

1                                   A bill to be entitled  
2           An act relating to solvency of health maintenance and  
3           prepaid limited health service organizations; amending  
4           s. 636.004, F.S.; defining the term "life and health  
5           insurer"; amending s. 636.043, F.S.; revising  
6           requirements for annual, quarterly, and miscellaneous  
7           reports by a prepaid limited health service  
8           organization; amending s. 641.19, F.S.; defining the  
9           term "medical services organization"; amending s.  
10          641.201, F.S.; providing for applicability; providing  
11          that health maintenance organizations are insurers for  
12          the purposes of certain statutes; providing  
13          alternative calculations for determining certain  
14          insurance premiums of health maintenance  
15          organizations; defining the term "life and health  
16          insurer"; amending s. 641.225, F.S.; revising certain  
17          surplus requirements for health maintenance  
18          organizations; conforming provisions to changes made  
19          by the act; amending s. 641.26, F.S.; revising  
20          requirements for annual and quarterly reports by a  
21          health maintenance organization; amending s. 641.27,  
22          F.S.; revising provisions regarding payment of  
23          expenses for examinations of health maintenance  
24          organizations; amending s. 641.35, F.S.; providing  
25          that certain assets of a health maintenance  
26          organization may not be considered assets for purposes

27 of determining the financial condition of the  
 28 organization; repealing s. 641.365, F.S., relating to  
 29 payment of dividends by health maintenance  
 30 organizations; providing an effective date.

31

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

33

34 Section 1. Section 636.004, Florida Statutes, is amended  
 35 to read:

36 636.004 Applicability of other laws.—

37 (1) Except as provided in this act, prepaid limited health  
 38 service organizations are governed by the provisions of this act  
 39 and are exempt from the Florida Insurance Code unless  
 40 specifically referenced.

41 (2) For purposes of s. 624.4085, the term "life and health  
 42 insurer" includes a prepaid limited health service organization,  
 43 as defined in s. 636.003, initially authorized in this state on  
 44 or after July 1, 2015, and not authorized in any other state,  
 45 jurisdiction, or country.

46 Section 2. Subsections (1) and (4) of section 636.043,  
 47 Florida Statutes, are amended to read:

48 636.043 Annual, quarterly, and miscellaneous reports.—

49 (1) Each prepaid limited health service organization must  
 50 file an annual report with the office on or before March 1 of  
 51 each year showing its condition on the last day of the preceding  
 52 calendar year. The report must be annually, within 3 months

53 ~~after the end of its fiscal year, a report~~ verified by the oath  
54 of at least two officers ~~covering the preceding calendar year.~~  
55 ~~Any organization licensed prior to October 1, 1993, shall not be~~  
56 ~~required to file a financial statement, as required by paragraph~~  
57 ~~(2) (a), based on statutory accounting principles until the first~~  
58 ~~annual report for fiscal years ending after December 31, 1994.~~

59 (4) Each authorized prepaid limited health service  
60 organization must file a quarterly report for the first three  
61 calendar quarters of each year. The statement for the quarter  
62 ending March 31 must be filed with the office on or before May  
63 15, the statement for the quarter ending June 30 must be filed  
64 with the office on or before August 15, and the statement for  
65 the quarter ending September 30 must be filed with the office on  
66 or before November 15 ~~each calendar quarter within 45 days after~~  
67 ~~the end of the quarter.~~ The report shall contain:

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

75 (b) A listing of providers.

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

79 Section 3. Subsection (23) is added to section 641.19,  
80 Florida Statutes, to read:

81 641.19 Definitions.—As used in this part, the term:  
82 (23) "Medical services organization," means an entity  
83 providing one or more medical practice management services to  
84 health care providers, including, but not limited to,  
85 administrative, financial, operational, personnel, records  
86 management, educational, compliance, or managed care services.

87 Section 4. Section 641.201, Florida Statutes, is amended  
88 to read:

89 641.201 Applicability of other laws.—

90 (1) Except as provided in this part, health maintenance  
91 organizations shall be governed by the provisions of this part  
92 and part III of this chapter and shall be exempt from all other  
93 provisions of the Florida Insurance Code except those provisions  
94 of the Florida Insurance Code, including provisions specified in  
95 this section, that are explicitly made applicable to health  
96 maintenance organizations.

97 (2) (a) Health maintenance organizations shall be  
98 considered insurers for purposes of ss. 624.4073, 628.231,  
99 628.371, 628.381, and 628.391.

100 (b) Health maintenance organizations shall be considered  
101 insurers for purposes of s. 624.4095, except that in calculating  
102 the premium to surplus ratio of a health maintenance  
103 organization pursuant to s. 624.4095(1), actual or projected  
104 risk revenue shall be added to actual or projected written

105 premiums.

106 (3) For purposes of s. 624.4085, the term "life and health  
 107 insurer" shall also include a health maintenance organization  
 108 and a prepaid limited health service organization, as defined in  
 109 s. 636.003, initially authorized in this state on or after July  
 110 1, 2015, and not authorized in any other state, jurisdiction, or  
 111 country.

112 Section 5. Subsections (1) and (2) of section 641.225,  
 113 Florida Statutes, are amended to read:

114 641.225 Surplus requirements.—

115 (1) (a) Each health maintenance organization holding a  
 116 certificate of authority issued before July 1, 2015, shall at  
 117 all times maintain a minimum surplus in an amount that is the  
 118 greater of:

- 119 1. Ten ~~\$1,500,000, or 10~~ percent of total liabilities; ~~or~~
- 120 2. Two ~~2~~ percent of total annualized premium; or
- 121 3. \$1.5 million until June 30, 2017; \$3 million on or  
 122 after July 1, 2017, and until June 30, 2021; \$6 million on or  
 123 after July 1, 2021, and until June 30, 2025; and \$10 million on  
 124 or after July 1, 2025.

125 (b) Each health maintenance organization holding a  
 126 certificate of authority issued on or after July 1, 2015, shall  
 127 at all times maintain a minimum surplus in an amount that is the  
 128 greater of:

- 129 1. Ten percent of total liabilities;
- 130 2. Two percent of total annualized premium; or

131 3. Ten million.

132 ~~(2) The office shall not issue a certificate of authority,~~  
133 ~~except as provided in subsection (3), unless the health~~  
134 ~~maintenance organization has a minimum surplus in an amount~~  
135 ~~which is the greater of:~~

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

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

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

144 Section 6. Subsections (1), (3), and (5) of section  
145 641.26, Florida Statutes, are amended to read:

146 641.26 Annual and quarterly reports.—

147 (1) Every health maintenance organization shall file an  
148 annual report with the office on or before March 1 of each year  
149 showing its condition on the last day of the preceding calendar  
150 year. The report must be, annually within 3 months after the end  
151 of its fiscal year, or within an extension of time therefor as  
152 the office, for good cause, may grant, in a form prescribed by  
153 the commission, file a report with the office, verified by the  
154 oath of two officers of the organization or, if not a  
155 corporation, of two persons who are principal managing directors  
156 of the affairs of the organization and, properly notarized on a

157 form prescribed by the commission. For good cause, the office  
158 may grant the organization an extension of time to file the  
159 report. The report must ~~, showing its condition on the last day~~  
160 ~~of the immediately preceding reporting period. Such report shall~~  
161 include:

162 (a) A financial statement of the health maintenance  
163 organization filed by electronic means in a computer-readable  
164 form using a format acceptable to the office.

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

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

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

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

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

181 1. The health maintenance organization is actuarially  
182 sound, which certification must ~~shall~~ consider the rates,

183 benefits, and expenses of, and any other funds available for the  
 184 payment of obligations of, the organization.

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

188 3. The health maintenance organization has adequately  
 189 provided for incurred but not reported claims and claims  
 190 reported but not fully paid ~~have been adequately provided for.~~

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

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

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

206 (3) (a) Every health maintenance organization must ~~shall~~  
 207 file quarterly, for the first three calendar quarters of each  
 208 year, an unaudited financial statement of the organization as

209 described in paragraphs (1)(a) and (b). The statement for the  
210 quarter ending March 31 must ~~shall~~ be filed with the office on  
211 or before May 15, the statement for the quarter ending June 30  
212 must ~~shall~~ be filed with the office on or before August 15, and  
213 the statement for the quarter ending September 30 must ~~shall~~ be  
214 filed with the office on or before November 15. The quarterly  
215 report must ~~shall~~ be verified by the oath of two officers of the  
216 organization and<sup>7</sup> properly notarized.

217 (b) Every health maintenance organization must file  
218 annually, for the preceding calendar year ending December 31, an  
219 audited financial statement of the organization. The statement  
220 must be filed with the office on or before the following June 1.  
221 The office may require a health maintenance organization to file  
222 an audited financial statement earlier than June 1 upon  
223 notifying the organization at least 90 days in advance. The  
224 audited financial statement must include a balance sheet and  
225 statement of operations for the preceding year certified by an  
226 independent certified public accountant, prepared in accordance  
227 with statutory accounting principles, and, beginning with the  
228 financial statement filed for December 31, 2015, subject to  
229 commission rules applicable to insurer audits.

230 (5) Each authorized health maintenance organization must  
231 ~~shall~~ retain an independent certified public accountant,<sup>7</sup>  
232 ~~referred to in this section as "CPA,"~~ who agrees by written  
233 contract with the health maintenance organization to comply with  
234 the provisions of this part.

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

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

243           (c) The completed work papers and any written  
 244 communications between the certified public accountant ~~CPA~~ firm  
 245 and the health maintenance organization relating to the audit of  
 246 the health maintenance organization must ~~shall~~ be made available  
 247 for review on a visual-inspection-only basis by the office at  
 248 the offices of the health maintenance organization, at the  
 249 office, or at any other reasonable place as mutually agreed  
 250 between the office and the health maintenance organization. The  
 251 certified public accountant ~~CPA~~ must retain for review the work  
 252 papers and written communications for a period of at least ~~not~~  
 253 ~~less than~~ 6 years.

254           (d) The certified public accountant must ~~CPA shall~~ provide  
 255 to the office a written report describing material weaknesses in  
 256 the health maintenance organization's internal control structure  
 257 as noted during the audit. The report must be filed with the  
 258 annual audited financial statement as required in paragraph  
 259 (3) (b). The health maintenance organization must provide a  
 260 description of remedial actions taken or proposed to correct

261 material weaknesses if the actions are not described in the  
 262 report.

263 Section 7. Subsection (1) of section 641.27, Florida  
 264 Statutes, is amended to read:

265 641.27 Examination by the office ~~department.~~-

266 (1) The office shall examine the affairs, transactions,  
 267 accounts, business records, and assets of any health maintenance  
 268 organization as often as it deems it expedient for the  
 269 protection of the people of this state, but not less frequently  
 270 than once every 5 years. However, except when the medical  
 271 records are requested and copies furnished pursuant to s.  
 272 456.057, medical records of individuals and records of  
 273 physicians providing service under contract to the health  
 274 maintenance organization shall not be subject to audit, although  
 275 they may be subject to subpoena by court order upon a showing of  
 276 good cause. For the purpose of examinations, the office may  
 277 administer oaths to and examine the officers and agents of a  
 278 health maintenance organization concerning its business and  
 279 affairs. The examination of each health maintenance organization  
 280 by the office, including payment of examination expenses, shall  
 281 be subject to the same terms and conditions as apply to insurers  
 282 under chapter 624. ~~In no event shall expenses of all~~  
 283 ~~examinations exceed a maximum of \$50,000 for any 1-year period.~~  
 284 Any rehabilitation, liquidation, conservation, or dissolution of  
 285 a health maintenance organization shall be conducted under the  
 286 supervision of the department, which shall have all power with

287 | respect thereto granted to it under the laws governing the  
288 | rehabilitation, liquidation, reorganization, conservation, or  
289 | dissolution of life insurance companies.

290 |       Section 8. Paragraph (j) is added to subsection (2) of  
291 | section 641.35, Florida Statutes, to read:

292 |       641.35 Assets, liabilities, and investments.—

293 |       (2) ASSETS NOT ALLOWED.—In addition to assets impliedly  
294 | excluded by the provisions of subsection (1), the following  
295 | assets expressly shall not be allowed as assets in any  
296 | determination of the financial condition of a health maintenance  
297 | organization:

298 |       (j) Beginning January 1, 2016, accounts receivable from a  
299 | medical services organization, as defined in s. 641.19, pursuant  
300 | to a contract with the health maintenance organization.

301 |       Section 9. Section 641.365, Florida Statutes, is repealed.

302 |       Section 10. This act shall take effect July 1, 2015.