By Senator Lee

24-00614C-15 20151190__

A bill to be entitled

An act relating to insurer solvency; amending s. 624.407, F.S.; revising the amount of surplus which must be possessed by insurers applying for an original certificate of authority; defining the term "health benefit plan"; amending s. 624.408, F.S.; revising the amount of surplus which must be possessed by insurers in order to retain a certificate of authority; authorizing the Office of Insurance Regulation to reduce certain surplus requirements under specified circumstances; defining the term "health benefit plan"; amending s. 624.4085, F.S.; revising the term "life and health insurer" to include specified health maintenance and prepaid limited health service organizations; amending s. 636.043, F.S.; revising the due date and required content for the mandatory annual report of a prepaid limited health service organization to the office; revising the time periods to be covered by such organization's required quarterly reports to the office; amending s. 641.19, F.S.; defining the term "management services organization"; amending s. 641.201, F.S.; providing that a health maintenance organization is considered an insurer for purposes of specified provisions of law relating to insolvent insurers, requirements for the directors of domestic insurers, the payment of dividends and distributions of other property by domestic stock insurers, penalties for domestic and mutual stock insurers that illegally pay dividends,

and certain restrictions on premiums written; providing that health maintenance organizations are considered life and health insurers for purposes of specified provisions of law relating to insurer surplus requirements; amending s. 641.225, F.S.; conforming provisions to changes made by the act; amending s. 641.26, F.S.; revising the due date and required content for the mandatory annual report and audited financial statement of a health maintenance organization which must be submitted to the office; amending s. 641.27, F.S.; revising the payment requirements applicable to health maintenance organizations for the examination expenses incurred by the office; amending s. 641.35, F.S.; excluding receivables from a management services organization from being included in the assets of a health maintenance organization for purposes of determining the organization's financial condition; repealing s. 641.365, F.S., relating to the payment of dividends and distributions of other property by health maintenance organizations; amending ss. 817.234 and 817.50, F.S.; conforming cross-references; providing a directive to the Division of Law Revision and Information; providing effective dates.

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

Section 1. Section 624.407, Florida Statutes, is amended to read:

624.407 Surplus required of~~; new~~ insurers applying for an original certificate of authority.—

(1) To receive authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer applying for its original certificate of authority in this state must ~~shall~~ possess surplus as to policyholders in at least the following amount ~~greater of~~:

(a) For a property and casualty insurer, $5 million or 10 percent of the insurer's total liabilities, whichever is greater, except for a domestic insurer that transacts residential property insurance and is:

1. Not a wholly owned subsidiary of an insurer domiciled in any other state, which must have a surplus of $15 million.

2. A wholly owned subsidiary of an insurer domiciled in any other state, which must have a surplus of $50 million.~~, or $2.5 million for any other insurer;~~

(b) For a life insurer ~~insurers~~, $2.5 million or 4 percent of the insurer's total liabilities, whichever is greater.~~;~~

(c) For a life and health insurer that will issue a health benefit plan or a long-term care insurance policy on or after the effective date of this act, the greater of:

1. The sum of $10 million plus the amount of startup losses, excluding profits, projected to be incurred on the insurer's startup projection until the projection reflects statutory net profits for 12 consecutive months; ~~insurers,~~

2. Four ~~4~~ percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance, based on the insurer's startup projection; or

3. Two percent of the insurer's total projected premiums

relative to health insurance, based on the insurer's startup projection.

(d) For a life and health insurer that is not subject to paragraph (c), the greater of:

1. The sum of $2.5 million; or

2. Four percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance.

(e) For all other insurers, the greater of $2.5 million or ~~other than life insurers and life and health insurers,~~ 10 percent of the insurer's total liabilities.~~; or~~

~~(e) Notwithstanding paragraph (a) or paragraph (d), for a domestic insurer that transacts residential property insurance and is:~~

~~1. Not a wholly owned subsidiary of an insurer domiciled in any other state, $15 million.~~

~~2. A wholly owned subsidiary of an insurer domiciled in any other state, $50 million.~~

(2) Notwithstanding subsection (1), a new insurer may not be required to have surplus as to policyholders greater than $100 million.

(3) The requirements of this section shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, regardless of whether ~~or not~~ only a portion of such kinds of insurance are transacted in this state.

(4) As to surplus as to policyholders required for qualification to transact one or more kinds of insurance, domestic mutual insurers are governed by chapter 628, and

domestic reciprocal insurers are governed by chapter 629.

(5) For the purposes of this section, liabilities do not include liabilities required under s. 625.041(5). For purposes of computing minimum surplus as to policyholders pursuant to s. 625.305(1), liabilities include liabilities required under s. 625.041(5).

(6) As used in this section, the term "health benefit plan" has the same meaning as in s. 627.6699.

Section 2. Section 624.408, Florida Statutes, is amended to read:

624.408 Surplus required for~~; current~~ insurers to maintain a certificate of authority.—

(1) To maintain a certificate of authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer in this state must at all times maintain surplus as to policyholders in at least the following amount ~~greater of~~:

(a) ~~Except as provided in paragraphs (e), (f), and (g), $1.5 million.~~

~~(b)~~ For a life insurer ~~insurers~~, $1.5 million or 4 percent of the insurer's total liabilities, whichever is greater.

(b) For a life and health insurer that is authorized to issue a health benefit plan or long-term care insurance policy and that:

1. Did not hold a certificate of authority before the effective date of this act, $10 million.

2. Held a certificate of authority before the effective date of this act, $1.5 million until June 30, 2017; $3 million on or after July 1, 2017, and until June 30, 2021; $6 million on

or after July 1, 2021, and until June 30, 2025; and $10 million on or after July 1, 2025.

The office may reduce the surplus requirement imposed under this paragraph if the office finds the reduction to be in the public interest because the insurer is not writing new business in this state, the insurer is writing business only within a limited geographic service area, the insurer has premiums in force of less than $1 million annually, or the insurer has a policy count of fewer than 6,000, or because of any other factor relevant to making such a finding.

(c) For a life and health insurer that is not subject to paragraph (b) ~~insurers~~, the greater of:

1. The sum of $1.5 million; or

2. Four ~~4~~ percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance.

(d) ~~For all insurers other than mortgage guaranty insurers, life insurers, and life and health insurers, 10 percent of the insurer's total liabilities.~~

~~(e)~~ For a property and casualty insurer ~~insurers~~, $4 million, except for a property and casualty insurer ~~insurers~~ authorized to underwrite any line of residential property insurance.

(e)~~(f)~~ For a residential property insurer:

1. ~~insurers~~ Not holding a certificate of authority before July 1, 2011, $15 million.

2.~~(g) For residential property insurers~~ Holding a certificate of authority before July 1, 2011, $5 million ~~and~~

until June 30, 2016~~, $5 million~~; $10 million on or after July 1, 2016, and until June 30, 2021~~, $10 million~~; and $15 million on or after July 1, 2021~~, $15 million~~.

The office may reduce the surplus requirement under this paragraph ~~in paragraphs (f) and (g)~~ if the insurer is not writing new business, has premiums in force of less than $1 million per year in residential property insurance, or is a mutual insurance company.

(f) For all other insurers, the greater of $1.5 million or 10 percent of the insurer's total liabilities.

(2) For purposes of this section, liabilities do not include liabilities required under s. 625.041(5). For purposes of computing minimum surplus as to policyholders pursuant to s. 625.305(1), liabilities include liabilities required under s. 625.041(5).

(3) This section does not require an insurer to have surplus as to policyholders greater than $100 million.

(4) A mortgage guaranty insurer shall maintain a minimum surplus as required by s. 635.042.

(5) As used in this section, the term "health benefit plan" has the same meaning as in s. 627.6699.

Section 3. Effective July 1, 2015, paragraph (g) of subsection (1) of section 624.4085, Florida Statutes, is amended to read:

624.4085 Risk-based capital requirements for insurers.—

(1) As used in this section, the term:

(g) "Life and health insurer" means an insurer authorized or eligible under the Florida Insurance Code to underwrite life

or health insurance. The term also includes:

1. A property and casualty insurer that writes accident and health insurance only.

2. Effective January 1, 2015, ~~the term also includes~~ a health maintenance organization that is authorized in this state and one or more other states, jurisdictions, or countries and a prepaid limited health service organization that is authorized in this state and one or more other states, jurisdictions, or countries.

3. A health maintenance organization and a prepaid limited health service organization initially authorized in this state on or after July 1, 2015, and not authorized in any other state, jurisdiction, or country.

As used in this paragraph, the term "health maintenance organization" has the same meaning as in s. 641.19 and the term "prepaid limited health service organization" has the same meaning as in s. 636.003.

Section 4. Effective July 1, 2015, subsection (1), paragraph (a) of subsection (2), and subsections (4) and (6) of section 636.043, Florida Statutes, are amended to read:

636.043 Annual, quarterly, and miscellaneous reports.—

(1) Each prepaid limited health service organization must file an annual report with the office on or before March 1 of each year showing its condition on the last day of the immediately preceding calendar year. The ~~annually, within 3 months after the end of its fiscal year, a~~ report must be verified by the notarized oath of at least two officers covering the preceding calendar year. ~~Any organization licensed prior to~~

~~October 1, 1993, shall not be required to file a financial statement, as required by paragraph (2)(a), based on statutory accounting principles until the first annual report for fiscal years ending after December 31, 1994.~~

(2) The ~~Such~~ report must be on forms prescribed by the commission and must include:

(a)1. A ~~statutory~~ financial statement of the organization prepared in accordance with statutory accounting principles and filed by electronic means in a computer-readable format acceptable to the office~~, including its balance sheet, income statement, and statement of changes in cash flow for the preceding year, certified by an independent certified public accountant, or a consolidated audited financial statement of its parent company prepared on the basis of statutory accounting principles, certified by an independent certified public accountant, attached to which must be consolidating financial statements of the parent company, including the prepaid limited health service organization~~.

2. Any entity subject to this chapter may make written application to the office for approval to file audited financial statements prepared in accordance with generally accepted accounting principles in lieu of statutory financial statements. The office shall approve the application if it finds it to be in the best interest of the subscribers. An application for exemption is required each year and must be filed with the office at least 2 months prior to the end of the fiscal year for which the exemption is being requested.

(4)(a) Each authorized prepaid limited health service organization must file a quarterly report for each calendar

quarter. The report for the quarter ending March 31 shall be filed with the office on or before May 15, the report for the quarter ending June 30 shall be filed on or before August 15, and the report for the quarter ending September 30 shall be filed on or before November 15. The quarterly report must be verified by the notarized oath of two officers of the organization ~~within 45 days after the end of the quarter~~. The report must ~~shall~~ contain:

1.~~(a)~~ A financial statement prepared in accordance with statutory accounting principles. Any entity licensed before October 1, 1993, is ~~shall~~ not ~~be~~ required to file a financial statement based on statutory accounting principles until the first quarterly filing after the entity files its annual financial statement based on statutory accounting principles as required by subsection (1).

2.~~(b)~~ A listing of providers.

3.~~(c)~~ Such other information relating to the performance of the prepaid limited health service organization as is reasonably required by the commission or office.

(b) On or before June 1, each authorized prepaid limited health service organization shall annually file with the office an audited financial statement of the organization for the preceding year ending December 31. The office may require the organization to file an audited financial report earlier than June 1 upon notifying the organization at least 90 days in advance. The audited financial statement must include:

1. A balance sheet, income statement, and statement of changes in cash flow for the preceding year, all of which must be certified by an independent certified public accountant; or

2. A consolidated audited financial statement of the organization's parent company, prepared on the basis of statutory accounting principles, which must be certified by an independent certified public accountant and to which are attached the consolidated financial statements of the parent company, including those of the prepaid limited health service organization.

Beginning with the financial statement filed for the year ending December 31, 2015, the audited financial statement or consolidated audited financial statement required by this paragraph is subject to commission rules applicable to insurer audits.

(6) Each authorized prepaid limited health service organization shall retain an independent certified public accountant~~, hereinafter referred to as "CPA,"~~ who agrees by written contract with the prepaid limited health service organization to comply with ~~the provisions of~~ this act. The contract must state that:

(a) The independent certified public accountant must ~~CPA will~~ provide to the prepaid limited health service organization audited statutory financial statements consistent with this act.

(b) Any determination by the independent certified public accountant ~~CPA~~ that the prepaid limited health service organization does not meet minimum surplus requirements as set forth in this act must ~~will~~ be stated by the independent certified public accountant ~~CPA~~, in writing, in the audited financial statement.

(c) The completed workpapers and any written communications

between the independent certified public accountant ~~CPA~~ and the prepaid limited health service organization relating to the audit of the prepaid limited health service organization must ~~will~~ be made available for review on a visual-inspection-only basis by the office at the offices of the prepaid limited health service organization, at the office, or at any other reasonable place as mutually agreed between the office and the prepaid limited health service organization. The independent certified public accountant ~~CPA~~ must retain for review the workpapers and written communications for a period of not less than 6 years.

Section 5. Present subsections (14) through (22) of section 641.19, Florida Statutes, are redesignated as subsections (15) through (23), respectively, and a new subsection (14) is added to that section, to read:

641.19 Definitions.—As used in this part, the term:

(14) "Management services organization" means an entity that provides one or more medical practice management services to health care providers, including, but not limited to, administrative, financial, operational, personnel, records management, educational, compliance, and managed care services.

Section 6. Section 641.201, Florida Statutes, is amended to read:

641.201 Applicability of other laws.—

(1) Except as provided in this part, health maintenance organizations are ~~shall be~~ governed by ~~the provisions of~~ this part and part III of this chapter and are ~~shall be~~ exempt from all other provisions of the Florida Insurance Code except those ~~provisions of the Florida Insurance Code~~ that are explicitly made applicable to health maintenance organizations.

(2) Health maintenance organizations are considered insurers for purposes of:

(a) Sections 624.4073, 628.231, 628.371, and 628.391.

(b) Section 624.4095, except that:

1. The ratio of actual or projected annual gross written premiums to current or projected surplus as to policyholders for a health maintenance organization holding a certificate of authority before the effective date of this act, may not exceed 30 to 1 on or after July 1, 2017, until June 30, 2021; 20 to 1 on or after July 1, 2021, until June 30, 2025; and 10 to 1 on or after July 1, 2025.

2. In calculating the premium-to-surplus ratio of a health maintenance organization pursuant to s. 624.4095(1), actual or projected risk revenue must be added to actual or projected written premiums.

(3) Health maintenance organizations are considered life and health insurers for purposes of ss. 624.407 and 624.408.

Section 7. Subsections (1) and (2) of section 641.225, Florida Statutes, are amended to read:

641.225 Surplus requirements.—

(1) Each health maintenance organization shall at all times maintain a minimum surplus as provided in s. 624.408 ~~in an amount that is the greater of $1,500,000, or 10 percent of total liabilities, or 2 percent of total annualized premium~~.

(2) The office may ~~shall~~ not issue a certificate of authority, except as provided in subsection (3), unless the health maintenance organization has at least the ~~a~~ minimum surplus required in s. 624.407 ~~in an amount which is the greater of:~~

~~(a) Ten percent of their total liabilities based on their startup projection as set forth in this part;~~

~~(b) Two percent of their total projected premiums based on their startup projection as set forth in this part; or~~

~~(c) $1,500,000, plus all startup losses, excluding profits, projected to be incurred on their startup projection until the projection reflects statutory net profits for 12 consecutive months~~.

Section 8. Effective July 1, 2015, subsections (1), (3), and (5) of section 641.26, Florida Statutes, are amended to read:

641.26 Annual and quarterly reports.—

(1) Each ~~Every~~ health maintenance organization must file an annual report with the office on or before March 1 of each year showing its condition on the last day of the immediately preceding calendar year. The report must be ~~shall, annually within 3 months after the end of its fiscal year, or within an extension of time therefor as the office, for good cause, may grant, in a form prescribed by the commission, file a report with the office,~~ verified by the notarized oath of two officers of the organization or, if not a corporation, of two persons who are principal managing directors of the affairs of the organization, on a form prescribed by the commission. For good cause, the office may grant the organization an extension of time to file the report. The report must ~~properly notarized, showing its condition on the last day of the immediately preceding reporting period. Such report shall~~ include:

(a) A financial statement of the health maintenance organization filed by electronic means in a computer-readable

form using a format acceptable to the office.

(b) A financial statement of the health maintenance organization filed on forms acceptable to the office.

~~(c) An audited financial statement of the health maintenance organization, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant, prepared in accordance with statutory accounting principles.~~

(c) ~~(d)~~ The number of health maintenance contracts issued and outstanding and the number of health maintenance contracts terminated.

(d) ~~(e)~~ The number and amount of damage claims for medical injury initiated against the health maintenance organization and any of the providers engaged by it during the reporting year, broken down into claims with and without formal legal process, and the disposition, if any, of each such claim.

(e) ~~(f)~~ An actuarial certification that:

1. The health maintenance organization is actuarially sound, which certification must ~~shall~~ consider the rates, benefits, and expenses of, and any other funds available for the payment of obligations of, the organization.

2. The rates being charged or to be charged are actuarially adequate to the end of the period for which rates have been guaranteed.

3. Incurred but not reported claims and claims reported but not fully paid have been adequately provided for.

4. The health maintenance organization has adequately provided for all obligations required by s. 641.35(3)(a).

~~(g) A report prepared by the certified public accountant~~

~~and filed with the office describing material weaknesses in the health maintenance organization's internal control structure as noted by the certified public accountant during the audit. The report must be filed with the annual audited financial report as required in paragraph (c). The health maintenance organization shall provide a description of remedial actions taken or proposed to correct material weaknesses, if the actions are not described in the independent certified public accountant's report.~~

(f) ~~(h)~~ Such other information relating to the performance of health maintenance organizations as is required by the commission or office.

(3)(a) Each ~~Every~~ health maintenance organization shall file quarterly, for the first three calendar quarters of each year, an unaudited financial statement of the organization as described in paragraphs (1)(a) and (b). The statement for the quarter ending March 31 shall be filed with the office on or before May 15, the statement for the quarter ending June 30 shall be filed on or before August 15, and the statement for the quarter ending September 30 shall be filed on or before November 15. The quarterly report must ~~shall~~ be verified by the notarized oath of two officers of the organization~~, properly notarized~~.

(b) Each health maintenance organization shall file annually, for the preceding year ending December 31, an audited financial statement of the organization. The statement for the year ending December 31 must be filed with the office on or before the following June 1. The office may require a health maintenance organization to file an audited financial report earlier than June 1 upon notifying the organization at least 90

days in advance. The audited financial statement must include a balance sheet and statement of operations for the preceding year certified by an independent certified public accountant and must be prepared in accordance with statutory accounting principles. The audited financial statement filed for the year ending December 31, 2015, is subject to commission rules applicable to insurer audits.

(5) Each authorized health maintenance organization shall retain an independent certified public accountant~~, referred to in this section as "CPA,"~~ who agrees by written contract with the health maintenance organization to comply with ~~the provisions of~~ this part.

(a) The independent certified public accountant ~~CPA~~ shall provide to the health maintenance organization ~~HMO~~ audited financial statements consistent with this part.

(b) Any determination by the independent certified public accountant ~~CPA~~ that the health maintenance organization does not meet minimum surplus requirements as set forth in this part must ~~shall~~ be stated by the independent certified public accountant ~~CPA~~, in writing, in the audited financial statement.

(c) The completed work papers and any written communications between the independent certified public accountant ~~CPA~~ firm and the health maintenance organization relating to the audit of the health maintenance organization shall be made available for review on a visual-inspection-only basis by the office at the offices of the health maintenance organization, at the office, or at any other reasonable place as mutually agreed between the office and the health maintenance organization. The independent certified public accountant ~~CPA~~

must retain for review the work papers and written communications for a period of not less than 6 years.

(d) The independent certified public accountant ~~CPA~~ shall provide to the office a written report describing material weaknesses in the health maintenance organization's internal control structure as noted during the audit. The report must be filed with the annual audited financial statement required under paragraph (3)(b). The health maintenance organization must provide a description of remedial actions taken or proposed to be taken to correct material weaknesses, if the actions are not described in the written report provided to the office by the independent certified public accountant.

Section 9. Effective July 1, 2015, section 641.27, Florida Statutes, is amended to read:

641.27 Examination by the office ~~department~~.—

(1) The office shall examine the affairs, transactions, accounts, business records, and assets of any health maintenance organization as often as it deems it expedient for the protection of the people of this state, but not less frequently than once every 5 years. However, except when the medical records are requested and copies furnished pursuant to s. 456.057, medical records of individuals and records of physicians providing service under contract to the health maintenance organization are ~~shall~~ not ~~be~~ subject to audit, although they may be subject to subpoena by court order upon a showing of good cause. For the purpose of examinations, the office may administer oaths to and examine the officers and agents of a health maintenance organization concerning its business and affairs. The examination of each health maintenance

organization by the office, including payment of examination expenses, is ~~shall be~~ subject to the same terms and conditions as apply to insurers under chapter 624. ~~In no event shall expenses of all examinations exceed a maximum of $50,000 for any 1-year period.~~ Any rehabilitation, liquidation, conservation, or dissolution of a health maintenance organization shall be conducted under the supervision of the department, which shall have all power with respect thereto granted to it under the laws governing the rehabilitation, liquidation, reorganization, conservation, or dissolution of life insurance companies.

(2) The office may contract, at reasonable fees for work performed, with qualified, impartial outside sources to perform audits or examinations or portions thereof pertaining to the qualification of an entity for issuance of a certificate of authority or to determine continued compliance with the requirements of this part, in which case the payment must be made directly to the contracted examiner by the health maintenance organization examined, in accordance with the rates and terms agreed to by the office and the examiner. Any contracted assistance shall be under the direct supervision of the office. The results of any contracted assistance are ~~shall be~~ subject to the review of, and approval, disapproval, or modification by, the office.

Section 10. Paragraph (j) is added to subsection (2) of section 641.35, Florida Statutes, to read:

641.35 Assets, liabilities, and investments.—

(2) ASSETS NOT ALLOWED.—In addition to assets impliedly excluded by the provisions of subsection (1), the following assets are ~~expressly shall~~ not ~~be~~ allowed as assets in any

determination of the financial condition of a health maintenance organization:

(j) Beginning on or after January 1, 2016, any receivables from a management services organization pursuant to contract with the health maintenance organization.

Section 11. Section 641.365, Florida Statutes, is repealed.

Section 12. Paragraph (b) of subsection (2) of section 817.234, Florida Statutes, is amended to read:

817.234 False and fraudulent insurance claims.—

(2)

(b) In addition to any other provision of law, systematic upcoding by a provider, as defined in s. 641.19~~(14)~~, with the intent to obtain reimbursement otherwise not due from an insurer is punishable as provided in s. 641.52(5).

Section 13. Subsection (1) of section 817.50, Florida Statutes, is amended to read:

817.50 Fraudulently obtaining goods, services, etc., from a health care provider.—

(1) Whoever shall, willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise, or services from any health care provider in this state, as defined in s. 641.19~~(14)~~, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 14. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" where it occurs in this act with the date the act becomes a law.

Section 15. Except as otherwise provided, this act shall take effect upon becoming a law.