

By Senator Silver

38-312-98

See HB 1547

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. Subsection (4) of section 440.11, Florida
 28 Statutes, is 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, is
6 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 has 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 files 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, 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, and
13 subsection (14) is added to that section, to read:

14 641.3903 Unfair methods of competition and unfair or
15 deceptive acts or practices defined.--The following are
16 defined as unfair methods of competition and unfair or
17 deceptive acts or practices:

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

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

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

1 subscriber or enrollee at a higher premium rate or continuing
2 an existing contract at an increased premium without meeting
3 any applicable notice requirements.

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

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

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

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

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

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

25 641.3917 Civil liability.--The provisions of this part
26 are cumulative to rights under the general civil and common
27 law, and no action of the department shall abrogate such
28 rights to damage or other relief in any court.

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

1 (a) A violation of s. 641.3903(5)(a), (b), (c)1.-7.,
2 (10), or (12) by the health maintenance organization; or
3 (b) The health maintenance organization's failure to
4 provide a covered service when in good faith the health
5 maintenance organization should have provided such service had
6 it acted fairly and honestly toward its subscriber or enrollee
7 and with due regard for the subscriber's interests and, in the
8 independent medical judgment of a contract treating physician
9 or other physician authorized by the health maintenance
10 organization, the service is medically necessary.
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12 However, a person pursuing a remedy under this section need
13 not prove that such act was committed or performed with such
14 frequency as to indicate a general business practice.
15 (2)(a) As a condition precedent to bringing an action
16 under this section, the department and the health maintenance
17 organization must have been given 60 days' written notice of
18 the violation. If the department returns a notice for lack of
19 specificity, the 60-day time period shall not begin until a
20 proper notice is filed.
21 (b) The notice shall be on a form provided by the
22 department and shall state with specificity the following
23 information and such other information as the department may
24 require:
25 1. The provision of law, including the specific
26 language of the law, which the health maintenance organization
27 has allegedly violated.
28 2. The facts and circumstances giving rise to the
29 violation.
30 3. The name of any individual involved in the
31 violation.

1 4. Any reference to specific contract language that is
2 relevant to the violation.

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

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

13 (d) No action shall lie under this section if, within
14 60 days after filing notice, the damages are paid or the
15 circumstances giving rise to the violation are corrected.

16 (e) The health maintenance organization that is the
17 recipient of a notice filed pursuant to this section shall
18 report to the department on the disposition of the alleged
19 violation.

20 (f) The applicable statute of limitations for an
21 action under this section shall be tolled for a period of 65
22 days by the mailing of the notice required by this subsection
23 or the mailing of a subsequent notice required by this
24 subsection.

25 (3) Upon adverse adjudication at trial or upon appeal,
26 the health maintenance organization shall be liable for
27 damages, together with court costs and reasonable attorney's
28 fees, incurred by the plaintiff.

29 (4) Punitive damages shall not be awarded under this
30 section unless the acts giving rise to the violation occur
31 with such frequency as to indicate a general business practice

1 and are either willful, wanton, and malicious or are in
2 reckless disregard for the rights of any subscriber or
3 enrollee. Any person who pursues a claim under this
4 subsection shall post, in advance, the costs of discovery.
5 Such costs shall be awarded to the health maintenance
6 organization if no punitive damages are awarded to the
7 plaintiff.

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

18 (6)(a) The civil remedy specified in this section does
19 not preempt any other remedy or cause of action provided for
20 pursuant to any other law or pursuant to the common law of
21 this state. Any person may obtain a judgment under either the
22 common law remedy of bad faith or the remedy provided in this
23 section, but is not entitled to a judgment under both
24 remedies. This section does not create a common law cause of
25 action. The damages recoverable under this section include
26 damages that are a reasonably foreseeable result of a
27 specified violation of this section by the health maintenance
28 organization and may include an award or judgment in an amount
29 that exceeds contract limits.

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