

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 Appropriations

BILL: CS/SB 524

INTRODUCER: Banking and Insurance Committee and Senators Diaz, Farmer, and Bean

SUBJECT: Health Insurance Savings Programs

DATE: April 17, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>Sanders</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 524 creates the Patient Savings Act, which allows health insurers and health maintenance organizations (HMOs) to create a shared savings incentive program that may provide financial incentives to insureds with individual policies or contracts when they obtain shoppable health care services offered by their health insurer or HMO through their shared savings list. The shoppable health care services are lower-cost, high-quality non-emergency services for which a shared savings incentive is available for insureds under the program. The insurer's shared savings incentive list may include shoppable health care services within and outside of Florida. The program is voluntary for insurers, HMOs, policyholders, and subscribers. Health insurers offering a shared savings incentive program must submit an annual report to the Office of Insurance Regulation (OIR) regarding the performance of the program.

The Revenue Estimating Conference determined the bill has a negative \$100,000 recurring impact to the General Revenue fund, based on the analysis for CS/HB 1113, the House companion.¹

The effective date of the bill is January 1, 2020.

¹ Revenue Estimating Conference (March 15, 2019)
<http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/pdf/Impact0315.pdf> (last visited April 8, 2019).

II. Present Situation:

Health care spending in the United States is expected to grow an average of 5.5 percent annually from 2018-2027, reaching nearly \$6.0 trillion by 2027.² Consumers are becoming responsible for a growing proportion of this spending, as demonstrated in the increased use of high deductible health plans and other forms of cost sharing. Since 2012, the percentage of workers covered by a plan with a deductible of \$1,000 or greater has grown from 34 to 51 percent.³

Price transparency and quality transparency enable consumers to obtain more value out of the health care system. Greater awareness and access by consumers to pricing information before obtaining health care services may result in lower overall payments for health care services and higher quality providers. A recent study concluded that the use of private price transparency platforms was associated with lower claims payments for common medical services.⁴ According to a 2017 survey, 98 percent of health plans around the country indicated that they have cost calculator tools, but only two percent of policyholders or subscribers use them.⁵ Financial incentives may encourage consumers to access price information. Incentives may include reductions in premiums, cash payments, or lower out-of-pocket costs for their members if they select low-price, high quality providers.

Regulation of Health Insurance

The OIR is responsible for the regulation of insurers and other risk-bearing entities.⁶ Rates and forms of individual and small group policies and contracts are subject to prior approval. The Insurance Code⁷ does not address a shared savings program.

Section 627.6385, F.S., requires health insurers writing individual policies to make available on their website a method for policyholders to estimate their copayments, deductibles, and other cost-sharing responsibilities for health care services and procedures.⁸ Insurers are required to provide a hyperlink to health information, including service bundles and quality of care information, developed by the Agency for Health Care Administration. Likewise, the federal Patient Protection and Affordable Care Act⁹ requires insurance policies and contracts to provide price and coverage information to enrollees, including cost sharing and payments with respect to out-of-network coverage.¹⁰

² Office of the Actuary, Centers for Medicare & Medicaid Services (CMS), National Health Expenditure Projections 2018-2027, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf> (last viewed March 2, 2019).

³ North Carolina Medical Journal, 79. 1.34.

⁴ JAMA. 2014;312(16):1670-1676.

⁵ Catalyst for Payment Reform Survey available at <http://www.catalyzepaymentreform.org/wp-content/uploads/2017/04/National-Scorecard.png> (last viewed March 2, 2019).

⁶ Section 20.121, F.S. The Financial Services Commission, composed of the Governor, Attorney General, Commissioner of Agriculture, and the Chief Financial Officer, are the agency head for purposes of rulemaking.

⁷ Ch. 624, F.S.

⁸ The Agency for Healthcare Administration, available at <http://www.floridahealthfinder.gov/index.html> (last viewed March 2, 2019).

⁹ Patient Protection and Affordable Care Act, Public Law 111-148, was enacted on March 23, 2010; and amended by the Health Care and Education Reconciliation Act, Public Law 111-152, was enacted on March 30, 2010.

¹⁰ 45 CFR Part 147 and Section 2715A Public Health Service Act.

State Group Insurance Program

On January 1, 2019, the Division of State Group Insurance of the Department of Management Services instituted a voluntary shared savings program to reward policyholders, subscribers, or their dependents for making informed and cost-effective decisions about health care spending, thereby reducing healthcare costs.¹¹ The program allows participants to earn rewards by receiving rewardable healthcare services through two state vendors. Rewards are credited to a select pretax savings or spending account of the participant, and funds can be used to pay for eligible medical, dental, and vision expenses. Rewards are earned after the participant shops for a rewardable healthcare service on the website, receives the service, and the claim has been paid.¹²

III. Effect of Proposed Changes:

Section 1 creates s. 627.6387, F.S., the “Patient Saving Act.” This section establishes the shared savings incentive program, which is a voluntary incentive program a health insurer may establish to provide incentives when the insured who has an individual policy, contract, or certificate of insurance obtains a shoppable health care service from a health insurer’s shared savings list. An insured may not be required to participate in a shared savings incentive program. For purposes of this section, the terms “health care provider,” health insurer,” “shared savings incentive,” “shared “savings incentive program,” and “shoppable health care service” are defined.

A “health care provider” means a hospital; a facility licensed under ch. 395, F.S., an entity licensed under ch. 400, F.S.; a health care practitioner as defined in s. 456.001, F.S.; a blood bank, plasma center, industrial clinic, or renal dialysis facility; or a professional association, partnership, corporation, joint venture, or other association for professional activity by health care providers. The term includes entities and professionals outside of this state with an active, unencumbered license for an equivalent facility or practitioner type issued by another state, the District of Columbia, or a possession or territory of the United States.

A “health insurer” is an authorized insurer offering health insurance as defined in s. 624.603, F.S., or a health maintenance organization as defined in s. 641.19, F.S. The term does not include the state group health insurance program.

A “shared savings incentive,” is a voluntary and optional financial incentive that a health insurer may provide to an insured for choosing certain shoppable health care services under a shared savings incentive program and may include, but is not limited to, the incentives described in s. 626.9541(4)(a), F.S., which relate to participation in a wellness or health improvement program. The term, “shared savings incentive program,” means a voluntary and optional incentive program established by a health insurer pursuant to this section.

A “shoppable health care service” is a lower-cost, high quality nonemergency health care service for which a shared savings incentive is available for insureds under a health insurer’s shared savings incentive program. Shoppable health care services may be provided within or outside of this state and include, but are not limited to:

¹¹ Ch. 2017-70, L.O.F.

¹² MyBenefits, Shared Savings Program, available at https://www.mybenefits.myflorida.com/health/shared_savings_program (last viewed March 2, 2019).

- Clinical laboratory services;
- Infusion therapy;
- Inpatient and outpatient surgical procedures;
- Obstetrical and gynecological services;
- Inpatient and outpatient nonsurgical diagnostic tests and procedures;
- Physical and occupational therapy services;
- Radiology and imaging services;
- Prescription drugs; and
- Services provided through telehealth.

A health insurer that offers a shared savings incentive program must:

- Establish the program as a component part of the policy, contract, or certificate of insurance provided by the health insurer.
- File a description of the program with the OIR on a form prescribed by the Financial Services Commission¹³ (commission). The OIR must determine if the program complies with the statutory requirements.
- Notify each insured about the program annually, and at the time of renewal, and notify an applicant for insurance of the availability of the program at the time of enrollment.
- Publish on a webpage easily accessible to insureds and to applicants for insurance coverage a list of shoppable health care services and health care providers and the shared savings incentive amount applicable for each service.
- Notify insureds and the OIR 30 days before program termination.

A shared saving incentive:

- May not be less than 25 percent of the savings generated by the insured's participation in any shared savings incentive offered by the health insurer. The baseline for the savings calculation is the average in-network amount paid for that service in the most recent 12-month period or some other methodology established by the health insurer and approved by the OIR.
- Must be credited or deposited quarterly to an insured's account as a return or reduction in premium, or credited to the insured flexible spending account, health savings account, or health reimbursement account, such that the amount does not constitute income for the insured.

A health insurer offering a shared savings program must submit an annual report to the OIR after the end of each plan year. At a minimum, the report must include the following information:

- Number of insureds who participated in the program and the number of instances of participation;
- The total cost of services provided as a part of the program;

¹³ Section 624.05, F.S., defines "Commission" as the Financial Services Commission. The commission is comprised of four members: the Governor, the Attorney General, the Chief Financial Officer and the Commissioner of Agriculture and is responsible for final approval of rules developed by the Office of Financial Regulation and the Office of Insurance Regulation. Financial Services Commission, <https://www.flofr.com/sitepages/financialservicescommission.htm> (last visited April 2, 2019).

- The total value of the incentive payments made to insureds participating in the program and the values distributed as premium reductions, credits to flexible spending, health savings, or health reimbursement accounts; and
- An inventory of the shoppable health care services offered by the health insurer.

A shared savings incentive offered by a health insurer:

- Is not an administrative expense for rate development or rate filing purposes; and
- Does not constitute an unfair method of competition or an unfair or deceptive act or practice under s. 626.9541, F.S., and is presumed to be appropriate unless credible data clearly demonstrates otherwise.

A shared savings incentive amount provided as a return or reduction in premium reduces the health insurer's direct written premium by the shared savings incentive dollar amount for purposes of ss. 624.509 and 624.5091, F.S. (insurance premium tax and retaliatory tax).

The commission may adopt rules necessary to implement and enforce this section.

Section 2 provides the bill takes effect January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill allows an insurer to reduce its direct written premiums by the dollar amount of the shared savings incentives provided to insureds, thereby reducing its tax liabilities relating to Florida's insurance premium tax and the retaliatory tax. The fiscal impact is

indeterminate. The Revenue Estimating Conference determined the bill has a negative \$100,000 recurring impact to the General Revenue fund, based on the analysis for CS/HB 1113, the House companion.¹⁴

B. Private Sector Impact:

The implementation of a shared savings incentive program may encourage insureds to obtain high quality health care services at lower prices.

C. Government Sector Impact:

The OIR indicates the bill does not have a fiscal impact to state government; however, the OIR also indicates it will need to update “its computer system to allow for carriers to submit a description of the shared savings incentive program”.¹⁵ The OIR did not provide an estimate of the cost associated with this system upgrade.

The bill provides the Financial Services Commission with rulemaking authority to implement the provisions of the bill.

The bill allows an insurer to reduce its direct written premiums, which also reduces the insurer’s tax liabilities related to Florida’s insurance premium tax and the retaliatory tax. The effect of this reduction is unknown and indeterminate. *See* Tax/Fee Issues above.

VI. Technical Deficiencies:

It is unclear whether the shared savings incentives provided to an insured could exceed the annual limits on contributions to pretax savings or spending accounts, such as the health savings account, or the amount of premiums paid by the insured during a plan year.

The term, “health insurer,” is defined to mean insurance as defined in s. 624.603, F.S., which includes major medical health insurance, as well as excepted benefit, limited benefit, indemnity benefit, and supplemental benefit policies. Generally, pretax savings or spending accounts, such as the health savings account, provide tax advantages to offset health care costs. To be eligible for a health savings account, an individual is required to be covered under a high deductible health plan, which provides major medical coverage.¹⁶

VII. Related Issues:

The bill applies to individual policies or contracts only because the bill amends Part VI of ch. 627, F.S. Section 627.601(2), F.S., provides that nothing in this part applies to or affects any group or blanket policy.

¹⁴ Revenue Estimating Conference (March 15, 2019) http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/Impact0315.pdf (last visited April 8, 2019).

¹⁵ The Office of Insurance Regulation, *Senate Bill 524 2019 Agency Legislative Bill Analysis* (February 18, 2019) (on file with the Senate Committee on Appropriations).

¹⁶ Internal Revenue Service, *Health Savings Accounts and Other Tax-Favored Health Plans*, (May 4, 2019) <https://www.irs.gov/pub/irs-pdf/p969.pdf> (last visited Mar. 12, 2019).

VIII. Statutes Affected:

This bill creates section 627.6387 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 Banking and Insurance on March 11, 2019:

The CS:

- Revises definitions.
- Revises and clarifies requirements of the shared savings program.
- Provides technical changes.
- Requires health insurers to submit an annual report to the Office of Insurance Regulation.

- B. **Amendments:**

None.