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HB 1081, Engrossed 1

2005 Legislature

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; creating s. 636.205, F.S.;
7 providing requirements for issuance of a license;
8 authorizing the Office of Insurance Regulation to deny a
9 license; amending s. 636.206, F.S.; providing that
10 discount medical plan organizations are not subject to the
11 Florida Insurance Code for purposes of examination and
12 investigation; creating s. 636.207, F.S.; providing for
13 applicability of pt. II of ch. 636, F.S.; amending s.
14 636.208, F.S.; revising provisions relating to
15 reimbursement of certain charges and fees upon
16 cancellation of membership in the plan; amending s.
17 636.210, F.S.; revising prohibitions relating to
18 advertising; amending s. 636.212, F.S.; revising
19 provisions relating to disclosures to prospective members;
20 amending s. 636.214, F.S.; revising provisions relating to
21 provider agreements; amending s. 636.216, F.S.; providing
22 conditions for approval of charges and forms; deleting a
23 provision relating to request for a hearing; amending s.
24 636.218, F.S.; revising requirements for information to be
25 included in annual reports; creating s. 636.223, F.S.;
26 providing for administrative penalties; amending s.
27 636.228, F.S.; specifying marketing requirements of
28 discount medical plans; providing limitations; amending s.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 | 636.230, F.S.; specifying fee disclosure requirements for
 30 | bundling discount medical plans with other products;
 31 | amending s. 636.236, F.S.; requiring discount medical plan
 32 | organizations to maintain surety bonds; providing
 33 | conditions for substituting deposited securities for
 34 | surety bonds; amending s. 636.238, F.S.; revising
 35 | penalties; repealing s. 636.242, F.S., relating to civil
 36 | remedies; providing an effective date.

37 |

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

39 |

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

42 | 636.202 Definitions.--As used in this part, the term:

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

50 | Section 2. Subsections (1) and (2) of section 636.204,
 51 | Florida Statutes, are amended to read:

52 | 636.204 License required.--

53 | (1) Before doing business in this state as a discount
 54 | medical plan organization, an entity must be a corporation, a
 55 | limited liability company, or a limited partnership,
 56 | incorporated, organized, formed, or registered under the laws of

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57 this state or authorized to transact business in this state in
 58 accordance with chapter 607, chapter 608, chapter 617, chapter
 59 620, or chapter 865 incorporated under the laws of this state
 60 or, if a foreign corporation, authorized to transact business in
 61 this state, and must be licensed by the office ~~possess a license~~
 62 as a discount medical plan organization or be licensed by the
 63 office pursuant to chapter 624, part I of chapter 636, or
 64 chapter 641 from the office.

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

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

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

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

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84 the discount medical plan organization, including any possible
85 conflicts of interest.

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

90 (e) A statement generally describing the applicant, its
91 facilities and personnel, and the medical services to be
92 offered.

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

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

99 (h) A copy of the form of any contract made or to be made
100 between the applicant and any person, corporation, partnership,
101 or other entity for the performance on the applicant's behalf of
102 any function, including, but not limited to, marketing,
103 administration, enrollment, investment management, and
104 subcontracting for the provision of health services to members.

105 (i) A copy of the applicant's most recent financial
106 statements audited by an independent certified public
107 accountant. An applicant that is a subsidiary of a parent entity
108 that is publicly traded and that prepares audited financial
109 statements reflecting the consolidated operations of the parent
110 entity and the subsidiary may petition the office to accept, in
111 lieu of the audited financial statement of the applicant, the

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112 audited financial statement of the parent entity and a written
 113 guaranty by the parent entity that the minimum capital
 114 requirements of the applicant required by this part will be met
 115 by the parent entity.

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

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

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

120 (m) Such other information as the commission or office may
 121 reasonably require to make the determinations required by this
 122 part.

123 Section 3. Section 636.205, Florida Statutes, is created
 124 to read:

125 636.205 Issuance of license; denial.--

126 (1) Following receipt of an application filed pursuant to
 127 s. 636.204, the office shall review the application and notify
 128 the applicant of any deficiencies contained therein. The office
 129 shall issue a license to an applicant who has filed a completed
 130 application pursuant to s. 636.204 upon payment of the fees
 131 specified in s. 636.204 and upon the office being satisfied that
 132 the following conditions are met:

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

134 (b) The entity has the required minimum capital
 135 requirements.

136 (c) The ownership, control, and management of the entity
 137 are competent and trustworthy and possess managerial experience
 138 that would make the proposed operation beneficial to the
 139 subscribers. The office shall not grant or continue to grant

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140 authority to transact the business of a discount medical plan
141 organization in this state at any time during which the office
142 has good reason to believe that the ownership, control, or
143 management of the organization includes any person whose
144 business operations are or have been marked by business
145 practices or conduct that is detrimental to the public,
146 stockholders, investors, or creditors.

147 (d) The discount medical plan organization has a complaint
148 procedure that will facilitate the resolution of subscriber
149 grievances and that includes both formal and informal steps
150 available within the organization.

151 (e) Any deficiencies identified by the office have been
152 corrected.

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

154 (2) If the application for a license is denied, the office
155 shall notify the applicant and shall specify the reasons for
156 denial in the notice.

157 Section 4. Section 636.206, Florida Statutes, is amended
158 to read:

159 636.206 Examinations and investigations.--

160 (1) The office may examine or investigate the business and
161 affairs of any discount medical plan organization. The office
162 may order any discount medical plan organization or applicant to
163 produce any records, books, files, advertising and solicitation
164 materials, or other information and may take statements under
165 oath to determine whether the discount medical plan organization
166 or applicant is in violation of the law or is acting contrary to
167 the public interest. The expenses incurred in conducting any

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168 examination or investigation must be paid by the discount
169 medical plan organization or applicant. Examinations and
170 investigations must be conducted as provided in chapter 624, ~~and~~
171 ~~discount medical plan organizations are subject to all~~
172 ~~applicable provisions of the insurance code.~~

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

176 Section 5. Section 636.207, Florida Statutes, is created
177 to read:

178 636.207 Applicability of part.--Except as otherwise
179 provided in this part, discount medical plan organizations are
180 governed by the provisions of this part and are exempt from the
181 Florida Insurance Code unless specifically referenced.

182 Section 6. Section 636.208, Florida Statutes, is amended
183 to read:

184 636.208 Fees; charges; reimbursement.--

185 (1) A discount medical plan organization may charge a
186 periodic charge as well as a reasonable one-time processing fee
187 for a discount medical plan and a periodic charge. ~~If a discount~~
188 ~~medical plan charges for a time period in excess of 1 month, the~~
189 ~~plan must, in the event of cancellation of the membership by~~
190 ~~either party, make a pro rata reimbursement of the fees to the~~
191 ~~member.~~

192 (2) If the member cancels his or her membership in the
193 discount medical plan organization within the first 30 days
194 after the effective date of enrollment in the plan, the member
195 shall receive a reimbursement of all periodic charges upon

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196 return of the discount card to the discount medical plan
 197 organization.

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

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

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

209 636.210 Prohibited activities of a discount medical plan
 210 organization.--

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

212 (a) Use in its advertisements, marketing material,
 213 brochures, and discount cards the term "insurance" except as
 214 otherwise provided in this part or as a disclaimer of any
 215 relationship between discount medical plan organization benefits
 216 and insurance;

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

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224 Section 8. Section 636.212, Florida Statutes, is amended
 225 to read:

226 636.212 Disclosures.--The following disclosures must be
 227 made in writing to any prospective member and must be on the
 228 first page of any advertisements, marketing materials, or
 229 brochures relating to a discount medical plan. The disclosures
 230 must be printed in not less than 12-point type ~~or no smaller~~
 231 ~~than the largest type on the page if larger than 12-point type:~~

- 232 (1) That the plan is not a ~~health~~ insurance ~~policy~~.
- 233 (2) That the plan provides discounts at certain health
 234 care providers for medical services.
- 235 (3) That the plan does not make payments directly to the
 236 providers of medical services.
- 237 (4) That the plan member is obligated to pay for all
 238 health care services but will receive a discount from those
 239 health care providers who have contracted with the discount plan
 240 organization.
- 241 (5) The ~~corporate~~ name and address ~~the locations~~ of the
 242 licensed discount medical plan organization.

243
 244 If the initial contract is made by telephone, the disclosures
 245 required by this section shall be made orally and provided in
 246 the initial written materials that describe the benefits under
 247 the discount medical plan provided to the prospective or new
 248 member.

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

251 636.214 Provider agreements.--

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

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

256 (b) The amount or amounts of the discounts or,
 257 alternatively, a fee schedule which reflects the provider's
 258 discounted rates.

259 (c) That the provider will not charge members more than
 260 the discounted rates.

261 (4) The discount medical plan organization shall maintain
 262 a copy of each active provider agreement into which it has
 263 entered.

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

266 636.216 Charge or form filings.--

267 (4) A charge or form is considered approved on the 60th
 268 day after its date of filing unless it has been previously
 269 disapproved by the office. The office shall disapprove any form
 270 that does not meet the requirements of this part or that is
 271 unreasonable, discriminatory, misleading, or unfair. If such
 272 filings are disapproved, the office shall notify the discount
 273 medical plan organization and shall specify in the notice the
 274 reasons for disapproval. ~~The discount medical plan organization~~
 275 ~~has 21 days from the date of receipt of notice to request a~~
 276 ~~hearing before the office pursuant to chapter 120.~~

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

279 636.218 Annual reports.--

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

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

296 (b) If different from the initial application or the last
297 annual report, a list of the names and residence addresses of
298 all persons responsible for the conduct of the organization's
299 affairs, together with a disclosure of the extent and nature of
300 any contracts or arrangements between such persons and the
301 discount medical plan organization, including any possible
302 conflicts of interest.

303 (c) The number of discount medical plan members in the
304 state.

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

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308 Section 12. Section 636.223, Florida Statutes, is created
 309 to read:

310 636.223 Administrative penalty.--In lieu of suspending or
 311 revoking a certificate of authority whenever any discount
 312 medical plan organization has been found to have violated any
 313 provision of this part, the office may:

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

318 (2) Impose a monetary penalty of not less than \$100 for
 319 each violation, but not to exceed an aggregate penalty of
 320 \$75,000.

321 Section 13. Subsection (2) of section 636.228, Florida
 322 Statutes, is amended to read:

323 636.228 Marketing of discount medical plans.--

324 (2) The discount medical plan organization shall have an
 325 executed written agreement with a marketer prior to the
 326 marketer's marketing, promoting, selling, or distributing the
 327 discount medical plan. Such agreement shall prohibit the
 328 marketer from using marketing materials, brochures, and discount
 329 cards without the approval in writing by the discount medical
 330 plan organization. The discount medical plan organization shall
 331 be bound by and shall be responsible and financially liable for
 332 any acts of its marketers, within the scope of the marketers'
 333 agency, that do not comply with the provisions of this part.

334 Section 14. Section 636.230, Florida Statutes, is amended
 335 to read:

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336 636.230 Bundling discount medical plans with other
 337 ~~insurance~~ products.--When a marketer or discount medical plan
 338 organization sells a discount medical plan together with any
 339 other product, the fees for the discount medical plan each
 340 ~~individual product~~ must be provided in writing to the member if
 341 the fees exceed \$30 and itemized.

342 Section 15. Section 636.236, Florida Statutes, is amended
 343 to read:

344 636.236 Surety bond or security deposit.--

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

353 (2)~~(1)~~ In lieu of the bond specified in subsection (1), a
 354 licensed discount medical plan organization ~~may~~ must deposit and
 355 maintain deposited in trust with the department securities
 356 eligible for deposit under s. 625.52, having at all times a
 357 value of not less than \$35,000, ~~for use by the office in~~
 358 protecting plan members. If a licensed discount medical plan
 359 organization substitutes its deposited securities under this
 360 subsection with a surety bond authorized in subsection (1), such
 361 deposited securities shall be returned to the discount medical
 362 plan organization no later than 45 days following the effective
 363 date of the surety bond.

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364 ~~(3)(2)~~ No judgment creditor or other claimant of a
 365 discount medical plan organization, other than the office or
 366 department, shall have the right to levy upon any of the assets
 367 or securities held in this state as a deposit under subsections
 368 ~~subsection~~ (1) and (2).

369 Section 16. Section 636.238, Florida Statutes, is amended
 370 to read:

371 636.238 Penalties for violation of this part.--

372 (1) Except as provided in subsection (2), a person who
 373 willfully violates any provision of this part commits a
 374 misdemeanor of the second degree, punishable as provided in s.
 375 775.082 or s. 775.083.

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

384 (3) A person who collects fees for purported membership in
 385 a discount medical plan but purposefully fails to provide the
 386 promised benefits commits a theft, punishable as provided in s.
 387 812.014.

388 Section 17. Section 636.242, Florida Statutes, is
 389 repealed.

390 Section 18. This act shall take effect upon becoming a
 391 law.