

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Banking and Insurance Committee

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BILL: SB 6-A

SPONSOR: Senator Peaden

SUBJECT: Discount Medical Plans

DATE: December 13, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	<b>Favorable</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Discount medical plan organizations that provide access for plan members to health care providers of medical services at a discounted fee in exchange for fees or other consideration are subject to licensure and regulation by the Office of Insurance Regulation (OIR), effective January 1, 2005. This bill extends the deadline for complying with licensure requirements for discount medical plan organizations that are subject to regulation by the OIR, from January 1, 2005, to March 31, 2005. Since the current law does not appear to authorize the OIR to adopt rules and forms, such as the application forms, until January 1, 2005, it appears that the OIR would not be able to issue valid licenses by the January 1, 2005, statutory deadline.

This bill creates unnumbered sections of the Florida Statutes.

## II. Present Situation:

Discount medical card plans offer a variety of health care services to consumers at a discounted rate. These plans are not health insurance and therefore do not pay for services on behalf of members; instead, the plans offer members access to specific health care products and services at a discounted fee. These health products and services may include, but are not limited to, dental services, emergency services, mental health services, vision care, chiropractic services, and hearing care. Generally, a medical discount plan organization has a contract with a provider network under which the individual providers provide the medical services at a discount and a marketer sells the plan to members.

These discount plans can perform a useful role in the health delivery system by providing consumers with savings on necessary medical services; however, some unscrupulous discount

medical plans may require undisclosed fees, not provide any services, or fraudulently market such discount plans as insurance products to members for those fees.

In 2004, the Florida Legislature established the regulation of medical discount plan organizations by the Office of Insurance Regulation (“OIR”) which is under the Financial Services Commission.<sup>12</sup> Discount medical plan organizations that provide access for plan members to health care providers of medical services at a discounted fee in exchange for fees, dues, charges, or other consideration are subject to licensure and regulation by the OIR. The law provides a licensure exemption for individual providers who offer discounts to their own patients.

Part II of ch. 636, F.S., as created by the 2004 legislation, establishes licensure requirements, annual financial reporting, net worth requirements, authority for examinations and investigations, rulemaking authority for the Financial Services Commission (“commission”), prohibited activities, criminal penalties, and civil remedies, effective January 1, 2005.<sup>3</sup> The commission is authorized to adopt rules, for licensure, standards for evaluating forms, advertisements, marketing materials, and discount cards, and the collection of data.<sup>4</sup>

Before transacting business in Florida, a discount medical plan organizations must be incorporated and possess a license as a discount medical plan organization.<sup>5</sup> As a condition of licensure, each discount medical plan organization must maintain a net worth requirement of \$150,000. All charges to members of such plans must be filed with the OIR and any charge to members greater than \$30 per month or \$360 per year must be approved by the OIR before the charges can be used by the plan. All forms used by the organization must be filed with and approved by the OIR.

Section 636.204, F.S., requires applicants for licensure to submit an application on a form prescribed by the commission. The commission is required to establish, by rule, an application packet that includes certain documents, such as articles of incorporation, background and biographical statements, fingerprint cards, audited financial statements, and a summary of the business operations.

To facilitate the licensure process for applicants, the OIR created forms and commenced the rulemaking process to implement the provisions of part II of ch. 636, F.S. In October 2004, the OIR developed an application package that is accessible on its website. On October 7, 2004, the OIR held a public workshop on proposed rules relating to filing and review standards to implement certain provisions of part II of ch. 636, F.S. Subsequently, on November 22, 2004, the OIR held a public hearing on those proposed rules. It is anticipated that the rules will be on the agenda for final approval by the Financial Services Commission meeting at its next meeting in

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<sup>1</sup> Ch. 2004-297, L.O.F.

<sup>2</sup> The Financial Services Commission (commission) as an independent entity housed within the Department of Financial Services. The commission members consist of the Governor and the Cabinet. The Office of Insurance Regulation and the Office of Financial Regulation are under the commission. [s. 20.121(3), F.S.]

<sup>3</sup> The members of the Financial Services Commission serves as the agency head of the Office of Insurance Regulation for the purpose of rulemaking pursuant to s. 20.121(3), F.S.

<sup>4</sup> Section 636.232, F.S.

<sup>5</sup> Section 636.204, L.O.F.

2005. On December 16, 2004, the OIR is scheduled to workshop a proposed rule relating to application forms for licensure.

The commission does not appear to have statutory authority under the provisions of the 2004 law to prescribe a form for such licensure until January 1, 2005, which is the same statutory deadline for applicants to comply with the licensure requirements. Some would argue that the organizations cannot submit applications until the Financial Services Commission has adopted such rules and forms, and licenses cannot be approved until after applications are subsequently submitted.

If such licenses are not effective on January 1, 2005, as required by current law, organizations offering discount medical plans could be found in violation of the law and subject to criminal and civil penalties. Section 636.238, F.S., provides that violation of any provision of part II is a second-degree misdemeanor. Operating an unlicensed discount medical plan organization is punishable under s. 624.401 F.S., as if the unlicensed discount medical plan organization were an unlicensed insurer and the fees charged were premium. The law also authorizes the OIR to seek injunctive relief against an unlicensed discount medical plan organization, or any person who has violated a provision of this part or a rule adopted pursuant to this part.<sup>6</sup> Section 636.242, F.S., authorizes any person damaged by acts of a person in violation of part II of ch. 636, F.S., to file a civil action against that person. Attorneys' fees and court costs may be recoverable.<sup>7</sup>

At this time, the number of organizations subject to state licensure is indeterminate. As of December 10, 2004, the OIR has received seven applications for licensure. The OIR has received consumer complaints or inquiries regarding approximately 40 companies. According to the Consumer Health Alliance, a national trade association for the discount health care industry, over 10 million people in the United States are members of such plans.

### III. Effect of Proposed Changes:

**Section 1** provides that, notwithstanding the effective date of January 1, 2005, specified in section 31, of chapter 2004-297, Laws of Florida, a person who does business as a discount medical plan organization or who markets a discount medical plan is not subject to the requirements of part II of chapter 636, F.S., until March 31, 2005.

This change would provide discount medical plan organizations additional time to comply with licensure requirements. This extension would allow the Office of Insurance Regulation and Financial Services Commission additional time to adopt rules and forms related to the licensure and regulation of discount medical plan organizations, thereby allowing such organizations to submit applications and comply with licensing requirements by the March 31, 2005 deadline.

**Section 2** provides that this act will take effect upon becoming a law.

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<sup>6</sup> Section 636.240, F.S.

<sup>7</sup> Section 636.242, F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The discount medical plan organizations will have an additional 3 months to comply with the initial licensure requirements. By extending the deadline for licensure until March 31, 2005, the Office of Insurance Regulation and Financial Services Commission will have adequate time to adopt rules and forms *prior* to the licensure deadline. If the current laws relating to licensure were not changed, the organizations would not be able to meet the January 1, 2005 licensure requirement since the Office and Commission would not appear to have the authority to adopt rules and forms until January 1, 2005. Without this extension of time for licensure, these organizations could be subject to potential civil and criminal provisions for noncompliance due to their inability to meet the current January 1, 2005 deadline.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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