

CHAMBER ACTION

1 The Health Care General Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to discount medical plan organizations;
7 amending s. 636.202, F.S.; revising a definition; amending
8 s. 636.204, F.S.; revising provisions relating to
9 licensure requirements to do business as a discount
10 medical plan organization; creating s. 636.205, F.S.;
11 providing requirements for issuance of a license;
12 authorizing the Office of Insurance Regulation to deny a
13 license; amending s. 636.206, F.S.; providing that
14 discount medical plan organizations are not subject to the
15 Florida Insurance Code for purposes of examination and
16 investigation; creating s. 636.207, F.S.; providing for
17 applicability of pt. II of ch. 636, F.S.; amending s.
18 636.208, F.S.; revising provisions relating to
19 reimbursement of certain charges and fees upon
20 cancellation of membership in the plan; amending s.
21 636.210, F.S.; revising prohibitions relating to
22 advertising; amending s. 636.212, F.S.; revising
23 provisions relating to disclosures to prospective members;

24 | amending s. 636.214, F.S.; revising provisions relating to
 25 | provider agreements; amending s. 636.216, F.S.; providing
 26 | conditions for approval of charges and forms; deleting a
 27 | provision relating to request for a hearing; amending s.
 28 | 636.218, F.S.; revising requirements for information to be
 29 | included in annual reports; creating s. 636.223, F.S.;
 30 | providing for administrative penalties; amending s.
 31 | 636.228, F.S.; specifying marketing requirements of
 32 | discount medical plans; providing limitations; amending s.
 33 | 636.230, F.S.; specifying fee disclosure requirements for
 34 | bundling discount medical plans with other products;
 35 | amending s. 636.236, F.S.; requiring discount medical plan
 36 | organizations to maintain surety bonds; providing
 37 | conditions for substituting deposited securities for
 38 | surety bonds; amending s. 636.238, F.S.; revising
 39 | penalties; repealing s. 636.242, F.S., relating to civil
 40 | remedies; providing an effective date.

41

42 | Be It Enacted by the Legislature of the State of Florida:

43

44 | Section 1. Subsection (2) of section 636.202, Florida
 45 | Statutes, is amended to read:

46 | 636.202 Definitions.--As used in this part, the term:

47 | (2) "Discount medical plan organization" means an entity
 48 | which, in exchange for fees, dues, charges, or other
 49 | consideration, provides access for plan members to providers of
 50 | medical services and the right to receive medical services from
 51 | those providers at a discount. ~~The term "discount medical plan"~~

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52 ~~does not include any product regulated under chapter 627,~~
 53 ~~chapter 641, or part I of this chapter.~~

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

56 636.204 License required.--

57 (1) Before doing business in this state as a discount
 58 medical plan organization, an entity must be a corporation, a
 59 limited liability company, or a limited partnership,
 60 incorporated, organized, formed, or registered under the laws of
 61 this state or authorized to transact business in this state in
 62 accordance with chapter 607, chapter 608, chapter 617, chapter
 63 620, or chapter 865 ~~incorporated under the laws of this state~~
 64 ~~or, if a foreign corporation, authorized to transact business in~~
 65 ~~this state, and must be licensed by the office~~ possess a license
 66 as a discount medical plan organization or be licensed by the
 67 office pursuant to chapter 624, part I of chapter 636, or
 68 chapter 641 ~~from the office.~~

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

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

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

77 (c) A list of the names, addresses, official positions,
 78 and biographical information of the individuals who are
 79 responsible for conducting the applicant's affairs, including,

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80 but not limited to, all members of the board of directors, board
81 of trustees, executive committee, or other governing board or
82 committee, the officers, contracted management company
83 personnel, and any person or entity owning or having the right
84 to acquire 10 percent or more of the voting securities of the
85 applicant. Such listing must fully disclose the extent and
86 nature of any contracts or arrangements between any individual
87 who is responsible for conducting the applicant's affairs and
88 the discount medical plan organization, including any possible
89 conflicts of interest.

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

94 (e) A statement generally describing the applicant, its
95 facilities and personnel, and the medical services to be
96 offered.

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

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

103 (h) A copy of the form of any contract made or to be made
104 between the applicant and any person, corporation, partnership,
105 or other entity for the performance on the applicant's behalf of
106 any function, including, but not limited to, marketing,

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107 administration, enrollment, investment management, and
108 subcontracting for the provision of health services to members.

109 (i) A copy of the applicant's most recent financial
110 statements audited by an independent certified public
111 accountant. An applicant that is a subsidiary of a parent entity
112 that is publicly traded and that prepares audited financial
113 statements reflecting the consolidated operations of the parent
114 entity and the subsidiary may petition the office to accept, in
115 lieu of the audited financial statement of the applicant, the
116 audited financial statement of the parent entity and a written
117 guaranty by the parent entity that the minimum capital
118 requirements of the applicant required by this part will be met
119 by the parent entity.

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

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

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

124 (m) Such other information as the commission or office may
125 reasonably require to make the determinations required by this
126 part.

127 Section 3. Section 636.205, Florida Statutes, is created
128 to read:

129 636.205 Issuance of license; denial.--

130 (1) Following receipt of an application filed pursuant to
131 s. 636.204, the office shall review the application and notify
132 the applicant of any deficiencies contained therein. The office
133 shall issue a license to an applicant who has filed a completed
134 application pursuant to s. 636.204 upon payment of the fees

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135 specified in s. 636.204 and upon the office being satisfied that
 136 the following conditions are met:

137 (a) The requirements of s. 636.204 have been fulfilled.

138 (b) The entity has the required minimum capital
 139 requirements.

140 (c) The ownership, control, and management of the entity
 141 are competent and trustworthy and possess managerial experience
 142 that would make the proposed operation beneficial to the
 143 subscribers. The office shall not grant or continue to grant
 144 authority to transact the business of a discount medical plan
 145 organization in this state at any time during which the office
 146 has good reason to believe that the ownership, control, or
 147 management of the organization includes any person whose
 148 business operations are or have been marked by business
 149 practices or conduct that is detrimental to the public,
 150 stockholders, investors, or creditors.

151 (d) The discount medical plan organization has a complaint
 152 procedure that will facilitate the resolution of subscriber
 153 grievances and that includes both formal and informal steps
 154 available within the organization.

155 (e) Any deficiencies identified by the office have been
 156 corrected.

157 (f) All requirements of this part have been met.

158 (2) If the application for a license is denied, the office
 159 shall notify the applicant and shall specify the reasons for
 160 denial in the notice.

161 Section 4. Section 636.206, Florida Statutes, is amended
 162 to read:

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163 | 636.206 Examinations and investigations.--

164 | (1) The office may examine or investigate the business and
 165 | affairs of any discount medical plan organization. The office
 166 | may order any discount medical plan organization or applicant to
 167 | produce any records, books, files, advertising and solicitation
 168 | materials, or other information and may take statements under
 169 | oath to determine whether the discount medical plan organization
 170 | or applicant is in violation of the law or is acting contrary to
 171 | the public interest. The expenses incurred in conducting any
 172 | examination or investigation must be paid by the discount
 173 | medical plan organization or applicant. Examinations and
 174 | investigations must be conducted as provided in chapter 624, ~~and~~
 175 | ~~discount medical plan organizations are subject to all~~
 176 | ~~applicable provisions of the insurance code.~~

177 | (2) Failure by the discount medical plan organization to
 178 | pay the expenses incurred under subsection (1) is grounds for
 179 | denial or revocation.

180 | Section 5. Section 636.207, Florida Statutes, is created
 181 | to read:

182 | 636.207 Applicability of part.--Except as otherwise
 183 | provided in this part, discount medical plan organizations are
 184 | governed by the provisions of this part and are exempt from the
 185 | Florida Insurance Code unless specifically referenced.

186 | Section 6. Section 636.208, Florida Statutes, is amended
 187 | to read:

188 | 636.208 Fees; charges; reimbursement.--

189 | (1) A discount medical plan organization may charge a
 190 | periodic charge as well as a reasonable one-time processing fee

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191 ~~for a discount medical plan and a periodic charge. If a discount~~
 192 ~~medical plan charges for a time period in excess of 1 month, the~~
 193 ~~plan must, in the event of cancellation of the membership by~~
 194 ~~either party, make a pro rata reimbursement of the fees to the~~
 195 ~~member.~~

196 (2) If the member cancels his or her membership in the
 197 discount medical plan organization within the first 30 days
 198 after the effective date of enrollment in the plan, the member
 199 shall receive a reimbursement of all periodic charges upon
 200 return of the discount card to the discount medical plan
 201 organization.

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

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

211 Section 7. Paragraphs (a) and (b) of subsection (1) of
 212 section 636.210, Florida Statutes, are amended to read:

213 636.210 Prohibited activities of a discount medical plan
 214 organization.--

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

216 (a) Use in its advertisements, marketing material,
 217 brochures, and discount cards the term "insurance" except as
 218 otherwise provided in this part or as a disclaimer of any

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219 relationship between discount medical plan organization benefits
220 and insurance;

221 (b) Use in its advertisements, marketing material,
222 brochures, and discount cards the terms "health plan,"
223 "coverage," "copay," "copayments," "preexisting conditions,"
224 "guaranteed issue," "premium," ~~enrollment,~~ "PPO," "preferred
225 provider organization," or other terms in a manner that could
226 reasonably mislead a person into believing the discount medical
227 plan was health insurance;

228 Section 8. Section 636.212, Florida Statutes, is amended
229 to read:

230 636.212 Disclosures.--The following disclosures must be
231 made in writing to any prospective member and must be on the
232 first page of any advertisements, marketing materials, or
233 brochures relating to a discount medical plan. The disclosures
234 must be printed in not less than 12-point type ~~or no smaller~~
235 ~~than the largest type on the page if larger than 12-point type:~~

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

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

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

241 (4) That the plan member is obligated to pay for all
242 health care services but will receive a discount from those
243 health care providers who have contracted with the discount plan
244 organization.

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

247
248 If the initial contract is made by telephone, the disclosures
249 required by this section shall be made orally and provided in
250 the initial written materials that describe the benefits under
251 the discount medical plan provided to the prospective or new
252 member.

253 Section 9. Subsections (2) and (4) of section 636.214,
254 Florida Statutes, are amended to read:

255 636.214 Provider agreements.--

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

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

260 (b) The amount or amounts of the discounts or,
261 alternatively, a fee schedule which reflects the provider's
262 discounted rates.

263 (c) That the provider will not charge members more than
264 the discounted rates.

265 (4) The discount medical plan organization shall maintain
266 a copy of each active provider agreement into which it has
267 entered.

268 Section 10. Subsection (4) of section 636.216, Florida
269 Statutes, is amended to read:

270 636.216 Charge or form filings.--

271 (4) A charge or form is considered approved on the 60th
272 day after its date of filing unless it has been previously
273 disapproved by the office. The office shall disapprove any form
274 that does not meet the requirements of this part or that is

275 unreasonable, discriminatory, misleading, or unfair. If such
 276 filings are disapproved, the office shall notify the discount
 277 medical plan organization and shall specify in the notice the
 278 reasons for disapproval. ~~The discount medical plan organization~~
 279 ~~has 21 days from the date of receipt of notice to request a~~
 280 ~~hearing before the office pursuant to chapter 120.~~

281 Section 11. Subsection (2) of section 636.218, Florida
 282 Statutes, is amended to read:

283 636.218 Annual reports.--

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

286 (a) Audited financial statements prepared in accordance
 287 with generally accepted accounting principles certified by an
 288 independent certified public accountant, including the
 289 organization's balance sheet, income statement, and statement of
 290 changes in cash flow for the preceding year. An organization
 291 that is a subsidiary of a parent entity that is publicly traded
 292 and that prepares audited financial statements reflecting the
 293 consolidated operations of the parent entity and the
 294 organization may petition the office to accept, in lieu of the
 295 audited financial statement of the organization, the audited
 296 financial statement of the parent entity and a written guaranty
 297 by the parent entity that the minimum capital requirements of
 298 the organization required by this part will be met by the parent
 299 entity.

300 (b) If different from the initial application or the last
 301 annual report, a list of the names and residence addresses of
 302 all persons responsible for the conduct of the organization's

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303 | affairs, together with a disclosure of the extent and nature of
 304 | any contracts or arrangements between such persons and the
 305 | discount medical plan organization, including any possible
 306 | conflicts of interest.

307 | (c) The number of discount medical plan members in the
 308 | state.

309 | (d) Such other information relating to the performance of
 310 | the discount medical plan organization as is reasonably required
 311 | by the commission or office.

312 | Section 12. Section 636.223, Florida Statutes, is created
 313 | to read:

314 | 636.223 Administrative penalty.--In lieu of suspending or
 315 | revoking a certificate of authority whenever any discount
 316 | medical plan organization has been found to have violated any
 317 | provision of this part, the office may:

318 | (1) Issue and cause to be served upon the organization
 319 | charged with the violation a copy of such findings and an order
 320 | requiring such organization to cease and desist from engaging in
 321 | the act or practice that constitutes the violation.

322 | (2) Impose a monetary penalty of not less than \$100 for
 323 | each violation, but not to exceed an aggregate penalty of
 324 | \$75,000.

325 | Section 13. Subsection (2) of section 636.228, Florida
 326 | Statutes, is amended to read:

327 | 636.228 Marketing of discount medical plans.--

328 | (2) The discount medical plan organization shall have an
 329 | executed written agreement with a marketer prior to the
 330 | marketer's marketing, promoting, selling, or distributing the

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331 discount medical plan. Such agreement shall prohibit the
 332 marketer from using marketing materials, brochures, and discount
 333 cards without the approval in writing by the discount medical
 334 plan organization. The discount medical plan organization shall
 335 be bound by and shall be responsible and financially liable for
 336 any acts of its marketers, within the scope of the marketers'
 337 agency, that do not comply with the provisions of this part.

338 Section 14. Section 636.230, Florida Statutes, is amended
 339 to read:

340 636.230 Bundling discount medical plans with other
 341 ~~insurance~~ products.--When a marketer or discount medical plan
 342 organization sells a discount medical plan together with any
 343 other product, the fees for the discount medical plan each
 344 ~~individual product~~ must be provided in writing to the member if
 345 the fees exceed \$30 and itemized.

346 Section 15. Section 636.236, Florida Statutes, is amended
 347 to read:

348 636.236 Surety bond or security deposit.--

349 (1) Each discount medical plan organization licensed
 350 pursuant to the provisions of this part must maintain in force a
 351 surety bond in its own name in an amount not less than \$35,000
 352 to be used at the discretion of the office to protect the
 353 financial interests of members who may be adversely affected by
 354 the insolvency of a discount medical plan organization. The bond
 355 must be issued by an insurance company that is licensed to do
 356 business in this state.

357 (2)(1) In lieu of the bond specified in subsection (1), a
 358 licensed discount medical plan organization may ~~must~~ deposit and

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359 maintain deposited in trust with the department securities
 360 eligible for deposit under s. 625.52, having at all times a
 361 value of not less than \$35,000, ~~for use by the office in~~
 362 ~~protecting plan members.~~ If a licensed discount medical plan
 363 organization substitutes its deposited securities under this
 364 subsection with a surety bond authorized in subsection (1), such
 365 deposited securities shall be returned to the discount medical
 366 plan organization no later than 45 days following the effective
 367 date of the surety bond.

368 ~~(3)(2)~~ No judgment creditor or other claimant of a
 369 discount medical plan organization, other than the office or
 370 department, shall have the right to levy upon any of the assets
 371 or securities held in this state as a deposit under subsections
 372 ~~subsection~~ (1) and (2).

373 Section 16. Section 636.238, Florida Statutes, is amended
 374 to read:

375 636.238 Penalties for violation of this part.--

376 (1) Except as provided in subsection (2), a person who
 377 willfully violates any provision of this part commits a
 378 misdemeanor of the second degree, punishable as provided in s.
 379 775.082 or s. 775.083.

380 (2) A person who operates as or willfully aids and abets
 381 another operating as a discount medical plan organization in
 382 violation of s. 636.204(1) commits a felony punishable as
 383 provided for in s. 624.401(4)(b), as if the unlicensed discount
 384 medical plan organization were an unauthorized insurer, and the
 385 fees, dues, charges, or other consideration collected from the

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386 | members by the unlicensed discount medical plan organization or
387 | marketer were insurance premium.

388 | (3) A person who collects fees for purported membership in
389 | a discount medical plan but purposefully fails to provide the
390 | promised benefits commits a theft, punishable as provided in s.
391 | 812.014.

392 | Section 17. Section 636.242, Florida Statutes, is
393 | repealed.

394 | Section 18. This act shall take effect upon becoming a
395 | law.