

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 935 Price Transparency in Contracts  
**SPONSOR(S):** Health & Human Services Committee, Rodriguez, A.  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1560

| REFERENCE                            | ACTION              | ANALYST     | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--------------------------------------|---------------------|-------------|--|
| 1) Health Market Reform Subcommittee | 13 Y, 0 N           | Grabowski   | Crosier                                  |
| 2) Insurance & Banking Subcommittee  | 13 Y, 0 N           | Fortenberry | Luczynski                                |
| 3) Health & Human Services Committee | 17 Y, 0 N, As<br>CS | Grabowski   | Calamas                                  |

### SUMMARY ANALYSIS

The United States is experiencing significant changes in health care payment and delivery. Consumers bear a greater share of health care costs, and more participate in high deductible health plans. Clear, accurate information about the cost and quality of health care is necessary for consumers to select value-based health care.

CS/HB 935 prohibits a health insurer from limiting a health care provider's ability to disclose whether a patient's cost-sharing obligation under his or her health insurance exceeds the cash price for a covered service. In addition, insurers must not prevent providers from communicating the availability of more affordable services to insured patients.

The bill also prohibits an insurer from requiring an insured patient to make a payment for a health care service that exceeds the cash price of that service in the absence of health insurance.

The bill has no fiscal impact on state or local government. The bill has no direct economic impact on the private sector.

The bill provides an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Health Care Price Transparency

The United States is experiencing significant changes in health care payment and delivery. Consumers bear a greater share of health care costs, and more participate in high deductible health plans. Clear, factual information about the cost and quality of health care is necessary for consumers to select value-driven health care options and for consumers and providers to be involved in and accountable for decisions about health and health care services. To promote consumer involvement, health care pricing and other data needs to be free, timely, reliable, and reflect individual health care needs and insurance coverage.

Price transparency can refer to the availability of provider-specific information on the price for a specific health care service or set of services to consumers and other interested parties.<sup>1</sup> Price can be defined as an estimate of a consumer's complete cost on a health care service or services that reflects any negotiated discounts; is inclusive of all costs to the consumer associated with a service or services, including hospital, physician, and lab fees; and identifies a consumer's out-of-pocket cost.<sup>2</sup> Further, price transparency can be considered "readily available information on the price of health care services that, together with other information, helps define the value of those services and enables patients and other care purchasers to identify, compare, and choose providers that offer the desired level of value."<sup>3</sup> Indeed, the definition of the price or cost of health care has different meanings depending on who is incurring the cost.<sup>4</sup>

As health care costs continue to rise, most health insurance buyers are asking their consumers to take on a greater share of their costs, increasing both premiums and out-of-pocket expenses. According to the Kaiser Family Foundation, more than one in five Americans with private insurance is enrolled in a high deductible health plan (HDHP). Most covered workers face additional out-of-pocket costs when they use health care services, such as co-payments or coinsurance for physician visits and hospitalizations. Eighty-one percent of covered workers have a general annual deductible for single coverage that must be met before most services are paid for by the plan.<sup>5</sup>

Among covered workers with a general annual deductible, the average deductible amount for single coverage is \$1,573.<sup>6</sup> The average annual deductible is similar to last year (\$1,505), but has increased from \$917 in 2010.<sup>7</sup> Deductibles differ by firm size; for workers in plans with a deductible, the average deductible for single coverage is \$2,132 in small firms, compared to \$1,355 for workers in large firms.<sup>8</sup> Sixty-eight percent of covered workers in small firms are in a plan with a deductible of at least \$1,000 for single coverage compared to 54% in large firms; a similar pattern exists for those in plans with a deductible of at least \$2,000 (42% for small firms vs. 20% for large firms). The chart below shows the

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<sup>1</sup> Government Accounting Office, *Meaningful Price Information is Difficult for Consumers to Obtain Prior to Receiving Care*, September 2011, page 2, available at <http://www.gao.gov/products/GAO-11-791> (last accessed January 3, 2019).

<sup>2</sup> Id.

<sup>3</sup> Healthcare Financial Management Association, *Price Transparency in Health Care: Report from the HFMA Price Transparency Task Force*, page 2, 2014, available at <https://www.hfma.org/Content.aspx?id=22305> (last accessed January 3, 2019).

<sup>4</sup> Id.

<sup>5</sup> The Henry J. Kaiser Family Foundation, *2018 Employer Health Benefits Survey*, October 3, 2018, available at <http://files.kff.org/attachment/Report-Employer-Health-Benefits-Annual-Survey-2018> (last accessed January 2, 2019).

<sup>6</sup> Id.

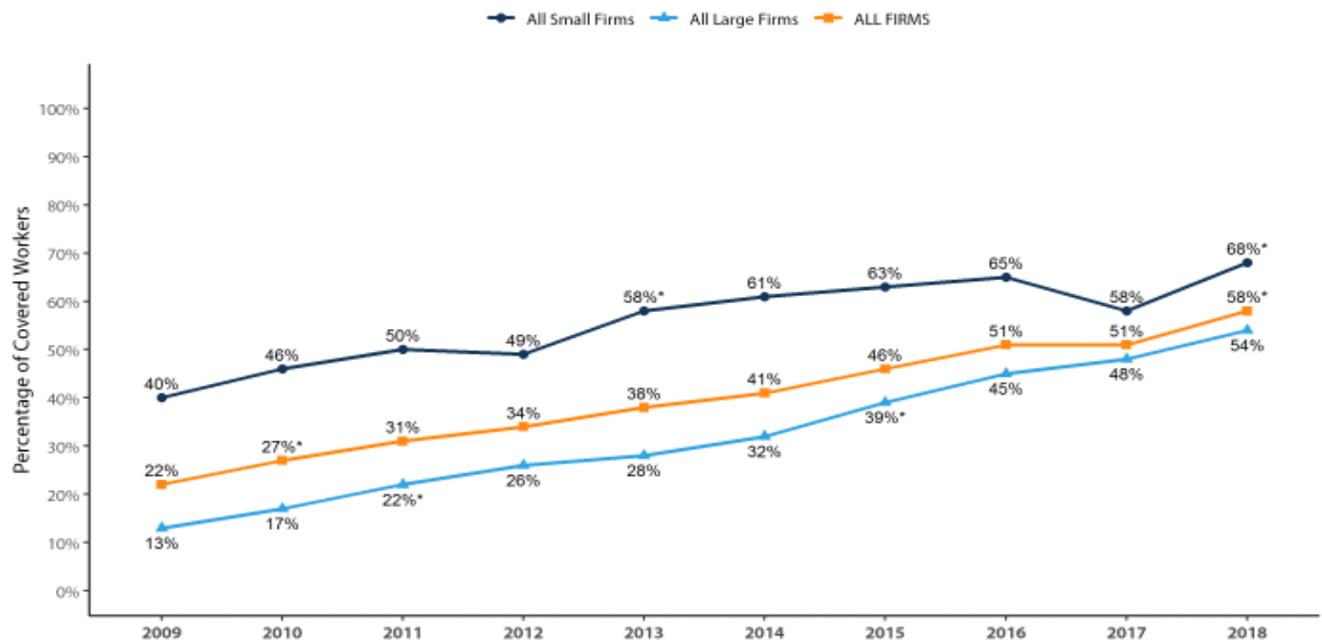
<sup>7</sup> Id.

<sup>8</sup> Id.

percent of workers enrolled in employer-sponsored insurance with an annual deductible of \$1,000 or more for single coverage by employer size for 2009 through 2018.<sup>9</sup>

**Figure 7.13**

**Percentage of Covered Workers Enrolled in a Plan with a General Annual Deductible of \$1,000 or More for Single Coverage, by Firm Size, 2009-2018**



\* Estimate is statistically different from estimate for the previous year shown (p < .05).

NOTE: Small Firms have 3-199 workers and Large Firms have 200 or more workers. These estimates include workers enrolled in HDHP/SOs and other plan types. Average general annual deductibles are for in-network providers.

SOURCE: KFF Employer Health Benefits Survey, 2018; Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2009-2017

Looking at the increase in deductible amounts over time does not capture the full impact for workers because the share of covered workers in plans with a general annual deductible also has increased significantly, from 59% in 2008 to 78% in 2013 to 85% in 2018. If we look at the change in deductible amounts for all covered workers (assigning a zero value to workers in plans with no deductible), we can look at the impact of both trends together. Using this approach, the average deductible for all covered workers in 2018 is \$1,350, up 53% from \$883 in 2013 and 212% from \$433 in 2008.

From 2013 to 2018, the average premium for covered workers with family coverage increased 20%, while wages have only increased 12%.<sup>10</sup> The dramatic increases in the costs of healthcare in recent years have focused significant attention on the need for greater communication and transparency to inform individual health care choices.

*National Price Transparency Studies*

To explore how expanding price transparency efforts could produce significant cost savings for the healthcare system, the Gary and Mary West Health Policy Center funded an analysis, “Healthcare Price Transparency: Policy Approaches and Estimated Impacts on Spending.” This report, conducted in collaboration with researchers from the Center for Studying Health System Change and RAND, found that implementation of three policy changes could save \$100 billion over ten years.

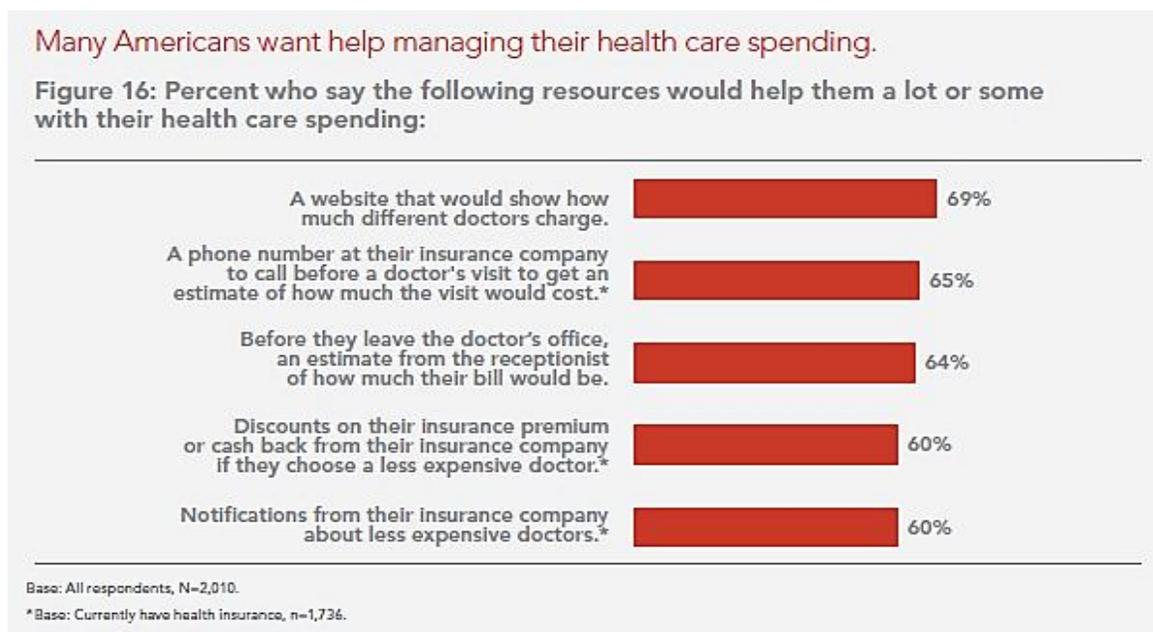
<sup>9</sup> Id, figure 7.13.

<sup>10</sup> Id.

- Provide personalized out-of-pocket expense information to patients and families before receiving care.
- Provide prices to physicians through electronic health record systems when ordering treatments and tests.
- Expand state-based all-payer health claims databases (APCDs), which could save up to \$55 billion by collecting and providing data and analytics tools that supply quality, efficiency and cost information to policy makers, employers, providers, and patients.<sup>11</sup>

The report specifically found that requiring all private health insurance plans to provide personalized out-of-pocket price data to enrollees would reduce total health spending by an estimated \$18 billion over the 10-year period from 2014 to 2023.<sup>12</sup>

As Americans take on more of their health care costs, research suggests that they are looking for more and better price information.<sup>13</sup>



One study in 2014, which conducted a nationally representative survey of more than 2,000 adults, found that 56 percent of Americans actively searched for price information before obtaining health care, including 21 percent who compared the price of health care services across multiple providers.<sup>14</sup> The chart below illustrates the finding that, as a consumer's health plan deductible increases, the consumer is more likely to seek out price information.<sup>15</sup>

<sup>11</sup> White, C., Ginsburg, P., et al., Gary and Mary West Health Policy Center, *Healthcare Price Transparency: Policy Approaches and Estimated Impacts on Spending*, May 2014, available at <http://www.westhealth.org/wp-content/uploads/2015/05/Price-Transparency-Policy-Analysis-FINAL-5-2-14.pdf> (last accessed January 3, 2019).

<sup>12</sup> Id., pg. 1.

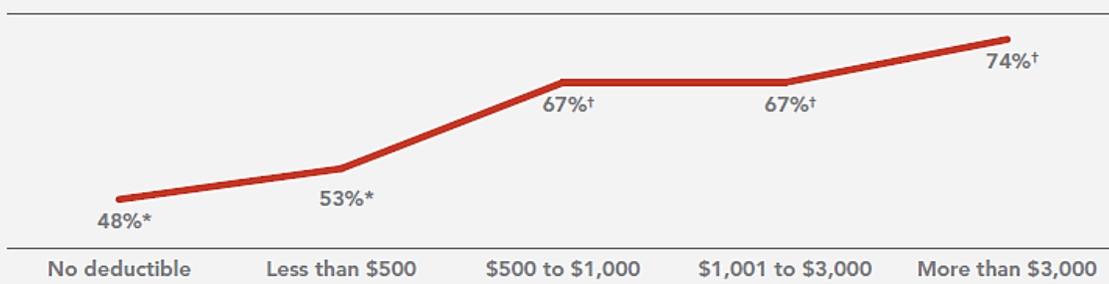
<sup>13</sup> Public Agenda and Robert Wood Johnson Foundation, *How Much Will It Cost? How Americans Use Prices in Health Care*, March 2015, page 34, available at [https://www.publicagenda.org/files/HowMuchWillItCost\\_PublicAgenda\\_2015.pdf](https://www.publicagenda.org/files/HowMuchWillItCost_PublicAgenda_2015.pdf) (last accessed January 3, 2019).

<sup>14</sup> Id., pg. 3.

<sup>15</sup> Id., pg. 13.

## People with deductibles over \$500 are more likely to seek price information.

Figure 2: Percent who say they have tried to find price information before getting care, by deductible amount:



Base: Currently have health insurance, n=1,736.

Estimates for groups indicated by \* are not statistically different from each other, and groups indicated by † are not statistically different from each other; groups indicated by \* are statistically different from groups indicated by † at the p<.05 level.

The individuals who compared prices stated that such research impacted their health care choices and saved them money.<sup>16</sup> In addition, the study found that most Americans do not equate price with quality of care. Seventy one percent do not believe higher prices impart a higher level care quality and 63 percent do not believe that lower price is indicative of lower level care quality.<sup>17</sup> Consumers enrolled in high-deductible and consumer-directed health plans are more price-sensitive than consumers with plans that have much lower cost-sharing obligations. Accordingly, these consumers find an estimate of their individual out-of-pocket costs more useful than any other kind of health care price transparency tool.<sup>18</sup> Another study found that when they have access to well-designed reports on price and quality, 80 percent of health care consumers will select the highest value health care provider.<sup>19</sup>

### *Florida Price Transparency: Patient's Bill of Rights and Responsibilities*

In 1991, the Legislature enacted the Florida Patient's Bill of Rights and Responsibilities (Patient's Bill of Rights).<sup>20</sup> The statute established the right of patients to expect medical providers to observe standards of care in providing medical treatment and communicating with their patients.<sup>21</sup> The standards of care include, but are not limited to, the following aspects of medical treatment and patient communication:

- Individual dignity;
- Provision of information;
- Financial information and the disclosure of financial information;
- Access to health care;
- Experimental research; and
- Patient's knowledge of rights and responsibilities.

<sup>16</sup> Id., pg. 4.

<sup>17</sup> Supra note 13.

<sup>18</sup> American Institute for Research, *Consumer Beliefs and Use of Information About Health Care Cost, Resource Use, and Value*, Robert Wood Johnson Foundation, October 2012, page 4, available at [https://www.rwjf.org/content/dam/farm/reports/issue\\_briefs/2012/rwjf402126](https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf402126) (last accessed January 4, 2019).

<sup>19</sup> Hibbard, JH, et al., *An Experiment Shows That a Well-Designed Report on Costs and Quality Can Help Consumers Choose High-Value Health Care*, *Health Affairs* 2012; 31(3): 560-568.

<sup>20</sup> S. 1, Ch. 91-127, Laws of Fla. (1991); s. 381.026, F.S.; The Florida Patient's Bill of Rights and Responsibilities is intended to promote better communication and eliminate misunderstandings between the patient and health care provider or health care facility. The rights of patients include standards related to individual dignity; information about the provider, facility, diagnosis, treatments, risks, etc.; financial information and disclosure; access to health care; experimental research; and patient's knowledge of rights and responsibilities. Patient responsibilities include giving the provider accurate and complete information regarding the patient's health, comprehending the course of treatment and following the treatment plan, keeping appointments, fulfilling financial obligations, and following the facility's rules and regulations affecting patient care and conduct.

<sup>21</sup> S. 381.026(3), F.S.

Under s. 381.026(4)(c), F.S., a patient has the right to request certain financial information from health care providers and facilities.<sup>22</sup> Specifically, upon request, a health care provider or health care facility must provide a person with a reasonable estimate of the cost of medical treatment prior to the provision of treatment.<sup>23</sup> Estimates must be written in language “comprehensible to an ordinary layperson.”<sup>24</sup> The reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges as the patient’s needs or medical condition warrant.<sup>25</sup> A patient has the right to receive a copy of an itemized bill upon request and to receive an explanation of charges upon request.<sup>26</sup>

Currently, under the Patient’s Bill of Rights financial information and disclosure provisions:

- A request is necessary before a health care provider or health care facility must disclose to a Medicare-eligible patient whether the provider or facility accepts Medicare payment as full payment for medical services and treatment rendered in the provider’s office or health care facility.
- A request is necessary before a health care provider or health care facility is required to furnish a person an estimate of charges for medical services before providing the services. The Florida Patient’s Bill of Rights and Responsibilities does not require that the components making up the estimate be itemized or that the estimate be presented in a manner that is easily understood by an ordinary layperson.
- A licensed facility must place a notice in its reception area that financial information related to that facility is available on the website of the Agency for Health Care Administration (AHCA).
- The facility may indicate that the pricing information is based on a compilation of charges for the average patient and that an individual patient’s charges may vary.
- A patient has the right to receive an itemized bill upon request.

Health care providers and health care facilities are required to make available to patients a summary of their rights. The applicable regulatory board or Agency may impose an administrative fine when a provider or facility fails to make available to patients a summary of their rights.<sup>27</sup>

The Patient’s Bill of Rights also authorizes, but does not require, primary care providers<sup>28</sup> to publish a schedule of charges for the medical services offered to patients.<sup>29</sup> The schedule must include certain price information for at least the 50 services most frequently provided by the primary care provider.<sup>30</sup> The law also requires the posting of the schedule in a conspicuous place in the reception area of the provider’s office and at least 15 square feet in size.<sup>31</sup> A primary care provider who publishes and maintains a schedule of charges is exempt from licensure fees for a single renewal of a professional license and from the continuing education requirements for a single 2-year period.<sup>32</sup>

The law requires urgent care centers to publish a schedule of charges for the medical services offered to patients.<sup>33</sup> This applies to any entity that holds itself out to the general public, in any manner, as a facility or clinic where immediate, but not emergent, care is provided, expressly including offsite facilities of hospitals or hospital-physician joint ventures; and licensed health care clinics that operate in

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<sup>22</sup> S. 381.026(4)(c), F.S.

<sup>23</sup> S. 381.026(4)(c)3., F.S.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> S. 381.026(4)(c)5., F.S.

<sup>27</sup> S. 381.0261, F.S.

<sup>28</sup> S. 381.026(2)(d), F.S., defines primary care providers to include allopathic physicians, osteopathic physicians, and nurses who provide medical services that are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.

<sup>29</sup> S. 381.026(4)(c)3., F.S.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> S. 381.026(4)(c)4., F.S.

<sup>33</sup> S. 395.107(1), F.S.

three or more locations. The schedule requirements for urgent care centers are the same as those established for primary care providers.<sup>34</sup> The schedule must describe each medical service in language comprehensible to a layperson. This provision prevents a center from using medical or billing codes, Latin phrases, or technical medical jargon as the only description of each medical service. An urgent care center that fails to publish and post the schedule of charges is subject to a fine of not more than \$1,000 per day (until the schedule is published and posted).<sup>35</sup>

### *Florida Price Transparency: Health Care Facilities*

Under s. 395.301, F.S., a health care facility<sup>36</sup> must provide, within 7 days of a written request, a good faith estimate of reasonably anticipated charges for the facility to treat the patient's condition. Upon request, the facility must also provide revisions to the estimate. The estimate may represent the average charges for that diagnosis related group or the average charges for that procedure. The facility is required to place a notice in the reception area that this information is available. A facility that fails to provide the estimate as required may be fined \$500 for each instance of the facility's failure to provide the requested information.

Also pursuant to s. 395.301, F.S., a licensed facility must notify each patient during admission and at discharge of his or her right to receive an itemized bill upon request. If requested, within 7 days of discharge or release, the licensed facility must provide an itemized statement, in language comprehensible to an ordinary layperson, detailing the specific nature of charges or expenses incurred by the patient. This initial bill must contain a statement of specific services received and expenses incurred for the items of service, enumerating in detail the constituent components of the services received within each department of the licensed facility and including unit price data on rates charged by the licensed facility. The patient or patient's representative may elect to receive this level of detail in subsequent billings for services.

Current law also directs these health care facilities to publish information on their websites detailing the cost of specific health care services and procedures, as well as information on financial assistance that may be available to prospective patients. The facility must disclose to the consumer that these averages and ranges of payments are estimates, and that actual charges will be based on the services actually provided.<sup>37</sup> Under s. 408.05, F.S., AHCA contracts with a vendor to collect and publish this cost information to consumers on an internet site.<sup>38</sup> Hospitals and other facilities post a link to this site - <https://pricing.floridahealthfinder.gov/> - to comply with the price transparency requirements. The cost information is searchable, and based on descriptive bundles of commonly performed procedures and services. The information must, at a minimum, provide the estimated average payment received and the estimated range of payment from all non-governmental payers for the bundles available at the facility.<sup>39</sup>

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<sup>34</sup> S. 395.107(2), F.S.

<sup>35</sup> In 2012, the Legislature considered, but did not pass, HB 1329. The bill required ambulatory surgical centers and diagnostic-imaging centers to comply with the provisions of s. 395.107, F.S., established by HB 935 in 2011, and required physicians to publish, in writing, a schedule of medical charges. The bill would have imposed a fine of \$1,000, per day, on an urgent care center, ambulatory surgical center, or diagnostic-imaging center that fails to post the schedule of medical charges. The failure of a practitioner to publish and distribute a schedule of medical charges subjected the practitioner to discipline under the applicable practice act and s. 456.072, F.S. Lastly, the bill addressed balance billing by requiring health insurers, hospitals, and medical providers to disclose contractual relationships among the parties and to disclose, in advance of the provision of medical care or services, whether or not the patient will be balance billed as a result of the contractual relationship, or lack thereof, among the insurer, hospital, and medical provider. Failure to provide disclosure to the insured as required by this provision of the bill resulted in a \$500 fine, per occurrence, to be imposed by the AHCA.

<sup>36</sup> The term "health care facilities" refers to hospital, ambulatory surgical centers, and mobile surgical centers, all of which are licensed under part I of Chapter 395, F.S.

<sup>37</sup> S. 395.301, F.S.

<sup>38</sup> S. 408.05(3)(c), F.S.

<sup>39</sup> Id.

The law also establishes the right of a patient to request a personalized estimate on the costs of care from health care practitioners who provide services in a licensed hospital facility or ambulatory surgical center.<sup>40</sup>

### **Effect of Proposed Changes**

CS/HB 935 prohibits a health insurer from limiting a health care provider's ability to disclose whether a patient's cost-sharing obligation under his or her health insurance exceeds the cash price for a covered service.<sup>41</sup> In addition, an insurer may not prevent a provider from communicating the availability of more affordable services to an insured patient.

The bill also prohibits an insurer from requiring an insured patient to make a payment for a health care service that exceeds the cash price of that service in the absence of health insurance.

The bill provides an effective date of July 1, 2019.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 627.4303, F.S.; relating to price transparency in contracts between health insurers and health care providers.

**Section 2:** Provides an effective date of July 1, 2019.

## **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.

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<sup>40</sup> S. 456.0575(2), F.S.

<sup>41</sup> While cash price is not a defined term, in the healthcare context it generally refers to the price that a health care provider would charge a patient who does not have health insurance.

### **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 neither authorizes nor requires administrative rulemaking.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 21, 2019, the Health and Human Services Committee adopted a strike-all amendment to the bill. The amendment clarifies that the bill applies only to major medical coverage policies and not to more limited forms of health benefits that may be available to consumers. The amendment also:

- Prohibits an insurer from limiting a provider's ability to discuss cost-related information with a patient; and,
- Prohibits an insurer from requiring an insured individual to make a payment for any covered service that exceeds the cash price of that service.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.