

# 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: Health Care Committee

BILL: CS/SB 2214

SPONSOR: Banking and Insurance Committee and Senator Saunders

SUBJECT: Discount Medical Plan Organizations

DATE: April 26, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	<b>Fav/CS</b>
2.	Garner	Wilson	HE	<b>Favorable</b>
3.				
4.				
5.				
6.				

## I. Summary:

Discount medical plan organizations (DMPO) that provide access for plan members to providers of medical services at a discounted fee in exchange for fees or other consideration are subject to licensure and regulation under pt. 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 60<sup>th</sup> day after filing unless OIR has previously disapproved it;
- Authorizes OIR to disapprove any form that does not comply with pt. 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 fee 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 amends ss. 636.202, 636.204, 636.206, 636.208, 636.210, 636.212, 636.214, 636.216, 636.218, 636.228, 636.230, 636.236, and 636.238, F.S.

The bill creates ss. 636.205, 636.207, and 636.223, F.S.

The bill repeals s. 636.242, F.S.

## **II. Present Situation:**

### **Discount Medical Plan Organizations (DMPOs)**

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 DMPO has a contract with a provider network under which the individual providers render 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 care 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.

### **DMPO Regulation in Florida**

During the 2004 Regular Session, the Florida Legislature established the regulation of DMPOs by OIR, effective January 1, 2005.<sup>1</sup> DMPOs that provide access for plan members to providers of medical services at a discounted fee in exchange for fees, dues, charges, or other consideration are subject to licensure and regulation by 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, L.O.F., 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 was approved 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.<sup>2</sup> The commission is authorized to adopt rules for licensure, standards for evaluating forms, advertisements, marketing materials, discount cards, and the collection of data.<sup>3</sup>

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<sup>1</sup> Ch. 2004-297, L.O.F.

<sup>2</sup> 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.

<sup>3</sup> Section 636.232, F.S.

Before transacting business in Florida, a DMPO must be incorporated and possess a license as a DMPO.<sup>4</sup> As a condition of licensure, each DMPO must maintain a net worth requirement of \$150,000. All charges to members of such plans must be filed with OIR and any charge to members greater than \$30 per month or \$360 per year must be approved by OIR before the charges can be used by the plan. All forms used by the organization must be filed with and approved by 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 a violation of any provision of pt. II of ch. 636, F.S., is a second-degree misdemeanor. Operating an unlicensed DMPO is punishable under s. 624.401, F.S., as if the unlicensed DMPO were an unlicensed insurer and the fees charged were premium. The law also authorizes OIR to seek injunctive relief against an unlicensed DMPO, or any person who has violated a provision of this part or a rule adopted pursuant to this part.<sup>5</sup> Section 636.242, F.S., authorizes any person damaged by acts of a person in violation of pt. II of ch. 636, F.S., to file a civil action against that person. Attorneys' fees and court costs may be recoverable.<sup>6</sup>

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 the term, "medical discount plan," does not include any product regulated under ch. 627, F.S. (insurance company), ch. 641, F.S. (health maintenance organization), or pt. I of ch. 636, F.S. (prepaid limited health service organization). Even though pt. II of ch. 636, F.S., relates specifically to DMPOs, a DMPO also may be licensed as an insurer, a health maintenance organization, or as a prepaid limited health service organization.

**Section 2.** Amends s. 636.204, F.S., relating to licensure, to expand the types of legal entities that can operate as a licensed DMPO 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 DMPO.

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<sup>4</sup> Section 636.204, F.S.

<sup>5</sup> Section 636.240, F.S.

<sup>6</sup> Section 636.242, F.S.

The section also would allow an applicant that is subsidiary of a parent company to petition OIR 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 DMPOs. 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, F.S., net worth requirements, ownership, control and management provisions, and all of the requirements of pt. II of ch. 636, F.S. If OIR denies an application for licensure, 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 Florida Insurance Code, to provide that DMPOs are governed by the provisions of pt. 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 one 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 DMPO 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 DMPO 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 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 60<sup>th</sup> day after filing unless OIR has previously disapproved it. OIR is authorized to disapprove any form that does not meet the requirements of pt. 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 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 subsidiary. 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 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, OIR can suspend or revoke a certificate of authority whenever a DMPO has violated provisions of pt. 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 materials, 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, 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 who 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 pt. 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 pt. 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 an effective date of upon becoming a law.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **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 DMPO. Currently, such entities must reorganize as a corporation to operate as a licensed 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 OIR in the form of administrative penalties, cease, and desist orders. These regulatory tools will assist 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 pt. II of ch. 636, F.S.

**C. Government Sector Impact:**

Section 11 of the bill provides greater enforcement tools for OIR by authorizing administrative fines.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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