

By Representatives McGriff, Waters and Wiles

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 215.555, F.S.; revising definitions; amending
4 s. 624.155, F.S.; revising time periods for
5 notice for bringing certain actions; amending
6 s. 624.307, F.S.; authorizing the Department of
7 Insurance to adopt rules; amending s. 624.310,
8 F.S.; proscribing conflict of interest
9 activities of licensee-affiliated parties under
10 certain circumstances; requiring
11 licensee-affiliated parties to disclose certain
12 personal interests; specifying certain
13 restrictions for licensee-affiliated parties;
14 providing voting rights limitations; providing
15 standards for identifying certain hazardous
16 insurers; providing department authority to
17 determine an insurer's financial condition and
18 issue certain orders to a hazardous insurer;
19 authorizing the department to adopt rules;
20 amending s. 624.315, F.S.; revising specified
21 contents of certain reports; amending s.
22 624.408, F.S.; deleting obsolete provisions;
23 amending ss. 624.423, 626.742, 626.8736,
24 626.907, and 634.161, F.S.; providing for
25 alternative methods of service of process;
26 amending s. 624.424, F.S.; exempting certain
27 insurers from certain annual statement
28 requirements; providing exceptions; renumbering
29 s. 624.4435, F.S., as s. 624.4242, F.S.;
30 amending s. 625.340, F.S.; requiring certain
31 foreign insurers to comply with certain

1 provisions; amending s. 626.8805, F.S.;

2 exempting certain administrators from

3 certificate of authority requirements; amending

4 s. 627.4615, F.S.; increasing the minimum rate

5 for certain interest calculations; amending s.

6 627.482, F.S.; specifying a rate of simple

7 interest for certain cash surrenders of

8 policies; amending s. 627.613, F.S.; increasing

9 a specified rate of simple interest; amending

10 s. 627.914, F.S.; clarifying application of

11 time of payment requirements to self-insurance

12 funds; deleting provisions relating to certain

13 required information relating to workers'

14 compensation insurance; amending s. 627.915,

15 F.S.; revising certain private passenger

16 automobile insurance information reporting

17 requirements; amending s. 641.19, F.S.;

18 defining "health care risk contract"; amending

19 s. 641.26, F.S.; revising health maintenance

20 organization annual reporting requirements;

21 creating s. 641.263, F.S.; providing for

22 risk-based capital for health maintenance

23 organizations; providing for risk-based capital

24 reports; providing requirements for health

25 maintenance organizations upon the occurrence

26 of certain events; providing notice

27 requirements; requiring a risk-based capital

28 plan for such events; providing duties and

29 responsibilities of the department; providing

30 for department hearings of challenges by health

31 maintenance organizations; providing notice

1 requirements; authorizing the department to
2 adopt rules; authorizing the department to
3 exempt certain health maintenance
4 organizations; providing for effect of certain
5 notices; providing for alternative requirements
6 for certain time periods; creating s. 641.265,
7 F.S.; requiring health maintenance
8 organizations to file certain comprehensive
9 business plans; providing requirements;
10 amending s. 641.35, F.S.; including under
11 liabilities the amounts of certain claims in
12 determinations of financial health of health
13 maintenance organizations; amending ss.
14 641.2018, 641.495, 817.234, and 817.50, F.S.;
15 correcting cross references; repealing s.
16 641.2342, F.S., relating to contract providers;
17 providing effective dates.

18
19 Be It Enacted by the Legislature of the State of Florida:
20

21 Section 1. Paragraph (c) of subsection (2) of section
22 215.555, Florida Statutes, is amended, and paragraph (n) is
23 added to said subsection, to read:

24 215.555 Florida Hurricane Catastrophe Fund.--

25 (2) DEFINITIONS.--As used in this section:

26 (c) "Covered policy" means any insurance policy
27 covering residential property in this state, including, but
28 not limited to, any homeowner's, mobile home owner's, farm
29 owner's, condominium association, condominium unit owner's,
30 tenant's, or apartment building policy, or any other policy
31 covering a residential structure or its contents issued by any

1 authorized insurer, including any joint underwriting
2 association or similar entity created pursuant to law or a
3 transferred policy as defined in paragraph (n). Additionally,
4 covered policies include policies covering the peril of wind
5 removed from the Florida Residential Property and Casualty
6 Joint Underwriting Association, created pursuant to s.
7 627.351(6), or from the Florida Windstorm Underwriting
8 Association, created pursuant to s. 627.351(2), by an
9 authorized insurer under the terms and conditions of an
10 executed assumption agreement between the authorized insurer
11 and either such association. Each assumption agreement between
12 either association and such authorized insurer must be
13 approved by the Florida Department of Insurance prior to the
14 effective date of the assumption, and the Department of
15 Insurance must provide written notification to the board
16 within 15 working days after such approval. "Covered policy"
17 does not include any policy that excludes wind coverage or
18 hurricane coverage or any reinsurance agreement and does not
19 include any policy otherwise meeting this definition which is
20 issued by a surplus lines insurer or a reinsurer.

21 (n) "Transferred policy" means a policy originally
22 written by an authorized insurer or joint underwriting
23 association which has been assumed by another authorized
24 insurer pursuant to an assumption and reinsurance agreement,
25 and meets all of the following conditions:

26 1. The policy was covered under a contract with the
27 fund immediately prior to the assumption.

28 2. The assumption and reinsurance agreement was
29 approved in advance by the Department of Insurance.

30 3. The assuming insurer is obligated to pay 100
31 percent of the losses of the policy.

1 4. An assumption notice that identifies the assuming
2 insurer is provided to each of the policyholders.

3 5. All premiums and assessments due to the fund from
4 the ceding insurer have been paid in full.

5 6. The assumption agreement provides for the full
6 payment of any premiums due to the fund for the transferred
7 policies for the balance of the contract period.

8 7. The assumption agreement clearly identifies
9 policies transferred and provides for the collection of any
10 data necessary for the fund to determine reimbursement under
11 the contract.

12 8. In the case of an authorized insurer, the
13 assumption agreement provides for the transfer of all policies
14 covered under the existing contract with the fund.

15 9. The assumption agreement provides for the full
16 payment of any future assessments associated with the exposure
17 from the transferred policies.

18 10. The assumption agreement is filed with the fund by
19 the assuming insurer within 15 days after approval by the
20 department.

21 Section 2. Subsection (2) of section 624.155, Florida
22 Statutes, is amended to read:

23 624.155 Civil remedy.--

24 (2)(a) As a condition precedent to bringing an action
25 under this section, ~~the department and~~ the insurer must have
26 been given 60 days' written notice of the violation. ~~If the~~
27 ~~department returns a notice for lack of specificity, the~~
28 ~~60-day time period shall not begin until a proper notice is~~
29 ~~filed.~~

30 (b) The notice shall ~~be on a form provided by the~~
31 ~~department and shall~~ state with specificity the following

1 information, ~~and such other information as the department may~~
2 ~~require:~~

3 1. The statutory provision, including the specific
4 language of the statute, which the insurer allegedly violated.

5 2. The facts and circumstances giving rise to the
6 violation.

7 3. The name of any individual involved in the
8 violation.

9 4. Reference to specific policy language that is
10 relevant to the violation, if any. If the person bringing the
11 civil action is a third party claimant, she or he shall not be
12 required to reference the specific policy language if the
13 insurer has not provided a copy of the policy to the third
14 party claimant pursuant to written request.

15 5. A statement that the notice is given in order to
16 perfect the right to pursue the civil remedy authorized by
17 this section.

18 ~~(c) Within 20 days of receipt of the notice, the~~
19 ~~department may return any notice that does not provide the~~
20 ~~specific information required by this section, and the~~
21 ~~department shall indicate the specific deficiencies contained~~
22 ~~in the notice. A determination by the department to return a~~
23 ~~notice for lack of specificity shall be exempt from the~~
24 ~~requirements of chapter 120.~~

25 (c)(d) No action shall lie if, within 60 days after
26 filing notice, the damages are paid or the circumstances
27 giving rise to the violation are corrected.

28 (d)(e) The insurer that is the recipient of a notice
29 filed pursuant to this section shall report to the department
30 on the disposition of the alleged violation.

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1 ~~(e)(f)~~ The applicable statute of limitations for an
2 action under this section shall be tolled for a period of 65
3 days by the mailing of the notice required by this subsection
4 or the mailing of a subsequent notice required by this
5 subsection.

6 Section 3. Subsection (8) is added to section 624.307,
7 Florida Statutes, to read:

8 624.307 General powers; duties.--

9 (8) The department may by rule specify the format
10 whereby any records, documents, or filings required pursuant
11 to the provisions of the Florida Insurance Code are to be
12 furnished to the department by licensees and
13 certificateholders. The rules may include provisions
14 governing electronic methodologies for use in furnishing such
15 records, documents, or filings.

16 Section 4. Subsections (4), (5), (6), and (7) of
17 section 624.310, Florida Statutes, are renumbered as
18 subsections (5), (6), (8), and (9), respectively, new
19 subsections (4) and (7) are added to said section, and present
20 subsection (6) of said section is amended, to read:

21 624.310 Enforcement; cease and desist orders; removal
22 of certain persons; fines.--

23 (4) LICENSEE-AFFILIATED PARTIES.--

24 (a) A licensee-affiliated party may not engage or
25 participate, directly or indirectly, in any business or
26 transaction conducted on behalf of or involving the licensee,
27 subsidiary, or service corporation which would result in a
28 conflict of the party's own personal interests with those of
29 the licensee, subsidiary, or service corporation with which he
30 or she is affiliated, unless:

1 1. Such business or transactions are conducted in good
2 faith and are honest, fair, and reasonable to the licensee,
3 subsidiary, or service corporation and are on terms no more
4 favorable than would be offered to a disinterested third
5 party.

6 2. A full disclosure of such business or transaction
7 and the nature of the licensee-affiliated party's interest is
8 made to the board of directors.

9 3. Such business or transactions are approved in good
10 faith by the board of directors, any interested director
11 abstaining, and such approval is recorded in the minutes.

12 4. Any profits inuring to the licensee-affiliated
13 party are not at the expense of the state financial
14 institution, subsidiary, or service corporation and do not
15 prejudice the best interests of the licensee, subsidiary, or
16 service corporation in any way.

17 5. Such business or transactions do not represent a
18 breach of the licensee-affiliated party's fiduciary duty and
19 are not fraudulent, illegal, or ultra vires.

20 (b) Without limitation by any of the specific
21 provisions of this section, the department may require the
22 disclosure by licensee-affiliated parties of their personal
23 interests, directly or indirectly, in any business or
24 transactions on behalf of or involving the licensee,
25 subsidiary, or service corporation and of their control of or
26 active participation in enterprises having activities related
27 to the business of the state financial institution,
28 subsidiary, or service corporation.

29 (c) The following restrictions governing the conduct
30 of licensee-affiliated parties are expressly specified, but
31 such specification is not to be construed in any manner as

1 excusing such parties from the observance of any other aspect
2 of the general fiduciary duty owed by them to the licensee
3 which they serve:

4 1. A director of a licensee may not accept director
5 fees unless the director fees have been previously approved by
6 the board of directors and such fees represent reasonable
7 compensation for service as a director or member of a
8 committee. This subparagraph does not limit or preclude
9 reasonable compensation as otherwise authorized by paragraph
10 (a) for a director who also provides goods or services to the
11 licensee.

12 2. Except as provided in ss. 657.039 and 658.48, a
13 licensee-affiliated party may not have any interest, directly
14 or indirectly, in the proceeds of a loan or investment or of a
15 purchase or sale made by the licensee, subsidiary, or service
16 corporation unless such loan, investment, purchase, or sale is
17 authorized expressly by resolution of the board of directors
18 and unless such resolution is approved by vote of at least a
19 majority of the directors of the licensee with all interested
20 parties taking no part in such vote.

21 3. A licensee-affiliated party may not have any
22 interest, direct or indirect, in the purchase at less than the
23 face value of any evidence of a savings account, deposit, or
24 other indebtedness issued by the state financial institution,
25 subsidiary, or service corporation.

26 4. A licensee-affiliated party acting as proxy for a
27 stockholder of a licensee, subsidiary, or service corporation
28 may not exercise, transfer, or delegate such vote or votes in
29 any consideration of a private benefit or advantage, direct or
30 indirect. The voting rights of stockholders and directors may
31 not be the subject of sale, barter, exchange, or similar

1 transaction, either directly or indirectly. Any
2 licensee-affiliated party who violates the provisions of this
3 subparagraph is accountable to the licensee, subsidiary, or
4 service corporation for any increment.

5 (7) CORRECTIVE ACTION.--

6 (a) The purpose of this subsection is to set forth the
7 standards the department may use for identifying insurers
8 found to be in such condition as to render the continuance of
9 their business hazardous to the public or to holders of their
10 policies or certificates of insurance. This subsection shall
11 not be interpreted to limit the powers granted the department
12 by any other laws of this state, nor shall this subsection be
13 interpreted to supersede any laws or parts of laws of this
14 state.

15 (b) The following standards may be considered by the
16 department to determine whether the continued operation of any
17 insurer transacting an insurance business in this state might
18 be deemed to be hazardous to policyholders, creditors, or the
19 general public:

20 1. Adverse findings reported in financial condition
21 and market conduct examination reports.

22 2. The National Association of Insurance Commissioners
23 Insurance Regulatory Information System and its related
24 reports.

25 3. The ratios of commission expense, general insurance
26 expense, policy benefits, and reserve increases as to annual
27 premium and net investment income which could lead to an
28 impairment of capital and surplus.

29 4. Whether the insurer's asset portfolio, when viewed
30 in light of current economic conditions, is of sufficient
31

- 1 value, liquidity, or diversity to assure the insurer's ability
2 to meet its outstanding obligations as they mature.
- 3 5. The ability of an assuming reinsurer to perform and
4 whether the insurer's reinsurance program provides sufficient
5 protection for the insurer's remaining surplus after taking
6 into account the insurer's cash flow and the classes of
7 business written as well as the financial condition of the
8 assuming reinsurer.
- 9 6. Whether the insurer's operating loss in the last
10 12-month period or any shorter period of time, including, but
11 not limited to, net capital gain or loss, change in
12 non-admitted assets, and cash dividends paid to shareholders,
13 is greater than 50 percent of the insurer's remaining surplus
14 as regards policyholders in excess of the minimum required.
- 15 7. Whether any affiliate, subsidiary, or reinsurer is
16 insolvent, threatened with insolvency, or delinquent in
17 payment of its monetary or other obligation.
- 18 8. Contingent liabilities, pledges, or guaranties that
19 either individually or collectively involve a total amount
20 that in the opinion of the department may affect the solvency
21 of the insurer.
- 22 9. Whether any controlling person of an insurer is
23 delinquent in the transmitting to, or payment of, net premiums
24 to such insurer.
- 25 10. The age and collectibility of receivables.
- 26 11. Whether the management of an insurer, including
27 officers, directors, or any other person who directly or
28 indirectly controls the operation of such insurer, fails to
29 possess and demonstrate the competence, fitness, and
30 reputation deemed necessary to serve the insurer in such
31 position.

1 12. Whether the management of an insurer has failed to
2 respond to inquiries relative to the condition of the insurer
3 or has furnished false and misleading information concerning
4 an inquiry.

5 13. Whether the management of an insurer has filed any
6 false or misleading sworn financial statement, has released a
7 false or misleading financial statement to lending
8 institutions or to the general public, or has made a false or
9 misleading entry or omitted an entry of material amount in the
10 books of the insurer.

11 14. Whether the insurer has grown so rapidly and to
12 such an extent that the insurer lacks adequate financial and
13 administrative capacity to meet its obligations in a timely
14 manner.

15 15. Whether the insurer has experienced or will
16 experience in the foreseeable future cash flow liquidity
17 problems.

18 (c)1. For the purposes of making a determination of an
19 insurer's financial condition under this subsection, the
20 department may:

21 a. Disregard any credit or amount receivable resulting
22 from transactions with a reinsurer which is insolvent,
23 impaired, or otherwise subject to a delinquency proceeding.

24 b. Make appropriate adjustments to asset values
25 attributable to investments in or transactions with parents,
26 subsidiaries, or affiliates.

27 c. Refuse to recognize the stated value of accounts
28 receivable if the ability to collect receivables is highly
29 speculative in view of the age of the account or the financial
30 condition of the debtor.

31

- 1 d. Increase the insurer's liability in an amount equal
2 to any contingent liability, pledge, or guarantee not
3 otherwise included if there is a substantial risk that the
4 insurer will be called upon to meet the obligation undertaken
5 within the next 12-month period.
- 6 2. If the department determines that the continued
7 operation of the insurer licensed to transact business in this
8 state may be hazardous to policyholders, creditors, or the
9 general public, the department may, upon its determination,
10 issue an order requiring the insurer to:
- 11 a. Reduce the total amount of present and potential
12 liability for policy benefits by reinsurance.
- 13 b. Reduce, suspend, or limit the volume of business
14 being accepted or renewed.
- 15 c. Reduce general insurance and commission expenses by
16 specified methods.
- 17 d. Increase the insurer's capital and surplus.
- 18 e. Suspend or limit the declaration and payment of
19 dividend by an insurer to its stockholders or to its
20 policyholders.
- 21 f. File reports in a form acceptable to the department
22 concerning the market value of an insurer's assets.
- 23 g. Limit or withdraw from certain investments or
24 discontinue certain investment practices to the extent the
25 department deems necessary.
- 26 h. Document the adequacy of premium rates in relation
27 to the risks insured.
- 28 i. File, in addition to regular annual statements,
29 interim financial reports on the form adopted by the National
30 Association of Insurance Commissioners or in such format as
31 adopted by the department.

1
2 If the insurer is a foreign insurer, the department's order
3 may be limited to the extent provided by law.

4 3. Any insurer subject to an order under subparagraph
5 2. may request a hearing to review that order pursuant to the
6 applicable provisions of chapter 120.

7 (d) The department may adopt any rules necessary to
8 implement the provisions of this subsection and in so doing
9 may consider revisions by the National Association of
10 Insurance Commissioners to the model regulation or act upon
11 which this subsection is based or upon any similar association
12 model regulation or act.

13 (8)(6) ADMINISTRATIVE PROCEDURES.--All administrative
14 proceedings under subsections (3), (4), ~~and~~ (5), and (6) shall
15 be conducted in accordance with chapter 120. Any service
16 required or authorized to be made by the department under this
17 code shall be made by certified mail, return receipt
18 requested, delivered to the addressee only; by personal
19 delivery; or in accordance with chapter 48. The service
20 provided for herein shall be effective from the date of
21 delivery.

22 Section 5. Subsections (1) and (2) of section 624.315,
23 Florida Statutes, are amended to read:

24 624.315 Department; annual report.--

25 (1) As early as reasonably possible, the department
26 shall annually prepare a report to the Speaker and Minority
27 Leader of the House of Representatives, the President and
28 Minority Leader of the Senate, the chairs of the legislative
29 committees with jurisdiction over matters of insurance, and
30 the Governor showing, with respect to the preceding calendar
31 year:

1 (a) Names of the authorized insurers transacting
2 insurance in this state, with abstracts of their financial
3 statements including assets, liabilities, and net worth.

4 (b) Names of insurers whose business was closed during
5 the year, the cause thereof, and amounts of assets and
6 liabilities as ascertainable.

7 (c) Names of insurers against which delinquency or
8 similar proceedings were instituted, and a concise statement
9 of the circumstances and results of each such proceeding.

10 ~~(d) The receipts and estimated expenses of the~~
11 ~~department for the year.~~

12 (d)~~(e)~~ Such other pertinent information and matters as
13 the department deems to be in the public interest.

14 (e)~~(f)~~ Annually after each regular session of the
15 Legislature, a compilation of the laws of this state relating
16 to insurance. Any such publication may be printed, revised,
17 or reprinted upon the basis of the original low bid.

18 (f)~~(g)~~ An analysis and summary report of the state of
19 the insurance industry in this state evaluated as of the end
20 of the most recent calendar year.

21 (2) The department shall maintain the following
22 information and make such information available upon request:

23 (a) Calendar year profitability, including investment
24 income from policyholders' unearned premium and loss reserves
25 (Florida and countrywide).

26 (b) Aggregate Florida loss reserves.

27 (c) Premiums written (Florida and countrywide).

28 (d) Premiums earned (Florida and countrywide).

29 (e) Incurred losses (Florida and countrywide).

30 (f) Paid losses (Florida and countrywide).

31 (g) Allocated Florida loss adjustment expenses.

1 ~~(h) Renewal ratio (countrywide).~~
2 ~~(i) Variation of premiums charged by the industry as~~
3 ~~compared to rates promulgated by the Insurance Services Office~~
4 ~~(Florida and countrywide).~~
5 ~~(j) An analysis of policy size limits (Florida and~~
6 ~~countrywide).~~
7 ~~(k) Insureds' selection of claims-made versus~~
8 ~~occurrence coverage (Florida and countrywide).~~
9 (h)(l) A subreport on the involuntary market in
10 Florida encompassing such joint underwriting plans and
11 assigned risk plans operating in the state.
12 (i)(m) A subreport providing information relevant to
13 emerging markets and alternate marketing mechanisms, such as
14 self-insured trusts, risk retention groups, purchasing groups,
15 and the excess-surplus lines market.
16 ~~(n) Trends; emerging trends as exemplified by the~~
17 ~~percentage change in frequency and severity of both paid and~~
18 ~~incurred claims, and pure premium (Florida and countrywide).~~
19 ~~(o) Fast track loss ratios as defined and assimilated~~
20 ~~by the Insurance Services Office (Florida and countrywide).~~
21 Section 6. Paragraph (b) of subsection (1) of section
22 624.408, Florida Statutes, is amended to read:
23 624.408 Surplus as to policyholders required; new and
24 existing insurers.--
25 (1)
26 (b) For any property and casualty insurer holding a
27 certificate of authority on December 1, 1993, the following
28 amounts apply instead of the \$4 million required by
29 subparagraph (a)5.:
30 1. ~~On December 31, 1999, and until December 30, 2000,~~
31 ~~\$2.5 million.~~

1 ~~1.2.~~ On December 31, 2000, and until December 30,
2 2001, \$2.75 million.
3 ~~2.3.~~ On December 31, 2001, and until December 30,
4 2002, \$3 million.
5 ~~3.4.~~ On December 31, 2002, and until December 30,
6 2003, \$3.25 million.
7 ~~4.5.~~ On December 31, 2003, and until December 30,
8 2004, \$3.6 million.
9 ~~5.6.~~ On December 31, 2004, and thereafter, \$4 million.
10 Section 7. Subsection (1) of section 624.423, Florida
11 Statutes, is amended, and subsection (4) is added to said
12 section, to read:
13 624.423 Serving process.--
14 (1) Service of process upon the Insurance Commissioner
15 and Treasurer as process agent of the insurer (under s.
16 624.422) shall be made by serving copies in triplicate of the
17 process upon the Insurance Commissioner and Treasurer or upon
18 her or his assistant, deputy, or other person in charge of her
19 or his office. Upon receiving such service, the Insurance
20 Commissioner and Treasurer shall file one copy in her or his
21 office, return one copy with her or his admission of service,
22 and promptly forward one copy of the process by ~~registered or~~
23 ~~certified mail~~ or by such other method of expeditious delivery
24 determined to be appropriate by the department to the person
25 last designated by the insurer to receive the same, as
26 provided under s. 624.422(2).
27 (4) The department may prescribe by rule the method to
28 be used by the department in forwarding the process to the
29 person designated by the insurer and in returning a copy with
30 the admission of service as described in this section.
31

1 Section 8. Paragraph (b) of subsection (1) of section
2 624.424, Florida Statutes, is amended to read:

3 624.424 Annual statement and other information.--

4 (1)

5 (b)1. Each insurer's annual statement must contain a
6 statement of opinion on loss and loss adjustment expense
7 reserves made by a member of the American Academy of Actuaries
8 or by a qualified loss reserve specialist, under criteria
9 established by rule of the department. In adopting the rule,
10 the department must consider any criteria established by the
11 National Association of Insurance Commissioners. The
12 department may require semiannual updates of the annual
13 statement of opinion as to a particular insurer if the
14 department has reasonable cause to believe that such reserves
15 are understated to the extent of materially misstating the
16 financial position of the insurer. Workpapers in support of
17 the statement of opinion must be provided to the department
18 upon request. This ~~subparagraph~~ ~~paragraph~~ does not apply to
19 life insurance or title insurance.

20 2. Any authorized insurer otherwise subject to this
21 paragraph having direct premiums written in this state of less
22 than \$1 million in any calendar year and less than 1,000
23 policyholders or certificateholders of directly written
24 policies nationwide at the end of such calendar year is exempt
25 from this section for such year unless the department makes a
26 specific finding that compliance is necessary in order for the
27 department to carry out its statutory responsibilities.
28 However, any insurer having assumed premiums pursuant to
29 contracts or treaties or reinsurance of \$1 million or more is
30 not exempt. Any insurer subject to an exemption must submit,
31 by March 1 following the year to which the exemption applies,

1 an affidavit sworn to by a responsible officer of the insurer
2 specifying the amount of direct premiums written in this state
3 and number of policyholders or certificateholders.

4 Section 9. Section 624.4435, Florida Statutes, is
5 renumbered as section 624.4242, Florida Statutes.

6 Section 10. Section 625.340, Florida Statutes, is
7 amended to read:

8 625.340 Investments of foreign or alien insurers.--The
9 investment portfolio of a foreign or alien insurer shall be as
10 permitted by the laws of its domicile if of a quality
11 substantially as high as that required under this chapter for
12 similar funds of like domestic insurers. Foreign insurers that
13 are commercially domiciled as defined in s. 624.075 shall
14 comply with parts I and II of this chapter.

15 Section 11. Subsection (4) of section 626.742, Florida
16 Statutes, is amended to read:

17 626.742 Nonresident agents; service of process.--

18 (4) Upon receiving such service, the Insurance
19 Commissioner and Treasurer shall forthwith send one of the
20 copies of the process, by ~~registered~~ mail or by such other
21 method of expeditious delivery determined to be appropriate by
22 the department with return receipt requested, to the defendant
23 agent at his or her last address of record with the
24 department.

25 Section 12. Subsection (4) of section 626.8736,
26 Florida Statutes, is amended to read:

27 626.8736 Nonresident independent or public adjusters;
28 service of process.--

29 (4) Upon receiving the service, the Insurance
30 Commissioner and Treasurer shall forthwith send one of the
31 copies of the process, by ~~registered~~ mail or by such other

1 method of expeditious delivery determined to be appropriate by
2 the department ~~with return receipt requested~~, to the defendant
3 nonresident independent or public adjuster at his or her last
4 address of record with the department.

5 Section 13. Effective January 1, 2002, subsection (7)
6 is added to section 626.8805, Florida Statutes, to read:

7 626.8805 Certificate of authority to act as
8 administrator.--

9 (7) An administrator is not required to hold a
10 certificate of authority pursuant to this section if:

11 (a) The administrator has its principal place of
12 business in another state.

13 (b) The administrator is not soliciting business as an
14 administrator in this state.

15 (c) In the case of any group policy or plan of
16 insurance serviced by the administrator, the lesser of 5
17 percent of or 100 certificateholders reside in this state.

18 Section 14. Subsection (1) of section 626.907, Florida
19 Statutes, is amended to read:

20 626.907 Service of process; judgment by default.--

21 (1) Service of process upon an insurer or person
22 representing or aiding such insurer pursuant to s. 626.906
23 shall be made by delivering to and leaving with the Insurance
24 Commissioner and Treasurer or some person in apparent charge
25 of his or her office two copies thereof. The Insurance
26 Commissioner and Treasurer shall forthwith mail, or by such
27 other method of expeditious delivery determined to be
28 appropriate by the department ~~send, by registered mail~~ one of
29 the copies of such process to the defendant at the defendant's
30 last known principal place of business and shall keep a record
31 of all process so served upon him or her. The service of

1 process is sufficient, provided notice of such service and a
2 copy of the process are sent within 10 days thereafter by
3 registered mail by plaintiff or plaintiff's attorney to the
4 defendant at the defendant's last known principal place of
5 business, and the defendant's receipt, or receipt issued by
6 the post office with which the letter is registered, showing
7 the name of the sender of the letter and the name and address
8 of the person to whom the letter is addressed, and the
9 affidavit of the plaintiff or plaintiff's attorney showing a
10 compliance herewith are filed with the clerk of the court in
11 which the action is pending on or before the date the
12 defendant is required to appear, or within such further time
13 as the court may allow.

14 Section 15. Section 627.4615, Florida Statutes, is
15 amended to read:

16 627.4615 Interest payable on death claim
17 payments.--When a policy provides for payment of its proceeds
18 in a lump sum upon the death of the insured, the payment must
19 include interest, at an annual rate equal to or greater than
20 the Moody's Corporate Bond Yield Average-Monthly Average
21 Corporate as of the day the claim was received, from the date
22 the insurer receives written due proof of death of the
23 insured. If the method of calculating such index is
24 substantially changed from the method of calculation in use on
25 January 1, 1993, the rate must not be less than 12 8 percent.

26 Section 16. Subsection (1) of section 627.482, Florida
27 Statutes, is amended to read:

28 627.482 Interest payable on cash surrender of
29 policy.--

30 (1) If an insured requests payment of the cash
31 surrender value of a policy from its insurer, such payment

1 shall include simple interest at the rate of 12 percent per
2 year interest ~~specified in s. 625.121(6)(e)~~, unless such
3 payment is made by the insurer within 30 days of receipt of
4 the ~~insurance policy and request for cash surrender.~~

5 Section 17. Subsection (6) of section 627.613, Florida
6 Statutes, is amended to read:

7 627.613 Time of payment of claims.--

8 (6) All overdue payments shall bear simple interest at
9 the rate of 12 ~~10~~ percent per year.

10 Section 18. Section 627.914, Florida Statutes, is
11 amended to read:

12 627.914 Reports of information by workers'
13 compensation insurers required.--

14 (1) The department shall promulgate rules and
15 statistical plans which shall thereafter be used by each
16 insurer and self-insurance fund as defined in s. 624.461 in
17 the recording and reporting of loss, expense, and claims
18 experience, in order that the experience of all insurers and
19 self-insurance funds ~~self-insurers~~ may be made available at
20 least annually in such form and detail as may be necessary to
21 aid the department in determining whether Florida experience
22 for workers' compensation insurance is sufficient for
23 establishing rates.

24 ~~(2) Any insurer authorized to write a policy of~~
25 ~~workers' compensation insurance shall transmit the following~~
26 ~~information to the department each year with its annual~~
27 ~~report, and such information shall be reported on a net basis~~
28 ~~with respect to reinsurance for nationwide experience and on a~~
29 ~~direct basis for Florida experience:~~

30 ~~(a) Premiums written;~~

31 ~~(b) Premiums earned;~~

1 ~~(c) Dividends paid or credited to policyholders;~~
2 ~~(d) Losses paid;~~
3 ~~(e) Allocated loss adjustment expenses;~~
4 ~~(f) The ratio of allocated loss adjustment expenses to~~
5 ~~losses paid;~~
6 ~~(g) Unallocated loss adjustment expenses;~~
7 ~~(h) The ratio of unallocated loss adjustment expenses~~
8 ~~to losses paid;~~
9 ~~(i) The total of losses paid and unallocated and~~
10 ~~allocated loss adjustment expenses;~~
11 ~~(j) The ratio of losses paid and unallocated and~~
12 ~~allocated loss adjustment expenses to premiums earned;~~
13 ~~(k) The number of claims outstanding as of December 31~~
14 ~~of each year;~~
15 ~~(l) The total amount of losses unpaid as of December~~
16 ~~31 of each year;~~
17 ~~(m) The total amount of allocated and unallocated loss~~
18 ~~adjustment expenses unpaid as of December 31 of each year; and~~
19 ~~(n) The total of losses paid and allocated loss~~
20 ~~adjustment expenses and unallocated loss adjustment expenses,~~
21 ~~plus the total of losses unpaid as of December 31 of each year~~
22 ~~and loss adjustment expenses unpaid as of December 31 of each~~
23 ~~year.~~
24 ~~(3) A report of the information required in subsection~~
25 ~~(2) shall be filed no later than April 1 of each year and~~
26 ~~shall include the information for the preceding year ending~~
27 ~~December 31. All reports shall be on a calendar-accident year~~
28 ~~basis, and each calendar-accident year shall be reported at~~
29 ~~eight stages of development.~~
30 (2)(4) Each insurer and self-insurance fund as defined
31 in s. 624.461 authorized to write a policy of workers'

1 compensation insurance shall transmit the following
2 information ~~for paragraphs (a), (b), (d), and (e)~~ annually on
3 both Florida experience and nationwide experience separately:

- 4 (a) Payrolls by classification.
- 5 (b) Manual premiums by classification.
- 6 (c) Standard premiums by classification.
- 7 (d) Losses by classification and injury type.
- 8 (e) Expenses.

9
10 A report of this information shall be filed no later than July
11 ~~April~~ 1 of each year. All reports shall be filed in
12 accordance with standard reporting procedures for insurers,
13 which procedures have received approval by the department, and
14 shall contain data for the most recent policy period
15 available. A statistical or rating organization may be used
16 by insurers or self-insurance funds to report the data
17 required by this section. The statistical or rating
18 organization shall report each data element in the aggregate
19 only for insurers and self-insurance funds required to report
20 under this section who elect to have the rating organization
21 report on their behalf. Such insurers and self-insurance funds
22 shall be named in the report.

23 ~~(3)(5) Individual self-insurers authorized to transact~~
24 ~~workers' compensation insurance as provided in s.~~
25 440.02(23)(a) shall report only Florida data as prescribed in
26 ~~paragraphs (a)-(e) of subsection(2)(4)~~ to the Division of
27 Workers' Compensation of the Department of Labor and
28 Employment Security.

29 (a) The Division of Workers' Compensation shall
30 publish the dates and forms necessary to enable individual
31 self-insurers to comply with this section.

1 (b) The Division of Workers' Compensation shall report
2 the information collected under this section to the Department
3 of Insurance in a manner prescribed by the department.

4 (c) A statistical or rating organization may be used
5 by individual self-insurers for the purposes of reporting the
6 data required by this section and calculating experience
7 ratings.

8 ~~(4)(6)~~ The department shall provide a summary of
9 information provided pursuant to subsection ~~subsections~~ (2)
10 ~~and (4)~~ in its annual report.

11 Section 19. Subsection (1) of section 627.915, Florida
12 Statutes, is amended to read:

13 627.915 Insurer experience reporting.--

14 (1) Each insurer transacting private passenger
15 automobile insurance in this state shall report certain
16 information annually to the department. The information will
17 be due on or before July 1 of each year. The information shall
18 be divided into the following categories: bodily injury
19 liability; property damage liability; uninsured motorist;
20 personal injury protection benefits; medical payments;
21 comprehensive and collision. The information given shall be
22 on direct insurance writings in the state alone and shall
23 represent total limits data. The information set forth in
24 paragraphs (a)-~~(d)(f)~~ is applicable to voluntary private
25 passenger and Joint Underwriting Association private passenger
26 writings and shall be reported for each of the latest 3
27 calendar-accident years, with an evaluation date of March 31
28 of the current year. The information set forth in paragraphs
29 ~~(e)-(h)(g)-(j)~~ is applicable to voluntary private passenger
30 writings and shall be reported on a calendar-accident year
31

1 basis ultimately seven times at seven different stages of
2 development.

3 (a) Premiums earned for the latest 3 calendar-accident
4 years.

5 ~~(b) Loss development factors and the historic~~
6 ~~development of those factors.~~

7 (b)(c) Policyholder dividends incurred.

8 (c)(d) Expenses for other acquisition and general
9 expense.

10 (d)(e) Expenses for agents' commissions and taxes,
11 licenses, and fees.

12 ~~(f) Profit and contingency factors as utilized in the~~
13 ~~insurer's automobile rate filings for the applicable years.~~

14 (e)(g) Losses paid.

15 (f)(h) Losses unpaid.

16 (g)(i) Loss adjustment expenses paid.

17 (h)(j) Loss adjustment expenses unpaid.

18 Section 20. Subsection (1) of section 634.161, Florida
19 Statutes, is amended to read:

20 634.161 Service of process; method.--

21 (1) Service of process upon the Insurance Commissioner
22 and Treasurer as process agent of the company shall be made by
23 serving copies in triplicate of the process upon the Insurance
24 Commissioner and Treasurer or upon her or his assistant,
25 deputy, or other person in charge of her or his office. Upon
26 receiving such service, the Insurance Commissioner and
27 Treasurer shall file one copy with the department, return one
28 copy with her or his admission of service, and promptly
29 forward one copy of the process by ~~registered or certified~~
30 mail or by such other method of expeditious delivery
31 determined to be appropriate by the department to the person

1 last designated by the company to receive the same, as
2 provided under s. 634.151.

3 Section 21. Subsections (12) through (21) of section
4 641.19, Florida Statutes, are renumbered as subsections (13)
5 through (22), respectively, and a new subsection (12) is added
6 to said section to read:

7 641.19 Definitions.--As used in this part, the term:
8 (12) "Health care risk contract" means a contract
9 under which a person or entity receives consideration or other
10 compensation in an amount greater than 1 percent of the health
11 maintenance organization's annual gross written premium in
12 exchange for providing to the health maintenance organization
13 a provider network and other services, which may include
14 administrative services.

15 Section 22. Subsection (1) of section 641.2018,
16 Florida Statutes, is amended to read:

17 641.2018 Limited coverage for home health care
18 authorized.--

19 (1) Notwithstanding other provisions of this chapter,
20 a health maintenance organization may issue a contract that
21 limits coverage to home health care services only. The
22 organization and the contract shall be subject to all of the
23 requirements of this part that do not require or otherwise
24 apply to specific benefits other than home care services. To
25 this extent, all of the requirements of this part apply to any
26 organization or contract that limits coverage to home care
27 services, except the requirements for providing comprehensive
28 health care services as provided in ss. 641.19(4), ~~(12)~~, and
29 (13), and (14), and 641.31(1), except ss. 641.31(9), (12),
30 (17), (18), (19), (20), (21), and (24) and 641.31095.

31

1 Section 23. Subsections (1) and (3) of section 641.26,
2 Florida Statutes, are amended, and subsection (9) is added to
3 said section, to read:

4 641.26 Annual report.--

5 (1) Every health maintenance organization shall,
6 annually by April 1 ~~within 3 months after the end of its~~
7 ~~fiscal year~~, or within an extension of time therefor as the
8 department, for good cause, may grant, in a form prescribed by
9 the department, file a report with the department, verified by
10 the oath of two officers of the organization or, if not a
11 corporation, of two persons who are principal managing
12 directors of the affairs of the organization, properly
13 notarized, showing its condition on the last day of the
14 immediately preceding reporting period. Such report shall
15 include:

16 (a) A financial statement of the health maintenance
17 organization filed on a computer diskette using a format
18 acceptable to the department.

19 (b) A financial statement of the health maintenance
20 organization filed on forms acceptable to the department.

21 (c) An audited financial statement of the health
22 maintenance organization, including its balance sheet and a
23 statement of operations for the preceding year certified by an
24 independent certified public accountant, prepared in
25 accordance with statutory accounting principles.

26 (d) The number of health maintenance contracts issued
27 and outstanding and the number of health maintenance contracts
28 terminated.

29 (e) The number and amount of damage claims for medical
30 injury initiated against the health maintenance organization
31 and any of the providers engaged by it during the reporting

1 year, broken down into claims with and without formal legal
2 process, and the disposition, if any, of each such claim.

3 (f) An actuarial certification that:

4 1. The health maintenance organization is actuarially
5 sound, which certification shall consider the rates, benefits,
6 and expenses of, and any other funds available for the payment
7 of obligations of, the organization.

8 2. The rates being charged or to be charged are
9 actuarially adequate to the end of the period for which rates
10 have been guaranteed.

11 3. Incurred but not reported claims and claims
12 reported but not fully paid have been adequately provided for,
13 including claims arising for services provided to subscribers
14 if these services are provided under health care risk
15 contracts unless the obligations under such contracts are
16 secured by a financial instrument acceptable to the
17 department. Such instrument shall be certified as complying
18 with the requirements of this subsection. This requirement
19 shall not apply to a contract with a provider where the
20 contract is limited to services provided by such provider
21 under the scope of that provider's license.

22 (g) A report prepared by the certified public
23 accountant and filed with the department describing material
24 weaknesses in the health maintenance organization's internal
25 control structure as noted by the certified public accountant
26 during the audit. The report must be filed with the annual
27 audited financial report as required in paragraph (c). The
28 health maintenance organization shall provide a description of
29 remedial actions taken or proposed to correct material
30 weaknesses, if the actions are not described in the
31 independent certified public accountant's report.

1 (h) Such other information relating to the performance
2 of health maintenance organizations as is required by the
3 department.

4 (3) Every health maintenance organization shall file
5 ~~quarterly, within 45 days after each of its quarterly~~
6 ~~reporting periods,~~an unaudited quarterly financial statement
7 for each quarter except the fourth quarter of the organization
8 as described in paragraphs (1)(a) and (b). The report shall be
9 as described in paragraphs (1)(a) and (b) and shall be due
10 within 45 days after the end of the quarter. The quarterly
11 report shall be verified by the oath of two officers of the
12 organization, properly notarized.

13 (9) Each health maintenance organization shall
14 annually report, in a form and manner prescribed by the
15 department by rule, a summary of each health risk contract.

16 Section 24. Section 641.263, Florida Statutes, is
17 created to read:

18 641.263 Risk-based capital.--

19 (1) For purposes of this section:

20 (a) "Adjusted risk-based capital report" means a
21 risk-based capital report which has been adjusted by the
22 department in accordance with paragraph (2)(b).

23 (b) "Association" means the National Association of
24 Insurance Commissioners.

25 (c) "Corrective order" means an order issued by the
26 department specifying corrective actions which the department
27 has determined are required.

28 (d) "Risk-based capital instructions" means the
29 risk-based capital report including risk-based capital
30 instructions adopted by the association, as these risk-based
31 capital instructions may be amended by the association from

1 time to time in accordance with the procedures adopted by the
2 association.

3 (e) "Risk-based capital level" means a health
4 maintenance organization's company action level risk-based
5 capital, regulatory action level risk-based capital,
6 authorized control level risk-based capital, or mandatory
7 control level risk-based capital. For purposes of this
8 section:

9 1. "Company action level risk-based capital" means the
10 product of 2.0 and the health maintenance organization's
11 authorized control level risk-based capital.

12 2. "Regulatory action level risk-based capital" means
13 the product of 1.5 and the health maintenance organization's
14 authorized control level risk-based capital.

15 3. "Authorized control level risk-based capital" means
16 the number determined under the risk-based capital formula in
17 accordance with the risk-based capital instructions.

18 4. "Mandatory control level risk-based capital" means
19 the product of .70 and the authorized control level risk-based
20 capital.

21 (f) "Risk-based capital plan" means a comprehensive
22 financial plan containing the elements specified in paragraph
23 (3)(b). If the department rejects the risk-based capital plan,
24 and the plan is revised by the health maintenance
25 organization, with or without the department's recommendation,
26 the plan shall be called the "revised risk-based capital
27 plan."

28 (g) "Risk-based capital report" means the report
29 required in subsection (2).

30 (h) "Total adjusted capital" means the sum of:
31

1 1. A health maintenance organization's net worth,
2 consisting of its statutory capital and surplus, as determined
3 in accordance with the statutory accounting applicable to the
4 annual financial statements required to be filed under s.
5 641.26; and

6 2. Such other items, if any, as the risk-based capital
7 instructions may provide.

8 (2)(a) A health maintenance organization shall, on or
9 prior to April 1 of each year, prepare and submit to the
10 department a report of its risk-based capital levels as of the
11 end of the calendar year just ended, in a form and containing
12 such information as is required by the risk-based capital
13 instructions. In addition, a health maintenance organization
14 shall file its risk-based capital report:

15 1. With the association in accordance with the
16 risk-based capital instructions; and

17 2. With the chief insurance regulatory official in any
18 state in which the health maintenance organization is
19 authorized to do business, if such official has notified the
20 health maintenance organization of his or her request in
21 writing, in which case the health maintenance organization
22 shall file its risk-based capital report not later than the
23 later of 15 days after the receipt of notice to file its
24 risk-based capital report with that state or April 1.

25 (b) A health maintenance organization's risk-based
26 capital shall be determined in accordance with the formula set
27 forth in the risk-based capital instructions. The formula
28 shall take into account and may adjust for the covariance
29 between:

30 1. Asset risks;

31 2. Credit risks;

1 3. Underwriting risks; and
2 4. All other business risks and such other relevant
3 risks as are set forth in the risk-based capital instructions,
4
5 determined in each case by applying the factors in the manner
6 set forth in the risk-based capital instructions.

7 (c) The Legislature finds that an excess of capital
8 over the amount produced by the risk-based capital
9 requirements contained in this section and the formulas,
10 schedules, and instructions referenced in this section is
11 desirable in the health maintenance organization business.
12 Accordingly, health maintenance organizations should seek to
13 maintain capital above the risk-based capital levels required
14 by this section. Additional capital is used and useful in the
15 health maintenance organization business and helps to secure a
16 health maintenance organization against various risks inherent
17 in, or affecting, said business and not accounted for or only
18 partially measured by the risk-based capital requirements
19 contained in this section.

20 (d) If a health maintenance organization files a
21 risk-based capital report that in the judgment of the
22 department is inaccurate, the department shall adjust the
23 risk-based capital report to correct the inaccuracy and shall
24 notify the health maintenance organization of the adjustment.
25 The notice shall contain a statement of the reason for the
26 adjustment. A risk-based capital report as so adjusted is
27 referred to as an "adjusted risk-based capital report."

28 (3)(a) A company action level event includes:
29 1. The filing of a risk-based capital report by a
30 health maintenance organization that indicates that the health
31 maintenance organization's total adjusted capital is greater

1 than or equal to its regulatory action level risk-based
2 capital but less than its company action level risk-based
3 capital;

4 2. Notification by the department to the health
5 maintenance organization of an adjusted risk-based capital
6 report that indicates the event described in subparagraph 1.,
7 provided the health maintenance organization does not
8 challenge the adjusted risk-based capital report under
9 subsection (7); or

10 3. If, pursuant to the provisions of subsection (7), a
11 health maintenance organization challenges an adjusted
12 risk-based capital report that indicates the event described
13 in subparagraph 1., the notification by the department to the
14 health maintenance organization that the department has, after
15 a hearing, rejected the health maintenance organization's
16 challenge.

17 (b) If a company action level event occurs, the health
18 maintenance organization shall prepare and submit to the
19 department a risk-based capital plan that shall:

20 1. Identify the conditions that contribute to the
21 company action level event.

22 2. Contain proposals of corrective actions that the
23 health maintenance organization intends to take and that would
24 be expected to result in the elimination of the company action
25 level event.

26 3. Provide projections of the health maintenance
27 organization's financial results in the current year and at
28 least the 2 succeeding years, both in the absence of proposed
29 corrective actions and giving effect to the proposed
30 corrective actions, including projections of statutory balance
31 sheets, operating income, net income, capital and surplus, and

1 risk-based capital levels. The projections for both new and
2 renewal business might include separate projections for each
3 major line of business and separately identify each
4 significant income, expense, and benefit component.

5 4. Identify the key assumptions impacting the health
6 maintenance organization's projections and the sensitivity of
7 the projections to the assumptions.

8 5. Identify the quality of, and problems associated
9 with, the health maintenance organization's business,
10 including, but not limited to, its assets, anticipated
11 business growth and associated surplus strain, extraordinary
12 exposure to risk, mix of business, and use of reinsurance, if
13 any, in each case.

14 (c) The risk-based capital plan shall be submitted:

15 1. Within 45 days after a company action level event;

16 or

17 2. If the health maintenance organization challenges
18 an adjusted risk-based capital report pursuant to the
19 provisions of subsection (7), within 45 days after
20 notification to the health maintenance organization that the
21 department has, after a hearing, rejected the health
22 maintenance organization's challenge.

23 (d) Within 60 days after the submission by a health
24 maintenance organization of a risk-based capital plan to the
25 department, the department shall notify the health maintenance
26 organization whether the risk-based capital plan shall be
27 implemented or is, in the judgment of the department,
28 unsatisfactory. If the department determines the risk-based
29 capital plan is unsatisfactory, the notification to the health
30 maintenance organization shall set forth the reasons for the
31 determination and may set forth proposed revisions which will

1 render the risk-based capital plan satisfactory in the
2 judgment of the department. Upon notification from the
3 department, the health maintenance organization shall prepare
4 a revised risk-based capital plan, which may incorporate by
5 reference any revisions proposed by the department, and shall
6 submit the revised risk-based capital plan to the department:
7 1. Within 45 days after the notification from the
8 department; or
9 2. If the health maintenance organization challenges
10 the notification from the department under the provisions of
11 subsection (7), within 45 days after a notification to the
12 health maintenance organization that the department has, after
13 a hearing, rejected the health maintenance organization's
14 challenge.
15 (e) If the department notifies a health maintenance
16 organization that the health maintenance organization's
17 risk-based capital plan or revised risk-based capital plan is
18 unsatisfactory, the department may, at its discretion, subject
19 to the health maintenance organization's right to a hearing
20 under the provisions of subsection (7), specify in the
21 notification that the notification constitutes a regulatory
22 action level event.
23 (f) Each domestic health maintenance organization that
24 files a risk-based capital plan or revised risk-based capital
25 plan with the department shall file a copy of the risk-based
26 capital plan or revised risk-based capital plan with the
27 insurance department in any state in which the health
28 maintenance organization is authorized to do business if:
29 1. The state has a risk-based capital provision
30 substantially similar to the provisions of s. 641.264; and
31

1 2. The insurance department of that state has notified
2 the health maintenance organization of its request for the
3 filing in writing, in which case the health maintenance
4 organization shall file a copy of the risk-based capital plan
5 or revised risk-based capital plan in that state no later than
6 the later of:

7 a. Fifteen days after the receipt of notice to file a
8 copy of its risk-based capital plan or revised risk-based
9 capital plan with the state; or

10 b. The date on which the risk-based capital plan or
11 revised risk-based capital plan is filed under paragraph (c)
12 or paragraph (d).

13 (4)(a) A regulatory action level event includes, with
14 respect to a health maintenance organization:

15 1. The filing of a risk-based capital report by the
16 health maintenance organization that indicates that the health
17 maintenance organization's total adjusted capital is greater
18 than or equal to its authorized control level risk-based
19 capital but less than its regulatory action level risk-based
20 capital;

21 2. Notification by the department to a health
22 maintenance organization of an adjusted risk-based capital
23 report that indicates the event described in subparagraph 1.,
24 provided the health maintenance organization does not
25 challenge the adjusted risk-based capital report under the
26 provisions of subsection (7);

27 3. If, pursuant to the provisions of subsection (7),
28 the health maintenance organization challenges an adjusted
29 risk-based capital report that indicates the event described
30 in subparagraph 1., the notification by the department to the
31 health maintenance organization that the department has, after

1 a hearing, rejected the health maintenance organization's
2 challenge;
3 4. The failure of the health maintenance organization
4 to file a risk-based capital report by April 1, unless the
5 health maintenance organization has provided an explanation
6 for the failure that is satisfactory to the department and has
7 cured the failure within 10 days after April 1;
8 5. The failure of the health maintenance organization
9 to submit a risk-based capital plan to the department within
10 the time period set forth in paragraph (3)(c);
11 6. Notification by the department to the health
12 maintenance organization that:
13 a. The risk-based capital plan or revised risk-based
14 capital plan submitted by the health maintenance organization
15 is, in the judgment of the department, unsatisfactory; and
16 b. Notification constitutes a regulatory action level
17 event with respect to the health maintenance organization,
18 provided the health maintenance organization has not
19 challenged the determination under subsection (7);
20 7. If, pursuant to subsection (7), the health
21 maintenance organization challenges a determination by the
22 department under subparagraph 6., the notification by the
23 department to the health maintenance organization that the
24 department has, after a hearing, rejected the health
25 maintenance organization's challenge;
26 8. Notification by the department to the health
27 maintenance organization that the health maintenance
28 organization has failed to adhere to its risk-based capital
29 plan or revised risk-based capital plan, but only if the
30 failure has a substantial adverse effect on the ability of the
31 health maintenance organization to eliminate the company

1 action level event in accordance with its risk-based capital
2 plan or revised risk-based capital plan and the department has
3 so stated in the notification, provided the health maintenance
4 organization has not challenged the determination under
5 subsection (7); or

6 9. If, pursuant to subsection (7), the health
7 maintenance organization challenges a determination by the
8 department under subparagraph 8., the notification by the
9 department to the health maintenance organization that the
10 department has, after a hearing, rejected the health
11 maintenance organization's challenge.

12 (b) If a regulatory action level event occurs, the
13 department shall:

14 1. Require the health maintenance organization to
15 prepare and submit a risk-based capital plan or, if
16 applicable, a revised risk-based capital plan.

17 2. Perform such examination or analysis as the
18 department deems necessary of the assets, liabilities, and
19 operations of the health maintenance organization, including a
20 review of its risk-based capital plan or revised risk-based
21 capital plan.

22 3. Subsequent to the examination or analysis, issue a
23 corrective order specifying such corrective actions as the
24 department shall determine are required.

25 (c) In determining corrective actions, the department
26 may take into account factors the department deems relevant
27 with respect to the health maintenance organization based upon
28 the department's examination or analysis of the assets,
29 liabilities, and operations of the health maintenance
30 organization, including, but not limited to, the results of
31 any sensitivity tests undertaken pursuant to the risk-based

1 capital instructions. The risk-based capital plan or revised
2 risk-based capital plan shall be submitted:
3 1. Within 45 days after the occurrence of the
4 regulatory action level event;
5 2. If the health maintenance organization challenges
6 an adjusted risk-based capital report pursuant to subsection
7 (7) and the challenge is not frivolous in the judgment of the
8 department, within 45 days after the notification to the
9 health maintenance organization that the department has, after
10 a hearing, rejected the health maintenance organization's
11 challenge; or
12 3. If the health maintenance organization challenges a
13 revised risk-based capital plan pursuant to subsection (7) and
14 the challenge is not frivolous in the judgment of the
15 department, within 45 days after the notification to the
16 health maintenance organization that the department has, after
17 a hearing, rejected the health maintenance organization's
18 challenge.
19 (d) The department may retain actuaries, investment
20 experts, and other consultants as may be necessary in the
21 judgment of the department to review the health maintenance
22 organization's risk-based capital plan or revised risk-based
23 capital plan, examine or analyze the assets, liabilities, and
24 operations, including contractual relationships, of the health
25 maintenance organization, and formulate the corrective order
26 with respect to the health maintenance organization. The fees,
27 costs, and expenses relating to consultants shall be borne by
28 the affected health maintenance organization or such other
29 party as directed by the department.
30 (5)(a) An authorized control level event includes:
31

- 1 1. The filing of a risk-based capital report by the
2 health maintenance organization that indicates that the health
3 maintenance organization's total adjusted capital is greater
4 than or equal to its mandatory control level risk-based
5 capital but less than its authorized control level risk-based
6 capital;
- 7 2. Notification by the department to the health
8 maintenance organization of an adjusted risk-based capital
9 report that indicates the event described in subparagraph 1.,
10 provided the health maintenance organization does not
11 challenge the adjusted risk-based capital report under
12 subsection (7);
- 13 3. If, pursuant to subsection (7), the health
14 maintenance organization challenges an adjusted risk-based
15 capital report that indicates the event described in
16 subparagraph 1., notification by the department to the health
17 maintenance organization that the department has, after a
18 hearing, rejected the health maintenance organization's
19 challenge;
- 20 4. The failure of the health maintenance organization
21 to respond, in a manner satisfactory to the department, to a
22 corrective order, provided the health maintenance organization
23 has not challenged the corrective order under subsection (7);
24 or
- 25 5. If the health maintenance organization has
26 challenged a corrective order under subsection (7) and the
27 department has, after a hearing, rejected the challenge or
28 modified the corrective order, the failure of the health
29 maintenance organization to respond, in a manner satisfactory
30 to the department, to the corrective order subsequent to
31 rejection or modification by the department.

1 (b) If an authorized control level event occurs, with
2 respect to a health maintenance organization, the department
3 shall:
4 1. Take such actions as are required under paragraph
5 (4)(b) regarding a health maintenance organization with
6 respect to which a regulatory action level event has occurred;
7 or
8 2. If the department deems it to be in the best
9 interests of the subscribers and creditors of the health
10 maintenance organization and of the public, take such actions
11 as are necessary to cause the health maintenance organization
12 to be placed under regulatory control under chapter 631. If
13 the department takes such actions, the authorized control
14 level event shall be deemed sufficient grounds for the
15 department to take action under chapter 631 and the department
16 shall have the rights, powers, and duties with respect to the
17 health maintenance organization as are set forth in such
18 chapter. If the department takes actions under this
19 subparagraph pursuant to an adjusted risk-based capital
20 report, the health maintenance organization shall be entitled
21 to such protections as are afforded to health maintenance
22 organizations under the summary proceedings provisions of s.
23 120.574.
24 (6)(a) A mandatory control level event includes:
25 1. The filing of a risk-based capital report by the
26 health maintenance organization that indicates that the health
27 maintenance organization's total adjusted capital is less than
28 its mandatory control level risk-based capital;
29 2. Notification by the department to the health
30 maintenance organization of an adjusted risk-based capital
31 report that indicates the event described in subparagraph 1.,

1 provided the health maintenance organization does not
2 challenge the adjusted risk-based capital report under
3 subsection (7); or

4 3. If, pursuant to subsection (7), the health
5 maintenance organization challenges an adjusted risk-based
6 capital report that indicates the event described in
7 subparagraph 1., notification by the department to the health
8 maintenance organization that the department has, after a
9 hearing, rejected the health maintenance organization's
10 challenge.

11 (b) If a mandatory control level event occurs, the
12 department shall take such actions as are necessary to place
13 the health maintenance organization under regulatory control
14 under chapter 631. If the department takes such actions, the
15 mandatory control level event shall be deemed sufficient
16 grounds for the department to take action under chapter 631
17 and the department shall have the rights, powers, and duties
18 with respect to the health maintenance organization as are set
19 forth in such chapter. If the department takes actions under
20 this paragraph pursuant to an adjusted risk-based capital
21 report, the health maintenance organization shall be entitled
22 to the summary proceedings protections of s. 120.574. However,
23 the department may forego action for up to 90 days after the
24 mandatory control level event if the department finds there is
25 a reasonable expectation that the mandatory control level
26 event may be eliminated within the 90-day period.

27 (7) Upon the occurrence of any of the following
28 events, the health maintenance organization shall have the
29 right to a confidential departmental hearing, on a record, at
30 which the health maintenance organization may challenge any
31 determination or action by the department. The health

1 maintenance organization shall notify the department of its
2 request for a hearing within 5 days after the notification by
3 the department under this subsection. Upon receipt of the
4 health maintenance organization's request for a hearing, the
5 department shall set a date for the hearing, which shall be no
6 less than 10 nor more than 30 days after the date of the
7 health maintenance organization's request. Such events are:
8 (a) Notification to a health maintenance organization
9 by the department of an adjusted risk-based capital report.
10 (b) Notification to a health maintenance organization
11 by the department that:
12 1. The health maintenance organization's risk-based
13 capital plan or revised risk-based capital plan is
14 unsatisfactory; and
15 2. Notification constitutes a regulatory action level
16 event with respect to the health maintenance organization.
17 (c) Notification to a health maintenance organization
18 by the department that the health maintenance organization has
19 failed to adhere to its risk-based capital plan or revised
20 risk-based capital plan and that the failure has a substantial
21 adverse effect on the ability of the health maintenance
22 organization to eliminate the company action level event with
23 respect to the health maintenance organization in accordance
24 with its risk-based capital plan or revised risk-based capital
25 plan.
26 (d) Notification to a health maintenance organization
27 by the department of a corrective order with respect to the
28 health maintenance organization.
29 (8)(a) This section is supplemental to any other
30 provisions of this part and shall not preclude or limit any
31

1 other powers or duties of the department as provided in the
2 insurance code.
3 (b) The department may adopt reasonable rules
4 necessary to implement this section.
5 (c) The department may exempt from the application of
6 this section a health maintenance organization that:
7 1. Writes direct business only in this state;
8 2.a. Assumes no reinsurance in excess of 5 percent of
9 direct premium written; and
10 b. Writes direct annual premiums for comprehensive
11 medical business of \$2,000,000 or less; or
12 3. Is a limited health service organization that
13 covers less than 2,000 lives.
14 (9) There shall be no liability on the part of, and no
15 cause of action shall arise against, the commissioner or the
16 department or its employees or agents for any action taken by
17 them in the performance of their powers and duties under this
18 section.
19 (10) All notices by the department to a health
20 maintenance organization that may result in regulatory action
21 under this section shall be effective upon dispatch if
22 transmitted by registered or certified mail, or in the case of
23 any other transmission shall be effective upon the health
24 maintenance organization's receipt of notice.
25 (11) For risk-based capital reports required to be
26 filed in 2002, 2003, and 2004 by health maintenance
27 organizations with respect to their 2001, 2002, and 2003
28 annual statement data, the following requirements shall apply
29 in lieu of the provisions of subsections (3), (4), (5), and
30 (6):
31

1 (a) If a company action level event occurs with
2 respect to a health maintenance organization, the department
3 shall take no regulatory action under this section.

4 (b) If a regulatory action level event as provided in
5 subparagraphs (4)(a)1., 2., or 3. occurs, the department shall
6 take the actions required under subsection (3).

7 (c) If a regulatory action level event as provided in
8 subparagraphs (4)(a)4., 5., 6., 7., 8., or 9. occurs or an
9 authorized control level event occurs, the department shall
10 take the actions required under subsection (4) with respect to
11 the health maintenance organization.

12 (d) If a mandatory control level event occurs with
13 respect to a health maintenance organization, the department
14 shall take the actions required under subsection (5) with
15 respect to the health maintenance organization.

16
17 Nothing in this subsection restricts or otherwise limits the
18 department's authority under other provisions of the insurance
19 code.

20 Section 25. Section 641.265, Florida Statutes, is
21 created to read:

22 641.265 Comprehensive business plan.--Each health
23 maintenance organization, at the time of its application for
24 licensure, shall file with the department a comprehensive
25 business plan that includes:

26 (1) A feasibility study and marketing plan.

27 (2) A description of the proposed service area,
28 provider contracts, provider access, plan administration, and,
29 if applicable, management contracts.

30 (3) A minimum of 3 years of financial projections and
31 a description of any financial guarantees.

1 (4) A summary of the benefits to be offered.
2 Section 26. Paragraph (a) of subsection (3) of section
3 641.35, Florida Statutes, is amended to read:

4 641.35 Assets, liabilities, and investments.--

5 (3) LIABILITIES.--In any determination of the
6 financial condition of a health maintenance organization,
7 liabilities to be charged against its assets shall include:
8 (a) The amount, estimated consistently with the
9 provisions of this part, necessary to pay all of its unpaid
10 losses and claims incurred for or on behalf of a subscriber,
11 on or prior to the end of the reporting period, whether
12 reported or unreported, including claims arising for services
13 provided to subscribers where these services are provided
14 under health care risk contracts unless the obligations under
15 such contracts are secured by a financial instrument
16 acceptable to the department. This requirement shall not
17 apply to a contract with a provider where the contract is
18 limited to services provided by such provider under the scope
19 of that provider's license.

20
21 The department, upon determining that a health maintenance
22 organization has failed to report liabilities that should have
23 been reported, shall require a corrected report which reflects
24 the proper liabilities to be submitted by the organization to
25 the department within 10 working days of receipt of written
26 notification.

27 Section 27. Subsection (4) of section 641.495, Florida
28 Statutes, is amended to read:

29 641.495 Requirements for issuance and maintenance of
30 certificate.--

31

1 (4) The organization shall ensure that the health care
2 services it provides to subscribers, including physician
3 services as required by s. 641.19(14)(~~13~~)(d) and (e), are
4 accessible to the subscribers, with reasonable promptness,
5 with respect to geographic location, hours of operation,
6 provision of after-hours service, and staffing patterns within
7 generally accepted industry norms for meeting the projected
8 subscriber needs. The health maintenance organization must
9 provide treatment authorization 24 hours a day, 7 days a week.
10 Requests for treatment authorization may not be held pending
11 unless the requesting provider contractually agrees to take a
12 pending or tracking number.

13 Section 28. Paragraph (b) of subsection (2) of section
14 817.234, Florida Statutes, is amended to read:

15 817.234 False and fraudulent insurance claims.--

16 (2)

17 (b) In addition to any other provision of law,
18 systematic upcoding by a provider, as defined in s.
19 641.19(16)(~~15~~), with the intent to obtain reimbursement
20 otherwise not due from an insurer is punishable as provided in
21 s. 641.52(5).

22 Section 29. Subsection (1) of section 817.50, Florida
23 Statutes, is amended to read:

24 817.50 Fraudulently obtaining goods, services, etc.,
25 from a health care provider.--

26 (1) Whoever shall, willfully and with intent to
27 defraud, obtain or attempt to obtain goods, products,
28 merchandise, or services from any health care provider in this
29 state, as defined in s. 641.19(16)(~~15~~), commits a misdemeanor
30 of the second degree, punishable as provided in s. 775.082 or
31 s. 775.083.

