

By Representatives Crow, Flanagan, Ogles, Morroni, Fuller,
 Lacasa, Villalobos, Burroughs, K. Pruitt, Carlton, Stabins,
 Sublette, Fasano and D. Prewitt

1 A bill to be entitled
 2 An act relating to health care service
 3 programs; amending s. 440.11, F.S.;
 4 establishing exclusive liability of health
 5 maintenance organizations; providing
 6 application; amending s. 641.28, F.S.; revising
 7 award of attorney's fees in civil actions under
 8 certain circumstances; amending s. 641.315,
 9 F.S.; providing additional criteria for certain
 10 provider contracts; amending s. 641.3903, F.S.;
 11 specifying additional practices as unfair
 12 methods of competition or unfair or deceptive
 13 acts or practices; amending s. 641.3917, F.S.;
 14 authorizing civil actions against health
 15 maintenance organizations by certain persons
 16 under certain circumstances; providing
 17 requirements and procedures; providing for
 18 liability for damages and attorney's fees;
 19 prohibiting punitive damages under certain
 20 circumstances; requiring the advance posting of
 21 discovery costs; providing a legislative
 22 declaration; providing an appropriation;
 23 providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 440.11, Florida Statutes, is
 28 amended to read:

29 440.11 Exclusiveness of liability.--

30 (4) Notwithstanding the provisions of s. 624.155 or s.
 31 641.3917, the liability of a carrier or a health maintenance

1 organization to an employee or to anyone entitled to bring
2 suit in the name of the employee shall be as provided in this
3 chapter, which shall be exclusive and in place of all other
4 liability.

5 Section 2. Section 641.28, Florida Statutes, 1996
6 Supplement, is amended to read:

7 641.28 Civil remedy.--

8 (1) In any civil action brought to enforce the terms
9 and conditions of a health maintenance organization contract:

10 (a) If the civil action is filed before or within 60
11 days after the subscriber or enrollee filed a grievance or
12 notice of intent to sue with the statewide provider and
13 subscriber assistance program established pursuant to s.
14 408.7056 or a notice pursuant to s. 641.3917, the prevailing
15 party is entitled to recover reasonable attorney's fees and
16 court costs.

17 (b) If the civil action is filed pursuant to s.
18 641.3917 more than 60 days after the subscriber or enrollee
19 filed a notice of intent to sue with the statewide provider
20 and subscriber assistance program established pursuant to s.
21 408.7056 or a notice pursuant to s. 641.3917, and the
22 subscriber or enrollee receives a final judgment or decree
23 against the health maintenance organization in favor of the
24 subscriber or enrollee, the court shall enter a judgment or
25 decree against the health maintenance organization in favor of
26 the subscriber or enrollee for reasonable attorney's fees and
27 court costs.

28 (2) This section shall not be construed to authorize a
29 civil action against the department, its employees, or the
30 Insurance Commissioner or against the Agency for Health Care
31 Administration, its employees, or the director of the agency.

1 Section 3. Subsection (8) is added to section 641.315,
2 Florida Statutes, 1996 Supplement, to read:

3 641.315 Provider contracts.--

4 (8) No contract between a health maintenance
5 organization and a provider of health care services shall
6 contain any provision restricting the provider's ability to
7 communicate information to the provider's patient regarding
8 medical care or treatment options for the patient when the
9 provider deems knowledge of such information by the patient to
10 be in the best interest of the patient.

11 Section 4. Paragraphs (c), (d), and (e) are added to
12 subsection (10) of section 641.3903, Florida Statutes, 1996
13 Supplement, and subsection (14) is added to said section, to
14 read:

15 641.3903 Unfair methods of competition and unfair or
16 deceptive acts or practices defined.--The following are
17 defined as unfair methods of competition and unfair or
18 deceptive acts or practices:

19 (10) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED
20 CHARGES FOR HEALTH MAINTENANCE COVERAGE.--

21 (c) Canceling or otherwise terminating any health
22 maintenance contract or coverage, or requiring execution of a
23 consent to rate endorsement, during the stated contract term
24 for the purpose of offering to issue, or issuing, a similar or
25 identical contract to the same subscriber or enrollee with the
26 same exposure at a higher premium rate or continuing an
27 existing contract with the same exposure at an increased
28 premium.

29 (d) Issuing a nonrenewal notice on any health
30 maintenance organization contract, or requiring execution of a
31 consent to rate endorsement, for the purpose of offering to

1 issue, or issuing, a similar or identical contract to the same
2 subscriber or enrollee at a higher premium rate or continuing
3 an existing contract at an increased premium without meeting
4 any applicable notice requirements.

5 (e) Canceling or issuing a nonrenewal notice on any
6 health maintenance organization contract without complying
7 with any applicable cancellation or nonrenewal provision
8 required under the Florida Insurance Code.

9 (14) REFUSAL TO COVER.--In addition to other
10 provisions of this code, the refusal to cover, or continue to
11 cover, any individual solely because of:

12 (a) Race, color, creed, marital status, sex, or
13 national origin;

14 (b) The residence, age, or lawful occupation of the
15 individual, unless there is a reasonable relationship between
16 the residence, age, or lawful occupation of the individual and
17 the coverage issued or to be issued; or

18 (c) The fact that the enrollee or applicant had been
19 previously refused insurance coverage or health maintenance
20 organization coverage by any insurer or health maintenance
21 organization when such refusal to cover or continue to cover
22 for this reason occurs with such frequency as to indicate a
23 general business practice.

24 Section 5. Section 641.3917, Florida Statutes, is
25 amended to read:

26 641.3917 Civil liability.--The provisions of this part
27 are cumulative to rights under the general civil and common
28 law, and no action of the department shall abrogate such
29 rights to damage or other relief in any court.

30
31

1 (1) Any person to whom a duty is owed may bring a
2 civil action against a health maintenance organization when
3 such person suffers damages as a result of:

4 (a) A violation of s. 641.3903(5)(a), (b), (c)1.-7.,
5 (10), or (12) by the health maintenance organization; or

6 (b) The health maintenance organization's failure to
7 provide a covered service when in good faith the health
8 maintenance organization should have provided such service had
9 it acted fairly and honestly toward its subscriber or enrollee
10 and with due regard for the subscriber's interests and, in the
11 independent medical judgment of a contract treating physician
12 or other physician authorized by the health maintenance
13 organization, the service is medically necessary.

14
15 However, a person pursuing a remedy under this section need
16 not prove that such act was committed or performed with such
17 frequency as to indicate a general business practice.

18 (2)(a) As a condition precedent to bringing an action
19 under this section, the department and the health maintenance
20 organization must have been given 60 days' written notice of
21 the violation. If the department returns a notice for lack of
22 specificity, the 60-day time period shall not begin until a
23 proper notice is filed.

24 (b) The notice shall be on a form provided by the
25 department and shall state with specificity the following
26 information, and such other information as the department may
27 require:

28 1. The provision of law, including the specific
29 language of the law, which the health maintenance organization
30 has allegedly violated.

31

1 2. The facts and circumstances giving rise to the
2 violation.

3 3. The name of any individual involved in the
4 violation.

5 4. Any reference to specific contract language that is
6 relevant to the violation.

7 5. A statement that the notice is given in order to
8 perfect the right to pursue the civil remedy authorized by
9 this section.

10 (c) Within 20 days after receipt of the notice, the
11 department may return any notice that does not provide the
12 specific information required by this section and the
13 department shall indicate the specific deficiencies contained
14 in the notice. A determination by the department to return a
15 notice for lack of specificity is exempt from the requirements
16 of chapter 120.

17 (d) No action shall lie under this section if, within
18 60 days after filing notice, the damages are paid or the
19 circumstances giving rise to the violation are corrected.

20 (e) The health maintenance organization that is the
21 recipient of a notice filed pursuant to this section shall
22 report to the department on the disposition of the alleged
23 violation.

24 (f) The applicable statute of limitations for an
25 action under this section shall be tolled for a period of 65
26 days by the mailing of the notice required by this subsection
27 or the mailing of a subsequent notice required by this
28 subsection.

29 (3) Upon adverse adjudication at trial or upon appeal,
30 the health maintenance organization shall be liable for
31

1 damages, together with court costs and reasonable attorney's
2 fees, incurred by the plaintiff.

3 (4) Punitive damages shall not be awarded under this
4 section unless the acts giving rise to the violation occur
5 with such frequency as to indicate a general business practice
6 and are either willful, wanton, and malicious or are in
7 reckless disregard for the rights of any subscriber or
8 enrollee. Any person who pursues a claim under this
9 subsection shall post, in advance, the costs of discovery.
10 Such costs shall be awarded to the health maintenance
11 organization if no punitive damages are awarded to the
12 plaintiff.

13 25) This section shall not be construed to authorize a
14 class action suit against a health maintenance organization or
15 a civil action against the department, its employees, or the
16 Insurance Commissioner, or against the Agency for Health Care
17 Administration, its employees, or the director of the agency
18 or to create a cause of action when a health maintenance
19 organization or a prepaid health plan refuses to provide
20 service on the grounds that the charge for a service was
21 unreasonably high, unless otherwise provided in paragraph
22 (1)(b).

23 (6)(a) The civil remedy specified in this section does
24 not preempt any other remedy or cause of action provided for
25 pursuant to any other law or pursuant to the common law of
26 this state. Any person may obtain a judgment under either the
27 common law remedy of bad faith or the remedy provided in this
28 section, but is not entitled to a judgment under both
29 remedies. This section does not create a common law cause of
30 action. The damages recoverable under this section include
31 damages which are a reasonably foreseeable result of a

1 specified violation of this section by the health maintenance
2 organization and may include an award or judgment in an amount
3 that exceeds contract limits.

4 (b) This section does not create a cause of action for
5 medical malpractice. Such action shall be subject to the
6 provisions of chapter 766.

7 (c) This section shall not apply to the provision of
8 medical care, treatment, or attendance pursuant to chapter
9 440.

10 Section 6. The Legislature finds that the provisions
11 of this bill will fulfill an important state interest.

12 Section 7. There are hereby appropriated three
13 positions and \$112,000 from the Insurance Commissioner's
14 Regulatory Trust Fund to the Department of Insurance for the
15 purposes of carrying out the provisions of this act.

16 Section 8. This act shall take effect July 1, 1997.

17
18 *****

19 HOUSE SUMMARY

20 Establishes exclusive liability for health maintenance
21 organizations. Clarifies award of attorney's fees in
22 civil actions against health maintenance organizations
23 and prepaid health plans. Prohibits provider contracts
24 from restricting a provider from communicating
25 information to a patient. Specifies additional
26 activities as unfair methods of competition and unfair or
27 deceptive acts or practices. Provides procedures and
28 requirements for bringing civil actions against health
29 maintenance organizations. See bill for details.
30
31