

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.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 1432

SPONSOR: Banking and Insurance Committee and Senator Baker

SUBJECT: Insurance Administrators

DATE: March 22, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Insurance administrators provide various services to life or health insurers or self-insured programs such as soliciting coverage, collecting premiums, claims handling, and settling claims. Administrators must be licensed by the Office of Insurance Regulation (OIR) and are regulated under Part VII of Chapter 626, Florida Statutes (ss. 626.88-626.899).

Senate Bill 1432 makes changes to Chapter 626, F.S., that are consistent with the National Association of Insurance Commissioners Model Act 090, the NAIC Third Party Administrator Statute. The bill amends the definition of "administrator" to exempt from licensure requirements wholly owned direct or indirect subsidiaries of an employer that provide administrative services for the employer or the employer's subsidiaries or affiliated corporations. The bill creates additional exemptions from licensure for entities meeting certain criteria.

New applicants for licensure as an administrator must file audited financial statements for the past two fiscal years. New applicants must also submit a business plan that details staffing levels and the applicant's ability to provide a sufficient number of qualified personnel to carry out specified duties. The annual report filed by an administrator must include an audited financial statement performed by an independent certified public accountant under the bill, which also provides authority for the electronic submission of such documents.

The bill requires the insurer and its administrator to enter into a written agreement whereby the insurer determines the benefits, premium rates, underwriting criteria, and claims payment procedures the administrator is to follow. The insurer is solely responsible for the competent administration of its programs. Also, an insurer must semiannually review the operations of an

administrator handling over 100 insurance certificateholders, with one such review being an on-site audit of the administrator's operations.

The bill provides rulemaking authority to the Financial Services Commission.

The bill takes effect October 1, 2005.

This bill substantially amends sections 626.88, 626.8805, 626.8817, and 626.89 of the Florida Statutes. This bill creates section 626.8991 of the Florida Statutes.

II. Present Situation:

Insurance Administrators (Third Party Administrators)

An "administrator,"¹ more commonly referred to as a third party administrator or TPA, must be licensed by the Office of Insurance Regulation (OIR). Third party administrators provide various administrative services for life and health insurers, health maintenance organizations (HMOs), self-insurance programs, and other types of insurers. Some of the services provided by TPAs include soliciting and making effective insurance coverage, collecting premiums, and adjusting and settling claims.

Administrators are placed under various regulatory requirements under ss. 626.88-626.894, F.S. For example, an administrator must make its books and records available to the OIR for examination, audit, and inspection and must maintain its business records for five years.² Administrators are also required to file annual financial statements with the OIR.³ Administrators must have a written agreement with an insurer containing specified provisions. The insurance company, and not the administrator, must be responsible for determining the benefits, rates underwriting criteria, and claims payment procedures.⁴ A payment to the administrator of any premiums on behalf of the insured are deemed to have been received by the insurer and all premiums collected by an administrator on behalf of an insurer must be held by the administrator in a fiduciary capacity. If an administrator is collecting premiums for more than one insurer, the administrator must keep records clearly recording each insurer's accounts.

The administrator law requires that a person who provides billing and collection services to HMOs on behalf of health care providers must comply with s. 641.3155, F.S., the prompt payment statute, and s. 641.51(4), F.S., which requires that only a Florida licensed physician or osteopath may render an adverse determination regarding a service provided by a physician and specifies procedures that must be followed.⁵

¹ As provided in s. 626.88(1), F.S., "...[A]n "administrator" is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage . . . or any person who, through a health care risk contract as defined in s. 641.234 with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers, . . ."

² s. 626.884, F.S.

³ s. 626.89, F.S.

⁴ ss. 626.8817 and 626.882, F.S.

⁵ s. 626.88, F.S.

The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states.⁶ The NAIC was created to coordinate regulation of multi-state insurers, provide a forum for addressing major insurance issues, and promote consistent laws among the states. The NAIC also has a national accreditation program of reviewing state insurance departments,⁷ serves as a national insurer information clearinghouse, provides a structure for interstate cooperation in examining multi-state insurers, and develops model laws.⁸ Many of the NAIC model laws have been adopted in whole or in part by Florida, including parts of NAIC Model Act 090, the Third Party Administrator Statute, found in sections 626.88-626.899, F.S.

III. Effect of Proposed Changes:

The provisions of Senate Bill 1432 all conform to the provisions of the National Association of Insurance Commissioners Model Act 090, the NAIC Third Party Administrator Statute NAIC.

Section 1. Amends the definitions of “administrator”, and creates definitions for “affiliate” and “affiliated,” “control,” and “GAAP” in s. 626.88, F.S. The definition of “administrator” is amended to exempt from licensure wholly owned direct or indirect subsidiaries of an employer that provide administrative services for the employer or the employers subsidiaries or affiliated corporations. Current law only provides an exemption for the employer, not its subsidiaries.

The bill creates three new exemptions from licensure as well. First, the bill exempts an entity that is affiliated with an insurer and only performs contractual duties of an administrator for the direct and assumed insurance business of an affiliated insurer. The insurer is responsible for the acts of the administrator and for providing the administrator’s books and records to the insurance commissioner upon request. The second exemption is created for a nonresident entity licensed in its state of domicile that administers only a group plan with 100 or fewer Florida residents for all plans that it administers. The third exemption is for a Florida licensed managing general agent whose activities are limited exclusively to activities covered under such license.

The bill provides definitions for “affiliate” or “affiliated,” “control,” and “GAAP” (generally accepted accounting principles) that are consistent with the NAIC Model Act.

Section 2. Amends s. 626.8805, F.S., to require applicants for licensure as an administrator to file audited financial statements certified by an officer of the applicant and prepared in accordance with GAAP for the 2 most recent fiscal years that prove the applicant has a positive net worth. If the applicant has been in existence less than 2 years, then the financial statement must include any completed fiscal years and any month during the current fiscal year for which a financial statement or report has been completed. Currently, applicants must file annual statements or reports for the 3 most recent years, but they are not required to be audited.

⁶ Also includes the District of Columbia and four U.S. territories.

⁷ Florida was the first state to be accredited by the NAIC and has since been reaccredited twice.

⁸ Florida has enacted via statute a number of NAIC model acts, either in part or in whole. Examples of model acts adopted by Florida include NAIC Model Act 315—Risk Based Capital (RBC) For Insurers Model Act and NAIC Model Act 440—Insurance Holding Company System Regulatory Act.

The bill creates a new requirement that an applicant for licensure as an administrator must submit a business plan that includes the staffing levels and proposed activities in Florida and nationwide. The plan must provide for sufficient staffing levels in the areas of claims processing, recordkeeping, and underwriting.

Section 3. Amends s. 626.8817, F.S., to add specific requirements to the current requirement that an insurer using the services of an administrator is responsible for determining the benefits, premium rates, underwriting criteria, and claims payments procedures applicable to the coverage, and securing reinsurance, if any is needed. The bill provides that the insurer must make a written agreement between itself and the administrator pertaining to these matters.

The bill adds that the insurer is solely responsible for the competent administration of its programs. The insurer must conduct a semiannual review of an administrator that administers benefits for more than 100 certificateholders on the insurer's behalf, with at least one of the reviews being an on-site audit of the administrator's operations.

Section 4. Amends s. 626.89, F.S., to require that an administrator file with the OIR an audited financial statement performed by an independent certified public accountant. The annual report is currently required by statute to be filed by June 1 of each year. The bill also provides authority for the financial services commission to require electronic filing of the annual report.

Section 5. Creates s. 626.8991, F.S., to provide the Financial Services Commission with rulemaking authority to administer this part of the Florida Statutes.

Section 6. The act shall take effect on October 1, 2005.

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:

Administrator licensees that do not currently obtain audited financial statements will incur the increased cost of a financial audit to be included with its annual report. Also, applicants for licensure will have to pay for an audit of its operations for the two most recent fiscal years it has been in existence.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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