

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 Health Policy

BILL: CS/SB 132

INTRODUCER: Health Policy Committee and Senators Grimsley and Gaetz

SUBJECT: Direct Primary Care

DATE: February 8, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Fav/CS
2.	Johnson	Knudson	BI	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 132 provides that a direct primary care agreement is not insurance and is not subject to the Florida Insurance Code. Direct primary care (DPC) is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee to the primary care provider for defined primary care services. The bill specifies certain provisions that must be included in a direct primary care agreement.

II. Present Situation:

Direct Primary Care

Direct primary care is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee, usually between \$50 and \$100 per individual,¹ to the primary care provider for defined primary care services, such as access at all times to the patient's primary care provider. Other primary care services may include:

- Office visits;
- Annual physical examination;

¹ Approximately two thirds of DPC practices charge less than \$135 per month. Jen Wieczner, *Is Obamacare Driving Doctors to Refuse Insurance?*, WALL ST. J. MARKETWATCH, Nov. 12, 2013, available at <http://www.marketwatch.com/story/is-direct-primary-care-for-you-2013-11-12> (last visited Jan. 27, 2016).

outside of standard insurance coverage.³ The AAPP said that number has increased around 25 percent per year since 2010.⁴

DPC and Health Care Reform

The Patient Protection and Affordable Care Act (PPACA)⁵ addresses the DPC practice model as part of health care reform. A qualified health plan under PPACA is permitted to offer coverage through a DPC medical home plan if it provides essential health benefits and meets all other criteria in the law.⁶ Patients who are enrolled in a DPC medical home plan are exempt from the individual mandate if they have coverage for other services, such as a wraparound catastrophic health policy to cover treatment for serious illnesses, like cancer, or severe injuries that require lengthy hospital stays and rehabilitation.⁷ In Colorado and Washington, qualified health plans are offering DPC medical home coverage on each state-based health insurance exchange.⁸

III. Effect of Proposed Changes:

The bill creates s. 624.27, F.S., relating to the application of the Florida Insurance Code (code) to direct primary care agreements. Several new definitions are created under this section:

- *Direct primary care agreement* means a contract between a primary care provider and a patient, the patient's legal representative, or an employer which must satisfy certain requirements within the bill and does not indemnify for services provided by a third party.
- *Primary care provider* means a licensed health care practitioner under chapter 458 (medical doctor or physician assistant), chapter 459 (osteopathic doctor or physician assistant), chapter 460 (chiropractic physician), or chapter 464 (nurses), or a primary care group practice who provides medical services which are commonly provided without referral from another health care provider.
- *Primary care service* means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

The bill provides that a direct primary care agreement is not insurance and entering into such an agreement is not the business of insurance. The bill exempts both the agreement and the activity from the code. Through the exemption, the bill eliminates any authority of OIR to regulate a direct primary care agreement or the act of entering into such an agreement. The bill also exempts a primary care provider, or his or her agent, from certification or licensing requirements under the code to market, sell, or offer to sell a direct primary care agreement.

The bill requires a direct primary care agreement to:

- Be in writing;

³ David Twiddy, *Practice Transformation: Taking the Direct Primary Care Route*, FAMILY PRACTICE MGMT, No. 3, (May-June 2014), <http://www.aafp.org/fpm/2014/0500/p10.html> (last visited Jan. 27, 2016).

⁴ Id.

⁵ Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).

⁶ 42 U.S.C. s. 1802 (a)(3); 45 C.F.R. s. 156.245.

⁷ 42 U.S.C. s. 18021(a)(3).

⁸ Robleto, *Supra* note 1, slide 2.

- Be signed by the primary care provider, or his or her agent, and the patient, or the patient's legal representative, or an employer;
- Allow either party to terminate the agreement by written notice followed by a waiting period as specified in the agreement;
- Describe the scope of services that are covered by the monthly fee;
- Specify the monthly fee and any fees for primary care services not covered by the monthly fee;
- Specify the duration of the agreement and any automatic renewal provisions;
- Provide for a refund to the patient of monthly fees paid in advance if the primary care provider stops offering primary care services for any reason;
- State that the agreement is not health insurance and the primary care provider will not file any claims against any health insurance or reimbursement plans the patient may have for any primary care services covered by the agreement; and
- State that the agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the federal Patient Protection and Affordable Care Act.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 132 removes regulatory uncertainty for health care providers as to whether the direct primary care agreement is insurance. Additional primary care providers may elect to pursue this option and establish direct primary care practices in this state which could increase access to affordable primary care services.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates 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 Health Policy on February 1, 2016:

The CS expands the definition of a primary care provider to include a chiropractic physician and conforms the description of the licensed persons to health care practitioners as opposed to health care providers.

- B. Amendments:

None.