1 A bill to be entitled
2 An act relating to insurer solvency; amending s.
3 624.4085, F.S.; providing and revising definitions;
4 providing exceptions for certain health organizations
5 and property and casualty insurers regarding
6 determination of risk-based capital; providing
7 requirements relating to the filing of a risk-based
8 capital report by a health organization; amending s.
9 631.271, F.S.; revising provisions relating to the
10 order of distribution of claims from an insurer's
11 estate to include claims from medical treatment in a
12 liquidation of a health insurer or health maintenance
13 organization; amending s. 631.717, F.S.; requiring the
14 Florida Insurance Guaranty Association, Inc., to
15 provide notice to member insurers, the Department of
16 Financial Services, and the Office of Insurance
17 Regulation within a specified period before assessing
18 costs; amending s. 631.718, F.S.; providing
19 requirements relating to certain assessments for
20 payment of claims under long-term care insurance
21 policies of an impaired or insolvent insurer;
22 providing applicability; amending s. 641.201, F.S.;
23 providing that health maintenance organizations are
24 considered insurers for certain purposes and are
25 subject to the risk-based capital requirements;

26 creating s. 641.222, F.S.; prohibiting former officers
27 and directors of insolvent insurers from serving as an
28 officer or director of a health maintenance
29 organization under certain circumstances; providing a
30 directive to the Division of Law Revision and
31 Information; providing effective dates.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Effective July 1, 2017, paragraph (g) of
36 subsection (1), of section 624.4085, Florida Statutes, is
37 redesignated as paragraph (h), present paragraph (g) of
38 subsection (1), subsection (2), and paragraph (a) of subsection
39 (3) are amended, and a new paragraph (g) is added to subsection
40 (1), to read:
41 624.4085 Risk-based capital requirements for insurers.—
42 (1) As used in this section, the term:
43 (g) "Health organization" means a health maintenance
44 organization or a prepaid limited health service organization
45 authorized only in this state which reports using the health
46 annual statement instructions.
47 (h) ~~(g)~~ "Life and health insurer" means an insurer
48 authorized or eligible under the Florida Insurance Code to
49 underwrite life or health insurance. The term also includes:
50 1. A property and casualty insurer that writes accident

51 and health insurance only.
52 2. Effective January 1, 2015, ~~the term also includes~~ a
53 health maintenance organization that is authorized in this state
54 and one or more other states, jurisdictions, or countries and a
55 prepaid limited health service organization that is authorized
56 in this state and one or more other states, jurisdictions, or
57 countries.
58
59 As used in this paragraph, the term "health maintenance
60 organization" has the same meaning as in s. 641.19, and the term
61 "prepaid limited health service organization" has the same
62 meaning as in s. 636.003.
63 (2)(a) Each domestic insurer that is subject to this
64 section shall, on or before March 1 of each year, prepare and
65 file with the National Association of Insurance Commissioners a
66 report of its risk-based capital levels as of the end of the
67 calendar year just ended, in a form and containing the
68 information required in the risk-based capital instructions. In
69 addition, each domestic insurer shall file a printed copy of its
70 risk-based capital report:
71 1. With the office on or before March 1 of each year.
72 2. With the insurance department in any other state in
73 which the insurer is authorized to do business, if that
74 department has notified the insurer of its request in writing,
75 in which case the insurer shall file its risk-based capital

76 report not later than the later of:
77 a. Fifteen days after the receipt of notice to file its
78 risk-based capital report with that state; or
79 b. March 1.
80 (b) The comparison of an insurer's total adjusted capital
81 to any of its risk-based capital levels is a regulatory tool
82 that may indicate the need for possible corrective action with
83 respect to the insurer, and may not be used as a means to rank
84 insurers generally. Therefore, except as otherwise required
85 under this section, the making, publishing, disseminating,
86 circulating, or placing before the public, or causing, directly
87 or indirectly, to be made, published, disseminated, circulated,
88 or placed before the public, in a newspaper, magazine, or other
89 publication, or in the form of a notice, circular, pamphlet,
90 letter, or poster, or over any radio or television station, or
91 in any other way, an advertisement, announcement, or statement
92 containing an assertion, representation, or statement with
93 regard to the risk-based capital levels of any insurer, or of
94 any component derived in the calculation, by any insurer, agent,
95 broker, or other person engaged in any manner in the insurance
96 business would be misleading and is therefore prohibited;
97 however, if any materially false statement with respect to the
98 comparison regarding an insurer's total adjusted capital to its
99 risk-based capital levels (or any of them) or an inappropriate
100 comparison of any other amount to the insurer's risk-based

101 capital levels is published in any written publication and the
102 insurer is able to demonstrate to the office with substantial
103 proof the falsity or inappropriateness of the statement, the
104 insurer may publish in a written publication an announcement the
105 sole purpose of which is to rebut the materially false
106 statement.
107 (c) The office shall use the risk-based capital
108 instructions, risk-based capital reports, adjusted risk-based
109 capital reports, risk-based capital plans, and revised risk-
110 based capital plans solely for monitoring the solvency of
111 insurers and assessing the need for corrective action with
112 respect to insurers. The office may not use that information for
113 ratemaking, as evidence in any rate proceeding, or for
114 calculating or deriving any elements of an appropriate premium
115 level or rate of return for any line of insurance which an
116 insurer or an affiliate of such insurer is authorized to write.
117 (d) The risk-based capital level for a life and health
118 insurer, except for a health organization, ~~insurer's risk-based~~
119 ~~capital~~ is determined in accordance with the formula set forth
120 in the risk-based capital instructions. The formula takes into
121 account and may adjust for the covariance between:
122 1. The risk with respect to the insurer's assets;
123 2. The risk of adverse insurance experience with respect
124 to the insurer's liabilities and obligations;
125 3. The interest rate risk with respect to the insurer's

126 business; and
127 4. Any other business or other relevant risk set out in
128 the risk-based capital instructions,
129
130 determined in each case by applying the factors in the manner
131 set forth in the risk-based capital instructions.
132 (e) The ~~A property and casualty insurer's~~ risk-based
133 capital of a property and casualty insurer, except a property
134 and casualty insurer that writes accident and health insurance
135 only, or a health organization, is determined in accordance with
136 the formula set forth in the risk-based capital instructions.
137 The formula takes into account and may adjust for the covariance
138 between:
139 1. The asset risk;
140 2. The credit risk;
141 3. The underwriting risk; and
142 4. Any other business or other relevant risk set out in
143 the risk-based capital instructions,
144
145 determined in each case by applying the factors in the manner
146 set forth in the risk-based capital instructions.
147 (f) The Legislature finds that an excess of capital over
148 the amount produced by the risk-based capital requirements and
149 the formulas, schedules, and instructions specified in this
150 section is a desirable goal with respect to the business of

151 insurance. Accordingly, insurers should seek to maintain capital
152 above the risk-based capital levels required by this section.
153 Additional capital is used and useful in the insurance business
154 and helps to secure an insurer against various risks inherent
155 in, or affecting, the business of insurance and not accounted
156 for or only partially measured by the risk-based capital
157 requirements contained in this section.
158 (g) If a domestic insurer files a risk-based capital
159 report that the office finds is inaccurate, the office shall
160 adjust the risk-based capital report to correct the inaccuracy
161 and shall notify the insurer of the adjustment. The notice must
162 state the reason for the adjustment. A risk-based capital report
163 that is so adjusted is referred to as the adjusted risk-based
164 capital report. The adjusted risk-based capital report must also
165 be filed by the insurer with the National Association of
166 Insurance Commissioners.
167
168 Until January 1, 2020, a health organization that holds a
169 certificate of authority in this state before the effective date
170 of this act, but is not authorized in any other state,
171 jurisdiction, or country, is not required to comply with this
172 subsection. A health organization that has agreed to comply with
173 this section by execution of an agreement with the office
174 remains subject to the terms of that agreement.
175 (3)(a) A company action level event includes:

176 1. The filing of a risk-based capital report by an insurer
177 which indicates that:
178 a. The insurer's total adjusted capital is greater than or
179 equal to its regulatory action level risk-based capital but less
180 than its company action level risk-based capital;
181 b. If a life and health insurer other than a health
182 organization reports using the life and health annual statement
183 instructions, the insurer has total adjusted capital that is
184 greater than or equal to its company action level risk-based
185 capital, but is less than the product of its authorized control
186 level risk-based capital and 3.0, and has a negative trend;
187 c. ~~Effective January 1, 2015,~~ If a life and health or
188 property and casualty insurer or a health organization reports
189 using the health annual statement instructions, the insurer or
190 organization has total adjusted capital that is greater than or
191 equal to its company action level risk-based capital, but is
192 less than the product of its authorized control level risk-based
193 capital and 3.0, and triggers the trend test determined in
194 accordance with the trend test calculation included in the Risk-
195 Based Capital Forecasting and Instructions, Health, updated
196 annually by the NAIC; or
197 d. If a property and casualty insurer reports using the
198 property and casualty annual statement instructions, the insurer
199 has total adjusted capital that is greater than or equal to its
200 company action level risk-based capital, but less than the

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

201 product of its authorized control level risk-based capital and
202 3.0, and triggers the trend test determined in accordance with
203 the trend test calculation included in the Risk-Based Capital
204 Forecasting and Instructions, Property/Casualty, updated
205 annually by the NAIC;
206 2. The notification by the office to the insurer of an
207 adjusted risk-based capital report that indicates an event in
208 subparagraph 1., unless the insurer challenges the adjusted
209 risk-based capital report under subsection (7); or
210 3. If, under subsection (7), an insurer challenges an
211 adjusted risk-based capital report that indicates an event in
212 subparagraph 1., the notification by the office to the insurer
213 that the office has, after a hearing, rejected the insurer's
214 challenge.
215 Section 2. Paragraph (b) of subsection (1) of section
216 631.271, Florida Statutes, is amended to read:
217 631.271 Priority of claims.—
218 (1) The priority of distribution of claims from the
219 insurer's estate shall be in accordance with the order in which
220 each class of claims is set forth in this subsection. Every
221 claim in each class shall be paid in full or adequate funds
222 shall be retained for such payment before the members of the
223 next class may receive any payment. No subclasses may be
224 established within any class. The order of distribution of
225 claims shall be:

226 (b) Class 2.—All claims under policies for losses
227 incurred, including third-party claims, all claims against the
228 insurer for liability for bodily injury or for injury to or
229 destruction of tangible property which claims are not under
230 policies, ~~and~~ all claims of a guaranty association or foreign
231 guaranty association, and all claims for medical treatment by
232 physicians, hospitals, and other medical providers in a
233 liquidation of a health insurer or a health maintenance
234 organization. All claims under life insurance and annuity
235 policies, whether for death proceeds, annuity proceeds, or
236 investment values, shall be treated as loss claims. That portion
237 of any loss, indemnification for which is provided by other
238 benefits or advantages recovered by the claimant, may not be
239 included in this class, other than benefits or advantages
240 recovered or recoverable in discharge of familial obligations of
241 support or by way of succession at death or as proceeds of life
242 insurance, or as gratuities. No payment by an employer to her or
243 his employee may be treated as a gratuity.
244 Section 3. Subsection (6) of section 631.717, Florida
245 Statutes, is amended to read:
246 631.717 Powers and duties of the association.—
247 (6) The association may assist and advise the department,
248 upon its request, concerning rehabilitation, payment of claims,
249 continuance of coverage, or the performance of other contractual
250 obligations of any impaired or insolvent insurer. The

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

251 association may also assist and advise departments of insurance
252 of other states; other guaranty associations; and conservators,
253 rehabilitators, and receivers appointed or acting in regard to
254 any member insured wherever located, for the purpose of
255 developing plans to coordinate protection of policyholders.
256 Costs of such activities may be charged against the health
257 insurance account, the life insurance account, or the annuity
258 account created by s. 631.715, at the discretion of the board of
259 directors, notwithstanding any other provision of this part.
260 Notice of any assessment of costs, along with detailed and
261 itemized bills justifying such costs, must be given to the
262 member insurers, the department, and the office no later than 60
263 days before the assessment.
264 Section 4. Subsection (3) of section 631.718, Florida
265 Statutes, is amended to read:
266 631.718 Assessments.—
267 (3)(a) The amount of any Class A assessment shall be
268 determined by the board and may be made on a non-pro rata basis.
269 The assessment may not be credited against future insolvency
270 assessments and may not exceed $250 per member insurer in any
271 one calendar year.
272 (b) The amount of any Class B assessment shall be
273 allocated for assessment purposes among the accounts pursuant to
274 an allocation formula, which may be based on the premiums or
275 reserves of the impaired or insolvent insurer.

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

276 (c) Class B assessments against member insurers for each
277 account, except for long-term care insurance claims, must be
278 based upon the premiums received on business in this state by
279 each assessed member insurer on policies or contracts covered by
280 each account for the 3 most recent calendar years for which
281 information is available preceding the year of the assessment in
282 proportion to premiums received on business in this state for
283 those calendar years by all assessed member insurers. If the
284 most recent 3 years of premium information is not available for
285 each member insurer, the board of directors may use the premium
286 information that is reasonably available.
287 (d) Class B assessments made by the board of directors
288 pursuant to paragraph (2)(b) for the payment of claims under
289 long-term care insurance policies of an impaired or insolvent
290 insurer shall be levied first against life and health member
291 insurers that received premiums for long-term care insurance in
292 this state in any of the 20 calendar years preceding the
293 assessments in proportion to the total of long-term care
294 insurance premiums received on business in this state by all
295 assessed member insurers for those calendar years. If the board
296 of directors finds that the assessments against member insurers
297 that have written long-term care insurance is insufficient for
298 the payment of claims, the association shall assess health
299 insurers and life insurers in an amount sufficient to pay all
300 long-term care insurance claims as they come due. Such

301 assessment shall be based upon the total of life and health
302 insurance premiums written in this state for the 3 calendar
303 years preceding the assessment and may not be considered
304 borrowing between accounts.
305 (e) ~~(d)~~ Assessments for funds to meet the requirements of
306 the association with respect to an impaired or insolvent insurer
307 may not be made until necessary to implement the purposes of
308 this part.
309 (f) ~~(e)~~ Classification of assessments under subsection (2)
310 and computation of assessments under this subsection must be
311 made with a reasonable degree of accuracy, recognizing that
312 exact determinations are not always possible.
313
314 This subsection applies to all assessments issued on or after
315 the effective date of this act, regardless of the date of
316 liquidation.
317 Section 5. Section 641.201, Florida Statutes, is amended
318 to read:
319 641.201 Applicability of other laws.—
320 (1) Except as provided in this part, health maintenance
321 organizations are ~~shall be~~ governed by ~~the provisions of~~ this
322 part and part III of this chapter and are ~~shall be~~ exempt from
323 all other provisions of the Florida Insurance Code except those
324 provisions ~~of the Florida Insurance Code~~ that are explicitly
325 made applicable to health maintenance organizations.

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

326 (2) Health maintenance organizations are considered
327 insurers for purposes of:
328 (a) Sections 624.4073 and 628.231.
329 (b) Section 624.4095, except that:
330 1. The ratio of actual or projected annual gross written
331 premiums to current or projected surplus as to policyholders for
332 a health maintenance organization holding a certificate of
333 authority before the effective date of this act may not exceed
334 30 to 1 beginning July 1, 2020, until June 30, 2024; 20 to 1
335 beginning July 1, 2024, until June 30, 2028; and 10 to 1
336 beginning July 1, 2028.
337 2. In calculating the premium-to-surplus ratio of a health
338 maintenance organization pursuant to s. 624.4095(1), actual or
339 projected risk revenue must be added to actual or projected
340 written premiums.
341 (3) Health maintenance organizations are subject to the
342 applicable provisions of s. 624.4085.
343 Section 6. Section 641.222, Florida Statutes, is created
344 to read:
345 641.222 Officers and directors of insolvent insurers.—Any
346 person who was an officer or director of an insurer or health
347 maintenance organization doing business in this state and who
348 served in that capacity within the 2-year period before the date
349 the insurer or health maintenance organization became insolvent,
350 for any insolvency that occurs on or after July 1, 2017, may not

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

351 thereafter serve as an officer or director of a health
352 maintenance organization authorized in this state, unless the
353 officer or director demonstrates that his or her personal
354 actions or omissions were not a significant contributing cause
355 to the insolvency.
356 Section 7. The Division of Law Revision and Information is
357 directed to replace the phrase "the effective date of this act"
358 wherever it occurs in this act with the date this act becomes a
359 law.
360 Section 8. Except as otherwise expressly provided in this
361 act, this act shall take effect upon becoming a law.