

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1325 Health Care Cost Savings
SPONSOR(S): Finance & Facilities Subcommittee, Fernandez-Barquin
TIED BILLS: IDEN./SIM. **BILLS:** SB 252

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|------------------|---------|--|
| 1) Finance & Facilities Subcommittee | 18 Y, 0 N, As CS | Poche | Lloyd |
| 2) Health & Human Services Committee | 16 Y, 0 N | Poche | Calamas |

SUMMARY ANALYSIS

In 2019, the Legislature enacted the Patient Savings Act (Act), which allows health insurers to create a shared savings incentive program (program) to encourage insureds to choose lower cost, high quality nonemergency health care services and share any savings realized as a result of their choice. Health insurers are not required to establish a program under the Act, and an insured's participation in a program is voluntary and optional. A program may offer shared savings incentives as, for example, premium reduction or return; flexible spending account, health savings account, or health reimbursement account credit; and cash or cash equivalent including, but not limited to, merchandise, a gift card, or a debit card. Incentives under a program must be distributed at least quarterly to participating insureds.

Under the Act, services within and outside Florida for which incentives may be offered include, but are not limited to:

- Clinical laboratory services;
- Infusion therapy;
- Inpatient and outpatient surgical procedures;
- Obstetrical and gynecological services;
- Inpatient and outpatient nonsurgical diagnostic tests and procedures;
- Physical and occupational therapy services;
- Radiology and imaging services;
- Prescription drugs;
- Services provided through telehealth; and
- Any additional services published by the Agency for Health Care Administration that have the most significant price variation both statewide and regionally pursuant to s. 408.05(3)(m), F.S.

CS/HB 1325 authorizes, but does not require, an individual health insurer, group health insurer, or health maintenance organization that offers a shared savings incentive program to include items and services listed in federal law, the Table 1-500 Items and Services List (List), as shoppable health care services for which the shared savings incentive is available. The List is added to the group of shoppable health care services from which a health insurer can select certain items and services for its program. The bill also makes clear that these changes are effective for the 2023 plan year, not the current plan year.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Health Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.¹ The Agency for Health Care Administration (AHCA) regulates the quality of care by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from AHCA.² As part of the certification process used by AHCA, an HMO must provide information to demonstrate that it can provide quality of care consistent with prevailing standards of care.³ All persons who transact insurance in the state must comply with the Insurance Code (Code).⁴ OIR has the power to collect, propose, publish, and disseminate any information relating to the subject matter of the Code,⁵ and may investigate any matter relating to insurance.⁶

Shared Savings Programs

In 2019, the Legislature adopted the Patient Savings Act (Act),⁷ which allows health insurers to create a shared savings incentive program (program) to encourage insured individuals to shop for high quality, lower cost health care services and share any savings realized with the insured, as a result of the insured's choice. The Act authorized implementing incentive programs for plan years beginning January 1, 2020.

The law permits an issuer of individual and group health insurance policies, as well as a health maintenance organization (HMO), to establish a program. A program may offer a shared savings incentive payment to an insured who receives treatment from a comprehensive list of more than 25 individual entities or groups that provide a health care service; this includes hospitals, physicians, nursing homes, pharmacies, and others.⁸

Health insurers who choose to offer a program must develop a website outlining the range of "shoppable health care services"⁹ available to insureds. The website must provide insureds with an inventory of participating health care providers and an accounting of the shared savings incentives available for each shoppable service. The law provides a list of nonemergency services that qualify as shoppable health care services, which include, but are not limited to:

- Clinical laboratory services.
- Infusion therapy.
- Inpatient and outpatient surgical procedures.
- Obstetrical and gynecological services.
- Outpatient nonsurgical diagnostic tests and procedures.
- Physical and occupational therapy services.
- Radiology and imaging services.
- Prescription drugs.

¹ S. 20.121(3)(a), F.S.

² S. 641.21(1), F.S.

³ S. 641.495, F.S.

⁴ S. 624.11, F.S.

⁵ S. 624.307(4), F.S.

⁶ S. 624.307(3), F.S.

⁷ Ch. 2019-100, L.O.F.

⁸ Ss. 627.6387, 627.6648, and 641.31076, F.S. The State Employee Group Program, which provides health care benefits to state employees, also offers a shared savings program, described in s. 110.12303, F.S.

⁹ Id. The term "shoppable health care services" generally refers to medical services that can be scheduled in advance. Florida law specifies a list of services that qualify for this designation.

- Services provided through telehealth.

Shared Savings Incentives

Under current law, a “shared savings incentive” is an optional financial incentive that may be paid to an insured for choosing certain shoppable health care services under a program.¹⁰ When an insured obtains a shoppable health care service for less than the average price for the service, any savings generated will be shared by the health insurer and the insured. An insured is entitled to a financial incentive that is no less than 25 percent of the savings that accrue to the insurer as a result of the insured’s participation.¹¹

A program may financially reward insureds who use shoppable health care services in several different forms, including, for example, premium reductions, or deposits into a flexible spending account, health savings account, or health reimbursement account.¹²

If an insurer or HMO offers a shared savings program, it must be a component part of the policy, contract, or certificate of insurance, and the insurer or HMO must notify its insureds of the program annually and at the time of enrollment and renewal.¹³

Currently, one health insurer has a shared savings program, as of January 1, 2021.¹⁴

Federal Rule on Price Transparency

On November 12, 2020, the U.S. Departments of Health and Human Services, Treasury, and Labor published the Transparency in Coverage Final Rule (Final Rule),¹⁵ imposing new requirements on group health plans and health insurers in the individual and group markets¹⁶ to disclose cost sharing information, in-network provider negotiated rates, historical out-of-network allowed amounts, and drug pricing information.

For plan years beginning on or after January 1, 2022, plans and issuers must make publicly available, through standardized, regularly updated, machine-readable files:

- Negotiated rates for in-network providers;
- Historical allowed amounts for out-of-network providers; and
- Prices for prescription drugs.

Under the Final Rule, for plan years beginning on or after January 1, 2023, plans and issuers must disclose to enrollees, through a self-service online tool, personalized cost-sharing information and negotiated rates for 500 shoppable services (Table 1–500 Items and Services List) identified in the Final Rule. The List was created using billing codes for various medical items, services, and treatment. It includes services such as specific medical treatments, screenings, injections, assessments, medications, surgical procedures, diagnostic tests, and laboratory services.

For plan years beginning on or after January 1, 2024, the disclosure requirement expands to all covered health care items and services, including encounters, procedures, medical tests, supplies, prescription drugs, medical equipment, and fees, including facility fees.

¹⁰ Ss. 627.6387(2)(c), F.S., and 641.31076(2)(c), F.S.

¹¹ Ss. 627.6387(3)(d), F.S., and 641.31076(3)(d), F.S.

¹² Id.

¹³ Id.

¹⁴ Office of Insurance Regulation, *2022 Legislative Session – HB 1325*, pg. 2 (Sept. 21, 2021).

¹⁵ 26 CFR Part 54, 29 CFR Part 2590, 45 CFR Part 147 and 45 CFR Part 158; see Transparency in Coverage; Final Rule, 85 Fed. Reg. 72,158 (Nov. 12, 2020) <https://www.federalregister.gov/documents/2020/11/12/2020-24591/transparency-in-coverage>.

¹⁶ The Final Rule does not apply to grandfathered health plans; account-based group health plans, such as health reimbursement arrangements (HRAs), including individual-coverage HRAs; or health flexible spending accounts, healthcare-sharing ministries, or short-term limited duration insurance plans.

Effect of Proposed Changes

CS/HB 1325 authorizes, but does not require, an individual health insurer, group health insurer, or an HMO that offers a shared savings incentive program to include items and services listed in federal law, the Table 1-500 Items and Services List (List), as shoppable health care services for which the shared savings incentive is available. The List includes health care items and services based on billing codes. A health insurer may select the List as the entirety of its program, or in conjunction with other categories of services listed in the statute.

The bill makes clear that the changes to the optional shared savings incentive programs begin with the 2023 plan year, and not the current plan year.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.6387, F.S., relating to shared savings incentive program.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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:

The bill provisions do not require additional rule-making authority for implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 16, 2022, the Finance & Facilities Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Added the List of 1-500 Items and Services from federal law to the list of shoppable health care services in the group health insurer and HMO shared savings incentive program statutes.
- Changed the effective date to upon becoming law, allowing insurers and HMOs to establish a shared savings incentive program that includes the services specified by the bill as soon as this bill is signed into law, if they choose.
- Made clear that the addition of the List of 1-500 Items and Services is applicable to the 2023 plan year.

The analysis is drafted to the committee substitute as passed by the Finance & Facilities Subcommittee.