

CHAPTER 2019-83

Committee Substitute for Committee Substitute for House Bill No. 673

An act relating to insurer guaranty associations; amending s. 631.713, F.S.; revising applicability of part III of ch. 631, F.S., as to health maintenance organizations, long-term care insurance benefits, certain health care benefits, and certain structured settlement annuity benefits; amending s. 631.716, F.S.; revising the number of members and composition of the Florida Life and Health Insurance Guaranty Association's board of directors; specifying requirements relating to the director of the Florida Health Maintenance Organization Consumer Assistance Plan to be confirmed to the association's board; specifying rights of the director or his or her alternate; deleting an obsolete provision; amending s. 631.717, F.S.; adding the reissuance of covered policies to a list of duties of the association relating to insolvent insurers; providing construction; specifying duties of the association as to potential long-term care insurer impairments or insolvencies, sharing information, and providing assistance to the Florida Health Maintenance Organization Consumer Assistance Plan's board of directors; revising applicability of a specified limit on the association's liability for the contractual obligations of an insolvent insurer; conforming a provision to changes made by the act; requiring that the Department of Financial Services, rather than a receivership court, approve certain alternative policies or contracts; authorizing the board to file directly for actuarially justified rate or premium increases; amending s. 631.718, F.S.; specifying the calculation and allocation of Class B assessments for long-term care insurance; specifying a limit on certain assessments on a member insurer or member health maintenance organization; conforming provisions to changes made by the act; amending s. 631.721, F.S.; deleting an obsolete provision; revising the requirements of the association's plan of operation relating to long-term care insurer impairments and insolvencies; conforming a cross-reference; creating s. 631.738, F.S.; providing applicability of certain provisions to certain health maintenance organizations; amending s. 631.816, F.S.; adding duties of the board of directors of the Florida Health Maintenance Organization Consumer Assistance Plan to conform to changes made by the act; amending s. 631.818, F.S.; adding to the duties of the plan to conform to changes made by the act; amending s. 631.819, F.S.; specifying requirements for long-term care insurer impairment and insolvency assessments for member health maintenance organizations; requiring the plan to issue certificates of contribution to member health maintenance organizations paying certain assessments; specifying requirements of, and the use of, such certificates; amending s. 631.820, F.S.; conforming provisions to changes made by the act; amending s. 631.821, F.S.; making a technical change; providing applicability of specified provisions to certain long-term care insurer impairment and insolvency

assessments; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Subsection (3) of section 631.713, Florida Statutes, is amended to read:

631.713 Application of part.—

(3) This part does not apply to:

(a) That portion or part of a variable life insurance contract or variable annuity contract not guaranteed by an insurer.

(b) That portion or part of any policy or contract under which the risk is borne by the policyholder.

(c) Any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

(d) Fraternal benefit societies as defined in s. 632.601.

(e) Health maintenance organizations, except for assessments levied pursuant to ss. 631.715(2)(a)1., 631.718(3)(b), and 631.819(2)(c) for long-term care insurer impairments or insolvencies insurance.

(f) Dental service plan insurance.

(g) Pharmaceutical service plan insurance.

(h) Optometric service plan insurance.

(i) Ambulance service association insurance.

(j) Preneed funeral merchandise or service contract insurance.

(k) Prepaid health clinic insurance.

(l) Any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits:

1. Guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate;

2. Under an annuity issued by an insurer under 26 U.S.C. s. 408(b); or

3. Under an annuity issued by an insurer and held by a custodian or trustee in accordance with 26 U.S.C. s. 408(a).

This paragraph applies to every insolvency regardless of its date of inception, and an assessment base may not include premiums for such excluded products.

(m) Any federal employees' group policy or contract that, under 5 U.S.C. s. 8909(f), is prohibited from being subject to an assessment under s. 631.718.

(n) Except as provided in this paragraph, a portion of a policy or contract, to the extent that the rate of interest on which the policy or contract is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

1. Averaged over the period of 4 years immediately preceding the date on which the member insurer becomes an impaired or insolvent insurer under this part, whichever is earlier, exceeds the rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged for that same 4-year period or for such lesser period if the policy or contract was issued less than 4 years before the member insurer becomes an impaired or insolvent insurer under this part, whichever is earlier; and

2. On and after the date on which the member insurer becomes an impaired or insolvent insurer under this part, whichever is earlier, exceeds the rate of interest determined by subtracting 3 percentage points from the most current version of Moody's Corporate Bond Yield Average.

This paragraph does not apply to any portion of a policy or contract, including a rider, which provides long-term care or any other health insurance benefit.

(o) A portion of a policy or contract to the extent the policy or contract provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this part. However, if the interest or change in value is credited less frequently than annually as determined by using the procedures defined in the policy or contract, interest or change in value shall be credited by using the procedure defined in the policy or contract as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and shall not be subject to forfeiture.

(p) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Title XVIII (Medicare), Title XIX (Medicaid), or Title XXI (the Children's Health Insurance Program) of the Social Security Act Medicare part C or part D or any regulations promulgated thereunder issued pursuant to Medicare Part C or Part D.

(q) Structured settlement annuity benefits to which a payee, or a beneficiary if the payee is deceased, has transferred his or her rights in a structured settlement factoring transaction, as that term is defined in 26 U.S.C. s. 5891(c)(3)(A).

Section 2. Subsection (1) of section 631.716, Florida Statutes, is amended to read:

631.716 Board of directors.—

(1)(a) The board of directors of the association shall have at least 9, but no more than 11, members. The members shall be comprised of not fewer than five nor more than nine member insurers, serving terms as established in the plan of operation and 1 Florida Health Maintenance Organization Consumer Assistance Plan director confirmed pursuant to paragraph (b). At all times, at least 1 one member of the board must shall be a domestic insurer as defined in s. 624.06(1). The members of the board who are member insurers shall be elected by member insurers, subject to the approval of the department.

(b) The board shall confirm, subject to the approval of the department, the Florida Health Maintenance Organization Consumer Assistance Plan director. The confirmed director must not be a member insurer serving on the board of the association. The director confirmed to the board must be designated by the Florida Health Maintenance Organization Consumer Assistance Plan's board of directors to serve on the board and represent the interests of the Florida Health Maintenance Organization Consumer Assistance Plan and its board of directors. An individual serving as a Florida Health Maintenance Organization Consumer Assistance Plan director on the board must be a member of the Florida Health Maintenance Organization Consumer Assistance Plan's board of directors. The Florida Health Maintenance Organization Consumer Assistance Plan director, or his or her alternate, has the right to be present at all meetings of the board and has full voting rights on all issues.

(c) A vacancy on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the department. Prior to the selection of the initial board of directors and the organization of the association, the department shall give notice to all member insurers of the time and place of the organizational meeting. At the organizational meeting, each member insurer shall be entitled to one vote, in person or by proxy. If the board of directors is not elected within 60 days after notice of the organizational meeting, the department may appoint the initial members.

Section 3. Present subsections (9) through (12) of section 631.717, Florida Statutes, are redesignated as subsections (12) through (15), respectively, new subsections (9), (10), and (11) are added to that section, subsections (2) and (3), paragraph (c) of present subsection (9), and

paragraph (g) of present subsection (12) are amended, and paragraph (h) is added to present subsection (12) of that section, to read:

631.717 Powers and duties of the association.—

(2) If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the department:

(a) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the covered policies of persons referred to in s. 631.713(2); and

(b) Provide moneys, pledges, notes, guarantees, or other means that are proper and reasonably necessary to implement paragraph (a) in order to assure payment of the contractual obligations of the insolvent insurer with regard to persons referred to in s. 631.713(2).

(3) If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the department:

(a) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the covered policies of residents of this state; and

(b) Provide moneys, pledges, notes, guarantees, or other means that are proper and reasonably necessary to implement paragraph (a) in order to assure payment of the contractual obligations of the insolvent insurer with regard to persons referred to in s. 631.713(2).

However, this subsection does not apply when the department has determined that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides, by statute, protection substantially similar to that provided by this part for residents of this state.

(9) For purposes of this part, benefits provided by a long-term care rider to a life insurance policy or annuity contract are considered the same type of benefits as the base life insurance policy or annuity contract to which the rider relates.

(10) In the event of a potential long-term care insurer impairment or insolvency, the association shall coordinate its activities with the Florida Health Maintenance Organization Consumer Assistance Plan, including the development of any plan for handling the administration of the impairment or insolvency.

(11) The association shall share information, including data, with and assist, as applicable, the board of directors of the Florida Health Maintenance Organization Consumer Assistance Plan with the administration and collection of member health maintenance organization assessments for long-term care insurer impairments or insolvencies pursuant to ss. 631.715(2)(a)1., 631.718(3)(b), 631.818(2), and 631.819(2)(c).

(12)(9) The association’s liability for the contractual obligations of the insolvent insurer must be as great as, but no greater than, the contractual obligations of the insurer in the absence of such insolvency, unless such obligations are reduced as permitted by subsection (4), but the aggregate liability of the association with respect to one life shall not exceed the following:

(c) For all other benefits, including in long-term care policies, \$300,000, including cash values, except as provided in paragraph (d).

In no event is the association liable for any penalties or interest.

(15)(12)

(g) In carrying out its duties in connection with guaranteeing, assuming, reissuing, or reinsuring policies or contracts under subsections (2) and (3), the association may, subject to approval of the department ~~receivership court~~, issue an alternative policy or contract to substitute coverage for a policy or contract providing that provides an interest rate, crediting rate, or similar factor that was determined by use of an index or other external reference stated in the policy or contract and employed in calculating returns or changes in value ~~by issuing an alternative policy or contract~~. In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract must provide for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value. In such case:

1. There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.
2. The alternative policy or contract shall be substantially similar to the replaced policy or contract in all other material terms.

(h) In accordance with the terms and conditions of the policy or contract, the board may directly file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this part.

Section 4. Paragraph (b) of subsection (3), paragraph (a) of subsection (5), and subsection (8) of section 631.718, Florida Statutes, are amended to read:

631.718 Assessments.—

(3)

(b)1. The amount of any Class B assessment, except for assessments related to long-term care insurance, must shall be allocated for assessment purposes among the accounts pursuant to an allocation formula, which may be based on the premiums or reserves of the impaired or insolvent insurer.

2. The amount of the Class B assessment for long-term care insurance written by the impaired or insolvent insurer must be allocated according to a methodology included in the plan of operation and approved by the department. The methodology must provide for 50 percent of the assessment to be allocated to health member insurers and 50 percent to be allocated to life and annuity member insurers.

3. For the purposes of the methodology outlined in subparagraph 2. and included in the plan of operation, the health member insurers' share of the assessment must be calculated by including the assessable premiums of member health maintenance organizations of the Florida Health Maintenance Organization Consumer Assistance Plan.

(5)(a)1. The total of all assessments upon a member insurer for each account may not in any one calendar year exceed 1 percent of the sum of the insurer's premiums written in this state regarding business covered by the account received during the 3 calendar years preceding the year in which the assessment is made, divided by three. If premium information for the 3-year period is not reasonably available for each member insurer, the association may use any reasonably available premium information.

2. For long-term care insurer impairments and insolvencies only, the total assessments upon a member insurer or member health maintenance organization of the Florida Health Maintenance Organization Consumer Assistance Plan may not, in any one calendar year, exceed 0.5 percent of the sum of the member insurer's or member health maintenance organization's premiums written in this state regarding business covered by the account received during the calendar year preceding the year in which the assessment is made. If premium information is not reasonably available for each member insurer or member health maintenance organization of the Florida Health Maintenance Organization Consumer Assistance Plan, the association or the Florida Health Maintenance Organization Consumer Assistance Plan may use any reasonably available premium information.

(8) The association shall issue to each member insurer paying an assessment under this part, other than a Class A assessment, a certificate of contribution, in a form prescribed by the office department, for the amount of the assessment so paid. All outstanding certificates are of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the office department approves. However, any amount offset pursuant to s. 631.72 may not be shown as an asset of the insurer on any of its financial statements.

Section 5. Paragraph (b) of subsection (1), paragraph (f) of subsection (3), and subsection (4) of section 631.721, Florida Statutes, are amended to read:

631.721 Plan of operation.—

(1)

(b) ~~If the association fails to submit a suitable proposed plan of operation within 180 days following October 1, 1979, or If at any time thereafter the association fails to submit suitable amendments to the plan, the department shall, after notice and hearing, adopt such reasonable rules as are necessary to effectuate the provisions of this part. Such rules shall continue in force until modified by the department or superseded by a proposed plan submitted by the association and approved by the department.~~

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(f) Establish any additional procedures for assessments under s. 631.718, including procedures to share assessment information, including data, with and assist, as applicable, the board of directors of the Florida Health Maintenance Organization Consumer Assistance Plan with the administration, collection, and deposit of member health maintenance organization assessments for long-term care insurer impairments and insolvencies into the health account established under s. 631.715.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under ss. 631.717(13)(c) and 631.718 ss. 631.717(10)(e) and 631.718, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the department and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

Section 6. Section 631.738, Florida Statutes, is created to read:

631.738 Applicability as to certain health maintenance organizations. The provisions of this part which relate to assessments for long-term care insurer impairments and insolvencies do not apply to any nonprofit health maintenance organization that operates only in this state and whose statutory capital and surplus is less than \$200 million as of December 31 of the year preceding the year in which the assessment is made.

Section 7. Subsection (7) is added to section 631.816, Florida Statutes, to read:

631.816 Board of directors.—

(7) Subject to the approval of the department, the board shall designate one representative to serve as a member of the board of directors of the Florida Life and Health Insurance Guaranty Association pursuant to s.

631.716(1). The representative, or his or her alternate, has the right to be present during all meetings of the association board of directors and shall have full voting rights.

Section 8. Present subsections (2) through (6) of section 631.818, Florida Statutes, are renumbered as subsections (3) through (7), respectively, a new subsection (2) is added to that section, present subsection (4) is amended, present paragraph (f) of present subsection (6) is redesignated as paragraph (g), and a new paragraph (f) is added to that subsection, to read:

631.818 Powers and duties of the plan.—

(2) In the event of a long-term care insurer impairment or insolvency, pursuant to s. 631.819(2)(c), the plan shall:

(a) Collect and transmit all information requested by the Florida Life and Health Insurance Guaranty Association for the association to determine the appropriate assessment base of the health insurance account pursuant to ss. 631.715(2)(a)1. and 631.718(3)(b).

(b) Levy and collect assessments from HMOs.

(c) Coordinate the administration and collection of member HMO assessments for long-term care insurer impairments and insolvencies with the Florida Life and Health Insurance Guaranty Association.

~~(5)(4) The plan may render assistance and advice to the department, at the department’s request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any HMO subject to a delinquency proceeding or a proceeding under s. 624.90.~~

~~(7)(6) The plan may:~~

(f) In the event of a long-term care insurer impairment or insolvency, coordinate with the Florida Life and Health Insurance Guaranty Association to carry out the responsibilities of the association for the limited purpose of the long-term care insurer impairment or insolvency, including the development of any plan for handling the administration of the impairment or insolvency.

Section 9. Subsections (1) and (3) of section 631.819, Florida Statutes, are amended, paragraph (c) is added to subsection (2), and subsection (6) is added to that section, to read:

631.819 Assessments.—

(1) For the purposes of providing the funds necessary to carry out the powers and duties of the plan, the board of directors shall assess the member HMOs at such time and for such amounts as the board finds necessary.

Assessments shall be due not less than 30 days after written notice to the member HMOs insurers.

(2) Assessments for funds to meet the requirements of the plan with respect to an insolvent HMO shall not be made until necessary to implement the purposes of this part. In order to carry out its duties and powers under this part, upon the insolvency of an HMO, the plan shall levy and collect assessments as follows:

(c) For the purposes of long-term care insurer impairment and insolvency assessments under s. 631.718(3)(b), member HMOs must be assessed in the same manner as member insurers of the Florida Life and Health Insurance Guaranty Association under part III of this chapter. Long-term care insurer impairment and insolvency assessments must be levied and collected by the plan pursuant to this part, deposited into the health insurance account established under s. 631.715, and used solely for long-term care insurer impairment or insolvency obligations. Assessments collected from member HMOs are considered part of and satisfy the obligations of the health insurance account under ss. 631.715(2)(a)1. and 631.718(3)(b).

(3) All assessments against HMOs, including long-term care insurer impairment and insolvency assessments, must shall be levied as a percentage of annual earned premium revenue for non-Medicare and non-Medicaid contracts. In no event may the plan assess in any calendar year more than 0.5 percent of each HMO's annual earned premium revenue for non-Medicare and non-Medicaid contracts.

(6) The plan shall issue, in a form prescribed by the office, a certificate of contribution to each member HMO paying a long-term care insurer impairment or insolvency assessment under this part for the amount of the assessment so paid. All outstanding certificates are of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the member HMO in its financial statement as an asset in such form and for such amount and period of time as the office approves. However, any amount offset pursuant to s. 631.828 may not be shown as an asset of the member HMO on any of its financial statements.

Section 10. Paragraph (f) of subsection (3) and paragraph (a) of subsection (4) of section 631.820, Florida Statutes, are amended to read:

631.820 Plan of operation.—

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(f) Establish any additional procedures for assessments under this part, including procedures to coordinate the administration and collection of member HMO assessments for long-term care insurer impairments and

insolvencies with the board of directors of the Florida Life and Health Insurance Guaranty Association.

(4)(a) The plan of operation may provide that any or all powers and duties of the plan, except those under ss. 631.818(7)(b) and (c) and 631.819 ss. 631.818(6)(b) and (e) and 631.819, are delegated to an administrator that which may be a corporation, association, or other organization that which performs or will perform functions similar to those of this plan, or its equivalent.

Section 11. Subsection (2) of section 631.821, Florida Statutes, is amended to read:

631.821 Powers and duties of the department.—

(2) Any action of the board of directors of the plan may be appealed to the office by any member HMO if such appeal is taken within 21 days of the action being appealed; however, the HMO must comply with such action pending exhaustion of appeal ~~under s. 631.818(2)~~. Any appeal shall be promptly determined by the office, and final action or order of the office shall be subject to judicial review in a court of competent jurisdiction.

Section 12. Section 631.738, Florida Statutes, as created by this act, and the amendments made to ss. 631.713, 631.717, 631.718, 631.721, 631.818, 631.819, and 631.820, Florida Statutes, by this act apply only to long-term care insurer impairment and insolvency assessments that result from an insurer being adjudged insolvent by a court of competent jurisdiction or being determined by the office to be impaired on or after the effective date of this act.

Section 13. The Division of Law Revision is directed to replace the phrase “the effective date of this act” wherever it occurs in this act with the date this act becomes a law.

Section 14. This act shall take effect upon becoming a law.

Approved by the Governor June 7, 2019.

Filed in Office Secretary of State June 7, 2019.