

By the Committee on Insurance and Representatives Wiles
and Cosgrove

1 A bill to be entitled
2 An act relating to insurance fraud; amending s.
3 626.989, F.S.; applying certain provisions to
4 health maintenance organizations; creating s.
5 626.9892, F.S.; establishing the Anti-Fraud
6 Reward Program in the department; providing for
7 rewards under certain circumstances; requiring
8 the department to adopt rules to implement the
9 program; exempting review of department
10 decisions relating to rewards; creating s.
11 641.3915, F.S.; requiring certain health
12 maintenance organizations to comply with
13 insurer anti-fraud requirements; amending s.
14 775.15, F.S.; extending the statute of
15 limitations for certain insurance fraud
16 violations; amending s. 817.234, F.S.;
17 specifying a schedule of criminal penalties for
18 committing insurance fraud; providing
19 definitions; providing application to health
20 maintenance organizations and contracts;
21 amending s. 817.505, F.S.; revising a penalty
22 for patient brokering; reenacting s.
23 455.657(3), F.S., relating to kickbacks, to
24 incorporate changes; providing an
25 appropriation; providing an effective date.

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27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Paragraph (d) of subsection (4) of section
30 626.989, Florida Statutes, 1998 Supplement, is amended, and
31 paragraph (g) is added to said subsection, to read:

1 626.989 Division of Insurance Fraud; definition;
2 investigative, subpoena powers; protection from civil
3 liability; reports to division; division investigator's power
4 to execute warrants and make arrests.--

5 (4)

6 (d) In addition to the immunity granted in paragraph
7 (c), persons identified as designated employees whose
8 responsibilities include the investigation and disposition of
9 claims relating to suspected fraudulent insurance acts may
10 share information relating to persons suspected of committing
11 fraudulent insurance acts with other designated employees
12 employed by the same or other insurers or health maintenance
13 organizations whose responsibilities include the investigation
14 and disposition of claims relating to fraudulent insurance
15 acts, provided the department has been given written notice of
16 the names and job titles of such designated employees prior to
17 such designated employees sharing information. Unless the
18 designated employees of the insurer or health maintenance
19 organization act in bad faith or in reckless disregard for the
20 rights of any insured, neither the insurer or health
21 maintenance organization nor their ~~its~~ designated employees
22 are civilly liable for libel, slander, or any other relevant
23 tort, and a civil action does not arise against the insurer or
24 health maintenance organization or their ~~its~~ designated
25 employees:

26 1. For any information related to suspected fraudulent
27 insurance acts provided to an insurer; or

28 2. For any information relating to suspected
29 fraudulent insurance acts provided to the National Insurance
30 Crime Bureau or the National Association of Insurance
31 Commissioners.

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2 Provided, however, that the qualified immunity against civil
3 liability conferred on any insurer or health maintenance
4 organization or its designated employees shall be forfeited
5 with respect to the exchange or publication of any defamatory
6 information with third persons not expressly authorized by
7 this paragraph to share in such information.

8 (g) For purposes of this subsection, "person" shall
9 include a health maintenance organization as defined in s.
10 641.19(13).

11 Section 2. Section 626.9892, Florida Statutes, is
12 created to read:

13 626.9892 Anti-Fraud Reward Program; reporting of
14 insurance fraud.--

15 (1) The Anti-Fraud Reward Program is hereby
16 established within the department, to be funded from the
17 Insurance Commissioner's Regulatory Trust Fund.

18 (2) The department may pay rewards of up to \$25,000 to
19 persons providing information leading to the arrest and
20 conviction of persons committing complex or organized crimes
21 investigated by the Division of Insurance Fraud arising from
22 violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989,
23 or s. 817.234.

24 (3) Only a single reward amount may be paid by the
25 department for claims arising out of the same transaction or
26 occurrence, regardless of the number of persons arrested and
27 convicted and the number of persons submitting claims for the
28 reward. The reward may be disbursed among more than one
29 person in amounts determined by the department.

30 (4) The department shall adopt rules which set forth
31 the application and approval process, including the criteria

1 against which claims shall be evaluated, the basis for
2 determining specific reward amounts, and the manner in which
3 rewards shall be disbursed. Applications for rewards
4 authorized by this section must be made pursuant to rules
5 established by the department.

6 (5) Determinations by the department to grant or deny
7 a reward under this section shall not be considered agency
8 action subject to review under s. 120.569 or s. 120.57.

9 Section 3. Section 641.3915, Florida Statutes, is
10 created to read:

11 641.3915 Health maintenance organization anti-fraud
12 plans and investigative units.--Each authorized health
13 maintenance organization and applicant for a certificate of
14 authority shall comply with the provisions of s. 626.9891 as
15 though such organization or applicant were an authorized
16 insurer.

17 Section 4. Paragraph (h) of subsection (2) of section
18 775.15, Florida Statutes, 1998 Supplement, is amended to read:

19 775.15 Time limitations.--

20 (2) Except as otherwise provided in this section,
21 prosecutions for other offenses are subject to the following
22 periods of limitation:

23 (h) A prosecution for a felony violation of s. 440.105
24 and s. 817.234 must be commenced within 5 years after the
25 violation is committed.

26 Section 5. Subsections (1), (2), (3), (4), and (10) of
27 section 817.234, Florida Statutes, 1998 Supplement, are
28 amended, and subsections (11) and (12) are added to said
29 section, to read:

30 817.234 False and fraudulent insurance claims.--

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1 (1)(a) A person commits insurance fraud punishable as
2 provided in subsection (11) if that ~~Any person who~~, with the
3 intent to injure, defraud, or deceive any insurer:
4 1. Presents or causes to be presented any written or
5 oral statement as part of, or in support of, a claim for
6 payment or other benefit pursuant to an insurance policy or a
7 health maintenance organization subscriber or provider
8 contract, knowing that such statement contains any false,
9 incomplete, or misleading information concerning any fact or
10 thing material to such claim;
11 2. Prepares or makes any written or oral statement
12 that is intended to be presented to any insurer in connection
13 with, or in support of, any claim for payment or other benefit
14 pursuant to an insurance policy or a health maintenance
15 organization subscriber or provider contract, knowing that
16 such statement contains any false, incomplete, or misleading
17 information concerning any fact or thing material to such
18 claim; or
19 3.a. Knowingly presents, causes to be presented, or
20 prepares or makes with knowledge or belief that it will be
21 presented to any insurer, purported insurer, servicing
22 corporation, insurance broker, or insurance agent, or any
23 employee or agent thereof, any false, incomplete, or
24 misleading information or written or oral statement as part
25 of, or in support of, an application for the issuance of, or
26 the rating of, any insurance policy, or a health maintenance
27 organization subscriber or provider contract; or
28 b. Who knowingly conceals information concerning any
29 fact material to such application;
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1 ~~commits a felony of the third degree, punishable as provided~~
2 ~~in s. 775.082, s. 775.083, or s. 775.084.~~

3 (b) All claims and application forms shall contain a
4 statement that is approved by the Department of Insurance that
5 clearly states in substance the following: "Any person who
6 knowingly and with intent to injure, defraud, or deceive any
7 insurer files a statement of claim or an application
8 containing any false, incomplete, or misleading information is
9 guilty of a felony of the third degree." This paragraph shall
10 not apply to reinsurance contracts, reinsurance agreements, or
11 reinsurance claims transactions.~~The changes in this paragraph~~
12 ~~relating to applications shall take effect on March 1, 1996.~~

13 (2) Any physician licensed under chapter 458,
14 osteopathic physician licensed under chapter 459, chiropractic
15 physician licensed under chapter 460, or other practitioner
16 licensed under the laws of this state who knowingly and
17 willfully assists, conspires with, or urges any insured party
18 to fraudulently violate any of the provisions of this section
19 or part XI of chapter 627, or any person who, due to such
20 assistance, conspiracy, or urging by said physician,
21 osteopathic physician, chiropractic physician, or
22 practitioner, knowingly and willfully benefits from the
23 proceeds derived from the use of such fraud, commits insurance
24 fraud is guilty of a felony of the third degree, punishable as
25 provided in subsection (11)~~s. 775.082, s. 775.083, or s.~~
26 ~~775.084.~~ In the event that a physician, osteopathic physician,
27 chiropractic physician, or practitioner is adjudicated guilty
28 of a violation of this section, the Board of Medicine as set
29 forth in chapter 458, the Board of Osteopathic Medicine as set
30 forth in chapter 459, the Board of Chiropractic Medicine as
31 set forth in chapter 460, or other appropriate licensing

1 authority shall hold an administrative hearing to consider the
2 imposition of administrative sanctions as provided by law
3 against said physician, osteopathic physician, chiropractic
4 physician, or practitioner.

5 (3) Any attorney who knowingly and willfully assists,
6 conspires with, or urges any claimant to fraudulently violate
7 any of the provisions of this section or part XI of chapter
8 627, or any person who, due to such assistance, conspiracy, or
9 urging on such attorney's part, knowingly and willfully
10 benefits from the proceeds derived from the use of such fraud,
11 commits insurance fraud ~~a felony of the third degree,~~
12 punishable as provided in subsection (11) ~~s. 775.082, s.~~
13 ~~775.083, or s. 775.084.~~

14 (4) Any ~~No~~ person or governmental unit licensed under
15 chapter 395 to maintain or operate a hospital, and any ~~no~~
16 administrator or employee of any such hospital, who shall
17 knowingly and willfully allows ~~allow~~ the use of the facilities
18 of said hospital by an insured party in a scheme or conspiracy
19 to fraudulently violate any of the provisions of this section
20 or part XI of chapter 627. ~~Any hospital administrator or~~
21 ~~employee who violates this subsection~~ commits insurance fraud
22 ~~a felony of the third degree,~~ punishable as provided in
23 subsection (11) ~~s. 775.082, s. 775.083, or s. 775.084.~~ Any
24 adjudication of guilt for a violation of this subsection, or
25 the use of business practices demonstrating a pattern
26 indicating that the spirit of the law set forth in this
27 section or part XI of chapter 627 is not being followed, shall
28 be grounds for suspension or revocation of the license to
29 operate the hospital or the imposition of an administrative
30 penalty of up to \$5,000 by the licensing agency, as set forth
31 in chapter 395.

1 (10) As used in this section, the term "insurer" means
2 any insurer, health maintenance organization, self-insurer,
3 self-insurance fund, or other similar entity or person
4 regulated under chapter 440 or chapter 641 or by the
5 Department of Insurance under the Florida Insurance Code.

6 (11) If the value of any property involved in a
7 violation of this section:

8 (a) Is less than \$20,000, the offender commits a
9 felony of the third degree, punishable as provided in s.
10 775.082, s. 775.083, or s. 775.084.

11 (b) Is \$20,000 or more, but less than \$100,000, the
12 offender commits a felony of the second degree, punishable as
13 provided in s. 775.082, s. 775.083, or s. 775.084.

14 (c) Is \$100,000 or more, the offender commits a felony
15 of the first degree, punishable as provided in s. 775.082, s.
16 775.083, or s. 775.084.

17 (12) As used in this section:

18 (a) "Property" means property as defined in s.
19 812.012.

20 (b) "Value" means value as defined in s. 812.012.

21 Section 6. Subsection (4) of section 817.505, Florida
22 Statutes, 1998 Supplement, is amended to read:

23 817.505 Patient brokering prohibited; exceptions;
24 penalties.--

25 (4) Any person, including an officer, partner, agent,
26 attorney, or other representative of a firm, joint venture,
27 partnership, business trust, syndicate, corporation, or other
28 business entity, who violates any provision of this section
29 commits+

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1 ~~(a) A misdemeanor of the first degree for a first~~
2 ~~violation, punishable as provided in s. 775.082 or by a fine~~
3 ~~not to exceed \$5,000, or both.~~

4 ~~(b) a felony of the third degree for a second or~~
5 ~~subsequent violation, punishable as provided in s. 775.082, s.~~
6 ~~775.083, or s. 775.084 or by a fine not to exceed \$10,000, or~~
7 ~~both.~~

8 Section 7. For the purpose of incorporating the
9 amendment to subsection (4) of section 817.505, Florida
10 Statutes, 1998 Supplement, in a reference thereto, subsection
11 (3) of section 455.657, Florida Statutes, is reenacted to
12 read:

13 455.657 Kickbacks prohibited.--

14 (3) Violations of this section shall be considered
15 patient brokering and shall be punishable as provided in s.
16 817.505.

17 Section 8. The sum of \$250,000 is hereby appropriated
18 from the Insurance Commissioner's Regulatory Trust Fund in a
19 nonoperating category for state fiscal year 1999-2000 for the
20 purpose of implementing the reward program under s. 626.9892,
21 Florida Statutes, as created by this act.

22 Section 9. This act shall take effect July 1, 1999.
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