

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 161 Direct Primary Care Agreements  
**SPONSOR(S):** Health Innovation Subcommittee, Burgess, Jr.  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 240

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	15 Y, 0 N, As CS	Poche	Poche
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

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, usually between \$25 and \$100 per individual, to the primary care provider for defined primary care services. After paying the fee, a patient can utilize all services under the agreement at no extra charge. Some DPC practices also include routine preventative services, women's health services, pediatric care, urgent care, wellness education, chronic disease management, and home visits. The Office of Insurance Regulation does not currently regulate DPC agreements.

CS/HB 161 provides that a direct primary care agreement (agreement) and the act of entering into such an agreement are not insurance and not subject to regulation under the Florida Insurance Code (Code), including chapter 636, F.S. The bill also exempts a primary care provider, which includes a primary care group practice, or his or her agent, from any certification or licensure requirements in the Code for marketing, selling, or offering to sell an agreement. An agreement must:

- Be in writing;
- Be signed by the primary care provider, or his or her agent, and the patient, or the patient's legal representative;
- Allow either party to terminate the agreement by written notice followed by, at least, a 30 day waiting period;
- Allow immediate termination of the agreement for a violation of physician-patient relationship or a breach of the terms of the agreement;
- Describe the scope of services that are covered by the monthly fee;
- Specify the monthly fee and any fees for services not covered under the agreement;
- 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 that the primary care provider will not file any claims against the patient's health insurance policy or plan for reimbursement for any primary care services covered by the agreement;
- State that the agreement does not qualify as minimum essential coverage to satisfy the individual responsibility provision of the Patient Protection and Affordable Care Act; and
- State that the agreement is not workers' compensation insurance and may not replace the employer's obligations under chapter 440, F.S.

The bill provides an effective date of July 1, 2017.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida Office of Insurance Regulation

The Florida Office of Insurance Regulation (OIR) regulates the business of insurance in the state, in accordance with the Florida Insurance Code (Code). The specific chapters under the Code are:

- Chapter 624, F.S. – Insurance Code: Administration and General Provisions
- Chapter 625, F.S. – Accounting, Investments, and Deposits by Insurers
- Chapter 626, F.S. – Insurance Field Representatives and Operations
- Chapter 627, F.S. – Insurance Rates and Contracts
- Chapter 628, F.S. – Stock and Mutual Insurers; Holding Companies
- Chapter 629, F.S. – Reciprocal Insurers
- Chapter 630, F.S. – Alien Insurers: Trusteed Assets; Domestication
- Chapter 631, F.S. – Insurer Insolvency; Guaranty of Payment
- Chapter 632, F.S. – Fraternal Benefit Societies
- Chapter 634, F.S. – Warranty Associations
- Chapter 635, F.S. – Mortgage Guaranty Insurance
- Chapter 636, F.S. – Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations
- Chapter 641, F.S. – Health Care Service Programs
- Chapter 648, F.S. – Bail Bond Agents
- Chapter 651, F.S. – Continuing Care Contracts

The Life and Health Unit (Unit) of OIR provides financial oversight of health insurers, health maintenance organizations, and other regulated entities providing health care coverage. The Unit also reviews and approves some health care coverage products offered in the state. The following chart shows the type and number of each entity in the state:<sup>1</sup>

Authority Category	Authorities
Health Insurers	378
Third Party Administrators	302
Continuing Care Retirement Communities	76
Discount Medical Plan Organizations	38
Health Maintenance Organizations	35
Fraternal Benefit Societies	38
Prepaid Limited Health Service Organizations/Prepaid Health Clinics	24

#### Direct Primary Care

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, usually between \$50 and \$100 per individual,<sup>2</sup> to the primary care provider for defined primary care services. These primary care services may include:

<sup>1</sup> Email correspondence from OIR staff dated February 3, 2017, reflecting the number of entities in the state as of February 2, 2017 (on file with Health Innovation Subcommittee staff).

<sup>2</sup> A recent study of 141 DPC practices found the average monthly fee to be \$77.38. Philip M. Eskew and Kathleen Klink, *Direct Primary Care: Practice Distribution and Cost Across the Nation*, Journal of the Amer. Bd. of Family Med., November-December 2015, Vol. 28 No. 6, pg. 797; approximately two thirds of DPC practices charge less than \$135 per month. Jen Wiczner, *Is Obamacare Driving*

- Office visits;
- Annual physical examination;
- Routine laboratory tests;
- Vaccinations;
- Wound care;<sup>3</sup>
- Splinting or casting of fractured or broken bones;
- Other routine testing, e.g. echocardiogram and colon cancer screening; or
- Other medically necessary primary care procedures.

After paying the fee, a patient can access all services under the agreement at no extra charge. Some DPC practices also include routine preventative services, like laboratory tests, mammograms, Pap screenings, vaccinations, and home visits.<sup>4</sup> A primary care provider DPC model can be designed to address the large majority of health care issues, including women's health services, pediatric care, urgent care, wellness education, and chronic disease management.

In the DPC practice model, the primary care provider eliminates practice overhead costs associated with filing claims, coding, refiling claims, write-offs, appealing denials, and employing billing staff. The cost and time savings can be reinvested in the practice, allowing more time with patients to address their primary care needs.

The following chart illustrates the concentration of DPC practices in the United States:<sup>5</sup>

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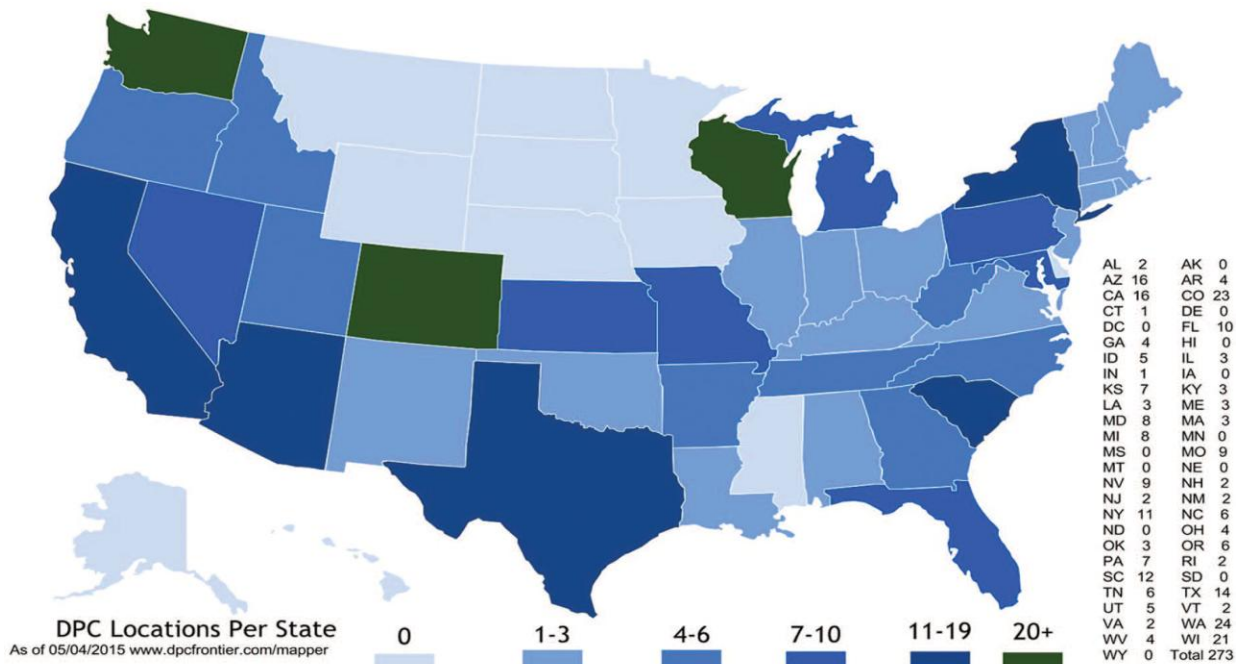
*Doctors to Refuse Insurance?*, Wall St. J. Marketwatch, Nov. 12, 2013, available at: <http://www.marketwatch.com/story/is-direct-primary-care-for-you-2013-11-12> (last visited February 5, 2017).

<sup>3</sup> E.g., stitches and sterile dressings.

<sup>4</sup> Direct Primary Care Journal, *DPC Journal Releases Two-Year Industry Analysis of Direct Primary Care Marketplace; Shows Trends, Demographics, DPC Hot Zones*, available at: <http://directprimarycarejournal.com/2015/08/24/dpc-journal-releases-two-year-industry-analysis-of-direct-primary-care-marketplace-shows-trends-demographics-dpc-hot-zones/> (last viewed February 5, 2017).

<sup>5</sup> See supra, FN 2, Eskew and Klink.

# Direct Primary Care Practice Distribution



There are an estimated 4,400 direct primary care physicians nationwide, up from 756 in 2010.<sup>6</sup>

As of June 2016, sixteen states have approved legislation which defines DPC agreements or services as outside the scope of state regulation<sup>7</sup>, including:

- Washington
- West Virginia
- Oregon
- Utah
- Arizona
- Louisiana
- Michigan
- Mississippi
- Idaho
- Oklahoma
- Kansas
- Missouri
- Texas
- Nebraska
- Tennessee
- Wyoming

Florida statutes do not specifically address DPC agreements, and OIR has not asserted regulatory authority over them. There is uncertainty about whether OIR might assert such authority in the future. In the event that OIR found that DPC agreements constitute insurance plans subject to regulation under the Insurance Code, the agreements could be subject to the insurance premium tax. In addition, DPC would be required to meet all other applicable regulations, including reserve requirements, rate and form reviews by OIR, and regulations governing ownership and administration of the DPC arrangement.

<sup>6</sup> Daniel McCorry, *Direct Primary Care: An Innovative Alternative to Conventional Health Insurance*, The Heritage Foundation Backgrounder, No. 2939 (Aug. 6, 2014), available at: <http://report.heritage.org/bg2939> (last viewed January 23, 2016).

<sup>7</sup> Direct Primary Care Coalition, *On the Move in the States with DPC*, available at: <http://www.dpcare.org> (last viewed February 5, 2017).

## DPC and Health Care Reform

The Patient Protection and Affordable Care Act (PPACA)<sup>8</sup> addresses the DPC practice model. The individual responsibility provision of PPACA requires individuals to obtain health insurance coverage that meets minimum essential coverage standards in the law. Failure to do so results in tax penalties. Direct primary care arrangements alone do not constitute minimum essential coverage because they do not cover catastrophic medical events. 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.<sup>9</sup> Patients who are enrolled in a DPC medical home plan may be compliant with 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.<sup>10</sup> In Colorado and Washington, qualified health plans are offering DPC medical home coverage on each state-based health insurance exchange.<sup>11</sup>

### **Effect of Proposed Changes**

CS/HB 161 provides that a direct primary care agreement is not insurance and entering into such an agreement is not the business of insurance. It exempts both the agreement and the activity from the Code, including chapter 636, F.S. Through the exemption, the bill eliminates any authority of OIR to regulate a direct primary care agreement or 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;
- Be signed by the primary care provider, or his or her agent, and the patient, the patient's legal representative, or an employer;
- Allow either party to terminate the agreement by written notice followed by, at least, a 30 day waiting period;
- Allow immediate termination of the agreement for a violation of physician-patient relationship or a breach of the terms of the agreement;
- Describe the scope of services that are covered by the monthly fee;
- Specify the monthly fee and any fees for services not covered under the agreement;
- 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 that the primary care provider will not bill the patient's health insurance policy or plan for services covered under the agreement;
- State that the agreement does not qualify as minimum essential coverage to satisfy the individual responsibility provision of the Patient Protection and Affordable Care Act; and
- State that the agreement is not workers' compensation insurance and may not replace the employer's obligations under chapter 440, F.S.

The bill provides an effective date of July 1, 2017.

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

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<sup>8</sup> Pub. L. No. 111-148, H.R. 3590, 111<sup>th</sup> Cong. (Mar. 23, 2010).

<sup>9</sup> 42 U.S.C. §1802 (a)(3); 45 C.F.R. §156.245

<sup>10</sup> 42 U.S.C. §18021(a)(3); The Secretary of the U.S. Department of Health and Human Services is required to promulgate rules to guide insurers in developing DPC medical home products that provide minimum essential coverage. As of the date of this analysis, those rules have not been promulgated.

<sup>11</sup> Jay Keese, Direct Primary Care Coalition, *Direct Primary Care*, PowerPoint presentation before the House Health Innovation Subcommittee, slide 2, February 17, 2015 (on file with Health Innovation Subcommittee staff).

**Section 1:** Creates s. 624.27, F.S., relating to application of code as to direct primary care agreements.

**Section 2:** Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

On March 20<sup>th</sup> and December 4<sup>th</sup>, 2015, the Revenue Estimating Conference (REC) adopted an estimate of the impact of previous versions of this bill, which had similar or identical language to CS/HB 161. The REC estimated the prior bills to have either no impact or a negative, indeterminate impact to General Revenue, reflecting uncertainty about whether DPC agreements might be subject to regulation by OIR and thereby subject to insurance premium tax under s. 624.509, F.S.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes any regulatory uncertainty as to the status of a direct primary care agreement as insurance. Primary care providers may choose to invest in establishing direct primary care practices throughout the state to provide primary care services, which would increase access to such services, without concern of facing regulatory action by OIR.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Not applicable.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2017, the Health Innovation Subcommittee adopted one amendment to HB 161. The amendment required the direct primary care agreement to include a notice provision, in at least 12-point type in a contrasting color on the signature page, stating that the agreement is not workers' compensation insurance and may not replace an employer's obligations under chapter 440, F.S., the workers' compensation statute.

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