

By Senator Saunders

37-1168A-05

See HB 1081

1 A bill to be entitled
2 An act relating to discount medical plan
3 organizations; amending s. 636.202, F.S.;
4 revising a definition; amending s. 636.204,
5 F.S.; revising provisions relating to licensure
6 requirements to do business as a discount
7 medical plan organization; amending s. 636.206,
8 F.S.; providing that discount medical plan
9 organizations are not subject to the Florida
10 Insurance Code for purposes of examination and
11 investigation; creating s. 636.207, F.S.;
12 providing for applicability of pt. II of ch.
13 636, F.S.; amending s. 636.208, F.S.; revising
14 provisions relating to reimbursement of certain
15 charges and fees upon cancellation of
16 membership in the plan; amending s. 636.210,
17 F.S.; revising prohibitions relating to
18 advertising; amending s. 636.212, F.S.;
19 revising provisions relating to disclosures to
20 prospective members; amending s. 636.214, F.S.;
21 revising provisions relating to provider
22 agreements; amending s. 636.216, F.S.;
23 providing conditions for approval of charges
24 and forms; deleting a provision relating to
25 request for a hearing; amending s. 636.218,
26 F.S.; revising requirements for information to
27 be included in annual reports; creating s.
28 636.223, F.S.; providing for administrative
29 penalties; amending s. 636.228, F.S.;
30 specifying marketing requirements of discount
31 medical plans; providing limitations; amending

1 s. 636.230, F.S.; specifying fee disclosure
2 requirements for bundling discount medical
3 plans with other products; amending s. 636.236,
4 F.S.; requiring discount medical plan
5 organizations to maintain surety bonds;
6 providing conditions for substituting deposited
7 securities for surety bonds; amending s.
8 636.238, F.S.; revising penalties; repealing s.
9 636.242, F.S., relating to civil remedies;
10 providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsection (2) of section 636.202, Florida
15 Statutes, is amended to read:

16 636.202 Definitions.--As used in this part, the term:

17 (2) "Discount medical plan organization" means an
18 entity which, in exchange for fees, dues, charges, or other
19 consideration, provides access for plan members to providers
20 of medical services and the right to receive medical services
21 from those providers at a discount. ~~The term "discount medical~~
22 ~~plan" does not include any product regulated under chapter~~
23 ~~627, chapter 641, or part I of this chapter.~~

24 Section 2. Subsections (1) and (2) of section 636.204,
25 Florida Statutes, are amended to read:

26 636.204 License required.--

27 (1) Before doing business in this state as a discount
28 medical plan organization, an entity must be a corporation, a
29 limited liability company ~~incorporated~~ under the laws of this
30 state, ~~or, if a partnership or foreign entity corporation,~~
31 authorized to transact business in this state, ~~and must be~~ be

1 licensed by the office ~~possess a license~~ as a discount medical
2 plan organization or be licensed by the office pursuant to
3 chapter 624, part I of chapter 636, or chapter 641 ~~from the~~
4 ~~office.~~

5 (2) An application for a license to operate as a
6 discount medical plan organization must be filed with the
7 office on a form prescribed by the commission. Such
8 application must be sworn to by an officer or authorized
9 representative of the applicant and be accompanied by the
10 following, if applicable:

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

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

15 (c) A list of the names, addresses, official
16 positions, and biographical information of the individuals who
17 are responsible for conducting the applicant's affairs,
18 including, but not limited to, all members of the board of
19 directors, board of trustees, executive committee, or other
20 governing board or committee, the officers, contracted
21 management company personnel, and any person or entity owning
22 or having the right to acquire 10 percent or more of the
23 voting securities of the applicant. Such listing must fully
24 disclose the extent and nature of any contracts or
25 arrangements between any individual who is responsible for
26 conducting the applicant's affairs and the discount medical
27 plan organization, including any possible conflicts of
28 interest.

29 (d) A complete biographical statement, on forms
30 prescribed by the commission, an independent investigation
31 report, and a set of fingerprints, as provided in chapter 624,

1 with respect to each individual identified under paragraph
2 (c).

3 (e) A statement generally describing the applicant,
4 its facilities and personnel, and the medical services to be
5 offered.

6 (f) A copy of the form of all contracts made or to be
7 made between the applicant and any providers or provider
8 networks regarding the provision of medical services to
9 members.

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

13 (h) A copy of the form of any contract made or to be
14 made between the applicant and any person, corporation,
15 partnership, or other entity for the performance on the
16 applicant's behalf of any function, including, but not limited
17 to, marketing, administration, enrollment, investment
18 management, and subcontracting for the provision of health
19 services to members.

20 (i) A copy of the applicant's most recent financial
21 statements audited by an independent certified public
22 accountant. An applicant that is a subsidiary of a parent
23 entity that prepares audited financial statements reflecting
24 the consolidated operations of the parent entity and the
25 subsidiary may submit a copy of the parent entity's most
26 recent audited financial statements if the parent entity also
27 issues a written guaranty that the minimum capital
28 requirements of the applicant required by this part will be
29 met.

30 (j) A description of the proposed method of marketing.
31

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

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

4 (m) Such other information as the commission or office
5 may reasonably require to make the determinations required by
6 this part.

7 Section 3. Section 636.206, Florida Statutes, is
8 amended to read:

9 636.206 Examinations and investigations.--

10 (1) The office may examine or investigate the business
11 and affairs of any discount medical plan organization. The
12 office may order any discount medical plan organization or
13 applicant to produce any records, books, files, advertising
14 and solicitation materials, or other information and may take
15 statements under oath to determine whether the discount
16 medical plan organization or applicant is in violation of the
17 law or is acting contrary to the public interest. The expenses
18 incurred in conducting any examination or investigation must
19 be paid by the discount medical plan organization or
20 applicant. Examinations and investigations must be conducted
21 as provided in chapter 624, ~~and discount medical plan~~
22 ~~organizations are subject to all applicable provisions of the~~
23 ~~insurance code.~~

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

27 Section 4. Section 636.207, Florida Statutes, is
28 created to read:

29 636.207 Applicability of part.--Except as otherwise
30 provided in this part, discount medical plan organizations are
31

1 governed by the provisions of this part and are exempt from
2 the Florida Insurance Code unless specifically referenced.

3 Section 5. Section 636.208, Florida Statutes, is
4 amended to read:

5 636.208 Fees; charges; reimbursement.--

6 (1) A discount medical plan organization may charge a
7 periodic charge as well as a reasonable one-time processing
8 fee for a discount medical plan and a periodic charge. If a
9 discount medical plan charges for a time period in excess of 1
10 month, the plan must, in the event of cancellation of the
11 membership by either party, make a pro rata reimbursement of
12 the fees to the member.

13 (2) If the member cancels his or her membership in the
14 discount medical plan organization within the first 30 days
15 after the effective date of enrollment in the plan, the member
16 shall receive a reimbursement of all periodic charges upon
17 return of the discount card to the discount medical plan
18 organization.

19 (3) If the discount medical plan organization cancels
20 a membership for any reason other than nonpayment of fees by
21 the member, the discount medical plan organization shall make
22 a pro rata reimbursement of all periodic charges to the
23 member.

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

29 Section 6. Paragraphs (a) and (b) of subsection (1) of
30 section 636.210, Florida Statutes, are amended to read:

31

1 636.210 Prohibited activities of a discount medical
2 plan organization.--

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

4 (a) Use in its advertisements, marketing material,
5 brochures, and discount cards the term "insurance" except as
6 otherwise provided in this part or as a disclaimer of any
7 relationship between discount medical plan organization
8 benefits and insurance;

9 (b) Use in its advertisements, marketing material,
10 brochures, and discount cards the terms "health plan,"
11 "coverage," "copay," "copayments," "preexisting conditions,"
12 "guaranteed issue," "premium," ~~"enrollment,"~~ "PPO," "preferred
13 provider organization," or other terms in a manner that could
14 reasonably mislead a person into believing the discount
15 medical plan was health insurance;

16 Section 7. Section 636.212, Florida Statutes, is
17 amended to read:

18 636.212 Disclosures.--The following disclosures must
19 be made in writing to any prospective member and must be on
20 the first page of any advertisements, marketing materials, or
21 brochures relating to a discount medical plan. The disclosures
22 must be printed in not less than 12-point type ~~or no smaller~~
23 ~~than the largest type on the page if larger than 12 point~~
24 ~~type:~~

25 (1) That the plan is not ~~a health~~ insurance ~~policy~~.

26 (2) That the plan provides discounts at certain health
27 care providers for medical services.

28 (3) That the plan does not make payments directly to
29 the providers of medical services.

30 (4) That the plan member is obligated to pay for all
31 health care services but will receive a discount from those

1 health care providers who have contracted with the discount
2 plan organization.

3 (5) The ~~corporate~~ name and address ~~the locations~~ of
4 the licensed discount medical plan organization.

5
6 If the initial contract is made by telephone, the disclosures
7 required by this section shall be made orally and provided in
8 the initial written materials that describe the benefits under
9 the discount medical plan provided to the prospective or new
10 member.

11 Section 8. Subsections (2) and (4) of section 636.214,
12 Florida Statutes, are amended to read:

13 636.214 Provider agreements.--

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

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

18 (b) The amount or amounts of the discounts or,
19 alternatively, a fee schedule which reflects the provider's
20 discounted rates.

21 (c) That the provider will not charge members more
22 than the discounted rates.

23 (4) The discount medical plan organization shall
24 maintain a copy of each active provider agreement into which
25 it has entered.

26 Section 9. Section 636.216, Florida Statutes, is
27 amended to read:

28 636.216 Charge or form filings.--

29 (1) All charges to members must be filed with the
30 office and any charge to members greater than \$30 per month or
31 \$360 per year must be approved by the office before the

1 | charges can be used. The discount medical plan organization
2 | has the burden of proof that the charges bear a reasonable
3 | relation to the benefits received by the member.

4 | (2) There must be a written agreement between the
5 | discount medical plan organization and the member specifying
6 | the benefits under the discount medical plan and complying
7 | with the disclosure requirements of this part.

8 | (3) All forms used, including the written agreement
9 | pursuant to subsection (2), must first be filed with and
10 | approved by the office. Every form filed shall be identified
11 | by a unique form number placed in the lower left corner of
12 | each form.

13 | (4) A charge or form is considered approved on the
14 | 60th day after its date of filing unless it has been
15 | previously disapproved by the office. The office shall
16 | disapprove any form that does not meet the requirements of
17 | this part or that is unreasonable, discriminatory, misleading,
18 | or unfair. If such filings are disapproved, the office shall
19 | notify the discount medical plan organization and shall
20 | specify in the notice the reasons for disapproval. ~~The~~
21 | ~~discount medical plan organization has 21 days from the date~~
22 | ~~of receipt of notice to request a hearing before the office~~
23 | ~~pursuant to chapter 120.~~

24 | Section 10. Subsection (2) of section 636.218, Florida
25 | Statutes, is amended to read:

26 | 636.218 Annual reports.--

27 | (2) Such reports must be on forms prescribed by the
28 | commission and must include:

29 | (a) A sworn affidavit, signed by a company officer,
30 | certifying that the discount medical plan organization is in
31 | compliance with s. 636.220(1). ~~Audited financial statements~~

1 ~~prepared in accordance with generally accepted accounting~~
2 ~~principles certified by an independent certified public~~
3 ~~accountant, including the organization's balance sheet, income~~
4 ~~statement, and statement of changes in cash flow for the~~
5 ~~preceding year.~~

6 (b) If different from the initial application or the
7 last annual report, a list of the names and residence
8 addresses of all persons responsible for the conduct of the
9 organization's affairs, together with a disclosure of the
10 extent and nature of any contracts or arrangements between
11 such persons and the discount medical plan organization,
12 including any possible conflicts of interest.

13 (c) The number of discount medical plan members in the
14 state.

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

18 Section 11. Section 636.223, Florida Statutes, is
19 created to read:

20 636.223 Administrative penalty.--In lieu of suspending
21 or revoking a certificate of authority, whenever any discount
22 medical plan organization has been found to have violated any
23 provision of this part, the office may:

24 (1) Issue and cause to be served upon the organization
25 charged with the violation a copy of such findings and an
26 order requiring such organization to cease and desist from
27 engaging in the act or practice that constitutes the
28 violation.

29 (2) Impose a monetary penalty of not less that \$100
30 for each violation, but not to exceed an aggregate penalty of
31 \$50,000.

1 Section 12. Subsection (2) of section 636.228, Florida
2 Statutes, is amended to read:

3 636.228 Marketing of discount medical plans.--

4 (2) The discount medical plan organization shall have
5 an executed written agreement with a marketer prior to the
6 marketer's marketing, promoting, selling, or distributing the
7 discount medical plan. Such agreement shall prohibit the
8 marketer from using marketing materials, brochures, and
9 discount cards without the approval in writing by the discount
10 medical plan organization. The discount medical plan
11 organization shall be bound by and shall be responsible and
12 financially liable for any acts of its marketers, within the
13 scope of the marketers' agency, that do not comply with the
14 provisions of this part.

15 Section 13. Section 636.230, Florida Statutes, is
16 amended to read:

17 636.230 Bundling discount medical plans with other
18 ~~insurance~~ products.--When a marketer or discount medical plan
19 organization sells a discount medical plan together with any
20 other product, the fees for the discount medical plan each
21 ~~individual product~~ must be provided in writing to the member
22 if the fees exceed \$30 and itemized.

23 Section 14. Section 636.236, Florida Statutes, is
24 amended to read:

25 636.236 Surety bond or security deposit.--

26 (1) Each discount medical plan organization licensed
27 pursuant to the provisions of this part must maintain in force
28 a surety bond in its own name in an amount not less than
29 \$35,000 to be used at the discretion of the office to protect
30 the financial interests of members who may be adversely
31 affected by the insolvency of a discount medical plan

1 organization. The bond must be issued by an insurance company
2 that is licensed to do business in this state.

3 ~~(2)(1)~~ In lieu of the bond specified in subsection
4 ~~(1),~~ a licensed discount medical plan organization ~~may~~ must
5 deposit and maintain deposited in trust with the department
6 securities eligible for deposit under s. 625.52~~7~~, having at all
7 times a value of not less than \$35,000~~, for use by the office~~
8 ~~in protecting plan members. If a licensed discount medical~~
9 plan organization substitutes its deposited securities under
10 this subsection with a surety bond authorized in subsection
11 (1), such deposited securities shall be returned to the
12 discount medical plan organization no later than 45 days
13 following the effective date of the surety bond.

14 ~~(3)(2)~~ No judgment creditor or other claimant of a
15 discount medical plan organization, other than the office or
16 department, shall have the right to levy upon any of the
17 assets or securities held in this state as a deposit under
18 subsections ~~subsection~~ (1) and (2).

19 Section 15. Section 636.238, Florida Statutes, is
20 amended to read:

21 636.238 Penalties for violation of this part.--

22 (1) Except as provided in subsection (2), a person who
23 willfully violates any provision of this part commits a
24 misdemeanor of the second degree, punishable as provided in s.
25 775.082 or s. 775.083.

26 (2) A person who operates as ~~or aids and abets another~~
27 ~~operating as~~ a discount medical plan organization in violation
28 of s. 636.204(1) commits a felony punishable as provided for
29 in s. 624.401(4)(b), as if the unlicensed discount medical
30 plan organization were an unauthorized insurer, and the fees,
31 dues, charges, or other consideration collected from the

1 members by the unlicensed discount medical plan organization
2 or marketer were insurance premium.

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

7 Section 16. Section 636.242, Florida Statutes, is
8 repealed.

9 Section 17. This act shall take effect upon becoming a
10 law.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31