

Bill No. CS for SB 420

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Campbell moved the following amendment:

Senate Amendment (with title amendment)

On page 38, between lines 25 and 26,

insert:

Section 17. Section 641.28, Florida Statutes, is amended to read:

641.28 Civil remedy.--

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

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

(b) If the civil action is filed more than 60 days after the subscriber or enrollee filed a notice of intent to sue with the statewide provider and subscriber assistance program established pursuant to s. 408.7056 or a notice

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1 pursuant to s. 641.3917, and the subscriber or enrollee
2 receives a final judgment or decree against the health
3 maintenance organization in favor of the subscriber or
4 enrollee, the court shall enter a judgment or decree against
5 the health maintenance organization in favor of the subscriber
6 or enrollee for reasonable attorney's fees and court costs.

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

11 Section 18. Paragraphs (c), (d), and (e) are added to
12 subsection (10) of section 641.3903, Florida Statutes, and
13 subsection (15) 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) Cancelling 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

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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) Cancelling 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 (15) 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 19. 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:

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1 (a) A violation of s. 641.3903(5)(a), (b), (c)1.-7.,
2 (10), or (15) 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 the service if
6 it had acted fairly and honestly toward its subscriber or
7 enrollee and with due regard for his or her interests and, in
8 the independent medical judgment of a contract treating
9 physician or other physician authorized by the health
10 maintenance organization, the service is medically necessary.

11
12 However, a person pursuing a remedy under this section need
13 not prove that such acts were 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 does not begin until a
20 proper notice is filed.

21 (b) The notice must be on a form provided by the
22 department and must state with specificity the following
23 information and such other information as the department
24 requires:

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.

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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 under this section shall report to
18 the department on the disposition of the alleged violation.

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

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

28 (4) Punitive damages shall not be awarded under this
29 section unless the acts giving rise to the violation occur
30 with such frequency as to indicate a general business practice
31 and are either willful, wanton, and malicious or are in

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

7 (5) This section shall not be construed to authorize a
8 class action suit against a health maintenance organization or
9 a civil action against the department, its employees, or the
10 Insurance Commissioner, or against the Agency for Health Care
11 Administration, its employees, or the director of the agency
12 or to create a cause of action when a health maintenance
13 organization refuses to pay a claim for reimbursement on the
14 grounds that the charge for a service was unreasonably high or
15 that the service provided was not medically necessary.

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

28 (b) This section does not create a cause of action for
29 medical malpractice. Such an action is subject to the
30 provisions of chapter 766.

31 (c) This section does not apply to the provision of

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1 medical care, treatment, or attendance pursuant to chapter
2 440.

3 Section 20. Subsection (4) of section 440.11, Florida
4 Statutes, is amended to read:

5 440.11 Exclusiveness of liability.--

6 (4) Notwithstanding the provisions of s. 624.155 or s.
7 641.3917, the liability of a carrier or a health maintenance
8 organization to an employee or to anyone entitled to bring
9 suit in the name of the employee shall be as provided in this
10 chapter, which shall be exclusive and in place of all other
11 liability.

12
13 (Redesignate subsequent sections.)

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16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 On page 3, line 1, after the semicolon

19
20 insert:

21 service delivery; amending s. 641.28, F.S.;

22 revising award of attorney's fees in civil

23 actions under certain circumstances; amending

24 s. 641.3917, F.S.; authorizing civil actions

25 against health maintenance organizations by

26 certain persons under certain circumstances;

27 providing requirements and procedures;

28 providing for liability for damages and

29 attorney's fees; prohibiting punitive damages

30 under certain circumstances; requiring the

31 advance posting of discovery costs; amending s.

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440.11, F.S.; establishing exclusive liability
of health maintenance organizations; amending
s. 641.511,