

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1021 Florida Insurance Code Exemption for Nonprofit Religious Organizations
SPONSOR(S): Insurance & Banking Subcommittee; Health Innovation Subcommittee; Altman and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 660

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N, As CS	Grabowski	Crosier
2) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Peterson	Luczynski
3) Health & Human Services Committee	17 Y, 1 N	Grabowski	Calamas

SUMMARY ANALYSIS

A health care sharing ministry is an organization that facilitates the sharing of health care expenses among individuals with similar and sincerely held beliefs. These organizations resemble insurance in that members pay monthly membership fees and submit claims when they incur medical bills. However, these organizations are not health insurers in the traditional sense.

Florida law refers to health care sharing ministries as “nonprofit religious organizations.” Section 624.1265, F.S. provides nonprofit religious organizations that meet certain conditions with an explicit exemption from the Florida Insurance Code. This exemption has existed since 2008.

The Patient Protection and Affordable Care Act of 2010 (PPACA) established an individual coverage mandate applicable to most Americans. However, the law also provides an exemption from the coverage mandate to participants in health care sharing ministries.

CS/CS/HB 1021 amends s. 624.1265, F.S., to more closely reflect the federal requirements governing operation of health care sharing ministries. The bill allows for participation by individuals “who share a common set of ethical or religious beliefs.” This change brings the Florida statute into alignment with PPACA, and also expands the opportunity for participation by removing the requirement that participants adhere to the same religion.

The bill also requires nonprofit religious organizations that provide health care sharing services to specify contribution amounts to prospective participants and to report monthly to participants the amount of qualified needs actually funded in the previous month in accordance with criteria set by the organization. The bill establishes a new audit requirement for these organizations and directs such entities to coordinate an annual audit with an independent certified public accounting firm.

CS/CS/HB 1021 also modifies the standard disclaimer that must be provided by nonprofit religious organizations to prospective participants. The disclaimer indicates that these organizations are not insurers and are exempt from the Florida Insurance Code.

The bill has no fiscal impact to state or local government.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Health Care Sharing Ministries

A health care sharing ministry is an organization that facilitates the sharing of health care expenses among individuals with similar and sincerely held beliefs.¹ These organizations resemble insurance in that members pay monthly membership fees and submit claims when they incur medical bills.² However, these organizations are not health insurers in the traditional sense; it is unclear whether they maintain cash reserves and they do not guarantee payment of claims. Some health care sharing ministries act as clearinghouses to allow one or more participants to directly pay the medical expenses of another participant. Other health care sharing ministries receive contributions from members, which are then pooled and held in trust for future reimbursements to eligible participants to pay authorized medical expenses.³

The federal Patient Protection and Affordable Care Act of 2010 (PPACA)⁴ defines a “health care sharing ministry” as an organization:

- Which is a non-profit that is tax-exempt under federal law;
- Members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the state in which a member resides or is employed;
- Members of which retain membership even after they develop a medical condition;
- Which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999; and,
- Which conducts an annual audit performed by an independent certified public accounting firm in accordance with generally accepted accounting principles that is made available to the public upon request.⁵

PPACA grants organizations meeting these criteria special status.⁶ PPACA created an individual coverage mandate – meaning that most individuals must obtain health insurance or pay a tax penalty to the federal government.⁷ However, individuals participating in a health care sharing ministry are exempt from this penalty and are considered to have met the individual mandate by virtue of their participation.⁸

Nearly half the states in the U.S. have provided these organizations with wholesale exemptions (hereinafter, “safe harbors”⁹) from state insurance laws.¹⁰

¹ See, e.g., Alliance of Health Care Sharing Ministries, <http://www.healthcaresharing.org/about-us/> (last accessed December 29, 2017).

² Timothy Stoltzfus Jost, *Loopholes in the Affordable Care Act: Regulatory Gaps and Border Crossing Techniques and How to Address Them*, 5 St. Louis U. J. Health L. & Pol'y 27 (2011). Available at https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1265&context=wlu_fac (last accessed January 12, 2018).

³ *Id.*

⁴ Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148. On March 30, 2010, PPACA was amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

⁵ 26 US Code 5000A(d)(2)(B).

⁶ *Supra* note 4.

⁷ *Supra* note 5.

⁸ U.S. Internal Revenue Service, “Individual Shared Responsibility Provision – Exemptions: Claiming or Reporting,” Available at <https://www.irs.gov/affordable-care-act/individuals-and-families/aca-individual-shared-responsibility-provision-exemptions> (last accessed January 15, 2018).

⁹ A safe harbor law states that certain types of behavior or activities are not considered violations of law as long as they fall within certain parameters.

¹⁰ Benjamin Boyd, *Health Care Sharing Ministries: Scam or Solution?*, 26 J.L. & Health 219 (2013).

Health Care Sharing Ministry Regulation in Florida

The regulatory oversight of insurance companies is generally reserved to the states. In Florida, the Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the Florida Insurance Code.^{11,12}

Florida has provided a safe harbor to health care sharing ministries since 2008, expressly stating that such organizations are exempt from regulation as insurers¹³ by the OIR.¹⁴ Section 624.1265, F.S., outlines criteria that must be met in order for an entity to be defined as a “nonprofit religious organization” for purposes of the exemption.¹⁵ An entity seeking this designation must:

- Qualify as a non-profit organization under Title 26, s. 501 of the Internal Revenue Code;
- Limit its participants to members of the same religion;
- Act as an organizational clearinghouse for information between participants who have financial, physical, or medical needs and participants who have the ability to pay for the benefit of those participants who have financial, physical, or medical needs;
- Provide for the financial or medical needs of a participant through payments directly from one participant to another participant; and,
- Suggest amounts that participants may voluntarily give with no assumption of risk or promise to pay among the participants or between the participants.¹⁶

In addition to these requirements, the law gives nonprofit religious organizations certain authority to manage membership. These organizations may establish qualifications of participation relating to the health of a prospective participant.¹⁷ For example, nonprofit religious organizations may exclude individuals with pre-existing or complex health conditions from participation. This practice is known as medical underwriting.¹⁸ Nonprofit religious organizations also may cancel the membership of a participant when he or she indicates unwillingness to participate by virtue of failing to make a payment to another participant for a period in excess of 60 days.¹⁹

Lastly, current law directs nonprofit religious organizations to provide each participant with written notice indicating that the organization is not an insurance company and is not subject to the regulatory requirements or consumer protections of the Florida Insurance Code.²⁰

Available at <http://engagedscholarship.csuohio.edu/jlh/vol26/iss2/4> (last accessed January 13, 2018).

¹¹ S. 20.121(3)(a)1., F.S. The OIR’s commissioner is the agency head for purposes of final agency action, and its rulemaking body is the Financial Services Commission (the Governor and the Cabinet).

¹² The Florida Insurance Code consists of Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

¹³ Over the years, health care sharing ministries have been involved in litigation with state regulators over whether their services are “insurance” for purposes of state insurance codes. See Benjamin Boyd, *Health Care Sharing Ministries: Scam or Solution*, 26 J.L. & Health 219 (2013) pp. 233-239 (discussing regulatory issues between health care sharing ministries and various state regulators).

¹⁴ S. 624.1265, F.S.

¹⁵ The Florida Insurance Code refers to “nonprofit religious organizations” and not “health care sharing ministries”. In practice, the terms are equivalent.

¹⁶ S. 624.1265(1), F.S.

¹⁷ S. 624.1265(2), F.S.

¹⁸ See, for example, Gary Claxton, et al. “Pre-existing Conditions and Medical Underwriting in the Individual Insurance Market Prior to the ACA,” Henry J. Kaiser Family Foundation, December 12, 2016. Available at <https://www.kff.org/health-reform/issue-brief/pre-existing-conditions-and-medical-underwriting-in-the-individual-insurance-market-prior-to-the-aca/> (last accessed January 13, 2018).

¹⁹ S. 624.1265(2), F.S.

²⁰ S. 624.1265(3), F.S.

Effect of Proposed Changes

CS/CS/HB 1021 amends S. 624.1265, F.S., to more closely reflect the PPACA. The bill amends the participation requirements associated with nonprofit religious organizations and modifies disclaimers that must be provided to participants.

From a membership perspective, the bill allows for participation by individuals “who share a common set of ethical or religious beliefs”. Under current law, participation is limited to individuals “of the same religion,” which is a more restrictive standard. This change brings the Florida statute into alignment with PPACA, and also expands the opportunity for participation.

Currently, s. 624.1265, F.S., dictates that the nonprofit religious organizations act as an organizational clearinghouse for information between participants who have financial, physical, or medical needs and participants who have the ability to pay for the benefit of those participants. The bill replaces the term “organizational clearinghouse” with the term “facilitator” to require that the nonprofit religious organization act as a facilitator among participants who have financial, physical, or medical needs²¹ to assist those with financial or medical needs in accordance with criteria established by the nonprofit religious organization. There does not seem to be a substantive difference between these terms.

The bill expands existing law to clarify that nonprofit religious organizations may facilitate the sharing of health costs either by pooling contributions from participants or directing payments from one participant to another.

The bill requires that nonprofit religious organizations set contribution levels for participants and to report monthly to participants the amount of qualified needs actually funded in the previous month in accordance with criteria set by the organization.

The bill establishes an annual audit requirement for nonprofit religious organizations that does not currently exist in Florida law. It requires a nonprofit religious organization that provides medical cost sharing services to arrange for an annual audit to be performed by an independent certified public accounting firm in accordance with generally accepted accounting principles. The findings of this audit must be made available to the public by providing a copy upon request or by posting on the nonprofit religious organization’s website.

Lastly, the bill amends the disclaimer that must be provided to participants, which explicitly reflects the nonprofit religious organization’s exemption from the Florida Insurance Code including its consumer protections.

The bill has an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 624.1265, F.S., relating to nonprofit religious organization exemption.

Section 2: Provides for an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²¹ The bill omits the term “physical” from the list of needs that must be addressed by nonprofit religious organizations under the statute. The effects of this change are not entirely clear.

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:

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2018, the Health Innovation Subcommittee adopted a strike-all amendment that made several modifications to the bill. The strike-all amendment:

- Reinstated the term “physical” in the list of conditions included in s. 624.1265(1)(c), F.S., which requires nonprofit religious organizations to consider such needs for purposes of financial assistance;
- Allowed nonprofit religious organizations to facilitate medical cost sharing through either the pooling of contributions from participants or direct payments from one participant to another; and,
- Revised the universal disclaimer that must be provided by nonprofit religious organizations to prospective participants to indicate that participation in a medical cost sharing agreement does not guarantee coverage of health care expenses. This disclaimer specifies that services provided by a nonprofit religious organization do not constitute health insurance and are not regulated by the Florida Insurance Code.

The bill was reported favorably as a committee substitute.

On January 23, 2018, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment made a series of conforming and technical changes, which do not change the effect of the bill.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.