

By Representative Negron

1 A bill to be entitled
2 An act relating to solvency of insurers and
3 health maintenance organizations; amending s.
4 624.404, F.S.; revising a definition; amending
5 s. 624.80, F.S.; revising a definition;
6 amending s. 624.81, F.S.; specifying authority
7 of the Department of Insurance relating to
8 certain notice requirements; authorizing the
9 department to adopt certain rules; amending s.
10 624.84, F.S.; specifying that administrative
11 review of certain orders does not operate as an
12 automatic stay of such orders; specifying that
13 certain actions are not subject to
14 administrative review; amending s. 641.26,
15 F.S.; revising certain annual report
16 requirements; amending s. 641.35, F.S.;
17 specifying inclusion of certain losses and
18 claims under liabilities of a health
19 maintenance organization under certain
20 circumstances; providing an exception; amending
21 s. 641.365, F.S.; revising limitations on
22 certain dividend payments or distributions to
23 stockholders by a health maintenance
24 organization; specifying criteria for making
25 payments, declaring dividends, or making
26 distributions; specifying criteria for
27 department approval of certain dividends or
28 distributions; providing an effective date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (b) of subsection (4) of section
2 624.404, Florida Statutes, is amended to read:

3 624.404 General eligibility of insurers for
4 certificate of authority.--To qualify for and hold authority
5 to transact insurance in this state, an insurer must be
6 otherwise in compliance with this code and with its charter
7 powers and must be an incorporated stock insurer, an
8 incorporated mutual insurer, or a reciprocal insurer, of the
9 same general type as may be formed as a domestic insurer under
10 this code; except that:

11 (4)

12 (b) A "fronting company" is an authorized insurer
13 which by reinsurance or otherwise generally transfers more
14 than 50 percent to one unauthorized insurer which does not
15 meet the requirements of s. 624.610(3)(a), (b), or (c)~~is not~~
16 ~~an approved reinsurer~~, or more than 75 percent to two or more
17 unauthorized insurers which do not meet the requirements of s.
18 624.610(3)(a), (b), or (c)~~are not approved reinsurers~~, of the
19 entire risk of loss on all of the insurance written by it in
20 this state, or on one or more lines of insurance, on all of
21 the business produced through one or more agents or agencies,
22 or on all of the business from a designated geographical
23 territory, without obtaining the prior approval of the
24 department.

25 Section 2. Subsection (2) of section 624.80, Florida
26 Statutes, is amended to read:

27 624.80 Definitions.--As used in this part:

28 (2) "Unsound condition" means that the department has
29 determined that one or more any of the following conditions
30 exist with respect to an insurer:

1 (a) The insurer's required surplus, capital, or
2 capital stock is impaired to an extent prohibited by law;

3 (b) The insurer continues to write new business when
4 it has not maintained the required surplus or capital; ~~or~~

5 (c) The insurer attempts to dissolve or liquidate
6 without first having made provisions, satisfactory to the
7 department, for liabilities arising from insurance policies
8 issued by the insurer; or

9 (d) The insurer meets one or more of the grounds in s.
10 631.051 for the appointment of the department as receiver.

11 Section 3. Subsections (1) and (6) of section 624.81,
12 Florida Statutes, are amended, and subsection (10) is added to
13 said section, to read:

14 624.81 Notice to comply with written requirements of
15 department; noncompliance.--

16 (1) If the department determines that the conditions
17 set forth in subsection (2) exist, the department shall issue
18 an order placing ~~notify~~ the insurer in administrative
19 supervision ~~writing of its determination~~, setting forth the
20 reasons giving rise to the determination, and specifying that
21 the department is applying and effectuating the provisions of
22 this part.

23 (6) If the department and the insurer are unable to
24 agree on the provisions of the plan, the department may
25 require the insurer to take such corrective action as may be
26 reasonably necessary to remove the causes and conditions
27 giving rise to the need for administrative supervision ~~proceed~~
28 ~~under applicable provisions of this code other than the~~
29 ~~provisions of this part.~~

30 (10) The department may adopt rules consistent with
31 the National Association of Insurance Commissioners' 1997

1 "Model Regulation to Define Standards and Commissioner's
2 Authority for Companies Deemed to Be in Hazardous Financial
3 Condition," which are necessary to implement the provisions of
4 this part.

5 Section 4. Section 624.84, Florida Statutes, is
6 amended to read:

7 624.84 ~~Review and stay of action.--~~Review under s.
8 120.57 of an order placing an insurer in administrative
9 supervision does not operate as an automatic stay of the
10 order. During the period of supervision, the actions taken or
11 proposed to be taken by the supervisor are not subject to
12 review under chapter 120.~~During the period of supervision,~~
13 ~~the insurer may contest an action taken or proposed to be~~
14 ~~taken by the supervisor, specifying the manner wherein the~~
15 ~~action complained of would not result in improving the~~
16 ~~condition of the insurer, and the request shall stay the~~
17 ~~action specified pending reconsideration of the action by the~~
18 ~~department. If upon reconsideration the action of the~~
19 ~~department is upheld, the stay shall be lifted. Denial of the~~
20 ~~insurer's request upon reconsideration entitles the insurer to~~
21 ~~request a proceeding under ss. 120.569 and 120.57.~~

22 Section 5. Paragraph (f) of subsection (1) and
23 subsections (3) and (8) of section 641.26, Florida Statutes,
24 are amended to read:

25 641.26 Annual report.--

26 (1) Every health maintenance organization shall,
27 annually within 3 months after the end of its fiscal year, or
28 within an extension of time therefor as the department, for
29 good cause, may grant, in a form prescribed by the department,
30 file a report with the department, verified by the oath of two
31 officers of the organization or, if not a corporation, of two

1 persons who are principal managing directors of the affairs of
2 the organization, properly notarized, showing its condition on
3 the last day of the immediately preceding reporting period.
4 Such report shall include:
5 (f) An actuarial certification that:
6 1. The health maintenance organization is actuarially
7 sound, which certification shall consider the rates, benefits,
8 and expenses of, and any other funds available for the payment
9 of obligations of, the organization.
10 2. The rates being charged or to be charged are
11 actuarially adequate to the end of the period for which rates
12 have been guaranteed.
13 3. Incurred but not reported claims and claims
14 reported but not fully paid have been adequately provided for.
15 4. The health maintenance organization has adequately
16 provided for all obligations required by s. 641.35(3)(a).
17 (3) Every health maintenance organization shall file
18 quarterly, for the first three calendar quarters of each year
19 within 45 days after each of its quarterly reporting periods,
20 an unaudited financial statement of the organization as
21 described in paragraphs (1)(a) and (b). The statement for the
22 quarter ending March 31 shall be filed on or before May 15,
23 the statement for the quarter ending June 30 shall be filed on
24 or before August 15, and the statement for the quarter ending
25 September 30 shall be filed on or before November 15.The
26 quarterly report shall be verified by the oath of two officers
27 of the organization, properly notarized.
28 (8) Each health maintenance organization shall file
29 one copy of its annual statement convention blank in
30 electronic form, along with such additional filings as
31 prescribed by the department for the preceding calendar year

1 or quarter, with the National Association of Insurance
2 Commissioners. Each health maintenance organization shall pay
3 fees assessed by the National Association of Insurance
4 Commissioners to the department a reasonable fee to cover
5 costs associated with the filing and analysis of the documents
6 by the National Association of Insurance Commissioners.

7 Section 6. Paragraph (a) of subsection (3) of section
8 641.35, Florida Statutes, is amended to read:

9 641.35 Assets, liabilities, and investments.--

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

13 (a) The amount, estimated consistently with the
14 provisions of this part, necessary to pay all of its unpaid
15 losses and claims incurred for or on behalf of a subscriber,
16 on or prior to the end of the reporting period, whether
17 reported or unreported, including contract and premium
18 deficiency reserves. If a health maintenance organization,
19 through a capitation or other contractual arrangement,
20 transfers to any entity other than this state, the United
21 States, or an agency thereof or to an insurer or health
22 maintenance organization authorized in this state the
23 obligation to pay any provider for any claim arising from
24 services provided to or for the benefit of any subscriber, for
25 purposes of determining the financial condition of the health
26 maintenance organization, the liabilities of the health
27 maintenance organization under this section shall include the
28 amount of those losses and claims to the extent that the
29 provider has not received payment therefor, unless obligations
30 under such contracts are secured by a financial instrument

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1 acceptable to the department which assures full payment of
2 those claims.

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4 The department, upon determining that a health maintenance
5 organization has failed to report liabilities that should have
6 been reported, shall require a corrected report which reflects
7 the proper liabilities to be submitted by the organization to
8 the department within 10 working days of receipt of written
9 notification.

10 Section 7. Subsections (1) and (2) of section 641.365,
11 Florida Statutes, are amended to read:

12 641.365 Dividends.--

13 (1)(a) A health maintenance organization shall not pay
14 any dividend or distribute cash or other property to
15 stockholders except out of that part of its available and
16 accumulated surplus funds which is derived from realized net
17 operating profits on its business and net realized capital
18 gains. ~~Dividend payments or distributions to stockholders~~
19 ~~shall not exceed 10 percent of such surplus in any one year~~
20 ~~unless otherwise approved by the department. In addition to~~
21 ~~such limited payments, a health maintenance organization may~~
22 ~~make dividend payments or distributions out of the health~~
23 ~~maintenance organization's entire net operating profits and~~
24 ~~realized net capital gains derived during the immediately~~
25 ~~preceding calendar or fiscal year, as applicable.~~

26 (b) In no event shall a health maintenance
27 organization pay or declare any dividend or distribute cash or
28 other property to or on behalf of any stockholder if,
29 immediately before or after such distribution, the health
30 maintenance organization's available and accumulated surplus
31 funds, which are derived from realized net operating profits

1 on its business and net realized gains, are or would be less
2 than zero.

3 (c) A health maintenance organization may make
4 dividend payments or distributions to stockholders without the
5 prior written approval of the department when:

6 1. The dividend is equal to or less than the greater
7 of:

8 a. Ten percent of the health maintenance
9 organization's accumulated surplus funds which are derived
10 from realized net operating profits on its business and net
11 realized capital gains as of the immediate preceding calendar
12 year; or

13 b. The health maintenance organization's entire net
14 operating profit and realized net capital gains derived during
15 the immediately preceding calendar year.

16 2. The health maintenance organization will have
17 surplus equal to or exceeding 115 percent of the minimum
18 required statutory surplus after the dividend or distribution
19 is made.

20 3. The health maintenance organization has filed a
21 notice with the department at least 30 days prior to the
22 dividend payment or distribution, or such shorter period of
23 time as approved by the department on a case-by-case basis.

24 4. The notice includes a certification by an officer
25 of the health maintenance organization attesting that after
26 payment of the dividend or distribution the health maintenance
27 organization will have at least 115 percent of required
28 statutory surplus.

29 (2) The department shall not approve a dividend or
30 distribution in excess of the maximum amount allowed in
31 subsection (1) unless it determines that the distribution or

1 dividend would not jeopardize the financial condition of the
2 health maintenance organization, considering:

3 (a) The liquidity, quality, and diversification of the
4 health maintenance organization's assets and the effect on its
5 ability to meet its obligations.

6 (b) Any reduction of investment portfolio and
7 investment income.

8 (c) Industrywide financial conditions.

9 (d) Prior dividend distributions of the health
10 maintenance organization.

11 (e) Whether the dividend is only a pass-through
12 dividend from a subsidiary of the health maintenance
13 organization.

14 Section 8. This act shall take effect October 1, 2002.

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17 HOUSE SUMMARY

18 Revises various provisions relating to Department of
19 Insurance administration of solvency provisions as
20 applied to insurers or health maintenance organizations.

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