HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 577 Discount Plan Organizations
SPONSOR(S): Health Innovation Subcommittee; Pigman
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	13 Y, 0 N, As CS	Tuszynski	Poche
2) Insurance & Banking Subcommittee	15 Y, 0 N	Peterson	Luczynski
3) Health & Human Services Committee	17 Y, 0 N	Tuszynski	Calamas

SUMMARY ANALYSIS

Regulatory oversight of insurance companies is generally reserved to the states. In Florida, the Office of Insurance Regulation (OIR), within the Department of Financial Services (DFS), regulates insurers and other risk bearing entities under the Insurance Code.

Discount Medical Plan Organizations (DMPOs) offer discount medical plans, in exchange for fees, dues, charges, or other consideration, which provide access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. Discount medical plans are not considered insurance under ch. 627, F.S., health maintenance organizations under chapter 641, F.S., or prepaid limited health plans under part I of ch. 636, F.S. The Legislature established the regulatory scheme for DMPOs in 2004, which includes licensure, forms and rate filings and approval, disclosure requirements, and penalties.

The bill renames a “Discount Medical Plan” and a “Discount Medical Plan Organization” a “Discount Plan” and a “Discount Plan Organization” (DPO), and clarifies the definition of a “Discount Plan” to exclude any plan that does not charge a fee to members. The bill removes all rate and form filing and approval requirements for DPOs. To increase flexibility in marketing and reduce administrative barriers on DPOs, the bill:

- Defines “first page”, upon which certain disclosures must appear, to mean the first page of any marketing material that first includes information describing benefits;
- Allows DPOs to delegate functions to marketers and binds DPOs to the actions of those marketers within the scope of the delegation; and
- Allows marketers and DPOs to commingle certain information on forms, advertisements, marketing materials, or brochures.

To maintain consumer protections for potential members and members of Discount Plans, the bill:

- Changes the disclosure requirements by requiring acknowledgement and acceptance of the disclosures before enrollment and creating visibility and follow up requirements for disclosures made by electronic means or telephone;
- Requires third-party entities that enter into contracts with providers to administer or provide a Discount Plan platform to providers’ patients to be licensed as a DPO; and
- Establishes new cancellation and reimbursement requirements for DPOs to disallow any charges beyond the effective cancellation date, require pro rata reimbursement of charges paid by a member for the months beyond the effective cancellation date, and require pro rata reimbursement for members who cancel during an open enrollment period, upon return of his or her discount card.

The bill also makes extensive conforming changes to the chapter to reflect the new names.

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

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Office of Insurance Regulation

The regulatory oversight of insurance companies is generally reserved to the states. In Florida, the Office of Insurance Regulation (OIR), within the Department of Financial Services (DFS), regulates insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the Insurance Code (Code).[1]

All persons who transact insurance in the state must comply with the Insurance Code.[2] OIR has the power to collect, propose, publish, and disseminate any information relating to the subject matter of the Code,[3] and may investigate any matter relating to insurance.[4] The specific chapters that comprise 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

Discount Medical Plans and Organizations

Discount Medical Plan Organizations (DMPOs)[5] offer Discount Medical Plans,[6] in exchange for fees, dues, charges, or other consideration, which provide access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. For example, a member might pay a DMPO a monthly fee of $25 to access a network of providers who have contracted with the DMPO to offer discounts on certain procedures; the member chooses one of these contracted providers and has a $500 procedure done for $425, which is the 15 percent discounted rate provided in the plan.

[1] S. 20.121(3)(a)1., F.S. The OIR's commissioner is the agency head for purposes of final agency action, and its rulemaking body is the Financial Services Commission (the Governor and the Cabinet).
[2] S. 624.11, F.S.
[3] S. 624.307(4), F.S.
[4] S. 624.307(3), F.S.
[5] S. 636.202(2), F.S.
[6] S. 636.202(1), F.S.

Discount Medical Plans are not considered insurance under chapter 627, F.S., health maintenance organizations under chapter 641, F.S., or prepaid limited health plans under part I of chapter 636, F.S.[7]

Regulation of DMPOs

The Legislature established the regulatory scheme for DMPOs in 2004, creating part II of ch. 636, F.S., titled "Discount Medical Plan Organizations."[8] Regulation of DMPOs involves licensure, form and rate filings and approval, procedures for examinations and investigations by OIR, prohibited activities, required disclosures to plan members, tracking of providers, annual report filing, minimum capital requirements, a process for suspension and revocation of licenses, and other penalties.[9]

To obtain a license, a prospective DMPO must file an application with OIR for approval and pay a $50 licensure fee.[10] The application must include corporate formation documents, a copy of the form of all contracts for the provision of services, financial statements, and other information OIR may reasonably require.[11] If approved, OIR must issue a license for 1 year, and each year thereafter the DMPO must renew its license and pay a $50 fee.[12] The statute exempts from DMPO licensure requirements a provider who provides discounts to his or her own patients, such as a dentist who discounts routine procedures for current active patients.[13]

A DMPO must file all charges to members with OIR, and any charge to members that is more than $30 per month or $360 per year must be approved by OIR.[14] A DMPO is also required to file and get approval by OIR for all forms, including advertisements, marketing materials, and brochures, before using them.[15] DMPOs must make the following disclosures on the first page, written in 12-point font, of any advertisement, marketing material, and brochure, to any prospective member:[16]

- The plan is not insurance.
- The plan provides discounts at certain health care providers for medical services.
- The plan does not make payments directly to the providers of medical services.
- The plan member is obligated to pay for all health care services but will receive a discount from those providers who have contracted with the DMPO.
- The name and address of the licensed DMPO.

If a member cancels his or her membership in a plan within the first 30 days of the effective date of enrollment, the DMPO must reimburse all periodic charges upon return of the discount card to the DMPO and any portion of a one-time processing fee in excess of $30.[17] If a DMPO fails to comply with the provisions of part II of ch. 636, F.S., OIR may levy administrative penalties of $100 per violation, not to exceed $75,000 in aggregate,[18] or $500 per day for the first 10 days and $1,000 for each day after the 10th day for failure to file the required annual report.[19] OIR may also suspend a DMPO's authority to enroll new members, or revoke a DMPO's license.[20]

[7] Id.
[8] Ch. 2004-297, Laws of Fla.
[9] Part II of Ch. 636, F.S.
[10] S. 636.204(2) and (5), F.S.
[11] S. 636.204(2)(a),(b),(c),(f),(i), and (m), F.S.
[12] S. 636.204(3), F.S.
[13] S. 636.204(6), F.S.
[14] S. 636.216(1), F.S.
[15] Ss. 636.216(3) and 228(1), F.S.
[16] S. 636.212, F.S.
[17] S. 636.208, F.S.
[18] S. 636.223, F.S.
[19] S. 636.218, F.S.
[20] S. 636.222, F.S.

Complaints against DMPOs

From January 2014 through December 2016, there were 35 complaints filed against DMPOs.[21] The majority of these complaints concerned refunds after cancellation of a plan, confusion regarding the difference in insurance and a Discount Medical Plan, and provider network adequacy.[22]

Effect of the Bill

The bill renames a "Discount Medical Plan" and a "Discount Medical Plan Organization" to a "Discount Plan" and a "Discount Plan Organization" (DPO). Plans may use the old plan and organization monikers until June 30, 2018, allowing such plans and organizations enough time to make changes to plan and marketing materials. The bill clarifies the definition of a "Discount Plan" to exclude from licensure requirements any plan that does not charge a fee to its members. The bill also requires third-party entities that enter contracts with providers to administer or provide a Discount Plan platform to providers' patients to be licensed as a DPO.

The bill eliminates all required form filing and approval by OIR for DPOs, repeals the requirement for DPOs to file all member charges with OIR, and removes the requirement that all charges greater than $30 per month or $360 per year be approved by OIR. These changes will remove administrative burdens on DPOs and OIR relating to form and rate filing. Removing the requirement for the approval of charges over a certain amount by OIR will further reduce administrative burdens and introduce a free-market approach to the determination of charges for Discount Plan products.

The bill makes changes to the disclosure requirements of DPOs. The bill:

- Defines "first page," upon which the disclosures must appear, to be the page of any advertisement, marketing material, or brochure that first includes information describing benefits.
- Requires a DPO or a DPO's marketer to provide the required disclosures to a prospective member and require the member to acknowledge and accept the disclosures before enrolling. This protects members by requiring that the prospective member must affirmatively acknowledge and accept the required disclosures before enrolling in a Discount Plan.
- Requires disclosures made by electronic means to include the required disclosures and to be presented in a readable font size and color.
- Requires disclosures made by telephone to include all required disclosures, and to be followed up with written disclosures provided to the member.
- Allows additional disclosures beyond the statutory requirement.

These changes in disclosure requirements allow DPOs more flexibility in the design and presentation of advertising and marketing materials. The changes maintain consumer protections by requiring acknowledgment and acceptance of the disclosures before allowing enrollment and requiring visibility and follow-up requirements for disclosures made by electronic means or telephone.

The bill creates further consumer protections by establishing new requirements for cancellation and reimbursement after cancellation of Discount Plans. Under these new requirements, DPOs must:

- Cancel a membership on or before 30 days after receipt of a request to cancel;
- Refrain from charging a member any fee after the effective date of cancellation;
- Provide pro rata reimbursement of periodic charges to a member after cancellation of his or her membership;

[21] Email from Elizabeth Boyd, Legislative Affairs Director, Office of Chief Financial Officer, FW: DMPO Complaints, (Feb. 13, 2017).
[22] Redacted Consumer Requests for Assistance from the Department of Financial Services (on file with Health Innovation Subcommittee staff).

- Provide pro rata reimbursement of all periodic charges for a member who cancels his or her membership, consistent with open enrollment rules established by an employer or association, upon return of the discount card to the DPO; and
- Maintain an accurate record of each member in a form accessible to OIR for the duration of the agreement and for 5 years thereafter, to include membership materials provided, the discount plan issued, and charges billed and paid.

The bill changes how Discount Plans can be marketed. The bill explicitly allows a DPO to delegate functions to a marketer and states the DPO will be bound to the actions of marketers within the scope of that delegation which do not comply with statute. The bill also allows a marketer or Discount Plan Organization selling a Discount Plan with medical services and other services to commingle those products on a single page of forms, advertisements, marketing materials, or brochures. This change allows DPOs and Discount Plan marketers to offer multiple products within one form or on the same marketing materials, further reducing administrative burdens on DPOs.

The bill makes extensive conforming changes to the chapter to reflect the new names.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Retitles chapter 636, F.S., from "Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations" to "Prepaid Limited Health Service Organizations and Discount Plan Organizations."
Section 2: Retitles part II of chapter 636, F.S., from "Discount Medical Plan Organizations" to "Discount Plan Organizations."
Section 3: Amends s. 636.202, F.S., relating to definitions.
Section 4: Amends s. 636.204, F.S., relating to license required.
Section 5: Amends s. 636.206, F.S., relating to examinations and investigations.
Section 6: Amends s. 636.208, F.S., relating to fees; charges; reimbursement.
Section 7: Amends s. 636.212, F.S., relating to disclosures.
Section 8: Amends s. 636.214, F.S., relating to provider agreements.
Section 9: Amends s. 636.216, F.S., relating to form filings.
Section 10: Amends s. 636.228, F.S., relating to marketing of discount medical plans.
Section 11: Amends s. 636.230, F.S., relating to bundling discount medical plans with other products.
Section 12: Amends s. 636.232, F.S., relating to rules.
Section 13: Amends s. 408.9091, F.S., relating to Cover Florida Health Care Access Program.
Section 14: Amends s. 408.910, F.S., relating to Florida Health Choices Program.
Section 15: Amends s. 627.64731, F.S., relating to leasing, renting, or granting access to participating provider.
Section 16: Amends s. 636.003, F.S., relating to definitions.
Section 17: Amends s. 636.205, F.S., relating to issuance of license; denial.
Section 18: Amends s. 636.207, F.S., relating to applicability of part.
Section 19: Amends s. 636.210, F.S., relating to prohibited activities of a discount medical plan organization.
Section 20: Amends s. 636.218, F.S., relating to annual reports.
Section 21: Amends s. 636.220, F.S., relating to minimum capital requirements.
Section 22: Amends s. 636.222, F.S., relating to suspension or revocation of license; suspension of enrollment of new members; terms of suspension.
Section 23: Amends s. 636.223, F.S., relating to administrative penalty.
Section 24: Amends s. 636.224, F.S., relating to notice of change of name or address of discount medical plan organization.
Section 25: Amends s. 636.226, F.S., relating to provider name listing.

Section 26: Amends s. 636.234, F.S., relating to service of process on a discount medical plan organization.
Section 27: Amends s. 636.236, F.S., relating to surety bond or security deposit.
Section 28: Amends s. 636.238, F.S., relating to penalties for violation of this part.
Section 29: Amends s. 636.240, F.S., relating to injunctions.
Section 30: Amends s. 636.244, F.S., relating to unlicensed discount medical plan organizations.
Section 31: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   OIR may realize a decrease in regulatory workload due to removal of the rate and form filing and approval requirement for Discount Plans and removal of the approval requirement for Discount Plan charges above $30 per month or $360 per year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DPOs should realize administrative efficiencies from the elimination of several filing requirements and other regulations. DPOs may be more likely to charge more than $30 per month or $360 per year, since OIR approval is no longer required.

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 March 7, 2017, the Health Innovation Subcommittee adopted one amendment to HB 577. The amendment:

- Removed the requirement that providers offering discounted services to their own patients for a fee to obtain and maintain a DPO license;
- Required a third-party entity that contracts with a provider to administer or provide a Discount Plan platform for the provider's patients to be licensed as a DPO;
- Restructured and clarified language regarding disclosures in Discount Plans to require:
  - A DPO or marketer to provide the required disclosures to a prospective member and require the member to acknowledge and accept the disclosures before enrolling;
  - Disclosures made by electronic means to include the required disclosures and to use a readable font size and color; and
  - Disclosures made by telephone to include all required disclosures, and to be followed up with written disclosures provided to the member.
- Eliminated form filing with and approval by OIR for DPOs;
- Required a DPO to maintain accurate records of each member in a form accessible by OIR for the duration of the agreement and for 5 years thereafter, to include membership materials provided, the discount plan issued, and charges billed and paid;
- Created new reimbursement rules that require a DPO to:
  - Cancel a membership on or before 30 days after receipt of a request to cancel;
  - Refrain from charging a member any fee after the effective date of cancellation;
  - Provide pro rata reimbursement of periodic charges to a member after cancellation of his or her membership; and
  - Provide pro rata reimbursement of all periodic charges for a member who cancels his or her membership, consistent with open enrollment rules established by an employer or association, upon return of the discount card to the DPO.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.