A bill to be entitled
An act relating to health insurance; amending s. 641.19, F.S.; revising definitions; amending s. 641.51, F.S.; deleting a provision that provides that health maintenance organizations are not vicariously liable for certain medical negligence except under certain circumstances; amending s. 641.3917, F.S.; authorizing specified persons to bring a civil action against a health maintenance organization for certain violations; providing for construction; specifying a health maintenance organization’s liability for such violations; repealing s. 768.0981, F.S., relating to a limitation on actions against insurers, prepaid limited health service organizations, health maintenance organizations, or prepaid health clinics; providing applicability; providing an effective date.

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

Section 1. Subsections (11), (12), and (18) of section 641.19, Florida Statutes, are amended to read:

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

(11) “Health maintenance contract” means any contract entered into by a health maintenance organization with a subscriber or group of subscribers to provide coverage for comprehensive health care services in exchange for a prepaid per capita or prepaid aggregate fixed sum.

(12) “Health maintenance organization” means any organization authorized under this part which:

(a) Provides, through arrangements with other persons, emergency care; inpatient hospital services; physician care, including care provided by physicians licensed under chapters...
458, 459, 460, and 461 ambulatory diagnostic treatment and preventive health care services.

(b) Provides, either directly or through arrangements with other persons, health care services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis.

(c) Provides, either directly or through arrangements with other persons, comprehensive health care services which subscribers are entitled to receive pursuant to a contract.

(d) Provides physician services, by physicians licensed under chapters 458, 459, 460, and 461, directly through physicians who are either employees or partners of such organization or under arrangements with a physician or any group of physicians.

(e) If offering services through a managed care system, has a system in which a primary physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 is designated for each subscriber upon request of a subscriber requesting service by a physician licensed under any of those chapters, and is responsible for coordinating the health care of the subscriber of the respectively requested service and for referring the subscriber to other providers of the same discipline when necessary. Each female subscriber may select as her primary physician an obstetrician/gynecologist who has agreed to serve as a primary physician and is in the health maintenance organization’s provider network.

Except in cases in which the health care provider is an employee of the health maintenance organization, the fact that the health
maintenance organization arranges for the provision of health

care services under this chapter does not create an actual
agency, apparent agency, or employer-employee relationship
between the health care provider and the health maintenance
organization for purposes of vicarious liability for the medical
negligence of the health care provider.

(18) “Subscriber” means an entity or individual who has
contracted, or on whose behalf a contract has been entered into,
with a health maintenance organization for health care services
coverage or other persons who also receive health care services
coverage as a result of the contract.

Section 2. Subsection (3) of section 641.51, Florida
Statutes, is amended to read:

641.51 Quality assurance program; second medical opinion
requirement.—

(3) The health maintenance organization shall not have the
right to control the professional judgment of a physician
licensed under chapter 458, chapter 459, chapter 460, or chapter
461 concerning the proper course of treatment of a subscriber.
However, this subsection shall not be considered to restrict a
utilization management program established by an organization or
to affect an organization’s decision as to payment for covered
services. Except in cases in which the health care provider is
an employee of the health maintenance organization, the health
maintenance organization shall not be vicariously liable for the
medical negligence of the health care provider, whether such
claim is alleged under a theory of actual agency, apparent
agency, or employer-employee relationship.

Section 3. Section 641.3917, Florida Statutes, is amended
641.3917 Civil liability.—

(1) The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department or office shall abrogate such rights to damage or other relief in any court.

(2) Any person to whom a duty is owed may bring a civil action against a health maintenance organization when such person suffers damages as a result of the health maintenance organization’s:

   (a) Violation of s. 641.3155, s. 641.3903(5), (10), (12), (13), or (14), or s. 641.51; or

   (b) Failure to provide a covered service, when the health maintenance organization in good faith should have provided such service had it acted fairly and reasonably toward the subscriber or enrollee and with due regard for his or her interests, and such service is medically reasonable or necessary in the independent medical judgment of a treating physician under contract with, or another physician authorized by, the health maintenance organization.

A person bringing an action under this subsection need not prove that such act was committed or performed with such frequency as to indicate a general business practice.

(3) The health maintenance organization is liable for all of the claimant’s damages or $500 per violation, whichever is greater. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive
damages. In an action or proceeding brought under this subsection, the court shall award a prevailing plaintiff reasonable attorney fees as part of the costs.

Section 4. Section 768.0981, Florida Statutes, is repealed.

Section 5. The amendments to ss. 641.19, 641.51, and 641.3917, Florida Statutes, made by this act and the repeal of s. 768.0981, Florida Statutes, by this act apply to causes of action accruing on or after the effective date of this act.

Section 6. This act shall take effect October 1, 2017.