HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 621 CS Health Maintenance Organizations
SPONSOR(S): Grimsley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 94

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee	8 Y, 1 N	Brown-Barrios	Brown-Barrios
2) Insurance Committee	16 Y, 0 N, w/CS	Freire	Cooper
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

The laws regulating health maintenance organizations (HMOs) provide for the regulation of fiscal intermediary services organizations (FISOs). The law is designed to protect funds received from an HMO and held by entities which have an obligation to distribute those funds to health care providers who contract with the HMO. This is primarily done by requiring those entities to apply for registration and to post a fidelity bond and a surety bond with the Office of Insurance Regulation (OIR). The bill revises the definition of who must be registered as a FISO by deleting the exemption for entities that are owned, operated, or controlled by certain licensed entities. As revised, only the licensed entities themselves would be exempt, including hospitals, authorized insurers, third party administrators, prepaid limited health service organizations, and HMOs. Also, the current exemption for physician group practices would be limited to group practices providing services under the scope of licenses of the members of that group practice.

The bill further requires FISOs to comply with additional requirements in order to be registered. These requirements include:

1) Requiring OIR to periodically examine the affairs of any HMO and to take remedial action when necessary;
2) Complying with prompt payment of claims statute;
3) Requiring compliance with treatment authorization and payment of claims; and
4) Requiring compliance with rendering adverse determination statute.

This bill will not have any fiscal impact on the public sector and should have limited fiscal impact on the private sector.

If enacted the bill act takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – In order to be registered, fiscal intermediary services organizations (FISOs) will have to comply with additional requirements.

Ensure Lower Taxes -- Entities which are no longer exempt from registration with OIR as a fiscal intermediary service organization would be subject to the expense of obtaining a surety bond and fidelity bond.

B. EFFECT OF PROPOSED CHANGES:

The bill revises the definition of a fiscal intermediary services organization by narrowing certain exemptions from the current definition. By doing so, certain entities that are currently exempt would be required to be licensed as a FISO. Specifically, the bill deletes the exemption for entities that are owned, operated, or controlled by certain licensed entities, so that only the licensed entity itself would be exempt. These licensed entities include hospitals licensed under ch. 395, F.S., insurers licensed under ch. 624, F.S., third party administrators licensed under ch. 626, F.S., prepaid limited health service organizations licensed under ch. 636, F.S., and health maintenance organizations licensed under ch. 641, F.S. Also, the current exemption for entities owned, operated, or controlled by physician group practices is revised to be limited to physician group practices, as defined in s. 456.053(3)(h), F.S., providing services under the scope of licenses of the members of the group practice. In other words, a physician group practice providing fiscal intermediary services to members outside of that group practice would not be exempt from licensure as a FISO.

The bill also amends s. 641.316(6), F.S., to allow the Office of Insurance Regulation (OIR) to deny registration to any fiscal intermediary services organization (FISO) that does not comply with the following additional requirements:

1) Section 641.27, F.S.: Relating to the OIR's right to examine the affairs of any health maintenance organization and to take remedial action when it is necessary.
2) Section 641.3155, F.S.: Regulating the prompt payment of claims.
3) Section 641.3156, F.S.: Relating to treatment authorization and payment of claims.
4) Section 641.51(4), F.S.: Relating to rendering adverse determination.

BACKGROUND

Regulation of Health Maintenance Organizations

OIR regulates health maintenance organization solvency, contracts, rates, and marketing activities under part I of chapter 641, F.S. The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of chapter 641, F.S. Before receiving a certificate of authority from OIR, an HMO must receive a Health Care Provider Certificate from AHCA. Any entity that is issued a certificate of authority and that is otherwise in compliance with the licensure provisions under part I may enter into contracts in Florida to provide an agreed-upon set of comprehensive health care services to subscribers.

Fiscal Intermediary Services Organizations (FISOs)

Legislation in 1997 amended the HMO laws to provide for the regulation of FISOs.[1] At that time, some health care professionals were contracting with unregulated entities to collect payments from HMOs on the providers' behalf and to distribute those funds to the contracting health care providers. There were

[1] s 641.316, F.S.

reported cases of misappropriation of funds by such entities, with no apparent recourse to regulatory agencies. Essentially, the law is designed to protect funds received from an HMO and held by entities which have an obligation to distribute those funds to medical professionals who contract with the HMO. This is primarily done by requiring those entities to apply for registration and to post a fidelity bond and a surety bond with OIR. A fiscal intermediary services organization is defined as:

> [A] person or entity which performs fiduciary or fiscal intermediary services to health care professionals who contract with health maintenance organizations, other than a fiscal intermediary services organization owned, operated, or controlled by a hospital licensed under chapter 395, an insurer licensed under chapter 624, a third party administrator licensed under chapter 626, a prepaid limited health service organization licensed under chapter 636, a health maintenance organization licensed under chapter 641, or physician group practices as defined in s. 456.053(3)(h).[2]

The term fiduciary or fiscal intermediary services means:

> [R]eimbursements received or collected on behalf of health care professionals for services rendered, patient and provider accounting, financial reporting and auditing, receipts and collections management, compensation and reimbursement disbursement services, or other related fiduciary services pursuant to health care professional contracts with health maintenance organizations...[3]

The above definition of a FISO exempts physician group practices, but it is not clear that this exemption is limited to providing fiscal intermediary services only to members of that group practice, though that may be the intent. This appears to be a broader exemption than a similar exemption for physician group practices from licensure as an administrator in s. 626.88(1)(o), F.S. (See, Administrators, below.) That statute limits the exemption for physician group practices to providing services under the scope of the license of the members of the group practice. The definition of a FISO also exempts organizations owned, operated, or controlled by various licensed entities, such as hospitals, insurers, third-party administrators, HMOs, etc. In contrast, the exemption from licensure as an administrator includes licensed insurers, HMOs, and certain other entities, but does not exempt subsidiaries or other independent organizations that are owned, operated, or controlled by such licensed entities.

The express legislative intent of the statute is to ensure the financial soundness of FISOs. A FISO which is operated for the purpose of acquiring and administering provider contracts with managed care plans must secure and maintain a fidelity bond and a surety bond. As currently required, a fidelity bond must be maintained in the minimum amount of 10 percent of the funds handled by the FISO during the prior year or $1 million, whichever is less, but not less than $50,000. This bond protects the FISO from loss due to dishonesty of its employees. A surety bond must also be maintained in the minimum amount of 5 percent of the funds handled by the FISO during the prior year or $250,000, whichever is less, but not less than $10,000. The surety bond protects against misappropriation of funds within the FISO's control or custody.

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[2] s. 456.053(3)(f), F.S., provides, "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:

1. In which each health care provider who is a member of the group provides substantially the full range of services which the health care provider routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel;
2. For which substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and
3. In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.

[3] Section 641.316(2)(a), F.S.

A FISO registering with OIR must meet certain application requirements of chapter 641, F.S. that apply to HMOs.[4] These require that a FISO provide OIR with a list of the names, addresses and official capacities of the persons who are responsible for the operations of the company, including officers, directors, and owners of more than 5 percent of the common stock of the company. The listed persons must fully disclose all contracts or arrangements between them and the company, including any conflicts of interest, and must submit autobiographical statements, fingerprints, and an independently performed background report. In general, receiving authority to operate as a FISO is conditioned on OIR being satisfied that the ownership, control and management of the entity is competent and trustworthy, and possesses managerial experience that would make the proposed operation beneficial to its constituents.

There are currently 15 active FISOs registered with OIR. Once a FISO is registered, there is generally no regulatory activity other than periodic review of the surety bonds and fidelity bonds to determine if the amounts are adequate relative to the amount of funds handled annually by the FISO, as required by statute.

HMO Responsibility for Violations of Prompt Pay Law if Payment Obligations are Transferred

A law enacted in 2002 holds HMOs ultimately responsible for compliance with certain statutory requirements related to prompt payment, treatment authorization, and adverse determinations, if the HMO transfers its payment obligations to a licensed administrator.[5] But the law apparently does not hold an HMO responsible for compliance with such requirements if it transfers its payment obligations to an entity other than a licensed administrator.

Specifically, this law provides that if an HMO, through a health care risk contract, transfers to any entity the obligations to pay a provider for any claim arising from services provided to a subscriber, then the HMO remains responsible for any violations of three specified statutes:

- Section 641.3155, F.S., which are the prompt payment requirements;
- Section 641.3156, F.S., which requires HMOs to pay claims for treatment if a provider follows the treatment authorization procedures and receives authorization; and
- Section 641.51(4), F.S., which requires that only a Florida licensed allopathic physician or osteopathic physician may render an adverse determination regarding a service provided by a physician licensed in the state and specifies procedures that must be followed.

The bill also requires FISOs to comply with the above requirements in order to be registered by the OIR.

Senate Committee Staff Interim Project

The "BACKGROUND", provided above, summarizes the report and findings in the 2005 Senate Banking and Insurance Committee staff interim project, *Determining the Sufficiency of Regulation of Third-Party Administrators and Fiscal Intermediary Services Organizations (2005-109).* The interim project made the following recommendations:

- Expand the requirements of s. 641.234(4), F.S., to hold a health maintenance organization responsible for statutory requirements related to payment to health care providers if the HMO transfers to any entity the obligations to pay providers. The current law may limit this liability to HMO contracts with licensed administrators and limit this responsibility to violations of only certain statutes.
- Narrow the exemption from registration as a FISO for a physician group practice in s. 641.316, F.S., to physician group practices providing fiscal intermediary services to members of the group practice.
- Narrow the exemption from registration as a FISO for licensed insurers, HMOs, administrators, hospitals, and prepaid limited health service organizations to those entities themselves, rather than any entity owned operated, or controlled by such licensed entities.

[4] ss. 641.21(1)(c) and 641.22(6), F.S.
[5] ch. 2002-389, L.O.F.; s. 641.234(4), F.S.

- Alternatively, consider repealing the FISO statute and require entities to be licensed as third party administrators if they provide fiscal intermediary services to providers under contract with HMO.

C. SECTION DIRECTORY:

Section 1. Amends s. 641.316, F.S., relating to the definition and registration requirement of fiscal intermediary services organization.

Section 2. Provides that this act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Entities which are no longer exempt from registration with OIR as a fiscal intermediary services organization would be subject to the expense of obtaining a surety bond and a fidelity bond.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On its April 5, 2006 meeting, the Insurance Committee adopted HB 621 with one amendment. The amendment narrowed the scope to 1) expanding the definition of fiscal intermediary services organizations, and to 2) require FISOs to comply with additional registration requirements.

This analysis has been updated to reflect the changes made by the Insurance Committee at its April 5, 2006 meeting.