

1 A bill to be entitled
2 An act relating to discount medical plan organizations;
3 amending s. 636.202, F.S.; revising a definition; amending
4 s. 636.204, F.S.; revising provisions relating to
5 licensure requirements to do business as a discount
6 medical plan organization; amending s. 636.206, F.S.;
7 providing that discount medical plan organizations are not
8 subject to the Florida Insurance Code for purposes of
9 examination and investigation; creating s. 636.207, F.S.;
10 providing for applicability of pt. II of ch. 636, F.S.;
11 amending s. 636.208, F.S.; revising provisions relating to
12 reimbursement of certain charges and fees upon
13 cancellation of membership in the plan; amending s.
14 636.210, F.S.; revising prohibitions relating to
15 advertising; amending s. 636.212, F.S.; revising
16 provisions relating to disclosures to prospective members;
17 amending s. 636.214, F.S.; revising provisions relating to
18 provider agreements; amending s. 636.216, F.S.; providing
19 conditions for approval of charges and forms; deleting a
20 provision relating to request for a hearing; amending s.
21 636.218, F.S.; revising requirements for information to be
22 included in annual reports; creating s. 636.223, F.S.;
23 providing for administrative penalties; amending s.
24 636.228, F.S.; specifying marketing requirements of
25 discount medical plans; providing limitations; amending s.
26 636.230, F.S.; specifying fee disclosure requirements for
27 bundling discount medical plans with other products;
28 amending s. 636.236, F.S.; requiring discount medical plan

29 organizations to maintain surety bonds; providing
 30 conditions for substituting deposited securities for
 31 surety bonds; amending s. 636.238, F.S.; revising
 32 penalties; repealing s. 636.242, F.S., relating to civil
 33 remedies; providing an effective date.

34

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

36

37 Section 1. Subsection (2) of section 636.202, Florida
 38 Statutes, is amended to read:

39 636.202 Definitions.--As used in this part, the term:

40 (2) "Discount medical plan organization" means an entity
 41 which, in exchange for fees, dues, charges, or other
 42 consideration, provides access for plan members to providers of
 43 medical services and the right to receive medical services from
 44 those providers at a discount. ~~The term "discount medical plan"~~
 45 ~~does not include any product regulated under chapter 627,~~
 46 ~~chapter 641, or part I of this chapter.~~

47 Section 2. Subsections (1) and (2) of section 636.204,
 48 Florida Statutes, are amended to read:

49 636.204 License required.--

50 (1) Before doing business in this state as a discount
 51 medical plan organization, an entity must be a corporation, a
 52 limited liability company ~~incorporated~~ under the laws of this
 53 state, or, if a partnership or foreign entity corporation,
 54 authorized to transact business in this state, and must be
 55 licensed by the office ~~possess a license~~ as a discount medical
 56 plan organization or be licensed by the office pursuant to

57 chapter 624, part I of chapter 636, or chapter 641 ~~from the~~
58 ~~office.~~

59 (2) An application for a license to operate as a discount
60 medical plan organization must be filed with the office on a
61 form prescribed by the commission. Such application must be
62 sworn to by an officer or authorized representative of the
63 applicant and be accompanied by the following, if applicable:

64 (a) A copy of the applicant's articles of incorporation,
65 including all amendments, or other organizing documents.

66 (b) A copy of the applicant's ~~corporation's~~ bylaws.

67 (c) A list of the names, addresses, official positions,
68 and biographical information of the individuals who are
69 responsible for conducting the applicant's affairs, including,
70 but not limited to, all members of the board of directors, board
71 of trustees, executive committee, or other governing board or
72 committee, the officers, contracted management company
73 personnel, and any person or entity owning or having the right
74 to acquire 10 percent or more of the voting securities of the
75 applicant. Such listing must fully disclose the extent and
76 nature of any contracts or arrangements between any individual
77 who is responsible for conducting the applicant's affairs and
78 the discount medical plan organization, including any possible
79 conflicts of interest.

80 (d) A complete biographical statement, on forms prescribed
81 by the commission, an independent investigation report, and a
82 set of fingerprints, as provided in chapter 624, with respect to
83 each individual identified under paragraph (c).

84 (e) A statement generally describing the applicant, its
85 facilities and personnel, and the medical services to be
86 offered.

87 (f) A copy of the form of all contracts made or to be made
88 between the applicant and any providers or provider networks
89 regarding the provision of medical services to members.

90 (g) A copy of the form of any contract made or arrangement
91 to be made between the applicant and any person listed in
92 paragraph (c).

93 (h) A copy of the form of any contract made or to be made
94 between the applicant and any person, corporation, partnership,
95 or other entity for the performance on the applicant's behalf of
96 any function, including, but not limited to, marketing,
97 administration, enrollment, investment management, and
98 subcontracting for the provision of health services to members.

99 (i) A copy of the applicant's most recent financial
100 statements audited by an independent certified public
101 accountant. An applicant that is a subsidiary of a parent entity
102 that prepares audited financial statements reflecting the
103 consolidated operations of the parent entity and the subsidiary
104 may submit a copy of the parent entity's most recent audited
105 financial statements if the parent entity also issues a written
106 guaranty that the minimum capital requirements of the applicant
107 required by this part will be met.

108 (j) A description of the proposed method of marketing.

109 (k) A description of the subscriber complaint procedures
110 to be established and maintained.

111 (l) The fee for issuance of a license.

112 (m) Such other information as the commission or office may
 113 reasonably require to make the determinations required by this
 114 part.

115 Section 3. Section 636.206, Florida Statutes, is amended
 116 to read:

117 636.206 Examinations and investigations.--

118 (1) The office may examine or investigate the business and
 119 affairs of any discount medical plan organization. The office
 120 may order any discount medical plan organization or applicant to
 121 produce any records, books, files, advertising and solicitation
 122 materials, or other information and may take statements under
 123 oath to determine whether the discount medical plan organization
 124 or applicant is in violation of the law or is acting contrary to
 125 the public interest. The expenses incurred in conducting any
 126 examination or investigation must be paid by the discount
 127 medical plan organization or applicant. Examinations and
 128 investigations must be conducted as provided in chapter 624, ~~and~~
 129 ~~discount medical plan organizations are subject to all~~
 130 ~~applicable provisions of the insurance code.~~

131 (2) Failure by the discount medical plan organization to
 132 pay the expenses incurred under subsection (1) is grounds for
 133 denial or revocation.

134 Section 4. Section 636.207, Florida Statutes, is created
 135 to read:

136 636.207 Applicability of part.--Except as otherwise
 137 provided in this part, discount medical plan organizations are
 138 governed by the provisions of this part and are exempt from the
 139 Florida Insurance Code unless specifically referenced.

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140 Section 5. Section 636.208, Florida Statutes, is amended
141 to read:

142 636.208 Fees; charges; reimbursement.--

143 (1) A discount medical plan organization may charge a
144 periodic charge as well as a reasonable one-time processing fee
145 for a discount medical plan and a periodic charge. If a discount
146 medical plan charges for a time period in excess of 1 month, the
147 plan must, in the event of cancellation of the membership by
148 either party, make a pro rata reimbursement of the fees to the
149 member.

150 (2) If the member cancels his or her membership in the
151 discount medical plan organization within the first 30 days
152 after the effective date of enrollment in the plan, the member
153 shall receive a reimbursement of all periodic charges upon
154 return of the discount card to the discount medical plan
155 organization.

156 (3) If the discount medical plan organization cancels a
157 membership for any reason other than nonpayment of fees by the
158 member, the discount medical plan organization shall make a pro
159 rata reimbursement of all periodic charges to the member.

160 (4) In addition to the reimbursement of periodic charges
161 for the reasons stated in subsections (2) and (3), a discount
162 medical plan organization shall also reimburse the member for
163 any portion of a one-time processing fee that exceeds \$30 per
164 year.

165 Section 6. Paragraphs (a) and (b) of subsection (1) of
166 section 636.210, Florida Statutes, are amended to read:

167 636.210 Prohibited activities of a discount medical plan
 168 organization.--

169 (1) A discount medical plan organization may not:

170 (a) Use in its advertisements, marketing material,
 171 brochures, and discount cards the term "insurance" except as
 172 otherwise provided in this part or as a disclaimer of any
 173 relationship between discount medical plan organization benefits
 174 and insurance;

175 (b) Use in its advertisements, marketing material,
 176 brochures, and discount cards the terms "health plan,"
 177 "coverage," "copay," "copayments," "preexisting conditions,"
 178 "guaranteed issue," "premium," ~~"enrollment,"~~ "PPO," "preferred
 179 provider organization," or other terms in a manner that could
 180 reasonably mislead a person into believing the discount medical
 181 plan was health insurance;

182 Section 7. Section 636.212, Florida Statutes, is amended
 183 to read:

184 636.212 Disclosures.--The following disclosures must be
 185 made in writing to any prospective member and must be on the
 186 first page of any advertisements, marketing materials, or
 187 brochures relating to a discount medical plan. The disclosures
 188 must be printed in not less than 12-point type ~~or no smaller~~
 189 ~~than the largest type on the page if larger than 12-point type:~~

190 (1) That the plan is not ~~a health insurance policy.~~

191 (2) That the plan provides discounts at certain health
 192 care providers for medical services.

193 (3) That the plan does not make payments directly to the
 194 providers of medical services.

195 (4) That the plan member is obligated to pay for all
 196 health care services but will receive a discount from those
 197 health care providers who have contracted with the discount plan
 198 organization.

199 (5) The ~~corporate~~ name and address ~~the locations~~ of the
 200 licensed discount medical plan organization.

201
 202 If the initial contract is made by telephone, the disclosures
 203 required by this section shall be made orally and provided in
 204 the initial written materials that describe the benefits under
 205 the discount medical plan provided to the prospective or new
 206 member.

207 Section 8. Subsections (2) and (4) of section 636.214,
 208 Florida Statutes, are amended to read:

209 636.214 Provider agreements.--

210 (2) A provider agreement between a discount medical plan
 211 organization and a provider must provide the following:

212 (a) A list of the services and products to be provided at
 213 a discount.

214 (b) The amount or amounts of the discounts or,
 215 alternatively, a fee schedule which reflects the provider's
 216 discounted rates.

217 (c) That the provider will not charge members more than
 218 the discounted rates.

219 (4) The discount medical plan organization shall maintain
 220 a copy of each active provider agreement into which it has
 221 entered.

222 Section 9. Subsection (4) of section 636.216, Florida
 223 Statutes, is amended to read:

224 636.216 Charge or form filings.--

225 (4) A charge or form is considered approved on the 60th
 226 day after its date of filing unless it has been previously
 227 disapproved by the office. The office shall disapprove any form
 228 that does not meet the requirements of this part or that is
 229 unreasonable, discriminatory, misleading, or unfair. If such
 230 filings are disapproved, the office shall notify the discount
 231 medical plan organization and shall specify in the notice the
 232 reasons for disapproval. ~~The discount medical plan organization~~
 233 ~~has 21 days from the date of receipt of notice to request a~~
 234 ~~hearing before the office pursuant to chapter 120.~~

235 Section 10. Subsection (2) of section 636.218, Florida
 236 Statutes, is amended to read:

237 636.218 Annual reports.--

238 (2) Such reports must be on forms prescribed by the
 239 commission and must include:

240 (a) A sworn affidavit, signed by a company officer,
 241 certifying that the discount medical plan organization is in
 242 compliance with s. 636.220(1). ~~Audited financial statements~~
 243 ~~prepared in accordance with generally accepted accounting~~
 244 ~~principles certified by an independent certified public~~
 245 ~~accountant, including the organization's balance sheet, income~~
 246 ~~statement, and statement of changes in cash flow for the~~
 247 ~~preceding year.~~

248 (b) If different from the initial application or the last
 249 annual report, a list of the names and residence addresses of

250 all persons responsible for the conduct of the organization's
 251 affairs, together with a disclosure of the extent and nature of
 252 any contracts or arrangements between such persons and the
 253 discount medical plan organization, including any possible
 254 conflicts of interest.

255 (c) The number of discount medical plan members in the
 256 state.

257 (d) Such other information relating to the performance of
 258 the discount medical plan organization as is reasonably required
 259 by the commission or office.

260 Section 11. Section 636.223, Florida Statutes, is created
 261 to read:

262 636.223 Administrative penalty.--In lieu of suspending or
 263 revoking a certificate of authority, whenever any discount
 264 medical plan organization has been found to have violated any
 265 provision of this part, the office may:

266 (1) Issue and cause to be served upon the organization
 267 charged with the violation a copy of such findings and an order
 268 requiring such organization to cease and desist from engaging in
 269 the act or practice that constitutes the violation.

270 (2) Impose a monetary penalty of not less that \$100 for
 271 each violation, but not to exceed an aggregate penalty of
 272 \$50,000.

273 Section 12. Subsection (2) of section 636.228, Florida
 274 Statutes, is amended to read:

275 636.228 Marketing of discount medical plans.--

276 (2) The discount medical plan organization shall have an
 277 executed written agreement with a marketer prior to the

278 marketer's marketing, promoting, selling, or distributing the
 279 discount medical plan. Such agreement shall prohibit the
 280 marketer from using marketing materials, brochures, and discount
 281 cards without the approval in writing by the discount medical
 282 plan organization. The discount medical plan organization shall
 283 be bound by and shall be responsible and financially liable for
 284 any acts of its marketers, within the scope of the marketers'
 285 agency, that do not comply with the provisions of this part.

286 Section 13. Section 636.230, Florida Statutes, is amended
 287 to read:

288 636.230 Bundling discount medical plans with other
 289 ~~insurance~~ products.--When a marketer or discount medical plan
 290 organization sells a discount medical plan together with any
 291 other product, the fees for the discount medical plan each
 292 ~~individual product~~ must be provided in writing to the member if
 293 the fees exceed \$30 and itemized.

294 Section 14. Section 636.236, Florida Statutes, is amended
 295 to read:

296 636.236 Surety bond or security deposit.--

297 (1) Each discount medical plan organization licensed
 298 pursuant to the provisions of this part must maintain in force a
 299 surety bond in its own name in an amount not less than \$35,000
 300 to be used at the discretion of the office to protect the
 301 financial interests of members who may be adversely affected by
 302 the insolvency of a discount medical plan organization. The bond
 303 must be issued by an insurance company that is licensed to do
 304 business in this state.

305 ~~(2)(1)~~ In lieu of the bond specified in subsection (1), a
 306 licensed discount medical plan organization may ~~must~~ deposit and
 307 maintain deposited in trust with the department securities
 308 eligible for deposit under s. 625.52, having at all times a
 309 value of not less than \$35,000, ~~for use by the office in~~
 310 ~~protecting plan members.~~ If a licensed discount medical plan
 311 organization substitutes its deposited securities under this
 312 subsection with a surety bond authorized in subsection (1), such
 313 deposited securities shall be returned to the discount medical
 314 plan organization no later than 45 days following the effective
 315 date of the surety bond.

316 ~~(3)(2)~~ No judgment creditor or other claimant of a
 317 discount medical plan organization, other than the office or
 318 department, shall have the right to levy upon any of the assets
 319 or securities held in this state as a deposit under subsections
 320 ~~subsection~~ (1) and (2).

321 Section 15. Section 636.238, Florida Statutes, is amended
 322 to read:

323 636.238 Penalties for violation of this part.--

324 (1) Except as provided in subsection (2), a person who
 325 willfully violates any provision of this part commits a
 326 misdemeanor of the second degree, punishable as provided in s.
 327 775.082 or s. 775.083.

328 (2) A person who operates as ~~or aids and abets another~~
 329 ~~operating as~~ a discount medical plan organization in violation
 330 of s. 636.204(1) commits a felony punishable as provided for in
 331 s. 624.401(4)(b), as if the unlicensed discount medical plan
 332 organization were an unauthorized insurer, and the fees, dues,

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333 charges, or other consideration collected from the members by
334 the unlicensed discount medical plan organization or marketer
335 were insurance premium.

336 (3) A person who collects fees for purported membership in
337 a discount medical plan but purposefully fails to provide the
338 promised benefits commits a theft, punishable as provided in s.
339 812.014.

340 Section 16. Section 636.242, Florida Statutes, is
341 repealed.

342 Section 17. This act shall take effect upon becoming a
343 law.