

House Bill No. 1081

An act relating to discount medical plan organizations; amending s. 636.202, F.S.; revising a definition; amending s. 636.204, F.S.; revising provisions relating to licensure requirements to do business as a discount medical plan organization; creating s. 636.205, F.S.; providing requirements for issuance of a license; authorizing the Office of Insurance Regulation to deny a license; amending s. 636.206, F.S.; providing that discount medical plan organizations are not subject to the Florida Insurance Code for purposes of examination and investigation; creating s. 636.207, F.S.; providing for applicability of pt. II of ch. 636, F.S.; amending s. 636.208, F.S.; revising provisions relating to reimbursement of certain charges and fees upon cancellation of membership in the plan; amending s. 636.210, F.S.; revising prohibitions relating to advertising; amending s. 636.212, F.S.; revising provisions relating to disclosures to prospective members; amending s. 636.214, F.S.; revising provisions relating to provider agreements; amending s. 636.216, F.S.; providing conditions for approval of charges and forms; deleting a provision relating to request for a hearing; amending s. 636.218, F.S.; revising requirements for information to be included in annual reports; creating s. 636.223, F.S.; providing for administrative penalties; amending s. 636.228, F.S.; specifying marketing requirements of discount medical plans; providing limitations; amending s. 636.230, F.S.; specifying fee disclosure requirements for bundling discount medical plans with other products; amending s. 636.236, F.S.; requiring discount medical plan organizations to maintain surety bonds; providing conditions for substituting deposited securities for surety bonds; amending s. 636.238, F.S.; revising penalties; repealing s. 636.242, F.S., relating to civil remedies; providing an effective date.

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

Section 1. Subsection (2) of section 636.202, Florida Statutes, is amended to read:

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

(2) “Discount medical plan organization” means an entity which, in exchange for fees, dues, charges, or other consideration, provides access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. ~~The term “discount medical plan” does not include any product regulated under chapter 627, chapter 641, or part I of this chapter.~~

Section 2. Subsections (1) and (2) of section 636.204, Florida Statutes, are amended to read:

636.204 License required.—

(1) Before doing business in this state as a discount medical plan organization, an entity must be a corporation, a limited liability company, or a limited partnership, incorporated, organized, formed, or registered under the laws of this state or authorized to transact business in this state in accordance with chapter 607, chapter 608, chapter 617, chapter 620, or chapter 865 incorporated under the laws of this state or, if a foreign corporation, authorized to transact business in this state, and must be licensed by the office possess a license as a discount medical plan organization or be licensed by the office pursuant to chapter 624, part I of chapter 636, or chapter 641 from the office.

(2) An application for a license to operate as a discount medical plan organization must be filed with the office on a form prescribed by the commission. Such application must be sworn to by an officer or authorized representative of the applicant and be accompanied by the following, if applicable:

(a) A copy of the applicant's articles of incorporation or other organizing documents, including all amendments.

(b) A copy of the applicant's ~~corporation's~~ bylaws.

(c) A list of the names, addresses, official positions, and biographical information of the individuals who are responsible for conducting the applicant's affairs, including, but not limited to, all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the officers, contracted management company personnel, and any person or entity owning or having the right to acquire 10 percent or more of the voting securities of the applicant. Such listing must fully disclose the extent and nature of any contracts or arrangements between any individual who is responsible for conducting the applicant's affairs and the discount medical plan organization, including any possible conflicts of interest.

(d) A complete biographical statement, on forms prescribed by the commission, an independent investigation report, and a set of fingerprints, as provided in chapter 624, with respect to each individual identified under paragraph (c).

(e) A statement generally describing the applicant, its facilities and personnel, and the medical services to be offered.

(f) A copy of the form of all contracts made or to be made between the applicant and any providers or provider networks regarding the provision of medical services to members.

(g) A copy of the form of any contract made or arrangement to be made between the applicant and any person listed in paragraph (c).

(h) A copy of the form of any contract made or to be made between the applicant and any person, corporation, partnership, or other entity for the performance on the applicant's behalf of any function, including, but not limited to, marketing, administration, enrollment, investment management, and subcontracting for the provision of health services to members.

(i) A copy of the applicant's most recent financial statements audited by an independent certified public accountant. An applicant that is a subsidiary of a parent entity that is publicly traded and that prepares audited financial statements reflecting the consolidated operations of the parent entity and the subsidiary may petition the office to accept, in lieu of the audited financial statement of the applicant, the audited financial statement of the parent entity and a written guaranty by the parent entity that the minimum capital requirements of the applicant required by this part will be met by the parent entity.

(j) A description of the proposed method of marketing.

(k) A description of the subscriber complaint procedures to be established and maintained.

(l) The fee for issuance of a license.

(m) Such other information as the commission or office may reasonably require to make the determinations required by this part.

Section 3. Section 636.205, Florida Statutes, is created to read:

636.205 Issuance of license; denial.—

(1) Following receipt of an application filed pursuant to s. 636.204, the office shall review the application and notify the applicant of any deficiencies contained therein. The office shall issue a license to an applicant who has filed a completed application pursuant to s. 636.204 upon payment of the fees specified in s. 636.204 and upon the office being satisfied that the following conditions are met:

(a) The requirements of s. 636.204 have been fulfilled.

(b) The entity has the required minimum capital requirements.

(c) The ownership, control, and management of the entity are competent and trustworthy and possess managerial experience that would make the proposed operation beneficial to the subscribers. The office shall not grant or continue to grant authority to transact the business of a discount medical plan organization in this state at any time during which the office has good reason to believe that the ownership, control, or management of the organization includes any person whose business operations are or have been marked by business practices or conduct that is detrimental to the public, stockholders, investors, or creditors.

(d) The discount medical plan organization has a complaint procedure that will facilitate the resolution of subscriber grievances and that includes both formal and informal steps available within the organization.

(e) Any deficiencies identified by the office have been corrected.

(f) All requirements of this part have been met.

(2) If the application for a license is denied, the office shall notify the applicant and shall specify the reasons for denial in the notice.

Section 4. Section 636.206, Florida Statutes, is amended to read:

636.206 Examinations and investigations.—

(1) The office may examine or investigate the business and affairs of any discount medical plan organization. The office may order any discount medical plan organization or applicant to produce any records, books, files, advertising and solicitation materials, or other information and may take statements under oath to determine whether the discount medical plan organization or applicant is in violation of the law or is acting contrary to the public interest. The expenses incurred in conducting any examination or investigation must be paid by the discount medical plan organization or applicant. Examinations and investigations must be conducted as provided in chapter 624, ~~and discount medical plan organizations are subject to all applicable provisions of the insurance code.~~

(2) Failure by the discount medical plan organization to pay the expenses incurred under subsection (1) is grounds for denial or revocation.

Section 5. Section 636.207, Florida Statutes, is created to read:

636.207 Applicability of part.—Except as otherwise provided in this part, discount medical plan organizations are governed by the provisions of this part and are exempt from the Florida Insurance Code unless specifically referenced.

Section 6. Section 636.208, Florida Statutes, is amended to read:

636.208 Fees; charges; reimbursement.—

(1) ~~A discount medical plan organization may charge a periodic charge as well as a reasonable one-time processing fee for a discount medical plan and a periodic charge. If a discount medical plan charges for a time period in excess of 1 month, the plan must, in the event of cancellation of the membership by either party, make a pro rata reimbursement of the fees to the member.~~

(2) If the member cancels his or her membership in the discount medical plan organization within the first 30 days after the effective date of enrollment in the plan, the member shall receive a reimbursement of all periodic charges upon return of the discount card to the discount medical plan organization.

(3) If the discount medical plan organization cancels a membership for any reason other than nonpayment of fees by the member, the discount medical plan organization shall make a pro rata reimbursement of all periodic charges to the member.

(4) In addition to the reimbursement of periodic charges for the reasons stated in subsections (2) and (3), a discount medical plan organization shall also reimburse the member for any portion of a one-time processing fee that exceeds \$30 per year.

Section 7. Paragraphs (a) and (b) of subsection (1) of section 636.210, Florida Statutes, are amended to read:

636.210 Prohibited activities of a discount medical plan organization.—

(1) A discount medical plan organization may not:

(a) Use in its advertisements, marketing material, brochures, and discount cards the term “insurance” except as otherwise provided in this part or as a disclaimer of any relationship between discount medical plan organization benefits and insurance;

(b) Use in its advertisements, marketing material, brochures, and discount cards the terms “health plan,” “coverage,” “copay,” “copayments,” “pre-existing conditions,” “guaranteed issue,” “premium,” ~~“enrollment,”~~ “PPO,” “preferred provider organization,” or other terms in a manner that could reasonably mislead a person into believing the discount medical plan was health insurance;

Section 8. Section 636.212, Florida Statutes, is amended to read:

636.212 Disclosures.—The following disclosures must be made in writing to any prospective member and must be on the first page of any advertisements, marketing materials, or brochures relating to a discount medical plan. The disclosures must be printed in not less than 12-point type ~~or no smaller than the largest type on the page if larger than 12-point type~~:

(1) That the plan is not a ~~health insurance policy~~.

(2) That the plan provides discounts at certain health care providers for medical services.

(3) That the plan does not make payments directly to the providers of medical services.

(4) That the plan member is obligated to pay for all health care services but will receive a discount from those health care providers who have contracted with the discount plan organization.

(5) The ~~corporate~~ name and address ~~the location~~ of the licensed discount medical plan organization.

If the initial contract is made by telephone, the disclosures required by this section shall be made orally and provided in the initial written materials that describe the benefits under the discount medical plan provided to the prospective or new member.

Section 9. Subsections (2) and (4) of section 636.214, Florida Statutes, are amended to read:

636.214 Provider agreements.—

(2) A provider agreement between a discount medical plan organization and a provider must provide the following:

- (a) A list of the services and products to be provided at a discount.
- (b) The amount or amounts of the discounts or, alternatively, a fee schedule which reflects the provider's discounted rates.
- (c) That the provider will not charge members more than the discounted rates.
- (4) The discount medical plan organization shall maintain a copy of each active provider agreement into which it has entered.

Section 10. Subsection (4) of section 636.216, Florida Statutes, is amended to read:

636.216 Charge or form filings.—

(4) A charge or form is considered approved on the 60th day after its date of filing unless it has been previously disapproved by the office. The office shall disapprove any form that does not meet the requirements of this part or that is unreasonable, discriminatory, misleading, or unfair. If such filings are disapproved, the office shall notify the discount medical plan organization and shall specify in the notice the reasons for disapproval. ~~The discount medical plan organization has 21 days from the date of receipt of notice to request a hearing before the office pursuant to chapter 120.~~

Section 11. Subsection (2) of section 636.218, Florida Statutes, is amended to read:

636.218 Annual reports.—

(2) Such reports must be on forms prescribed by the commission and must include:

(a) Audited financial statements prepared in accordance with generally accepted accounting principles certified by an independent certified public accountant, including the organization's balance sheet, income statement, and statement of changes in cash flow for the preceding year. An organization that is a subsidiary of a parent entity that is publicly traded and that prepares audited financial statements reflecting the consolidated operations of the parent entity and the organization may petition the office to accept, in lieu of the audited financial statement of the organization, the audited financial statement of the parent entity and a written guaranty by the parent entity that the minimum capital requirements of the organization required by this part will be met by the parent entity.

(b) If different from the initial application or the last annual report, a list of the names and residence addresses of all persons responsible for the conduct of the organization's affairs, together with a disclosure of the extent and nature of any contracts or arrangements between such persons and the discount medical plan organization, including any possible conflicts of interest.

(c) The number of discount medical plan members in the state.

(d) Such other information relating to the performance of the discount medical plan organization as is reasonably required by the commission or office.

Section 12. Section 636.223, Florida Statutes, is created to read:

636.223 Administrative penalty.—In lieu of suspending or revoking a certificate of authority whenever any discount medical plan organization has been found to have violated any provision of this part, the office may:

(1) Issue and cause to be served upon the organization charged with the violation a copy of such findings and an order requiring such organization to cease and desist from engaging in the act or practice that constitutes the violation.

(2) Impose a monetary penalty of not less than \$100 for each violation, but not to exceed an aggregate penalty of \$75,000.

Section 13. Subsection (2) of section 636.228, Florida Statutes, is amended to read:

636.228 Marketing of discount medical plans.—

(2) The discount medical plan organization shall have an executed written agreement with a marketer prior to the marketer's marketing, promoting, selling, or distributing the discount medical plan. Such agreement shall prohibit the marketer from using marketing materials, brochures, and discount cards without the approval in writing by the discount medical plan organization. The discount medical plan organization shall be bound by and shall be responsible and financially liable for any acts of its marketers, within the scope of the marketers' agency, that do not comply with the provisions of this part.

Section 14. Section 636.230, Florida Statutes, is amended to read:

636.230 Bundling discount medical plans with other insurance products.—When a marketer or discount medical plan organization sells a discount medical plan together with any other product, the fees for the discount medical plan each individual product must be provided in writing to the member if the fees exceed \$30 and itemized.

Section 15. Section 636.236, Florida Statutes, is amended to read:

636.236 Surety bond or security deposit.—

(1) Each discount medical plan organization licensed pursuant to the provisions of this part must maintain in force a surety bond in its own name in an amount not less than \$35,000 to be used at the discretion of the office to protect the financial interests of members who may be adversely affected by the insolvency of a discount medical plan organization. The bond must be issued by an insurance company that is licensed to do business in this state.

~~(2)(4)~~ In lieu of the bond specified in subsection (1), a licensed discount medical plan organization may must deposit and maintain deposited in trust with the department securities eligible for deposit under s. 625.52, having at all times a value of not less than \$35,000, for use by the office in protecting plan members. If a licensed discount medical plan organization substitutes its deposited securities under this subsection with a surety bond authorized in subsection (1), such deposited securities shall be returned to the discount medical plan organization no later than 45 days following the effective date of the surety bond.

~~(3)(2)~~ No judgment creditor or other claimant of a discount medical plan organization, other than the office or department, shall have the right to levy upon any of the assets or securities held in this state as a deposit under ~~subsections~~ subsection (1) and (2).

Section 16. Section 636.238, Florida Statutes, is amended to read:

636.238 Penalties for violation of this part.—

(1) Except as provided in subsection (2), a person who willfully violates any provision of this part commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who operates as or willfully aids and abets another operating as a discount medical plan organization in violation of s. 636.204(1) commits a felony punishable as provided for in s. 624.401(4)(b), as if the unlicensed discount medical plan organization were an unauthorized insurer, and the fees, dues, charges, or other consideration collected from the members by the unlicensed discount medical plan organization or marketer were insurance premium.

(3) A person who collects fees for purported membership in a discount medical plan but purposefully fails to provide the promised benefits commits a theft, punishable as provided in s. 812.014.

Section 17. Section 636.242, Florida Statutes, is repealed.

Section 18. This act shall take effect upon becoming a law.

Approved by the Governor June 14, 2005.

Filed in Office Secretary of State June 14, 2005.