

1
2 An act relating to health insurance; amending
3 s. 627.411, F.S.; revising grounds for
4 disapproval of health insurance policy forms;
5 requiring health under certain circumstances;
6 amending s. 626.9541, F.S., relating to unfair
7 discrimination; amending s. 627.6515, F.S.;
8 providing for disclosure and exceptions
9 thereto; clarifying applicability to
10 out-of-state group policies; prohibiting
11 predatory pricing; authorizing the Office of
12 Insurance Regulation to adopt rules; clarifying
13 applicability of group conversion provisions;
14 amending s. 641.31, F.S.; specifying
15 nonapplication of certain health maintenance
16 contract filing requirements to certain group
17 health insurance policies; providing
18 exceptions; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 627.411, Florida Statutes, is
23 amended to read:

24 627.411 Grounds for disapproval.--

25 (1) The department shall disapprove any form filed
26 under s. 627.410, or withdraw any previous approval thereof,
27 only if the form:

28 (a) Is in any respect in violation of, or does not
29 comply with, this code.

30 (b) Contains or incorporates by reference, where such
31 incorporation is otherwise permissible, any inconsistent,

1 ambiguous, or misleading clauses, or exceptions and conditions
2 which deceptively affect the risk purported to be assumed in
3 the general coverage of the contract.

4 (c) Has any title, heading, or other indication of its
5 provisions which is misleading.

6 (d) Is printed or otherwise reproduced in such manner
7 as to render any material provision of the form substantially
8 illegible.

9 (e) Is for health insurance, and:

10 1. Provides benefits that which are unreasonable in
11 relation to the premium charged;;

12 2. Contains provisions that which are unfair or
13 inequitable or contrary to the public policy of this state or
14 that which encourage misrepresentation;; ~~or~~

15 3. Contains provisions that which apply rating
16 practices that which result in premium escalations that are
17 ~~not viable for the policyholder market or result in unfair~~
18 ~~discrimination pursuant to s. 626.9541(1)(g)2. in sales~~
19 ~~practices.~~

20 (f) Excludes coverage for human immunodeficiency virus
21 infection or acquired immune deficiency syndrome or contains
22 limitations in the benefits payable, or in the terms or
23 conditions of such contract, for human immunodeficiency virus
24 infection or acquired immune deficiency syndrome which are
25 different than those which apply to any other sickness or
26 medical condition.

27 (2) In determining whether the benefits are reasonable
28 in relation to the premium charged, the department, in
29 accordance with reasonable actuarial techniques, shall
30 consider:

31

1 (a) Past loss experience and prospective loss
2 experience within and without this state.

3 (b) Allocation of expenses.

4 (c) Risk and contingency margins, along with
5 justification of such margins.

6 (d) Acquisition costs.

7 (3)(a) For health insurance coverage as described in
8 s. 627.6561(5)(a)2., the minimum loss ratio standard of
9 incurred claims to earned premium for the form shall be 65
10 percent.

11 (b) Incurred claims are claims occurring within a
12 fixed period, whether or not paid during the same period,
13 under the terms of the policy period.

14 1. Claims include scheduled benefit payments, or
15 services provided by a provider or through a provider network
16 for dental, vision, disability, and similar health benefits.

17 2. Claims do not include state assessments, taxes,
18 company expenses, or any expense incurred by the company for
19 the cost of adjusting and settling a claim, including the
20 review, qualification, oversight, management, or monitoring of
21 a claim or incentives or compensation to providers for other
22 than the provisions of health care services.

23 3. A company may at its discretion include costs that
24 are demonstrated to reduce claims, such as fraud intervention
25 programs or case management costs, which are identified in
26 each filing, are demonstrated to reduce claims costs, and do
27 not result in increasing the experience period loss ratio by
28 more than 5 percent.

29 4. For scheduled claim payments, such as disability
30 income or long-term care, the incurred claims shall be the
31

1 present value of the benefit payments discounted for
2 continuance and interest.

3 Section 2. Paragraph (g) of subsection (1) of section
4 626.9541, Florida Statutes, is amended to read:

5 626.9541 Unfair methods of competition and unfair or
6 deceptive acts or practices defined.--

7 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
8 DECEPTIVE ACTS.--The following are defined as unfair methods
9 of competition and unfair or deceptive acts or practices:

10 (g) Unfair discrimination.--

11 1. Knowingly making or permitting any unfair
12 discrimination between individuals of the same actuarially
13 supportable class and equal expectation of life, in the rates
14 charged for any life insurance or annuity contract, in the
15 dividends or other benefits payable thereon, or in any other
16 of the terms and conditions of such contract.

17 2. Knowingly making or permitting any unfair
18 discrimination between individuals of the same actuarially
19 supportable class, as determined at the original time of
20 issuance of the coverage, and essentially the same hazard, in
21 the amount of premium, policy fees, or rates charged for any
22 policy or contract of accident, disability, or health
23 insurance, in the benefits payable thereunder, in any of the
24 terms or conditions of such contract, or in any other manner
25 whatever.

26 3. For a health insurer, life insurer, disability
27 insurer, property and casualty insurer, automobile insurer, or
28 managed care provider to underwrite a policy, or refuse to
29 issue, reissue, or renew a policy, refuse to pay a claim,
30 cancel or otherwise terminate a policy, or increase rates
31 based upon the fact that an insured or applicant who is also

1 the proposed insured has made a claim or sought or should have
2 sought medical or psychological treatment in the past for
3 abuse, protection from abuse, or shelter from abuse, or that a
4 claim was caused in the past by, or might occur as a result
5 of, any future assault, battery, or sexual assault by a family
6 or household member upon another family or household member as
7 defined in s. 741.28. A health insurer, life insurer,
8 disability insurer, or managed care provider may refuse to
9 underwrite, issue, or renew a policy based on the applicant's
10 medical condition, but shall not consider whether such
11 condition was caused by an act of abuse. For purposes of this
12 section, the term "abuse" means the occurrence of one or more
13 of the following acts:

- 14 a. Attempting or committing assault, battery, sexual
15 assault, or sexual battery;
- 16 b. Placing another in fear of imminent serious bodily
17 injury by physical menace;
- 18 c. False imprisonment;
- 19 d. Physically or sexually abusing a minor child; or
- 20 e. An act of domestic violence as defined in s.
21 741.28.

22
23 This subparagraph does not prohibit a property and casualty
24 insurer or an automobile insurer from excluding coverage for
25 intentional acts by the insured if such exclusion does not
26 constitute an act of unfair discrimination as defined in this
27 paragraph.

28 Section 3. Subsection (2) of section 627.6515, Florida
29 Statutes, is amended, and subsections (9) and (10) are added
30 to that section to read:

31 627.6515 Out-of-state groups.--

1 (2) Except as otherwise provided in this part, this
2 part does not apply to a group health insurance policy issued
3 or delivered outside this state under which a resident of this
4 state is provided coverage if:

5 (a) The policy is issued to an employee group the
6 composition of which is substantially as described in s.
7 627.653; a labor union group or association group the
8 composition of which is substantially as described in s.
9 627.654; an additional group the composition of which is
10 substantially as described in s. 627.656; a group insured
11 under a blanket health policy when the composition of the
12 group is substantially in compliance with s. 627.659; a group
13 insured under a franchise health policy when the composition
14 of the group is substantially in compliance with s. 627.663;
15 an association group to cover persons associated in any other
16 common group, which common group is formed primarily for
17 purposes other than providing insurance; a group that is
18 established primarily for the purpose of providing group
19 insurance, provided the benefits are reasonable in relation to
20 the premiums charged thereunder and the issuance of the group
21 policy has resulted, or will result, in economies of
22 administration; or a group of insurance agents of an insurer,
23 which insurer is the policyholder;

24 (b) Certificates evidencing coverage under the policy
25 are issued to residents of this state and contain in
26 contrasting color and not less than 10-point type the
27 following statement: "The benefits of the policy providing
28 your coverage are governed primarily by the law of a state
29 other than Florida"; and

30 (c) The policy provides the benefits specified in ss.
31 627.419, 627.6574, 627.6575, 627.6579, 627.6612, 627.66121,

1 627.66122, 627.6613, 627.667, 627.6675, 627.6691, and
2 627.66911.

3 (d) Applications for certificates of coverage offered
4 to residents of this state must contain, in contrasting color
5 and not less than 12-point type, the following statement on
6 the same page as the applicant's signature:

7
8 "This policy is primarily governed by the laws
9 of ...insert state where the master policy if
10 filed.... As a result, all of the rating laws
11 applicable to policies filed in this state do
12 not apply to this coverage, which may result in
13 increases in your premium at renewal that would
14 not be permissible under a Florida-approved
15 policy. Any purchase of individual health
16 insurance should be considered carefully, as
17 future medical conditions may make it
18 impossible to qualify for another individual
19 health policy. For information concerning
20 individual health coverage under a
21 Florida-approved policy, consult your agent or
22 the Florida Department of Financial Services."
23 This paragraph applies only to group
24 certificates providing health insurance
25 coverage which require individualized
26 underwriting to determine coverage eligibility
27 for an individual or premium rates to be
28 charged to an individual except for the
29 following:

30 1. Policies issued to provide coverage to groups of
31 persons all of whom are in the same or functionally related

1 licensed professions, and providing coverage only to such
2 licensed professionals, their employees, or their dependents;

3 2. Policies providing coverage to small employers as
4 defined by s. 627.6699. Such policies shall be subject to, and
5 governed by, the provisions of s. 627.6699;

6 3. Policies issued to a bona fide association, as
7 defined by s. 627.6571(5), provided that there is a person or
8 board acting as a fiduciary for the benefit of the members,
9 and such association is not owned, controlled by, or otherwise
10 associated with the insurance company; or

11 4. Any accidental death, accidental death and
12 dismemberment, accident-only, vision-only, dental-only,
13 hospital indemnity-only, hospital accident-only, cancer,
14 specified disease, Medicare supplement, products that
15 supplement Medicare, long-term care, or disability income
16 insurance, or similar supplemental plans provided under a
17 separate policy, certificate, or contract of insurance, which
18 cannot duplicate coverage under an underlying health plan,
19 coinsurance, or deductibles or coverage issued as a supplement
20 to workers' compensation or similar insurance, or automobile
21 medical-payment insurance.

22 (9) Any insured shall be able to terminate membership
23 or affiliation with the group to whom the master policy is
24 issued. An insured that elects to terminate his membership or
25 affiliation with the group shall provide written notice to the
26 insurer. Upon providing the written notice, the member shall
27 be entitled to the rights and options provided by s. 627.6675.

28 (10) Any pricing structure that results, or is
29 reasonably expected to result, in rate escalations resulting
30 in a death spiral, which is a rate escalation caused by
31 segmenting healthy and unhealthy lives resulting in an

1 ultimate pool of primarily less healthy insureds, is
2 considered a predatory pricing structure and constitutes
3 unfair discrimination as provided in s. 626.9541(1)(g). The
4 Financial Services Commission may adopt rules to define other
5 unfairly discriminatory or predatory health insurance rating
6 practices.

7 Section 4. Subsection (2) and paragraph (d) of
8 subsection (3) of section 641.31, Florida Statutes, are
9 amended to read:

10 641.31 Health maintenance contracts.--

11 (2) The rates charged by any health maintenance
12 organization to its subscribers shall not be excessive,
13 inadequate, or unfairly discriminatory or follow a rating
14 methodology that is inconsistent, indeterminate, or ambiguous
15 or encourages misrepresentation or misunderstanding. A law
16 restricting or limiting deductibles, coinsurance, copayments,
17 or annual or lifetime maximum payments shall not apply to any
18 health maintenance organization contract that provides
19 coverage as described in s. 641.31071(5)(a)2., offered or
20 delivered to an individual or a group of 51 or more persons.

21 The department, in accordance with generally accepted
22 actuarial practice as applied to health maintenance
23 organizations, may define by rule what constitutes excessive,
24 inadequate, or unfairly discriminatory rates and may require
25 whatever information it deems necessary to determine that a
26 rate or proposed rate meets the requirements of this
27 subsection.

28 (3)

29 (d) Any change in rates charged for the contract must
30 be filed with the department not less than 30 days in advance
31 of the effective date. At the expiration of such 30 days, the

1 rate filing shall be deemed approved unless prior to such time
2 the filing has been affirmatively approved or disapproved by
3 order of the department. The approval of the filing by the
4 department constitutes a waiver of any unexpired portion of
5 such waiting period. The department may extend by not more
6 than an additional 15 days the period within which it may so
7 affirmatively approve or disapprove any such filing, by giving
8 notice of such extension before expiration of the initial
9 30-day period. At the expiration of any such period as so
10 extended, and in the absence of such prior affirmative
11 approval or disapproval, any such filing shall be deemed
12 approved. This paragraph does not apply to group health
13 contracts effectuated and delivered in this state, insuring
14 groups of 51 or more persons, except for Medicare supplement
15 insurance, long-term care insurance, and any coverage under
16 which the increase in claims costs over the lifetime of the
17 contract due to advancing age or duration is refunded in the
18 premium.

19 Section 5. This act shall take effect July 1, 2003.
20
21
22
23
24
25
26
27
28
29
30
31