

By Senator Carlton

24-1187-01

See HB

1                                   A bill to be entitled

2           An act relating to public records and meetings;

3           creating s. 641.264, F.S.; providing exemptions

4           from public records requirements and public

5           meetings requirements for health maintenance

6           organizations for certain risk-based capital

7           reports, orders, instructions, and plans and

8           related documents, materials, and information;

9           providing for future review and repeal;

10          providing a finding of public necessity;

11          providing an effective date.

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

15           Section 1. Section 641.264, Florida Statutes, is  
16 created to read:

17           641.264 Confidentiality of risk-based capital  
18 proceedings and records.--

19           (1) For the purposes of this section, the definitions  
20 of terms provided in s. 641.263 apply.

21           (2) All risk-based capital reports and related  
22 documents, materials, or other information, to the extent the  
23 information is not required to be set forth in a publicly  
24 available annual statement schedule, and risk-based capital  
25 plans and related documents, materials, and other information,  
26 including the results or report of any examination or analysis  
27 of a health maintenance organization performed pursuant to s.  
28 641.263 and any corrective order issued by the department  
29 pursuant to such examination or analysis, with respect to a  
30 health maintenance organization that are in the possession or  
31 control of the department shall be confidential by law and

1 privileged, shall be exempt from the provisions of s.  
2 119.07(1) and s. 24(a), Art. I of the State Constitution,  
3 shall not be subject to subpoena, and shall not be subject to  
4 discovery or admissible in evidence in any private civil  
5 action. However, the department is authorized to use a  
6 risk-based capital report, plan, or related documents,  
7 materials, or other information in the furtherance of any  
8 regulatory or legal action brought as a part of the  
9 department's official duties. Proceedings and hearings  
10 conducted pursuant to s. 641.263 relating to the department's  
11 actions regarding any health maintenance organization's  
12 risk-based capital plan, revised risk-based capital plan,  
13 risk-based capital report or adjusted risk-based capital  
14 report are exempt from the provisions of s. 286.011 and s.  
15 24(b), Art. I of the State Constitution, except as otherwise  
16 provided in this section.

17 (3) Neither the department nor any person who received  
18 a confidential risk-based capital report, plan, or related  
19 documents, materials, or other information while acting under  
20 the authority of the department shall be permitted or required  
21 to testify in any private civil action concerning such report,  
22 plan, or related documents, materials, or information, subject  
23 to the exceptions contained in subsections (2) and (4).

24 (4) In order to assist in the performance of its  
25 duties, the department may:

26 (a) Share a confidential or privileged risk-based  
27 capital report, plan, or related documents, materials, or  
28 other information with other state, federal, and international  
29 regulatory agencies, with the National Association of  
30 Insurance Commissioners and its affiliates and subsidiaries,  
31 and with state, federal, and international law enforcement

1 authorities, provided that the recipient agrees to maintain  
2 the confidentiality of the document, material, or other  
3 information.

4 (b) Receive confidential risk-based capital reports,  
5 plans, and related documents, materials, or information from  
6 the National Association of Insurance Commissioners and its  
7 affiliates and subsidiaries, and from regulatory and law  
8 enforcement officials of other foreign or domestic  
9 jurisdictions, and shall maintain as confidential or  
10 privileged any such report, plan, or related document,  
11 material, or information received with notice or the  
12 understanding that it is confidential or privileged under the  
13 laws of the jurisdiction that is the source of the document,  
14 material, or information.

15 (c) Enter into agreements governing sharing and use of  
16 information consistent with this subsection.

17 (5) No waiver of any applicable privilege or claim of  
18 confidentiality in the documents, materials, or information  
19 shall occur as a result of disclosure to the department under  
20 this section or as a result of sharing as authorized in  
21 paragraph (4)(c).

22 (6) It is the judgment of the Legislature that the  
23 comparison of a health maintenance organization's total  
24 adjusted capital to any of its risk-based capital levels is a  
25 regulatory tool which may indicate the need for corrective  
26 action with respect to the health maintenance organization and  
27 is not intended as a means to rank health maintenance  
28 organizations generally. Therefore, except as otherwise  
29 required under the provisions of this section, the making,  
30 publishing, disseminating, circulating, or placing before the  
31 public, or causing, directly or indirectly, to be made,

1 published, disseminated, circulated, or placed before the  
2 public in a newspaper, magazine, or other publication, in the  
3 form of a notice, circular, pamphlet, letter, or poster, or  
4 over a radio or television station, or in any other way, an  
5 advertisement, announcement, or statement containing an  
6 assertion, representation, or statement with regard to the  
7 risk-based capital levels of any health maintenance  
8 organization, or of any component derived in the calculation,  
9 by any health maintenance organization, agent, broker, or  
10 other person engaged in any manner in the health maintenance  
11 organization insurance business would be misleading and is  
12 therefore prohibited; provided, if any materially false  
13 statement with respect to the comparison regarding a health  
14 maintenance organization's total adjusted capital to any of  
15 its risk-based capital levels, or an inappropriate comparison  
16 of any other amount to the health maintenance organization's  
17 risk-based capital levels, is published in any written  
18 publication and the health maintenance organization is able to  
19 demonstrate to the department with substantial proof the  
20 inappropriateness or falsity of the statement, the health  
21 maintenance organization may publish an announcement in a  
22 written publication if the sole purpose of the announcement is  
23 to rebut the materially false statement.

24 (7) It is the further judgment of the Legislature that  
25 the risk-based capital instructions, risk-based capital  
26 reports, adjusted risk-based capital reports, risk-based  
27 capital plans and revised risk-based capital plans, and  
28 related documents, materials, or information are intended  
29 solely for use by the department in monitoring the solvency of  
30 health maintenance organizations and the need for possible  
31 corrective action with respect to health maintenance

1 organizations and shall not be used by the department for  
2 ratemaking nor considered or introduced as evidence in any  
3 rate proceeding nor used by the department to calculate or  
4 derive any elements of an appropriate premium level or rate of  
5 return for any line of insurance that a health maintenance  
6 organization or any affiliate is authorized to write.

7 (8) This section is subject to the Open Government  
8 Sunset Review Act of 1995 in accordance with s. 119.15, and  
9 shall stand repealed on October 2, 2006, unless reviewed and  
10 saved from repeal through reenactment by the Legislature.

11 Section 2. The Legislature finds that the public  
12 records and meetings exemptions provided for in section  
13 641.264, Florida Statutes, are a public necessity because  
14 unrestricted public access to information, proceedings, and  
15 hearings relating to a health maintenance organization's  
16 risk-based capital plan and risk-based capital adjusted  
17 report, and documents and examination reports related thereto,  
18 might damage the health maintenance organization if made  
19 available to its competitors and could substantially affect  
20 the solvency of a health maintenance organization. Damage to a  
21 health maintenance organization's solvency could have a  
22 substantial negative effect on the public as well as on other  
23 health maintenance organizations. Furthermore, public access  
24 to such information would not serve a public interest in that  
25 such information can be misleading as to a health maintenance  
26 organization's ranking because risk-based data does not  
27 reflect all of the factors involved in the assessment of a  
28 health maintenance organization's financial strength. The  
29 Legislature also finds that risk-based capital reports and  
30 plans reveal a health maintenance organization's investment  
31 decisions and that such decisions are a trade secret that give

1 the health maintenance organization a competitive advantage in  
2 the private market. Public access to such information could  
3 affect a health maintenance organization's ability to do  
4 business in Florida and the health maintenance organization's  
5 solvency. Therefore, it is a public necessity to maintain the  
6 confidentiality of this information and these proceedings and  
7 hearings within the regulatory body responsible for the  
8 oversight of health maintenance organization solvency.  
9 Finally, the Legislature finds that the public has access  
10 through other means to information regarding the financial  
11 strength of a health maintenance organization and its ranking  
12 with regard to other health maintenance organizations.

13 Section 3. This act shall take effect October 1, 2001,  
14 if SB \_\_\_\_ or similar legislation is adopted in the same  
15 legislative session or an extension thereof and becomes law.

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18 LEGISLATIVE SUMMARY

19 Provides an exemption from public records requirements  
20 for risk-based capital reports, orders, instructions, and  
21 plans and related documents, materials, and information  
22 of health maintenance organizations. Provides an  
23 exemption from public meetings requirements for  
24 proceedings and hearings relating to the Department of  
25 Insurance's supervision of health maintenance  
26 organizations relating to risk based capital. Provides  
27 for future review and repeal.  
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