

By the Committee on Banking and Insurance; and Senator Brandes

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1 A bill to be entitled
2 An act relating to insurer anti-fraud efforts;
3 reordering and amending s. 626.9891, F.S.; defining
4 and revising definitions; requiring every insurer to
5 designate at least one primary anti-fraud employee for
6 certain purposes; requiring insurers to adopt an anti-
7 fraud plan; revising insurer requirements in providing
8 anti-fraud information to the Department of Financial
9 Services; requiring specified information to be filed
10 annually with the department; revising the information
11 to be provided by insurers who write workers'
12 compensation insurance; requiring each insurer to
13 provide annual anti-fraud education and training;
14 requiring insurers who submit an application for a
15 certificate of authority after a specified date to
16 comply with the section; providing penalties for
17 failure to comply with requirements of the section;
18 creating s. 626.9896, F.S.; providing legislative
19 intent; creating a grant program to fund the Insurance
20 Fraud Dedicated Prosecutor Program within the
21 department; requiring moneys that are appropriated for
22 the program be used to fund specific attorney and
23 paralegal positions; specifying procedures to be used
24 by state attorneys' offices when applying for biennial
25 grants; specifying that grants are for two years but
26 authorizing the division to renew the grants;
27 specifying procedures to be used by the department in
28 awarding grant funds; requiring the Division of
29 Investigative and Forensic Services to provide an

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30 annual report to the Executive Office of the Governor,
31 the Speaker of the House of Representatives, and the
32 Senate President; specifying information to be
33 contained in the report; authorizing the department to
34 adopt rules to administer and implement the insurance
35 fraud dedicated prosecutor program; amending s.
36 641.3915, F.S.; deleting obsolete provisions;
37 providing an effective date.
38

39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Section 626.9891, Florida Statutes, is reordered
42 and amended to read:

43 626.9891 Insurer anti-fraud investigative units; reporting
44 requirements; penalties for noncompliance.-

45 (1)~~(5)~~ As used in ~~For purposes of~~ this section, the term:

46 (a) "Anti-fraud investigative unit" means the designated
47 anti-fraud unit or division, or contractor authorized under
48 subparagraph (2) (a) 2.

49 (b) "Designated anti-fraud unit or division" includes a
50 distinct unit or division or a unit or division made up of the
51 assignment of fraud investigation to employees whose principal
52 responsibilities are the investigation and disposition of claims
53 who are also assigned investigation of fraud. If an insurer
54 creates a distinct unit or division, hires additional employees,
55 or contracts with another entity to fulfill the requirements of
56 this section, the additional cost incurred must be included as
57 an administrative expense for ratemaking purposes.

58 (2)~~(1)~~ By December 31, 2017, every insurer admitted to do

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59 business in this state ~~who in the previous calendar year, at any~~
60 ~~time during that year, had \$10 million or more in direct~~
61 ~~premiums written~~ shall:

62 (a)1. Establish and maintain a designated anti-fraud unit
63 or division within the company to investigate and report
64 possible fraudulent insurance acts ~~claims~~ by insureds or by
65 persons making claims for services or repairs against policies
66 held by insureds; or

67 2.~~(b)~~ Contract with others to investigate and report
68 possible fraudulent insurance acts by insureds or by persons
69 making claims for services or repairs against policies held by
70 insureds.

71 (b) Adopt an anti-fraud plan.

72 (c) Designate at least one employee with primary
73 responsibility for implementing the requirements of this
74 section.

75 (d) Electronically ~~An insurer subject to this subsection~~
76 ~~shall~~ file with the Division of Investigative and Forensic
77 Services of the department, and annually thereafter on or before
78 July 1, 1996, a detailed description of the designated anti-
79 fraud unit or division ~~established pursuant to paragraph (a) or~~
80 a copy of the contract executed under subparagraph (a)2., as
81 applicable, a copy of the anti-fraud plan, and the name of the
82 employee designated under paragraph (c) and related documents
83 required by paragraph (b).

84
85 An insurer must include the additional cost incurred in creating
86 a distinct unit or division, hiring additional employees, or
87 contracting with another entity to fulfill the requirements of

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88 this section, as an administrative expense for ratemaking
89 purposes.

90 ~~(2) Every insurer admitted to do business in this state,~~
91 ~~which in the previous calendar year had less than \$10 million in~~
92 ~~direct premiums written, must adopt an anti-fraud plan and file~~
93 ~~it with the Division of Investigative and Forensic Services of~~
94 ~~the department on or before July 1, 1996. An insurer may, in~~
95 ~~lieu of adopting and filing an anti-fraud plan, comply with the~~
96 ~~provisions of subsection (1).~~

97 (3) Each ~~insurers~~ anti-fraud plan must ~~plans shall~~ include:

98 (a) An acknowledgement that the insurer has established
99 procedures for detecting and investigating possible fraudulent
100 insurance acts relating to the different types of insurance by
101 that insurer ~~A description of the insurer's procedures for~~
102 ~~detecting and investigating possible fraudulent insurance acts;~~

103 (b) An acknowledgment that the insurer has established ~~A~~
104 ~~description of the insurer's~~ procedures for the mandatory
105 reporting of possible fraudulent insurance acts to the Division
106 of Investigative and Forensic Services of the department;

107 (c) An acknowledgement that the insurer provides the ~~A~~
108 ~~description of the insurer's plan for~~ anti-fraud education and
109 training required by this section to the anti-fraud
110 investigative unit ~~of its claims adjusters or other personnel;~~
111 and

112 (d) A description of the required anti-fraud education and
113 training;

114 (e) A written description or chart ~~outlining the~~
115 ~~organizational arrangement~~ of the insurer's anti-fraud
116 investigative unit, including the position titles and

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117 ~~descriptions of staffing; and personnel who are responsible for~~
118 ~~the investigation and reporting of possible fraudulent insurance~~
119 ~~acts~~

120 (f) The rationale for the level of staffing and resources
121 being provided for the anti-fraud investigative unit which may
122 include objective criteria, such as the number of policies
123 written, the number of claims received on an annual basis, the
124 volume of suspected fraudulent claims detected on an annual
125 basis, an assessment of the optimal caseload that one
126 investigator can handle on an annual basis, and other factors.

127 (4) By December 31, 2018, each insurer shall provide staff
128 of the anti-fraud investigative unit at least 2 hours of initial
129 anti-fraud training that is designed to assist in identifying
130 and evaluating instances of suspected fraudulent insurance acts
131 in underwriting or claims activities. Annually thereafter, an
132 insurer shall provide such employees a 1-hour course that
133 addresses detection, referral, investigation, and reporting of
134 possible fraudulent insurance acts for the types of insurance
135 lines written by the insurer.

136 (5) Each insurer is required to report data related to
137 fraud for each line of insurance written by the insurer during
138 the prior calendar year. The data shall be reported to the
139 department by March 1, 2019, and annually thereafter, and must
140 include, at a minimum:

141 (a) The number of policies in effect;

142 (b) The amount of premiums written for policies;

143 (c) The number of claims received;

144 (d) The number of claims referred to the anti-fraud
145 investigative unit;

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146 (e) The number of other insurance fraud matters referred to
147 the anti-fraud investigative unit that were not claim related;

148 (f) The number of claims investigated or accepted by the
149 anti-fraud investigative unit;

150 (g) The number of other insurance fraud matters
151 investigated or accepted by the anti-fraud investigative unit
152 that were not claim related;

153 (h) The number of cases referred to the Division of
154 Investigative and Forensic Services;

155 (i) The number of cases referred to other law enforcement
156 agencies;

157 (j) The number of cases referred to other entities; and

158 (k) The estimated dollar amount or range of damages on
159 cases referred to the Division of Investigative and Forensic
160 Services or other agencies.

161 (6) In addition to providing information required under
162 subsections (2), (4), and (5), each insurer writing workers'
163 compensation insurance shall also report the following
164 information to the department, on or before March 1, 2019, and
165 annually thereafter August 1 of each year, on its experience in
166 implementing and maintaining an anti-fraud investigative unit or
167 an anti-fraud plan. The report must include, at a minimum:

168 (a) The estimated dollar amount of losses attributable to
169 workers' compensation fraud delineated by the type of fraud,
170 including claimant, employer, provider, agent, or other type.

171 (b) The estimated dollar amount of recoveries attributable
172 to workers' compensation fraud delineated by the type of fraud,
173 including claimant, employer, provider, agent, or other type.

174 (c) The number of cases referred to the Division of

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175 Investigative and Forensic Services, delineated by the type of
176 fraud, including claimant, employer, provider, agent, or other
177 type.

178 ~~(a) The dollar amount of recoveries and losses attributable~~
179 ~~to workers' compensation fraud delineated by the type of fraud:~~
180 ~~claimant, employer, provider, agent, or other.~~

181 ~~(b) The number of referrals to the Bureau of Workers'~~
182 ~~Compensation Fraud for the prior year.~~

183 ~~(c) A description of the organization of the anti-fraud~~
184 ~~investigative unit, if applicable, including the position titles~~
185 ~~and descriptions of staffing.~~

186 ~~(d) The rationale for the level of staffing and resources~~
187 ~~being provided for the anti-fraud investigative unit, which may~~
188 ~~include objective criteria such as number of policies written,~~
189 ~~number of claims received on an annual basis, volume of~~
190 ~~suspected fraudulent claims currently being detected, other~~
191 ~~factors, and an assessment of optimal caseload that can be~~
192 ~~handled by an investigator on an annual basis.~~

193 ~~(e) The inservice education and training provided to~~
194 ~~underwriting and claims personnel to assist in identifying and~~
195 ~~evaluating instances of suspected fraudulent activity in~~
196 ~~underwriting or claims activities.~~

197 ~~(f) A description of a public awareness program focused on~~
198 ~~the costs and frequency of insurance fraud and methods by which~~
199 ~~the public can prevent it.~~

200 (7)(4) An Any insurer who obtains a certificate of
201 authority has 6 after July 1, 1995, shall have 18 months in
202 which to comply with subsection (2), and one calendar year
203 thereafter, to comply with subsections (4), (5), and (6) the

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204 ~~requirements of this section.~~

205 ~~(8)(7) If an insurer fails to timely submit a final~~
206 ~~acceptable anti-fraud plan or anti-fraud investigative unit~~
207 ~~description, fails to implement the provisions of a plan or an~~
208 ~~anti-fraud investigative unit description, or otherwise refuses~~
209 ~~to comply with the provisions of this section, the department,~~
210 ~~office, or commission may:~~

211 (a) Impose an administrative fine of not more than \$2,000
212 per day for such failure ~~by an insurer to submit an acceptable~~
213 ~~anti-fraud plan or anti-fraud investigative unit description,~~
214 until the department, office, or commission deems the insurer to
215 be in compliance;

216 (b) Impose an administrative fine for failure by an insurer
217 to implement or follow the provisions of an anti-fraud plan or
218 anti-fraud investigative unit description; or

219 (c) Impose the provisions of both paragraphs (a) and (b).

220 ~~(9)(8) The department may adopt rules to administer this~~
221 ~~section.~~

222 Section 2. Section 626.9896, Florida Statutes, is created
223 to read:

224 626.9896 Insurance Fraud Dedicated Prosecutor Program.—

225 (1) LEGISLATIVE INTENT.—The Legislature recognizes the
226 increasing problem of insurance fraud, the need to adequately
227 investigate and prosecute insurance fraud, and the need to
228 create a program dedicated to the prosecution of insurance
229 fraud. The Legislature recognizes that the Division of
230 Investigative and Forensic Services of the department can
231 efficiently and effectively implement and monitor such a
232 program, and can direct and reallocate resources as insurance

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233 fraud trends change and demand for prosecutorial resources shift
234 between judicial circuits.

235 (2) ESTABLISHMENT OF THE INSURANCE FRAUD DEDICATED
236 PROSECUTOR PROGRAM.—There is created within the department a
237 grant program to fund the Insurance Fraud Dedicated Prosecutor
238 Program. The purpose of the program is to provide grants to
239 state attorneys' offices to fund attorney and paralegal
240 positions that are dedicated exclusively to the prosecution of
241 insurance fraud. The program shall consist only of funds
242 appropriated by the state specifically for this program.

243 (3) GRANT APPLICATIONS.—Beginning in 2018, a state
244 attorney's office seeking grant funds must submit an application
245 to the Division of Investigative and Forensic Services detailing
246 the proposed number of dedicated prosecutors and paralegals
247 requested for the prosecution of insurance fraud. Applications
248 must be received by July 1 of each even-numbered year and shall
249 identify funding needs for 2 years. Grant awards are contingent
250 upon legislative appropriation in the Insurance Regulatory Trust
251 Fund and Workers' Compensation Administration Trust Fund and
252 subject to renewal by the department. The division must compile
253 and review the timely submitted applications to establish its
254 legislative budget request for the program for the upcoming two
255 years.

256 (4) AWARD OF GRANTS.—The division is authorized to award
257 grants to state attorneys' offices using a formula adopted by
258 rule of the department and based on metrics and data compiled by
259 the division which allocate funds to the judicial circuits based
260 on trends in insurance fraud and the performance and output
261 measures reported as required by this section. A grant awarded

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262 to a state attorney's office may only be used to fund attorney
263 and paralegal positions that are dedicated exclusively to the
264 prosecution of insurance fraud. Grants are subject to the
265 provisions of s. 215.971. The division shall establish the
266 annual maximum grant amount, based on funds appropriated to the
267 department for funding the Insurance Fraud Dedicated Prosecutor
268 Program.

269 (5) REPORTING.—The division must track and report on the
270 effectiveness and efficiency of each state attorney's office's
271 use of the awarded grant funds. To help complete the report,
272 each state attorney's office that is awarded a grant under this
273 section must submit performance and output information as
274 determined by the division. The report must be provided to the
275 Executive Office of the Governor, the Speaker of the House of
276 Representatives, and the President of the Senate by September 1,
277 2020, and annually thereafter. The report must include, but is
278 not limited to, the following:

279 (a) The amount of grant funds received and expended by each
280 state attorney's office;

281 (b) A description of the purposes for which the funds were
282 expended, including payment of salaries, expenses, and any other
283 costs needed to support the delivery of services;

284 (c) The results achieved from the expenditures made,
285 including the number of complaints filed, the number of
286 investigations initiated, the number of arrests made, the number
287 of convictions, and the amount of restitution or fines paid as a
288 result of the cases presented for prosecution.

289 (6) RULES.—The department may adopt rules pursuant to ss.
290 120.536(1) and 120.54 for the administration and implementation

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291 of the Insurance Fraud Dedicated Prosecutor Program. Such rules
292 may establish procedures for the Insurance Fraud Dedicated
293 Prosecutor Program, including forms to be used by the state
294 attorney's offices. The department may establish a formula for
295 allocating grant funds, eligibility criteria, renewal
296 requirements, and standards for evaluating the effectiveness and
297 efficiency of expended funds.

298 Section 3. Section 641.3915, Florida Statutes, is amended
299 to read:

300 641.3915 Health maintenance organization anti-fraud plans
301 and investigative units.—Each authorized health maintenance
302 organization and applicant for a certificate of authority shall
303 comply with the provisions of ss. 626.989 and 626.9891 as though
304 such organization or applicant were an authorized insurer. ~~For~~
305 ~~purposes of this section, the reference to the year 1996 in s.~~
306 ~~626.9891 means the year 2000 and the reference to the year 1995~~
307 ~~means the year 1999.~~

308 Section 4. This act shall take effect September 1, 2017.