

By Senator Carlton

24-1221-01

See HB

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 the department with

17 authority to determine an insurer's financial

18 condition and issue certain orders to a

19 hazardous insurer; authorizing the department

20 to adopt rules; amending s. 624.315, F.S.;

21 revising specified contents of certain reports;

22 amending s. 624.408, F.S.; deleting obsolete

23 provisions; amending ss. 624.423, 626.742,

24 626.8736, 626.907, 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;

29 transferring and renumbering s. 624.4435, F.S.,

30 as s. 624.4242, F.S.; amending s. 625.340,

31 F.S.; requiring certain foreign insurers to

1 | comply with certain provisions; amending s.
2 | 626.8805, F.S.; exempting certain
3 | administrators from certificate-of-authority
4 | requirements; amending s. 627.4615, F.S.;
5 | increasing the minimum rate for certain
6 | interest calculations; amending s. 627.482,
7 | F.S.; specifying a rate of simple interest for
8 | certain cash surrenders of policies; amending
9 | s. 627.613, F.S.; increasing a specified rate
10 | of simple interest; amending s. 627.914, F.S.;
11 | clarifying application of time-of-payment
12 | requirements to self-insurance funds; deleting
13 | provisions relating to certain required
14 | information relating to workers' compensation
15 | insurance; amending s. 627.915, F.S.; revising
16 | certain reporting requirements concerning
17 | private passenger automobile insurance
18 | information; amending s. 641.19, F.S.; defining
19 | the term "health care risk contract"; amending
20 | s. 641.26, F.S.; revising health maintenance
21 | organization annual reporting requirements;
22 | creating s. 641.263, F.S.; providing for
23 | risk-based capital for health maintenance
24 | organizations; providing for risk-based capital
25 | reports; providing requirements for health
26 | maintenance organizations upon the occurrence
27 | of certain events; providing notice
28 | requirements; requiring a risk-based capital
29 | plan for such events; providing duties and
30 | responsibilities of the department; providing
31 | for department hearings of challenges by health

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

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

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

25 215.555 Florida Hurricane Catastrophe Fund.--

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

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

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

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

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

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

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1 3. The assuming insurer is obligated to pay 100
2 percent of the losses of the policy.

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

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

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

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

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

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

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

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

25 624.155 Civil remedy.--

26 (2)(a) As a condition precedent to bringing an action
27 under this section, ~~the department and~~ the insurer must have
28 been given 60 days' written notice of the violation. ~~If the~~
29 ~~department returns a notice for lack of specificity, the~~
30 ~~60-day time period shall not begin until a proper notice is~~
31 ~~filed.~~

1 (b) The notice shall ~~be on a form provided by the~~
2 ~~department and shall~~ state with specificity the following
3 ~~information, and such other information as the department may~~
4 ~~require:~~

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

7 2. The facts and circumstances giving rise to the
8 violation.

9 3. The name of any individual involved in the
10 violation.

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

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

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

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

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1 ~~(d)(e)~~ The insurer that is the recipient of a notice
2 filed pursuant to this section shall report to the department
3 on the disposition of the alleged violation.

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

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

11 624.307 General powers; duties.--

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

19 Section 4. Present subsections (4), (5), (6), and (7)
20 of section 624.310, Florida Statutes, are renumbered as
21 subsections (5), (6), (8), and (9), respectively, new
22 subsections (4) and (7) are added to that section, and present
23 subsection (6) of that section is amended, to read:

24 624.310 Enforcement; cease and desist orders; removal
25 of certain persons; fines.--

26 (4) LICENSEE-AFFILIATED PARTIES.--

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

1 the licensee, subsidiary, or service corporation with which he
2 or she is affiliated, unless:

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

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

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

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

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

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

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1 (c) The following restrictions governing the conduct
2 of licensee-affiliated parties are expressly specified, but
3 such specification is not to be construed in any manner as
4 excusing such parties from the observance of any other aspect
5 of the general fiduciary duty owed by them to the licensee
6 which they serve:

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

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

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

29 4. A licensee-affiliated party acting as proxy for a
30 stockholder of a licensee, subsidiary, or service corporation
31 may not exercise, transfer, or delegate such vote or votes in

1 any consideration of a private benefit or advantage, direct or
2 indirect. The voting rights of stockholders and directors may
3 not be the subject of sale, barter, exchange, or similar
4 transaction, either directly or indirectly. Any
5 licensee-affiliated party who violates the provisions of this
6 subparagraph is accountable to the licensee, subsidiary, or
7 service corporation for any increment.

8 (7) CORRECTIVE ACTION.--

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

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

23 1. Adverse findings reported in financial condition
24 and market conduct examination reports.

25 2. The National Association of Insurance Commissioners
26 Insurance Regulatory Information System and its related
27 reports.

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

1 4. Whether the insurer's asset portfolio, when viewed
2 in light of current economic conditions, is of sufficient
3 value, liquidity, or diversity to assure the insurer's ability
4 to meet its outstanding obligations as they mature.

5 5. The ability of an assuming reinsurer to perform and
6 whether the insurer's reinsurance program provides sufficient
7 protection for the insurer's remaining surplus after taking
8 into account the insurer's cash flow and the classes of
9 business written as well as the financial condition of the
10 assuming reinsurer.

11 6. Whether the insurer's operating loss in the last
12 12-month period or any shorter period of time, including, but
13 not limited to, net capital gain or loss, change in
14 non-admitted assets, and cash dividends paid to shareholders,
15 is greater than 50 percent of the insurer's remaining surplus
16 as regards policyholders in excess of the minimum required.

17 7. Whether any affiliate, subsidiary, or reinsurer is
18 insolvent, threatened with insolvency, or delinquent in
19 payment of its monetary or other obligation.

20 8. Contingent liabilities, pledges, or guaranties that
21 either individually or collectively involve a total amount
22 that in the opinion of the department may affect the solvency
23 of the insurer.

24 9. Whether any controlling person of an insurer is
25 delinquent in the transmitting to, or payment of, net premiums
26 to such insurer.

27 10. The age and collectibility of receivables.

28 11. Whether the management of an insurer, including
29 officers, directors, or any other person who directly or
30 indirectly controls the operation of such insurer, fails to
31 possess and demonstrate the competence, fitness, and

1 reputation deemed necessary to serve the insurer in such
2 position.

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

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

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

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

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

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

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

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

3 d. Increase the insurer's liability in an amount equal
4 to any contingent liability, pledge, or guarantee not
5 otherwise included if there is a substantial risk that the
6 insurer will be called upon to meet the obligation undertaken
7 within the next 12-month period.

8 2. If the department determines that the continued
9 operation of the insurer licensed to transact business in this
10 state may be hazardous to policyholders, creditors, or the
11 general public, the department may, upon its determination,
12 issue an order requiring the insurer to:

13 a. Reduce the total amount of present and potential
14 liability for policy benefits by reinsurance.

15 b. Reduce, suspend, or limit the volume of business
16 being accepted or renewed.

17 c. Reduce general insurance and commission expenses by
18 specified methods.

19 d. Increase the insurer's capital and surplus.

20 e. Suspend or limit the declaration and payment of
21 dividend by an insurer to its stockholders or to its
22 policyholders.

23 f. File reports in a form acceptable to the department
24 concerning the market value of an insurer's assets.

25 g. Limit or withdraw from certain investments or
26 discontinue certain investment practices to the extent the
27 department deems necessary.

28 h. Document the adequacy of premium rates in relation
29 to the risks insured.

30 i. File, in addition to regular annual statements,
31 interim financial reports on the form adopted by the National

1 Association of Insurance Commissioners or in such format as
2 adopted by the department.

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

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

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

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

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

26 624.315 Department; annual report.--

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

1 the Governor showing, with respect to the preceding calendar
2 year:

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

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

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

12 ~~(d) The receipts and estimated expenses of the~~
13 ~~department for the year.~~

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

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

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

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

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

28 (b) Aggregate Florida loss reserves.

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

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

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

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

1 ~~1. On December 31, 1999, and until December 30, 2000,~~
2 ~~\$2.5 million.~~
3 1.2. On December 31, 2000, and until December 30,
4 2001, \$2.75 million.
5 ~~2.3.~~ On December 31, 2001, and until December 30,
6 2002, \$3 million.
7 ~~3.4.~~ On December 31, 2002, and until December 30,
8 2003, \$3.25 million.
9 ~~4.5.~~ On December 31, 2003, and until December 30,
10 2004, \$3.6 million.
11 ~~5.6.~~ On December 31, 2004, and thereafter, \$4 million.
12 Section 7. Subsection (1) of section 624.423, Florida
13 Statutes, is amended, and subsection (4) is added to that
14 section, to read:
15 624.423 Serving process.--
16 (1) Service of process upon the Insurance Commissioner
17 and Treasurer as process agent of the insurer (under s.
18 624.422) shall be made by serving copies in triplicate of the
19 process upon the Insurance Commissioner and Treasurer or upon
20 her or his assistant, deputy, or other person in charge of her
21 or his office. Upon receiving such service, the Insurance
22 Commissioner and Treasurer shall file one copy in her or his
23 office, return one copy with her or his admission of service,
24 and promptly forward one copy of the process by ~~registered or~~
25 ~~certified~~ mail or by such other method of expeditious delivery
26 determined to be appropriate by the department to the person
27 last designated by the insurer to receive the same, as
28 provided under s. 624.422(2).
29 (4) The department may prescribe by rule the method to
30 be used by the department in forwarding the process to the
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1 person designated by the insurer and in returning a copy with
2 the admission of service as described in this section.

3 Section 8. Paragraph (b) of subsection (1) of section
4 624.424, Florida Statutes, is amended to read:

5 624.424 Annual statement and other information.--

6 (1)

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

22 2. Any authorized insurer otherwise subject to this
23 paragraph having direct premiums written in this state of less
24 than \$1 million in any calendar year and less than 1,000
25 policyholders or certificateholders of directly written
26 policies nationwide at the end of such calendar year is exempt
27 from this section for such year unless the department makes a
28 specific finding that compliance is necessary in order for the
29 department to carry out its statutory responsibilities.
30 However, any insurer having assumed premiums pursuant to
31 contracts or treaties or reinsurance of \$1 million or more is

1 not exempt. Any insurer subject to an exemption must submit,
2 by March 1 following the year to which the exemption applies,
3 an affidavit sworn to by a responsible officer of the insurer
4 specifying the amount of direct premiums written in this state
5 and number of policyholders or certificateholders.

6 Section 9. Section 624.4435, Florida Statutes, is
7 transferred and renumbered as section 624.4242, Florida
8 Statutes.

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

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

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

20 626.742 Nonresident agents; service of process.--

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

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

30 626.8736 Nonresident independent or public adjusters;
31 service of process.--

1 (4) Upon receiving the service, the Insurance
2 Commissioner and Treasurer shall forthwith send one of the
3 copies of the process, by ~~registered~~ mail or by such other
4 method of expeditious delivery determined to be appropriate by
5 the department with return receipt requested, to the defendant
6 nonresident independent or public adjuster at his or her last
7 address of record with the department.

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

10 626.8805 Certificate of authority to act as
11 administrator.--

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

14 (a) The administrator has its principal place of
15 business in another state.

16 (b) The administrator is not soliciting business as an
17 administrator in this state.

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

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

23 626.907 Service of process; judgment by default.--

24 (1) Service of process upon an insurer or person
25 representing or aiding such insurer pursuant to s. 626.906
26 shall be made by delivering to and leaving with the Insurance
27 Commissioner and Treasurer or some person in apparent charge
28 of his or her office two copies thereof. The Insurance
29 Commissioner and Treasurer shall forthwith mail, or by such
30 other method of expeditious delivery determined to be
31 appropriate by the department send, by registered mail one of

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

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

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

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

31

1 627.482 Interest payable on cash surrender of
2 policy.--

3 (1) If an insured requests payment of the cash
4 surrender value of a policy from its insurer, such payment
5 shall include simple interest at the rate of 12 percent per
6 year interest ~~specified in s. 625.121(6)(e)~~, unless such
7 payment is made by the insurer within 30 days of receipt of
8 the ~~insurance policy and request for cash surrender.~~

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

11 627.613 Time of payment of claims.--

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

14 Section 18. Section 627.914, Florida Statutes, is
15 amended to read:

16 627.914 Reports of information by workers'
17 compensation insurers required.--

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

28 ~~(2) Any insurer authorized to write a policy of~~
29 ~~workers' compensation insurance shall transmit the following~~
30 ~~information to the department each year with its annual~~
31 ~~report, and such information shall be reported on a net basis~~

1 ~~with respect to reinsurance for nationwide experience and on a~~
2 ~~direct basis for Florida experience;~~
3 ~~(a) Premiums written;~~
4 ~~(b) Premiums earned;~~
5 ~~(c) Dividends paid or credited to policyholders;~~
6 ~~(d) Losses paid;~~
7 ~~(e) Allocated loss adjustment expenses;~~
8 ~~(f) The ratio of allocated loss adjustment expenses to~~
9 ~~losses paid;~~
10 ~~(g) Unallocated loss adjustment expenses;~~
11 ~~(h) The ratio of unallocated loss adjustment expenses~~
12 ~~to losses paid;~~
13 ~~(i) The total of losses paid and unallocated and~~
14 ~~allocated loss adjustment expenses;~~
15 ~~(j) The ratio of losses paid and unallocated and~~
16 ~~allocated loss adjustment expenses to premiums earned;~~
17 ~~(k) The number of claims outstanding as of December 31~~
18 ~~of each year;~~
19 ~~(l) The total amount of losses unpaid as of December~~
20 ~~31 of each year;~~
21 ~~(m) The total amount of allocated and unallocated loss~~
22 ~~adjustment expenses unpaid as of December 31 of each year; and~~
23 ~~(n) The total of losses paid and allocated loss~~
24 ~~adjustment expenses and unallocated loss adjustment expenses,~~
25 ~~plus the total of losses unpaid as of December 31 of each year~~
26 ~~and loss adjustment expenses unpaid as of December 31 of each~~
27 ~~year.~~
28 ~~(3) A report of the information required in subsection~~
29 ~~(2) shall be filed no later than April 1 of each year and~~
30 ~~shall include the information for the preceding year ending~~
31 ~~December 31. All reports shall be on a calendar-accident year~~

1 ~~basis, and each calendar-accident year shall be reported at~~
2 ~~eight stages of development.~~

3 (2)(4) Each insurer and self-insurance fund as defined
4 in s. 624.461 authorized to write a policy of workers'
5 compensation insurance shall transmit the following
6 information ~~for paragraphs (a), (b), (d), and (e)~~ annually on
7 both Florida experience and nationwide experience separately:

- 8 (a) Payrolls by classification.
9 (b) Manual premiums by classification.
10 (c) Standard premiums by classification.
11 (d) Losses by classification and injury type.
12 (e) Expenses.

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

27 (3)(5) Individual self-insurers ~~authorized to transact~~
28 ~~workers' compensation insurance~~ as provided in s.
29 440.02(23)(a) shall report only Florida data as prescribed in
30 ~~paragraphs (a)-(e)~~ of subsection (2)(4) to the Division of
31

1 Workers' Compensation of the Department of Labor and
2 Employment Security.

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

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

9 (c) A statistical or rating organization may be used
10 by individual self-insurers for the purposes of reporting the
11 data required by this section and calculating experience
12 ratings.

13 ~~(4)(6)~~ The department shall provide a summary of
14 information provided pursuant to subsection ~~subsections~~ (2)
15 ~~and (4)~~ in its annual report.

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

18 627.915 Insurer experience reporting.--

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

1 calendar-accident years, with an evaluation date of March 31
2 of the current year. The information set forth in paragraphs
3 (e)-(h)~~(g)-(j)~~ is applicable to voluntary private passenger
4 writings and shall be reported on a calendar-accident year
5 basis ultimately seven times at seven different stages of
6 development.

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

9 ~~(b) Loss development factors and the historic~~
10 ~~development of those factors.~~

11 (b)~~(c)~~ Policyholder dividends incurred.

12 (c)~~(d)~~ Expenses for other acquisition and general
13 expense.

14 (d)~~(e)~~ Expenses for agents' commissions and taxes,
15 licenses, and fees.

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

18 (e)~~(g)~~ Losses paid.

19 (f)~~(h)~~ Losses unpaid.

20 (g)~~(i)~~ Loss adjustment expenses paid.

21 (h)~~(j)~~ Loss adjustment expenses unpaid.

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

24 634.161 Service of process; method.--

25 (1) Service of process upon the Insurance Commissioner
26 and Treasurer as process agent of the company shall be made by
27 serving copies in triplicate of the process upon the Insurance
28 Commissioner and Treasurer or upon her or his assistant,
29 deputy, or other person in charge of her or his office. Upon
30 receiving such service, the Insurance Commissioner and
31 Treasurer shall file one copy with the department, return one

1 copy with her or his admission of service, and promptly
2 forward one copy of the process by ~~registered or certified~~
3 mail or by such other method of expeditious delivery
4 determined to be appropriate by the department to the person
5 last designated by the company to receive the same, as
6 provided under s. 634.151.

7 Section 21. Present subsections (12) through (21) of
8 section 641.19, Florida Statutes, are renumbered as
9 subsections (13) through (22), respectively, and a new
10 subsection (12) is added to that section to read:

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

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

21 641.2018 Limited coverage for home health care
22 authorized.--

23 (1) Notwithstanding other provisions of this chapter,
24 a health maintenance organization may issue a contract that
25 limits coverage to home health care services only. The
26 organization and the contract shall be subject to all of the
27 requirements of this part that do not require or otherwise
28 apply to specific benefits other than home care services. To
29 this extent, all of the requirements of this part apply to any
30 organization or contract that limits coverage to home care
31 services, except the requirements for providing comprehensive

1 health care services as provided in ss. 641.19(4), ~~(12)~~, and
2 (13), and (14), and 641.31(1), except ss. 641.31(9), (12),
3 (17), (18), (19), (20), (21), and (24) and 641.31095.

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

7 641.26 Annual report.--

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

19 (a) A financial statement of the health maintenance
20 organization filed on a computer diskette using a format
21 acceptable to the department.

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

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

29 (d) The number of health maintenance contracts issued
30 and outstanding and the number of health maintenance contracts
31 terminated.

1 (e) The number and amount of damage claims for medical
2 injury initiated against the health maintenance organization
3 and any of the providers engaged by it during the reporting
4 year, broken down into claims with and without formal legal
5 process, and the disposition, if any, of each such claim.

6 (f) An actuarial certification that:

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

11 2. The rates being charged or to be charged are
12 actuarially adequate to the end of the period for which rates
13 have been guaranteed.

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

25 (g) A report prepared by the certified public
26 accountant and filed with the department describing material
27 weaknesses in the health maintenance organization's internal
28 control structure as noted by the certified public accountant
29 during the audit. The report must be filed with the annual
30 audited financial report as required in paragraph (c). The
31 health maintenance organization shall provide a description of

1 remedial actions taken or proposed to correct material
2 weaknesses, if the actions are not described in the
3 independent certified public accountant's report.

4 (h) Such other information relating to the performance
5 of health maintenance organizations as is required by the
6 department.

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

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

19 Section 24. Section 641.263, Florida Statutes, is
20 created to read:

21 641.263 Risk-based capital.--

22 (1) For purposes of this section:

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

26 (b) "Association" means the National Association of
27 Insurance Commissioners.

28 (c) "Corrective order" means an order issued by the
29 department specifying corrective actions which the department
30 has determined are required.

31

1 (d) "Risk-based capital instructions" means the
2 risk-based capital report including risk-based capital
3 instructions adopted by the association, as these risk-based
4 capital instructions may be amended by the association from
5 time to time in accordance with the procedures adopted by the
6 association.

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

13 1. "Company action level risk-based capital" means the
14 product of 2.0 and the health maintenance organization's
15 authorized control level risk-based capital.

16 2. "Regulatory action level risk-based capital" means
17 the product of 1.5 and the health maintenance organization's
18 authorized control level risk-based capital.

19 3. "Authorized control level risk-based capital" means
20 the number determined under the risk-based capital formula in
21 accordance with the risk-based capital instructions.

22 4. "Mandatory control level risk-based capital" means
23 the product of .70 and the authorized control level risk-based
24 capital.

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

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

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

4 1. A health maintenance organization's net worth,
5 consisting of its statutory capital and surplus, as determined
6 in accordance with the statutory accounting applicable to the
7 annual financial statements required to be filed under s.
8 641.26; and

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

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

18 1. With the association in accordance with the
19 risk-based capital instructions; and

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

28 (b) A health maintenance organization's risk-based
29 capital shall be determined in accordance with the formula set
30 forth in the risk-based capital instructions. The formula
31

1 shall take into account and may adjust for the covariance
2 between:
3 1. Asset risks;
4 2. Credit risks;
5 3. Underwriting risks; and
6 4. All other business risks and such other relevant
7 risks as are set forth in the risk-based capital instructions,
8
9 determined in each case by applying the factors in the manner
10 set forth in the risk-based capital instructions.
11 (c) The Legislature finds that an excess of capital
12 over the amount produced by the risk-based capital
13 requirements contained in this section and the formulas,
14 schedules, and instructions referenced in this section is
15 desirable in the health maintenance organization business.
16 Accordingly, health maintenance organizations should seek to
17 maintain capital above the risk-based capital levels required
18 by this section. Additional capital is used and useful in the
19 health maintenance organization business and helps to secure a
20 health maintenance organization against various risks inherent
21 in, or affecting, said business and not accounted for or only
22 partially measured by the risk-based capital requirements
23 contained in this section.
24 (d) If a health maintenance organization files a
25 risk-based capital report that in the judgment of the
26 department is inaccurate, the department shall adjust the
27 risk-based capital report to correct the inaccuracy and shall
28 notify the health maintenance organization of the adjustment.
29 The notice shall contain a statement of the reason for the
30 adjustment. A risk-based capital report as so adjusted is
31 referred to as an "adjusted risk-based capital report."

1 (3)(a) A company action level event includes:
2 1. The filing of a risk-based capital report by a
3 health maintenance organization that indicates that the health
4 maintenance organization's total adjusted capital is greater
5 than or equal to its regulatory action level risk-based
6 capital but less than its company action level risk-based
7 capital;
8 2. Notification by the department to the health
9 maintenance organization of an adjusted risk-based capital
10 report that indicates the event described in subparagraph 1.,
11 provided the health maintenance organization does not
12 challenge the adjusted risk-based capital report under
13 subsection (7); or
14 3. If, pursuant to the provisions of subsection (7), a
15 health maintenance organization challenges an adjusted
16 risk-based capital report that indicates the event described
17 in subparagraph 1., the notification by the department to the
18 health maintenance organization that the department has, after
19 a hearing, rejected the health maintenance organization's
20 challenge.
21 (b) If a company action level event occurs, the health
22 maintenance organization shall prepare and submit to the
23 department a risk-based capital plan that shall:
24 1. Identify the conditions that contribute to the
25 company action level event.
26 2. Contain proposals of corrective actions that the
27 health maintenance organization intends to take and that would
28 be expected to result in the elimination of the company action
29 level event.
30 3. Provide projections of the health maintenance
31 organization's financial results in the current year and at

1 least the 2 succeeding years, both in the absence of proposed
2 corrective actions and giving effect to the proposed
3 corrective actions, including projections of statutory balance
4 sheets, operating income, net income, capital and surplus, and
5 risk-based capital levels. The projections for both new and
6 renewal business might include separate projections for each
7 major line of business and separately identify each
8 significant income, expense, and benefit component.

9 4. Identify the key assumptions impacting the health
10 maintenance organization's projections and the sensitivity of
11 the projections to the assumptions.

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

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

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

20 or

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

27 (d) Within 60 days after the submission by a health
28 maintenance organization of a risk-based capital plan to the
29 department, the department shall notify the health maintenance
30 organization whether the risk-based capital plan shall be
31 implemented or is, in the judgment of the department,

1 unsatisfactory. If the department determines the risk-based
2 capital plan is unsatisfactory, the notification to the health
3 maintenance organization shall set forth the reasons for the
4 determination and may set forth proposed revisions which will
5 render the risk-based capital plan satisfactory in the
6 judgment of the department. Upon notification from the
7 department, the health maintenance organization shall prepare
8 a revised risk-based capital plan, which may incorporate by
9 reference any revisions proposed by the department, and shall
10 submit the revised risk-based capital plan to the department:

11 1. Within 45 days after the notification from the
12 department; or

13 2. If the health maintenance organization challenges
14 the notification from the department under the provisions of
15 subsection (7), within 45 days after a notification to the
16 health maintenance organization that the department has, after
17 a hearing, rejected the health maintenance organization's
18 challenge.

19 (e) If the department notifies a health maintenance
20 organization that the health maintenance organization's
21 risk-based capital plan or revised risk-based capital plan is
22 unsatisfactory, the department may, at its discretion, subject
23 to the health maintenance organization's right to a hearing
24 under the provisions of subsection (7), specify in the
25 notification that the notification constitutes a regulatory
26 action level event.

27 (f) Each domestic health maintenance organization that
28 files a risk-based capital plan or revised risk-based capital
29 plan with the department shall file a copy of the risk-based
30 capital plan or revised risk-based capital plan with the
31

1 insurance department in any state in which the health
2 maintenance organization is authorized to do business if:
3 1. The state has a risk-based capital provision
4 substantially similar to the provisions of s. 641.264; and
5 2. The insurance department of that state has notified
6 the health maintenance organization of its request for the
7 filing in writing, in which case the health maintenance
8 organization shall file a copy of the risk-based capital plan
9 or revised risk-based capital plan in that state no later than
10 the later of:
11 a. Fifteen days after the receipt of notice to file a
12 copy of its risk-based capital plan or revised risk-based
13 capital plan with the state; or
14 b. The date on which the risk-based capital plan or
15 revised risk-based capital plan is filed under paragraph (c)
16 or paragraph (d).
17 (4)(a) A regulatory action level event includes, with
18 respect to a health maintenance organization:
19 1. The filing of a risk-based capital report by the
20 health maintenance organization that indicates that the health
21 maintenance organization's total adjusted capital is greater
22 than or equal to its authorized control level risk-based
23 capital but less than its regulatory action level risk-based
24 capital;
25 2. Notification by the department to a health
26 maintenance organization of an adjusted risk-based capital
27 report that indicates the event described in subparagraph 1.,
28 provided the health maintenance organization does not
29 challenge the adjusted risk-based capital report under the
30 provisions of subsection (7);
31

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

8 4. The failure of the health maintenance organization
9 to file a risk-based capital report by April 1, unless the
10 health maintenance organization has provided an explanation
11 for the failure that is satisfactory to the department and has
12 cured the failure within 10 days after April 1;

13 5. The failure of the health maintenance organization
14 to submit a risk-based capital plan to the department within
15 the time period set forth in paragraph (3)(c);

16 6. Notification by the department to the health
17 maintenance organization that:

18 a. The risk-based capital plan or revised risk-based
19 capital plan submitted by the health maintenance organization
20 is, in the judgment of the department, unsatisfactory; and

21 b. Notification constitutes a regulatory action level
22 event with respect to the health maintenance organization,
23 provided the health maintenance organization has not
24 challenged the determination under subsection (7);

25 7. If, pursuant to subsection (7), the health
26 maintenance organization challenges a determination by the
27 department under subparagraph 6., the notification by the
28 department to the health maintenance organization that the
29 department has, after a hearing, rejected the health
30 maintenance organization's challenge;

31

1 8. Notification by the department to the health
2 maintenance organization that the health maintenance
3 organization has failed to adhere to its risk-based capital
4 plan or revised risk-based capital plan, but only if the
5 failure has a substantial adverse effect on the ability of the
6 health maintenance organization to eliminate the company
7 action level event in accordance with its risk-based capital
8 plan or revised risk-based capital plan and the department has
9 so stated in the notification, provided the health maintenance
10 organization has not challenged the determination under
11 subsection (7); or

12 9. If, pursuant to subsection (7), the health
13 maintenance organization challenges a determination by the
14 department under subparagraph 8., the notification by the
15 department to the health maintenance organization that the
16 department has, after a hearing, rejected the health
17 maintenance organization's challenge.

18 (b) If a regulatory action level event occurs, the
19 department shall:

20 1. Require the health maintenance organization to
21 prepare and submit a risk-based capital plan or, if
22 applicable, a revised risk-based capital plan.

23 2. Perform such examination or analysis as the
24 department deems necessary of the assets, liabilities, and
25 operations of the health maintenance organization, including a
26 review of its risk-based capital plan or revised risk-based
27 capital plan.

28 3. Subsequent to the examination or analysis, issue a
29 corrective order specifying such corrective actions as the
30 department shall determine are required.

31

1 (c) In determining corrective actions, the department
2 may take into account factors the department deems relevant
3 with respect to the health maintenance organization based upon
4 the department's examination or analysis of the assets,
5 liabilities, and operations of the health maintenance
6 organization, including, but not limited to, the results of
7 any sensitivity tests undertaken pursuant to the risk-based
8 capital instructions. The risk-based capital plan or revised
9 risk-based capital plan shall be submitted:

10 1. Within 45 days after the occurrence of the
11 regulatory action level event;

12 2. If the health maintenance organization challenges
13 an adjusted risk-based capital report pursuant to subsection
14 (7) and 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; or

19 3. If the health maintenance organization challenges a
20 revised risk-based capital plan pursuant to subsection (7) and
21 the challenge is not frivolous in the judgment of the
22 department, within 45 days after the notification to the
23 health maintenance organization that the department has, after
24 a hearing, rejected the health maintenance organization's
25 challenge.

26 (d) The department may retain actuaries, investment
27 experts, and other consultants as may be necessary in the
28 judgment of the department to review the health maintenance
29 organization's risk-based capital plan or revised risk-based
30 capital plan, examine or analyze the assets, liabilities, and
31 operations, including contractual relationships, of the health

1 maintenance organization, and formulate the corrective order
2 with respect to the health maintenance organization. The fees,
3 costs, and expenses relating to consultants shall be borne by
4 the affected health maintenance organization or such other
5 party as directed by the department.

6 (5)(a) An authorized control level event includes:

7 1. The filing of a risk-based capital report by the
8 health maintenance organization that indicates that the health
9 maintenance organization's total adjusted capital is greater
10 than or equal to its mandatory control level risk-based
11 capital but less than its authorized control level risk-based
12 capital;

13 2. Notification by the department to the health
14 maintenance organization of an adjusted risk-based capital
15 report that indicates the event described in subparagraph 1.,
16 provided the health maintenance organization does not
17 challenge the adjusted risk-based capital report under
18 subsection (7);

19 3. If, pursuant to subsection (7), the health
20 maintenance organization challenges an adjusted risk-based
21 capital report that indicates the event described in
22 subparagraph 1., notification by the department to the health
23 maintenance organization that the department has, after a
24 hearing, rejected the health maintenance organization's
25 challenge;

26 4. The failure of the health maintenance organization
27 to respond, in a manner satisfactory to the department, to a
28 corrective order, provided the health maintenance organization
29 has not challenged the corrective order under subsection (7);
30 or

31

1 5. If the health maintenance organization has
2 challenged a corrective order under subsection (7) and the
3 department has, after a hearing, rejected the challenge or
4 modified the corrective order, the failure of the health
5 maintenance organization to respond, in a manner satisfactory
6 to the department, to the corrective order subsequent to
7 rejection or modification by the department.

8 (b) If an authorized control level event occurs, with
9 respect to a health maintenance organization, the department
10 shall:

11 1. Take such actions as are required under paragraph
12 (4)(b) regarding a health maintenance organization with
13 respect to which a regulatory action level event has occurred;
14 or

15 2. If the department deems it to be in the best
16 interests of the subscribers and creditors of the health
17 maintenance organization and of the public, take such actions
18 as are necessary to cause the health maintenance organization
19 to be placed under regulatory control under chapter 631. If
20 the department takes such actions, the authorized control
21 level event shall be deemed sufficient grounds for the
22 department to take action under chapter 631 and the department
23 shall have the rights, powers, and duties with respect to the
24 health maintenance organization as are set forth in such
25 chapter. If the department takes actions under this
26 subparagraph pursuant to an adjusted risk-based capital
27 report, the health maintenance organization shall be entitled
28 to such protections as are afforded to health maintenance
29 organizations under the summary proceedings provisions of s.
30 120.574.

31 (6)(a) A mandatory control level event includes:

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 less than
4 its mandatory control level risk-based capital;

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

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

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

1 a reasonable expectation that the mandatory control level
2 event may be eliminated within the 90-day period.

3 (7) Upon the occurrence of any of the following
4 events, the health maintenance organization shall have the
5 right to a confidential departmental hearing, on a record, at
6 which the health maintenance organization may challenge any
7 determination or action by the department. The health
8 maintenance organization shall notify the department of its
9 request for a hearing within 5 days after the notification by
10 the department under this subsection. Upon receipt of the
11 health maintenance organization's request for a hearing, the
12 department shall set a date for the hearing, which shall be no
13 less than 10 nor more than 30 days after the date of the
14 health maintenance organization's request. Such events are:

15 (a) Notification to a health maintenance organization
16 by the department of an adjusted risk-based capital report.

17 (b) Notification to a health maintenance organization
18 by the department that:

19 1. The health maintenance organization's risk-based
20 capital plan or revised risk-based capital plan is
21 unsatisfactory; and

22 2. Notification constitutes a regulatory action level
23 event with respect to the health maintenance organization.

24 (c) Notification to a health maintenance organization
25 by the department that the health maintenance organization has
26 failed to adhere to its risk-based capital plan or revised
27 risk-based capital plan and that the failure has a substantial
28 adverse effect on the ability of the health maintenance
29 organization to eliminate the company action level event with
30 respect to the health maintenance organization in accordance

31

1 with its risk-based capital plan or revised risk-based capital
2 plan.

3 (d) Notification to a health maintenance organization
4 by the department of a corrective order with respect to the
5 health maintenance organization.

6 (8)(a) This section is supplemental to any other
7 provisions of this part and shall not preclude or limit any
8 other powers or duties of the department as provided in the
9 insurance code.

10 (b) The department may adopt reasonable rules
11 necessary to implement this section.

12 (c) The department may exempt from the application of
13 this section a health maintenance organization that:

14 1. Writes direct business only in this state;

15 2.a. Assumes no reinsurance in excess of 5 percent of
16 direct premium written; and

17 b. Writes direct annual premiums for comprehensive
18 medical business of \$2,000,000 or less; or

19 3. Is a limited health service organization that
20 covers less than 2,000 lives.

21 (9) There shall be no liability on the part of, and no
22 cause of action shall arise against, the commissioner or the
23 department or its employees or agents for any action taken by
24 them in the performance of their powers and duties under this
25 section.

26 (10) All notices by the department to a health
27 maintenance organization that may result in regulatory action
28 under this section shall be effective upon dispatch if
29 transmitted by registered or certified mail, or in the case of
30 any other transmission shall be effective upon the health
31 maintenance organization's receipt of notice.

1 (11) For risk-based capital reports required to be
2 filed in 2002, 2003, and 2004 by health maintenance
3 organizations with respect to their 2001, 2002, and 2003
4 annual statement data, the following requirements shall apply
5 in lieu of the provisions of subsections (3), (4), (5), and
6 (6):

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

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

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

18 (d) If a mandatory control level event occurs with
19 respect to a health maintenance organization, the department
20 shall take the actions required under subsection (5) with
21 respect to the health maintenance organization.

22
23 Nothing in this subsection restricts or otherwise limits the
24 department's authority under other provisions of the insurance
25 code.

26 Section 25. Section 641.265, Florida Statutes, is
27 created to read:

28 641.265 Comprehensive business plan.--Each health
29 maintenance organization, at the time of its application for
30 licensure, shall file with the department a comprehensive
31 business plan that includes:

- 1 (1) A feasibility study and marketing plan.
2 (2) A description of the proposed service area,
3 provider contracts, provider access, plan administration, and,
4 if applicable, management contracts.
5 (3) A minimum of 3 years of financial projections and
6 a description of any financial guarantees.
7 (4) A summary of the benefits to be offered.

8 Section 26. Paragraph (a) of subsection (3) of section
9 641.35, Florida Statutes, is amended to read:

10 641.35 Assets, liabilities, and investments.--

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

14 (a) The amount, estimated consistently with the
15 provisions of this part, necessary to pay all of its unpaid
16 losses and claims incurred for or on behalf of a subscriber,
17 on or prior to the end of the reporting period, whether
18 reported or unreported, including claims arising for services
19 provided to subscribers where these services are provided
20 under health care risk contracts unless the obligations under
21 such contracts are secured by a financial instrument
22 acceptable to the department. This requirement shall not
23 apply to a contract with a provider where the contract is
24 limited to services provided by such provider under the scope
25 of that provider's license.

26
27 The department, upon determining that a health maintenance
28 organization has failed to report liabilities that should have
29 been reported, shall require a corrected report which reflects
30 the proper liabilities to be submitted by the organization to
31

1 the department within 10 working days of receipt of written
2 notification.

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

5 641.495 Requirements for issuance and maintenance of
6 certificate.--

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

19 Section 28. Paragraph (b) of subsection (2) of section
20 817.234, Florida Statutes, is amended to read:

21 817.234 False and fraudulent insurance claims.--

22 (2)

23 (b) In addition to any other provision of law,
24 systematic upcoding by a provider, as defined in s.
25 641.19(16)~~(15)~~, with the intent to obtain reimbursement
26 otherwise not due from an insurer is punishable as provided in
27 s. 641.52(5).

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

30 817.50 Fraudulently obtaining goods, services, etc.,
31 from a health care provider.--

1 (1) Whoever shall, willfully and with intent to
2 defraud, obtain or attempt to obtain goods, products,
3 merchandise, or services from any health care provider in this
4 state, as defined in s. 641.19(16)(15), commits a misdemeanor
5 of the second degree, punishable as provided in s. 775.082 or
6 s. 775.083.

7 Section 30. Section 641.2342, Florida Statutes, is
8 repealed.

9 Section 31. Except as otherwise provided in this act,
10 this act shall take effect July 1, 2001.

11 *****

12
13 LEGISLATIVE SUMMARY

14 Revises various provisions relating to insurance. Revises
15 time periods for notice for bringing actions. Proscribes
16 conflict of interest activities of licensee-affiliated
17 parties, requires licensee-affiliated parties to disclose
18 personal interests, and specifies restrictions for
19 licensee-affiliated parties. Provides for alternative
20 methods of service of process. Requires foreign insurers'
21 code compliance. Provides for an administrator exemption
22 from certificate of authority requirements. Revises
23 interest rates and calculations of rates. Provides time
24 of payment requirements to self-insurance funds. Revises
25 private passenger automobile insurance information
26 reporting requirements and required information relating
27 to workers' compensation insurance. Revises health
28 maintenance organization annual reporting requirements.
29 Provides for risk-based capital for health maintenance
30 organizations and requires risk-based capital reports and
31 a risk-based capital plan for specified events. Provides
duties and responsibilities of the Department of
Insurance. Requires health maintenance organizations to
file comprehensive business plans. Includes under
liabilities the amounts of specified claims in
determinations of financial health of health maintenance
organizations. (See bill for details.)