

By Senator Garcia

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1 A bill to be entitled
2 An act relating to insurance administrators; amending
3 s. 626.88, F.S.; redefining the term "administrator"
4 to include a pharmacy benefits manager; amending s.
5 626.8805, F.S.; requiring the Office of Insurance
6 Regulation to conduct quarterly audits, for a certain
7 purpose, of pharmacy benefits managers that hold
8 certificates of authority to act as administrators;
9 amending ss. 626.891 and 626.894, F.S.; adding
10 violations of certain provisions of the Florida
11 Pharmacy Act as grounds for the office's suspension or
12 revocation of an administrator's certificate of
13 authority or imposition of a fine, respectively;
14 prohibiting the office, within a specified timeframe,
15 from penalizing a pharmacy benefits manager for
16 operating as an administrator if the pharmacy benefits
17 manager meets certain conditions; providing a
18 directive to the Division of Law Revision and
19 Information; providing an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Subsection (1) of section 626.88, Florida
24 Statutes, is amended to read:

25 626.88 Definitions.—For the purposes of this part, the
26 term:

27 (1) "Administrator" is any person who directly or
28 indirectly solicits or effects coverage of, collects charges or
29 premiums from, or adjusts or settles claims on residents of this
30 state in connection with authorized commercial self-insurance
31 funds or with insured or self-insured programs which provide
32 life or health insurance coverage or coverage of any other

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33 expenses described in s. 624.33(1); ~~or~~ any person who, through a
34 health care risk contract as defined in s. 641.234 with an
35 insurer or health maintenance organization, provides billing and
36 collection services to health insurers and health maintenance
37 organizations on behalf of health care providers; or a pharmacy
38 benefits manager as defined in s. 465.1862(1). The term does not
39 include the following persons, ~~other than any of the following~~
40 ~~persons:~~

41 (a) An employer or wholly owned direct or indirect
42 subsidiary of an employer, on behalf of such employer's
43 employees or the employees of one or more subsidiary or
44 affiliated corporations of such employer.

45 (b) A union on behalf of its members.

46 (c) An insurance company which is either authorized to
47 transact insurance in this state or is acting as an insurer with
48 respect to a policy lawfully issued and delivered by such
49 company in and pursuant to the laws of a state in which the
50 insurer was authorized to transact an insurance business.

51 (d) A health care services plan, health maintenance
52 organization, professional service plan corporation, or person
53 in the business of providing continuing care, possessing a valid
54 certificate of authority issued by the office, and the sales
55 representatives thereof, if the activities of such entity are
56 limited to the activities permitted under the certificate of
57 authority.

58 (e) An entity that is affiliated with an insurer and that
59 only performs the contractual duties, between the administrator
60 and the insurer, of an administrator for the direct and assumed
61 insurance business of the affiliated insurer. The insurer is

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62 responsible for the acts of the administrator and is responsible
63 for providing all of the administrator's books and records to
64 the insurance commissioner, upon a request from the insurance
65 commissioner. For purposes of this paragraph, the term "insurer"
66 means a licensed insurance company, health maintenance
67 organization, prepaid limited health service organization, or
68 prepaid health clinic.

69 (f) A nonresident entity licensed in its state of domicile
70 as an administrator if its duties in this state are limited to
71 the administration of a group policy or plan of insurance and no
72 more than a total of 100 lives for all plans reside in this
73 state.

74 (g) An insurance agent licensed in this state whose
75 activities are limited exclusively to the sale of insurance.

76 (h) A person licensed as a managing general agent in this
77 state whose activities are limited exclusively to the scope of
78 activities conveyed under such license.

79 (i) An adjuster licensed in this state whose activities are
80 limited to the adjustment of claims.

81 (j) A creditor on behalf of such creditor's debtors with
82 respect to insurance covering a debt between the creditor and
83 its debtors.

84 (k) A trust and its trustees, agents, and employees acting
85 pursuant to such trust established in conformity with 29 U.S.C.
86 s. 186.

87 (l) A trust exempt from taxation under s. 501(a) of the
88 Internal Revenue Code, a trust satisfying the requirements of
89 ss. 624.438 and 624.439, or any governmental trust as defined in
90 s. 624.33(3), and the trustees and employees acting pursuant to

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91 such trust, or a custodian and its agents and employees,
92 including individuals representing the trustees in overseeing
93 the activities of a service company or administrator, acting
94 pursuant to a custodial account which meets the requirements of
95 s. 401(f) of the Internal Revenue Code.

96 (m) A financial institution which is subject to supervision
97 or examination by federal or state authorities or a mortgage
98 lender licensed under chapter 494 who collects and remits
99 premiums to licensed insurance agents or authorized insurers
100 concurrently or in connection with mortgage loan payments.

101 (n) A credit card issuing company which advances for and
102 collects premiums or charges from its credit card holders who
103 have authorized such collection if such company does not adjust
104 or settle claims.

105 (o) A person who adjusts or settles claims in the normal
106 course of such person's practice or employment as an attorney at
107 law and who does not collect charges or premiums in connection
108 with life or health insurance coverage.

109 (p) A person approved by the department who administers
110 only self-insured workers' compensation plans.

111 (q) A service company or service agent and its employees,
112 authorized in accordance with ss. 626.895-626.899, serving only
113 a single employer plan, multiple-employer welfare arrangements,
114 or a combination thereof.

115 (r) Any provider or group practice, as defined in s.
116 456.053, providing services under the scope of the license of
117 the provider or the member of the group practice.

118 (s) Any hospital providing billing, claims, and collection
119 services solely on its own and its physicians' behalf and

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120 providing services under the scope of its license.

121 (t) A corporation not for profit whose membership consists
122 entirely of local governmental units authorized to enter into
123 risk management consortiums under s. 112.08.

124

125 A person who provides billing and collection services to health
126 insurers and health maintenance organizations on behalf of
127 health care providers shall comply with ~~the provisions of ss.~~
128 627.6131, 641.3155, and 641.51(4).

129 Section 2. Present subsection (6) of section 626.8805,
130 Florida Statutes, is redesignated as subsection (7), and a new
131 subsection (6) is added to that section, to read:

132 626.8805 Certificate of authority to act as administrator.-

133 (6) The office shall conduct quarterly audits of each
134 pharmacy benefits manager who holds a certificate of authority
135 to act as an administrator under this part for the purpose of
136 determining whether the pharmacy benefits manager violated any
137 provision of s. 465.1862.

138 Section 3. Subsection (2) of section 626.891, Florida
139 Statutes, is amended to read:

140 626.891 Grounds for suspension or revocation of certificate
141 of authority.-

142 (2) The office may, in its discretion, suspend or revoke
143 the certificate of authority of an administrator if it finds
144 that the administrator:

145 (a) Has violated any lawful rule or order of the commission
146 or office, or any provision of this chapter, s. 465.1862, or s.
147 465.1885;

148 (b) Has refused to be examined or to produce its accounts,

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149 records, and files for examination, or if any of its officers
150 has refused to give information with respect to its affairs or
151 has refused to perform any other legal obligation as to such
152 examination, when required by the office;

153 (c) Has, without just cause, refused to pay proper claims
154 or perform services arising under its contracts or has, without
155 just cause, compelled insured persons to accept less than the
156 amount due them or to employ attorneys or bring suit against the
157 administrator to secure full payment or settlement of such
158 claims;

159 (d) Is or was affiliated with and under the same general
160 management or interlocking directorate or ownership as another
161 administrator which transacts business in this state without
162 having a certificate of authority;

163 (e) At any time fails to meet any qualification for which
164 issuance of the certificate could have been refused had such
165 failure then existed and been known to the office;

166 (f) Has been convicted of, or has entered a plea of guilty
167 or nolo contendere to, a felony relating to the business of
168 insurance or insurance administration in this state or in any
169 other state without regard to whether adjudication was withheld;
170 or

171 (g) Is under suspension or revocation in another state.

172 Section 4. Subsection (3) of section 626.894, Florida
173 Statutes, is amended to read:

174 626.894 Administrative fine in lieu of suspension or
175 revocation.—

176 (3) With respect to any knowing and willful violation of a
177 lawful order or rule of the office or commission, or ~~or~~ a provision

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178 of this part, s. 465.1862, or s. 465.1885, the office may impose
179 a fine upon the administrator in an amount not to exceed \$5,000
180 for each such violation. In no event may such fine exceed an
181 aggregate amount of \$25,000 for all knowing and willful
182 violations arising out of the same action. In addition to such
183 fine, the administrator shall make restitution when due in
184 accordance with the provisions of subsection (2).

185 Section 5. Within 180 days after the effective date of this
186 act, the Office of Insurance Regulation may not penalize a
187 pharmacy benefits manager, as defined in s. 465.1862(1), Florida
188 Statutes, for operating as an administrator if the pharmacy
189 benefits manager applies for a certificate of authority within
190 90 days after the effective date of this act and is issued such
191 certificate of authority within 180 days after the effective
192 date of this act.

193 Section 6. The Division of Law Revision and Information is
194 directed to replace the phrase "the effective date of this act"
195 wherever it occurs in this act with the date this act becomes a
196 law.

197 Section 7. This act shall take effect upon becoming a law.