

1 A bill to be entitled
2 An act relating to risk-based capital requirements for
3 health maintenance organizations; creating s. 641.224,
4 F.S.; providing definitions; requiring a health
5 maintenance organization to file reports of its risk-based
6 capital levels, beginning on a certain date; prohibiting
7 certain uses of such reports; authorizing the Office of
8 Insurance Regulation to use certain documents for certain
9 purposes; providing requirements for determining risk-
10 based capital; providing legislative findings; authorizing
11 the office to adjust or revise risk-based capital reports
12 under certain circumstances; requiring notice of any
13 adjustments or revisions; providing for challenges to any
14 adjustments or revisions; requiring certain health
15 maintenance organizations to file copies of risk-based
16 capital plans with the insurance department of certain
17 states; providing criteria; providing criteria,
18 requirements, and procedures for company action level
19 events, regulatory action level events, authorized control
20 level events, and mandatory control level events relating
21 to levels of risk-based capital; providing duties and
22 responsibilities of the office relating to such events;
23 requiring a risk-based capital plan for certain purposes
24 under certain circumstances; specifying plan requirements;
25 authorizing the office to take certain corrective actions
26 under certain circumstances; authorizing the office to
27 retain professional assistance in undertaking certain
28 activities relating to a health maintenance organization's

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29 | levels of risk-based capital; authorizing the office to
30 | place a health maintenance organization under regulatory
31 | control under certain circumstances; providing for a right
32 | to a hearing before the office to challenge certain
33 | actions by the office; providing hearing requirements and
34 | procedures; specifying absence of liability of and
35 | prohibiting bringing certain causes of action against the
36 | Financial Services Commission, the Department of Financial
37 | Services, the office, and certain related personnel for
38 | certain activities; providing notification requirements
39 | for the office; providing construction; limiting
40 | application to certain health maintenance organizations;
41 | authorizing the commission to adopt rules; amending s.
42 | 641.31, F.S.; revising provisions authorizing health
43 | maintenance organizations to include point-of-service
44 | riders for point-of service benefits under health
45 | maintenance contracts to include preferred provider
46 | policies for preferred provider benefits through preferred
47 | provider networks; revising maximum premium limitations;
48 | providing reporting requirements; providing additional
49 | premium requirements and limitations relating to preferred
50 | provider policies; requiring certain health maintenance
51 | organizations to file a risk-based capital report with the
52 | office for informational purposes; providing a limitation;
53 | providing application; providing effective dates.

54 |
55 | Be It Enacted by the Legislature of the State of Florida:
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57 Section 1. Section 641.224, Florida Statutes, is created
58 to read:

59 641.224 Risk-based capital requirements for health
60 maintenance organizations.--

61 (1) As used in this section:

62 (a) "Adjusted risk-based capital report" means a risk-
63 based capital report that has been adjusted by the office in
64 accordance with this section.

65 (b) "Authorized control level risk-based capital" means
66 the number determined under the risk-based capital formula in
67 the risk-based capital instructions.

68 (c) "Company action level risk-based capital" means the
69 product of 2.0 and a health maintenance organization's
70 authorized control level risk-based capital.

71 (d) "Corrective order" means an order issued by the office
72 specifying corrective actions that the office has determined are
73 required.

74 (e) "Mandatory control level risk-based capital" means the
75 product of 0.70 and the authorized control level risk-based
76 capital.

77 (f) "Negative trend" means, with respect to a health
78 maintenance organization, a negative trend over a period of
79 time, as determined in accordance with the trend test
80 calculation included in the risk-based capital instructions.

81 (g) "Regulatory action level risk-based capital" means the
82 product of 1.5 and a health maintenance organization's
83 authorized control level risk-based capital.

84 (h) "Revised risk-based capital plan" means the revision

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85 of the risk-based capital plan that is prepared by a health
86 maintenance organization after the office rejects the original
87 plan.

88 (i) "Risk-based capital instructions" means the
89 instructions for preparing a risk-based capital report as
90 adopted by the National Association of Insurance Commissioners.

91 (j) "Risk-based capital level" means a health maintenance
92 organization's action level risk-based capital, regulatory
93 action level risk-based capital, authorized control level risk-
94 based capital, or mandatory control level risk-based capital.

95 (k) "Risk-based capital plan" means a comprehensive
96 financial plan specified in paragraph (4) (b).

97 (l) "Risk-based capital report" means the report required
98 in subsection (2).

99 (m) "Total adjusted capital" means the sum of:

100 1. A health maintenance organization's statutory capital
101 and surplus.

102 2. Any other item required by the risk-based capital
103 instructions.

104 (2) (a) Beginning January 1, 2011, a health maintenance
105 organization that is subject to this section, on or before 90
106 days after the end of its calendar year, shall prepare and file
107 with the National Association of Insurance Commissioners a
108 report of its risk-based capital levels as of the end of the
109 preceding calendar year, in a form and containing the
110 information required in the risk-based capital instructions. In
111 addition, each health maintenance organization shall file a
112 printed copy of its risk-based capital report:

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113 1. With the office on or before 3 months after the end of
114 its calendar year.

115 2. With the insurance department in any other state in
116 which the health maintenance organization is authorized to do
117 business, if that department has notified the health maintenance
118 organization of its request in writing, in which case the health
119 maintenance organization shall file its risk-based capital
120 report not later than the later of:

121 a. Fifteen days after the receipt of notice to file its
122 risk-based capital report with that state; or

123 b. Three months after the end of its calendar year.

124 (b) The comparison of a health maintenance organization's
125 total adjusted capital to any of its risk-based capital levels
126 is intended to be a regulatory tool that may indicate the need
127 for possible corrective action with respect to the health
128 maintenance organization and may not be used as a means to rank
129 health maintenance organizations generally. Therefore, except as
130 otherwise required under this section, the making, publishing,
131 disseminating, circulating, or placing before the public, or
132 causing, directly or indirectly, to be made, published,
133 disseminated, circulated, or placed before the public, in a
134 newspaper, magazine, or other publication, or in the form of a
135 notice, circular, pamphlet, letter, or poster, or over any radio
136 or television station, or in any other way, an advertisement,
137 announcement, or statement containing an assertion,
138 representation, or statement with regard to the risk-based
139 capital levels of any health maintenance organization, or of any
140 component derived in the calculation, by any health maintenance

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141 organization engaged in any manner in the health maintenance
142 organization business is misleading and is prohibited; however,
143 if any materially false statement with respect to the comparison
144 regarding a health maintenance organization's total adjusted
145 capital to all or any of its risk-based capital levels or an
146 inappropriate comparison of any other amount to the health
147 maintenance organization's risk-based capital levels is
148 published in any written publication and the health maintenance
149 organization is able to demonstrate to the office with
150 substantial proof the falsity or inappropriateness of the
151 statement, the health maintenance organization may publish in a
152 written publication an announcement the sole purpose of which is
153 to rebut the materially false statement.

154 (c) The office shall use the risk-based capital
155 instructions, risk-based capital reports, adjusted risk-based
156 capital reports, risk-based capital plans, and revised risk-
157 based capital plans solely for monitoring the solvency of health
158 maintenance organizations and assessing the need for corrective
159 action with respect to health maintenance organizations. The
160 office may not use that information for ratemaking, as evidence
161 in any rate proceeding, or for calculating or deriving any
162 elements of an appropriate premium level or rate of return for
163 which a health maintenance organization or an affiliate of such
164 health maintenance organization is authorized to write.

165 (d) A health maintenance organization's risk-based capital
166 shall be determined in accordance with the formula set forth in
167 the risk-based capital instructions. The formula shall take the
168 following into account, determined in each case by applying the

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169 factors in the manner set forth in the risk-based capital
170 instructions, and may adjust for the covariance between:

- 171 1. Asset risk.
- 172 2. Credit risk.
- 173 3. Underwriting risk.
- 174 4. All other business risks and such other relevant risks
175 as are set forth in the risk-based capital report.

176 (e) The Legislature finds that an excess of capital over
177 the amount produced by the risk-based capital requirements and
178 the formulas, schedules, and instructions specified in this
179 section is a desirable goal with respect to the business of a
180 health maintenance organization. Accordingly, health maintenance
181 organizations should seek to maintain capital above the risk-
182 based capital levels required by this section, which additional
183 capital may be used to help secure a health maintenance
184 organization against various risks inherent in, or affecting,
185 the business of insurance and not accounted for or only
186 partially measured by the risk-based capital requirements
187 contained in this section.

188 (f) If a health maintenance organization files a risk-
189 based capital report that the office finds is inaccurate, the
190 office shall adjust the risk-based capital report to correct the
191 inaccuracy and shall notify the health maintenance organization
192 of the adjustment. The notice must state the reason for the
193 adjustment. A risk-based capital report that is so adjusted is
194 referred to as the "adjusted risk-based capital report." The
195 adjusted risk-based capital report must also be filed by the
196 health maintenance organization with the National Association of

197 Insurance Commissioners.

198 (3) (a) For purposes of this section, a company action

199 level event includes:

200 1. The filing of a risk-based capital report by a health

201 maintenance organization that indicates that the health

202 maintenance organization's total adjusted capital is greater

203 than or equal to its regulatory action level risk-based capital

204 but less than its company action level risk-based capital;

205 2. The notification by the office to the health

206 maintenance organization of an adjusted risk-based capital

207 report that indicates an event described in subparagraph 1.,

208 unless the health maintenance organization challenges the

209 adjusted risk-based capital report under subsection (7); or

210 3. If, under subsection (7), a health maintenance

211 organization challenges an adjusted risk-based capital report

212 that indicates an event in subparagraph 1., the notification by

213 the office to the health maintenance organization that the

214 office, after a hearing, has rejected the health maintenance

215 organization's challenge.

216 (b) If a company action level event occurs, the health

217 maintenance organization shall prepare and submit to the office

218 a risk-based capital plan, which must:

219 1. Identify the conditions that contribute to the company

220 action level event.

221 2. Contain proposals of corrective actions that the health

222 maintenance organization intends to take and that are reasonably

223 expected to result in the elimination of the company action

224 level event.

225 3. Provide projections of the health maintenance
226 organization's financial results in the current year and at
227 least the 2 succeeding years, both in the absence of proposed
228 corrective actions and giving effect to the proposed corrective
229 actions, including projections of statutory operating income,
230 net income, capital, surplus, and risk-based capital levels. The
231 projections for both new and renewal business may include
232 separate projections for each major line of business and, if
233 separate projections are provided, must separately identify each
234 significant income, expense, and benefit component.

235 4. Identify the key assumptions affecting the health
236 maintenance organization's projections and the sensitivity of
237 the projections to the assumptions.

238 5. Identify the quality of, and problems associated with,
239 the health maintenance organization's business, including, but
240 not limited to, its assets, anticipated business growth and
241 associated surplus strain, extraordinary exposure to risk, mix
242 of business, and any use of reinsurance.

243 (c) The risk-based capital plan must be submitted:

244 1. Within 45 days after the company action level event; or

245 2. If the health maintenance organization challenges an
246 adjusted risk-based capital report under subsection (7), within
247 45 days after notification to the health maintenance
248 organization that the office, after a hearing, has rejected the
249 health maintenance organization's challenge.

250 (d) Within 60 days after the submission by a health
251 maintenance organization of a risk-based capital plan to the
252 office, the office shall notify the health maintenance

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253 organization whether the risk-based capital plan must be
254 implemented or, in the judgment of the office, is
255 unsatisfactory. If the office determines that the risk-based
256 capital plan is unsatisfactory, the notification to the health
257 maintenance organization must set forth the reasons for the
258 determination and may set forth proposed revisions. Upon
259 notification from the office, the health maintenance
260 organization shall prepare a revised risk-based capital plan
261 which may incorporate by reference any revisions proposed by the
262 office and shall submit the revised risk-based capital plan to
263 the office:

264 1. Within 45 days after the notification from the office;

265 or

266 2. If the health maintenance organization challenges the
267 notification from the office under subsection (7), within 45
268 days after a notification to the health maintenance organization
269 that the office, after a hearing, has rejected the health
270 maintenance organization's challenge.

271 (e) If the office notifies a health maintenance
272 organization that the health maintenance organization's risk-
273 based capital plan or revised risk-based capital plan is
274 unsatisfactory, the office, at its discretion and subject to the
275 health maintenance organization's right to a hearing under
276 subsection (7), may specify in the notification that the
277 notification is a regulatory action level event.

278 (f) Each health maintenance organization in this state
279 that files with the office a risk-based capital plan or a
280 revised risk-based capital plan shall also file a copy of the

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281 risk-based capital plan or the revised risk-based capital plan
282 with the insurance department in any other state in which the
283 insurer is authorized to do business if:

284 1. That state has a risk-based capital law that is
285 substantially similar to this section; and

286 2. The insurance department of that state has notified the
287 health maintenance organization in writing of its request for
288 the filing, in which case the health maintenance organization
289 shall file a copy of the risk-based capital plan or the revised
290 risk-based capital plan in that state no later than the later
291 of:

292 a. Fifteen days after the receipt of notice to file a copy
293 of its risk-based capital plan or revised risk-based capital
294 plan with the state; or

295 b. The date on which the risk-based capital plan or the
296 revised risk-based capital plan is filed under paragraph (c) or
297 paragraph (d).

298 (4) (a) For purposes of this section, a regulatory action
299 level event includes:

300 1. The filing of a risk-based capital report by the health
301 maintenance organization that indicates that the health
302 maintenance organization's total adjusted capital is greater
303 than or equal to its authorized control level risk-based capital
304 but is less than its regulatory action level risk-based capital;

305 2. The notification by the office to the health
306 maintenance organization of an adjusted risk-based capital
307 report that indicates the event described in subparagraph 1.,
308 unless the health maintenance organization challenges the

309 adjusted risk-based capital report under subsection (7);

310 3. If, under subsection (7), the health maintenance
311 organization challenges an adjusted risk-based capital report
312 that indicates the event described in subparagraph 1., the
313 notification by the office to the health maintenance
314 organization that the office, after a hearing, has rejected the
315 health maintenance organization's challenge;

316 4. The failure of the health maintenance organization to
317 file a risk-based capital report by the filing date, unless the
318 health maintenance organization provides an explanation for such
319 failure that is satisfactory to the office and cures the failure
320 within 10 days after the filing date;

321 5. The failure of the health maintenance organization to
322 submit a risk-based capital plan to the office within the time
323 period set forth in paragraph (3)(c);

324 6. Notification by the office to the health maintenance
325 organization that:

326 a. The risk-based capital plan or the revised risk-based
327 capital plan submitted by the health maintenance organization,
328 in the judgment of the office, is unsatisfactory; and

329 b. The notification constitutes a regulatory action level
330 event with respect to the health maintenance organization,
331 unless the health maintenance organization challenges the
332 determination under subsection (7);

333 7. If, under subsection (7), the health maintenance
334 organization challenges a determination by the office under
335 subparagraph 6., the notification by the office to the health
336 maintenance organization that the office, after a hearing, has

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337 rejected the challenge;

338 8. Notification by the office to the health maintenance
339 organization that the health maintenance organization has failed
340 to adhere to its risk-based capital plan or revised risk-based
341 capital plan but only if such failure has a substantial adverse
342 effect on the ability of the health maintenance organization to
343 eliminate the company action level event in accordance with its
344 risk-based capital plan or revised risk-based capital plan and
345 the office has so stated in the notification, unless the health
346 maintenance organization challenges the determination under
347 subsection (7); or

348 9. If, under subsection (7), the health maintenance
349 organization challenges a determination by the office under
350 subparagraph 8., the notification by the office to the health
351 maintenance organization that the office, after a hearing, has
352 rejected the challenge.

353 (b) If a regulatory action level event occurs, the office
354 shall:

355 1. Require the health maintenance organization to prepare
356 and submit a risk-based capital plan or, if applicable, a
357 revised risk-based capital plan.

358 2. Perform an examination pursuant to s. 641.27 or an
359 analysis, as the office considers necessary, of the assets,
360 liabilities, and operations of the health maintenance
361 organization, including a review of the risk-based capital plan
362 or the revised risk-based capital plan.

363 3. After the examination or analysis, issue a corrective
364 order specifying such corrective actions as the office

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365 determines are required.

366 (c) In determining corrective actions, the office shall
367 consider any factor relevant to the health maintenance
368 organization based upon the office's examination or analysis of
369 the assets, liabilities, and operations of the health
370 maintenance organization, including, but not limited to, the
371 results of any sensitivity tests undertaken as provided in the
372 risk-based capital instructions. The risk-based capital plan or
373 the revised risk-based capital plan shall be submitted:

374 1. Within 45 days after the occurrence of the regulatory
375 action level event;

376 2. If the health maintenance organization challenges an
377 adjusted risk-based capital report under subsection (7), within
378 45 days after the notification to the health maintenance
379 organization that the office, after a hearing, has rejected the
380 health maintenance organization's challenge; or

381 3. If the health maintenance organization challenges a
382 revised risk-based capital plan under subsection (7), within 45
383 days after the notification to the health maintenance
384 organization that the office, after a hearing, has rejected the
385 health maintenance organization's challenge.

386 (d) The office may retain actuaries, investment experts,
387 and other consultants to review a health maintenance
388 organization's risk-based capital plan or revised risk-based
389 capital plan, examine or analyze the assets, liabilities, and
390 operations of a health maintenance organization, including
391 contractual relationships, and formulate the corrective order
392 with respect to the health maintenance organization. The fees,

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393 costs, and expenses relating to consultants shall be borne by
394 the affected health maintenance organization or by any other
395 party as directed by the office.

396 (5) (a) For purposes of this section, an authorized control
397 level event includes:

398 1. The filing of a risk-based capital report by the health
399 maintenance organization that indicates that the health
400 maintenance organization's total adjusted capital is greater
401 than or equal to its mandatory control level risk-based capital
402 but is less than its authorized control level risk-based
403 capital;

404 2. The notification by the office to the health
405 maintenance organization of an adjusted risk-based capital
406 report that indicates the event described in subparagraph 1.,
407 unless the health maintenance organization challenges the
408 adjusted risk-based capital report under subsection (7);

409 3. If, under subsection (7), the health maintenance
410 organization challenges an adjusted risk-based capital report
411 that indicates the event described in subparagraph 1.,
412 notification by the office to the health maintenance
413 organization that the office, after a hearing, has rejected the
414 health maintenance organization's challenge;

415 4. The failure of the health maintenance organization to
416 respond, in a manner satisfactory to the office, to a corrective
417 order, unless the health maintenance organization challenges the
418 corrective order under subsection (7); or

419 5. If the health maintenance organization challenges a
420 corrective order under subsection (7) and the office, after a

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421 hearing, rejects the challenge or modifies the corrective order,
422 the failure of the health maintenance organization to respond in
423 a manner satisfactory to the office to the corrective order
424 after rejection or modification by the office.

425 (b) If an authorized control level event occurs, the
426 office shall:

427 1. Take any action required under subsection (4) regarding
428 the health maintenance organization with respect to which a
429 regulatory action level event has occurred; or

430 2. If the office considers it to be in the best interests
431 of the subscribers and creditors of the health maintenance
432 organization and of the public, take any action as necessary to
433 cause the health maintenance organization to be placed under
434 regulatory control under chapter 631. An authorized control
435 level event is a sufficient ground for the department to be
436 appointed as receiver as provided in chapter 631.

437 (6) (a) For purposes of this section, a mandatory control
438 level event includes:

439 1. The filing of a risk-based capital report that
440 indicates that the health maintenance organization's total
441 adjusted capital is less than its mandatory control level risk-
442 based capital;

443 2. Notification by the office to the health maintenance
444 organization of an adjusted risk-based capital report that
445 indicates the event described in subparagraph 1., unless the
446 health maintenance organization challenges the adjusted risk-
447 based capital report under subsection (7); or

448 3. If, under subsection (7), the health maintenance

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449 organization challenges an adjusted risk-based capital report
450 that indicates the event described in subparagraph 1.,
451 notification by the office to the health maintenance
452 organization that the office, after a hearing, has rejected the
453 health maintenance organization's challenge.

454 (b) If a mandatory control level event occurs, the office,
455 after due consideration of s. 641.225, shall take any action
456 necessary to place the health maintenance organization under
457 regulatory control, including any remedy available under chapter
458 631. A mandatory control level event is a sufficient ground for
459 the department to be appointed as receiver as provided in
460 chapter 631. The office may forego taking action for up to 90
461 days after the mandatory control level event if the office finds
462 there is a reasonable expectation that the mandatory control
463 level event may be eliminated within the 90-day period.

464 (7) (a) A health maintenance organization has a right to a
465 hearing before the office upon:

466 1. Notification to a health maintenance organization by
467 the office of an adjusted risk-based capital report;

468 2. Notification to a health maintenance organization by
469 the office that the health maintenance organization's risk-based
470 capital plan or revised risk-based capital plan is
471 unsatisfactory and that the notification constitutes a
472 regulatory action level event with respect to such health
473 maintenance organization;

474 3. Notification to any health maintenance organization by
475 the office that the health maintenance organization has failed
476 to adhere to its risk-based capital plan or revised risk-based

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477 capital plan and that the failure has a substantial adverse
478 effect on the ability of the health maintenance organization to
479 eliminate the company action level event in accordance with its
480 risk-based capital plan or its revised risk-based capital plan;
481 or

482 4. Notification to a health maintenance organization by
483 the office of a corrective order with respect to the health
484 maintenance organization.

485 (b) At such hearing, the health maintenance organization
486 may challenge any determination or action by the office. The
487 health maintenance organization shall notify the office of its
488 request for a hearing within 5 days after receipt of the
489 notification by the office under this subsection. Upon receipt
490 of the request for a hearing, the office shall set a date for
491 the hearing, which date must be no fewer than 10 or more than 30
492 days after the date the office receives the health maintenance
493 organization's request. The hearing must be conducted as
494 provided in s. 624.324, with the right to appellate review as
495 provided in s. 120.68.

496 (8) There is no liability on the part of, and a cause of
497 action may not be brought against, the commission, department,
498 or office, or their employees or agents, for any action taken by
499 the commission, department, office, employees, or agents in the
500 performance of their powers and duties under this section.

501 (9) The office shall transmit any notice that may result
502 in regulatory action by registered mail, certified mail, or any
503 other method of transmission. Notice is effective when the
504 health maintenance organization receives the notice.

505 (10) This section is supplemental to the other laws of
 506 this state and does not preclude or limit any power or duty of
 507 the department or office under those laws or under the rules
 508 adopted under those laws.

509 (11) This section does not apply to a health maintenance
 510 organization that writes direct annual premiums of \$2 million or
 511 less.

512 (12) The commission may adopt rules to administer this
 513 section, including, but not limited to, those regarding risk-
 514 based capital reports, adjusted risk-based capital reports,
 515 risk-based capital plans, and corrective orders and procedures
 516 to be followed in the event of a triggering of a company action
 517 level event, a regulatory action level event, an authorized
 518 control level event, or a mandatory control level event.

519 Section 2. Effective upon this act becoming a law,
 520 subsection (38) of section 641.31, Florida Statutes, is amended
 521 to read:

522 641.31 Health maintenance contracts.--

523 (38) (a) Notwithstanding any other provision of this part,
 524 a health maintenance organization that meets the requirements of
 525 paragraph (b) may offer, through a point-of-service rider to its
 526 contract providing comprehensive health care services or through
 527 a policy that provides coverage for benefits through a preferred
 528 provider network pursuant to s. 627.6471, ~~include~~ a point-of-
 529 service or preferred provider benefit. Under such a rider or
 530 policy, a subscriber or other covered person of the health
 531 maintenance organization may choose, at the time of covered
 532 service, a provider with whom the health maintenance

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533 organization does not have a health maintenance organization
534 provider contract. The rider or policy may not require a
535 referral from the health maintenance organization for the point-
536 of-service or preferred provider benefits.

537 (b) A health maintenance organization offering a point-of-
538 service or preferred provider benefits ~~rider~~ under this
539 subsection must have a valid certificate of authority issued
540 under the provisions of the chapter, must have been licensed
541 under this chapter for a minimum of 3 years, and must at all
542 times that it has point of service riders or preferred provider
543 policies in effect maintain a minimum surplus of \$5 million. A
544 health maintenance organization offering a point-of-service
545 rider to its contract or a preferred provider policy providing
546 comprehensive health care services may offer the rider or policy
547 to employers who have employees living and working outside the
548 health maintenance organization's approved geographic service
549 area without having to obtain a health care provider
550 certificate, as long as the master group contract is issued to
551 an employer that maintains its primary place of business within
552 the health maintenance organization's approved service area. Any
553 member or subscriber that lives and works outside the health
554 maintenance organization's service area and elects coverage
555 under the health maintenance organization's point-of-service
556 rider or preferred provider policy must provide a statement to
557 the health maintenance organization that indicates the member or
558 subscriber understands the limitations of his or her policy and
559 that only those benefits under the point-of-service rider or

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560 preferred provider policy will be covered when services are
561 provided outside the service area.

562 (c) Premiums paid in for the point-of-service riders or
563 preferred provider policies may not exceed 49 ~~45~~ percent of
564 total premiums for all health plan products sold by the health
565 maintenance organization offering the rider or preferred
566 provider policy unless the health maintenance organization
567 complies with the provisions of s. 624.4095 as if the health
568 maintenance organization were a health insurer. To determine the
569 available surplus to provide point-of-service riders or
570 preferred provider policies under the provisions of s.
571 624.4095(6), surplus shall be calculated by subtracting from
572 actual or projected surplus the surplus required to be
573 maintained under s. 641.225. In no event shall the total gross
574 premiums for point-of-service riders and preferred provider
575 policies exceed 49 percent of the gross premiums written on an
576 actual or projected basis for health maintenance organization
577 contracts. If the premiums written for point-of-service riders
578 and preferred provider policies exceed 49 percent of total
579 premiums for all health plan products sold by the health
580 maintenance organization, the health maintenance organization
581 shall file with the annual and quarterly financial reports
582 required by s. 641.26 a report, on a form prescribed by the
583 commission, reporting direct total premiums written, direct
584 premiums earned, direct losses paid, and direct losses incurred
585 for point-of-service riders and preferred provider policies. If
586 the premiums paid for point-of-service riders or preferred
587 provider policies exceed or are projected to exceed 49 ~~45~~

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588 percent, the health maintenance organization must notify the
589 office and, once this fact is known, must immediately cease
590 offering such a rider and preferred provider policy until it is
591 in compliance with the rider and preferred provider policy
592 premium cap.

593 (d) Notwithstanding the limitations of deductibles and
594 copayment provisions in this part, a point-of-service rider or
595 preferred provider policy may require the subscriber to pay a
596 reasonable copayment for each visit for services provided by a
597 noncontracted provider chosen at the time of the service. The
598 copayment by the subscriber may either be a specific dollar
599 amount or a percentage of the reimbursable provider charges
600 covered by the contract and must be paid by the subscriber to
601 the noncontracted provider upon receipt of covered services. The
602 point-of-service rider or preferred provider policy may require
603 that a reasonable annual deductible for the expenses associated
604 with the point-of-service rider or preferred provider policy be
605 met and may include a lifetime maximum benefit amount. The rider
606 or preferred provider policy must include the language required
607 by s. 627.6044 and must comply with copayment limits described
608 in s. 627.6471. Section 641.3154 does not apply to a point-of-
609 service rider or preferred provider policy authorized under this
610 subsection.

611 (e) The point-of-service rider or preferred provider
612 policy must contain provisions that comply with s. 627.6044.

613 (f) The term "point of service" may not be used by a
614 health maintenance organization except with riders permitted

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615 under this section or with forms approved by the office in which
616 a point-of-service product is offered with an indemnity carrier.

617 (g) A point-of-service rider or preferred provider policy
618 must be filed and approved under ss. 627.410 and 627.411.

619 (h) The premium for preferred provider policies earned by
620 health maintenance organizations shall not be included in the
621 health maintenance organization's assessment base provided in s.
622 631.819.

623 (i) A health maintenance organization issuing preferred
624 provider policies is subject to part III of chapter 631 as to
625 preferred provider policies. Assessments based on premiums
626 pursuant to part III of chapter 631 apply only to the premiums
627 earned on the preferred provider contracts.

628 (j) Preferred provider policies written by a health
629 maintenance organization are subject to premium tax on the same
630 basis as if the premiums were written by an authorized health
631 insurer pursuant to chapter 624.

632 Section 3. Beginning January 1, 2007, a health maintenance
633 organization subject to s. 641.224, Florida Statutes, shall file
634 with the Office of Insurance Regulation for the preceding
635 calendar year by April 1, 2007, and annually thereafter, the
636 risk-based capital report identified in s. 641.224(2), Florida
637 Statutes, for informational purposes only. The information-only
638 filing requirement expires upon the filing of the informational
639 report due April 2, 2011. Section 641.224, Florida Statutes,
640 applies to any risk-based capital report filed pursuant to this
641 section.

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642 Section 4. Except as otherwise expressly provided in this
643 act, this act shall take effect January 1, 2007.