

By Senator Atwater

25-1266A-06

See HB

1 A bill to be entitled

2 An act relating to risk-based capital

3 requirements for health maintenance

4 organizations; creating s. 641.224, F.S.;

5 providing definitions; requiring a health

6 maintenance organization to file reports of its

7 risk-based capital levels, beginning on a

8 certain date; prohibiting certain uses of such

9 reports; authorizing the Office of Insurance

10 Regulation to use certain documents for certain

11 purposes; providing requirements for

12 determining risk-based capital; providing

13 legislative findings; authorizing the office to

14 adjust or revise risk-based capital reports

15 under certain circumstances; requiring notice

16 of any adjustments or revisions; providing for

17 challenges to any adjustments or revisions;

18 requiring certain health maintenance

19 organizations to file copies of risk-based

20 capital plans with the insurance department of

21 certain states; providing criteria; providing

22 criteria, requirements, and procedures for

23 company action level events, regulatory action

24 level events, authorized control level events,

25 and mandatory control level events relating to

26 levels of risk-based capital; providing duties

27 and responsibilities of the office relating to

28 such events; requiring a risk-based capital

29 plan for certain purposes under certain

30 circumstances; specifying plan requirements;

31 authorizing the office to take certain

1 corrective actions under certain circumstances;
2 authorizing the office to retain professional
3 assistance in undertaking certain activities
4 relating to a health maintenance organization's
5 levels of risk-based capital; authorizing the
6 office to place a health maintenance
7 organization under regulatory control under
8 certain circumstances; providing for a right to
9 a hearing before the office to challenge
10 certain actions by the office; providing
11 hearing requirements and procedures; specifying
12 absence of liability of and prohibiting
13 bringing certain causes of action against the
14 Financial Services Commission, the Department
15 of Financial Services, the office, and certain
16 related personnel for certain activities;
17 providing notification requirements for the
18 office; providing construction; limiting
19 application to certain health maintenance
20 organizations; authorizing the commission to
21 adopt rules; amending s. 641.31, F.S.; revising
22 provisions authorizing health maintenance
23 organizations to include point-of-service
24 riders for point-of service benefits under
25 health maintenance contracts to include
26 preferred provider policies for preferred
27 provider benefits through preferred provider
28 networks; revising maximum premium limitations;
29 providing reporting requirements; providing
30 additional premium requirements and limitations
31 relating to preferred provider policies;

1 requiring certain health maintenance
2 organizations to file a risk-based capital
3 report with the office for informational
4 purposes; providing a limitation; providing
5 application; providing effective dates.
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7 Be It Enacted by the Legislature of the State of Florida:
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9 Section 1. Section 641.224, Florida Statutes, is
10 created to read:

11 641.224 Risk-based capital requirements for health
12 maintenance organizations.--

13 (1) As used in this section:

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

17 (b) "Authorized control level risk-based capital"
18 means the number determined under the risk-based capital
19 formula in the risk-based capital instructions.

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

23 (d) "Corrective order" means an order issued by the
24 office specifying corrective actions that the office has
25 determined are required.

26 (e) "Mandatory control level risk-based capital" means
27 the product of 0.70 and the authorized control level
28 risk-based capital.

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

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

6 (h) "Revised risk-based capital plan" means the
7 revision of the risk-based capital plan that is prepared by a
8 health maintenance organization after the office rejects the
9 original plan.

10 (i) "Risk-based capital instructions" means the
11 instructions for preparing a risk-based capital report as
12 adopted by the National Association of Insurance
13 Commissioners.

14 (j) "Risk-based capital level" means a health
15 maintenance organization's action level risk-based capital,
16 regulatory action level risk-based capital, authorized control
17 level risk-based capital, or mandatory control level
18 risk-based capital.

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

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

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

24 1. A health maintenance organization's statutory
25 capital and surplus.

26 2. Any other item required by the risk-based capital
27 instructions.

28 (2)(a) Beginning January 1, 2011, a health maintenance
29 organization that is subject to this section, on or before 90
30 days after the end of its calendar year, shall prepare and
31 file with the National Association of Insurance Commissioners

1 a report of its risk-based capital levels as of the end of the
2 preceding calendar year, in a form and containing the
3 information required in the risk-based capital instructions.
4 In addition, each health maintenance organization shall file a
5 printed copy of its risk-based capital report:
6 1. With the office on or before 3 months after the end
7 of its calendar year.
8 2. With the insurance department in any other state in
9 which the health maintenance organization is authorized to do
10 business, if that department has notified the health
11 maintenance organization of its request in writing, in which
12 case the health maintenance organization shall file its
13 risk-based capital report not later than the later of:
14 a. Fifteen days after the receipt of notice to file
15 its risk-based capital report with that state; or
16 b. Three months after the end of its calendar year.
17 (b) The comparison of a health maintenance
18 organization's total adjusted capital to any of its risk-based
19 capital levels is intended to be a regulatory tool that may
20 indicate the need for possible corrective action with respect
21 to the health maintenance organization and may not be used as
22 a means to rank health maintenance organizations generally.
23 Therefore, except as otherwise required under this section,
24 the making, publishing, disseminating, circulating, or placing
25 before the public, or causing, directly or indirectly, to be
26 made, published, disseminated, circulated, or placed before
27 the public, in a newspaper, magazine, or other publication, or
28 in the form of a notice, circular, pamphlet, letter, or
29 poster, or over any radio or television station, or in any
30 other way, an advertisement, announcement, or statement
31 containing an assertion, representation, or statement with

1 regard to the risk-based capital levels of any health
2 maintenance organization, or of any component derived in the
3 calculation, by any health maintenance organization engaged in
4 any manner in the health maintenance organization business is
5 misleading and is prohibited; however, if any materially false
6 statement with respect to the comparison regarding a health
7 maintenance organization's total adjusted capital to all or
8 any of its risk-based capital levels or an inappropriate
9 comparison of any other amount to the health maintenance
10 organization's risk-based capital levels is published in any
11 written publication and the health maintenance organization is
12 able to demonstrate to the office with substantial proof the
13 falsity or inappropriateness of the statement, the health
14 maintenance organization may publish in a written publication
15 an announcement the sole purpose of which is to rebut the
16 materially false statement.

17 (c) The office shall use the risk-based capital
18 instructions, risk-based capital reports, adjusted risk-based
19 capital reports, risk-based capital plans, and revised
20 risk-based capital plans solely for monitoring the solvency of
21 health maintenance organizations and assessing the need for
22 corrective action with respect to health maintenance
23 organizations. The office may not use that information for
24 ratemaking, as evidence in any rate proceeding, or for
25 calculating or deriving any elements of an appropriate premium
26 level or rate of return for which a health maintenance
27 organization or an affiliate of such health maintenance
28 organization is authorized to write.

29 (d) A health maintenance organization's risk-based
30 capital shall be determined in accordance with the formula set
31 forth in the risk-based capital instructions. The formula

1 shall take the following into account, determined in each case
2 by applying the factors in the manner set forth in the
3 risk-based capital instructions, and may adjust for the
4 covariance between:

5 1. Asset risk.

6 2. Credit risk.

7 3. Underwriting risk.

8 4. All other business risks and such other relevant
9 risks as are set forth in the risk-based capital report.

10 (e) The Legislature finds that an excess of capital
11 over the amount produced by the risk-based capital
12 requirements and the formulas, schedules, and instructions
13 specified in this section is a desirable goal with respect to
14 the business of a health maintenance organization.

15 Accordingly, health maintenance organizations should seek to
16 maintain capital above the risk-based capital levels required
17 by this section, which additional capital may be used to help
18 secure a health maintenance organization against various risks
19 inherent in, or affecting, the business of insurance and not
20 accounted for or only partially measured by the risk-based
21 capital requirements contained in this section.

22 (f) If a health maintenance organization files a
23 risk-based capital report that the office finds is inaccurate,
24 the office shall adjust the risk-based capital report to
25 correct the inaccuracy and shall notify the health maintenance
26 organization of the adjustment. The notice must state the
27 reason for the adjustment. A risk-based capital report that is
28 so adjusted is referred to as the "adjusted risk-based capital
29 report." The adjusted risk-based capital report must also be
30 filed by the health maintenance organization with the National
31 Association of Insurance Commissioners.

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

3 1. The filing of a risk-based capital report by a
4 health maintenance organization that indicates that the health
5 maintenance organization's total adjusted capital is greater
6 than or equal to its regulatory action level risk-based
7 capital but less than its company action level risk-based
8 capital;

9 2. The notification by the office to the health
10 maintenance organization of an adjusted risk-based capital
11 report that indicates an event described in subparagraph 1.,
12 unless the health maintenance organization challenges the
13 adjusted risk-based capital report under subsection (7); or

14 3. If, under subsection (7), a health maintenance
15 organization challenges an adjusted risk-based capital report
16 that indicates an event in subparagraph 1., the notification
17 by the office to the health maintenance organization that the
18 office, after a hearing, has rejected the health maintenance
19 organization's challenge.

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

23 1. Identify the conditions that contribute to the
24 company action level event.

25 2. Contain proposals of corrective actions that the
26 health maintenance organization intends to take and that are
27 reasonably expected to result in the elimination of the
28 company action level event.

29 3. Provide projections of the health maintenance
30 organization's financial results in the current year and at
31 least the 2 succeeding years, both in the absence of proposed

1 corrective actions and giving effect to the proposed
2 corrective actions, including projections of statutory
3 operating income, net income, capital, surplus, and risk-based
4 capital levels. The projections for both new and renewal
5 business may include separate projections for each major line
6 of business and, if separate projections are provided, must
7 separately identify each significant income, expense, and
8 benefit component.

9 4. Identify the key assumptions affecting the health
10 maintenance organization's projections and the sensitivity of
11 the projections to the assumptions.

12 5. Identify the quality of, and problems associated
13 with, the health maintenance organization's business,
14 including, but not limited to, its assets, anticipated
15 business growth and associated surplus strain, extraordinary
16 exposure to risk, mix of business, and any use of reinsurance.

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

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

20 2. If the health maintenance organization challenges
21 an adjusted risk-based capital report under subsection (7),
22 within 45 days after notification to the health maintenance
23 organization that the office, after a hearing, has rejected
24 the health maintenance organization's challenge.

25 (d) Within 60 days after the submission by a health
26 maintenance organization of a risk-based capital plan to the
27 office, the office shall notify the health maintenance
28 organization whether the risk-based capital plan must be
29 implemented or, in the judgment of the office, is
30 unsatisfactory. If the office determines that the risk-based
31 capital plan is unsatisfactory, the notification to the health

1 maintenance organization must set forth the reasons for the
2 determination and may set forth proposed revisions. Upon
3 notification from the office, the health maintenance
4 organization shall prepare a revised risk-based capital plan
5 which may incorporate by reference any revisions proposed by
6 the office and shall submit the revised risk-based capital
7 plan to the office:

8 1. Within 45 days after the notification from the
9 office; or

10 2. If the health maintenance organization challenges
11 the notification from the office under subsection (7), within
12 45 days after a notification to the health maintenance
13 organization that the office, after a hearing, has rejected
14 the health maintenance organization's challenge.

15 (e) If the office notifies a health maintenance
16 organization that the health maintenance organization's
17 risk-based capital plan or revised risk-based capital plan is
18 unsatisfactory, the office, at its discretion and subject to
19 the health maintenance organization's right to a hearing under
20 subsection (7), may specify in the notification that the
21 notification is a regulatory action level event.

22 (f) Each health maintenance organization in this state
23 that files with the office a risk-based capital plan or a
24 revised risk-based capital plan shall also file a copy of the
25 risk-based capital plan or the revised risk-based capital plan
26 with the insurance department in any other state in which the
27 insurer is authorized to do business if:

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

30 2. The insurance department of that state has notified
31 the health maintenance organization in writing of its request

1 for the filing, in which case the health maintenance
2 organization shall file a copy of the risk-based capital plan
3 or the revised risk-based capital plan in that state no later
4 than the later of:
5 a. Fifteen days after the receipt of notice to file a
6 copy of its risk-based capital plan or revised risk-based
7 capital plan with the state; or
8 b. The date on which the risk-based capital plan or
9 the revised risk-based capital plan is filed under paragraph
10 (c) or paragraph (d).
11 (4)(a) For purposes of this section, a regulatory
12 action level event includes:
13 1. The filing of a risk-based capital report by the
14 health maintenance organization that indicates that the health
15 maintenance organization's total adjusted capital is greater
16 than or equal to its authorized control level risk-based
17 capital but is less than its regulatory action level
18 risk-based capital;
19 2. The notification by the office to the health
20 maintenance organization of an adjusted risk-based capital
21 report that indicates the event described in subparagraph 1.,
22 unless the health maintenance organization challenges the
23 adjusted risk-based capital report under subsection (7);
24 3. If, under subsection (7), the health maintenance
25 organization challenges an adjusted risk-based capital report
26 that indicates the event described in subparagraph 1., the
27 notification by the office to the health maintenance
28 organization that the office, after a hearing, has rejected
29 the health maintenance organization's challenge;
30 4. The failure of the health maintenance organization
31 to file a risk-based capital report by the filing date, unless

1 the health maintenance organization provides an explanation
2 for such failure that is satisfactory to the office and cures
3 the failure within 10 days after the filing date;

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

7 6. Notification by the office to the health
8 maintenance organization that:

9 a. The risk-based capital plan or the revised
10 risk-based capital plan submitted by the health maintenance
11 organization, in the judgment of the office, is
12 unsatisfactory; and

13 b. The notification constitutes a regulatory action
14 level event with respect to the health maintenance
15 organization, unless the health maintenance organization
16 challenges the determination under subsection (7);

17 7. If, under subsection (7), the health maintenance
18 organization challenges a determination by the office under
19 subparagraph 6., the notification by the office to the health
20 maintenance organization that the office, after a hearing, has
21 rejected the challenge;

22 8. Notification by the office to the health
23 maintenance organization that the health maintenance
24 organization has failed to adhere to its risk-based capital
25 plan or revised risk-based capital plan but only if such
26 failure has a substantial adverse effect on the ability of the
27 health maintenance organization to eliminate the company
28 action level event in accordance with its risk-based capital
29 plan or revised risk-based capital plan and the office has so
30 stated in the notification, unless the health maintenance

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1 organization challenges the determination under subsection
2 (7); or

3 9. If, under subsection (7), the health maintenance
4 organization challenges a determination by the office under
5 subparagraph 8., the notification by the office to the health
6 maintenance organization that the office, after a hearing, has
7 rejected the challenge.

8 (b) If a regulatory action level event occurs, the
9 office shall:

10 1. Require the health maintenance organization to
11 prepare and submit a risk-based capital plan or, if
12 applicable, a revised risk-based capital plan.

13 2. Perform an examination pursuant to s. 641.27 or an
14 analysis, as the office considers necessary, of the assets,
15 liabilities, and operations of the health maintenance
16 organization, including a review of the risk-based capital
17 plan or the revised risk-based capital plan.

18 3. After the examination or analysis, issue a
19 corrective order specifying such corrective actions as the
20 office determines are required.

21 (c) In determining corrective actions, the office
22 shall consider any factor relevant to the health maintenance
23 organization based upon the office's examination or analysis
24 of the assets, liabilities, and operations of the health
25 maintenance organization, including, but not limited to, the
26 results of any sensitivity tests undertaken as provided in the
27 risk-based capital instructions. The risk-based capital plan
28 or the revised risk-based capital plan shall be submitted:

29 1. Within 45 days after the occurrence of the
30 regulatory action level event;

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

6 3. If the health maintenance organization challenges a
7 revised risk-based capital plan under subsection (7), within
8 45 days after the notification to the health maintenance
9 organization that the office, after a hearing, has rejected
10 the health maintenance organization's challenge.

11 (d) The office may retain actuaries, investment
12 experts, and other consultants to review a health maintenance
13 organization's risk-based capital plan or revised risk-based
14 capital plan, examine or analyze the assets, liabilities, and
15 operations of a health maintenance organization, including
16 contractual relationships, and formulate the corrective order
17 with respect to the health maintenance organization. The fees,
18 costs, and expenses relating to consultants shall be borne by
19 the affected health maintenance organization or by any other
20 party as directed by the office.

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

23 1. The filing of a risk-based capital report by the
24 health maintenance organization that indicates that the health
25 maintenance organization's total adjusted capital is greater
26 than or equal to its mandatory control level risk-based
27 capital but is less than its authorized control level
28 risk-based capital;

29 2. The notification by the office to the health
30 maintenance organization of an adjusted risk-based capital
31 report that indicates the event described in subparagraph 1.,

1 unless the health maintenance organization challenges the
2 adjusted risk-based capital report under subsection (7);

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

9 4. The failure of the health maintenance organization
10 to respond, in a manner satisfactory to the office, to a
11 corrective order, unless the health maintenance organization
12 challenges the corrective order under subsection (7); or

13 5. If the health maintenance organization challenges a
14 corrective order under subsection (7) and the office, after a
15 hearing, rejects the challenge or modifies the corrective
16 order, the failure of the health maintenance organization to
17 respond in a manner satisfactory to the office to the
18 corrective order after rejection or modification by the
19 office.

20 (b) If an authorized control level event occurs, the
21 office shall:

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

25 2. If the office considers it to be in the best
26 interests of the subscribers and creditors of the health
27 maintenance organization and of the public, take any action as
28 necessary to cause the health maintenance organization to be
29 placed under regulatory control under chapter 631. An
30 authorized control level event is a sufficient ground for the

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1 department to be appointed as receiver as provided in chapter
2 631.

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

5 1. The filing of a risk-based capital report that
6 indicates that the health maintenance organization's total
7 adjusted capital is less than its mandatory control level
8 risk-based capital;

9 2. Notification by the office to the health
10 maintenance organization of an adjusted risk-based capital
11 report that indicates the event described in subparagraph 1.,
12 unless the health maintenance organization challenges the
13 adjusted risk-based capital report under subsection (7); or

14 3. If, under subsection (7), the health maintenance
15 organization challenges an adjusted risk-based capital report
16 that indicates the event described in subparagraph 1.,
17 notification by the office to the health maintenance
18 organization that the office, after a hearing, has rejected
19 the health maintenance organization's challenge.

20 (b) If a mandatory control level event occurs, the
21 office, after due consideration of s. 641.225, shall take any
22 action necessary to place the health maintenance organization
23 under regulatory control, including any remedy available under
24 chapter 631. A mandatory control level event is a sufficient
25 ground for the department to be appointed as receiver as
26 provided in chapter 631. The office may forego taking action
27 for up to 90 days after the mandatory control level event if
28 the office finds there is a reasonable expectation that the
29 mandatory control level event may be eliminated within the
30 90-day period.

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1 (7)(a) A health maintenance organization has a right
2 to a hearing before the office upon:
3 1. Notification to a health maintenance organization
4 by the office of an adjusted risk-based capital report;
5 2. Notification to a health maintenance organization
6 by the office that the health maintenance organization's
7 risk-based capital plan or revised risk-based capital plan is
8 unsatisfactory and that the notification constitutes a
9 regulatory action level event with respect to such health
10 maintenance organization;
11 3. Notification to any health maintenance organization
12 by the office that the health maintenance organization has
13 failed to adhere to its risk-based capital plan or revised
14 risk-based capital plan and that the failure has a substantial
15 adverse effect on the ability of the health maintenance
16 organization to eliminate the company action level event in
17 accordance with its risk-based capital plan or its revised
18 risk-based capital plan; or
19 4. Notification to a health maintenance organization
20 by the office of a corrective order with respect to the health
21 maintenance organization.
22 (b) At such hearing, the health maintenance
23 organization may challenge any determination or action by the
24 office. The health maintenance organization shall notify the
25 office of its request for a hearing within 5 days after
26 receipt of the notification by the office under this
27 subsection. Upon receipt of the request for a hearing, the
28 office shall set a date for the hearing, which date must be no
29 fewer than 10 or more than 30 days after the date the office
30 receives the health maintenance organization's request. The
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1 hearing must be conducted as provided in s. 624.324, with the
2 right to appellate review as provided in s. 120.68.

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

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

13 (10) This section is supplemental to the other laws of
14 this state and does not preclude or limit any power or duty of
15 the department or office under those laws or under the rules
16 adopted under those laws.

17 (11) This section does not apply to a health
18 maintenance organization that writes direct annual premiums of
19 \$2 million or less.

20 (12) The commission may adopt rules to administer this
21 section, including, but not limited to, those regarding
22 risk-based capital reports, adjusted risk-based capital
23 reports, risk-based capital plans, and corrective orders and
24 procedures to be followed in the event of a triggering of a
25 company action level event, a regulatory action level event,
26 an authorized control level event, or a mandatory control
27 level event.

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

31 641.31 Health maintenance contracts.--

1 (38)(a) Notwithstanding any other provision of this
2 part, a health maintenance organization that meets the
3 requirements of paragraph (b) may offer, through a
4 point-of-service rider to its contract providing comprehensive
5 health care services or through a policy that provides
6 coverage for benefits through a preferred provider network
7 pursuant to s. 627.6471, include a point-of-service or
8 preferred provider benefit. Under such a rider or policy, a
9 subscriber or other covered person of the health maintenance
10 organization may choose, at the time of covered service, a
11 provider with whom the health maintenance organization does
12 not have a health maintenance organization provider contract.
13 The rider or policy may not require a referral from the health
14 maintenance organization for the point-of-service or preferred
15 provider benefits.

16 (b) A health maintenance organization offering a
17 point-of-service or preferred provider benefits ~~rider~~ under
18 this subsection must have a valid certificate of authority
19 issued under the provisions of the chapter, must have been
20 licensed under this chapter for a minimum of 3 years, and must
21 at all times that it has point of service riders or preferred
22 provider policies in effect maintain a minimum surplus of \$5
23 million. A health maintenance organization offering a
24 point-of-service rider to its contract or a preferred provider
25 policy providing comprehensive health care services may offer
26 the rider or policy to employers who have employees living and
27 working outside the health maintenance organization's approved
28 geographic service area without having to obtain a health care
29 provider certificate, as long as the master group contract is
30 issued to an employer that maintains its primary place of
31 business within the health maintenance organization's approved

1 | service area. Any member or subscriber that lives and works
2 | outside the health maintenance organization's service area and
3 | elects coverage under the health maintenance organization's
4 | point-of-service rider or preferred provider policy must
5 | provide a statement to the health maintenance organization
6 | that indicates the member or subscriber understands the
7 | limitations of his or her policy and that only those benefits
8 | under the point-of-service rider or preferred provider policy
9 | will be covered when services are provided outside the service
10 | area.

11 | (c) Premiums paid in for the point-of-service riders
12 | or preferred provider policies may not exceed ~~49~~ 15 percent of
13 | total premiums for all health plan products sold by the health
14 | maintenance organization offering the rider or preferred
15 | provider policy unless the health maintenance organization
16 | complies with the provisions of s. 624.4095 as if the health
17 | maintenance organization were a health insurer. To determine
18 | the available surplus to provide point-of-service riders or
19 | preferred provider policies under the provisions of s.
20 | 624.4095(6), surplus shall be calculated by subtracting from
21 | actual or projected surplus the surplus required to be
22 | maintained under s. 641.225. In no event shall the total gross
23 | premiums for point-of-service riders and preferred provider
24 | policies exceed 49 percent of the gross premiums written on an
25 | actual or projected basis for health maintenance organization
26 | contracts. If the premiums written for point-of-service riders
27 | and preferred provider policies exceed 49 percent of total
28 | premiums for all health plan products sold by the health
29 | maintenance organization, the health maintenance organization
30 | shall file with the annual and quarterly financial reports
31 | required by s. 641.26 a report, on a form prescribed by the

1 commission, reporting direct total premiums written, direct
2 premiums earned, direct losses paid, and direct losses
3 incurred for point-of-service riders and preferred provider
4 policies. If the premiums paid for point-of-service riders or
5 preferred provider policies exceed or are projected to exceed
6 ~~49~~ 15 percent, the health maintenance organization must notify
7 the office and, once this fact is known, must immediately
8 cease offering such a rider and preferred provider policy
9 until it is in compliance with the rider and preferred
10 provider policy premium cap.

11 (d) Notwithstanding the limitations of deductibles and
12 copayment provisions in this part, a point-of-service rider or
13 preferred provider policy may require the subscriber to pay a
14 reasonable copayment for each visit for services provided by a
15 noncontracted provider chosen at the time of the service. The
16 copayment by the subscriber may either be a specific dollar
17 amount or a percentage of the reimbursable provider charges
18 covered by the contract and must be paid by the subscriber to
19 the noncontracted provider upon receipt of covered services.
20 The point-of-service rider or preferred provider policy may
21 require that a reasonable annual deductible for the expenses
22 associated with the point-of-service rider or preferred
23 provider policy be met and may include a lifetime maximum
24 benefit amount. The rider or preferred provider policy must
25 include the language required by s. 627.6044 and must comply
26 with copayment limits described in s. 627.6471. Section
27 641.3154 does not apply to a point-of-service rider or
28 preferred provider policy authorized under this subsection.

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

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

6 (g) A point-of-service rider or preferred provider
7 policy must be filed and approved under ss. 627.410 and
8 627.411.

9 (h) The premium for preferred provider policies earned
10 by health maintenance organizations shall not be included in
11 the health maintenance organization's assessment base provided
12 in s. 631.819.

13 (i) A health maintenance organization issuing
14 preferred provider policies is subject to part III of chapter
15 631 as to preferred provider policies. Assessments based on
16 premiums pursuant to part III of chapter 631 apply only to the
17 premiums earned on the preferred provider contracts.

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

22 Section 3. Beginning January 1, 2007, a health
23 maintenance organization subject to s. 641.224, Florida
24 Statutes, shall file with the Office of Insurance Regulation
25 for the preceding calendar year by April 1, 2007, and annually
26 thereafter, the risk-based capital report identified in s.
27 641.224(2), Florida Statutes, for informational purposes only.
28 The information-only filing requirement expires upon the
29 filing of the informational report due April 2, 2011. Section
30 641.224, Florida Statutes, applies to any risk-based capital
31 report filed pursuant to this section.

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