

By the Committee on Banking and Insurance; and Senator Baker

597-1795-05

1 A bill to be entitled

2 An act relating to insurance administrators;

3 amending s. 626.88, F.S.; redefining the term

4 "administrator" and defining the terms

5 "affiliate," "control," and "GAAP"; amending s.

6 626.8805, F.S.; requiring additional

7 information to accompany an application for a

8 certificate of authority to act as an

9 administrator; amending s. 626.8817, F.S.;

10 detailing the responsibilities of an insurance

11 company in its dealings with an administrator;

12 amending s. 626.89, F.S.; prescribing

13 information that must be submitted in an

14 administrator's annual report; authorizing the

15 Financial Services Commission to require

16 electronic submission of annual reports;

17 creating s. 626.8991, F.S.; authorizing the

18 commission to adopt rules; providing an

19 effective date.

20

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

22

23 Section 1. Section 626.88, Florida Statutes, is

24 amended to read:

25 626.88 Definitions of ~~"administrator" and "insurer".~~--

26 ~~(1)~~ For the purposes of this part, the term:

27 (1) ~~an~~ "Administrator" is any person who directly or

28 indirectly solicits or effects coverage of, collects charges

29 or premiums from, or adjusts or settles claims on residents of

30 this state in connection with authorized commercial

31 self-insurance funds or with insured or self-insured programs

1 | which provide life or health insurance coverage or coverage of
2 | any other expenses described in s. 624.33(1) or any person
3 | who, through a health care risk contract as defined in s.
4 | 641.234 with an insurer or health maintenance organization,
5 | provides billing and collection services to health insurers
6 | and health maintenance organizations on behalf of health care
7 | providers, other than any of the following persons:

8 | (a) An employer or wholly owned direct or indirect
9 | subsidiary of an employer, on behalf of such employer's
10 | employees or the employees of one or more subsidiary or
11 | affiliated corporations of such employer.

12 | (b) A union on behalf of its members.

13 | (c) An insurance company which is either authorized to
14 | transact insurance in this state or is acting as an insurer
15 | with respect to a policy lawfully issued and delivered by such
16 | company in and pursuant to the laws of a state in which the
17 | insurer was authorized to transact an insurance business.

18 | (d) A health care services plan, health maintenance
19 | organization, professional service plan corporation, or person
20 | in the business of providing continuing care, possessing a
21 | valid certificate of authority issued by the office, and the
22 | sales representatives thereof, if the activities of such
23 | entity are limited to the activities permitted under the
24 | certificate of authority.

25 | (e) An entity that is affiliated with an insurer and
26 | that only performs the contractual duties, between the
27 | administrator and the insurer, of an administrator for the
28 | direct and assumed insurance business of the affiliated
29 | insurer. The insurer is responsible for the acts of the
30 | administrator and is responsible for providing all of the
31 | administrator's books and records to the insurance

1 commissioner, upon a request from the insurance commissioner.

2 For purposes of this paragraph, the term "insurer" means a
3 licensed insurance company, health maintenance organization,
4 prepaid limited health service organization, or prepaid health
5 clinic.

6 (f) A nonresident entity licensed in its state of
7 domicile as an administrator if its duties in this state are
8 limited to the administration of a group policy or plan of
9 insurance and no more than a total of 100 lives for all plans
10 reside in this state.

11 (g)(e) An insurance agent licensed in this state whose
12 activities are limited exclusively to the sale of insurance.

13 (h) A person licensed as a managing general agent in
14 this state, whose activities are limited exclusively to the
15 scope of activities conveyed under such license.

16 (i)(f) An adjuster licensed in this state whose
17 activities are limited to the adjustment of claims.

18 (j)(g) A creditor on behalf of such creditor's debtors
19 with respect to insurance covering a debt between the creditor
20 and its debtors.

21 (k)(h) A trust and its trustees, agents, and employees
22 acting pursuant to such trust established in conformity with
23 29 U.S.C. s. 186.

24 (l)(i) A trust exempt from taxation under s. 501(a) of
25 the Internal Revenue Code, a trust satisfying the requirements
26 of ss. 624.438 and 624.439, or any governmental trust as
27 defined in s. 624.33(3), and the trustees and employees acting
28 pursuant to such trust, or a custodian and its agents and
29 employees, including individuals representing the trustees in
30 overseeing the activities of a service company or
31 administrator, acting pursuant to a custodial account which

1 meets the requirements of s. 401(f) of the Internal Revenue
2 Code.

3 (m)~~(j)~~ A financial institution which is subject to
4 supervision or examination by federal or state authorities or
5 a mortgage lender licensed under chapter 494 who collects and
6 remits premiums to licensed insurance agents or authorized
7 insurers concurrently or in connection with mortgage loan
8 payments.

9 (n)~~(k)~~ A credit card issuing company which advances
10 for and collects premiums or charges from its credit card
11 holders who have authorized such collection if such company
12 does not adjust or settle claims.

13 (o)~~(l)~~ A person who adjusts or settles claims in the
14 normal course of such person's practice or employment as an
15 attorney at law and who does not collect charges or premiums
16 in connection with life or health insurance coverage.

17 (p)~~(m)~~ A person approved by the department who
18 administers only self-insured workers' compensation plans.

19 (q)~~(n)~~ A service company or service agent and its
20 employees, authorized in accordance with ss. 626.895-626.899,
21 serving only a single employer plan, multiple-employer welfare
22 arrangements, or a combination thereof.

23 (r)~~(o)~~ Any provider or group practice, as defined in
24 s. 456.053, providing services under the scope of the license
25 of the provider or the member of the group practice.

26 (s)~~(p)~~ Any hospital providing billing, claims, and
27 collection services solely on its own and its physicians'
28 behalf and providing services under the scope of its license.

29
30 A person who provides billing and collection services to
31 health insurers and health maintenance organizations on behalf

1 of health care providers shall comply with the provisions of
2 ss. 627.6131, 641.3155, and 641.51(4).

3 (2) "Affiliate" or "affiliated" means an entity or
4 person who directly or indirectly through one or more
5 intermediaries controls, is controlled by, or is under common
6 control with a specified entity or person.

7 (3) "Control," including the terms "controlling,"
8 "controlled by," and "under common control with," means the
9 possession, direct or indirect, of the power to direct or
10 cause the direction of the management and policies of a
11 person, whether through the ownership or voting securities, by
12 contract other than a commercial contract for goods or
13 nonmanagement services, or otherwise, unless the power is the
14 result of an official position with or corporate office held
15 by the person. Control shall be presumed to exist if any
16 person directly or indirectly owns, controls, holds with the
17 power to vote, or holds proxies representing 10 percent or
18 more of the voting securities of any other person.

19 (4) "GAAP" means United States generally accepted
20 accounting principles consistently applied.

21 ~~(5)(2) For the purposes of this part, an "Insurer"~~
22 includes an authorized commercial self-insurance fund and
23 includes any person undertaking to provide life or health
24 insurance coverage or coverage of any of the other expenses
25 described in s. 624.33(1).

26 Section 2. Subsection (2) of section 626.8805, Florida
27 Statutes, is amended to read:

28 626.8805 Certificate of authority to act as
29 administrator.--

30 (2) The administrator shall file with the office an
31 application for a certificate of authority upon a form to be

1 adopted by the commission and furnished by the office, which
2 application shall include or have attached the following
3 information and documents:

4 (a) All basic organizational documents of the
5 administrator, such as the articles of incorporation, articles
6 of association, partnership agreement, trade name certificate,
7 trust agreement, shareholder agreement, and other applicable
8 documents, and all amendments to those documents.

9 (b) The bylaws, rules, and regulations or similar
10 documents regulating the conduct or the internal affairs of
11 the administrator.

12 (c) The names, addresses, official positions, and
13 professional qualifications of the individuals who are
14 responsible for the conduct of the affairs of the
15 administrator, including all members of the board of
16 directors, board of trustees, executive committee, or other
17 governing board or committee, the principal officers in the
18 case of a corporation, the partners or members in the case of
19 a partnership or association, and any other person who
20 exercises control or influence over the affairs of the
21 administrator.

22 (d) Audited annual financial statements for the 2 most
23 recent fiscal years which prove that the applicant has a
24 positive net worth. If the applicant has been in existence for
25 less than 2 fiscal years, the application must include
26 financial statements or reports, certified by an officer of
27 the applicant and prepared in accordance with GAAP, for any
28 completed fiscal years and for any month during the current
29 fiscal year for which such financial statements or reports
30 have been completed. An audited financial statement or report
31 prepared on a consolidated basis must include a columnar

1 consolidating or combining worksheet that shall be filed with
2 the report and must comply with the following:

3 1. Amounts shown on the consolidated audited financial
4 report must be shown on the worksheet;

5 2. Amounts for each entity shall be stated separately;

6 and

7 3. Explanations of consolidating and eliminating
8 entries.

9
10 The applicant shall also include such other information as the
11 office requires in order to review the current financial
12 condition of the applicant. ~~Annual statements or reports for~~
13 ~~the 3 most recent years, or such other information as the~~
14 ~~office may require in order to review the current financial~~
15 ~~condition of the applicant.~~

16 (e) A statement describing the business plan,
17 including information on staffing levels and activities
18 proposed in this state and nationwide. The plan must provide
19 details setting forth the applicant's capability for providing
20 a sufficient number of experienced and qualified personnel in
21 the areas of claims processing, recordkeeping, and
22 underwriting.

23 (f)(e) If the applicant is not currently acting as an
24 administrator, a statement of the amounts and sources of the
25 funds available for organization expenses and the proposed
26 arrangements for reimbursement and compensation of
27 incorporators or other principals.

28 Section 3. Section 626.8817, Florida Statutes, is
29 amended to read:

30 626.8817 Responsibilities of insurance company with
31 respect to administration of coverage insured.--

1 (1) If an insurer uses the services of an
2 administrator, the insurer is responsible for determining the
3 benefits, premium rates, underwriting criteria, and claims
4 payment procedures applicable to the coverage and for securing
5 reinsurance, if any. The rules pertaining to these matters
6 shall be provided, in writing, by the insurer to the
7 administrator. The responsibilities of the administrator as to
8 any of these matters shall be set forth in the written
9 agreement between the administrator and the insurer.

10 (2) It is the sole responsibility of the insurer to
11 provide for competent administration of its programs.

12 (3) In cases in which an administrator administers
13 benefits for more than 100 certificateholders on behalf of an
14 insurer, the insurer shall, at least semiannually, conduct a
15 review of the operations of the administrator. At least one
16 such review must be an on-site audit of the operations of the
17 administrator.

18 (4) For purposes of this section, the term "insurer"
19 means a licensed insurance company, health maintenance
20 organization, prepaid limited health service organization, or
21 prepaid health clinic. ~~As to the administration of coverage~~
22 ~~insured by an insurance company, the insurance company, and~~
23 ~~not the administrator, shall be responsible for determining~~
24 ~~the benefits, rates, underwriting criteria, and claims payment~~
25 ~~procedures applicable to such coverage and for securing~~
26 ~~reinsurance, if any.~~

27 Section 4. Section 626.89, Florida Statutes, is
28 amended to read:

29 626.89 Annual financial statement and filing fee;
30 notice of change of ownership.--

31

1 (1) Each authorized administrator shall file with the
2 office a full and true statement of its financial condition,
3 transactions, and affairs. The statement shall be filed
4 annually on or before March 1 or within such extension of time
5 therefor as the office for good cause may have granted and
6 shall be for the preceding calendar year. The statement shall
7 be in such form and contain such matters as the commission
8 prescribes and shall be verified by at least two officers of
9 such administrator.

10 (2) Each authorized administrator shall also file an
11 audited financial statement performed by an independent
12 certified public accountant. The audited financial statement
13 shall be filed with the office on or before June 1 for the
14 preceding calendar year ending December 31. An audited
15 financial statement prepared on a consolidated basis must
16 include a columnar consolidating or combining worksheet that
17 must be filed with the statement and must comply with the
18 following:

19 (a) Amounts shown on the consolidated audited
20 financial statement must be shown on the worksheet;

21 (b) Amounts for each entity must be stated separately;
22 and

23 (c) Explanations of consolidating and eliminating
24 entries must be included.

25 ~~(3)~~(2) At the time of filing its annual statement, the
26 administrator shall pay a filing fee in the amount specified
27 in s. 624.501 for the filing of an annual statement by an
28 insurer.

29 ~~(4)~~(3) In addition, the administrator shall
30 immediately notify the office of any material change in its
31 ownership.

1 (5) The commission may by rule require all or part of
2 the statements or filings required under this section to be
3 submitted by electronic means in a computer-readable form
4 compatible with the electronic-data format specified by the
5 commission.

6 Section 5. Section 626.8991, Florida Statutes, is
7 created to read:

8 626.8991 Adoption of rules.--The commission may adopt
9 rules necessary to administer this part.

10 Section 6. This act shall take effect October 1, 2005.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 1432

15 The committee substitute requires the audited financial
16 statement performed by an independent certified public
17 accountant to be filed with the office by June 1 of each year,
18 rather than March 1.
19
20
21
22
23
24
25
26
27
28
29
30
31