By Senator Campbell

33-888-02

A bill to be entitled

An act relating to health care; requiring health maintenance organizations to provide for the resolution of grievances brought by subscribers; specifying the services to be included in a grievance system; requiring health maintenance organizations to establish an informal appeal process; providing for a formal internal appeal process; providing for an external appeal when a subscriber is dissatisfied with the results of a formal appeal; providing for the grievance to be reviewed by an independent utilization-review organization; providing for a party to appeal a decision by the utilization-review organization to the Agency for Health Care Administration; requiring that the Agency for Health Care Administration enter into contracts with utilization-review organizations for the purpose of reviewing appeals; authorizing the agency to adopt rules; providing for the right of a subscriber to maintain an action against a health maintenance organization; defining terms; providing that a health maintenance organization has the duty to exercise ordinary care when making treatment decisions; providing that a health maintenance organization is liable for damages for harm caused by failure to exercise ordinary care; providing certain limitations on actions; providing for a claim of liability to be reviewed by an independent

review organization; providing for the statute of limitations to be tolled under certain circumstances; requiring a health maintenance organization to disclose certain information to subscribers and prospective subscribers; specifying additional information that must be provided upon the request of a subscriber or prospective subscriber; requiring that a health maintenance organization provide notice if a provider is unavailable to render services; prescribing requirements for the notice; requiring health maintenance organizations to make certain allowances in developing provider profiles and measuring the performance of health care providers; providing for such information to be made available to the Department of Insurance, the Agency for Health Care Administration, and subscribers; prohibiting a health maintenance organization from taking retaliatory action against an employee for certain actions or disclosures concerning improper patient care; requiring that a health maintenance organization refer a subscriber to an outside provider when there is not a provider within the organization's network to provide a covered benefit; specifying circumstances under which a health maintenance organization must refer a subscriber to a specialist; limiting the cost of services provided by a nonparticipating provider; requiring that a health maintenance

organization provide a procedure to allow a subscriber to obtain drugs that are not included in the organization's drug formulary; prohibiting a health maintenance organization from arbitrarily interfering with certain decisions of a health care provider; prohibiting a health maintenance organization from discriminating against a subscriber based on race, national origin, and other factors; requiring health maintenance organizations to establish a policy governing the termination of health care providers; providing requirements for the policy; authorizing the Insurance Commissioner to suspend or revoke a certificate of authority upon finding certain violations by a health maintenance organization; providing for civil penalties; repealing s. 641.513, F.S., relating to requirements for providing emergency services and care; prohibiting coercion of provider selection; amending s. 627.419, F.S.; providing free choice to subscribers to certain health care plans, and to persons covered under certain health insurance policies or contracts, in the selection of specified health care providers; specifying conditions under which any health care provider must be permitted to provide services under a health care plan or health insurance policy or contract; providing limitations; providing for civil penalties; providing application; amending s. 641.28,

F.S.; limiting the parties that may recover attorney's fees and court costs in an action to enforce the terms of a health maintenance contract; providing an effective date.

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

Section 1. Managed-care bill of rights.--

(1) GENERAL PROVISIONS.--

(a) Each health maintenance organization shall establish a system to provide for the presentation and resolution of grievances brought by a subscriber or brought by a representative or provider acting on behalf of a subscriber and with the subscriber's consent. Such grievance may include, but need not be limited to, complaints regarding referral to a specialist, quality of care, choice and accessibility of providers, network adequacy, termination of coverage, denial of approval for coverage, or other limitations in the receipt of health care services. Each system for resolving grievances must be in writing, must be given to each subscriber and each provider, and must be incorporated into the health maintenance contract. Each grievance system must include:

1. The provision of the telephone numbers and business addresses of each employee of the health maintenance organization who is responsible for grievance resolution.

2. A system to record and document the status of all grievances, which must be maintained for at least 3 years.

3. The services of a representative to assist subscribers with grievance procedures upon request.

4. Establishment of a specified response time for the resolution of grievances, which may not exceed the time limits set forth in subsection (2) or subsection (3).

5. A detailed description of how grievances are processed and resolved.

6. A requirement that the determination must set forth the basis for any denial and include specific information concerning appeal rights, procedures for an independent external appeal, to whom and where to address any appeal, and the applicable deadlines for appeal.

(b) If a health maintenance organization fails to comply with any of the deadlines at any stage of the organization's internal review process, or waives the completion of the process, the subscriber, or the subscriber's representative or provider, is relieved of the obligation to complete the process and may proceed directly to the external appeals process set forth in subsection (4).

(c) All time limits set forth in subsections (2), (3), and (4) must include an additional 3 days for mailing following the date of the postmark. A decision with respect to urgent or emergency care must also be communicated by telephone.

(2) INFORMAL APPEAL PROCESS.--

(a) Each health maintenance organization must establish and maintain an informal internal appeal process whereby any subscriber, or representative or provider acting on behalf of a subscriber and with the subscriber's consent, who has a grievance concerning any of the actions by the health maintenance organization as described in paragraph (1)(a) or related thereto, shall be given the opportunity to

discuss and appeal that determination to the medical director or the physician designee who rendered the determination.

(b) An informal appeal under this subsection must be concluded as soon as possible in accordance with the medical exigencies of the case. If the appeal is from a determination regarding urgent or emergency care, the appeal must be resolved within 72 hours after the initial contact by the subscriber or the subscriber's representative or provider. In the case of all other appeals, the appeal must be resolved within 5 business days after the initial contact by the subscriber or the subscriber's representative or provider. If an appeal under this subsection is not resolved to the satisfaction of the subscriber, the health maintenance organization shall provide to the subscriber, the subscriber's provider, and the subscriber's representative, if applicable, a written explanation of the basis for the decision on the grievance and notification of the right to proceed to a formal appeals process under subsection (3). The notice must be postmarked within the applicable time limits prescribed in this paragraph.

(3) FORMAL INTERNAL APPEAL PROCESS.--

(a) Each health maintenance organization shall establish and maintain a formal internal appeal process whereby any subscriber, or representative or provider acting on behalf of a subscriber and with the subscriber's consent, who is dissatisfied with the results of the informal appeal under subsection (2) may pursue the subscriber's appeal before a panel of physicians selected by the health maintenance organization who have not been involved in the determination being appealed.

(b) The members of the formal appeal panel must include consultant practitioners who are trained in or who practice in the same specialty that would typically manage the case being appealed or must include other licensed health care professionals who are mutually agreed upon by the parties. The consulting practitioners or professionals may not have been involved in the determination being appealed. The consulting practitioners or professionals must participate in the panel's review of the case at the request of the subscriber or the subscriber's representative or provider.

(c) Within 10 business days after an appeal is filed under this subsection, the health maintenance organization must acknowledge in writing to the subscriber, or the subscriber's representative or provider, receipt of the appeal.

(d) A formal appeal under this subsection must be concluded as soon as possible. If the appeal is from a determination regarding urgent or emergency care, the appeal must be resolved within 72 hours after the filing of the formal appeal. In the case of all other appeals, the appeal must be resolved within 5 business days after the filing of the formal appeal.

(e) The health maintenance organization may extend the review for up to an additional 20 days if it demonstrates reasonable cause for the delay which is beyond its control and if the health maintenance organization provides a written progress report and explanation for the delay to the Agency for Health Care Administration. The health maintenance organization must notify the subscriber, and when applicable the subscriber's representative or provider, of the delay prior to the end of the time limitation in paragraph (d).

(f) If a formal appeal under this subsection is denied, the health maintenance organization must notify the subscriber, and where applicable the subscriber's avocate or provider, of the denial. The notice must be in writing, set forth the basis for the denial, and include notice of the subscriber's right to proceed to an independent external appeal under subsection (4). The notice must include specific instruction on how and where the subscriber may file for an external appeal of the denial.

(4) EXTERNAL APPEAL PROCESS.--

(a) If a subscriber, or a subscriber's representative or provider acting on behalf of a subscriber and with the subscriber's consent, is dissatisfied with the results of a formal internal appeal under subsection (3), the subscriber, or the subscriber's representative or provider, may pursue an appeal to the Agency for Health Care Administration for referral to an independent utilization review organization.

(b) To initiate an external appeal, the subscriber, or the subscriber's representative or provider, must file a written request with the Agency for Health Care Administration. The appeal must be filed within 30 business days after receipt of the written decision of the formal internal appeal under subsection (3). The agency may extend for an additional 30 days the time for filing the appeal upon a showing of good cause. A delay under this paragraph does not affect a subscriber's right to proceed under any other applicable state or federal law.

(c) Within 5 days after receiving a request for an external appeal, the Agency for Health Care Administration shall determine whether the procedural requirements described in this section have been satisfied. If those requirements

have been satisfied, the agency shall assign the appeal to an independent utilization review organization for review.

(d) The independent utilization review organization shall assign the case for a full review within 5 days after receiving an appeal under paragraph (c) and shall determine whether, as a result of the health maintenance organization's determination, the subscriber was deprived of any of the rights described in paragraph (1)(a). The independent utilization review organization shall consider all pertinent medical records; reports submitted by the consulting physician and other documents submitted by the parties; any applicable and generally accepted practice guidelines developed by the Federal Government, national or professional medical societies, boards, or associations; and any applicable clinical protocols or practice guidelines developed by the health maintenance organization. The independent utilization review organization shall refer all cases for review to a consultant physician or other health care professional in the same speciality or area of practice who manages the type of treatment that is the subject of the appeal. All final recommendations of the independent utilization review organization are subject to approval by the medical director of the independent utilization review organization or by an alternate physician if the medical director has a conflict of interest.

(e) The independent utilization review organization shall issue its recommended decision to the Agency for Health Care Administration and provide copies to the subscriber, the subscriber's representative or provider if applicable, and the health maintenance organization. The decision must be issued as soon as possible in accordance with the medical exigencies

of the case which, except as provided in this paragraph, may not exceed 30 business days after receipt of all documentation necessary to complete the review. However, the independent utilization review organization may extend its review for a reasonable period due to circumstances beyond the control of all parties to the action, and must advise the subscriber, the subscriber's representative or provider if applicable, the health maintenance organization, and the Agency for Health Care Administration in a formal statement explaining the delay. If any party fails to provide documentation sought by the independent utilization review organization which is within that party's control, the party waives its position with respect to the review.

(f) If the independent utilization review organization determines that the subscriber was deprived of medically necessary covered services, the independent utilization review organization shall, in its recommended decision, advise all parties of the appropriate covered health care services the subscriber is entitled to receive. In all cases, the independent utilization review organization shall advise all parties of the basis of its recommended decision.

(g) Any party may appeal the recommended decision to the Agency for Health Care Administration, with a copy of the appeal to all other parties, within 20 days after the date the decision is issued. If a decision is appealed, any other party may file with the Agency for Health Care Administration its position on the issues raised in the appeal, with copies to all other parties, within 20 days after receipt of the initial appeal.

(h) The Agency for Health Care Administration shall issue its decision within 30 days after completion of the

record in the case. The decision must include an explanation of the basis supporting the decision. The final decision of the Agency for Health Care Administration is binding on the health maintenance organization.

(i) The Agency for Health Care Administration shall issue a report 30 days after the end of each calendar quarter which summarizes all appeals and final decisions. The report must maintain the confidentiality of patient information and shall be provided to the Governor, the Insurance Commissioner, and the appropriate substantive committees of the Senate and the House of Representatives. The quarterly reports shall be available to the public.

(5) INDEPENDENT UTILIZATION-REVIEW ORGANIZATIONS.--

(a) The Agency for Health Care Administration shall enter into contracts with as many independent utilization-review organizations throughout the state as the agency considers necessary to conduct external appeals under this section. Each independent utilization-review organization must be independent of any insurance carrier, and a physician may not be assigned to hear any appeal that would constitute a conflict of interest. As part of its contract, each independent utilization-review organization shall submit to the Agency for Health Care Administration a list of the organization's physician reviewers and the health maintenance organizations, health insurers, health providers, and other health care providers with whom the organization has a contractual or other business arrangement. Each organization shall update the list of its business relationships as changes, additions, or deletions occur.

(b) Upon any request for an external appeal, the Agency for Health Care Administration shall assign the appeal

to an approved independent utilization-review organization on a random basis. The agency may deny an assignment if, in its determination, the assignment would result in a conflict of interest or would otherwise create the appearance of impropriety.

(c) The Agency for Health Care Administration shall adopt rules to administer this section.

Section 2. Right of subscribers to maintain an action against a health maintenance organization.--

(1) DEFINITIONS.--As used in this section, the term:

(a) "Appropriate and medically necessary" means the standard for health care services as determined by physicians and health care providers in accordance with the prevailing practices and standards of the medical profession and community.

(b) "Health care treatment decision" means a determination made when medical services are actually provided by the health care plan and a decision that affects the quality of the diagnosis, care, or treatment provided to the plans subscribers.

(c) "Ordinary care" means, in the case of a health maintenance organization, that degree of care that a health maintenance organization of ordinary prudence would use under the same or similar circumstances. In the case of a person who is an employee, agent, or representative of a health maintenance organization, the term "ordinary care" means that degree of care that a person of ordinary prudence in the same profession, specialty, or area of practice would use in the same or similar circumstances.

(2) APPLICATION.--

(a) A health maintenance organization has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to a subscriber which is proximately caused by its failure to exercise such ordinary care.

(b) A health maintenance organization is also liable for damages for harm to a subscriber which are proximately caused by the health care treatment decisions made by its employees, agents, or representatives who act on behalf of the health maintenance organization and over whom it has the right to exercise influence or control and whose actions or failure to act constitute the failure to exercise ordinary care.

(c) It is a defense to any action asserted against a health maintenance organization that:

1. Neither the health maintenance organization or any employee, agent, or representative for whose conduct such health maintenance organization is liable under paragraph (b) controlled, influenced, or participated in the health care treatment decision; and

2. The health maintenance organization did not deny or delay payment for any treatment prescribed or recommended by a health care provider to the subscriber.

(d) The standards in paragraphs (a) and (b) do not create an obligation on the part of the health maintenance organization to provide treatment to a subscriber which is not covered by the health care plan.

(e) This section does not create any liability on the part of an employer, an employer group-purchasing organization, or a pharmacy licensed by the Board of Pharmacy which purchases coverage or assumes risk on behalf of its employees.

(f) A health maintenance organization may not remove a physician or health care provider from its plan or refuse to renew the physician or health care provider with its plan for advocating on behalf of a subscriber for appropriate and medically necessary health care for the subscriber.

(g) A health maintenance organization may not enter into a contract with a physician, hospital, or other health care provider or pharmaceutical company which includes an indemnification or hold-harmless clause for the acts or conduct of the health maintenance organization. Any such indemnification or hold-harmless clause in an existing contract is void.

(h) Any law of this state prohibiting a health maintenance organization from practicing medicine or being licensed to practice medicine may not be asserted as a defense by a health maintenance organization in an action brought against it pursuant to this section or any other law.

(i) In an action against a health maintenance organization, a finding that a physician or other health care provider is an employee, agent, or representative of such health maintenance organization may not be based solely on proof that such person's name appears in a listing of approved physicians or health care providers made available to subscribers under a health care plan.

(j) This section does not apply to workers' compensation insurance coverage.

(3) LIMITATIONS ON ACTIONS.--

(a) A person may not maintain an action under this section against a health maintenance organization that is required to comply with the appeal process provided under

section 1 of this act unless the subscriber or the subscriber's representative:

1. Has exhausted the appeals and review applicable under the appeal process; or

2. Before instituting the action:

a. Gives written notice of the claim as provided by paragraph (b); and

b. Agrees to submit the claim to a review by an independent review organization as required by paragraph (c).

(b) Notice of intent to maintain an action must be delivered or mailed to the health maintenance organization against whom the action is made not later than the 30th day before the date the claim is filed.

(c) The subscriber, or the subscriber's representative, must submit the claim to a review by an independent review organization if the health maintenance organization against whom the claim is made requests the review not later than the 14th day after the date notice under paragraph (b) is received by the health maintenance organization. If the health maintenance organization does not request the review within the period specified by this paragraph, the subscriber, or the subscriber's representative, is not required to submit the claim to independent review before maintaining the action.

(d) Subject to paragraph (e), if the subscriber has not complied with paragraph (a), an action under this section may not be dismissed by the court, but the court may, in its discretion, order the parties to submit to an independent review or mediation or other nonbinding alternative dispute resolution and may abate the action for a period not to exceed 30 days for such purposes. Such orders of the court are the

sole remedies available to a party complaining of a subscriber's failure to comply with paragraph (a).

(e) The subscriber is not required to comply with paragraph (c) and an order of abatement or other order pursuant to paragraph (d) for failure to comply may not be imposed if the subscriber has filed a pleading alleging in substance that:

1. Harm to the subscriber has already occurred because of the conduct of the health maintenance organization or because of an act or omission of an employee, agent, or representative of such organization for whose conduct it is liable; and

2. The review would not be beneficial to the subscriber.

(f) If the court, upon motion by the defendant health maintenance organization, finds after hearing that such pleading was not made in good faith, the court may enter an order pursuant to paragraph (d).

(g) If the subscriber, or the subscriber's representative, seeks to exhaust the appeals and review or provides notice, as required by paragraph (a), before the statute of limitations applicable to a claim against a health maintenance organization has expired, the limitations period is tolled until the later of:

1. The 30th day after the date the subscriber, or the subscriber's representative, has exhausted the process for appeals and review applicable under the appeals process; or

2. The 40th day after the date the subscriber, or the subscriber's representative, gives notice under paragraph (b).

(h) This section does not prohibit a subscriber from pursuing other appropriate remedies, including injunctive

relief, a declaratory judgment, or other relief available under law, if the requirement of exhausting the process for appeal and review places the subscriber's health in serious jeopardy.

Section 3. Disclosure of information.--This section applies to all health maintenance contracts entered into by a health maintenance organization with a subscriber or group of subscribers.

(1) Each health maintenance organization shall supply written disclosure information to each subscriber, and upon request to each prospective subscriber prior to enrollment, which may be incorporated into the health maintenance contract. If any inconsistency exists between a separate written disclosure statement and the health maintenance contract, the terms of the health maintenance contract shall control. The information to be disclosed must include at least the following:

(a) A description of coverage provisions; health care benefits; benefit maximums, including benefit limitations; and exclusions of coverage, including the definition of medical necessity used in determining whether benefits will be covered.

(b) A description of requirements for prior authorization or other requirements for treatments and services.

(c) A description of the utilization review policies and procedures used by the health maintenance organization, including:

1. The circumstances under which utilization review will be undertaken;

2. The toll-free telephone number of the utilization review agent;

3. The timeframes under which utilization review decisions must be made for prospective, retrospective, and concurrent decisions;

4. The right to reconsideration;

5. The right to an appeal, including the expedited and standard appeals processes and the timeframes for such appeals;

6. The right to designate a representative;

7. A notice that all denials of claims will be made by qualified health care providers and that all notices of denials will include information about the basis of the decision;

8. A notice of the right to an appeal, together with a description of the appeal process established under section 1 of this act; and

9. Any further appeal rights, if any.

(d) A description prepared annually of the types of methodologies the health maintenance organization uses to reimburse health care providers, specifying the type of methodology that is used to reimburse particular types of providers or reimburse for the provision of particular types of services. However, this paragraph does not require disclosure of individual contracts or the specific details of any financial arrangement between a health maintenance organization and a health care provider.

(e) An explanation of a subscriber's financial responsibility for payment of premiums, coinsurance, copayments, deductibles, and any other charges; annual limits on a subscriber's financial responsibility; caps on payments

for covered services; and financial responsibility for noncovered health care procedures, treatments, or services.

(f) An explanation, where applicable, of a subscriber's financial responsibility for payment when services are provided by a health care provider who is not part of the health maintenance organization's network of providers or by any provider without required authorization.

(g) A description of the grievance procedures to be used to resolve disputes between the health maintenance organization and a subscriber, including:

1. The right to file a grievance regarding any dispute between the health maintenance organization and a subscriber;

2. The right to file a grievance orally when the dispute is about referrals or covered benefits;

3. The toll-free telephone number that subscribers may use to file an oral grievance;

4. The timeframes and circumstances for expedited and standard grievances;

5. The right to appeal a grievance determination and the procedures for filing such an appeal;

6. The timeframes and circumstances for expedited and standard appeals;

7. The right to designate a representative; and

8. A notice that all disputes involving clinical decisions will be made by qualified health care providers and that all notices of determination will include information about the basis of the decision and further appeal rights, if any.

(h) A description of the procedure for obtaining emergency services. Such description must include a definition of emergency services, a notice that emergency services are

not subject to prior approval, and a description of the subscriber's financial and other responsibilities regarding obtaining such services, including the subscriber's financial responsibilities, if any, when such services are received outside the service area of the health maintenance organization.

(i) Where applicable, a description of procedures for subscribers to select and access the health maintenance organization's primary and specialty care providers, including notice of how to determine whether a participating provider is accepting new patients.

(j) Where applicable, a description of the procedures for changing primary and specialty care providers within the health maintenance organization's network of providers.

(k) Where applicable, notice that a subscriber may obtain a referral to a health care provider outside of the organization's network when the health maintenance organization does not have a health care provider in the network with appropriate training and experience to meet the particular health care needs of the subscriber, and the procedure by which the subscriber may obtain such referral.

(l) Where applicable, notice that a subscriber with a condition that requires ongoing care from a specialist may request a standing referral to such a specialist and the procedure for requesting and obtaining such a standing referral.

(m) Where applicable, notice that a subscriber with a life-threatening condition or disease, or a degenerative and disabling condition or disease, either of which requires specialized medical care over a prolonged period, may request a specialist responsible for providing or coordinating the

subscriber's medical care, and the procedure for requesting and obtaining such a specialist.

(n) Where applicable, notice that a subscriber with a life-threatening condition or disease, or a degenerative and disabling condition or disease, either of which requires specialized medical care over a prolonged period, may request access to a specialty care center, and the procedure by which such access may be obtained.

(o) A description of how the health maintenance organization addresses the needs of non-English-speaking subscribers.

(p) Notice of all appropriate mailing addresses and telephone numbers to be used by subscribers seeking information or authorization.

(q) Where applicable, a listing by specialty, which may be in a separate document that is updated annually, of the name, address, and telephone number of all participating health care providers, including facilities, and the board certification number of physicians.

(r) A description of the mechanisms by which subscribers may participate in developing policies of the health maintenance organization.

(2) Each health maintenance organization, upon the request of a subscriber or prospective subscriber shall:

(a) Provide a list of the names, business addresses, and official positions of the board of directors, officers, and members of the health maintenance organization.

(b) Provide a copy of the most recent annual certified financial statement of the health maintenance organization, including its balance sheet and summary of receipts and disbursements prepared by a certified public accountant.

(c) Provide a copy of the most recent health maintenance contracts.

(d) Provide information relating to consumer complaints compiled under section 408.10, Florida Statutes.

(e) Provide the procedures for protecting the confidentiality of medical records and other subscriber information.

(f) Where applicable, allow subscribers and prospective subscribers to inspect drug formularies used by the health maintenance organization and disclose whether individual drugs are included or excluded from coverage.

(g) Provide a written description of the organizational arrangements and ongoing procedures of the health maintenance organization's quality assurance program, if any.

(h) Provide a description of the procedures followed by the health maintenance organization in making decisions about the experimental or investigational nature of individual drugs, medical devices, or treatments in clinical trials.

(i) Provide individual health care provider's affiliations with participating hospitals, if any.

(j) Upon written request, provide specific written clinical review criteria relating to a particular condition or disease and, where appropriate, other clinical information that the health maintenance organization considers in its utilization review and a description of how it is used in the utilization-review process. However, to the extent such information is proprietary to the health maintenance organization, the information may only be used for the purposes of assisting the subscriber or prospective subscriber

in evaluating the covered services provided by the organization.

(k) Where applicable, provide the written application procedures and minimum qualification requirements for a health care provider to be considered by the health maintenance organization for participation in the organization's network of providers.

(l) Disclose any other information required by rule of the Department of Insurance or the Agency for Health Care Administration.

(3) This section does not prevent a health maintenance organization from changing or updating the materials that are made available to subscribers.

(4) As to any program where the subscriber must select a primary care provider, if a participating primary care provider becomes unavailable to provide services to a subscriber, the health maintenance organization shall provide written notice within 15 days after the date the organization becomes aware of such unavailability to each subscriber who has chosen the provider as his or her primary care provider. If a subscriber is enrolled in a managed care plan and is undergoing an ongoing course of treatment with any other participating provider who becomes unavailable to continue to provide services to such subscriber, and the health maintenance organization is aware of such ongoing course of treatment, the organization shall provide written notice within 15 days after the date the organization becomes aware of such unavailability to such subscriber. Each notice must also describe the procedures for continuing care and for choosing an alternative provider.

Section 4. Provider profiles.--Each health maintenance organization, in developing provider profiles or otherwise measuring the performance of health care providers, shall:

(1) Make allowances for the severity of illness or condition of the patient mix;

(2) Make allowances for patients with multiple illnesses or conditions;

(3) Make available to the Department of Insurance and the Agency for Health Care Administration documentation of how the health maintenance organization makes such allowances; and

(4) Inform subscribers and participating providers, upon request, how the health maintenance organization considers patient mix when profiling or evaluating providers.

Section 5. Retaliatory action prohibited.--A health maintenance organization may not take any retaliatory action against an employee because the employee does any of the following:

(1) Discloses, or threatens to disclose, to a supervisor or any agency an activity, policy, or practice of the health maintenance organization or another employer with whom there is a business relationship which the employee reasonably believes violates a law or rule, or, in the case of an employee who is a licensed or certified health care provider, reasonably believes constitutes improper quality of patient care.

(2) Provides information to, or testifies before, any agency conducting an investigation, hearing, or inquiry into any violation of law or rule by a health maintenance organization or another employer with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care provider, provides information to, or

testifies before, any agency conducting an investigation, hearing, or inquiry into the quality of patient care.

(3) Objects to, or refuses to participate in any activity, policy, or practice that the employee reasonably believes:

(a) Violates a law or rule, or, if the employee is a licensed or certified health care provider, constitutes improper quality of patient care;

(b) Is fraudulent or criminal; or

(c) Is incompatible with a clear mandate of public policy concerning the public health, safety, or welfare or protection of the environment.

Section 6. Referrals to another provider.--In any case in which there is not a health care provider within the health maintenance organization's provider network to provide a covered benefit, the health maintenance organization shall arrange for a referral to a provider with the necessary expertise and ensure that the subscriber obtains the covered benefit at a cost that does not exceed the subscriber's cost if the benefit were obtained from a participating provider.

Section 7. Prescription drug formulary.--If a health maintenance organization uses a formulary for prescription drugs, the health maintenance organization must include a written procedure whereby a subscriber may obtain, without penalty and in a timely fashion, specific drugs and medications that are not included in the formulary when:

(1) The formulary's equivalent has been ineffective in the treatment of the subscriber's disease or condition; or

(2) The formulary's drug causes, or is reasonably expected to cause, adverse or harmful reactions in the subscriber.

Section 8. Arbitrary limitations or conditions for the provision of services prohibited.--

(1) A health maintenance organization may not arbitrarily interfere with or alter the decision of the health care provider regarding the manner or setting in which particular services are delivered if the services are medically necessary or appropriate for treatment or diagnosis to the extent that such treatment or diagnosis is otherwise a covered benefit.

(2) Subsection (1) does not prohibit a health maintenance organization from limiting the delivery of services to one or more health care providers within a network of such providers.

(3) As used in subsection (1), the term "medically necessary or appropriate" means a service or benefit that is consistent with generally accepted principles of professional medical practice.

Section 9. Discrimination prohibited.--

(1) Subject to subsection (2), a health maintenance organization, with respect to health insurance coverage, may not discriminate against a subscriber in the delivery of health care services consistent with the benefits covered under the health maintenance contract, or coverage required by law, based on race, color, ethnicity, national origin, religion, sex, age, mental or physical disability, sexual orientation, genetic information, or source of payment.

(2) Subsection (1) does not apply to eligibility for coverage; the offering or guaranteeing of an offer of coverage; the application of an exclusion for a preexisting condition, consistent with applicable law; or premiums charged for coverage under the health maintenance contract.

Section 10. Termination of a provider.--Each health maintenance organization shall establish a policy governing the termination of providers. The policy must assure the continued coverage of services at the contract price by a terminated provider for up to 120 calendar days in cases where it is medically necessary for the subscriber to continue treatment with the terminated provider. The case of the pregnancy of a subscriber constitutes medical necessity and coverage of services by the terminated provider shall continue to the postpartum evaluation of the subscriber, up to 6 weeks after delivery. The policy must clearly state that the determination as to the medical necessity of a subscriber's continued treatment with a terminated provider is subject to the appeal procedures set forth in section 1 of this act.

Section 11. (1) The Insurance Commissioner may suspend or revoke a certificate of authority issued under part I of chapter 641, Florida Statutes, or deny an application for a certificate of authority, if the commissioner finds that:

(a) The health maintenance organization is operating significantly in contravention of its basic organizational document, unless amendments to the basic organizational document or other submissions that are consistent with the operations of the organization have been filed with and approved by the commissioner.

(b) The health maintenance organization does not provide or arrange for basic health care services.

(c) The health maintenance organization is unable to fulfill its obligations to furnish health care coverage.

(d) The health maintenance organization is no longer financially responsible and may reasonably be expected to be

unable to meet its obligations to subscribers or prospective subscribers.

(e) The health maintenance organization has failed to correct, within the time prescribed, any deficiency occurring due to the impairment of the prescribed minimum net worth of the health maintenance organization.

(f) The health maintenance organization has failed to implement the grievance procedures and appeal process required by section 1 of this act in a reasonable manner to resolve valid complaints.

(g) The health maintenance organization, or a person acting on behalf of the organization, has intentionally advertised or merchandised the services of the organization in an untrue, a misrepresentative, a misleading, a deceptive, or an unfair manner.

(h) The continued operation of the health maintenance organization would be hazardous to the subscribers of the organization.

(i) The health maintenance organization has otherwise failed to substantially comply with part I of chapter 641, Florida Statutes.

(2) The Insurance Commissioner may impose a civil penalty of not more than $25,000 against a health maintenance organization for each cause listed in subsection (1). The civil penalties may not exceed $100,000 against any one health maintenance organization in 1 calendar year. The penalty may be imposed in addition to or instead of a suspension or revocation of the organization's certificate of authority.

Section 12. Section 641.513, Florida Statutes, is repealed.

Section 13. Prohibition against requiring or coercing a subscriber to use a provider other than the provider selected by the subscriber; penalties.--

(1) Notwithstanding any other provision of law to the contrary, any subscriber to a health plan offered by or through a health maintenance organization, managed care organization, or prepaid health plan is entitled at all times to free, full, and absolute choice in the selection of a provider or facility licensed or permitted under chapter 458, chapter 459, chapter 460, chapter 461, chapter 463, chapter 465, or chapter 466, Florida Statutes. It is expressly forbidden for any health plan to contain any provision that would require or coerce a subscriber to the plan to use any provider other than the provider selected by the subscriber. Health maintenance organizations, managed care provider organizations, and prepaid health plans must allow any health care provider to participate as a service provider under a health plan offered by the health maintenance organization, managed care organization, or prepaid health plan, if the health care provider agrees to:

(a) Accept the reimbursement rates negotiated by the health maintenance organization, managed care provider organization, or prepaid health plan with other health care providers that provide the same service under the health plan; and

(b) Comply with all guidelines relating to quality of care and utilization criteria which must be met by other employee or nonemployee providers.

(2) A health maintenance organization, managed care provider organization, or prepaid health plan that violates subsection (1) is subject to a civil fine in the amount of:

(a) Up to $25,000 for each violation; or

(b) If the Director of Health Care Administration determines that the entity has engaged in a pattern of violations of subsection (1), up to $100,000 for each violation.

Section 14. Subsection (10) is added to section 627.419, Florida Statutes, to read:

627.419 Construction of policies.--

(10)(a) Notwithstanding any other provision of law to the contrary, any person covered under any health insurance policy, health care services plan, or other contract that provides for payment for medical expense benefits or procedures is entitled at all times to free, full, and absolute choice in the selection of a provider or facility licensed or permitted under chapter 458, chapter 459, chapter 460, chapter 461, chapter 463, chapter 465, or chapter 466. It is expressly forbidden for any health plan to contain any provision that would require or coerce a person covered by the plan to use any provider other than the provider selected by the subscriber. Any health insurance policy, health care services plan, or other contract that provides for payment for medical expense benefits or procedures must allow any health care provider to participate as a service provider under a health plan offered by the health insurance policy, health care services plan, or other contract that provides for payment for medical expense benefits or procedures, if the health care provider agrees to:

1. Accept the reimbursement rates negotiated by the health insurance policy, health care services plan, or other contract that provides for payment for medical expense

benefits or procedures with other health care providers that provide the same service under the health plan; and

2. Comply with all guidelines relating to quality of care and utilization criteria which must be met by other providers with whom the health insurance policy, health care services plan, or other contract that provides for payment for medical expense benefits or procedures has contractual arrangements for those services.

(b) The provider of any health insurance policy, health care services plan, or other contract that violates paragraph (a) is subject to a civil fine in the amount of:

1. Up to $25,000 for each violation; or

2. If the Insurance Commissioner determines that the provider has engaged in a pattern of violations of paragraph (a), up to $100,000 for each violation.

Section 15. The provisions of sections 13 and 14 of this act do not apply to any health insurance policy that is in force before the effective date of this act but do apply to such policies at the next renewal period immediately following October 1, 2002.

Section 16. Section 641.28, Florida Statutes, is amended to read:

641.28 Civil remedy.--In any civil action brought to enforce the terms and conditions of a health maintenance organization contract, only the prevailing subscriber, or a representative or provider acting on behalf of a subscriber, ~~party~~ is entitled to recover reasonable attorney's fees and court costs. ~~This section shall not be construed to authorize a civil action against the department, its employees, or the Insurance Commissioner or against the Agency for Health Care Administration, its employees, or the director of the agency.~~

Section 17. This act shall take effect October 1, 2002.

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SENATE SUMMARY

Requires health maintenance organizations to provide an appeal process to resolve grievances brought by subscribers. Provides for an external appeal when a subscriber is dissatisfied with the results of a formal appeal. Provides for the Agency for Health Care Administration to adopt rules governing the appeal process. Provides that a subscriber may maintain an action against a health maintenance organization that has not exercised ordinary care in making treatment decisions. Provides for a claim of liability to be reviewed by an independent review organization. Provides requirements for profiles of health care providers and the measurement of the performance of health care providers. Prohibits a health maintenance organization from taking retaliatory action against an employee for certain actions or disclosures concerning improper patient care. Requires that a health maintenance organization refer a subscriber to an outside provider in cases in which there is not a provider within the organization's network to provide a covered benefit. Prohibits a health maintenance organization from arbitrarily interfering with certain decisions of a health care provider. Authorizes the Insurance Commissioner to suspend or revoke a certificate of authority upon finding certain violations by a health maintenance organization. Provides that subscribers are entitled to free, full, and absolute choice of providers offering physician, chiropractic, podiatry, optometry, pharmacy, or dental services, and prohibits coercion or coercive requirements relating to subscriber selection. Provides for civil fines for violations. (See bill for details.)