CHAPTER 97-92

Committee Substitute for Committee Substitute for Senate Bill No. 286

An act relating to state group insurance; amending s. 20.22, F.S.; renaming the Division of State Employees' Insurance within the Department of Management Services as the Division of State Group Insurance; creating the Florida State Group Insurance Council within the department; providing its membership; providing its powers and duties; providing for meetings; providing travel and per diem; amending s. 20.42, F.S.; eliminating duties of the Division of State Health Purchasing of the Agency for Health Care Administration with respect to state employee health insurance; amending s. 110.123, F.S.; defining the term "division"; creating the Division of State Group Insurance within the Department of Management Services and requiring that department to provide administrative support and service to the division; excluding the division from control, supervision, or direction by the department; providing for a director of the division; providing requirements; providing for administration of the state group insurance program by the division; providing criteria for division contracts with insuring entities; requiring notice by certain health care providers; authorizing the division to adopt rules; amending s. 110.12315, F.S.; assigning the Division of State Group Insurance duties relating to the prescription drug program; amending s. 110.1232, F.S.; assigning the Division of State Group Insurance duties relating to health insurance coverage for persons retired under state-administered retirement before a specified date; amending s. 110.1234, F.S.; assigning the Division of State Group Insurance duties relating to health insurance for retirees under the Florida Retirement System or Medicare Supplement; amending s. 110.161, F.S.; assigning the Division of State Group Insurance duties relating to the pretax benefits program; providing an effective date.

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

Section 1. Paragraph (j) of subsection (2) of section 20.22, Florida Statutes, is amended and subsection (5) is added to read:

20.22 Department of Management Services.—There is created a Department of Management Services.

(2) The following divisions and bureaus within the Department of Management Services are established:

(a) Division of Administration.

(b) Division of Building Construction.

(c) Division of Communications.

(d) Division of Facilities Management.

(e) Division of Information Services.

(f) Division of Motor Pool.

1. Bureau of Aircraft.

2. Bureau of Motor Vehicles.

(g) Division of Personnel Management Services.

1. Office of Labor Relations.

(h) Division of Purchasing.

1. Bureau of Federal Property Assistance.

(i) Division of Retirement.

(j) Division of State Group ~~Employees'~~ Insurance.

(k) Division of Administrative Hearings.

(l) Division of Capitol Police.

(5)(a) The Florida State Group Insurance Council is created within the division for the purpose of providing joint and coordinated oversight of the operation and administration of the state group insurance program. The council shall consist of the state budget director; an individual from the private sector with an extensive health administration background, appointed by the Governor; a member of the Florida Senate, appointed by the President of the Senate; a member of the Florida House of Representatives, appointed by the Speaker of the House of Representatives; a representative of the State University System, appointed by the Board of Regents; the State Insurance Commissioner or his designee; the director of the Division of Retirement; and two representatives of employees and retirees, appointed by the Governor. Members of the council appointed by the Governor shall be appointed to serve terms of 4 years each. Each member of the council shall serve until a successor is appointed. Additionally, the director of the Division of State Employee Insurance shall be a nonvoting member of the council.

(b) Of the two members representing employees, one member must be appointed in such a manner as to represent state-employee bargaining units, and one member must be a retired employee. Each member must be a resident of the state.

(c) The council is assigned to the Division of State Group Insurance for administrative and fiscal accountability purposes, but the council and its staff shall otherwise function independently of the control and direction of the division. The Division of State Group Insurance shall furnish dedicated administrative and secretarial assistance to the council, and other assistance to the council as requested.

(d) The council shall have the primary functions to:

1. Recommend accountability measures and review the implementation of performance-based program budgeting measures under which the Division of State Group Insurance operates.

2. Review and recommend procedures and criteria for contract selection before any contract solicitation.

3. Review and make recommendations regarding insurance benefit packages.

4. Review external audit reports, service organization reports, compliance reviews, or other contractually required management reports relating to third-party administrator activities to determine areas that potentially may require division action.

5. Review third-party administrator management reports leading to conclusions regarding report completion, accuracy, validity, and reasonableness.

6. Review third-party administrator overpayment and refund collection activities to provide assurances that health plan assets are safeguarded.

7. Review use of detailed provider/subscriber surveys designed to detect potential problem areas with the state group insurance program and make recommendations to the director.

8. Review reports and make recommendations to safeguard the financial stability of the group insurance program.

(e) The council or a member thereof may not enter into the day-to-day operation of the division and is specifically prohibited from taking part in:

1. The awarding of contracts.

2. The selection of a consultant or contractor or the prequalification of any individual consultant or contractor. However, the council may recommend to the director standards and policies governing the procedure for selection and prequalification of consultants and contractors.

3. The employment, promotion, demotion, suspension, transfer, or discharge of any division personnel.

4. The granting, denial, suspension, or revocation of any license or permit issued by the division.

(f)1. The chair and any other officers of the council shall be selected by the council members for a 1-year term but may succeed themselves.

2. The council shall hold a minimum of four regular meetings annually, and other meetings may be called by the chair upon giving at least 1 week's notice to all members and the public pursuant to chapter 120. Other meetings may also be held upon the written request of at least four other members of the council, with at least 1 week's notice of such meeting being given

to all members and the public by the chair pursuant to chapter 120. Emergency meetings may be held without notice upon the request of all members of the council.

3. A majority of the membership of the council constitutes a quorum at any meeting of the council. An action of the council is not considered adopted unless the action is taken pursuant to the affirmative vote of a majority of the members present, but not fewer than four members of the council at a meeting held pursuant to subparagraph 2., and the vote is recorded in the minutes of that meeting.

4. The chair shall cause to be made a complete record of the proceedings of the council. The proceedings of the council shall be open to the public and the records shall be open for public inspection.

(g) The meetings of the council shall be held in the central office of the department in Tallahassee unless the chair determines that special circumstances warrant meeting at another location.

(h) Members of the council are entitled to per diem and travel expenses pursuant to s. 112.061.

Section 2. Paragraph (c) of subsection (2) of section 20.42, Florida Statutes, 1996 Supplement, is amended to read:

20.42 Agency for Health Care Administration.—There is created the Agency for Health Care Administration within the Department of Business and Professional Regulation. The agency shall be a separate budget entity, and the director of the agency shall be the agency head for all purposes. The agency shall not be subject to control, supervision, or direction by the Department of Business and Professional Regulation in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) ORGANIZATION OF THE AGENCY.—The agency shall be organized as follows:

(c) The Division of State Health Purchasing~~, which~~ shall be responsible for the Medicaid program ~~and the state employee health insurance program functions related to: the procurement of the administrator of the state employee health insurance plan; the development of the plan's benefit design; the establishment of the plan's cost sharing and cost containment requirements; the creation and maintenance of administrative cost controls; the collection and analysis of data; and the monitoring and evaluation of the administrator and provider network performance~~. The division shall also administer the contracts with the Florida Health Access Corporation program and the Florida Health Care Purchasing Cooperative and the Florida Healthy Kids Corporation.

Section 3. Section 110.123, Florida Statutes, 1996 Supplement, is amended to read:

110.123 State group insurance program.—

(1) TITLE.—This section may be cited as the "State Group Insurance Program Law."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Department" means the Department of Management Services.

(b) "Division" means the Division of State Group Insurance in the department.

(c)~~(b)~~ "Enrollee" means all state officers and employees, retired state officers and employees, and surviving spouses of deceased state officers and employees enrolled in an insurance plan offered by the state group insurance program.

(d)~~(c)~~ "Full-time state employees" includes all full-time employees of all branches or agencies of state government holding salaried positions and paid by state warrant or from agency funds, and employees paid from regular salary appropriations for 8 months' employment, including university personnel on academic contracts, but in no case shall "state employee" or "salaried position" include persons paid from other-personal-services (OPS) funds.

(e)~~(d)~~ "Health maintenance organization" or "HMO" means an entity certified under part I of chapter 641.

(f)~~(e)~~ "Part-time state employee" means any employee of any branch or agency of state government paid by state warrant from salary appropriations or from agency funds, and who is employed for less than the normal full-time workweek established by the department or, if on academic contract or seasonal or other type of employment which is less than year-round, is employed for less than 8 months during any 12-month period, but in no case shall "part-time" employee include a person paid from other-personal-services (OPS) funds.

(g)~~(f)~~ "Retired state officer or employee" or "retiree" means any state officer or state employee who retires under a state retirement system or a state optional annuity or retirement program or is placed on disability retirement, and who was insured under the state group insurance program at the time of retirement, and who begins receiving retirement benefits immediately after retirement from state office or employment.

(h)~~(g)~~ "State agency" or "agency" means any branch, department, or agency of state government.

(i)~~(h)~~ "State group health insurance plan" means the state self-insured health insurance plan offered to state officers and employees, retired state officers and employees, and surviving spouses of deceased state officers and employees pursuant to this section.

(j)~~(i)~~ "State group insurance program" or "programs" means the package of insurance plans offered to state officers and employees, retired state officers and employees, and surviving spouses of deceased state officers and

employees pursuant to this section, including the state group health insurance plan, health maintenance organization plans, and other plans required or authorized by this section.

(k)~~(j)~~ "State officer" means any constitutional state officer, any elected state officer paid by state warrant, or any appointed state officer who is commissioned by the Governor and who is paid by state warrant.

(l)~~(k)~~ "Surviving spouse" means the widow or widower of a deceased state officer, full-time state employee, part-time state employee, or retiree if such widow or widower was covered as a dependent under the state group health insurance plan or a health maintenance organization plan established pursuant to this section at the time of the death of the deceased officer, employee, or retiree. "Surviving spouse" also means any widow or widower who is receiving or eligible to receive a monthly state warrant from a state retirement system as the beneficiary of a state officer, full-time state employee, or retiree who died prior to July 1, 1979. For the purposes of this section, any such widow or widower shall cease to be a surviving spouse upon his or her remarriage.

(3) STATE GROUP INSURANCE PROGRAM.—

(a) The Division of State Group Insurance is created within the Department of Management Services, to be headed by a director who shall be appointed by the Governor and confirmed by the Senate. The division shall be a separate budget entity, and the director shall be its agency head for all purposes. The Department of Management Services shall provide administrative support and service to the division to the extent requested by the director. The division shall not be subject to control, supervision, or direction by the Department of Management Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters, except to the extent as provided in chapters 110, 216, 255, 282, and 287 for agencies of the executive branch.

(b) The director shall be a person qualified by training and experience to understand the problems and needs of state employees in the area of health care coverage and insurance issues. The director shall have training and experience in the field of health care reimbursement, insurance or self-insurance programs, and the administration of such programs in the public or private sector.

(c)~~(a)~~ It is the intent of the Legislature to offer a comprehensive package of health insurance benefits for state employees which are provided in a cost-efficient and prudent manner, and to allow state employees the option to choose benefit plans which best suit their individual needs. Therefore, the state group insurance program is established which may include the state group health insurance plan, health maintenance organization plans, group life insurance plans, group accidental death and dismemberment plans, and group disability insurance plans. Furthermore, the division ~~department~~ is additionally authorized to establish and provide as part of the state group insurance program any other group insurance plans which are consistent with the provisions of this section.

(d)~~(b)~~ Notwithstanding any provision in this section to the contrary, it is the intent of the Legislature that the division ~~Agency for Health Care Administration~~ shall be responsible for all aspects of the purchase of health care for state employees under the state group health insurance plan and the health maintenance organizations plans. Responsibilities shall include, but not be limited to, the development of requests for proposals for state employee health services, the determination of health care benefits to be provided, and the negotiation of contracts for health care and health care administrative services. Prior to the negotiation of contracts for health care services, the Legislature intends that the division ~~Agency for Health Care Administration~~ shall develop, in consultation with the Department of Management Services with respect to state collective bargaining issues, the health benefits and terms to be included in the state group health insurance program. The division ~~Agency for Health Care Administration~~ shall adopt rules necessary to perform its responsibilities pursuant to this section. It is the intent of the Legislature that the division ~~Department of Management Services~~ shall be responsible for the contract management and day-to-day management of the state employee health insurance program, including, but not limited to, employee enrollment, premium collection, payment to health care providers, and other administrative functions related to the program.

(e)1. Notwithstanding the provisions of Chapter 287, Florida Statutes, and the authority of the Division of Purchasing, for the purpose of protecting the health of, and providing medical services to, state employees participating in the State Employees' Health Self-Insurance Plan, the Division of State Group Insurance may contract to retain the services of professional administrators for the State Employees' Health Self-Insurance Plan. The agency shall follow good purchasing practices of state procurement to the extent practicable under the circumstances.

2. Each vendor in a major procurement, and any other vendor if the division deems it necessary to protect the state's financial interests, shall, at the time of executing any contract with the division, post an appropriate bond with the division in an amount determined by the division to be adequate to protect the state's interests but not higher than the full amount estimated to be paid annually to the vendor under the contract.

3. Each major contract entered into by the division pursuant to this section shall contain a provision for payment of liquidated damages to the division for material noncompliance by a vendor with a contract provision. The division may require a liquidated damages provision in any contract if the division deems it necessary to protect the state's financial interests.

4. The provisions of s. 120.57(3) apply to the division's contracting process, except:

a. A formal written protest of any decision, intended decision, or other action subject to protest shall be filed within 72 hours after receipt of notice of the decision, intended decision, or other action.

b. As an alternative to any provision of s. 120.57(3), the division may proceed with the bid selection or contract award process if the director of the department sets forth, in writing, particular facts and circumstances which

demonstrate the necessity of continuing the procurement process or the contract award process in order to avoid a substantial disruption to the provision of any scheduled insurance services.

(f)~~(c)~~ Except as provided for in subparagraph (h)~~(e)~~2., the percentage of state contribution toward the cost of any plan in the state group insurance program shall be uniform with respect to all state employees in state collective bargaining units participating in the same plan or any similar plan. Nothing contained within this section prohibits the development of separate benefit plans for officers and employees exempt from collective bargaining or the development of separate benefit plans for each collective bargaining unit.

(g)~~(d)~~ Participation by individuals in the program shall be available to all state officers, full-time state employees, and part-time state employees; and such participation in the program or any plan thereof shall be voluntary. Participation in the program shall also be available to retired state officers and employees who elect at the time of retirement to continue coverage under the program, but they may elect to continue all or only part of the coverage they had at the time of retirement. A surviving spouse may elect to continue coverage only under the state group health insurance plan or a health maintenance organization plan.

(h)~~(e)~~1. A person eligible to participate in the state group health insurance plan may be authorized by rules ~~approved by the Agency for Health Care Administration and~~ adopted by the division ~~department~~, in lieu of participating in the state group health insurance plan, to exercise an option to elect membership in a health maintenance organization plan which is under contract with the state in accordance with criteria established by this section and by said rules. The offer of optional membership in a health maintenance organization plan permitted by this paragraph may be limited or conditioned by rule as may be necessary to meet the requirements of state and federal laws.

2. ~~Subject to the approval of and supervision by the Agency for Health Care Administration,~~ The division ~~department~~ shall contract with health maintenance organizations to participate in the state group insurance program through a request for proposal based upon a premium and a minimum benefit package as follows:

a. A minimum benefit package to be provided by a participating HMO shall include: physician services; inpatient and outpatient hospital services; emergency medical services, including out-of-area emergency coverage; diagnostic laboratory and diagnostic and therapeutic radiologic services; mental health, alcohol, and chemical dependency treatment services meeting the minimum requirements of state and federal law; skilled nursing facilities and services; prescription drugs; and other benefits as may be required by the division ~~department~~. Additional services may be provided subject to the contract between the division ~~department~~ and the HMO.

b. A uniform schedule for deductibles and copayments may be established for all participating HMOs.

c. Based upon the minimum benefit package and copayments and deductibles contained in sub-subparagraphs a. and b., the division ~~Agency for Health Care Administration~~ shall issue a request for proposal for all HMOs which are interested in participating in the state group insurance program. Upon receipt of all proposals, the division ~~Agency for Health Care Administration~~ may, as it deems appropriate, enter into contract negotiations with HMOs submitting bids. As part of the request for proposal process, the division ~~Agency for Health Care Administration~~ may require detailed financial data from each HMO which participates in the bidding process for the purpose of determining the financial stability of the HMO.

d. In determining which HMOs to contract with, the division ~~Agency for Health Care Administration~~ shall, at a minimum, consider: each proposed contractor's previous experience and expertise in providing prepaid health benefits; each proposed contractor's historical experience in enrolling and providing health care services to participants in the state group insurance program; the cost of the premiums; the plan's ability to adequately provide service coverage and administrative support services as determined by the division ~~Agency for Health Care Administration~~; plan benefits in addition to the minimum benefit package; accessibility to providers; and the financial solvency of the plan. Nothing shall preclude the division ~~Agency for Health Care Administration~~ from negotiating regional or statewide contracts with health maintenance organization plans when this is cost-effective and when the division ~~Agency for Health Care Administration~~ determines the plan has the best overall benefit package for the service areas involved. However, no HMO shall be eligible for a contract if the HMO's retiree Medicare premium exceeds the retiree rate as set by the division ~~department~~ for the state group health insurance plan.

e. The division ~~department, subject to the review and approval of the Agency for Health Care Administration,~~ may limit the number of HMOs that it contracts with in each service area based on the nature of the bids the division ~~Agency for Health Care Administration~~ receives, the number of state employees in the service area, and any unique geographical characteristics of the service area. The division ~~department, subject to the review and approval of the Agency for Health Care Administration,~~ shall establish by rule service areas throughout the state.

f. All persons participating in the state group insurance program who are required to contribute towards a total state group health premium shall be subject to the same dollar contribution regardless of whether the enrollee enrolls in the state group health insurance plan or in an HMO plan.

3. The division ~~Agency for Health Care Administration~~ is authorized to negotiate and ~~the department is authorized~~ to contract with specialty psychiatric hospitals for mental health benefits, on a regional basis, for alcohol, drug abuse, and mental and nervous disorders. The division ~~department~~ may establish, subject to the approval of ~~the Agency for Health Care Administration and~~ the Legislature pursuant to subsection (5), any such regional plan upon completion of an actuarial study to determine any impact on plan benefits and premiums.

4. In addition to contracting pursuant to subparagraph 2., the division ~~department~~ shall enter into contract with any HMO to participate in the state group insurance program which:

a. Serves greater than 5,000 recipients on a prepaid basis under the Medicaid program;

b. Does not currently meet the 25 percent non-Medicare/non-Medicaid enrollment composition requirement established by the Department of Health and Human Services excluding participants enrolled in the state group insurance program;

c. Meets the minimum benefit package and copayments and deductibles contained in sub-subparagraphs 2.a. and b.;

d. Is willing to participate in the state group insurance program at a cost of premiums that is not greater than 95 percent of the cost of HMO premiums accepted by the division ~~department~~ in each service area; and

e. Meets the minimum surplus requirements of s. 641.225.

The division ~~department~~ is authorized to contract with HMOs that meet the requirements of sub-subparagraphs a. through d. prior to the open enrollment period for state employees. The division ~~department~~ is not required to renew the contract with the HMOs as set forth in this paragraph more than twice. Thereafter, the HMOs shall be eligible to participate in the state group insurance program only through the request for proposal process described in subparagraph 2.

5. All enrollees in the state group health insurance plan or any health maintenance organization plan shall have the option of changing to any other health plan which is offered by the state within any open enrollment period designated by the division ~~department~~. Open enrollment shall be held at least once each calendar year.

6. Any HMO participating in the state group insurance program shall, upon the request of the division ~~Agency for Health Care Administration~~, submit to the division ~~Agency for Health Care Administration~~ standardized data for the purpose of comparison of the appropriateness, quality, and efficiency of care provided by the HMO. Such standardized data shall include: membership profiles; inpatient and outpatient utilization by age and sex, type of service, provider type, and facility; and emergency care experience. Requirements and timetables for submission of such standardized data and such other data as the division ~~Agency for Health Care Administration~~ deems necessary to evaluate the performance of participating HMOs shall be adopted ~~promulgated~~ by rule.

7. The division ~~department~~ shall, after consultation with ~~the Agency for Health Care Administration and~~ representatives from each of the unions representing state and university employees, establish a comprehensive package of insurance benefits including, but not limited to, supplemental health and life coverage, dental care, long-term care, and vision care to allow

state employees the option to choose the benefit plans which best suit their individual needs.

a. Based upon a desired benefit package, the division ~~Agency for Health Care Administration~~ shall issue a request for proposal for health insurance providers interested in participating in the state group insurance program, and the division ~~department~~ shall issue a request for proposal for insurance providers interested in participating in the non-health-related components of the state group insurance program. Upon receipt of all proposals, the division ~~department or the Agency for Health Care Administration~~ may~~, as either deems appropriate,~~ enter into contract negotiations with insurance providers submitting bids or negotiate a specially designed benefit package. Insurance providers offering or providing supplemental coverage as of May 30, 1991, which qualify for pretax benefit treatment pursuant to s. 125 of the Internal Revenue Code of 1986, with 5,500 or more state employees currently enrolled may be included by the division ~~department~~ in the supplemental insurance benefit plan established by the division ~~department or the Agency for Health Care Administration~~ without participating in a request for proposal, submitting bids, negotiating contracts, or negotiating a specially designed benefit package. These contracts shall provide state employees with the most cost-effective and comprehensive coverage available; however, no state or agency funds shall be contributed toward the cost of any part of the premium of such supplemental benefit plans.

b. Pursuant to the applicable provisions of s. 110.161, and s. 125 of the Internal Revenue Code of 1986, the division ~~department~~ shall enroll in the pretax benefit program those state employees who voluntarily elect coverage in any of the supplemental insurance benefit plans as provided by sub-subparagraph a.

c. Nothing herein contained shall be construed to prohibit insurance providers from continuing to provide or offer supplemental benefit coverage to state employees as provided under existing agency plans.

(h)~~(f)~~ The benefits of the insurance authorized by this section shall not be in lieu of any benefits payable under chapter 440, the Workers' Compensation Law. The insurance authorized by this law shall not be deemed to constitute insurance to secure workers' compensation benefits as required by chapter 440.

(4) PAYMENT OF PREMIUMS; CONTRIBUTION BY STATE; LIMITATION ON ACTIONS TO PAY AND COLLECT PREMIUMS.—

(a) Except as provided in paragraph (e) with respect to law enforcement, correctional, and correctional probation officers, legislative authorization through the appropriations act is required for payment by a state agency of any part of the premium cost of participation in any group insurance plan. However, the state contribution for full-time employees or part-time permanent employees shall continue in the respective proportions for up to 6 months for any such officer or employee who has been granted an approved parental or medical leave of absence without pay.

(b) If a state officer or full-time state employee selects membership in a health maintenance organization as authorized by paragraph (3)(g)~~(e)~~, the officer or employee is entitled to a state contribution toward individual and dependent membership as provided by the Legislature through the appropriations act.

(c) During each policy or budget year, no state agency shall contribute a greater percentage of the premium cost for its officers or employees for any type of coverage under the state group insurance program than any other agency, nor shall any greater percentage contribution of premium cost be made for employees in one state collective bargaining unit than for those in any other state collective bargaining unit.

(d) The state contribution for a part-time permanent state employee who elects to participate in the program shall be prorated so that the percentage of the cost contributed for the part-time permanent employee bears that relation to the percentage of cost contributed for a similar full-time employee that the part-time employee's normal workday bears to a full-time employee's normal workday.

(e) No state contribution for the cost of any part of the premium shall be made for retirees or surviving spouses for any type of coverage under the state group insurance program. However, any state agency that employs a full-time law enforcement officer, correctional officer, or correctional probation officer who is killed in the line of duty on or after July 1, 1980, as a result of an act of violence inflicted by another person while the officer is engaged in the performance of law enforcement duties or as a result of an assault against the officer under riot conditions shall pay the entire premium of the state group health insurance plan for the employee's surviving spouse until remarried, and for each dependent child of the employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if:

1. At the time of the employee's death, the child is dependent upon the employee for support; and

2. The surviving child continues to be a dependent for support, or the surviving child is a full-time or part-time student and is dependent for support.

(f) Pursuant to the request of each state officer, full-time or part-time state employee, or retiree participating in the state group insurance program, and upon certification of the employing agency approved by the Division of State Group Insurance ~~Secretary of Management Services~~, the Comptroller shall deduct from the salary or retirement warrant payable to each participant the amount so certified and shall handle such deductions in accordance with rules established by the division ~~department~~.

(g) No administrative or civil proceeding shall be commenced to collect an underpayment or refund an overpayment of premiums collected pursuant to this subsection unless such claim is filed with the Division of State Group ~~Employees'~~ Insurance within 2 years after the alleged underpayment

or overpayment was made. For purposes of this paragraph, a payroll deduction, salary reduction, or contribution by an agency is deemed to be made on the date the salary warrant is issued.

(5) DIVISION OF STATE GROUP INSURANCE ~~DEPARTMENT OF MANAGEMENT SERVICES~~; POWERS AND DUTIES.—The division ~~Department of Management Services~~ is responsible for the administration of the state group insurance program. The division ~~department~~ shall initiate and supervise the program as established by this section and shall adopt such rules as are necessary to perform its responsibilities. To implement this program, the division ~~department~~ shall, with prior approval by the Legislature ~~and, for state employee health insurance, by the Agency for Health Care Administration~~:

(a) Determine the benefits to be provided and the contributions to be required for the state group insurance program. Such determinations, whether for a contracted plan or a self-insurance plan pursuant to paragraph (c), do not constitute rules within the meaning of s. 120.52 or final orders within the meaning of s. 120.52. Any physician's fee schedule used in the health and accident plan shall not be available for inspection or copying by medical providers or other persons not involved in the administration of the program. However, in the determination of the design of the program, the division ~~department or the Agency for Health Care Administration~~ shall consider existing and complementary benefits provided by the Florida Retirement System and the Social Security System.

(b) Prepare, in cooperation with the Department of Insurance ~~and the Agency for Health Care Administration~~, the specifications necessary to implement the program.

(c) Contract on a competitive proposal basis with an insurance carrier or carriers, or professional administrator, determined by the Department of Insurance to be fully qualified, financially sound, and capable of meeting all servicing requirements. Alternatively, the division ~~Department of Management Services~~ may self-insure any plan or plans contained in the state group insurance program subject to approval based on actuarial soundness by the Department of Insurance. The division ~~department~~ may contract with an insurance company or professional administrator qualified and approved by the Department of Insurance to administer such plan. Before entering into any contract, the division ~~Department of Management Services or, for state employee health insurance, the Agency for Health Care Administration~~ shall advertise for competitive proposals, and such contract shall be let upon the consideration of the benefits provided in relationship to the cost of such benefits. In determining which entity to contract with, the division shall, at a minimum, consider: the entity's previous experience and expertise in administering group insurance programs of the type it proposes to administer; the entity's ability to specifically perform its contractual obligations in this state and other governmental jurisdictions; the entity's anticipated administrative costs and claims experience; the entity's capability to adequately provide service coverage and sufficient number of experienced and qualified personnel in the areas of claims processing, recordkeeping, and underwriting, as determined by the division; the entity's accessibility to state employees and providers; the financial solvency of the entity, and using accepted

business-sector measures of financial performance. The division ~~department, subject to the review and approval of the Agency for Health Care Administration,~~ may contract for medical services which will improve the health or reduce medical costs for employees who participate in the state group insurance plan.

(d) With respect to the state group health insurance plan, be authorized~~, subject to the review and approval of the Agency for Health Care Administration,~~ to require copayments with respect to all providers under the plan.

(e) Have authority to establish~~, subject to the review and approval of the Agency for Health Care Administration,~~ a voluntary program for comprehensive health maintenance, which may include health educational components and health appraisals.

(f) With respect to any contract with an insurance carrier or carriers or professional administrator entered into by the division, require that the state and the enrollees be held harmless and indemnified for any financial loss caused by the failure of the insurance carrier or professional administrator to comply with the terms of the contract.

(g) With respect to any contract with an insurance carrier or carriers, or professional administrator entered into by the division, require that the carrier or professional administrator provide written notice to individual enrollees if any payment due to any health care provider of the enrollee remains unpaid beyond a period of time as specified in the contract.

(h) Have authority to establish a voluntary group long-term care program or other programs to be funded on a pre-tax contribution basis or on a post-tax contribution basis, as the division determines.

Final decisions concerning the existence of coverage or benefits under the state group health insurance plan shall not be delegated or deemed to have been delegated by the division ~~department, except that such decisions shall be subject to the review and approval of the Agency for Health Care Administration~~.

(6) DEPOSIT OF PREMIUMS AND REFUNDS.—Premium dollars collected and not required to pay the costs of the program, prior to being paid to the carrier insurance company, shall be invested, and the earnings from such investment shall be deposited in a trust fund to be designated in the State Treasury and utilized for increased benefits or reduced premiums for the participants or may be used to pay for the administration of the state group insurance program. Any refunds paid the state by the insurance carrier from premium dollar reserves held by the carrier and earned on such refunds shall be deposited in the trust fund and used for such purposes.

(7) CONTINUATION OF AGENCY INSURANCE PLANS.—Nothing contained in this section shall require the discontinuation of any insurance plan provided by any state agency; however, no state or agency funds shall be contributed toward the cost of any part of the premium of such agency plans. Such agency plans shall not be deemed to be included in the state group insurance program.

(8) COVERAGE FOR LEGISLATIVE MEMBERS AND EMPLOYEES.—The Legislature may provide coverage for its members and employees under all or any part of the state group insurance program; may provide coverage for its members and employees under a legislative group insurance program in lieu of all or any part of the state group insurance program; and, notwithstanding the provisions of paragraph (4)(c), may assume the cost of any group insurance coverage provided to its members and employees.

(9) PUBLIC RECORDS LAW; EXEMPTION.—Patient medical records and medical claims records of state employees, former employees, and eligible dependents in the custody or control of the state group insurance program are confidential and exempt from the provisions of s. 119.07(1). Such records shall not be furnished to any person other than the employee or the employee's legal representative, except upon written authorization of the employee, but may be furnished in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the employee or the employee's legal representative by the party seeking such records.

(10) STATEMENTS OF PURPOSE AND INTENT AND OTHER PROVISIONS REQUIRED FOR QUALIFICATION UNDER THE INTERNAL REVENUE CODE OF THE UNITED STATES.—Any other provisions in this chapter to the contrary notwithstanding:

(a) Any provision in this chapter relating to a state group insurance program shall be construed and administered to the extent possible to qualify such program to be a qualified and nondiscriminatory employee benefit plan under existing or hereafter-enacted provisions of the Internal Revenue Code of the United States.

(b) The division ~~department~~ may adopt any rule necessary to accomplish the purposes of this subsection not inconsistent with this chapter.

(c) This subsection is declaratory of the legislative intent upon the original enactment of this section and is deemed to have been in effect since that date.

(11) NOTICE BY HEALTH CARE PROVIDERS.—Any health care provider that has entered into a contract with a carrier or professional administrator that has contracted with the division to administer the self-insurance program under this section shall provide written notification to the enrollee and the carrier or administrator at least 10 days before assigning or transferring the responsibility for collecting any payment or debt related to the plan to a collection agency or to any other third party.

Section 4. Subsections (2) and (3) of section 110.12315, Florida Statutes, are amended to read:

110.12315 Prescription drug program.—

(2)(a) Notwithstanding provisions of statute or agency administrative rules that may have been enacted or adopted prior to April 8, 1992, the Division of State Group Insurance ~~Department of Management Services~~, in

making provision for reimbursement for prescription medicines dispensed to members of the State Group Health Insurance Plan and their dependents, shall allow prescriptions written by health care providers under the plan to be filled by any licensed pharmacy pursuant to contractual claims-processing provisions. Retail pharmacies participating in this program shall be reimbursed at a uniform rate and subject to uniform conditions, according to the terms and conditions of the plan established by the Division of State Group Insurance ~~Department of Management Services~~ and relevant provisions of the annual General Appropriations Act and implementing legislation. Nothing in this section shall be construed as prohibiting a mail order prescription drug program distinct from the service provided by retail pharmacies.

(b) The reimbursement schedule developed by the Division of State Group Insurance ~~Department of Management Services~~ for a prescription pharmaceutical shall be based on the cost of the generic equivalent drug if a generic equivalent exists, unless the physician prescribing the pharmaceutical clearly states on the prescription that the brand name drug is medically necessary or that the drug product is included on the formulary of drug products that may not be interchanged as provided in chapter 465. In cases in which the physician indicates that a brand name drug is medically necessary, reimbursement shall be based on the cost of the brand name drug as specified in the reimbursement plan adopted by the Division of State Group Insurance ~~Department of Management Services~~.

(c) Not later than October 1, 1992, the Department of Management Services shall implement a prescription utilization review program. All pharmacies dispensing medicines to members of the State Group Health Insurance Plan and their dependents shall be required to make records available for this review as a condition of participation in the State Group Health Insurance Plan.

(d) The Division of State Group Insurance ~~Department of Management Services~~ shall assure the prompt implementation of this section and may reject all existing contract bids, rebid a pharmaceutical contract, or amend any existing pharmaceutical contract, and exercise any option for terminating any contract that conflicts with these provisions. The Division of State Group Insurance ~~Department of Management Services~~ shall incorporate additional cost savings and adjustments required to balance within appropriations provided, including, but not limited to, a trial or starter dose program and dispensing of long-term maintenance medication in lieu of acute therapy medication. This section does not authorize a reduction in the existing benefit configuration or allow premiums, deductions, or copayments to be raised above the levels specified in the 1992-1993 General Appropriations Act.

(3) The current pharmacy dispensing fee shall remain in effect. Additionally, participating pharmacies are required to use a point-of-sale device or an on-line computer system to verify a participant's coverage. The state is not responsible or liable for payment for the prescription of a person whose eligibility has not been verified by the state's contracted administrator or the Division of State Group ~~Employee~~ Insurance.

Section 5. Section 110.1232, Florida Statutes, is amended to read:

110.1232 Health insurance coverage for persons retired under state-administered retirement systems before January 1, 1976, and for spouses.—Notwithstanding any provisions of law to the contrary, the Division of State Group Insurance ~~Department of Management Services~~ shall provide health insurance coverage in the State Group Health Insurance Plan for persons who retired prior to January 1, 1976, under any of the state-administered retirement systems and who are not covered by social security and for the spouses and surviving spouses of such retirees who are also not covered by social security. Such health insurance coverage shall provide the same benefits as provided to other retirees who are entitled to participate under s. 110.123. The claims experience of this group shall be commingled with the claims experience of other members covered under s. 110.123.

Section 6. Section 110.1234, Florida Statutes, is amended to read:

110.1234 Health insurance for retirees under the Florida Retirement System; Medicare supplement and fully insured coverage.—

(1) The Division of State Group Insurance ~~Department of Management Services~~ shall solicit competitive bids from state-licensed insurance companies to provide and administer a fully insured Medicare supplement policy for all eligible retirees of a state or local public employer. Such Medicare supplement policy shall meet the provisions of ss. 627.671-627.675. For the purpose of this subsection, "eligible retiree" means any public employee who retired from a state or local public employer who is covered by Medicare, Parts A and B. The department shall authorize one company to offer the Medicare supplement coverage to all eligible retirees. All premiums shall be paid by the retiree.

(2) The Division of State Group Insurance ~~Department of Management Services~~ shall solicit competitive bids from state-licensed insurance companies to provide and administer fully insured health insurance coverage for all public employees who retired from a state or local public employer who are not covered by Medicare, Parts A and B. The division ~~department~~ may authorize one company to offer such coverage if the proposed benefits and premiums are reasonable. If such coverage is authorized, all premiums shall be paid for by the retiree.

Section 7. Subsections (5), (6), and (7) of section 110.161, Florida Statutes, are amended to read:

110.161 State employees; pretax benefits program.—

(5) The Division of State Group Insurance ~~Department of Management Services~~ shall develop rules for the pretax benefits program, which shall specify the benefits to be offered under the program, the continuing tax-exempt status of the program, and any other matters deemed necessary by the department to implement this section. The rules must be approved by a majority vote of the Administration Commission.

(6) The Division of State Group Insurance ~~Department of Management Services~~ is authorized to establish a pretax benefits program for all employ-

ees whereby employees would receive benefits which are not includable in gross income under the Internal Revenue Code of 1986. The pretax benefits program shall be implemented in phases. Phase one shall allow employee contributions to premiums for the state health program and state life insurance to be paid on a pretax basis unless an employee elects not to participate. Phase two shall allow employees to voluntarily establish expense reimbursement plans from their salaries on a pretax basis to pay for qualified medical and dependent care expenses, including premiums paid by employees for qualified supplemental insurance. Phase two may also provide for the payment of such premiums through a pretax payroll procedure as used in phase one. The Administration Commission and the Division of State Group Insurance ~~Department of Management Services~~ are directed to take all actions necessary to preserve the tax-exempt status of the program.

(7) The Legislature recognizes that a substantial amount of the employer savings realized by the implementation of a pretax benefits program will be the result of diminutions in the state's employer contribution to the Federal Insurance Contributions Act tax. There is hereby created the Pretax Benefits Trust Fund in the Division of State Group Insurance ~~Department of Management Services~~. Each agency shall transfer to the Pretax Benefits Trust Fund the employer FICA contributions saved by the state as a result of the implementation of the pretax benefits program authorized pursuant to this section. Any moneys forfeited pursuant to employees' salary reduction agreements to participate in phase one or phase two of the program must also be deposited in the Pretax Benefits Trust Fund. Moneys in the Pretax Benefits Trust Fund shall be used for the pretax benefits program, including its administration by the Department of Management Services or a third-party administrator.

Section 8. All powers, duties, and functions of the Division of State Health Purchasing in the Agency for Health Care Administration relating to its duties described in section 110.123, Florida Statutes, including a proportional allocation of indirect costs and overhead, are transferred by a type two transfer, as defined in section 20.06, Florida Statutes, to the Department of Management Services and shall be assigned to the Division of State Group Insurance.

Section 9. It is the Legislature's belief that the state's employees and retirees as well as their dependents are entitled to and deserving of a quality and reliable insurance program. The Legislature also acknowledges that the state has been experiencing performance problems with the present contractor administering the state employees' self insurance program. It is the Legislature's intent that the present third party adminstrator should be meeting contract performance standards by June 30, 1997. It is also the intent of the Legislature that the third party administrator shall be capable of sustaining contract performance standards through the remainder of the contract period. Additionally, it is the Legislature's intent that should the third party administrator fail to meet contract standards by June 30, 1997, or demonstrate inability to sustain contract performance standards, the contract should be terminated and a new, capable, professional administrator should be selected.

Section 10. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 24, 1997.

Filed in Office Secretary of State May 23, 1997.