

By Senator Geller

29-1587-00

1                                   A bill to be entitled  
2           An act relating to health care; amending s.  
3           408.7056, F.S.; modifying grievance procedures  
4           for a managed care entity, subscriber, or  
5           provider; authorizing administrative law judges  
6           to order a subscriber or provider to pay costs  
7           and attorney's fees for participating in a  
8           proceeding for an improper purpose; amending s.  
9           641.19, F.S.; defining the term  
10          "health-care-risk contract"; amending s.  
11          641.201, F.S.; providing applicability of the  
12          Florida Insurance Code to health maintenance  
13          organizations; amending s. 641.234, F.S.;  
14          providing conditions under which the Department  
15          of Insurance may order a health maintenance  
16          organization to cancel a contract; amending s.  
17          641.26, F.S.; requiring a health maintenance  
18          organization's annual report to contain a  
19          certification of specified facts by an  
20          independent actuary; requiring an annual  
21          summary of all contracts with entities who have  
22          assumed a specified portion of the health care  
23          risk of a health maintenance organization;  
24          amending s. 641.27, F.S.; providing for payment  
25          by a health maintenance organization of fees to  
26          outside examiners appointed by the Department  
27          of Insurance; amending s. 641.35, F.S.;  
28          specifying certain liabilities to be charged  
29          against a health maintenance organization when  
30          making a determination of its financial  
31          condition; providing for application of federal

1 solvency requirements to provider-sponsored  
2 organizations; providing that a health  
3 maintenance organization is ultimately liable  
4 to a provider for authorized services provided  
5 to subscribers; prohibiting the solicitation or  
6 acceptance of contracts by insolvent or  
7 impaired health maintenance organizations;  
8 providing a criminal penalty; providing that  
9 part IV of ch. 628, F.S., applies to health  
10 maintenance organizations; repealing s.  
11 641.2342, F.S., relating to contract providers  
12 providing more than 10 percent of the health  
13 care risks of a health maintenance  
14 organization; providing an effective date.

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

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18 Section 1. Subsections (8) and (14) of section  
19 408.7056, Florida Statutes, are amended to read:

20 408.7056 Statewide Provider and Subscriber Assistance  
21 Program.--

22 (8) A managed care entity, subscriber, or provider  
23 that is affected by a panel recommendation may within 10 days  
24 after receipt of the panel's recommendation, or 72 hours after  
25 receipt of a recommendation in an expedited grievance, furnish  
26 to the agency or department written evidence in opposition to  
27 the recommendation or findings of fact of the panel, and may  
28 request that the panel grant a rehearing of the grievance.

29 (14) A proposed order issued by the agency or  
30 department ~~which only requires the managed care entity to take~~  
31 ~~a specific action~~ under subsection (7) is subject to a summary

1 hearing in accordance with s. 120.574, at the request of the  
2 managed care entity, subscriber, or provider, unless all of  
3 the parties agree otherwise. If the managed care entity does  
4 not prevail at the hearing, the managed care entity must pay  
5 reasonable costs and attorney's fees of the agency or the  
6 department incurred in that proceeding. If an administrative  
7 law judge of the Division of Administrative Hearings  
8 determines that a subscriber or provider participated in a  
9 proceeding for an improper purpose as described in s. 120.595,  
10 the administrative law judge may order the subscriber or  
11 provider to pay reasonable costs and attorney's fees incurred  
12 by the agency or department during that proceeding.

13 Section 2. Present subsections (12) through (21) of  
14 section 641.19, Florida Statutes, are redesignated as  
15 subsections (13) through (22), respectively, and a new  
16 subsection (12) is added to that section to read:

17 641.19 Definitions.--As used in this part, the term:  
18 (12) "Health care risk contract" means a contract  
19 under which a person assumes, through capitation or other  
20 means, the health care risk of a health maintenance  
21 organization.

22 Section 3. Section 641.201, Florida Statutes, is  
23 amended to read:

24 641.201 Applicability of other laws.--Except as  
25 provided in this part, health maintenance organizations shall  
26 be governed by the provisions of this part and part III of  
27 this chapter and shall be exempt from all other provisions of  
28 the Florida Insurance Code except those provisions of the  
29 Florida Insurance Code that are explicitly made applicable to  
30 health maintenance organizations.

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1           Section 4. Section 641.234, Florida Statutes, is  
2 amended to read:

3           641.234 Administrative, provider, and management  
4 contracts.--

5           (1) The department may require a health maintenance  
6 organization to submit any contract for administrative  
7 services, contract with a provider other than an individual  
8 physician, contract for management services, and contract with  
9 an affiliated entity to the department.

10           (2) After review of a contract the department may  
11 order the health maintenance organization to cancel the  
12 contract in accordance with the terms of the contract and  
13 applicable law if it determines:

14           (a) That the fees to be paid by the health maintenance  
15 organization under the contract are so unreasonably high as  
16 compared with similar contracts entered into by the health  
17 maintenance organization or as compared with similar contracts  
18 entered into by other health maintenance organizations in  
19 similar circumstances that the contract is detrimental to the  
20 subscribers, stockholders, investors, or creditors of the  
21 health maintenance organization;

22           (b) That the proposed contract is with an entity that  
23 is not licensed under state statutes and is in good standing  
24 with the applicable regulatory agency; or

25           (c) That the proposed contract is with an entity that  
26 does not have the expertise or financial capacity to fulfill  
27 the terms of the contract.

28           (3) If the health maintenance organization enters into  
29 a contract with an intermediary organization, the contract  
30 must include a provision stating that the health maintenance  
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1 organization remains liable if the intermediary organization  
2 fails to pay provider claims.

3 (4)~~(3)~~ All contracts for administrative services,  
4 management services, provider services other than individual  
5 physician contracts, and with affiliated entities entered into  
6 or renewed by a health maintenance organization on or after  
7 October 1, 1988, shall contain a provision that the contract  
8 shall be canceled upon issuance of an order by the department  
9 pursuant to this section.

10 Section 5. Paragraph (f) of subsection (1) of section  
11 641.26, Florida Statutes, is amended, and subsection (9) is  
12 added to that section to read:

13 641.26 Annual report.--

14 (1) Every health maintenance organization shall,  
15 annually within 3 months after the end of its fiscal year, or  
16 within an extension of time therefor as the department, for  
17 good cause, may grant, in a form prescribed by the department,  
18 file a report with the department, verified by the oath of two  
19 officers of the organization or, if not a corporation, of two  
20 persons who are principal managing directors of the affairs of  
21 the organization, properly notarized, showing its condition on  
22 the last day of the immediately preceding reporting period.

23 Such report shall include:

24 (f) An independent actuarial certification that:

25 1. The health maintenance organization is actuarially  
26 sound, which certification shall consider the rates, benefits,  
27 and expenses of, and any other funds available for the payment  
28 of obligations of, the organization.

29 2. The rates being charged or to be charged are  
30 actuarially adequate to the end of the period for which rates  
31 have been guaranteed.

1           3. Incurred but not reported claims and claims  
2 reported but not fully paid have been adequately provided for,  
3 including claims arising for services provided to subscribers  
4 when these services are provided under health-care-risk  
5 contracts, unless the obligations under such contracts are  
6 secured by a financial instrument acceptable to the  
7 department. Such instrument must be certified as complying  
8 with the requirements of this paragraph unless the contract is  
9 limited to services provided by such provider under the scope  
10 of that provider's license.

11           (9) Each health maintenance organization shall  
12 annually report, in a format prescribed in rule by the  
13 department, a summary of all contracts with entities that have  
14 assumed more than 1 percent of the health care risk of the  
15 health maintenance organization.

16           Section 6. Subsection (2) of section 641.27, Florida  
17 Statutes, is amended to read:

18           641.27 Examination by the department.--

19           (2) The department may contract, at reasonable fees  
20 for work performed, with qualified, impartial outside sources  
21 to perform audits or examinations or portions thereof  
22 pertaining to the qualification of an entity for issuance of a  
23 certificate of authority or to determine continued compliance  
24 with the requirements of this part, in which case the payment  
25 must be made, directly to the contracted examiner by the  
26 health maintenance organization examined, in accordance with  
27 the rates and terms agreed to by the department and the  
28 examiner. Any contracted assistance shall be under the direct  
29 supervision of the department. The results of any contracted  
30 assistance shall be subject to the review of, and approval,  
31 disapproval, or modification by, the department.

1           Section 7. Paragraph (a) of subsection (3) of section  
2 641.35, Florida Statutes, is amended to read:

3           641.35 Assets, liabilities, and investments.--

4           (3) LIABILITIES.--In any determination of the  
5 financial condition of a health maintenance organization,  
6 liabilities to be charged against its assets shall include:

7           (a) The amount, estimated consistently with the  
8 provisions of this part, necessary to pay all of its unpaid  
9 losses and claims incurred for or on behalf of a subscriber,  
10 on or prior to the end of the reporting period, whether  
11 reported or unreported, including claims arising for services  
12 provided to subscribers under health-care-risk contracts  
13 unless the obligations under such contracts are secured by a  
14 financial instrument acceptable to the department or the  
15 contract is limited to services provided by such provider  
16 under the scope of that provider's license.

17           Section 8. Application of federal solvency  
18 requirements to provider-sponsored organizations.--The  
19 solvency requirements of sections 1855 and 1856 of the  
20 Balanced Budget Act of 1997 and rules adopted by the Secretary  
21 of the United States Department of Health and Human Services  
22 apply to a health maintenance organization that is a  
23 provider-sponsored organization rather than the solvency  
24 requirements of part I of chapter 64, Florida Statutes.  
25 However, if the provider-sponsored organization does not meet  
26 the solvency requirements of this part, the organization is  
27 limited to the issuance of Medicare+Choice plans to eligible  
28 individuals. For the purposes of this section, the terms  
29 "Medicare+Choice plans," "provider-sponsored organizations,"  
30 and "solvency requirements" have the same meaning as defined  
31 in the federal act and federal rules and regulations.

1           Section 9. A health maintenance organization,  
2 regardless of the terms of any health-care-risk contracts,  
3 remains ultimately liable to any provider that provides  
4 authorized services to the health maintenance organization's  
5 subscribers.

6           Section 10. Soliciting or accepting new or renewal  
7 health maintenance contracts by insolvent or impaired health  
8 maintenance organization prohibited; penalty.--

9           (1) Whether or not delinquency proceedings as to a  
10 health maintenance organization have been or are to be  
11 initiated, but while such insolvency or impairment exists, a  
12 director or officer of a health maintenance organization,  
13 except with the written permission of the Department of  
14 Insurance, may not authorize or permit the health maintenance  
15 organization to solicit or accept new or renewal health  
16 maintenance contracts in this state after the director or  
17 officer knew, or reasonably should have known, that the health  
18 maintenance organization was insolvent or impaired. As used in  
19 this section, the term "impaired" includes impairment for  
20 capital or surplus, as defined in section 641.225, Florida  
21 Statutes.

22           (2) Any director or officer who violates this section  
23 is guilty of a felony of the third degree, punishable as  
24 provided in section 775.082, section 775.083, or section  
25 775.084, Florida Statutes.

26           Section 11. Insurance holding companies.--Part IV of  
27 chapter 628, Florida Statutes, applies to health maintenance  
28 organizations licensed under part I of chapter 641, Florida  
29 Statutes.

30           Section 12. Section 641.2342, Florida Statutes, is  
31 repealed.



1           Section 13. This act shall take effect July 1, 2000.

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SENATE SUMMARY

Substantially modifies provisions relating to health maintenance organizations. Modifies grievance procedures for a managed care entity, subscriber, or provider. Authorizes administrative law judges to order a subscriber or provider to pay costs and attorney's fees for participating in a proceeding for an improper purpose. Provides a definition. Provides for applicability of the Florida Insurance Code to health maintenance organizations. Provides conditions under which the Department of Insurance may order a health maintenance organization to cancel a contract. Requires a health maintenance organization's annual report to contain a certification of specified facts by an independent actuary. Requires an annual summary of all contracts with entities who have assumed more than 1 percent of the health care risk of a health maintenance organization. Provides for payment by health maintenance organization of fees to outside examiners appointed by the Department of Insurance. Specifies certain liabilities to be charged against a health maintenance organization when making a determination of its financial condition. Provides for application of federal solvency requirements to provider-sponsored organizations. Provides that a health maintenance organization is ultimately liable to a provider for authorized services. Modifies grievance procedures for a managed care entity, subscriber, or provider. Authorizes administrative law judges to order a subscriber or provider to pay costs and attorney's fees for participating in a proceeding for an improper purpose. Provides for applicability of the Florida Insurance Code to health maintenance organizations. Provides conditions under which the Department of Insurance may order a health maintenance organization to cancel a contract. Requires a health maintenance organization's annual report to contain a certification of specified facts by an independent actuary. Prohibits solicitation of acceptance of contracts by insolvent or impaired health maintenance organizations. Provides a criminal penalty. Provides that part IV of ch. 628, F.S., applies to health maintenance organizations. Repeals s. 641.2342, F.S., relating to contract providers providing more than 10 percent of the health care risks of a health maintenance organization.