

By Senator Sanderson

31-1369-02

See HB 1373

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:

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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 that 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 LEGISLATIVE 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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