

By Representatives Crow, Lacasa, Barreiro, Fasano, Crist, Murman, Argenziano, Gottlieb, Greenstein, Sobel, Ogles, Rayson and Cosgrove

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. 641.3903,
 9 F.S.; specifying additional practices as unfair
 10 methods of competition or unfair or deceptive
 11 acts or practices; amending s. 641.3917, F.S.;
 12 authorizing civil actions against health
 13 maintenance organizations by certain persons
 14 under certain circumstances; providing
 15 requirements and procedures; providing for
 16 liability for damages and attorney's fees;
 17 prohibiting punitive damages under certain
 18 circumstances; requiring the advance posting of
 19 discovery costs; providing a legislative
 20 declaration; providing an appropriation;
 21 providing an effective date.

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

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 25 Section 1. Subsection (4) of section 440.11, Florida
 26 Statutes, is amended to read:

27 440.11 Exclusiveness of liability.--

28 (4) Notwithstanding the provisions of s. 624.155 or s.
 29 641.3917, the liability of a carrier or a health maintenance
 30 organization to an employee or to anyone entitled to bring
 31 suit in the name of the employee shall be as provided in this

1 chapter, which shall be exclusive and in place of all other
2 liability.

3 Section 2. Section 641.28, Florida Statutes, is
4 amended to read:

5 641.28 Civil remedy.--

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

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

15 (b) If the civil action is filed pursuant to s.
16 641.3917 more than 60 days after the subscriber or enrollee
17 filed a notice of intent to sue with the statewide provider
18 and subscriber assistance program established pursuant to s.
19 408.7056 or a notice pursuant to s. 641.3917, and the
20 subscriber or enrollee receives a final judgment or decree
21 against the health maintenance organization in favor of the
22 subscriber or enrollee, the court shall enter a judgment or
23 decree against the health maintenance organization in favor of
24 the subscriber or enrollee for reasonable attorney's fees and
25 court costs.

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

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1 Section 3. Paragraphs (c), (d), and (e) are added to
2 subsection (10) of section 641.3903, Florida Statutes, and
3 subsection (14) is added to said section, to read:

4 641.3903 Unfair methods of competition and unfair or
5 deceptive acts or practices defined.--The following are
6 defined as unfair methods of competition and unfair or
7 deceptive acts or practices:

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

10 (c) Canceling or otherwise terminating any health
11 maintenance contract or coverage, or requiring execution of a
12 consent to rate endorsement, during the stated contract term
13 for the purpose of offering to issue, or issuing, a similar or
14 identical contract to the same subscriber or enrollee with the
15 same exposure at a higher premium rate or continuing an
16 existing contract with the same exposure at an increased
17 premium.

18 (d) Issuing a nonrenewal notice on any health
19 maintenance organization contract, or requiring execution of a
20 consent to rate endorsement, for the purpose of offering to
21 issue, or issuing, a similar or identical contract to the same
22 subscriber or enrollee at a higher premium rate or continuing
23 an existing contract at an increased premium without meeting
24 any applicable notice requirements.

25 (e) Canceling or issuing a nonrenewal notice on any
26 health maintenance organization contract without complying
27 with any applicable cancellation or nonrenewal provision
28 required under the Florida Insurance Code.

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

1 (a) Race, color, creed, marital status, sex, or
2 national origin;

3 (b) The residence, age, or lawful occupation of the
4 individual, unless there is a reasonable relationship between
5 the residence, age, or lawful occupation of the individual and
6 the coverage issued or to be issued; or

7 (c) The fact that the enrollee or applicant had been
8 previously refused insurance coverage or health maintenance
9 organization coverage by any insurer or health maintenance
10 organization when such refusal to cover or continue to cover
11 for this reason occurs with such frequency as to indicate a
12 general business practice.

13 Section 4. Section 641.3917, Florida Statutes, is
14 amended to read:

15 641.3917 Civil liability.--The provisions of this part
16 are cumulative to rights under the general civil and common
17 law, and no action of the department shall abrogate such
18 rights to damage or other relief in any court.

19 (1) Any person may bring a civil action against a
20 health maintenance organization when such person suffers
21 damages as a result of:

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

24 (b) The health maintenance organization's failure to
25 provide a covered service when in good faith the health
26 maintenance organization should have provided such service had
27 it acted fairly and honestly toward its subscriber or enrollee
28 and with due regard for the subscriber's interests and, in the
29 independent medical judgment of a physician, the service is
30 medically necessary.

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

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

10 (b) The notice shall be on a form provided by the
11 department and shall state with specificity the following
12 information, and such other information as the department may
13 require:

14 1. The provision of law, including the specific
15 language of the law, which the health maintenance organization
16 has allegedly violated.

17 2. The facts and circumstances giving rise to the
18 violation.

19 3. The name of any individual involved in the
20 violation.

21 4. Any reference to specific contract language that is
22 relevant to the violation.

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

26 (c) Within 20 days after receipt of the notice, the
27 department may return any notice that does not provide the
28 specific information required by this section and the
29 department shall indicate the specific deficiencies contained
30 in the notice. A determination by the department to return a
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1 notice for lack of specificity is exempt from the requirements
2 of chapter 120.

3 (d) No action shall lie under this section if, within
4 60 days after filing notice, the damages are paid or the
5 circumstances giving rise to the violation are corrected.

6 (e) The health maintenance organization that is the
7 recipient of a notice filed pursuant to this section shall
8 report to the department on the disposition of the alleged
9 violation.

10 (f) The applicable statute of limitations for an
11 action under this section shall be tolled for a period of 65
12 days by the mailing of the notice required by this subsection
13 or the mailing of a subsequent notice required by this
14 subsection.

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

19 (4) Punitive damages shall not be awarded under this
20 section unless the acts giving rise to the violation occur
21 with such frequency as to indicate a general business practice
22 and are either willful, wanton, and malicious or are in
23 reckless disregard for the rights of any subscriber or
24 enrollee. Any person who pursues a claim under this
25 subsection shall post, in advance, the costs of discovery.
26 Such costs shall be awarded to the health maintenance
27 organization if no punitive damages are awarded to the
28 plaintiff.

29 (5) This section shall not be construed to authorize a
30 class action suit against a health maintenance organization or
31 a civil action against the department, its employees, or the

1 Insurance Commissioner, or against the Agency for Health Care
2 Administration, its employees, or the director of the agency
3 or to create a cause of action when a health maintenance
4 organization or a prepaid health plan refuses to provide
5 service on the grounds that the charge for a service was
6 unreasonably high, unless otherwise provided in paragraph
7 (1)(b).

8 (6)(a) The civil remedy specified in this section does
9 not preempt any other remedy or cause of action provided for
10 pursuant to any other law or pursuant to the common law of
11 this state. Any person may obtain a judgment under either the
12 common law remedy of bad faith or the remedy provided in this
13 section, but is not entitled to a judgment under both
14 remedies. This section does not create a common law cause of
15 action. The damages recoverable under this section include
16 damages which are a reasonably foreseeable result of a
17 specified violation of this section by the health maintenance
18 organization and may include an award or judgment in an amount
19 that exceeds contract limits.

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

23 (c) This section shall not apply to the provision of
24 medical care, treatment, or attendance pursuant to chapter
25 440.

26 Section 5. The Legislature finds that the provisions
27 of this bill will fulfill an important state interest.

28 Section 6. There are hereby appropriated three
29 positions and \$112,000 from the Insurance Commissioner's
30 Regulatory Trust Fund to the Department of Insurance for the
31 purposes of carrying out the provisions of this act.

1 Section 7. This act shall take effect July 1, 1999.

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HOUSE SUMMARY

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Establishes exclusive liability for health maintenance organizations. Clarifies award of attorney's fees in civil actions against health maintenance organizations and prepaid health plans. Specifies additional activities as unfair methods of competition and unfair or deceptive acts or practices. Provides procedures and requirements for bringing civil actions against health maintenance organizations. See bill for details.

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