

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 Banking and Insurance

BILL: SB 660

INTRODUCER: Senator Brandes

SUBJECT: Florida Insurance Code Exemption for Nonprofit Religious Organizations

DATE: December 9, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 660 amends Florida’s statute governing health care sharing ministries to reflect changes in how the entities operate. A health care sharing ministry is a health care cost sharing arrangement among persons of similar and sincerely held beliefs, administered by a not-for-profit religious organization. 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. While these entities help participants pay for health care services, they are not insurance companies and are not regulated by the Office of Insurance Regulation. Participants in health care sharing ministries are exempt from the tax penalty for failure to obtain health insurance in federal law.

Current law limits participation in the health care sharing ministry to those who share the same religion. The bill allows participation by those who “share a common set of ethical or religious beliefs.” The bill provides that the health care sharing ministry must provide for the financial or medical needs of a participant through contributions from other participants. Current law requires the health care sharing ministry must provide for financial or medical needs by direct payments from one participant to another. The bill allows direct payments but also allows payments from a fund to a participant.

The bill requires the health care sharing ministry to provide monthly to the participants the amount of qualified needs actually shared in the previous month. It also creates an annual audit requirement that does not exist in Florida law.

The bill requires a more extensive notice to participants that the health care sharing ministry is not an insurance company and no participant is required by law to assist others with medical expenses.

II. Present Situation:

Health Care Sharing Ministries

A health care sharing ministry is a health care cost sharing arrangement among persons of similar and sincerely held beliefs, administered by a not-for-profit religious organization.¹ 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

Federal law defines a “health care sharing ministry” as an organization:

- Which is described in section 501(c)(3) and is exempt from taxation under section 501(a);
- 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.³

Members of health care sharing ministries are exempt from the federal tax penalty for failing to have health insurance.⁴

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.⁵ Florida created an exemption from the Insurance Code for nonprofit religious organizations in 2008.⁶ Accordingly, these entities are not regulated by the Office of Insurance Regulation.

Section 624.1265, F.S., sets forth the requirements for an exemption from the Florida Insurance Code for health care sharing ministries. The entity must be a nonprofit religious organization⁷ and must:

- Limit its participants to members of the same religion;

¹ See <https://www.alec.org/model-policy/health-care-sharing-ministries-tax-parity-act/> (last visited November 29, 2017).

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

³ See 26 US Code 5000A(d)(2)(B)(ii).

⁴ See 26 US Code 5000A(2)(2)(B).

⁵ 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).

⁶ See ch. 2008-32, L.O.F.

⁷ The federal law uses “health care sharing ministry” while Florida law uses “nonprofit religious organization.” In this analysis, “nonprofit religious organization” will be used as it is defined in s. 624.1265, F.S., and has the same meaning as “health care sharing ministry.”

- 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.⁸

The nonprofit religious organization must provide each prospective participant in the organizational clearinghouse written notice:

- That the organization is not an insurance company;
- That membership is not offered through an insurance company; and
- That the organization is not subject to the regulatory requirements or consumer protections of the Florida Insurance Code.⁹

The nonprofit religious organization is allowed to establish the qualifications of participation relating to the health of a prospective participant.¹⁰ For example, a nonprofit religious organization could exclude persons with specified preexisting conditions. The nonprofit religious organization is allowed to cancel the membership of a participant when such participant indicates his or her unwillingness to participate by failing to make a payment to another participant for a period in excess of 60 days.¹¹ An individual participant may limit the financial or medical needs that may be eligible for payment.¹² The Florida statute is similar to 2008 model legislation created by the American Legislative Exchange Council (ALEC). In 2017, the ALEC promulgated updated model legislation.¹³

III. Effect of Proposed Changes:

The bill amends s. 624.1265, F.S., to conform the statute to the 2017 ALEC “Health Care Sharing Ministries Freedom to Share Act,” or model act. Current law limits participation in the nonprofit religious organization to those who share the same religion. The bill allows participation by those who “share a common set of ethical or religious beliefs.” This change will allow participants from different religions to participate in the same nonprofit religious organization. This change will also make the language in Florida law the same as language in the federal law.

Currently, s. 624.1265, F.S., provides that the nonprofit religious organization must 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

⁸ See s. 624.1265(1), F.S.

⁹ See s. 624.1265(3), F.S.

¹⁰ See s. 624.1265(2), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ See <https://www.alec.org/model-policy/health-care-sharing-ministries-freedom-to-share-act/> (last accessed November 30, 2017).

financial or medical needs¹⁴ to assist those with financial or medical needs in accordance with criteria established by the nonprofit religious organization. This change conforms the Florida law to the model act.

The bill provides that the nonprofit religious organization must provide for the financial or medical needs of a participant through contributions from other participants. Current law requires the nonprofit religious organization must provide for financial or medical needs by direct payments from one participant to another. The bill allows direct payments but also allows payments from a fund to a participant.

The bill requires the nonprofit religious organization to provide monthly to the participants the amount of qualified needs actually shared in the previous month.

The bill creates an annual audit requirement that does not exist in Florida law.¹⁵ It requires the nonprofit religious organization to conduct an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and that is made available to the public by providing a copy upon request or by posting on the nonprofit religious organization's website.

The bill amends the notice that the nonprofit religious organization must provide to participants. The notice required by the bill must 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.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁴ Section 624.1265, F.S., uses "financial, physical, or medical" needs. The bill eliminates "physical" from the statute. It is not clear whether removing "physical" from the statute makes a substantive change. The model act and similar laws from other states do not include it.

¹⁵ The audit requirement of the bill is contained in current federal law and the model act.

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 is not known.

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.