

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 769 Health Provider Contracts
SPONSOR(S): Health Innovation Subcommittee; Peters
TIED BILLS: **IDEN./SIM. BILLS:** SB 856

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	10 Y, 1 N, As CS	Langston	Poche
2) Insurance & Banking Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Ophthalmologists, optometrists, and opticians are health care practitioners, as defined in s. 456.001(4), F.S. They are regulated by their respective boards within the Division of Medical Quality Assurance and are overseen by the Department of Health (DOH).

The key difference between ophthalmologists, optometrists, and opticians is the scope of their practice. An optician designs, verifies, fits, and dispenses eyeglasses, contact lenses, and other optical devices upon the written prescription of a licensed ophthalmologist or optometrist; they do not diagnose or treat eye diseases. In addition to being able to dispense eyeglasses and contact lenses, an optometrist performs eye exams and vision tests to detect certain eye abnormalities, prescribes eyeglasses and contact lenses, and prescribes medications for eye diseases. An optometrist is not a medical doctor and is not authorized within the scope of practice to perform surgery or other invasive procedures. An ophthalmologist is a medical doctor or an osteopathic physician; therefore, in addition to being able to perform the duties of an optometrist, the ophthalmologist is licensed to perform eye surgeries.

Ophthalmologists, optometrists, and opticians routinely contract with health insurers, prepaid limited health services providers (PLHSOs), and health maintenance organizations (HMOs) for the provision of vision care services.

CS/HB 769 restrict health insurers, PLHSOs, HMOs, and third-party administrators from requiring an ophthalmologist or optometrist to provide vision care services as a condition of participating as a provider of any other type of service to an insured. The bill also prohibits a plan or insurer from requiring an ophthalmologist, optometrist, or optician to purchase materials or services from an entity in which the insurer, PLHSO, or HMO, or third-party administrator has an ownership or financial interest.

The bill also provides that a violation of the prohibitions constitutes an unfair insurance trade practice under s. 626.9541, F.S., and an unfair or deceptive act or practice under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The violator is subject to civil or administrative penalty under FDUTPA.

The bill provides that these provisions only apply to contracts or renewals entered into on or after July 1, 2015.

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

The bill provides for an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Ophthalmologists, Optometrists, and Opticians

Ophthalmologists and optometrists are health care practitioners, as defined in s. 456.001(4), F.S., and are regulated by their respective boards within the Division of Medical Quality Assurance¹ in the Department of Health (DOH).² Ophthalmologists are governed by the practice act in Chapter 458 or 459, F.S.; optometrists are governed by the practice act in Chapter 463, F.S.

Ophthalmologists

Ophthalmology is a branch of medicine specializing in the anatomy, function, and diseases of the eye. Ophthalmologists provide a full spectrum of eye care. They perform functions of optometrists, such as annual eye exams and prescribing glasses and contact lenses. In addition, they are authorized within their scope of practice to perform delicate eye surgery. Ophthalmologists are either Medical Doctors (MDs) or Doctor of Osteopathic Medicine (DOs). They are regulated by the Board of Medicine and the Board of Osteopathic Medicine, respectively.

Optometrists

Optometrists, licensed by the Board of Optometry, are the primary health providers for normal vision care, including yearly checkups. They are licensed to practice optometry, which involves performing eye exams and vision tests, prescribing and dispensing glasses and contact lenses, detecting certain eye abnormalities, and prescribing medications for certain eye diseases.³ An optometrist, or Doctor of Optometry, is not a medical doctor and is not authorized within his or her scope of practice to perform surgery or other invasive techniques.⁴

Opticians

Opticians, licensed by Board of Opticianry, are technicians trained to design, verify and fit eyeglass lenses and frames, contact lenses, and other devices to correct eyesight.⁵ Opticians are not permitted to test vision, diagnose or treat eye diseases, or write prescriptions for visual correction. Opticians rely on prescriptions supplied by ophthalmologists or optometrists to provide services.

Health Insurer Contracts

Health insurer provider contracts are regulated by the Office of Insurance Regulation (OIR) under Part VI of ch. 627, F.S.

There are certain limitations placed on health insurer contracts. Section 627.6474(1), F.S., provides that a health insurer that requires a contracted health care practitioner to accept the terms of other practitioner contracts with the insurer, health maintenance organization (HMO) preferred provider, exclusive provider organization, prepaid limited health service organization (PLHSO), or other provider contract is void. The only exception is for a practitioner in a group practice who must accept the terms of a contract negotiated for the practitioner by the group, as a condition of continuation or renewal of the contract. Additionally, s. 627.6474(2), F.S., provides that a contract between a health insurer and a

¹ S. 456.001, F.S.

² S. 456.004, F.S.

³ American Association for Pediatric Ophthalmology and Strabismus, *Differences between Ophthalmologist, Optometrist and Optician*, <http://www.aapos.org/terms/conditions/132> (last visited March 18, 2015).

⁴ S. 463.0055(1)(a), F.S.

⁵ Supra, note 3.

dentist for the provision of dental services may not require the dentist to provide services to the insured under such contract at a fee set by the health insurer unless such services are covered services under the applicable contract.

Current Florida law does not prohibit provider contracts between health insurers and ophthalmologists or optometrists from containing provisions requiring the ophthalmologist or optometrist to provide vision care services as a condition of participating as a provider of any other type of service to an insured. Additionally, current Florida law does not prohibit provider contracts between health insurers and ophthalmologists or optometrists from containing provisions requiring the ophthalmologist or optometrist to purchase materials or services from an entity which the insurer has an ownership or financial interest.

Prepaid Limited Health Service Organization (PLHSO) Arrangements

PLHSOs provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment, and are authorized in Part I, ch. 636, F.S. Limited health services are ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services. Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

There are other limitations on PLHSO agreements. Section 636.035(12), F.S., provides that a contract is void if, as a condition of continuation or renewal of a contract, it requires a contracted limited health service provider to accept the terms of other practitioner contracts with the PLHSO or any insurer, preferred provider, exclusive provider organization, or other provider. There is an exception to this limitation for a practitioner in a group practice who must accept the terms of a contract negotiated for the practitioner by the group, as a condition of continuation or renewal of the contract. Additionally, s. 636.035(13), F.S., provides that a contract for dental services may not contain a provision that requires the dentist to provide services to the subscriber of the PLHSO at a fee set by the PLHSO unless such services are covered services under the applicable contract.

Section 636.035, F.S., does not prohibit provider contracts between PLHSOs and ophthalmologists or optometrists from containing provisions requiring the ophthalmologist or optometrist to provide vision care services as a condition of participating as a provider of any other type of service to an insured. Additionally, the statute does not prohibit provider contracts between PLHSOs and ophthalmologists or optometrists from containing provisions requiring the ophthalmologist or optometrist to purchase materials or services from an entity which the insurer has an ownership or financial interest.

Health Maintenance Organization (HMO) Contracts

OIR regulates HMO contracts and rates under Part I of ch. 641, F.S. The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under Part III of ch. 641, F.S. Section 641.315, F.S., authorizes provider contracts for HMOs. It specifies the requirements for HMO provider contracts with "health care practitioners" as defined in s. 465.001(4), F.S.

Part I of ch. 641, F.S., limits the provisions that may be in a contract with an HMO. Section 641.315(9), F.S., provides that a contract between an HMO and a contracted primary care or admitting physician may not contain any provision that prohibits the physician from providing inpatient services in a contracted hospital to a subscriber if such services are determined by the organization to be medically necessary and covered services under the organization's contract with the contract holder. Also, s. 641.315(10), F.S., provides that an HMO contract that requires a contracted health care practitioner to accept the terms of another practitioner contract is void, except in cases where the practitioner is in a group practice and must accept the terms of a contract negotiated for the practitioner by the group, as a condition of continuation or renewal of the contract. Additionally, s. 641.315(11), F.S., provides that a contract for dental services may not contain a provision that requires the dentist to provide services to the subscriber of the HMO at a fee set by the HMO unless such services are covered services under the applicable contract.

Section 641.315, F.S., does not prohibit provider contracts between HMOs and ophthalmologists or optometrists from containing provisions requiring the ophthalmologist or optometrist to provide vision care services as a condition of participating as a provider of any other type of service to an insured. Additionally, s. 641.315, F.S., does not prohibit provider contracts between HMOs and ophthalmologists or optometrists from containing provisions requiring the ophthalmologist or optometrist to purchase materials or services from an entity which the insurer has an ownership or financial interest.

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA)⁶ regulates methods of competition and prohibits unfair or deceptive acts or practices. The Legislature designed FDUTPA to protect not only the rights of litigants, but also the rights of the consuming public at large.⁷

The purpose of FDUTPA is to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.⁸ FDUTPA is not limited to purely consumer transactions; it protects any person, business or consumer.⁹ FDUTPA applies to any act or practice occurring in the conduct of any trade or commerce, even as between purely commercial interests.¹⁰ As such, FDUTPA must be liberally construed in order to:

- Simplify, clarify, and modernize the law governing consumer protection;
- Protect consumers and legitimate businesses from unfair methods of competition and unconscionable, deceptive, and unfair trade practices; and
- Make state consumer protection and enforcement consistent with the established policies of federal law relating to consumer protection.¹¹

Effect of the Proposed Changes

CS/HB 769 amends ss. 627.6474, F.S., 636.035, F.S., and 641.315, F.S., to restrict health insurers, PLHSOs, and HMOs, respectively from placing certain requirements on ophthalmologists, optometrists, and opticians under their provider agreements or arrangements.

The bill amends ss. 627.6474 F.S., 636.035, F.S., and 641.315, F.S., to prevent insurers, or their third-party administrator, from requiring an ophthalmologist or optometrist to provide vision care services as a condition of participating as a provider of any other type of service to the insured. The bill also prevents insurers, or their third-party administrators, from requiring the ophthalmologist, optometrist, or optician to purchase materials or services from an entity which the insurer or its third-party administrator has an ownership or financial interest.

The bill specifies that an insurer that violates this section has committed an unfair insurance trade practice and an unfair or deceptive act under FDUTPA. The bill subjects the violator to civil and administrative penalties under the Unfair Insurance Trade Practices Act¹² and FDUTPA. Potential penalties under the Unfair Insurance Trade Practices Act include an amount not greater than:

- \$5,000 for each nonwillful violation
- \$40,000 for each willful violation.
- An aggregate amount of \$20,000 for all nonwillful violations arising out of the same action

⁶ S. 501.201, F.S. et seq.

⁷ *State, Office of Atty. Gen., Dept. of Legal Affairs v. Wyndham Intern., Inc.*, 869 So. 2d 592, 598 (Fla. 1st DCA 2004)

⁸ *Suris v. Gilmore Liquidating, Inc.*, 651 So. 2d 1282, 1283 (Fla. 3d DCA 1995)

⁹ *Pepsico, Inc. v. Distribuidora La Matagalpa, Inc.*, 510 F. Supp. 2d 1110, 1114 (S.D. Fla. 2007) (applying Florida law)

¹⁰ *Beacon Prop. Mgmt., Inc. v. PNR, Inc.*, 890 So. 2d 274, 278 (Fla. 4th DCA 2004)

¹¹ S. 501.202, F.S.

¹² See s. 626.9631, F.S., the penalties under the insurance code are in addition to any other civil or administrative penalties.

- An aggregate amount of \$200,000 for all willful violations arising out of the same action.¹³

Potential penalties under FDUTPA include:

- Not more than \$10,000 for each such violation;
- A declaratory judgment that an act or practice violates this part and enjoining the insurer or plan that has violated, is violating, or is otherwise likely to violate this part; and
- Attorney's fees and costs.

The bill provides that these provisions only apply to contracts or renewals entered into on or after July 1, 2015.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.6474, F.S., relating to provider contracts.

Section 2: Amends s. 636.035, F.S., relating to provider arrangements.

Section 3: Amends s. 641.315, F.S., relating to provider contracts.

Section 4: Provides an effective date of July 1, 2015.

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:

A health insurer, PLHSO, or HMO or a third-party administrator found to have violated the provisions of the bill is subject to civil and administrative fines under the Unfair Insurance Trade Practices Act and FDUTPA.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹³ S. 656.9521(2), F.S.
STORAGE NAME: h0769b.HIS
DATE: 3/20/2015

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Health Innovation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Relocated the limitations on provider contracts for health insurers, prepaid limited health service organizations (PLHSOs) and HMOs to the chapters regulating the particular type of insurance provider instead of placing them in ch. 501, F.S.
- Prevented contracts from requiring that an optician purchase materials from an entity in which the insurance provider, PLHSO, or HMO, or its third-party administrator, has an ownership, financial, or controlling interest.
- Specified that a violation of the bill is an unfair insurance trade practice under s. 626.9541, F.S.
- Specified that the bill only applies to contracts entered to or renewed after July 1, 2015.

The analysis is drafted to the committee substitute as passed by the Health Innovation Subcommittee.