By the Committee on Health Care Services and Representative Saunders

1 A bill to be entitled
2 An act relating to the delivery of health care
3 services; creating s. 624.1291, F.S., providing
4 an exemption from the Insurance Code for
5 certain health care services; creating s.
6 624.1292, F.S., providing an exemption from the
7 Insurance Code for certain contracts with
8 self-funded ERISA plans; creating part IV of
9 ch. 641, F.S.; creating the "Provider Sponsored
10 Organization Act"; providing legislative
11 findings and purposes; providing definitions;
12 prohibiting provider sponsored organizations
13 from transacting insurance business other than
14 the offering of Medicare Choice plans;
15 providing for application of parts I and III of
16 ch. 641, F.S., to provider sponsored
17 organizations; providing exceptions; amending
18 s. 641.227, F.S.; providing for deposits into
19 the Rehabilitation Administrative Expense Fund
20 by a provider sponsored organization; providing
21 for reimbursements; amending s. 641.316, F.S.;
22 providing for an exemption from s. 455.654,
23 F.S., to provider sponsored organizations
24 relating to certain financial arrangements;
25 creating a panel to study health care
26 regulation; providing for membership; providing
27 for specific areas of study; requiring a
28 report; providing for future repeal; providing
29 effective dates.
30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Section 624.1291, Florida Statutes, is
2 created to read:
3 624.1291 Certain health care services; exemption from
4 code.--Any person who enters into a contract or agreement with
5 an authorized insurer, or with a health maintenance
6 organization or provider sponsored organization that has
7 obtained a certificate of authority pursuant to chapter 641,
8 to provide health care services to persons insured under a
9 health insurance policy, health maintenance organization
10 contract, or provider sponsored organization contract, shall
11 not be deemed to be an insurer and shall not be subject to the
12 provisions of this code, regardless of any risk assumed under
13 the contract or agreement, provided:
14 (1) The authorized insurer, health maintenance
15 organization, or provider sponsored organization remains
16 contractually liable to the insured to the full extent
17 provided in the policy or contract with the insured.
18 (2) The person does not receive any premium payment or
19 per-capita fee from the insured other than fees for services
20 not covered under the insured's policy or contract, such as
21 deductible amounts, co-payments, or charges in excess of
22 policy or contract limits which are otherwise allowed to be
23 collected.
24 (3) Any person who is an "administrator" as defined in
25 s. 626.88 meets the requirements of part VII of chapter 626
26 and any person who is performing "fiscal intermediary
27 services" as defined in s. 641.316 meets the requirements of
28 that section.
29 Section 2. Section 624.1292, Florida Statutes, is
30 created to read:
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1 624.1292 Contracts with self-funded ERISA plans;
2 exemption from code.--An insurer, a health maintenance
3 organization, provider sponsored organization, hospital,
4 licensed health care provider, or any group or combination of
5 such persons or entities, to the extent this section does not
6 conflict with federal law, shall not be deemed to be an
7 insurer and shall not be subject to the provisions of this
8 code with respect to contracts or agreements with an employer
9 which has established a self-funded employee-benefit plan
10 under the Employee Retirement Income Security Act (ERISA), 29
11 U.S.C. ss. 1001-1461, under which:
12 (1) The employer retains the ultimate obligation to
13 provide health benefits to covered employees or the financial
14 risk relating thereto.
15 (2) The insurer, health maintenance organization,
16 provider sponsored organization, hospital, or licensed health
17 care provider does not receive any premium payment or
18 per-capita fee from the covered employees other than fees for
19 services not covered by the plan, such as deductible amounts,
20 co-payments, or charges in excess of plan limits which are
21 otherwise allowed to be collected.
22 Section 3. Part IV of chapter 641, Florida Statutes,
23 consisting of sections 641.801, 641.802, 641.803, 641.804,
24 641.805, and 641.806, Florida Statutes, is created to read:
25 641.801 Short title.--This part may be cited as the
26 "Provider Sponsored Organization Act."
27 641.802 Declaration of legislative findings and
28 purposes.--
29 (1) The Legislature finds that a major restructuring
30 of health care has taken place which has changed the way in
31 which health care services are paid for and delivered and that

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1 today, the emphasis is on providing cost-conscious health care
2 services through managed care. The Legislature recognizes that
3 alternative methods for the delivery of health care are needed
4 to promote competition and increase patients' choices.
5 (2) The Legislature finds that the United States
6 Congress has enacted legislation that allows provider
7 sponsored organizations to provide coordinated-care plans to
8 Medicare enrollees through the Medicare Choice program. The
9 federal legislation requires any organization that offers a
10 Medicare Choice plan to be organized and licensed under state
11 law as a risk-bearing entity eligible to offer health-benefit
12 coverage in the state in which it offers a Medicare Choice
13 plan.
14 (3) The Legislature finds that these plans, when
15 properly operated, emphasize cost and quality controls, while
16 ensuring that the provider has control over medical decisions.
17 (4) The Legislature declares the policy of this state
18 is to:
19 (a) Eliminate legal barriers to the organization,
20 promotion, and expansion of provider sponsored organizations
21 that offer Medicare Choice plans in order to encourage the
22 development of valuable options for the Medicare beneficiaries
23 of this state.
24 (b) Recognize comprehensive provider sponsored
25 organizations as exempt from the insurance laws of this state
26 except in the manner and to the extent set forth in this part.
27 641.803 Definitions.--As used in this part:
28 (1) "Affiliation" means a relationship between
29 providers in which, through contract, ownership, or otherwise:
30 (a) One provider, directly or indirectly, controls, is
31 controlled by, or is under common control with the other;

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1 (b) Both providers are part of a controlled group of
2 corporations under s. 1563 of the Internal Revenue Code of
3 1986;
4 (c) Each provider is a participant in a lawful
5 combination under which each provider shares substantial
6 financial risk in connection with the organization's
7 operations; or
8 (d) Both providers are part of an affiliated service
9 group under s. 414 of the Internal Revenue Code of 1986.
10 (2) "Comprehensive health care services" means
11 services, medical equipment, and supplies required under the
12 Medicare Choice program.
13 (3) "Copayment" means a specific dollar amount that
14 the subscriber must pay upon receipt of covered health care
15 services as required or authorized under the Medicare Choice
16 program.
17 (4) "Provider sponsored contract" means any contract
18 entered into by a provider sponsored organization that serves
19 Medicare Choice beneficiaries.
20 (5) "Provider sponsored organization" means any
21 organization authorized under this part which:
22 (a) Is established, organized, and operated by a
23 health care provider or group of affiliated health care
24 providers.
25 (b) Provides a substantial proportion of the health
26 care items and services specified in the Medicare Choice
27 contract, as defined by the Secretary of the United States
28 Department of Health and Human Services, directly through the
29 provider or affiliated group of providers.
30 (c) Shares, with respect to its affiliated providers,
31 directly or indirectly, substantial financial risk in the

1 provision of such items and services and has at least a
2 majority financial interest in the entity.
3
4 The term "substantial proportion" shall be defined by the
5 Secretary of the United States Department of Health and Human
6 Services after having taken into account the need for such an
7 organization to assume responsibility for providing
8 significantly more than the majority of the items and services
9 under the Medicare Choice contract through its own affiliated
10 providers and the remainder of the items and services under
11 such contract through providers with which the organization
12 has an agreement to provide such items and services.
13 Consideration shall also be given to the need for the
14 organization to provide a limited proportion of the items and
15 services under the contract through entities that are neither
16 affiliated with nor have an agreement with the organization.
17 (6) "Subscriber" means a Medicare Choice enrollee who
18 is eligible for coverage as a Medicare beneficiary.
19 (7) "Surplus" means total assets in excess of total
20 liabilities as determined by the federal rules on solvency
21 standards established by the Secretary of the United States
22 Department of Health and Human Services pursuant to s. 1856(a)
23 of the Balanced Budget of 1997, for provider sponsored
24 organizations that offer the Medicare Choice plan.
25 641.804 Applicability of other laws.--Except as
26 provided in this part, provider sponsored organizations shall
27 be governed by this part and are exempt from all other
28 provisions of the Florida Insurance Code.
29 641.805 Insurance business not authorized.--The
30 provisions of the Florida Insurance Code or this part do not
31 authorize any provider sponsored organization to transact any

1 insurance business other than to offer Medicare Choice plans
2 pursuant to s. 1855 of the Balanced Budget Act of 1997.
3 641.806 Applicability of parts I and III;
4 exceptions.--The provisions of parts I and III of this chapter
5 apply to provider sponsored organizations to the same extent
6 such sections apply to health maintenance organizations,
7 except:
8 (1) The definitions used in this part shall control to
9 the extent of any conflict with the definitions used in s.
10 641.19.
11 (2) The certificate of authority, application for
12 certificate, and all other forms issued or prescribed by the
13 department pursuant to this part shall refer to a "provider
14 sponsored organization" rather than a "health maintenance
15 organization."
16 (3) Such provisions shall not apply to the extent of
17 any conflict with ss. 1855 and 1856 of the Balanced Budget Act
18 of 1997 and rules and regulations adopted by the Secretary of
19 the United States Department of Health and Human Services,
20 including, but not limited to, requirements related to
21 surplus, net worth, assets, liabilities, investments, provider
22 sponsored organization contracts, payment of benefits, and
23 procedures for grievances and appeals.
24 (4) Such provisions shall not apply to the extent of
25 any waiver granted by the Secretary of the United States
26 Department of Health and Human Services under s. 1856(a)(2) of
27 the Balanced Budget Act of 1997.
28 (5) Such provisions shall not apply to the extent that
29 they are unrelated to, or inconsistent with, the limited
30 authority of provider sponsored organizations to offer only
31 Medicare Choice plans.

1 (6) Section 641.228, relating to the Florida Health
2 Maintenance Organization Consumer Assistance Plan, shall not
3 apply.
4 Section 4. Section 641.227, Florida Statutes, is
5 amended to read:
6 641.227 Rehabilitation Administrative Expense Fund.--
7 (1) The department may ~~shall~~ not issue or permit to
8 exist a certificate of authority to operate a health
9 maintenance organization or provider sponsored organization in
10 this state unless the organization has deposited with the
11 department $10,000 in cash for use in the Rehabilitation
12 Administrative Expense Fund as established in subsection (2).
13 (2) The department shall maintain all deposits
14 received under this section and all income from such deposits
15 in trust in an account titled "Rehabilitation Administrative
16 Expense Fund." The fund shall be administered by the
17 department and shall be used for the purpose of payment of the
18 administrative expenses of the department during any
19 rehabilitation of a health maintenance organization or
20 provider sponsored organization, when rehabilitation is
21 ordered by a court of competent jurisdiction.
22 (3) Upon successful rehabilitation of a health
23 maintenance organization or provider sponsored organization,
24 the organization shall reimburse the fund for the amount of
25 expenses incurred by the department during the court-ordered
26 rehabilitation period.
27 (4) If a court of competent jurisdiction orders
28 liquidation of a health maintenance organization or provider
29 sponsored organization, the fund shall be reimbursed for
30 expenses incurred by the department as provided for in chapter
31 631.

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1 (5) Each deposit made under this section shall be
2 allowed as an asset for purposes of determination of the
3 financial condition of the health maintenance organization or
4 provider sponsored organization. The deposit shall be
5 refunded to the organization only when the organization both
6 ceases operation as a health maintenance organization or
7 provider sponsored organization and no longer holds a
8 subsisting certificate of authority.
9 Section 5. Paragraph (b) of subsection (2) and
10 subsection (5) of section 641.315, Florida Statutes, are
11 amended to read:
12 641.316 Fiscal intermediary services.--
13 (2)
14 (b) The term "fiscal intermediary services
15 organization" means a person or entity that ~~which~~ performs
16 fiduciary or fiscal intermediary services to health care
17 professionals who contract with health maintenance
18 organizations or provider sponsored organizations other than a
19 fiscal intermediary services organization owned, operated, or
20 controlled by a hospital licensed under chapter 395, an
21 insurer licensed under chapter 624, a third-party
22 administrator licensed under chapter 626, a prepaid limited
23 health organization licensed under chapter 636, a health
24 maintenance organization or provider sponsored organization
25 licensed under this chapter, or physician group practices as
26 defined in s. 455.236(3)(f).
27 (5) Any fiscal intermediary services organization,
28 other than a fiscal intermediary services organization owned,
29 operated, or controlled by a hospital licensed under chapter
30 395, an insurer licensed under chapter 624, a third-party
31 administrator licensed under chapter 626, a prepaid limited

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1 health organization licensed under chapter 636, a health
2 maintenance organization or provider sponsored organization
3 licensed under this chapter, or physician group practices as
4 defined in s. 455.236(3)(f), must register with the department
5 and meet the requirements of this section. In order to
6 register as a fiscal intermediary services organization, the
7 organization must comply with ss. 641.21(1)(c) and (d) and
8 641.22(6). Should the department determine that the fiscal
9 intermediary services organization does not meet the
10 requirements of this section, the registration shall be
11 denied. In the event that the registrant fails to maintain
12 compliance with the provisions of this section, the department
13 may revoke or suspend the registration. In lieu of revocation
14 or suspension of the registration, the department may levy an
15 administrative penalty in accordance with s. 641.25.
16 Section 6. A provider sponsored organization is exempt
17 from s. 455.654, Florida Statutes, for the provision of health
18 care services to enrollees of a Medicare Choice plan.
19 Section 7. (1) There is hereby created the Panel for
20 the Study of the Regulation of Health Care Services.
21 (2) The panel shall be composed of 12 persons as
22 follows:
23 (a) A member of the House of Representatives to be
24 appointed by the Speaker of the House of Representatives.
25 (b) A member of the Florida Senate to be appointed by
26 the President of the Senate.
27 (c) Three persons who are representatives of hospitals
28 to be appointed one each by the Florida Hospital Association,
29 the Florida League of Health Systems, and the Association of
30 Community Hospitals and Health Systems of Florida,
31 Incorporated.

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1 (d) Three persons who are representatives of
2 physicians, two of whom shall be appointed by the Florida
3 Medical Association and one of whom shall be appointed by the
4 Florida Osteopathic Medical Association, Inc.
5 (e) The Secretary of the Department of Health or the
6 secretary's designee who shall be an employee of the
7 department.
8 (f) The Director of the Agency for Health Care
9 Administration or the director's designee who shall be an
10 employee of the agency.
11 (g) A representative of an outpatient health care
12 facility owned and operated by a hospital to be selected by
13 the three hospital representatives.
14 (h) A representative of a freestanding outpatient
15 health care facility to be selected by the three physician
16 representatives.
17 (3) The panel members shall be appointed by June 1,
18 1998, and the panel shall hold an initial meeting by July 1,
19 1998. All expenses of the panel, including travel and per
20 diem, shall be paid by the organizations appointing members
21 pursuant to subsection (2) in proportion to the members
22 appointed by said organizations. The Department of Health and
23 the Agency for Health Care Administration shall provide staff
24 support, research, data retrieval, and analysis as requested
25 by the panel to fulfill its responsibilities. The panel shall
26 hold such public hearings as it deems appropriate to receive
27 testimony. Notice of all meetings of the panel and of its
28 public hearings shall be provided in the Florida
29 Administrative Weekly.
30 (4) The panel shall be co-chaired by the member of the
31 House of Representatives appointed by the Speaker of the House

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1 of Representatives and the member of the Senate appointed by
2 the Senate President.
3 (5) The panel is directed to study and develop
4 findings and recommendations, including specific legislative
5 recommendations, on the following subjects:
6 (a) The identification of the various health care
7 services being provided both on an inpatient and outpatient
8 basis throughout the state.
9 (b) The identification of the specific settings in
10 which each health care service is being provided throughout
11 the state.
12 (c) The identification of the state rules and
13 regulations, including licensure requirements, plans, and
14 construction requirements and all other regulatory
15 requirements, which are imposed by the state and its agencies
16 on each type of health care facility in each specific setting.
17 (d) The identification of federal rules and
18 regulations imposed on each type of health care facility in
19 each specific setting and a comparison of federal rules with
20 applicable state rules to identify duplication and unnecessary
21 state rules which may be superceded by federal rules.
22 (e) If there are no regulatory requirements for a
23 specific service in a specific setting, the identification by
24 the panel of such situation and specific recommendations by
25 the panel concerning whether or not regulations should be
26 required.
27 (f) If there are regulatory requirements which are
28 being imposed on a specific service in a specific setting,
29 specific recommendations by the panel concerning whether or
30 not the regulations should be continued.
31

1 (g) For each type of service in each type of setting,
2 the identification by the panel of the amount of the Public
3 Medical Assistance Trust Fund assessment paid, the amount of
4 Medicaid reimbursement received, and the amount of free care
5 provided, including charity care and bad debts.
6 (6) The panel shall submit its final report by January
7 31, 1999, to the Governor, the President of the Senate, and
8 the Speaker of the House of Representatives.
9 (7) This section shall take effect upon becoming a law
10 and is repealed effective March 1, 1999.
11 Section 8. Except as otherwise provided herein, this
12 act shall take effect October 1 of the year in which enacted.
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