

By Representative Patterson

1 A bill to be entitled
2 An act relating to health insurance; amending
3 s. 627.410, F.S.; modifying rate filing
4 requirements for approval of health insurance
5 policy forms by the Department of Insurance;
6 amending s. 627.411, F.S.; providing guidelines
7 for determining when benefits are considered
8 reasonable in relation to the premium charged
9 for purposes of disapproval of health insurance
10 policy forms by the department; providing an
11 effective date.

12

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

14

15 Section 1. Subsections (1), (3), (6), (7), and (8) of
16 section 627.410, Florida Statutes, are amended to read:

17 627.410 Filing, approval of forms.--

18 (1) No basic insurance policy or annuity contract
19 form, or application form where written application is
20 required and is to be made a part of the policy or contract,
21 or group certificates issued under a master contract delivered
22 in this state, or printed rider or endorsement form or form of
23 renewal certificate, shall be delivered or issued for delivery
24 in this state, unless the form has been filed with the
25 department at its offices in Tallahassee by or in behalf of
26 the insurer which proposes to use such form and has been
27 approved by the department. This provision does not apply to
28 ~~surety bonds or to~~ policies, riders, endorsements, or forms of
29 unique character which are designed for and used with relation
30 to insurance upon a particular subject (other than as to
31 individual or small group health insurance), or which relate

1 to the manner of distribution of benefits or to the
2 reservation of rights and benefits under life or health
3 insurance policies and are used at the request of the
4 individual policyholder, contract holder, or
5 certificateholder. As to group insurance policies effectuated
6 and delivered outside this state but covering persons resident
7 in this state, the group certificates to be delivered or
8 issued for delivery in this state shall be filed with the
9 department for information purposes only.

10 (3) The department may, as specified in s. 627.411(1)
11 ~~for cause~~, withdraw a previous approval. No insurer shall
12 issue or use any form disapproved by the department, or as to
13 which the department has withdrawn approval, after the
14 effective date of the order of the department.

15 (6)(a) An insurer shall not deliver or issue for
16 delivery or renew in this state any health insurance policy
17 form until it has filed with the department a copy of every
18 applicable rating manual, rating schedule, change in rating
19 manual, and change in rating schedule; if rating manuals and
20 rating schedules are not applicable, the insurer must file
21 with the department applicable premium rates and any change in
22 applicable premium rates. This provision does not apply to
23 rating manuals, rating schedules, changes in rating manuals or
24 schedules, or if rating manuals or schedules are not
25 applicable, to premium rates or changes in such rates,
26 relating to policies, riders, endorsements, or forms of unique
27 character which are designed for and used with relation to
28 insurance upon a particular subject or to benefits under group
29 health insurance policies insuring 51 or more persons and are
30 used at the request of the individual policyholder, contract
31 holder, or certificateholder.

1 (b) The department may establish by rule, for each
2 type of health insurance form, procedures to be used in
3 ascertaining that a form meets the standards in s. 627.411(2)
4 for new rate filings and rate revisions in accordance with
5 generally accepted standards of actuarial practice ~~the~~
6 ~~reasonableness of benefits in relation to premium rates~~ and
7 may, by rule, exempt from any requirement of paragraph (a) any
8 health insurance policy form or type thereof (as specified in
9 such rule) to which form or type such requirements may not be
10 practically applied or to which form or type the application
11 of such requirements is not desirable or necessary for the
12 protection of the public. With respect to any health insurance
13 policy form or type thereof which is exempted by rule from any
14 requirement of paragraph (a), premium rates filed pursuant to
15 ss. 627.640 and 627.662 shall be for informational purposes.

16 (c) Every filing made pursuant to this subsection
17 shall be made within the same time period provided in, and
18 shall be deemed to be approved under the same conditions as
19 those provided in, subsection (2).

20 (d) Every filing made pursuant to this subsection,
21 except disability income policies and accidental death
22 policies, shall be prohibited from applying the following
23 rating practices:

- 24 1. Select and ultimate premium schedules.
- 25 2. Premium class definitions which classify insured
26 based on year of issue or duration since issue.
- 27 3. Attained age premium structures on policy forms,
28 except long-term care policy forms, under which more than 50
29 percent of the policies are issued to persons age 65 or over.

30 (e) ~~Except as provided in subparagraph 1., an insurer~~
31 ~~shall continue to make available for purchase any individual~~

1 ~~policy form issued on or after October 1, 1993. A policy form~~
2 ~~shall not be considered to be available for purchase unless~~
3 ~~the insurer has actively offered it for sale in the previous~~
4 ~~12 months.~~

5 1. An insurer may discontinue the availability of an
6 individual a policy form if the insurer provides to the
7 department in writing its decision at least 30 days prior to
8 discontinuing the availability of the form of the policy or
9 certificate. After receipt of the notice by the department,
10 the insurer shall no longer offer for sale the policy form or
11 certificate form in this state.

12 ~~2. An insurer that discontinues the availability of a~~
13 ~~policy form pursuant to subparagraph 1. shall not file for~~
14 ~~approval a new policy form providing similar benefits as the~~
15 ~~discontinued form for a period of 5 years after the insurer~~
16 ~~provides notice to the department of the discontinuance. The~~
17 ~~period of discontinuance may be reduced if the department~~
18 ~~determines that a shorter period is appropriate.~~

19 ~~2.3.~~ The experience of an individual accident and
20 health insurance ~~all~~ policy form that is no longer being
21 marketed in this state, except for policies rated pursuant to
22 a loss ratio guarantee under subsection (8), shall be combined
23 with the experience of at least one other individual accident
24 and health insurance policy form providing similar benefits,
25 as determined by the insurer, which is still being marketed in
26 the state by the same insurer, unless the insurer has no other
27 policy form ~~forms~~ providing similar benefits ~~shall be combined~~
28 ~~for all rating purposes.~~ For purposes of this section, a form
29 is considered active if the form has been marketed in this
30 state in the past 6 months.

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1 (7)(a) Each insurer subject to the requirements of
2 subsection (6) shall make an annual filing with the department
3 no later than 12 months after its previous filing,
4 establishing compliance with the standards in s. 627.411(2)
5 for each insurance policy form, excluding noncancelable policy
6 forms. For guaranteed renewable, medical indemnity, loss of
7 income, and disability income policy forms, the filing shall
8 be biennial and made no later than 24 months after its
9 previous filing ~~demonstrating the reasonableness of benefits~~
10 ~~in relation to premium rates.~~ The department, after receiving
11 a request to be exempted from the provisions of this section,
12 may, for good cause due to insignificant numbers of policies
13 in force or insignificant premium volume, exempt a company, by
14 line of coverage, from filing rates or rate certification as
15 required by this section.

16 (b) The filing required by this subsection shall be
17 satisfied by one of the following methods:

18 1. A rate filing prepared by an actuary which contains
19 documentation establishing ~~demonstrating~~ the reasonableness of
20 benefits in relation to premiums charged ~~in accordance with~~
21 ~~the applicable rating laws and rules promulgated by the~~
22 ~~department.~~ For premium rate changes, benefits shall be deemed
23 reasonable in relation to premium charged if both of the
24 following loss ratios meet or exceed the standards established
25 in s. 627.411(2).

26 a. The anticipated loss ratio over the entire future
27 period for which the revised rates are computed to provide
28 coverage.

29 b. The lifetime anticipated loss ratio derived by
30 dividing the amount determined under sub-sub-subparagraph (I)
31 by the amount determined under sub-sub-subparagraph (II):

1 (I) The sum of the accumulated benefits from the
2 original effective date of the form to the effective date of
3 the revision, and the present value of future benefits.
4 (II) The sum of the accumulated premiums from the
5 original effective date of the form to the effective date of
6 the revision, and the present value of future premiums, which
7 present values shall be taken over the entire period for which
8 the revised rates are computed to provide coverage and which
9 accumulated benefits and premiums shall include an explicit
10 estimate of actual benefits and premiums from the last date an
11 accounting has been made to the effective date of the
12 revision.
13
14 Interest shall be used in the calculation of these accumulated
15 benefits and premiums and present values in the calculation of
16 the loss ratio. For purposes of sub-sub-subparagraph (I), the
17 present value of benefits may, at the insurer's option,
18 include recognition of the policy reserve as a benefit
19 (addition), or the present value of premiums may, at the
20 insurer's option, include recognition of the policy reserve as
21 a deduction. Anticipated loss ratios lower than those
22 indicated in sub-sub-subparagraphs (I) and (II) shall require
23 justification based on special circumstances that may be
24 applicable, including, but not limited to: accident only,
25 short-term nonrenewable, specified peril, and other special
26 risks; marketing methods; giving due consideration to
27 acquisition and administration costs and premium mode;
28 extraordinary expenses; high risk of claims fluctuation
29 because of low loss frequency or the catastrophic or
30 experimental nature of the coverage; product features, such as
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1 long elimination periods, high deductibles, and high maximum
2 limits; and the industrial or debit method of distribution.

3 2. If no rate change is proposed, a filing which
4 consists of a certification by an actuary that benefits are
5 reasonable in relation to premiums currently charged in
6 accordance with the loss ratio standards established in this
7 section and s. 627.411(2)~~applicable laws and rules~~
8 ~~promulgated by the department.~~

9 3. For premium rate changes for group policy forms,
10 benefits shall be deemed reasonable in relation to premium
11 charged if the anticipated loss ratio over the entire future
12 period for which the revised rates are computed to provide
13 coverage meets or exceeds the standards established in s.
14 627.411(2).

15 4. An insurer may combine the experience of similar
16 policy forms in the required filing.

17 (c) As used in this section, the term "actuary" means
18 an individual who is a member of the Society of Actuaries or
19 the American Academy of Actuaries. If an insurer does not
20 employ or otherwise retain the services of an actuary, the
21 insurer's certification shall be prepared by insurer personnel
22 or consultants with a minimum of 5 years' experience in
23 insurance ratemaking and~~The~~ chief executive officer of the
24 insurer shall review and sign the certification indicating his
25 or her agreement with its conclusions.

26 (d) If at the time a filing is required under this
27 section an insurer is in the process of completing a rate
28 review, the insurer may apply to the department for an
29 extension of up to an additional 30 days in which to make the
30 filing. The request for extension must be received by the
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1 department in its offices in Tallahassee no later than the
2 date the filing is due.

3 (e) If an insurer fails to meet the filing
4 requirements of this subsection and does not submit the filing
5 within 60 days following the date the filing is due, the
6 department may, in addition to any other penalty authorized by
7 law, order the insurer to discontinue the issuance of policies
8 for which the required filing was not made, until such time as
9 the ~~department determines that the~~ required filing is properly
10 submitted.

11 (8)(a) For the purposes of subsections (6) and (7) and
12 s. 627.411, benefits of an individual accident and health
13 insurance policy form, including Medicare supplement policies
14 as defined in s. 627.672, ~~when authorized by rules adopted by~~
15 ~~the department~~, and excluding long-term care insurance
16 policies as defined in s. 627.9404, and other policy forms
17 under which more than 50 percent of the policies are issued to
18 individuals age 65 and over, are deemed to comply with the
19 provisions cited in this section ~~to be reasonable in relation~~
20 ~~to premium rates~~ if the rates are filed pursuant to a loss
21 ratio guarantee and both the initial rates and the durational
22 and lifetime loss ratios have been approved by the department,
23 and such benefits shall continue to be deemed reasonable for
24 renewal rates while the insurer complies with such guarantee,
25 provided the currently expected lifetime loss ratio is not
26 more than 5 percent less than the filed lifetime loss ratio as
27 certified to by an actuary. The department shall have the
28 right to bring an administrative action should it deem that
29 the lifetime loss ratio will not be met. For Medicare
30 supplement filings, the department may withdraw a previously
31 approved filing which was made pursuant to a loss ratio

1 guarantee if it determines that the filing is not in
2 compliance with ss. 627.671-627.675 or the currently expected
3 lifetime loss ratio is less than the filed lifetime loss ratio
4 as certified by an actuary in the initial guaranteed loss
5 ratio filing. If this section conflicts with ss.
6 627.671-627.675, ss. 627.671-627.675 shall control.

7 (b) The renewal premium rates shall be deemed to be
8 approved upon filing with the department if the filing is
9 accompanied by the most current approved loss ratio guarantee.
10 The loss ratio guarantee shall be in writing, shall be signed
11 by an officer of the insurer, and shall contain at least:

12 1. A recitation of the anticipated lifetime and
13 durational target loss ratios contained in the actuarial
14 memorandum filed with the policy form when it was originally
15 approved. The durational target loss ratios shall be
16 calculated for 1-year experience periods. If statutory
17 changes have rendered any portion of such actuarial memorandum
18 obsolete, the loss ratio guarantee shall also include an
19 amendment to the actuarial memorandum reflecting current law
20 and containing new lifetime and durational loss ratio targets.

21 2. A guarantee that the applicable loss ratios for the
22 experience period in which the new rates will take effect, and
23 for each experience period thereafter until new rates are
24 filed, will meet the loss ratios referred to in subparagraph
25 1.

26 3. A guarantee that the applicable loss ratio results
27 for the experience period will be independently audited at the
28 insurer's expense. The audit shall be performed in the second
29 calendar quarter of the year following the end of the
30 experience period, and the audited results shall be reported
31 to the department no later than the end of such quarter. The

1 department shall establish by rule the minimum information
2 reasonably necessary to be included in the report. The audit
3 shall be done in accordance with accepted accounting and
4 actuarial principles.

5 4. A guarantee that affected policyholders in this
6 state shall be issued a proportional refund, based on the
7 premium earned, of the amount necessary to bring the
8 applicable experience period loss ratio up to the durational
9 target loss ratio referred to in subparagraph 1. The refund
10 shall be made to all policyholders in this state who are
11 insured under the applicable policy form as of the last day of
12 the experience period, except that no refund need be made to a
13 policyholder in an amount less than \$10. Refunds less than \$10
14 shall be aggregated and paid pro rata to the policyholders
15 receiving refunds. The refund shall include interest at the
16 then-current variable loan interest rate for life insurance
17 policies established by the National Association of Insurance
18 Commissioners, from the end of the experience period until the
19 date of payment. Payments shall be made during the third
20 calendar quarter of the year following the experience period
21 for which a refund is determined to be due. However, no
22 refunds shall be made until 60 days after the filing of the
23 audit report in order that the department has adequate time to
24 review the report.

25 5. A guarantee that if the applicable loss ratio
26 exceeds the durational target loss ratio for that experience
27 period by more than 20 percent, provided there are at least
28 2,000 policyholders on the form nationwide or, if not, then
29 accumulated each calendar year until 2,000 policyholder years
30 is reached, the insurer, if directed by the department, shall
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1 withdraw the policy form for the purposes of issuing new
2 policies.

3 (c) As used in this subsection:

4 1. "Loss ratio" means the ratio of incurred claims to
5 earned premium.

6 2. "Applicable loss ratio" means the loss ratio
7 attributable solely to this state if there are 2,000 or more
8 policyholders in the state. If there are 500 or more
9 policyholders in this state but less than 2,000, it is the
10 linear interpolation of the nationwide loss ratio and the loss
11 ratio for this state. If there are less than 500
12 policyholders in this state, it is the nationwide loss ratio;
13 however, if there are less than 2,000 policyholder years
14 nationwide, the experience must be accumulated until the end
15 of the calendar year in which 2,000 policyholder years are
16 obtained.

17 3. "Experience period" means the period, ordinarily a
18 calendar year, for which a loss ratio guarantee is calculated.

19 Section 2. Section 627.411, Florida Statutes, is
20 amended to read:

21 627.411 ~~Grounds for Disapproval of forms.~~--

22 (1) The department shall disapprove any insurance
23 policy form that must be filed under s. 627.410, or withdraw
24 any previous approval thereof, only if the form:

25 (a) Is in any respect in violation of, or does not
26 comply with, this code.

27 (b) Contains or incorporates by reference, where such
28 incorporation is otherwise permissible, any inconsistent,
29 ambiguous, or misleading clauses, or exceptions and conditions
30 which deceptively affect the risk purported to be assumed in
31 the general coverage of the contract.

1 (c) Has any title, heading, or other indication of its
2 provisions which is misleading.

3 (d) Is printed or otherwise reproduced in such manner
4 as to render any material provision of the form substantially
5 illegible.

6 (e)1. Is for health insurance, and provides benefits
7 which are unreasonable in relation to the premium charged as
8 specified in s. 627.411(2); or

9 2. Contains provisions that constitute unfair
10 discrimination pursuant to s. 626.9541(1)(g), which are unfair
11 or inequitable as contrary to the public policy of this state
12 or which encourages misrepresentation or which apply rating
13 practices which result in premium escalations that are not
14 viable for the policyholder market or result in unfair
15 discrimination in sales practices.

16 (f) Excludes coverage for human immunodeficiency virus
17 infection or acquired immune deficiency syndrome or contains
18 limitations in the benefits payable, or in the terms or
19 conditions of such contract, for human immunodeficiency virus
20 infection or acquired immune deficiency syndrome which are
21 different than those which apply to any other sickness or
22 medical condition.

23 (2) ~~In determining whether the Benefits are deemed~~
24 ~~reasonable in relation to the premium charged if premium rates~~
25 ~~are neither excessive nor inadequate as specified in this~~
26 ~~subsection., the department, in accordance with reasonable~~
27 ~~actuarial techniques, shall consider:~~

28 (a) ~~Past loss experience and prospective loss~~
29 ~~experience within and without this state.~~

30 (b) ~~Allocation of expenses.~~

31

<u>Group size</u>	<u>Loss ratio</u>
<u>Fewer than 51 certificates</u>	<u>65 percent</u>
<u>51 through 500 certificates</u>	<u>70 percent</u>
<u>All others</u>	<u>75 percent</u>

b. Group medical indemnity or any group policy with an average annual premium per certificate of less than \$1,000.

<u>Group size</u>	<u>Loss ratio</u>
<u>Fewer than 51 certificates</u>	<u>57.5 percent</u>
<u>51 through 500 certificates</u>	<u>62.5 percent</u>
<u>All others</u>	<u>67.5 percent</u>

3. Group conversion insurance, other than long-term-care insurance and Medicare supplement insurance, issued on either a group or an individual basis, shall have a loss ratio of not less than 120 percent, subject to the limits described in s. 627.6675.

4. The lifetime loss ratios in subparagraphs 1. and 2. may be adjusted in accordance with the following formula:

$$R' = (A - 25I) R/A$$

Where:

R = the loss ratio from subparagraphs 1. and 2.

A = the average annualized premium per individual policy or per group certificate.

I = (CPI-U, year N-1)/103.9.

R' = the adjusted loss ratio.

1
2 R' cannot be more than 10 percentage points less than R nor
3 less than 50 percent, except that R' cannot be less than 45
4 percent as to accident only non-cancellable policies. The
5 CPI-U is the consumer price index for all urban consumers, for
6 all items and for all regions of the United States combined,
7 as determined by the United States Department of Labor, Bureau
8 of Labor Statistics as of September of each year. Year N-1 is
9 the calendar year immediately preceding the calendar year N in
10 which the rate filing is submitted in this state.

11 5. Blanket insurance is exempt from the loss ratios
12 described in subparagraphs 1.-3. The minimum loss ratio for
13 blanket insurance is 65 percent.

14 6. Medicare supplement and long-term-care insurance
15 are exempt from the loss ratios described in subparagraphs
16 1.-3. The minimum loss ratios for Medicare supplement
17 insurance must be established in accordance with s. 627.674.
18 Benefits under long-term care insurance policies shall be
19 deemed reasonable in relation to premiums provided the
20 expected loss ratio is at least 60 percent, calculated in a
21 manner which provides for adequate reserving of the long-term
22 care insurance risk. In evaluating the expected loss ratio,
23 due consideration shall be given to: statistical credibility
24 of incurred claims experience and earned premiums; the period
25 for which rates are computed to provide coverage; experienced
26 and projected trends; the concentration of experience within
27 early policy duration; expected claim fluctuations; experience
28 refunds, adjustments, or dividends; renewability features; all
29 appropriate expense factors; interest; the experimental nature
30 of the coverage; policy reserves; the mix of business by risk
31 classification; and product features such as long elimination

1 periods, high deductibles, and high maximum limits.
2 Additionally, except to the extent of any conflict with this
3 code, such rules shall include the factors specified in
4 section 17A of the Long-Term Care Model Regulations, as
5 approved by the National Association of Insurance
6 Commissioners in July 1998.
7 7. The anticipated future loss ratio shall be
8 calculated as the present value of anticipated future benefits
9 divided by the present value of future premiums, calculated
10 over the entire period for which the revised rates are
11 computed to provide coverage.
12 8. The lifetime loss ratio shall be calculated as the
13 sum of:
14 a. The accumulated benefits from the original
15 effective date of the form to the effective date of the
16 revision.
17 b. The present value of anticipated future benefits
18 divided by the sum of the accumulated premiums from the
19 original effective date of the form to the effective date of
20 the revision.
21 c. The present value of anticipated future premiums,
22 with future values calculated over the entire period for which
23 the revised rates are computed to provide coverage.
24 9. Interest shall be used in the calculation of
25 accumulated and present values of benefits and premiums.
26 10. The minimum loss ratio for individual contracts
27 and group certificate forms issued, delivered, or issued for
28 delivery in this state prior to June 1, 1994, that were
29 approved by the department prior to February 1, 1994, shall be
30 the loss ratio and loss ratio adjustment formula that was in
31 effect at the time the form was approved.

1 11. Anticipated loss ratios lower than those required
2 in subparagraph (a)1. or subparagraph (a)2. shall require
3 justification based upon special circumstances that may be
4 applicable, including, but not limited to:

5 a. Accident only, short-term nonrenewable, specified
6 peril, and other special risks.

7 b. Marketing methods; giving due consideration to
8 acquisition and administration costs and premium mode;
9 extraordinary expenses; high risks of claims fluctuation
10 because of low loss frequency or the catastrophic or
11 experimental nature of the coverage; product features, such as
12 long elimination periods, high deductibles, and high maximum
13 limits; and the industrial or debit method of distribution.

14 (b) Premium rates are not inadequate if the insurer
15 demonstrates, in accordance with generally accepted standards
16 of actuarial practice, that the sum of premium income and
17 investment income, minus the sum of benefit payments,
18 expenses, taxes, and contingency margins is greater than zero.

19 Section 3. This act shall take effect July 1, 2000.

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22 HOUSE SUMMARY

23 Modifies the rate filing requirements for a health
24 insurer to have its policy forms approved by the
25 Department of Insurance. Provides guidelines for the
26 department in determining when benefits are considered
27 reasonable in relation to the premium charged.