

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5A

Discount Medical Plan Organizations

SPONSOR(S): Farkas

TIED BILLS:

IDEN./SIM. BILLS: SB 6A

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|------------------------|-----------|---------|----------------|
| 1) Insurance Committee | 17 Y, 0 N | Tinney | Cooper |
| 2) Commerce Council | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

SUMMARY ANALYSIS

Regulation of the insurance industry in Florida is shared between the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) within DFS. The state's Chief Financial Officer (CFO) heads DFS while the Governor and the three Cabinet members act as the collegial head of OIR. The primary duty assigned to OIR is the licensure and approval of rates for insurance companies. The Governor and Cabinet, as head of OIR, are responsible for approving administrative rules of the Office.

Within the past 10-12 years, business entities known as discount medical plan organizations have begun offering discounts for specified health care services. These organizations are popularly referred to as DMPOs (pronounced "dimpos"). Once a consumer joins a DMPO, the consumer typically receives an ID card, literature outlining the services discounted by the DMPO, a list of participating providers, telephone numbers, and other similar information.

Currently, more than 20 million Americans are served by DMPOs, including at least 1 million Florida households (more than 2 million citizens). DMPOs are not insurance agencies under current law and thus, were not subject to regulation under the Florida Insurance Code until the Legislature authorized OIR to regulate DMPOs, effective January 1, 2005, as part of ch. 2004-297, LOF.

OIR began implementing the licensure program for DMPOs during the summer of 2004. This implementation includes the formulation and adoption of administrative rules to regulate DMPOs, as well. The application and other rules have not yet received final approval from the Financial Services Commission, i.e., the Governor and Cabinet. Currently, OIR is scheduled to appear before the Financial Services Commission at its February 2005 meeting. All rules, other than the licensure application, will be presented to the Commission for approval at the February 2005 meeting.

Based upon the current schedule of OIR to finalize rules for the licensure of DMPOs, it is not feasible for the new regulations to be adopted by January 1, 2005, the date specified in the 2004 law. The bill postpones the date by which DMPOs would be required to submit licensure information to OIR from January 1, 2005, until March 31, 2005. There is no fiscal impact to the state resulting from the bill; it takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0005b.IN.doc

DATE: 12/13/2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|-------|------|-------|
| 1. Reduce government? | Yes[] | No[] | N/A[] |
| 2. Lower taxes? | Yes[] | No[] | N/A[] |
| 3. Expand individual freedom? | Yes[] | No[] | N/A[] |
| 4. Increase personal responsibility? | Yes[] | No[] | N/A[] |
| 5. Empower families? | Yes[] | No[] | N/A[] |

NOTE: The Speaker of the House has adopted new House Principles to guide members in evaluating legislation during the 2002-2004 Legislature. These principles are:

Provide limited government,
Ensure lower taxes,
Safeguard individual liberty,
Promote personal responsibility,
Empower families, and
Maintain public security.

The bill only expands the effective date of a law enacted by the 2004 Legislature; the six principles do not appear to apply to this bill.

B. EFFECT OF PROPOSED CHANGES:

Financial Services Commission: The Office of Insurance Regulation (OIR)

In Florida, the Legislature has created a bifurcated regulatory structure for the insurance industry. Both the Department of Financial Services (DFS) and the Financial Services Commission (the Commission) are assigned the powers and duties of the former Department of Insurance related to the regulation of insurers and other similar entities. The Financial Services Commission consists of the Governor and the three Cabinet members, i.e., the Attorney General, Chief Financial Officer, and Commissioner of Agriculture. Although the Commission is administratively housed within DFS, the law is clear that such placement is for administrative purposes only; the Commission is not subject to control or limitation by DFS.

The Financial Services Commission oversees the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR). Each Office is headed by a director who is appointed by, and serves at the pleasure of, the commission, with a requirement that both the Governor and the CFO concur in appointing or removing the director of either of the two Offices. The Commission and the directors of each Office share responsibility for final agency action. The Commission acts as agency head for purposes of rulemaking under ss. 120.536-120.565, F.S., while the directors act as agency heads for other final agency actions under chapter 120, F.S., the Administrative Procedure Act, for all areas within the regulatory authority of their respective Offices.

Under current law in s. 20.121, F.S., OIR is directed to license and regulate insurance companies, multiple-employer welfare arrangements, commercial self-insurance funds (including workers' compensation group self-insurance funds), viatical settlement providers and contracts, purchasing groups and risk retention groups, fraternal benefit societies, warranty associations, prepaid limited health service organizations, health maintenance organizations, prepaid health clinics, legal expense corporations, and continuing care facilities.

OIR also is directed by law to conduct financial and market conduct examinations of insurers; regulate the financial status and solvency of insurers, including administrative supervision of insurers; license and regulate insurance administrators, service companies, and premium finance companies and agreements; approve eligible surplus lines insurers; approve policy forms and rates for insurers; approve plans of operation and regulate joint underwriting associations (not including appointment of board members); approve donor annuity agreements; receive reports of claims information from insurers; and approve local government self-insurance plans for health coverage.

Discount Medical Plan Organizations (DMPOs)

Within the past 10-12 years, business entities have begun offering discounts for specified health care services; these entities are popularly referred to as DMPOs (pronounced "dimpos"). DMPOs have emerged in part to fill the gaps for the many Americans who either are uninsured for health benefits, or who are underinsured. Once a consumer joins a DMPO, the consumer typically receives an ID card, literature outlining the services discounted by the DMPO, a list of participating providers, telephone numbers, and other similar information.

DMPOs traditionally have specialized in offering discounts for five ancillary types of health care services: vision, hearing, chiropractic, podiatric, and dental care. Recently, however, DMPOs also have begun offering discounts for more traditional health care services, including physician care, hospitalization, prescription drugs, nurse medical information lines, vitamins, and emergency care for members who are out of town.

In 2002, the five major DMPOs in the U.S. formed the Consumer Health Alliance (the Alliance) in Dallas, TX to represent DMPOs before state and federal regulatory bodies. The Alliance also serves as a clearinghouse for information to consumers and other parties interested in purchasing discounted health care services. Literature provided by the Alliance states that it ". . . is the national trade association of the discount health care industry." Representatives of the Alliance assert that the five Alliance members sell some type of discount medical plan throughout the country.

Information provided by the Alliance indicates that more than 20 million Americans currently are served by DMPOs. Representatives of the Alliance estimate that at least 1 million Florida households (more than 2 million citizens) currently participate in a discount medical program. Representatives of the Alliance indicate that the consumer monthly cost for a DMPO that provides only one type of benefit or discounted service ranges from \$15-20; this cost generally covers an entire family, rather than a single individual.

In many ways, a DMPO operates similarly to a preferred provider organization (PPO). That is, a DMPO may contract with individual service providers, such as hearing specialists, optometrists, chiropractors, podiatrists, and dentists, for example, to provide specified services for a predetermined price. The DMPO estimates the number of monthly clients or requests for services a provider may anticipate, and the service provider indicates the price at which services can be provided based upon the estimated volume of patients.

Health care service providers tend to participate with DMPOs because the service providers receive payment from the DMPO member at the time the service is provided. The service provider is not required to file a claim for payment of services, so the provider bears little risk for agreeing to a fixed fee for services provided to DMPO members.

Representatives of the Alliance state that most of the major DMPOs, including the five Alliance members, sell their services at retail prices to individual families of consumers as well as selling their benefits at wholesale prices to organizations such as AARP, AAA Motor Club, credit unions, banks, credit card merchants, and health insurers, among other entities. Wholesale purchasers then resell

DMPOs to their respective members or consumers or offer the discount card at no charge as a member benefit.

DMPOs are not insurance agencies under current law and thus, were not subject to regulation under the Florida Insurance Code until the Legislature authorized OIR to regulate DMPOs, effective January 1, 2005, as part of ch. 2004-297, LOF. Some DMPOs also are licensed to sell insurance, both in Florida and elsewhere in the country, however.

Consumer Concerns about DMPOs

DFS operates a toll-free consumer information and complaint line for questions regarding insurance agents, companies, policies, and other similar matters. DFS reports that it has received “thousands” of telephone inquiries relating to DMPOs in the past 10-12 years. Specifically, DFS reports that its consumer information staff receives an estimated 1,000 calls per month about DMPOs. Many of these calls are requests for information, but an estimated 39 calls per month report specific consumer complaints or problems with DMPOs which DFS staff investigates. These numbers represent an estimated 12,000 calls regarding DMPOs annually, of which approximately 468 calls per year result in investigations by DFS or OIR staff into specific complaints.

2004 Legislative Action for Regulating DMPOs

During the 2004 regular legislative session, the Legislature enacted ch. 2004-297, LOF, a law addressing many facets of health care services. Among the provisions of the 2004 law is a regulatory structure authorizing OIR to license and oversee DMPOs operating within Florida. Regulation of DMPOs by OIR becomes effective January 1, 2005.

The law creates part II of chapter 636, F.S. entitled “Discount Medical Plan Organizations”. A discount medical plan is defined as a “business arrangement or contract in which a person, in exchange for fees, dues, charges, or other consideration, provides access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. Similarly, the 2004 law provides additional definitions for plan organizations, marketers, providers, provider networks, medical services and members.

The new law requires DMPOs to be incorporated in Florida and licensed through OIR prior to operating in the state. DMPOs are required to submit an application packet approved by the Financial Services Commission. The application packet requires corporation articles and bylaws, background and biographical statements on DMPO principals, fingerprint cards, audited financial statements, and other similar information. DFS reports that the regulatory structure for DMPOs is similar to the licensing process for Specialty Insurers. Licenses for DMPOs, which cost \$50, are valid for 1 year.

OIR is authorized to examine records and investigate DMPOs in accordance with current law governing investigations by OIR. An affected DMPO is required by law to pay any costs incurred during an investigation. Under the 2004 law, a DMPO is prohibited from using certain insurance terminology in its marketing and advertising. The law prohibits restrictions of free access by members to providers with whom the discount medical plan organization has contracted.

A DMPO is prohibited from making payments to its providers and from collecting fees for services from plan members. The law authorizes a DMPO to charge its members a monthly fee and a one-time processing fee, however, if the DMPO collects monthly fees in advance, it must, in case of cancellation by either party, make a pro rata refund to the member.

The law requires a DMPO to make five disclosures to prospective and actual members: (1) to specify that the plan is not a health insurance policy, (2) to state that the plan does not make payments to providers, (3) to explain that the plan provides discounts to medical services, (4) to clarify that the

member is responsible for the full amount of the discounted fee, and (5) to provide the corporate name and location of the discount medical plan organization.

Under the 2004 law, a DMPO is required to obtain a written provider agreement with every individual provider who offers discounts under its discount medical plans. The provider agreement must list the services and discounts being offered and must include an agreement that the provider will not charge members in excess of the discount.

The law requires DMPOs to file their forms and rates with OIR. If a DMPO charges its members an amount exceeding \$30 per month or \$360 annually, the charges must be pre-approved by OIR.

Each licensed DMPO must file an annual report with OIR including its audited financial statements, a listing of principals, the number of plan members, and other information specified by OIR and the Financial Services Commission.

Under the 2004 law, a DMPO may be penalized to file the required annual report in a timely manner. OIR may levy a fine up to \$500 per day, for the first 10 days of failure to file, and up to \$1,000 for each day after the first 10 days of failure to file, up to a maximum fine of \$50,000. A DMPO is prohibited from enrolling new members until the annual report is submitted.

The law specifies that a DMPO possess a minimum capital reserve of at least \$150,000 in order to receive a license. OIR is authorized to suspend or revoke the license of a DMPO if it violates the law or if OIR determines that the DMPO poses a threat to public welfare.

A DMPO is required to provide OIR at least 30 days notice before changing its name or address. Further, the law requires DMPOs to maintain an up-to-date web page with a listing of all its providers. The DMPO web page address must be included on all marketing materials and discount cards.

The 2004 law assigns responsibility and financial responsibility to DMPOs for any fraudulent or illegal acts of its marketers. The law also requires a licensed DMPO to deposit at least \$35,000 in trust with OIR, in order to protect the plan members. The Financial Services Commission is authorized to adopt rules to implement the licensure of DMPOs.

Finally, the 2004 law appropriated \$169,069 from the Insurance Regulatory Trust Fund to OIR, and authorized three full-time positions, to regulate DMPOs.

Rulemaking: Current Status

In July and August, and again in October, staff of OIR invited representatives of several DMPOs currently operating in Florida to Tallahassee to familiarize OIR with DMPO operations, benefits, and members. Following these meetings, OIR began drafting rules for regulating DMPOs.

Rule adoption and other administrative actions of executive agencies are governed by chapter 120, F.S., the Administrative Procedure Act (the Act). The Act specifies time periods between proposing rules, affording public input, notifying the public that the rules are pending adoption, and final adoption of the rules. An agency must provide public notice of each step in the rule-adoption process.

OIR began implementing the licensure program for DMPOs during the summer of 2004. By early October, DFS had made available an application form for DMPO licensure on its website, although the application has not yet received final approval from the Financial Services Commission. Similarly, OIR is in the process of adopting other rules to implement the regulatory structure adopted by the 2004 Legislature. Currently, OIR is scheduled to appear before the Governor and Cabinet, i.e., the Financial Services Commission, at its February 2005 meeting. All rules, other than the licensure application, will be presented to the Commission for approval at the February 2005 meeting.

OIR expects to advertise notice of a public workshop regarding the DMPO licensure application soon. In the meantime, the Office will continue to collect licensure information on the proposed form that is available on the DFS website.

The Legislative Joint Administrative Procedures Committee (JAPC)

JAPC is a joint legislative committee assigned to oversee the rulemaking activities of executive agencies. As such, JAPC carefully reviews each rule proposed by an agency to ensure that the rule complies with current law and the legislative authority to implement a law or program. JAPC also compares proposed rules to the law to ensure that an agency does not exceed the authority granted by law.

In late fall 2004, Senator Rudy Garcia, chair of the Senate Banking and Insurance Committee, wrote to JAPC requesting an opinion regarding the practicality of OIR implementing the licensure and regulation of DMPOs by January 1, 2005. F. Scott Boyd, Executive Director and General Counsel for JAPC responded to Senator Garcia by letter dated December 2, 2004.

In his response, Mr. Boyd stated, “[i]n my judgment, as a practical matter, it is not possible to have licensure of discount medical plan organizations in effect on January 1, 2005, [in a manner] consistent with the provisions of that law as now written.” Mr. Boyd explained his reasoning as follows:

For example, consistent with s. 636.204(2), F.S., applicants are required to submit an application on a form prescribed by the [Financial Services] Commission. It is impossible for any applicant to meet this requirement until a form is prescribed. The [C]ommission has no statutory authority to prescribe a form for such licensure until January 1, 2005. Similarly, the [C]ommission is required to prescribe a biographical statement form. The authority to require additional information as part of the application . . . similarly does not arise until January 1, 2005.

Based upon the information provided by JAPC to Senator Garcia, it appears that it is not feasible for OIR to implement its regulation of DMPOs by January 1, 2005, the date specified in the 2004 law.

Changes Proposed by the Bill

The date by which DMPOs would be required to submit licensure information to OIR is postponed from January 1, 2005, until March 31, 2005.

C. SECTION DIRECTORY:

Section 1 delays the effective date of regulating DMPOs by OIR from January 1, 2005 until March 31, 2005.

Section 2 provides the act takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The following data is based on information provided by staff of the Office of Insurance Regulation dated December 8, 2004.

For OIR there is not any additional impact and there will be no fiscal impact on OIR with a compliance date change of March 31, 2004.

In ch. 2004-297, LOF, a comprehensive health care law enacted in the 2004 regular legislative session, \$169,069 was appropriated to the Office of Insurance Regulation with authority for OIR to fill three regulatory full-time equivalent (FTE) positions for the purpose of regulating DMPOs. The head of OIR has allocated those three positions to each of the applicable units at OIR that will be overseeing DMPOs.

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:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

According to OIR, chapter 2004-297, LOF, the law that authorized OIR to regulate DMPOs, provided sufficient rulemaking authority to the Financial Services Commission to implement the new regulatory

program. No additional rulemaking authority would be required by postponing the effective date of the new regulations from January 1, 2005 until March 31, 2005.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|-------|------|-------|
| 1. Reduce government? | Yes[] | No[] | N/A[] |
| 2. Lower taxes? | Yes[] | No[] | N/A[] |
| 3. Expand individual freedom? | Yes[] | No[] | N/A[] |
| 4. Increase personal responsibility? | Yes[] | No[] | N/A[] |
| 5. Empower families? | Yes[] | No[] | N/A[] |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

E. FISCAL IMPACT ON STATE GOVERNMENT:

3. Revenues:

4. Expenditures:

F. FISCAL IMPACT ON LOCAL GOVERNMENTS:

3. Revenues:

4. Expenditures:

G. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

H. FISCAL COMMENTS:

III. COMMENTS

D. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

E. RULE-MAKING AUTHORITY:

F. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES