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:	CS/SB 1520
INTRODUCER:	Banking and Insurance Committee and Senator Bean
SUBJECT:	Direct Health Care Agreements
DATE:	April 16, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Lloyd	Brown	HP	**Favorable**
3.	Johnson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1520 expands the scope of the current exemption from the Florida Insurance Code (code) for direct primary care agreements to apply to all direct health care agreements for specified health care practitioners, which would include dentists. The bill removes regulatory uncertainty as to whether such providers may use a direct contracting model without the possibility of such agreements being considered insurance products.

The bill does not impact state revenues or expenditures.

The effective date of the bill is July 1, 2019.

II. Present Situation:

Direct Contracting with Health Care Providers

Direct primary care is a type of direct contracting that eliminates third party payers from the provider-patient relationship.[1] Through a direct contractual agreement with a health care

[1] The direct primary care or direct contracting model is compared to the concierge practice model. However, while both provide access to physician services for a periodic fee, the concierge model generally continues to bill third party payers, such as insurers on a fee for service basis, in addition to the collection of membership and retainer fees. *See* Phillip M. Eskew and Kathleen Klink, *Direct Primary Care: Practice Distribution and Cost Across the Nation*, Journal of the Amer. Bd. of

provider, a patient generally pays a monthly retainer fee, on average $77 per individual,[2] to the health care provider for defined primary care services, such as office visits, preventive care, annual physical examination, and routine laboratory tests.

After paying the monthly fee, a patient can access all services under the agreement at no extra charge based on the terms of the agreement. Typically, direct contracting practices provide routine preventive services, screenings, or tests, like lab tests, mammograms, pap screenings, and vaccinations. A direct health care provider agreement can be designed to address most health care issues, including women's health services, pediatric care, urgent care, wellness education, and chronic disease management. A direct contracting agreement may also include specialty physicians.

Individuals and employers may enter into such direct contracting agreements. A recent Willis Towers Watson survey found that only six percent of employers were contracting directly with providers in 2017, but 22 percent are considering it for 2019 to obtain greater savings for the delivery of health care services.[3]

Some of the potential benefits of the direct contracting model for providers include reducing patient volume, minimizing administrative and staffing expenses, increasing time with patients, and increasing revenues. The direct contracting provider eliminates administrative costs associated with filing and resolving insurance claims. Existing direct primary care practices claim to reduce expenses by more than 40 percent by eliminating administrative staff resources associated with third-party costs.[4]

In 2014, the American Academy of Private Physicians (AAPP) estimated that approximately 5,500 physicians operate under some type of direct financial relationship with their patients outside of standard insurance coverage. According to the AAPP, that number has increased around 25 percent per year since 2010.[5] The Direct Primary Care Coalition has adopted model state legislation for direct primary care agreements (DPC).[6] As of March 1, 2019, 25 states have adopted some type of direct contracting agreement provisions, such as DPC legislation, which defines a DPC agreement as an agreement between a primary care physician and a patient, and such agreement is outside the scope of state insurance regulation.[7] Missouri enacted a law in 2015 which provides that a medical retainer agreement was an agreement between a licensed

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Family Med. (Nov.-Dec. 2015) Vol. 28, No. 6, p. 797, *available at:* http://www.jabfm.org/content/28/6/793.full.pdf (last viewed March 28, 2019).

[2] *Id.* A study of 141 DPC practices found the average monthly retainer fee to be $77.38. Of the 141 practices identified, 116 (82 percent) have cost information available online. The average monthly cost to the patient was $93.26 (median monthly cost, $75.00; range, $26.67 to $562.50 per month) for these 116 practices. Of the 116 DPCs noted, 36 charged a one-time enrollment fee and the average enrollment fee was $78. Twenty-eight of 116 DPCs charged a fee for office visits in addition to the retainer fee, and the average visit fee was $16.

[3] Willis Towers Watson, *Best practices in health care employer survey* (2018), available at https://www.willistowerswatson.com/-/media/WTW/PDF/Insights/2018/01/2017-best-practices-in-health-care-employer-survey-wtw.pdf (last viewed Mar. 11, 2019).

[4] Lisa Zamosky, Direct-Pay Medical Practices Could Diminish Payer Headaches, MEDICAL ECONOMICS (Apr. 24, 2014).

[5] David Twiddy, *Practice Transformation: Taking the Direct Primary Care Route*, Family Practice Management, No. 3, (May-June 2014), *available at:* http://www.aafp.org/fpm/2014/0500/p10.html (last viewed Oct. 19, 2017).

[6] Direct Primary Care Coalition Model State Legislation, *available at* http://www.dpcare.org/dpcc-model-legislation. (last viewed Mar. 9, 2019).

[7] See https://www.dpcare.org/state-level-progress-and-issues (last viewed Mar. 12, 2019).

physician and an individual patient and was not insurance, thereby not limiting the application of the law to direct primary care physicians.[8]

Federal Health Care Reform and Direct Primary Care

The federal Patient Protection and Affordable Care Act (PPACA)[9] requires health insurers to make guaranteed issue coverage available to all individuals and employers without exclusions for preexisting conditions. The PPACA also mandates that insurers that offer qualified health plans provide 10 categories of essential health benefits.[10]

An individual can enroll in a direct health care provider agreement and obtain coverage through a high deductible health plan (HDHP),[11] which would provide coverage for severe injuries or chronic conditions. Such an individual may benefit from enrolling in a direct health care provider agreement since it may provide a greater degree of access to health care for a monthly fee that is substantially less than the annual deductible of the HDHP.

State Regulation of Insurance

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities. These specified entities must meet certain requirements for licensure. Before receiving a certificate of authority from the OIR, a HMO and a prepaid health clinic must receive a health care provider certificate[12] from the Agency for Health Care Administration pursuant to part III of ch. 641, F.S.[13]

Currently, Florida law exempts direct primary care (DPC) agreements from regulation under the Insurance Code. Section 624.27, F.S., provides the following definitions and requirements for a DPC agreement to be exempt from the Insurance Code.

- A direct primary health care agreement is a contract between a health care provider and a patient, the patient's legal representative, or an employer which must satisfy the requirements regarding contract terms and disclosures and does not indemnify for services provided by a third party.
- A primary care provider is a licensed health care practitioner under ch. 458, F.S., (medical doctor or physician assistant); ch. 459, F.S., (osteopathic doctor or physician assistant); ch. 460, F.S., (chiropractic physician); or ch. 464, F.S., (nurses and advanced registered nurse practitioners); or a primary care group practice, which provides primary care services to patients.

[8] Missouri Law 2015 H.B. 769.

[9] Pub. Law No. 111-148 (Mar. 23, 2010) amended by Pub. Law. No. 111-152 (Mar. 30, 2010).

[10] 42 U.S.C. s. 18022.

[11] A high deductible health plan (HDHP) has a higher deductible than typical plans and a maximum limit on the amount of the annual deductible and out-of-pocket medical expenses an insured must pay for covered services. For 2019, for self-only coverage, the annual minimum deductible is $1,350 and the maximum is $6,650. See https://www.irs.gov/publications/p969#en_US_2016_publink1000204030 (last viewed Mar. 9, 2019).

[12] Section 641.49, F.S.

[13] Section 641.48, F.S., provides that the purpose of part III of ch. 641, F.S., is to ensure that HMOs and prepaid health clinics deliver high-quality care to their subscribers.

- Direct primary care services are screening, assessment, diagnosis, and treatment conducted within the competency and training of the primary care provider for the purpose of promoting health or detecting and managing disease or injury.

A DPC agreement must meet the following minimum requirements and disclosures:

- Be in writing and signed by the provider or the provider's agent and the patient, the patient's legal representative, or the patient's employer;
- Allow a party to terminate the agreement with 30 days' advance written notice and provide for the immediate termination of the agreement if the physician-patient relationship is violated or a party breaches the terms of the agreement;
- Describe the scope of health care services covered by the monthly fee;
- Specify the monthly fee and any fees for health care services not covered by the monthly fee;
- Specify the duration of the agreement and any automatic renewal provisions;
- Offer a refund of monthly fees paid in advance if the provider ceases to offer health care services for any reason; and
- Contain the following statements in contrasting color and 12-point or larger type on the same page as the applicant's signature:

> This agreement is not health insurance, and the health care provider will not file any claims against the patient's health insurance policy or plan for reimbursement of any primary care services covered by this agreement. This agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the federal Patient Protection and Affordable Care Act, 26 U.S.C. s. 5000A. This agreement is not workers' compensation insurance and does not replace an employer's obligations under ch. 440, F.S.

Prepaid Health Clinics

Prepaid health clinics[14] are required to obtain a certificate of authority from the OIR pursuant to part II of ch. 641, F.S. The entity must meet minimum surplus requirements[15] and comply with solvency protections for the benefit of subscribers by securing insurance or filing a surety bond with the OIR.[16] Part II also provides that the procedures for offering basic services and offering and terminating contracts to subscribers may not unfairly discriminate based on age, health, or economic status.[17]

State Regulation of Health Care Practitioners

The Department of Health (DOH) is responsible for the licensure and regulation of most health care practitioners in the state. In addition to the regulatory authority in specific practice acts for

[14] Section 641.402, F.S., defines the term, "prepaid health clinic," to mean any organization authorized under part II that provides, either directly or through arrangements with other persons, basic services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis, including those basic services which subscribers might reasonably require to maintain good health. However, no clinic that provides or contracts for, either directly or indirectly, inpatient hospital services, hospital inpatient physician services, or indemnity against the cost of such services shall be a prepaid health clinic.
[15] Section 641.406, F.S.
[16] Section 641.409, F.S.
[17] Section 641.406, F.S.

each profession or occupation, ch. 456, F.S., provides the general regulatory provisions for health care professions within the DOH through the Division of Medical Quality Assurance.

Section 456.001, F.S., defines "health care practitioner" as any person licensed under chs. 457 (acupuncture); 458 (medicine); 459 (osteopathic medicine); 460 (chiropractic medicine); 461 (podiatric medicine); 462 (naturopathic medicine); 463 (optometry); 464 (nursing); 465 (pharmacy); 466 (dentistry and dental hygiene); 467 (midwifery); 478 (electrology or electrolysis); 480 (massage therapy); 484 (opticianry and hearing aid specialists); 486 (physical therapy); 490 (psychology); 491 (psychotherapy); F.S., or parts III or IV of ch. 483 (clinical laboratory personnel or medical physics), F.S.[18]

III. Effect of Proposed Changes:

Section 1 amends s. 624.27, F.S., to expand the current exemption of direct primary care agreements from the Insurance Code to apply to all direct health care agreements with the specified practitioners, and dentists licensed under ch. 466, F.S., are added to the list. The existing provisions of the section are revised to replace the term, "primary care" with the term, "health care." As a result, the terms, "direct primary care agreement," "primary care provider," and "primary care services," are replaced with the terms, "direct health care agreement," "health care provider," and "health care services," respectively. As a result, the section provides that the act of entering into a direct health provider agreement does not constitute the business of insurance and is not subject to the Florida Insurance Code, and such agreements are no longer limited to primary care.

Section 2 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[18] The miscellaneous professions and occupations regulated in parts I, II, III, V, X, XIII, or XIV (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics) of ch. 468, F.S., are considered health care practitioners under s. 456.001, F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1520 removes regulatory uncertainty for health care providers who are not primary care providers that contract directly with individuals or employers by providing that the direct health care agreement is not insurance if certain conditions are met, and as a result, the OIR does not regulate the agreements.

Additional health care providers may elect to pursue a direct health care model and establish direct health care practices that may increase patients' access to affordable health care services.

Many individuals have high deductible policies and must meet a significant out of pocket cost to access many types of medical care. The direct health care agreement may provide a less expensive option for accessing certain services.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.27 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 18, 2019:
The CS provides that a direct health care agreement could include agreements with dentists.

B. Amendments:

None.