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CHAMBER ACTION

1 The Insurance Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to risk-based capital requirements for
7 health maintenance organizations; creating s. 641.224,
8 F.S.; providing definitions; requiring a health
9 maintenance organization to file reports of its risk-based
10 capital levels, beginning on a certain date; prohibiting
11 certain uses of such reports; authorizing the Office of
12 Insurance Regulation to use certain documents for certain
13 purposes; providing requirements for determining risk-
14 based capital; providing legislative findings; authorizing
15 the office to adjust or revise risk-based capital reports
16 under certain circumstances; requiring notice of any
17 adjustments or revisions; providing for challenges to any
18 adjustments or revisions; requiring certain health
19 maintenance organizations to file copies of risk-based
20 capital plans with the insurance department of certain
21 states; providing criteria; providing criteria,
22 requirements, and procedures for company action level
23 events, regulatory action level events, authorized control

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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24 | level events, and mandatory control level events relating
25 | to levels of risk-based capital; providing duties and
26 | responsibilities of the office relating to such events;
27 | requiring a risk-based capital plan for certain purposes
28 | under certain circumstances; specifying plan requirements;
29 | authorizing the office to take certain corrective actions
30 | under certain circumstances; authorizing the office to
31 | retain professional assistance in undertaking certain
32 | activities relating to a health maintenance organization's
33 | levels of risk-based capital; authorizing the office to
34 | place a health maintenance organization under regulatory
35 | control under certain circumstances; providing for a right
36 | to a hearing before the office to challenge certain
37 | actions by the office; providing hearing requirements and
38 | procedures; specifying absence of liability of and
39 | prohibiting bringing certain causes of action against the
40 | Financial Services Commission, the Department of Financial
41 | Services, the office, and certain related personnel for
42 | certain activities; providing notification requirements
43 | for the office; providing construction; limiting
44 | application to certain health maintenance organizations;
45 | authorizing the commission to adopt rules; amending s.
46 | 641.31, F.S.; revising provisions authorizing health
47 | maintenance organizations to include point-of-service
48 | riders for point-of service benefits under health
49 | maintenance contracts to include preferred provider
50 | policies for preferred provider benefits through preferred
51 | provider networks; revising maximum premium limitations;

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52 providing reporting requirements; providing additional
53 premium requirements and limitations relating to preferred
54 provider policies; requiring certain health maintenance
55 organizations to file a risk-based capital report with the
56 office for informational purposes; providing a limitation;
57 providing application; providing effective dates.

58
59 Be It Enacted by the Legislature of the State of Florida:

60
61 Section 1. Section 641.224, Florida Statutes, is created
62 to read:

63 641.224 Risk-based capital requirements for health
64 maintenance organizations.--

65 (1) As used in this section:

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

69 (b) "Authorized control level risk-based capital" means
70 the number determined under the risk-based capital formula in
71 the risk-based capital instructions.

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

75 (d) "Corrective order" means an order issued by the office
76 specifying corrective actions that the office has determined are
77 required.

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78 (e) "Mandatory control level risk-based capital" means the
79 product of 0.70 and the authorized control level risk-based
80 capital.

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

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

88 (h) "Revised risk-based capital plan" means the revision
89 of the risk-based capital plan that is prepared by a health
90 maintenance organization after the office rejects the original
91 plan.

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

95 (j) "Risk-based capital level" means a health maintenance
96 organization's action level risk-based capital, regulatory
97 action level risk-based capital, authorized control level risk-
98 based capital, or mandatory control level risk-based capital.

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

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

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

104 1. A health maintenance organization's statutory capital
105 and surplus.

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106 2. Any other item required by the risk-based capital
107 instructions.

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

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

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

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

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

128 (b) The comparison of a health maintenance organization's
129 total adjusted capital to any of its risk-based capital levels
130 is intended to be a regulatory tool that may indicate the need
131 for possible corrective action with respect to the health
132 maintenance organization and may not be used as a means to rank
133 health maintenance organizations generally. Therefore, except as

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134 otherwise required under this section, the making, publishing,
135 disseminating, circulating, or placing before the public, or
136 causing, directly or indirectly, to be made, published,
137 disseminated, circulated, or placed before the public, in a
138 newspaper, magazine, or other publication, or in the form of a
139 notice, circular, pamphlet, letter, or poster, or over any radio
140 or television station, or in any other way, an advertisement,
141 announcement, or statement containing an assertion,
142 representation, or statement with regard to the risk-based
143 capital levels of any health maintenance organization, or of any
144 component derived in the calculation, by any health maintenance
145 organization engaged in any manner in the health maintenance
146 organization business is misleading and is prohibited; however,
147 if any materially false statement with respect to the comparison
148 regarding a health maintenance organization's total adjusted
149 capital to all or any of its risk-based capital levels or an
150 inappropriate comparison of any other amount to the health
151 maintenance organization's risk-based capital levels is
152 published in any written publication and the health maintenance
153 organization is able to demonstrate to the office with
154 substantial proof the falsity or inappropriateness of the
155 statement, the health maintenance organization may publish in a
156 written publication an announcement the sole purpose of which is
157 to rebut the materially false statement.

158 (c) The office shall use the risk-based capital
159 instructions, risk-based capital reports, adjusted risk-based
160 capital reports, risk-based capital plans, and revised risk-
161 based capital plans solely for monitoring the solvency of health

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162 maintenance organizations and assessing the need for corrective
163 action with respect to health maintenance organizations. The
164 office may not use that information for ratemaking, as evidence
165 in any rate proceeding, or for calculating or deriving any
166 elements of an appropriate premium level or rate of return for
167 which a health maintenance organization or an affiliate of such
168 health maintenance organization is authorized to write.

169 (d) A health maintenance organization's risk-based capital
170 shall be determined in accordance with the formula set forth in
171 the risk-based capital instructions. The formula shall take the
172 following into account, determined in each case by applying the
173 factors in the manner set forth in the risk-based capital
174 instructions, and may adjust for the covariance between:

- 175 1. Asset risk.
- 176 2. Credit risk.
- 177 3. Underwriting risk.
- 178 4. All other business risks and such other relevant risks
179 as are set forth in the risk-based capital report.

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

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190 partially measured by the risk-based capital requirements
191 contained in this section.

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

202 (3) (a) For purposes of this section, a company action
203 level event includes:

204 1. The filing of a risk-based capital report by a health
205 maintenance organization that indicates that the health
206 maintenance organization's total adjusted capital is greater
207 than or equal to its regulatory action level risk-based capital
208 but less than its company action level risk-based capital;

209 2. The notification by the office to the health
210 maintenance organization of an adjusted risk-based capital
211 report that indicates an event described in subparagraph 1.,
212 unless the health maintenance organization challenges the
213 adjusted risk-based capital report under subsection (7); or

214 3. If, under subsection (7), a health maintenance
215 organization challenges an adjusted risk-based capital report
216 that indicates an event in subparagraph 1., the notification by
217 the office to the health maintenance organization that the

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218 office, after a hearing, has rejected the health maintenance
219 organization's challenge.

220 (b) If a company action level event occurs, the health
221 maintenance organization shall prepare and submit to the office
222 a risk-based capital plan, which must:

223 1. Identify the conditions that contribute to the company
224 action level event.

225 2. Contain proposals of corrective actions that the health
226 maintenance organization intends to take and that are reasonably
227 expected to result in the elimination of the company action
228 level event.

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

239 4. Identify the key assumptions affecting the health
240 maintenance organization's projections and the sensitivity of
241 the projections to the assumptions.

242 5. Identify the quality of, and problems associated with,
243 the health maintenance organization's business, including, but
244 not limited to, its assets, anticipated business growth and

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245 associated surplus strain, extraordinary exposure to risk, mix
246 of business, and any use of reinsurance.

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

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

249 2. If the health maintenance organization challenges an
250 adjusted risk-based capital report under subsection (7), within
251 45 days after notification to the health maintenance
252 organization that the office, after a hearing, has rejected the
253 health maintenance organization's challenge.

254 (d) Within 60 days after the submission by a health
255 maintenance organization of a risk-based capital plan to the
256 office, the office shall notify the health maintenance
257 organization whether the risk-based capital plan must be
258 implemented or, in the judgment of the office, is
259 unsatisfactory. If the office determines that the risk-based
260 capital plan is unsatisfactory, the notification to the health
261 maintenance organization must set forth the reasons for the
262 determination and may set forth proposed revisions. Upon
263 notification from the office, the health maintenance
264 organization shall prepare a revised risk-based capital plan
265 which may incorporate by reference any revisions proposed by the
266 office and shall submit the revised risk-based capital plan to
267 the office:

268 1. Within 45 days after the notification from the office;
269 or

270 2. If the health maintenance organization challenges the
271 notification from the office under subsection (7), within 45
272 days after a notification to the health maintenance organization

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273 that the office, after a hearing, has rejected the health
274 maintenance organization's challenge.

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

282 (f) Each health maintenance organization in this state
283 that files with the office a risk-based capital plan or a
284 revised risk-based capital plan shall also file a copy of the
285 risk-based capital plan or the revised risk-based capital plan
286 with the insurance department in any other state in which the
287 health maintenance organization is authorized to do business if:

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

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

296 a. Fifteen days after the receipt of notice to file a copy
297 of its risk-based capital plan or revised risk-based capital
298 plan with the state; or

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299 b. The date on which the risk-based capital plan or the
300 revised risk-based capital plan is filed under paragraph (c) or
301 paragraph (d).

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

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

309 2. The notification by the office to the health
310 maintenance organization of an adjusted risk-based capital
311 report that indicates the event described in subparagraph 1.,
312 unless the health maintenance organization challenges the
313 adjusted risk-based capital report under subsection (7);

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

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

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

328 6. Notification by the office to the health maintenance
329 organization that:

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

333 b. The notification constitutes a regulatory action level
334 event with respect to the health maintenance organization,
335 unless the health maintenance organization challenges the
336 determination under subsection (7);

337 7. If, under subsection (7), the health maintenance
338 organization challenges a determination by the office under
339 subparagraph 6., the notification by the office to the health
340 maintenance organization that the office, after a hearing, has
341 rejected the challenge;

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

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352 9. If, under subsection (7), the health maintenance
353 organization challenges a determination by the office under
354 subparagraph 8., the notification by the office to the health
355 maintenance organization that the office, after a hearing, has
356 rejected the challenge.

357 (b) If a regulatory action level event occurs, the office
358 shall:

359 1. Require the health maintenance organization to prepare
360 and submit a risk-based capital plan or, if applicable, a
361 revised risk-based capital plan.

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

367 3. After the examination or analysis, issue a corrective
368 order specifying such corrective actions as the office
369 determines are required.

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

378 1. Within 45 days after the occurrence of the regulatory
379 action level event;

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380 2. If the health maintenance organization challenges an
381 adjusted risk-based capital report under subsection (7), within
382 45 days after the notification to the health maintenance
383 organization that the office, after a hearing, has rejected the
384 health maintenance organization's challenge; or

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

390 (d) The office may retain actuaries, investment experts,
391 and other consultants to review a health maintenance
392 organization's risk-based capital plan or revised risk-based
393 capital plan, examine or analyze the assets, liabilities, and
394 operations of a health maintenance organization, including
395 contractual relationships, and formulate the corrective order
396 with respect to the health maintenance organization. The fees,
397 costs, and expenses relating to consultants shall be borne by
398 the affected health maintenance organization or by any other
399 party as directed by the office.

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

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

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

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

419 4. The failure of the health maintenance organization to
420 respond, in a manner satisfactory to the office, to a corrective
421 order, unless the health maintenance organization challenges the
422 corrective order under subsection (7); or

423 5. If the health maintenance organization challenges a
424 corrective order under subsection (7) and the office, after a
425 hearing, rejects the challenge or modifies the corrective order,
426 the failure of the health maintenance organization to respond in
427 a manner satisfactory to the office to the corrective order
428 after rejection or modification by the office.

429 (b) If an authorized control level event occurs, the
430 office shall:

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

434 2. If the office considers it to be in the best interests
435 of the subscribers and creditors of the health maintenance

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436 organization and of the public, take any action as necessary to
437 cause the health maintenance organization to be placed under
438 regulatory control under chapter 631. An authorized control
439 level event is a sufficient ground for the department to be
440 appointed as receiver as provided in chapter 631.

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

443 1. The filing of a risk-based capital report that
444 indicates that the health maintenance organization's total
445 adjusted capital is less than its mandatory control level risk-
446 based capital;

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

452 3. If, under subsection (7), the health maintenance
453 organization challenges an adjusted risk-based capital report
454 that indicates the event described in subparagraph 1.,
455 notification by the office to the health maintenance
456 organization that the office, after a hearing, has rejected the
457 health maintenance organization's challenge.

458 (b) If a mandatory control level event occurs, the office,
459 after due consideration of s. 641.225, shall take any action
460 necessary to place the health maintenance organization under
461 regulatory control, including any remedy available under chapter
462 631. A mandatory control level event is a sufficient ground for
463 the department to be appointed as receiver as provided in

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464 chapter 631. The office may forego taking action for up to 90
465 days after the mandatory control level event if the office finds
466 there is a reasonable expectation that the mandatory control
467 level event may be eliminated within the 90-day period.

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

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

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

478 3. Notification to any health maintenance organization by
479 the office that the health maintenance organization has failed
480 to adhere to its risk-based capital plan or revised risk-based
481 capital plan and that the failure has a substantial adverse
482 effect on the ability of the health maintenance organization to
483 eliminate the company action level event in accordance with its
484 risk-based capital plan or its revised risk-based capital plan;
485 or

486 4. Notification to a health maintenance organization by
487 the office of a corrective order with respect to the health
488 maintenance organization.

489 (b) At such hearing, the health maintenance organization
490 may challenge any determination or action by the office. The
491 health maintenance organization shall notify the office of its

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492 request for a hearing within 5 days after receipt of the
493 notification by the office under this subsection. Upon receipt
494 of the request for a hearing, the office shall set a date for
495 the hearing, which date must be no fewer than 10 or more than 30
496 days after the date the office receives the health maintenance
497 organization's request. The hearing must be conducted as
498 provided in s. 624.324, with the right to appellate review as
499 provided in s. 120.68.

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

505 (9) The office shall transmit any notice that may result
506 in regulatory action by registered mail, certified mail, or any
507 other method of transmission that provides proof of receipt.
508 Notice is effective when the health maintenance organization
509 receives the notice.

510 (10) This section is supplemental to the other laws of
511 this state and does not preclude or limit any power or duty of
512 the department or office under those laws or under the rules
513 adopted under those laws.

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

517 (12) The commission may adopt rules to administer this
518 section, including, but not limited to, those regarding risk-
519 based capital reports, adjusted risk-based capital reports,

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520 risk-based capital plans, and corrective orders and procedures
521 to be followed in the event of a triggering of a company action
522 level event, a regulatory action level event, an authorized
523 control level event, or a mandatory control level event.

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

527 641.31 Health maintenance contracts.--

528 (38) (a) Notwithstanding any other provision of this part,
529 a health maintenance organization that meets the requirements of
530 paragraph (b) may offer, through a point-of-service rider to its
531 contract providing comprehensive health care services or through
532 a policy that provides coverage for benefits through a preferred
533 provider network pursuant to s. 627.6471, ~~include~~ a point-of-
534 service or preferred provider benefit. Under such a rider or
535 policy, a subscriber or other covered person of the health
536 maintenance organization may choose, at the time of covered
537 service, a provider with whom the health maintenance
538 organization does not have a health maintenance organization
539 provider contract. The rider or policy may not require a
540 referral from the health maintenance organization for the point-
541 of-service or preferred provider benefits.

542 (b) A health maintenance organization offering a point-of-
543 service or preferred provider benefits ~~rider~~ under this
544 subsection must have a valid certificate of authority issued
545 under the provisions of the chapter, must have been licensed
546 under this chapter for a minimum of 3 years, and must at all
547 times that it has point of service riders or preferred provider

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548 | policies in effect maintain a minimum surplus of \$5 million. A
549 | health maintenance organization offering a point-of-service
550 | rider to its contract or a preferred provider policy providing
551 | comprehensive health care services may offer the rider or policy
552 | to employers who have employees living and working outside the
553 | health maintenance organization's approved geographic service
554 | area without having to obtain a health care provider
555 | certificate, as long as the master group contract is issued to
556 | an employer that maintains its primary place of business within
557 | the health maintenance organization's approved service area. Any
558 | member or subscriber that lives and works outside the health
559 | maintenance organization's service area and elects coverage
560 | under the health maintenance organization's point-of-service
561 | rider or preferred provider policy must provide a statement to
562 | the health maintenance organization that indicates the member or
563 | subscriber understands the limitations of his or her policy and
564 | that only those benefits under the point-of-service rider or
565 | preferred provider policy will be covered when services are
566 | provided outside the service area.

567 | (c) Premiums paid in for the point-of-service riders or
568 | preferred provider policies may not exceed 15 percent of total
569 | premiums for all health plan products sold by the health
570 | maintenance organization offering the rider or preferred
571 | provider policy unless the health maintenance organization
572 | complies with the provisions of s. 624.4095 as if the health
573 | maintenance organization were a health insurer. To determine the
574 | available surplus to provide point-of-service riders or
575 | preferred provider policies under the provisions of s.

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576 | 624.4095(6), surplus shall be calculated by subtracting from
577 | actual or projected surplus the surplus required to be
578 | maintained under s. 641.225. In no event shall the total gross
579 | premiums for point-of-service riders and preferred provider
580 | policies exceed 49 percent of the gross premiums written on an
581 | actual or projected basis for health maintenance organization
582 | contracts. If the premiums written for point-of-service riders
583 | and preferred provider policies exceed 15 percent of total
584 | premiums for all health plan products sold by the health
585 | maintenance organization, the health maintenance organization
586 | shall file with the annual and quarterly financial reports
587 | required by s. 641.26 a report, on a form prescribed by the
588 | commission, reporting direct total premiums written, direct
589 | premiums earned, direct losses paid, and direct losses incurred
590 | for point-of-service riders and preferred provider policies. If
591 | the premiums paid for point-of-service riders or preferred
592 | provider policies exceed or are projected to exceed 49 15
593 | percent, the health maintenance organization must notify the
594 | office and, once this fact is known, must immediately cease
595 | offering such a rider and preferred provider policy until it is
596 | in compliance with the rider and preferred provider policy
597 | premium cap.

598 | (d) Notwithstanding the limitations of deductibles and
599 | copayment provisions in this part, a point-of-service rider or
600 | preferred provider policy may require the subscriber to pay a
601 | reasonable copayment for each visit for services provided by a
602 | noncontracted provider chosen at the time of the service. The
603 | copayment by the subscriber may either be a specific dollar

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604 amount or a percentage of the reimbursable provider charges
605 covered by the contract and must be paid by the subscriber to
606 the noncontracted provider upon receipt of covered services. The
607 point-of-service rider or preferred provider policy may require
608 that a reasonable annual deductible for the expenses associated
609 with the point-of-service rider or preferred provider policy be
610 met and may include a lifetime maximum benefit amount. The rider
611 or preferred provider policy must include the language required
612 by s. 627.6044 and must comply with copayment limits described
613 in s. 627.6471. Section 641.3154 does not apply to a point-of-
614 service rider or preferred provider policy authorized under this
615 subsection.

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

618 (f) The term "point of service" may not be used by a
619 health maintenance organization except with riders permitted
620 under this section or with forms approved by the office in which
621 a point-of-service product is offered with an indemnity carrier.

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

624 (h) The premium for preferred provider policies earned by
625 health maintenance organizations shall not be included in the
626 health maintenance organization's assessment base provided in s.
627 631.819.

628 (i) A health maintenance organization issuing preferred
629 provider policies is subject to part III of chapter 631 as to
630 preferred provider policies. Assessments based on premiums

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631 pursuant to part III of chapter 631 apply only to the premiums
632 earned on the preferred provider contracts.

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

637 Section 3. Beginning January 1, 2007, a health maintenance
638 organization subject to s. 641.224, Florida Statutes, shall file
639 with the Office of Insurance Regulation for the preceding
640 calendar year by April 1, 2007, and annually thereafter, the
641 risk-based capital report identified in s. 641.224(2), Florida
642 Statutes, for informational purposes only. The information-only
643 filing requirement expires upon the filing of the informational
644 report due April 2, 2011. Section 641.2241, Florida Statutes,
645 applies to any risk-based capital report filed pursuant to this
646 section.

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