

By Senators Silver and Campbell

38-371A-99

1 A bill to be entitled
2 An act relating to health care service
3 programs; amending s. 440.11, F.S.;
4 establishing exclusive liability of health
5 maintenance organizations; providing
6 applicability; amending s. 641.28, F.S.;
7 revising award of attorney's fees in civil
8 actions in specified circumstances; amending s.
9 641.315, F.S.; providing additional criteria
10 for certain provider contracts; amending s.
11 641.3903, F.S.; specifying additional practices
12 as unfair methods of competition or unfair or
13 deceptive acts or practices; amending s.
14 641.3917, F.S.; authorizing civil actions
15 against health maintenance organizations by
16 certain persons in certain circumstances;
17 providing requirements and procedures;
18 providing for liability for damages and
19 attorney's fees; prohibiting punitive damages
20 in certain circumstances; requiring the advance
21 posting of discovery costs; providing for the
22 award of discovery costs in specified
23 circumstances; providing legislative intent;
24 providing an appropriation; providing an
25 effective date.

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

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29 Section 1. Subsection (4) of section 440.11, Florida
30 Statutes, is amended to read:

31 440.11 Exclusiveness of liability.--

1 (4) Notwithstanding the provisions of s. 624.155 or s.
2 641.3917, the liability of a carrier or a health maintenance
3 organization to an employee or to anyone entitled to bring
4 suit in the name of the employee shall be as provided in this
5 chapter, which shall be exclusive and in place of all other
6 liability.

7 Section 2. Section 641.28, Florida Statutes, is
8 amended to read:

9 641.28 Civil remedy.--

10 (1) In any civil action brought to enforce the terms
11 and conditions of a health maintenance organization contract:

12 (a) If the civil action is filed no more than 60 days
13 after the subscriber or enrollee filed a grievance or notice
14 of intent to sue with the statewide provider and subscriber
15 assistance program established under s. 408.7056 or a notice
16 pursuant to s. 641.3917, the prevailing party is entitled to
17 recover reasonable attorney's fees and court costs.

18 (b) If the civil action is filed pursuant to s.
19 641.3917 more than 60 days after the subscriber or enrollee
20 files a notice of intent to sue with the statewide provider
21 and subscriber assistance program established under s.
22 408.7056 or files a notice pursuant to s. 641.3917, and the
23 subscriber or enrollee receives a final judgment or decree
24 against the health maintenance organization in favor of the
25 subscriber or enrollee, the court shall enter a judgment or
26 decree against the health maintenance organization in favor of
27 the subscriber or enrollee for reasonable attorney's fees and
28 court costs.

29 (2) This section does ~~shall not be construed to~~
30 authorize a civil action against the department, its
31 employees, or the Insurance Commissioner or against the Agency

1 for Health Care Administration, its employees, or the director
2 of the agency.

3 Section 3. Subsection (8) of section 641.315, Florida
4 Statutes, is amended to read:

5 641.315 Provider contracts.--

6 (8) A contract between a health maintenance
7 organization and a provider of health care services may ~~shall~~
8 not contain any provision that restricts ~~restricting~~ the
9 provider's ability to communicate information to the
10 provider's patient regarding medical care or treatment options
11 for the patient when the provider considers ~~deems~~ knowledge of
12 such information by the patient to be in the best interest of
13 the health of the patient.

14 Section 4. Subsection (10) of section 641.3903,
15 Florida Statutes, is amended, and subsection (14) is added to
16 that section, to read:

17 641.3903 Unfair methods of competition and unfair or
18 deceptive acts or practices defined.--The following are
19 defined as unfair methods of competition and unfair or
20 deceptive acts or practices:

21 (10) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED
22 CHARGES FOR HEALTH MAINTENANCE COVERAGE; CANCELING COVERAGE;
23 ISSUING OR CANCELING A NONRENEWAL NOTICE.--

24 (a) Knowingly collecting any sum as a premium or
25 charge for health maintenance coverage which is not then
26 provided or is not in due course to be provided, subject to
27 acceptance of the risk by the health maintenance organization,
28 by a health maintenance contract issued by a health
29 maintenance organization as permitted by this part.

30 (b) Knowingly collecting as a premium or charge for
31 health maintenance coverage any sum in excess of or less than

1 the premium or charge applicable to health maintenance
2 coverage, in accordance with the applicable classifications
3 and rates as filed with the department, and as specified in
4 the health maintenance contract.

5 (c) Canceling or otherwise terminating any health
6 maintenance contract or coverage, or requiring execution of a
7 consent to rate endorsement, during the stated contract term
8 for the purpose of offering to issue, or issuing, a similar or
9 identical contract to the same subscriber or enrollee with the
10 same exposure at a higher premium rate or continuing an
11 existing contract with the same exposure at an increased
12 premium.

13 (d) Issuing a nonrenewal notice on any health
14 maintenance organization, or requiring execution of a consent
15 to rate endorsement, for the purpose of offering to issue, or
16 issuing, a similar or identical contract to the same
17 subscriber or enrollee at a higher premium rate or continuing
18 an existing contract at an increased premium without meeting
19 any applicable notice requirements.

20 (e) Canceling or issuing a nonrenewal notice on any
21 health maintenance organization contract without complying
22 with any applicable cancellation or nonrenewal provision
23 required under the Florida Insurance Code.

24 (14) REFUSAL TO COVER.--In addition to other
25 provisions of this code, the refusal to cover or continue to
26 cover any individual solely because of:

27 (a) Race, color, creed, marital status, sex, or
28 national origin;

29 (b) The residence, age, or lawful occupation of the
30 individual, unless there is a reasonable relationship between
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1 the residence, age, or lawful occupation of the individual and
2 the coverage issued or to be issued; or

3 (c) The fact that the enrollee or applicant had been
4 previously refused insurance coverage or health maintenance
5 organization coverage by any insurer or health maintenance
6 organization if refusals to cover or continue to cover for
7 this reason occur with such frequency as to indicate a general
8 business practice.

9 Section 5. Section 641.3917, Florida Statutes, is
10 amended to read:

11 641.3917 Civil liability.--The provisions of this part
12 are cumulative to rights under the general civil and common
13 law, and no action of the department shall abrogate such
14 rights to damage or other relief in any court.

15 (1) Any person may bring a civil action against a
16 health maintenance organization to seek a remedy for damages
17 that the person suffers as a result of:

18 (a) A violation of s. 641.3903(5)(a), (b), (c)1.-7.,
19 (10), or (12) by the health maintenance organization; or

20 (b) The health maintenance organization's failure to
21 provide a covered service when in good faith the health
22 maintenance organization should have provided the service if
23 it had acted fairly and honestly toward its subscriber or
24 enrollee and with due regard for the subscriber's interests
25 and, in the independent medical judgment of a physician, the
26 service is medically necessary. However, in pursuing a remedy
27 under this section, a person need not prove that such an act
28 was committed or performed with such frequency as to indicate
29 a general business practice.

30 (2)(a) As a condition precedent to bringing an action
31 under this section, the department and the health maintenance

1 organization must have been given 60 days' written notice of
2 the violation. If the department returns a notice for lack of
3 specificity, the 60-day time period does not begin until a
4 proper notice is filed.

5 (b) The notice must be on a form provided by the
6 department and must state with specificity the following
7 information and such other information as the department
8 requires:

9 1. The provision of law, including the specific
10 language of the law, which the health maintenance organization
11 allegedly has violated.

12 2. The facts and circumstances giving rise to the
13 violation.

14 3. The name of any individual involved in the
15 violation.

16 4. Any reference to specific contract language that is
17 relevant to the violation.

18 5. A statement that the notice is given in order to
19 perfect the right to pursue the civil remedy authorized by
20 this section.

21 (c) Within 20 days after receiving the notice, the
22 department may return any notice that does not provide the
23 specific information required by this section, and the
24 department must indicate the specific deficiencies in the
25 notice. A determination by the department to return a notice
26 for lack of specificity is exempt from chapter 120.

27 (d) No action lies under this section if, within 60
28 days after filing notice, the damages are paid or the
29 circumstances giving rise to the violation are corrected.

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1 (e) The health maintenance organization that is the
2 recipient of a notice under this section shall report to the
3 department on the disposition of the alleged violation.

4 (f) The applicable statute of limitations for an
5 action under this section shall be tolled for a period of 65
6 days by the mailing of the notice required by this subsection
7 or the mailing of a subsequent notice required by this
8 subsection.

9 (3) Upon adverse adjudication at trial or upon appeal,
10 the health maintenance organization is liable for damages,
11 together with court costs and reasonable attorney's fees,
12 incurred by the plaintiff.

13 (4) Punitive damages shall not be awarded under this
14 section unless the acts giving rise to the violation occur
15 with such frequency as to indicate a general business practice
16 and are either willful, wanton, and malicious or are in
17 reckless disregard for the rights of any subscriber or
18 enrollee. Any person who pursues a claim under this subsection
19 shall post, in advance, the costs of discovery. Such costs
20 shall be awarded to the health maintenance organization if
21 punitive damages are not awarded to the plaintiff.

22 (5) This section does not authorize a class action
23 suit against a health maintenance organization or a civil
24 action against the department or its employees, against the
25 Insurance Commissioner, or against the Agency for Health Care
26 Administration, its employees, or the director of the agency,
27 nor does this section create a cause of action when a health
28 maintenance organization or a prepaid health plan refuses to
29 provide service on the grounds that the charge for a service
30 was unreasonably high, unless otherwise provided in paragraph

31 (1)(b).

1 (6)(a) The civil remedy specified in this section does
2 not preempt any other remedy or cause of action provided for
3 under any other law or under the common law of this state. Any
4 person may obtain a judgment under either the common law
5 remedy of bad faith or the remedy provided in this section but
6 is not entitled to a judgment under both remedies. This
7 section does not create a common law cause of action. The
8 damages recoverable under this section include damages that
9 are a reasonably foreseeable result of a specified violation
10 of this section by the health maintenance organization and may
11 include an award or judgment in an amount that exceeds
12 contract limits.

13 (b) This section does not create a cause of action for
14 medical malpractice. Such an action is subject to chapter 766.

15 (c) This section is inapplicable to the provision of
16 medical care, treatment, or attendance pursuant to chapter
17 440.

18 Section 6. The Legislature finds that this act will
19 fulfill an important state interest.

20 Section 7. There are hereby appropriated three
21 full-time positions and \$112,000 from the Insurance
22 Commissioner's Regulatory Trust Fund to the Department of
23 Insurance during fiscal year 1999-2000, to be used in carrying
24 out the provisions of this act.

25 Section 8. This act shall take effect July 1, 1999.
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SENATE SUMMARY

Relates to health care service programs. Establishes exclusive liability of health maintenance organizations. Revises the award of attorney's fees in civil actions in specified circumstances. Provides additional criteria for certain provider contracts. Specifies additional practices as unfair methods of competition or unfair or deceptive acts or practices.

Authorizes civil actions against health maintenance organizations by certain persons in certain circumstances and provides requirements and procedures. Provides for liability for damages and attorney's fees. Prohibits punitive damages in certain circumstances. Requires the advance posting of discovery costs. Provides for the award of discovery costs in specified circumstances. Provides legislative intent. Provides an appropriation.