires to be described in the notice, but rather that the proposed notice presents the information in a format that might put Obamacare in an unflattering light, by focusing the recipient's attention on its costs. Nothing in section 627.410(9)(b), however, indicates that the notice must or should advocate in favor of Obamacare or otherwise balance the illustration of Obamacare's impact on monthly premiums with a description of the supposed benefits that Obamacare affords those who happen to be winners under the federal law.

35. Petitioners, at bottom, have failed to show that the promulgation and use of Form 2112 would result in a real and immediate injury-in-fact sufficient to support standing to maintain a proceeding under section 120.56(2).

36. Nor have Petitioners demonstrated that the notice's alleged potential to influence CHAIN's decisions implicates concerns within the zone of interest that section 627.410(9) is

designed to protect. Nothing in the statute indicates that the purpose behind it was to assist recipients of the notice in making decisions about the purchase of insurance. The statute was instead clearly designed to educate Florida citizens about Obamacare, presumably to shape public opinion concerning that controversial federal law, whose very existence remains, as of this writing, a matter of intense political debate. While information about the estimated impact of Obamacare on monthly premiums might possibly influence some notice recipient's decision regarding the purchase of health insurance, such a result would be plainly incidental to the statute's purpose. Petitioners' interest in avoiding debates and discussions with board members and others about the CHAIN's health insurance decisions specifically or Obamacare's impact on insurance premiums generally is simply outside the zone of interest at issue.

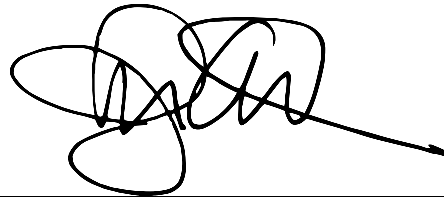
37. It is concluded, therefore, that neither CHAIN nor Mellowe has standing to challenge Form 2112 or the proposed rule adopting it by reference.

38. Because Petitioners lack standing to maintain this proceeding, the undersigned is without jurisdiction to rule on the merits of the rule challenge. See Abbott Labs. v. Mylan Pharms., Inc., 15 So. 3d 642, 651 n.2 (Fla. 1st DCA 2009).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that this case is dismissed for lack of jurisdiction.

DONE AND ORDERED this 4th day of November, 2013, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of November, 2013.

ENDNOTES

[1/] Section 627.410 provides in pertinent part as follows:

> (9) For plan years 2014 and 2015, nongrandfathered health plans for the individual or small group market are not subject to rate review or approval by the office. An insurer or health maintenance organization issuing or renewing such health plans shall file rates and any change in rates with the office as required by paragraph (6)(a), but the filing and rates are not subject to subsection (2);

paragraph (6)(b), paragraph (6)(c), or paragraph (6)(d); or subsection (7).

(a) For each individual and small group nongrandfathered health plan, an insurer or health maintenance organization shall include a notice describing or illustrating the estimated impact of PPACA on monthly premiums with the delivery of the policy or contract or, upon renewal, the premium renewal notice. The notice must be in a format established by rule of the commission. The format must specify how the information required under paragraph (b) is to be described or illustrated, and may allow for specified variations from such requirements in order to provide a more accurate and meaningful disclosure of the estimated impact of PPACA on monthly premiums, as determined by the commission. All notices shall be submitted to the office for informational purposes by September 1, 2013. The notice is required only for the first issuance or renewal of the policy or contract on or after January 1, 2014.

(b) The information provided in the notice shall be based on the statewide average premium for the policy or contract for the bronze, silver, gold, or platinum level plan, whichever is applicable to the policy or contract, and provide an estimate of the following effects of PPACA requirements:

1. The dollar amount of the premium which is attributable to the impact of guaranteed issuance of coverage. This estimate must include, but is not required to itemize, the impact of the requirement that rates be based on factors unrelated to health status, how the individual coverage mandate and subsidies provided in the health insurance exchange established in this state pursuant to PPACA affect the impact of guaranteed issuance of coverage, and estimated reinsurance credits.

2. The dollar amount of the premium which is attributable to fees, taxes, and assessments.

3. For individual policies or contracts, the dollar amount of the premium increase or decrease from the premium that would have otherwise been due which is attributable to the combined impact of the requirement that rates for age be limited to a 3-to-1 ratio and the prohibition against using gender as a rating factor. This estimate must be displayed for the average rates for male and female insureds, respectively, for the following three age categories: age 21 years to 29 years, age 30 years to 54 years, and age 55 years to 64 years.

4. The dollar amount which is attributable to the requirement that essential health benefits be provided and to meet the required actuarial value for the product, as compared to the statewide average premium for the policy or contract for the plan issued by that insurer or organization that has the highest enrollment in the individual or small group market on July 1, 2013, whichever is applicable. The statewide average premiums for the plan that has the highest enrollment must include all policyholders, including those that have health conditions that increase the standard premium.

(c) The office, in consultation with the department, shall develop a summary of the estimated impact of PPACA on monthly premiums as contained in the notices submitted by insurers and health maintenance organizations, which must be available on the respective websites of the office and department by October 1, 2013.

(d) This subsection is repealed on March 1, 2015.

[2/] A sheet of instructions is available, as well, to assist insurers in filling out the form.

[3/] The insight that economic interests can furnish the basis for standing to challenge a proposed or adopted agency rule was not original to the <u>Dental Hygienist</u> decision. <u>See</u> <u>Fla. Medical Ass'n, Inc. v. Dep't of Prof'l Reg.</u>, 426 So. 2d 1112, 1115 (Fla.

1st DCA 1983)(palpable economic injuries have long been recognized as a sufficient foundation for standing); Dep't of HRS v. Alice P., 367 So. 2d 1045, 1052 n.2 (Fla. 1st DCA 1979)(agency's cut-off of funds for certain abortions caused fewer women to seek abortions, which substantially affected abortion provider whose income declined as a result of decreased demand).

[4/] "In all fairness," wrote the court, "to deny the hygienists' standing to challenge unauthorized actions of the Board detrimental to their interests would produce the anomalous result that virtually no one would have such standing. In our view, under the facts presented here, such a result would thwart the purposes of [the statute authorizing challenges to proposed rules.]" Id. at 652.

[5/] The opinion in Secure Enterprises was not final as of the date of this Final Order. The undersigned has taken the decision into account, however, because Petitioners' standing must be determined, and at present Secure Enterprises is the court's most recent pronouncement on standing to maintain a rule challenge.

[6/] Insurers were protected, according to the court, by the reduced "financial exposure" from storm damage that (presumably) results from the widespread use of windstorm damage mitigation systems. Because insurers must discount their prices (premiums) to subsidize the purchase of others' products (windstorm protection systems), and because the insurance credits are supposed to reflect the actuarial value of the reduced loss exposure attributable to windstorm damage mitigation techniques, it is not readily apparent that insurers derive much benefit from the arrangement.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.