

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 660

INTRODUCER: Senator Brandes

SUBJECT: Florida Insurance Code Exemption for Nonprofit Religious Organizations

DATE: January 24, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------------|----------------|-----------|--------------------|
| 1. | <u>Billmeier</u> | <u>Knudson</u> | <u>BI</u> | Favorable |
| 2. | <u>Stallard</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 3. | <u>Billmeier</u> | <u>Phelps</u> | <u>RC</u> | Pre-meeting |

I. Summary:

SB 660 substantially conforms the statute that governs health care sharing ministries to model legislation of the American Legislative Exchange Council,¹ federal law, and the common practices of these ministries. A health care sharing ministry is an alternative to health insurance through which people of similar beliefs assist each other in paying for health care.

One area addressed by the bill is the list of requirements that a health care sharing ministry must meet to be exempt from the laws regulating insurers. New requirements are added to the list and other requirements in the list are modified. The additions require a ministry to:

- Have an annual, independent audit conducted according to generally accepted accounting principles; and
- Provide monthly statements to participants of the total dollar amount of qualified needs actually shared in the previous month in accordance with the ministry's criteria.

A revised requirement allows for flexibility in how medical costs may be shared among ministry participants. Current law requires participant-to-participant payment, but the bill also allows payments to be made from a common fund of participant-donated money.

Additionally, the bill removes language from the law that expressly states that a ministry may exclude participants who have pre-existing conditions. Finally, the bill requires a ministry to give much clearer notice to prospective participants that the ministry is not an insurer.

¹ See American Legislative Exchange Council, *Health Care Sharing Ministries Tax Parity Act*, <https://www.alec.org/model-policy/health-care-sharing-ministries-tax-parity-act/> (last visited Jan. 16, 2018).

II. Present Situation:

Overview

A health care sharing ministry is an alternative to health insurance through which people of similar ethical or religious beliefs assist each other in paying for health care. Some health care sharing ministries act as a clearinghouse to allow one or more members to directly pay the medical expenses of another member. Other health care sharing ministries receive funds from members and use those funds to pay authorized medical expenses when members request payment. The first health care sharing ministry was established in 1981.²

The Florida Insurance Code will exempt a ministry, which it refers to as a “nonprofit religious organization,”³ from the code’s provisions governing health insurers if the ministry meets several criteria set forth in the code. These requirements for a ministry’s exemption from the code also appear to serve as regulations for these organizations.

Florida Law

Since 2008, Florida law has expressly exempted health care sharing ministries that meet statutory criteria from being regulated as insurers. Specifically, a health care sharing ministry qualifies as a “nonprofit religious organization” that is exempt from the requirements of this state’s insurance code if it:

- Qualifies under federal law as tax-exempt;
- Limits its participants to members of the same religion;
- Acts 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;
- Provides for the financial or medical needs of a participant through payments directly from one participant to another participant; and
- Suggests amounts that participants may voluntarily give with no assumption of risk or promise to pay among the participants or between the participants.⁴

Though the code exempts qualified ministries from its requirements of insurers, it nonetheless regulates these ministries in a limited sense. Particularly, the code requires each ministry to give prospective participants notice that it is not an insurer and that it is not subject to regulation under the insurance code.⁵ Moreover, the code expressly states that it “does not prevent” an organization that meets the qualifying criteria from deciding which pre-existing conditions will disqualify a prospective participant or from canceling the membership of a participant who fails to make a payment for another participant for a period in excess of 60 days.

² See Benjamin Boyd, *Health Care Sharing Ministries: Scam or Solution*, 26 J.L. & Health 219, 229 (2013).

³ The more descriptive and widely used term “health care sharing ministry” will continue to be used generally throughout this analysis for continuity and to avoid confusion.

⁴ See s. 624.1265(1), F.S.

⁵ See s. 624.1265(3), F.S.

Federal Law

Federal law pertains to health care sharing ministries in two ways. As mentioned above, state law requires a ministry to qualify as tax exempt under federal tax law. Also, though federal law requires people to have health insurance or pay a penalty,⁶ it exempts members of a health care sharing ministry, which it defines as an organization:

- Which 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 which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.⁷

III. Effect of Proposed Changes:

Overview

The bill substantially conforms the statute that governs health care sharing ministries to model legislation of the American Legislative Exchange Council, federal law, and the common practices of these ministries.

The bill changes the list of requirements that a ministry must meet to be exempt from regulation as an insurer. Additionally, the bill removes language from the law which expressly states that a ministry may exclude participants who have pre-existing conditions. Finally, the bill requires each ministry to give a much clearer notice to prospective participants that the ministry is not an insurer.

Requirements for a Health Care Sharing Ministry to be Exempt from the Insurance Code

The Florida Insurance Code regulates insurance organizations that operate in this state. To avoid being subject to regulation under the code as an insurer, a health care sharing ministry must meet each of a list of criteria set forth in the code. The bill amends several of these criteria.

Current law requires a nonprofit religious organization to limit participation to “members of the same religion.” The bill modifies this language to require a ministry to limit participation to those who “share a common set of ethical or religious beliefs.” This change allows a nonprofit religious organization to welcome persons of different religions, or even of no religion. Additionally, this change conforms the code to language in federal law.

⁶ This provision is known as the “individual mandate.” The individual mandate was recently repealed, but the repeal is not effective until 2019. See Margot Sanger-Katz, *Requiem for the Individual Mandate*, N.Y. TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/upshot/individual-health-insurance-mandate-end-impact.html>.

⁷ See 26 U.S.C. 5000A(d)(2)(B)(ii).

Further, the code currently requires a health care sharing ministry to 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 “organizational clearinghouse” with “facilitator” and provides that the nonprofit religious organization must act as a facilitator among participants who have financial or medical needs⁸ to assist those with financial or medical needs in accordance with criteria established by the nonprofit religious organization. This change conforms the code to the model act.

The code currently requires a nonprofit religious organization to provide for financial or medical needs by direct payments from one participant to another. The bill allows direct payments to participants but does not require them. Thus, payments may pass through the organization or through a fund to a participant.

Under the bill, a health care sharing ministry must, on a monthly basis, provide the participants “the amount of qualified needs actually shared in the previous month in accordance with criteria established by the” health care sharing ministry. The code does not currently include this provision, which requires a ministry to be more transparent and more accountable to its participants.

Finally, the bill creates an annual audit requirement that does not exist in the code, but appears in the model act and federal law. Particularly, a health care sharing ministry must conduct an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles. Moreover, the audit must be made available to the public by providing a copy upon request or by posting it on the ministry’s website.

Notice

One of several ways in which the bill increases consumer protection has to do with the notice that a health care sharing ministry is required to provide to prospective members. The notice required by the bill is more explicit and more thorough than that required in current law. Moreover, the bill requires this notice to read, “in substance”:

The organization facilitating the sharing of medical expenses is not an insurance company, and neither its guidelines nor plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant is compelled by law to contribute toward your medical bills. As such, participation in the organization or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payments for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills.

⁸ Section 624.1265, F.S., uses “financial, physical, or medical” needs. The bill eliminates “physical” from the statute. It is not clear whether the removal “physical” from the statute is a substantive change. The model act and similar laws from other states do not include it.

Effective Date

The bill takes effect July 1, 2018.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The fiscal impact on the private sector should be minimal, as the changes made by the bill are relatively minor and health care sharing ministries have been operating under the requirements set forth in the Insurance Code since 2008.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.1265 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
