

1 be included in annual reports; creating s.
2 636.223, F.S.; providing for administrative
3 penalties; amending s. 636.228, F.S.;
4 specifying marketing requirements of discount
5 medical plans; providing limitations; amending
6 s. 636.230, F.S.; specifying fee disclosure
7 requirements for bundling discount medical
8 plans with other products; amending s. 636.236,
9 F.S.; requiring discount medical plan
10 organizations to maintain surety bonds;
11 providing conditions for substituting deposited
12 securities for surety bonds; amending s.
13 636.238, F.S.; revising penalties; repealing s.
14 636.242, F.S., relating to civil remedies;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsection (2) of section 636.202, Florida
20 Statutes, is amended to read:

21 636.202 Definitions.--As used in this part, the term:
22 (2) "Discount medical plan organization" means an
23 entity which, in exchange for fees, dues, charges, or other
24 consideration, provides access for plan members to providers
25 of medical services and the right to receive medical services
26 from those providers at a discount. ~~The term "discount medical~~
27 ~~plan" does not include any product regulated under chapter~~
28 ~~627, chapter 641, or part I of this chapter.~~

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

31 636.204 License required.--

1 (1) Before doing business in this state as a discount
2 medical plan organization, an entity must be a corporation, a
3 limited liability company or a limited partnership,
4 incorporated, organized, formed, or registered incorporated
5 under the laws of this state or, ~~if a foreign corporation,~~
6 authorized to transact business in this state in accordance
7 with chapter 607, chapter 608, chapter 617, chapter 620, or
8 chapter 865, and must be licensed by the office ~~possess a~~
9 ~~license~~ as a discount medical plan organization or be licensed
10 by the office pursuant to chapter 624, part I of chapter 636,
11 or chapter 641 ~~from the office.~~

12 (2) An application for a license to operate as a
13 discount medical plan organization must be filed with the
14 office on a form prescribed by the commission. Such
15 application must be sworn to by an officer or authorized
16 representative of the applicant and be accompanied by the
17 following, if applicable:

18 (a) A copy of the applicant's articles of
19 incorporation, or other organizing documents, including all
20 amendments.

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

22 (c) A list of the names, addresses, official
23 positions, and biographical information of the individuals who
24 are responsible for conducting the applicant's affairs,
25 including, but not limited to, all members of the board of
26 directors, board of trustees, executive committee, or other
27 governing board or committee, the officers, contracted
28 management company personnel, and any person or entity owning
29 or having the right to acquire 10 percent or more of the
30 voting securities of the applicant. Such listing must fully
31 disclose the extent and nature of any contracts or

1 | arrangements between any individual who is responsible for
2 | conducting the applicant's affairs and the discount medical
3 | plan organization, including any possible conflicts of
4 | interest.

5 | (d) A complete biographical statement, on forms
6 | prescribed by the commission, an independent investigation
7 | report, and a set of fingerprints, as provided in chapter 624,
8 | with respect to each individual identified under paragraph
9 | (c).

10 | (e) A statement generally describing the applicant,
11 | its facilities and personnel, and the medical services to be
12 | offered.

13 | (f) A copy of the form of all contracts made or to be
14 | made between the applicant and any providers or provider
15 | networks regarding the provision of medical services to
16 | members.

17 | (g) A copy of the form of any contract made or
18 | arrangement to be made between the applicant and any person
19 | listed in paragraph (c).

20 | (h) A copy of the form of any contract made or to be
21 | made between the applicant and any person, corporation,
22 | partnership, or other entity for the performance on the
23 | applicant's behalf of any function, including, but not limited
24 | to, marketing, administration, enrollment, investment
25 | management, and subcontracting for the provision of health
26 | services to members.

27 | (i) A copy of the applicant's most recent financial
28 | statements audited by an independent certified public
29 | accountant. An applicant that is a subsidiary of a parent
30 | entity that is publicly traded, which parent entity prepares
31 | audited financial statements reflecting the consolidated

1 operations of the parent entity and the subsidiary, may
2 petition the office to accept, in lieu of the audited
3 financial statement of the applicant, the audited financial
4 statement of the parent entity and a written guaranty by the
5 parent entity that the minimum capital requirements of the
6 applicant required by this part will be met by the parent
7 entity.

8 (j) A description of the proposed method of marketing.

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

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

12 (m) Such other information as the commission or office
13 may reasonably require to make the determinations required by
14 this part.

15 Section 3. Section 636.205, Florida Statutes, is
16 created to read:

17 636.205 Issuance of license; denial.--

18 (1) Following receipt of an application filed pursuant
19 to s. 636.204, the office shall review, and notify the
20 applicant of any deficiencies in, the application. The office
21 shall issue a license to an applicant who has filed a complete
22 application in conformity with s. 636.204, upon payment of the
23 fees specified by s. 636.204, and upon the office being
24 satisfied that the following conditions are met:

25 (a) The requirements of s. 636.204 are fulfilled.

26 (b) The entity has the required minimum capital.

27 (c) The ownership, control, and management of the
28 entity are competent and trustworthy and possess managerial
29 experience that would make the proposed operation beneficial
30 to the subscribers. If the office has good reason to believe
31 that the ownership, control, or management of a discount

1 medical plan organization includes a person whose business
2 operations are or have been marked by business practices or
3 conduct that is to the detriment of the public, stockholders,
4 investors, or creditors, the office may not grant or continue
5 the authority of such organization to transact the business of
6 a discount medical plan organization in this state.

7 (d) The discount medical plan organization has a
8 complaint procedure that will facilitate the resolution of
9 subscriber grievances and that includes, within the
10 organization, formal and informal steps.

11 (e) Any deficiencies identified by the office have
12 been corrected.

13 (f) All requirements of this part are met.

14 (2) If the application for a license is denied, the
15 office shall notify the applicant and shall specify the
16 reasons for denial in the notice.

17 Section 4. Section 636.206, Florida Statutes, is
18 amended to read:

19 636.206 Examinations and investigations.--

20 (1) The office may examine or investigate the business
21 and affairs of any discount medical plan organization. The
22 office may order any discount medical plan organization or
23 applicant to produce any records, books, files, advertising
24 and solicitation materials, or other information and may take
25 statements under oath to determine whether the discount
26 medical plan organization or applicant is in violation of the
27 law or is acting contrary to the public interest. The expenses
28 incurred in conducting any examination or investigation must
29 be paid by the discount medical plan organization or
30 applicant. Examinations and investigations must be conducted
31 as provided in chapter 624, ~~and discount medical plan~~

1 ~~organizations are subject to all applicable provisions of the~~
2 ~~insurance code.~~

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

6 Section 5. Section 636.207, Florida Statutes, is
7 created to read:

8 636.207 Applicability of part.--Except as otherwise
9 provided in this part, discount medical plan organizations are
10 governed by the provisions of this part and are exempt from
11 the Florida Insurance Code unless specifically referenced.

12 Section 6. Section 636.208, Florida Statutes, is
13 amended to read:

14 636.208 Fees; charges; reimbursement.--

15 (1) A discount medical plan organization may charge a
16 periodic charge as well as a reasonable one-time processing
17 fee for a discount medical plan and a periodic charge. ~~If a~~
18 ~~discount medical plan charges for a time period in excess of 1~~
19 ~~month, the plan must, in the event of cancellation of the~~
20 ~~membership by either party, make a pro rata reimbursement of~~
21 ~~the fees to the member.~~

22 (2) If the member cancels his or her membership in the
23 discount medical plan organization within the first 30 days
24 after the effective date of enrollment in the plan, the member
25 shall receive a reimbursement of all periodic charges upon
26 return of the discount card to the discount medical plan
27 organization.

28 (3) If the discount medical plan organization cancels
29 a membership for any reason other than nonpayment of fees by
30 the member, the discount medical plan organization shall make
31

1 a pro rata reimbursement of all periodic charges to the
2 member.

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

8 Section 7. Subsection (1) of section 636.210, Florida
9 Statutes, is amended to read:

10 636.210 Prohibited activities of a discount medical
11 plan organization.--

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

13 (a) Use in its advertisements, marketing material,
14 brochures, and discount cards the term "insurance" except as
15 otherwise provided in this part or as a disclaimer of any
16 relationship between discount medical plan organization
17 benefits and insurance;

18 (b) Use in its advertisements, marketing material,
19 brochures, and discount cards the terms "health plan,"
20 "coverage," "copay," "copayments," "preexisting conditions,"
21 "guaranteed issue," "premium," ~~"enrollment,"~~ "PPO," "preferred
22 provider organization," or other terms in a manner that could
23 reasonably mislead a person into believing the discount
24 medical plan was health insurance;

25 (c) Have restrictions on free access to plan
26 providers, including, but not limited to, waiting periods and
27 notification periods; or

28 (d) Pay providers any fees for medical services.

29 Section 8. Section 636.212, Florida Statutes, is
30 amended to read:

31

1 636.212 Disclosures.--The following disclosures must
2 be made in writing to any prospective member and must be on
3 the first page of any advertisements, marketing materials, or
4 brochures relating to a discount medical plan. The disclosures
5 must be printed in not less than 12-point type ~~or no smaller~~
6 ~~than the largest type on the page if larger than 12 point~~
7 ~~type:~~

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

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

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

13 (4) That the plan member is obligated to pay for all
14 health care services but will receive a discount from those
15 health care providers who have contracted with the discount
16 plan organization.

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

19
20 If the initial contract is made by telephone, the disclosures
21 required by this section shall be made orally and provided in
22 the initial written materials that describe the benefits under
23 the discount medical plan provided to the prospective or new
24 member.

25 Section 9. Subsections (2) and (4) of section 636.214,
26 Florida Statutes, are amended to read:

27 636.214 Provider agreements.--

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

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

1 (b) The amount or amounts of the discounts or,
2 alternatively, a fee schedule which reflects the provider's
3 discounted rates.

4 (c) That the provider will not charge members more
5 than the discounted rates.

6 (4) The discount medical plan organization shall
7 maintain a copy of each active provider agreement into which
8 it has entered.

9 Section 10. Section 636.216, Florida Statutes, is
10 amended to read:

11 636.216 Charge or form filings.--

12 (1) All charges to members must be filed with the
13 office and any charge to members greater than \$30 per month or
14 \$360 per year must be approved by the office before the
15 charges can be used. The discount medical plan organization
16 has the burden of proof that the charges bear a reasonable
17 relation to the benefits received by the member.

18 (2) There must be a written agreement between the
19 discount medical plan organization and the member specifying
20 the benefits under the discount medical plan and complying
21 with the disclosure requirements of this part.

22 (3) All forms used, including the written agreement
23 pursuant to subsection (2), must first be filed with and
24 approved by the office. Every form filed shall be identified
25 by a unique form number placed in the lower left corner of
26 each form.

27 (4) A charge or form is considered approved on the
28 60th day after its date of filing unless it has been
29 previously disapproved by the office. The office shall
30 disapprove any form that does not meet the requirements of
31 this part or that is unreasonable, discriminatory, misleading,

1 ~~or unfair.~~ If such filings are disapproved, the office shall
2 notify the discount medical plan organization and shall
3 specify in the notice the reasons for disapproval. ~~The~~
4 ~~discount medical plan organization has 21 days from the date~~
5 ~~of receipt of notice to request a hearing before the office~~
6 ~~pursuant to chapter 120.~~

7 Section 11. Subsection (2) of section 636.218, Florida
8 Statutes, is amended to read:

9 636.218 Annual reports.--

10 (2) Such reports must be on forms prescribed by the
11 commission and must include:

12 (a) Audited financial statements prepared in
13 accordance with generally accepted accounting principles
14 certified by an independent certified public accountant,
15 including the organization's balance sheet, income statement,
16 and statement of changes in cash flow for the preceding year.
17 An organization that is a subsidiary of a parent entity that
18 is publicly traded, which parent entity prepares audited
19 financial statements reflecting the consolidated operations of
20 the parent entity and the organization, may petition the
21 office to accept, in lieu of the audited financial statement
22 of the organization, the audited financial statement of the
23 parent entity and a written guaranty by the parent entity that
24 the minimum capital requirements of the organization required
25 by this part will be met by the parent entity.

26 (b) If different from the initial application or the
27 last annual report, a list of the names and residence
28 addresses of all persons responsible for the conduct of the
29 organization's affairs, together with a disclosure of the
30 extent and nature of any contracts or arrangements between
31

1 such persons and the discount medical plan organization,
2 including any possible conflicts of interest.

3 (c) The number of discount medical plan members in the
4 state.

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

8 Section 12. Section 636.223, Florida Statutes, is
9 created to read:

10 636.223 Administrative penalty.--In lieu of suspending
11 or revoking a certificate of authority, whenever any discount
12 medical plan organization has been found to have violated any
13 provision of this part, the office may:

14 (1) Issue and cause to be served upon the organization
15 charged with the violation a copy of such findings and an
16 order requiring such organization to cease and desist from
17 engaging in the act or practice that constitutes the
18 violation.

19 (2) Impose a monetary penalty of not less than \$100
20 for each violation, but not to exceed an aggregate penalty of
21 \$75,000.

22 Section 13. Subsection (2) of section 636.228, Florida
23 Statutes, is amended to read:

24 636.228 Marketing of discount medical plans.--

25 (2) The discount medical plan organization shall have
26 an executed written agreement with a marketer prior to the
27 marketer's marketing, promoting, selling, or distributing the
28 discount medical plan. Such agreement shall prohibit the
29 marketer from using marketing materials, brochures, and
30 discount cards without the approval in writing by the discount
31 medical plan organization. The discount medical plan

1 ~~organization shall be bound by and shall be responsible and~~
2 ~~financially liable for any acts of its marketers, within the~~
3 ~~scope of the marketers' agency, that do not comply with the~~
4 provisions of this part.

5 Section 14. Section 636.230, Florida Statutes, is
6 amended to read:

7 636.230 Bundling discount medical plans with other
8 ~~insurance~~ products.--When a marketer or discount medical plan
9 organization sells a discount medical plan together with any
10 other product, the fees for the discount medical plan ~~each~~
11 ~~individual product~~ must be provided in writing to the member
12 if the fees exceed \$30 and itemized.

13 Section 15. Section 636.236, Florida Statutes, is
14 amended to read:

15 636.236 Surety bond or security deposit.--

16 (1) Each discount medical plan organization licensed
17 pursuant to the provisions of this part must maintain in force
18 a surety bond in its own name in an amount not less than
19 \$35,000 to be used at the discretion of the office to protect
20 the financial interests of members who may be adversely
21 affected by the insolvency of a discount medical plan
22 organization. The bond must be issued by an insurance company
23 that is licensed to do business in this state.

24 (2)(1) In lieu of the bond specified in subsection
25 (1), a licensed discount medical plan organization may ~~must~~
26 deposit and maintain deposited in trust with the department
27 securities eligible for deposit under s. 625.527, having at all
28 times a value of not less than \$35,000, ~~for use by the office~~
29 in protecting plan members. ~~If a licensed discount medical~~
30 plan organization substitutes its deposited securities under
31 this subsection with a surety bond authorized in subsection

1 (1), such deposited securities shall be returned to the
2 discount medical plan organization no later than 45 days
3 following the effective date of the surety bond.

4 ~~(3)(2)~~ No judgment creditor or other claimant of a
5 discount medical plan organization, other than the office or
6 department, shall have the right to levy upon any of the
7 assets or securities held in this state as a deposit under
8 subsections ~~subsection~~ (1) and (2).

9 Section 16. Section 636.238, Florida Statutes, is
10 amended to read:

11 636.238 Penalties for violation of this part.--

12 (1) Except as provided in subsection (2), a person who
13 willfully violates any provision of this part commits a
14 misdemeanor of the second degree, punishable as provided in s.
15 775.082 or s. 775.083.

16 (2) A person who operates as or willfully aids and
17 abets another operating as a discount medical plan
18 organization in violation of s. 636.204(1) commits a felony
19 punishable as provided for in s. 624.401(4)(b), as if the
20 unlicensed discount medical plan organization were an
21 unauthorized insurer, and the fees, dues, charges, or other
22 consideration collected from the members by the unlicensed
23 discount medical plan organization or marketer were insurance
24 premium.

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

29 Section 17. Section 636.242, Florida Statutes, is
30 repealed.

31

1 Section 18. This act shall take effect upon becoming a
2 law.

3
4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 Senate Bill 2214

7 The committee substitute provides the following changes:

- 8 o Allows limited partnerships, rather than all
9 partnerships, to be eligible for licensure as a discount
10 medical plan organization.
11 o Allows an applicant for licensure to petition the Office
12 of Insurance Regulation to accept the audited financial
13 statements of the subsidiary's publicly traded parent
14 company in lieu of the applicant's financial statements
15 and a written guaranty by the parent company that the net
16 worth requirements of the applicant will be met by the
17 parent company.
18 o Authorizes the Office of Insurance Regulation to deny
19 licensure if certain conditions are not by the applicant.
20 The provision reiterates existing requirements and
21 creates new requirements, such as the management and
22 ownership of the entity must be competent and possess
23 managerial expertise. The office is authorized to deny or
24 revoke licensure for an entity that is deemed to be
25 conducting business in a manner that is detrimental.
26 o Authorizes a licensee to petition the Office of Insurance
27 Regulation to accept audited financial statements of the
28 subsidiary's parent company with a written guaranty by
29 the parent company that the net worth requirements of the
30 applicant will be met by the parent company in lieu of
31 the licensee submitting annual, audited financial
statements.
- o Increases the maximum, aggregate administrative penalty
from \$50,000 to \$75,000.
- o Reinserts current law which provides that it is a
third-degree felony to aid and abet an unlicensed
discount medical plan organization and revises the
standard of intent to "willfully."