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 2214
SPONSOR:	Banking and Insurance Committee and Senator Saunders
SUBJECT:	Discount Medical Plan Organizations
DATE:	April 13, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	**Fav/CS**
2.			HE	
3.				
4.				
5.				
6.				

I. Summary:

Discount medical plan organizations (DMPO) that provide access for plan members to health care providers of medical services at a discounted fee in exchange for fees or other consideration are subject to licensure and regulation under part II of ch. 636, F.S., by the Office of Insurance Regulation (OIR). The committee substitute provides the following changes related to the licensure and regulation of these entities:

- authorizes OIR to impose an administrative penalty and cease and desist orders in lieu of suspending or revoking the license of a DMPO;
- provides that any charge or form is deemed approved on the 60th day after filing unless the Office of Insurance Regulation has previously disapproved it;
- authorizes the Office of Insurance Regulation to disapprove any form that does comply with part II of ch. 636, F.S., or that is unreasonable, discriminatory, misleading, or unfair;
- authorizes a DMPO to retain up to a $30 one-time processing if a membership is canceled within 30 days of joining the plan;
- revises the DMPO's liability for the actions of its marketer;
- eliminates audited financial statement requirements for licensure, if the applicant is a subsidiary of a parent company and certain conditions are met by the parent company;
- eliminates the filing of annual, audited financial statements for a subsidiary of a parent company if certain conditions are met, and instead, requires a DMPO to file a sworn affidavit certifying compliance with net worth requirements; and
- repeals the civil remedies provision.

This bill substantially amends the following sections of the Florida Statutes: 636.202, 636.204, 636.206, 636.207, 636.208, 636.210, 636.212, 636.214, 636.216, 636.216, 636.218, 636.223, 636.228, 636.230, 636.236, and 636.238.

The bill creates the following section of the Florida Statutes: 636.205.

The bill repeals the following section of the Florida Statutes: 636.242.

II. Present Situation:

Discount medical plan organizations that provide access for plan members to health care providers of medical services at a discounted fee in exchange for fees or other consideration are subject to licensure and regulation by the Office of Insurance Regulation (OIR), which is under the Financial Services Commission. Discount medical card plans offer a variety of health care services to consumers at a discounted rate. These plans are not health insurance and therefore do not pay for services on behalf of members; instead, the plans offer members access to specific health care products and services at a discounted fee. These health products and services may include, but are not limited to, dental services, emergency services, mental health services, vision care, chiropractic services, and hearing care. Generally, a medical discount plan organization has a contract with a provider network under which the individual providers provide the medical services at a discount and a marketer sells the plan to members.

These discount plans can perform a useful role in the health delivery system by providing consumers with savings on necessary medical services; however, some unscrupulous discount medical plans may require undisclosed fees, not provide any services, or fraudulently market such discount plans as insurance products to members for those fees.

During the 2004 Regular Session, the Florida Legislature established the regulation of medical discount plan organizations by OIR, effective January 1, 2005.[1] Discount medical plan organizations that provide access for plan members to health care providers of medical services at a discounted fee in exchange for fees, dues, charges, or other consideration are subject to licensure and regulation by the OIR. The law provides a licensure exemption for individual providers who offer discounts to their own patients. During the 2004 Special Session, the Legislature enacted ch. 2004-479, LOF, which delayed the effective date of the laws regulating DMPOs from January 1, 2005 until March 31, 2005. This extension was necessary because all rules governing the licensure of DMPO activities had not been approved by the Financial Services Commission. Rules governing the DMPO forms were adopted by the Financial Services Commission on February 16, 2005 and the final application package is scheduled for approval at the April 5, 2005 Cabinet meeting.

Part II of ch. 636, F.S., establishes licensure requirements, annual financial reporting, net worth requirements, authority for examinations and investigations, rulemaking authority for the Financial Services Commission ("commission"), prohibited activities, criminal penalties, and civil remedies.[2] The commission is authorized to adopt rules, for licensure, standards for

[1] Ch. 2004-297, L.O.F.

[2] The members of the Financial Services Commission serves as the agency head of the Office of Insurance Regulation for the purpose of rulemaking pursuant to s. 20.121(3), F.S.

evaluating forms, advertisements, marketing materials, and discount cards, and the collection of data.[3]

Before transacting business in Florida, a discount medical plan organization must be incorporated and possess a license as a discount medical plan organization.[4] As a condition of licensure, each discount medical plan organization must maintain a net worth requirement of $150,000. All charges to members of such plans must be filed with the OIR and any charge to members greater than $30 per month or $360 per year must be approved by the OIR before the charges can be used by the plan. All forms used by the organization must be filed with and approved by the OIR.

Section 636.204, F.S., requires applicants for licensure to submit an application on a form prescribed by the commission. The commission is required to establish, by rule, an application packet that includes certain documents, such as articles of incorporation, background and biographical statements, fingerprint cards, audited financial statements, and a summary of the business operations.

Section 636.238, F.S., provides that violation of any provision of part II of ch. 636, F.S., is a second-degree misdemeanor. Operating an unlicensed discount medical plan organization is punishable under s. 624.401 F.S., as if the unlicensed discount medical plan organization were an unlicensed insurer and the fees charged were premium. The law also authorizes the OIR to seek injunctive relief against an unlicensed discount medical plan organization, or any person who has violated a provision of this part or a rule adopted pursuant to this part.[5] Section 636.242, F.S., authorizes any person damaged by acts of a person in violation of part II of ch. 636, F.S., to file a civil action against that person. Attorneys' fees and court costs may be recoverable.[6]

As of this time, the number of organizations subject to state licensure is indeterminate. As of March 28, 2005, 31 applications for licensure have been received by OIR. Of those, nine have been approved for licensure, 18 are pending, and four were submitted incomplete. According to the Consumer Health Alliance, a national trade association for the discount health care industry, over 10 million people in the United States are members of such plans.

III. Effect of Proposed Changes:

Section 1 amends s. 636.202, F.S., relating to definitions, to revise the definition of the term, "discount medical plan organization," to delete the provision that provides the term, "medical discount plan," does not include any product regulated under chapters 627 (insurance company) chapter 641 (health maintenance organization) or part I of ch. 636, F.S., (prepaid limited health services organization). Even though part II of ch. 636, F.S., relates specifically to DMPOs, a DMPO also may be licensed as an insurer, a health maintenance organization HMO, or as a prepaid limited health service organization.

[3] Section 636.232, F.S.
[4] Section 636.204, L.O.F.
[5] Section 636.240, F.S.
[6] Section 636.242, F.S.

Section 2 amends s. 636.204, F.S., relating to licensure, to expand the types of legal entities that can operate as a licensed discount medical plan organization to include limited liability companies and partnerships authorized to transact business in Florida. Currently, only an entity organized as a corporation is authorized to be licensed as a discount medical plan organization.

The section also would allow an applicant that is subsidiary of a parent company to petition the Office of Insurance to accept the consolidated financial statements of the parent company, in lieu of the subsidiary's individual financial statements, if the parent company issues a written guaranty that the minimum capital requirements of the applicant will be met. Presently, each applicant is required to submit audited financial statements.

Section 3 creates s. 636.205, F.S., to provide criteria for the licensure of discount medical plan organizations. The OIR would be required to issue a DMPO license to an applicant who had filed a complete application, paid the licensure fee, established a complaint resolution process, and complied with licensure requirements of s. 636.204, net worth requirements, ownership, control and management provisions, and all of the requirements of part II of ch. 636, F.S. If the OIR denies an application for licensure, the OIR is required to notify the applicant and specify the reasons for the denial.

Section 4 amends s. 636.206, F.S., which authorizes OIR to examine the books of a DMPO and to conduct an investigation of a DMPO, to delete language that applies unspecified provisions of the Florida Insurance Code to the examination process.

Section 5 creates s. 636.207, F.S, relating to the applicability of the insurance code, to provide that discount medical plan organizations are governed by the provisions of part II of ch. 636, F.S., and are exempt from the Florida Insurance Code unless specifically referenced.

Section 6 amends s. 636.208, F.S., relating to fees, charges, and reimbursements, to revise reimbursements. If a member cancels a DMPO membership within 30 days of joining the plan, the member will receive a reimbursement of all periodic charges after returning the membership card to the DMPO. If a DMPO cancels membership for any reason other than nonpayment of fees by a member, the DMPO is required to make a pro rata reimbursement of periodic charges to the member. A DMPO is required to refund to any terminating member any amount in excess of $30 charged by the DMPO for the one-time processing fee. Under current law, if a DMPO collects charges for more than 1 month, the DMPO is required to make a pro-rata reimbursement of fees if either the DMPO or member cancels membership.

Section 7 amends s. 636.210, F.S., relating to prohibited activities, to authorize a DMPO to use the word "insurance" in its advertisements and marketing materials "as a disclaimer of any relationship between discount medical plan organization benefits and insurance." The bill also authorizes a DMPO to use the word "enrollment" in its advertising and marketing materials.

Current law requires a DMPO to make specified disclosures in its advertising and marketing materials. For example, a DMPO must disclose that the plan is not a health insurance policy. The prohibition is changed by the bill to specify that a DMPO must disclose that it is not insurance, rather than it is not a health insurance policy. The bill allows a discount medical plan

organization to use in advertising and discounts the word, "insurance," in the context of a disclaimer of any relationship between such an organization and insurance.

Section 8 amends s. 636.212, F.S., relating to disclosures, to eliminate the requirement that disclosures must be printed in no smaller than the largest type of the page if the type is larger than the minimum 12-point font. The text of the required disclosures is revised to require that the DMPO to state that the plan is not insurance, rather than the plan is a health insurance policy.

The section also requires that, if the initial contact is made by telephone, the disclosures mandated by this section must be provided verbally and provided in the initial written materials that describe the benefits to the prospective or new member. Presently, the section is silent on disclosures required under telemarketing.

Section 9 amends s. 636.214, F.S., relating to provider agreements, to clarify that the DMPO must maintain a copy of each active provider agreement into which it has entered.

Section 10 amends s. 636.216. F.S., relating to charge or form filings, to provide that a charge or form be considered approved on the 60th day after filing unless the OIR has previously disapproved it. The OIR is authorized to disapprove any form that does not meet the requirements of part II, ch. 636, F.S., or that is unreasonable, discriminatory, misleading, or unfair. Currently, the DMPO has the burden of proof in demonstrating that the charges bear a reasonable relation to the benefits received by a member. The section deletes the provision that states that a DMPO has 21 days from the date of receipt of notice to request a hearing before the OIR pursuant to ch. 120, F.S.

Section 11 amends s. 636.218, F.S., relating to annual reporting requirements, to allow a licensee that is a subsidiary to submit audited financial statements of the parent company and a sworn affidavit, signed by a company officer, certifying compliance with the $150,000 net worth requirements, in lieu of annual, audited financial statements of the licensed subsdiary. The section also eliminates the annual reporting of key operating personnel unless a change has occurred since the prior year or initial application for licensure.

Section 12 creates s. 636.223, F.S., relating to administrative penalties, to authorize the OIR to issue cease and desist orders and to impose administrative fines of not less than $100 per violation, but not to exceed an aggregate penalty of $75,000, in lieu of suspension or revocation. Currently, the OIR can suspend or revoke a certificate of authority whenever a DMPO has violated provisions of part II of ch. 636, F.S.

Section 13 amends s. 636.228, F.S., relating to the marketing of discount medical plans, to prohibit a marketer from using marketing material, brochures, and discount cards without the written approval of the discount medical plan. The section also revises the DMPO's liability for acts of its marketers by providing that the DMPO is bound by any acts of its marketer within the scope of the marketers' agency. Presently, the DMPO is responsible and financially liable for any acts of its marketers that do not comply with the statutory provisions.

Section 14 amends s. 636.230, F.S., relating to bundling discount medical plans with other products, to require the disclosure of fees for the discount medical plan be in writing to the

member if the fees exceed $30. Presently, if a discount medical plan is sold with any other product, the fees for each individual product must be itemized and disclosed in writing.

Section 15 amends s. 636.236, F.S., relating to security deposit, to allow a DMPO to maintain a surety bond in its own name in an amount of at least $35,000, as an alternative to the currently required security deposit of at least $35,000. If a DMPO substitutes a surety bond for the currently required security deposit, the OIR is required to return the security deposit within 45 days following the effective date of the surety bond.

Section 16 amends s. 636.238, F.S., relating to penalties for violations, to revise the felony penalty provision for a person that aids and abets another person operating as an unlicensed DMPO by requiring willful intent. The section also raises the standard for pursuing actions against persons violating the DMPO statutory provisions. The section requires OIR to prove "willful" intent by a person violating any provision of part II of ch. 636, F.S., in order to pursue a misdemeanor of the second degree. Currently, if a person violates a provision of this part, the person commits a misdemeanor of the second degree. The section also requires OIR to prove that a person collects fees for membership in a discount plan and "purposefully" fails to provide the promised benefits in order to pursue theft charges.

Section 17 repeals s. 636.242, F.S., relating to civil remedies. Currently, this provision authorizes any person damaged by acts of a person in violation of part II of ch. 636, F.S., to file a civil action against that person. Attorneys' fees and court costs may be recoverable.

Section 18 provides that this act will take effect upon becoming a law.

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:

The bill will allow limited liability companies and partnerships to operate as a licensed discount medical plan organization. Currently, such entities must reorganize as a corporation to operate as a licensed discount medical plan organization (DMPO).

The bill eliminates the filing of annual audited financial statements by a subsidiary of a parent company if certain conditions are met, thereby reducing the regulatory costs of such subsidiaries. The bill allows a licensee to post a $35,000 surety bond, in lieu of a security deposit of at least $35,000, which should result in savings for the licensee.

Consumers will benefit from the additional compliance and enforcement tools provided to the Office of Insurance Regulation in the form of administrative penalties and cease and desist orders. These regulatory tools will assist the OIR in taking action against unlicensed entities and DMPOs engaged in prohibited activities.

The bill eliminates a person's rights to civil remedies in the event he or she is damaged by the acts of a person in violation of part II of ch. 636, F.S.

C. Government Sector Impact:

Section 11 of the bill provides greater enforcement tools for the Office of Insurance Regulation by authorizing administrative fines.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.