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A SUMMARY OF THE HEALTH CARE AND INSURANCE REFORM ACT OF 1993: FLORIDA BLAZES THE TRAIL

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ON April 29, 1993, Governor Chiles signed into law Florida's landmark "Health Care and Insurance Reform Act of 1993,"¹ placing Florida at the vanguard of health care reform.² Although this legislation addresses a wide range of health-related issues, the centerpiece of the Act is the establishment of a system of health care "managed competition" to improve the efficiency of the health care insurance markets and assist small employers in obtaining health insurance coverage for their employees.³ This Article will briefly discuss some of the history and problems that led to the Act. It will then discuss the Act itself and how the Act is intended to address those problems. Although focusing on the managed competition components of the Act and their implementation, this Article will also briefly discuss other aspects of the Act.

I. THE HISTORY AND PROBLEMS LEADING TO THE ACT

The Act was designed to address the rapidly rising costs of health care and the high percentage of individuals in Florida with no health insurance.⁴ In 1991, the total health care bill in Florida was thirty-one billion dollars. In 1992, it was thirty-eight billion dollars; with no major changes in the health care system, it is expected that Florida's total health care bill will reach ninety billion dollars by the year 2000.⁵ Per

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1. Ch. 93-129, 1993 Fla. Laws 657.

2. *Our Viewpoint: The Health-Care Gamble*, THE BRADENTON HERALD, May 6, 1993, at B4.

3. Staff of Fla. H.R. Comm. on Health Care, CS for SBs 1914, 2006, 1784, and 406 (1993) Staff Analysis 1 (final May 11, 1993) (on file with comm.) [hereinafter Health Care Staff Analysis].

4. Lawton Chiles, *Health-Care Reform Won't Work Until All Citizens Have Access*, ORLANDO SENTINEL, Nov. 9, 1992, at A11.

5. AGENCY FOR HEALTH CARE ADMIN., A BLUEPRINT FOR HEALTH SECURITY 14 (Dec. 1992) [hereinafter BLUEPRINT]; *U.S. Health Secretary Lauds Governor's Plan*, FLA. TIMES UNION (Jacksonville, Fla.), Mar. 6, 1993, at B3.

capita health care expenditures increased 152% between 1980 and 1991.⁶

In Florida, approximately 2.5 million individuals are uninsured; approximately seventy-five percent of these persons are either employed or are dependents of employed individuals.⁷ Among all states, Florida has the third-highest percentage of uninsured non-elderly residents.⁸ As health care costs have increased, more people have been forced to forego health insurance.⁹

A primary reason for these increased costs is the cost shifting associated with uninsured individuals who receive medical care.¹⁰ Although they have no insurance and are usually unable to pay for medical care with their own funds, these individuals need and deserve medical care.¹¹ Consequently, the health insurance premiums paid by employers, employees, and self-insuring individuals must be increased to offset the resulting health-care provider losses.¹² In addition, because the uninsured do not have full access to health care, diagnosis and treatment are often delayed, increasing the cost of care when these services eventually are provided.¹³

The Legislature passed the Health Care Reform Act of 1992 (1992 Act) to address these problems of increasing health care costs and decreasing access to health care. The provisions of the 1992 Act included: the creation of the Employee Health Care Access Act to reform the small group health insurance market;¹⁴ the creation of the Florida Health Plan to develop strategies and implement goals relating to access, cost containment, health care regulation, and insurance re-

6. BLUEPRINT, *supra* note 5, at E-1. Each Floridian spends about \$2,400 on health care a year; the cost of health insurance for the average Florida family is \$3,200 per year. Tim Nickens, *How Medical Costs Squeeze Florida's Budget*, MIAMI HERALD, Jan. 12, 1992, at 1C. In the United States, with no significant health care or insurance changes, U.S. employee health benefit costs are projected to overtake average salaries by the year 2001. BLUEPRINT, *supra* note 5, at E-2.

7. Health Care Staff Analysis, *supra* note 3, at 7.

8. BLUEPRINT, *supra* note 5, at 11 (the percentage of uninsured non-elderly residents in Florida is 22.9%, as compared to 16.6% nationally). Other studies have given Florida a 21.7% uninsured rate, as compared to 15.5% nationally. Vickie Chachere & Michael Sznajderman, *In Critical Condition*, TAMPA TRIBUNE, Mar. 21, 1993, at 1-Nation/World.

9. Health Care Staff Analysis, *supra* note 3, at 7.

10. BLUEPRINT, *supra* note 5, at 15. Hewitt Associates estimates that 27% of increases in insurance costs are due to cost shifting. *Id.* at 16.

11. *Id.* at 15.

12. *Id.*

13. *Id.*

14. Ch. 92-33, § 117, 1992 Fla. Laws 238, 328 (codified at FLA. STAT. § 627.6699 (Supp. 1992)).

forms;¹⁵ the creation of the Florida Health Care Services Corps, which was designed to stimulate the provision of medical services in underserved areas;¹⁶ and the creation of the Agency for Health Care Administration (Agency) to streamline the regulation of health care in the state.¹⁷ The Health Care and Insurance Reform Act of 1993 is designed to build upon and implement provisions of the 1992 Act.

II. THE ACT

A. *Managed Competition: Providing Health Care to the Uninsured*

Managed competition is a health care delivery system that blends appropriate aspects of government regulation with competition between health care organizations on quality and cost of services.¹⁸ Providers and payers join together to offer health care and insurance in a single benefit package; together they compete for customers in a geographically defined health care market.¹⁹ Managed competition is intended to "promote the pooling of purchaser and consumer buying power; ensure informed cost-conscious consumer choices of managed care plans; reward providers for high-quality, economical care; increase access to care for uninsured persons; and control the rate of inflation in health care costs."²⁰ It is to be implemented in Florida by the creation of Community Health Purchasing Alliances (CHPAs).²¹

1. *CHPAs*

CHPAs are state-chartered, private, non-profit organizations that will pool small businesses, state employees, and Medicaid recipients to

15. *Id.* §§ 5-7, 1992 Fla. Laws at 244 (codified at FLA. STAT. §§ 408.004-.006 (Supp. 1992)). One of the major components of this section was the provision mandating a December 31, 1994, deadline for ensuring access to health care for all Floridians. *Id.* § 7, 1992 Fla. Laws at 245 (codified at FLA. STAT. § 408.006(1) (Supp. 1992)). See also *Chiles Makes Reform Top Priority as Health Care Costs Rise and Rise*, ORLANDO SENTINEL, Sept. 14, 1992, at B6.

16. Ch. 92-33, § 111, 1992 Fla. Laws 238, 323 (codified at FLA. STAT. § 381.0302 (Supp. 1992)).

17. *Id.* § 1, 1992 Fla. Laws at 241 (codified at FLA. STAT. 20.42 (Supp. 1992)).

18. THE JACKSON HOLE GROUP, *THE 21ST CENTURY AMERICAN HEALTH SYSTEM: THE JACKSON HOLE GROUP PROPOSALS FOR HEALTH CARE REFORM THROUGH MANAGED COMPETITION* iii (1991).

19. FLA. H.R. COMM. ON HEALTH CARE, *THE HEALTH CARE AND INSURANCE REFORM ACT OF 1993* 45 (Apr. 1993) (on file with comm.); see also *Chiles Health Plan Provides Fundamental, Overdue Reform*, DAYTONA BEACH NEWS-J., Feb. 21, 1993, at B1.

20. Ch. 93-129, § 66, 1993 Fla. Laws 657, 738 (to be codified at FLA. STAT. § 408.70(2)).

21. Health Care Staff Analysis, *supra* note 3, at 1.

form large purchasing groups.²² CHPAs will assist members in obtaining health insurance by establishing pools of purchasers and disseminating information on the cost, quality, and efficiency of the available providers.²³ CHPAs are designed to bring members within defined geographic areas together to obtain better health insurance rates than would be available to individual members on their own, and to create a clearinghouse of health care information.

Because of their size—there will be only eleven for the entire state—CHPAs should be able to obtain volume discounts for health services for their members.²⁴ By offering the potential market share and market efficiency of a large pool of employers that can be reached through a single marketing process, CHPAs should give health insurers incentives to offer the CHPAs their best price.

CHPAs will also help members make more informed choices because they must provide “clear, *standardized* information on each accountable health partnership (AHP)²⁵ and each health plan offered.”²⁶ This standardized quality and price information, plus the low prices offered by the AHPs, should allow alliance members to purchase the best insurance plans for their needs at the best price.

(a) *AHPs*

An Accountable Health Partnership (AHP) is an organization of health care providers and health insurance carriers that will offer health care coverage as a package to CHPA members.²⁷ An AHP must be either a health insurer or health maintenance organization (HMO).²⁸ The State will also certify as an AHP associations of health care providers that are willing to first form an HMO or insurance company and be licensed by the Department of Insurance.²⁹

To qualify as an Accountable Health Partnership, an applicant must demonstrate its ability to provide proper services and accounta-

22. AGENCY FOR HEALTH CARE ADMIN., QUESTIONS AND ANSWERS ABOUT THE HEALTH CARE AND INSURANCE REFORM ACT OF 1993 I (May 18, 1993) (on file with comm.) [hereinafter QUESTIONS AND ANSWERS]. Some of the rules that will regulate CHPAs will be promulgated in Chapter 59D-1, *Florida Administrative Code*.

23. Health Care Staff Analysis, *supra* note 3, at 1.

24. QUESTIONS AND ANSWERS, *supra* note 22, at 1. See Appendix *infra* for a map showing the CHPA regions.

25. For a more detailed discussion of AHPs, see *infra* notes 27-30 and accompanying text.

26. Ch. 93-129, § 68, 1993 Fla. Laws 657, 741 (to be codified at FLA. STAT. § 408.702(6)(b)) (emphasis added).

27. *Id.* § 67, 1993 Fla. Laws at 739 (to be codified at FLA. STAT. § 408.701(1)); see also ASSOCIATION OF VOLUNTARY HOSPS. OF AM., CHPAs: FLORIDA'S PRESCRIPTION FOR HEALTH CARE REFORM: 20 OF THE MOST ASKED QUESTIONS ABOUT THE 1993 REFORM BILL, at question 3 (May 1993) (on file with author). Some of the rules that will regulate AHPs will be promulgated in chapter 59D-D, *Florida Administrative Code*.

28. Health Care Staff Analysis, *supra* note 3, at 33.

29. See *infra* note 30 and accompanying text.

bility, which includes establishing that: it is licensed and certified in good standing with the Department of Insurance and the licensure agency for the participating providers; it has the capacity to administer the health plan it is offering; it has the capability to arrange for the appropriate level of health care services and the capability to conduct utilization management; it can effectively evaluate the quality and cost-effectiveness of its providers; and it has a satisfactory grievance procedure.³⁰

(b) CHPA Memberships

There are two types of CHPA memberships: "alliance members" and "associate alliance members."³¹ Becoming a member in either is entirely voluntary.³² Only alliance members are eligible to purchase health plans offered through the CHPAs.³³ Alliance members may be either small employers or the State as an employer, and, if implemented, the State as a provider for Medicaid recipients, participants in the MedAccess program, and participants in the Medicaid buy-in program.³⁴

Small employers are entities that employ fifty or fewer individuals;³⁵ this includes self-employed individuals, sole proprietors, and independent contractors.³⁶ To be eligible for health coverage through a CHPA, single employee entities must derive taxable income from a trade or profession and must have proper evidence of this income.³⁷

The following unique requirements were included in the Act in order for the State as an employer to be included as an alliance member.

30. Ch. 93-129, § 77, 1993 Fla. Laws 657, 751 (to be codified at FLA. STAT. § 408.706(2)).

31. See generally *id.* § 67, 1993 Fla. Laws at 739 (to be codified at FLA. STAT. § 408.701); *id.* § 68, 1993 Fla. Laws at 741 (to be codified at FLA. STAT. § 408.702).

32. *Id.* (to be codified at FLA. STAT. § 408.702(5)).

33. *Id.* (to be codified at FLA. STAT. § 408.702(6)(c)).

34. *Id.* § 67, 1993 Fla. Laws at 739 (to be codified at FLA. STAT. § 408.701(4)). Florida is currently seeking federal waivers to implement the Medicaid buy-in program, as well as the other federally funded programs, to allow them to participate as alliance members. See QUESTIONS AND ANSWERS, *supra* note 22, at 20.

35. A "small employer" is defined as:

any person, sole proprietor, self-employed individual, independent contractor, firm, corporation, partnership, or association that is actively engaged in business and that, on at least 50 percent of its working days during the preceding calendar quarter, employed not more than 50 eligible employees, the majority of whom were employed within this state.

Ch. 93-129, § 65, 1993 Fla. Laws 657, 714 (amending FLA. STAT. § 627.6699(3)(r) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(3)(w)).

36. *Id.* § 69, 1993 Fla. Laws at 743 (to be codified at FLA. STAT. § 408.703(1)(a)); see also QUESTIONS AND ANSWERS, *supra* note 22, at 5.

37. The proper evidence is an IRS 1040 form, Schedule C or F, which shows taxable income in at least one of the two previous years. Ch. 93-129, § 69, 1993 Fla. Laws 657, 743 (to be codified at FLA. STAT. § 408.703(1)(b)); QUESTIONS AND ANSWERS, *supra* note 22, at 5.

At least one of the plans offered through the CHPA must "meet or exceed the benefit standard that has been collectively bargained" by the state employees.³⁸ The Department of Management Services must offer health plans offered by all AHPs within the CHPA to all state employees within the district.³⁹ The Department must make available HMOs, exclusive provider organizations, preferred provider organizations, and managed-care pure indemnity health plans.⁴⁰

In addition to the employer entities, the Act creates two new programs whose members may be able to receive benefits through the CHPAs. These are the MedAccess program⁴¹ and the Medicaid buy-in program⁴² and will be discussed in more detail later in this Article.⁴³

Medicaid recipients, participants in the MedAccess program, and participants in the Medicaid buy-in program will be eligible to receive benefits through the managed competition program if the State decides to join and offer the required benefits in this manner.⁴⁴ However, the claims experience, rates, and charges for Medicaid, MedAccess, and Medicaid buy-in members will not be commingled with those of other alliance-member benefit recipients.⁴⁵ In order to join, the benefits offered to Medicaid recipients as alliance members must be at least equal to current Medicaid benefits, and the costs to the Medicaid recipients cannot be greater than current costs.⁴⁶ The State needs federal waivers and assistance for both the Medicaid buy-in and Medicaid programs.⁴⁷

Almost any entity in Florida that is not eligible to be an alliance member is eligible to be an associate alliance member.⁴⁸ Associate alli-

38. Ch. 93-129, § 72, 1993 Fla. Laws 657, 747 (to be codified at FLA. STAT. § 408.7042(1)).

39. *Id.*

40. *Id.* All AHPs are not required to offer all four plans; however, all four plans must be available to state employees through "multiple" AHPs. *Id.* The statute also requires the Department to offer state employees a minimum of five health maintenance organizations and five insurance companies that offer preferred provider policies, if these are available within the district where the employee resides. *Id.* For definitions of the types of plans, see *infra* notes 55-58.

41. Ch. 93-129, §§ 37-46, 1993 Fla. Laws 657, 698 (to be codified at FLA. STAT. §§ 408.90-908).

42. *Id.* § 47, 1993 Fla. Laws at 704 (amending FLA. STAT. § 409.908 (Supp. 1992)).

43. See *infra* notes 90-104 and accompanying text.

44. Ch. 93-129, § 67, 1993 Fla. Laws 657, 739 (to be codified at FLA. STAT. § 408.701(4)(b)).

45. *Id.* § 72, 1993 Fla. Laws at 747 (to be codified at FLA. STAT. § 408.7042(2)). This should alleviate any fears that other members' rates will increase because of a perception that these groups' claims records may be higher than other covered individuals.

46. *Id.*

47. QUESTIONS AND ANSWERS, *supra* note 22, at 19-21.

48. The CHPA has the power, duty and responsibility to establish the conditions of alliance membership. Ch. 93-129, § 68, 1993 Fla. Laws 657, 741 (to be codified at FLA. STAT. § 408.702). However, the Agency has indicated that these conditions should not be inordinately restrictive by stating that "[a]nyone is eligible to join a CHPA." QUESTIONS AND ANSWERS, *supra* note 22, at 4.

ance members are not eligible to purchase health plans through the CHPAs, but they may receive all available information concerning the plans and the providers, including comparative cost, quality, and enrollee satisfaction.⁴⁹ Associate alliance members should generally be larger businesses which, although unable to purchase coverage through a CHPA, may benefit by having CHPA information to use in negotiations with their insurance companies and HMOs.⁵⁰

(c) *Alliance Members' Duties*

The Act allows the CHPAs to collect fees from each member to finance reasonable and necessary administration costs.⁵¹ In addition, although participation in a CHPA is entirely voluntary,⁵² once an employer becomes an alliance member, the employer is subject to certain duties and requirements. An employer with thirty or fewer employees must offer at least two AHPs or health plans to its workers, and an employer with more than thirty employees must offer at least three AHPs or health plans.⁵³ Although not explicit in the statute, the employer does not have to offer three separate benefit packages or three different AHPs to meet the requirements of this section. Instead, for example, the employer may meet this requirement through one AHP that offers three different methods of providing the benefits. Although small employer health insurance carriers must offer two types of benefit packages, the basic health benefit plan and the standard health benefit plan,⁵⁴ one AHP that offers the basic or standard benefit plan through a preferred provider organization (PPO),⁵⁵ an exclu-

49. Ch. 93-129, § 67, 1993 Fla. Laws 657, 739 (to be codified at FLA. STAT. § 408.701(6), (9)).

50. QUESTIONS AND ANSWERS, *supra* note 22, at 14; ASSOCIATION OF VOLUNTARY HOSPS. OF AM., *supra* note 27, at question 4.

51. Ch. 93-129, § 68, 1993 Fla. Laws 657, 741 (to be codified at FLA. STAT. § 408.702(7)).

52. *Id.* § 67, 1993 Fla. Laws at 739 (to be codified at FLA. STAT. § 408.701(4)(b)). However, if voluntary participation in health plans is not effective, the state may mandate participation or require some other type of health care participation in the future. *See supra* note 15.

53. Ch. 93-129, § 69, 1993 Fla. Laws 657, 743 (to be codified at FLA. STAT. § 408.703(5)).

54. *See infra* notes 83-86 and accompanying text. The companies may also offer a "limited benefit plan" if the standard and basic plans have been rejected. *See infra* note 88 and accompanying text.

55. Under a preferred provider network, the insurer negotiates with a group of providers to obtain reduced rates and places these providers on its "preferred" list. The insurer pays a higher percentage of the insured's bill if the insurer uses one of the providers on the preferred list, rather than a provider that is not a preferred provider. The insurer may not pay more than 30% more for preferred providers that it does for non-preferred providers. *See generally* FLA. STAT. § 627.4134 (1991).

sive provider organization (EPO),⁵⁶ and a pure indemnity agreement,⁵⁷ or any two of the insurance policy plans and an HMO,⁵⁸ would satisfy the requirement.⁵⁹

The Agency may not require a small employer to pay any portion of its employees' premiums as a condition of participation in the alliance,⁶⁰ but if the employer chooses to pay any portion of the coverage, it must contribute the same dollar amount regardless of which plan the employee chooses.⁶¹ This provision provides a financial incentive for the employees to pick the plan with the lowest premium, which should be the most cost-efficient plan. The employer must also provide assurance to the Agency that the individuals are employees or dependents of employees and have not been added for the purpose of obtaining health care,⁶² and the Agency may require that the small employer agree to participate for a specified period of time, not to exceed one year.⁶³

56. An exclusive provider policy limits the insured, with certain exceptions, to the use of certain providers. If the insured seeks care from a provider that is not on the exclusive list, and the insured is not seeking emergency care or is not outside the service area, then the insured does not have to indemnify the insured for the services. *See generally id.* § 627.6472 (Supp. 1992).

57. Pure indemnity agreements, as the name suggests, are policies that allow the insured to select the provider of his or her choice, with the insurer agreeing to indemnify an amount of the charges regardless of which provider the insured chooses. *See ch. 93-129, § 68, 1993 Fla. Laws 657, 741 (to be codified at FLA. STAT. § 408.702(6)(o)).*

58. An HMO is an organization that provides health-care services to persons on a prepaid per capita or prepaid aggregate fixed-sum basis, and provides those health-care services which subscribers might reasonably require in order to maintain good health; or provides services through physicians who are either employees of the organization or under arrangement with the organization. *FLA. JUR. 2D Words and Phrases 650 (1992).*

59. Rick Lutz, Remarks at the meeting of the Managed Competition Advisory Committee, held during the Agency for Health Care Administration Advisory Committees' Meeting (Aug. 5, 1993). It also appears that one AHP's standard and basic plans constitute two separate health plans for the purpose of the statute. An employer with under thirty employees would therefore be able to meet the two-plan requirement by offering one AHP's standard and basic benefit plans.

60. Ch. 93-129, § 69, 1993 Fla. Laws 657, 743 (to be codified at FLA. STAT. § 408.703(2)).

61.

If a member small employer offers more than one accountable health partnership or health plan and the employer contributes to coverage of employees or dependents of the employee, the alliance shall require that the employer contribute the same dollar amount for each employee, regardless of the accountable health partnership or benefit plan chosen by the employee.

Id. (to be codified at FLA. STAT. § 408.703(4)).

However, an employer may be able to pay different amounts based upon the employee's status or position within the company. Health Care Staff Analysis, *supra* note 3, at 31. Because the statute specifically prohibits varying payments by plan, employers may also be able to pay different amounts based on age, sex, and the like, as long as they pay the same amount per employee category and do not vary the amount per AHP or benefit plan chosen.

62. Ch. 93-129, § 69, 1993 Fla. Laws 657, 743 (to be codified at FLA. STAT. § 408.703(1)(b)).

63. *Id.* (to be codified at FLA. STAT. § 408.703(3)).

(d) *The State's Role in Supervising the CHPAs*

Although CHPAs will be operated as private organizations, the State will be actively involved. The Agency will assist in developing CHPAs by providing start-up funds and certifying that they comply with applicable rules and statutes.⁶⁴ Thereafter, the State will continue to monitor the CHPAs through the Agency and through the power to remove the CHPA's board of directors.⁶⁵

The Agency will not directly supervise the day-to-day operation of the CHPAs; instead, it will sit in a regulatory capacity. The Agency will conduct an annual performance review and certify that the CHPAs are conforming with state laws.⁶⁶ It may decertify a CHPA for failing to comply with the Act or any related rules of the Agency.⁶⁷ The Agency will develop and establish a data system that will include information on provider price, utilization, patient outcome, quality and patient satisfaction.⁶⁸ This data is to be organized in a standardized format to allow for ease in comparing AHPs and for comparing "national models and activities."⁶⁹

The Agency also will be responsible for protecting the public against anti-competitive pricing policies that could drive rates up in the future. Because the Agency's mandate provides the CHPAs and their board members with state and federal antitrust protection,⁷⁰ one fear is that large AHPs will lower their prices solely to drive out competition and subsequently increase prices. To prevent this, the Act requires the Agency to supervise the CHPAs to ensure that actions affecting market competition are not for private benefit.⁷¹

In addition to Agency supervision, the State will oversee the CHPAs through its power to remove their boards of directors.⁷² Each CHPA will operate under its own board of directors, which is composed of a total of seventeen members, each of whom reside within the CHPA region.⁷³ Specifically, each board is composed of three con-

64. *Id.* § 70, 1993 Fla. Laws at 744 (to be codified at FLA. STAT. § 408.704(1), (2)).

65. *See infra* notes 66-79 and accompanying text.

66. Ch. 93-129, § 70, 1993 Fla. Laws 657, 744 (to be codified at FLA. STAT. § 408.704(3)).

67. *Id.* (to be codified at FLA. STAT. § 408.704(1)).

68. *Id.* (to be codified at FLA. STAT. § 408.704(5)(b)1.).

69. *Id.* (to be codified at FLA. STAT. § 408.704(5)(b)2.).

70. *Id.* § 71, 1993 Fla. Laws at 746 (to be codified at FLA. STAT. § 408.7041).

71. *Id.*; *see also id.* § 79, 1993 Fla. Laws at 754.

72. *Id.* § 74, 1993 Fla. Laws at 748 (to be codified at FLA. STAT. § 408.705(6)). The initial board members were appointed by October 1, 1993, as mandated by the statute. *Id.* (to be codified at FLA. STAT. § 408.705(1)).

73. The Governor appoints nine of the initial board members for each CHPA, and the President of the Senate and the Speaker of the House each appoint four. *Id.* (to be codified at FLA. STAT. § 408.705(1)(a)-(c)).

sumer members, three members representing state and local government, and eleven members representing business and industry.⁷⁴ The consumer members must be employees of businesses located within the region.⁷⁵ The members representing state and local government must be, or must have been, in positions of government.⁷⁶ Of the members representing business and industry, at least six individuals must represent businesses that have fifty or fewer employees.⁷⁷ No member of the board of directors may "be employed by, affiliated with, an agent of, or otherwise a representative of any health care provider or insurance carrier."⁷⁸ The purpose of these conditions is to ensure that the boards are as independent and free from special interests as possible.⁷⁹

Although the Act is explicit as to how the initial board members are appointed⁸⁰ and specifically authorizes the Governor to remove any board member for "neglect of duty,"⁸¹ it does not address how the board members are to be replaced. Because the initial board members' terms are for three years,⁸² this issue will have to be addressed either by amendments to the statute, Agency rule-making, or perhaps in the by-laws of the CHPAs themselves.

2. *Types of Plans to be Offered*

Under the Act, AHPs that offer coverage to small employers are required to offer a basic health benefit plan and a standard health benefit plan.⁸³ The types of benefits covered under the plans are essentially the same.⁸⁴ Plans must include coverage for: inpatient hospitalization; outpatient services; newborn children; child care supervision services; adopted children; mammograms; handicapped children; emergency or urgent care out of the geographic service area; and hospices, where hospice coverage is most appropriate and cost effective.⁸⁵

74. *Id.* (to be codified at FLA. STAT. § 408.705(1)).

75. *Id.* (to be codified at FLA. STAT. § 408.705).

76. *Id.*

77. *Id.*

78. *Id.* (to be codified at FLA. STAT. § 408.705(4)).

79. *But see Beware Self-Interest Virus*, MIAMI HERALD, May 17, 1993, at A10.

80. *See supra* note 73.

81. Ch. 93-129, § 74, 1993 Fla. Laws 657, 748 (to be codified at FLA. STAT. § 408.705(6)).

82. *Id.* (to be codified at FLA. STAT. § 408.705(2)).

83. *Id.* § 65, 1993 Fla. Laws at 714 (amending FLA. STAT. § 627.6699(9) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(12)).

84. The 1993 Act revised the membership of the committee that is responsible for reviewing modifications to the plans to include additional representation from employers, community health-care purchasing alliances, HMOs and agents. *Id.*

85. *Id.* (amending FLA. STAT. § 627.6699(9)(b)4 (Supp. 1992), to be codified at FLA. STAT.

The purpose of having standardized plans is to facilitate comparison between different carriers, and, therefore, to "improve the overall fairness and efficiency of the small group health insurance market."⁸⁶ The main difference between the types of plans is the level of coverage to be offered. For example, standard policies have a lifetime benefit cap of \$1,000,000; a basic policy would have an annual maximum of \$50,000, but no lifetime cap.⁸⁷

If the small employer rejects, in writing, the standard and basic health benefit plans, the small employer-carrier may offer a limited benefit policy or contract.⁸⁸ The purpose of the limited benefit plan appears to have been to provide some health coverage to employees who could not afford the standard and basic health plans.

3. *MedAccess and the Medicaid Buy-In Programs*

Beginning July 1, 1994,⁸⁹ subject to fiscal limitations,⁹⁰ every resident of the state who has a gross family income equal to or less than 250% of the federal poverty level,⁹¹ and who has been without health insurance for the previous twelve months,⁹² is eligible to join a state-sponsored health insurance program called the MedAccess program.⁹³ This program will contain certain mandatory coverage, like annual physical exams and family planning services,⁹⁴ that emphasizes primary care and prevention.⁹⁵ However, MedAccess has a lifetime benefit cap of \$500,000.⁹⁶

The Agency is to provide for the determination and collection of

§ 627.6699(12)(b)4); ASSOCIATION OF VOLUNTARY HOSPS. OF AM., *supra* note 27, at question 3. The entire context of the policies to be issued as standard and basic health benefit plans is contained on the diskette referenced as *Informational Bulletin 93-018* released by the Florida Department of Insurance on November 5, 1993. Additional copies of this bulletin are available upon request from the Florida Department of Insurance.

86. Ch. 92-33, § 117, 1992 Fla. Laws 218, 328 (codified at FLA. STAT. § 627.6699(2) (Supp. 1992)).

87. ASSOCIATION OF VOLUNTARY HOSPS. OF AM., *supra* note 27, at question 3.

88. Ch. 93-129, § 65, 1993 Fla. Laws 657, 714 (amending FLA. STAT. § 627.6699(9) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(12)(c)).

89. *Id.* § 39, 1993 Fla. Laws at 699 (to be codified at FLA. STAT. § 408.902(1)).

90. *Id.* § 41, 1993 Fla. Laws at 700 (to be codified at FLA. STAT. § 408.903(9)).

91. For a family of four in 1993, 250% of the federal poverty level is approximately \$36,000. ASSOCIATION OF VOLUNTARY HOSPS. OF AM., *supra* note 27, at question 8.

92. Ch. 93-129, § 41, 1993 Fla. Laws 657, 700 (to be codified at FLA. STAT. § 408.903(1)). A person who is eligible for health care benefits under Medicare or Medicaid is also ineligible to join MedAccess. *Id.* (to be codified at FLA. STAT. § 408.903(3)).

93. *Id.* § 37, 1993 Fla. Laws at 698 (to be codified at FLA. STAT. § 408.90); ASSOCIATION OF VOLUNTARY HOSPS. OF AM., *supra* note 27, at question 8.

94. Ch. 93-129, § 42, 1993 Fla. Laws 657, 700 (to be codified at FLA. STAT. § 408.904(2)).

95. *Id.* § 37, 1993 Fla. Laws at 698 (to be codified at FLA. STAT. § 408.90). *see also id.* § 46, 1993 Fla. Laws at 703 (to be codified at FLA. STAT. § 408.908(5)).

96. *Id.* § 43, 1993 Fla. Laws at 702 (to be codified at FLA. STAT. § 408.905(5)).

premiums⁹⁷ in an amount sufficient to cover all expenses of the Med-Access program.⁹⁸ In addition, MedAccess health-care providers are to be reimbursed at Medicaid rates.⁹⁹ The theory behind MedAccess appears to be that the State can offer the benefit packages at a cost lower than what is available in the private market by utilizing the current Medicaid provider network, the Medicaid system of administration, and the purchasing alliances.

If the necessary federal authorizations and funds are obtained, the State will also establish a Medicaid buy-in program.¹⁰⁰ As opposed to MedAccess, this program is actually aimed at subsidizing health insurance for lower income people who make too much for Medicaid, but not enough to purchase health insurance.¹⁰¹ It will also be available to persons with an income of up to 250% of the federal poverty level.¹⁰² Once the Medicaid buy-in program is established, members of the MedAccess program may transfer to it.¹⁰³ Under this plan, individuals would pay a portion of the cost of their coverage, based on a sliding scale related to income.¹⁰⁴

B. Other Reforms Implemented in the Act

The Act addresses other areas of concern in addition to implementing managed competition and increasing access to health insurance for the uninsured. It seeks to reform health insurance in general and reform and enhance rural health delivery;¹⁰⁵ it mandates that the Agency coordinate and develop "scientifically sound, clinically relevant practice parameters" to reduce unwarranted health care practices and improve the quality of care;¹⁰⁶ it initiates a health care fraud and abuse study;¹⁰⁷ and it transfers Medicaid from the Department of Health and

97. *Id.* § 40, 1993 Fla. Laws at 699; *see also id.* § 45, 1993 Fla. Laws at 702 (to be codified at FLA. STAT. § 408.907)). Premiums may be collected from the individuals or their employers; however, to encourage employer payments, the agency may offer premium discounts to employers who pay at least 50% of the premium and collect the premium from the employees on behalf of the Agency. *Id.* (to be codified at FLA. STAT. § 408.907(1)-(3)).

98. *Id.* § 46, 1993 Fla. Laws at 703 (to be codified at FLA. STAT. § 408.908(7)).

99. *Id.* § 44, 1993 Fla. Laws at 702 (to be codified at FLA. STAT. § 408.906(2)).

100. *Id.* § 39, 1993 Fla. Laws at 699 (to be codified at FLA. STAT. § 408.902(2)).

101. ASSOCIATION OF VOLUNTARY HOSPS. OF AM., *supra* note 27, at question 8.

102. Ch. 93-129, § 39, 1993 Fla. Laws 657, 699 (to be codified at FLA. STAT. § 408.902(2)).

103. *See id.*

104. ASSOCIATION OF VOLUNTARY HOSPS. OF AM., *supra* note 27, at question 8.

105. *See infra* notes 122-33 and accompanying text.

106. Ch. 93-129, § 36, 1993 Fla. Laws 657, 696 (amending FLA. STAT. § 408.02 (Supp. 1992)).

107. *Id.* § 57, 1993 Fla. Laws at 710. The Agency shall establish a work group that will include representatives from the Department of Legal Affairs, the Department of Health and Rehabilitative Services, the Office of the Auditor General, the Department of Insurance, the

Rehabilitative Services to the Agency for Health Care Administration.¹⁰⁸ Only the health insurance reforms and the rural health initiatives will be discussed in the text of this Article.

1. Health Insurance Reforms

The legislation's health insurance reforms are primarily directed at small employer coverage. The Act expands the definition of small employer, which was limited to entities with three to twenty-five employees, so that a small employer now includes entities that employ from one to fifty employees.¹⁰⁹ Effective January 1, 1994, for employers with three to fifty eligible employees, and effective April 15, 1994, for employers with one or two eligible employees, all plans issued or renewed—not only the basic and standard benefit plans—are to be offered on a “guarantee-issue basis,” and rates are to be established by a “modified community rating methodology.”¹¹⁰

Guarantee basis means that the plans “must be offered to an employer, employee, or dependent of the employee, regardless of health status, preexisting conditions, or claims history.”¹¹¹ Small employer health insurance carriers may offer specialized additional or increased benefits as riders, which do not have to be issued on a guaranteed basis.¹¹² These riders may only be medically underwritten for the entire employee/dependent group, and may not be individually underwritten as to the employees or the dependents of such employees.¹¹³

Department of Law Enforcement, the United States Department of Justice, and the private insurance sector. *Id.* § 57(3), 1993 Fla. Laws at 710. The work group shall identify the major forms of health insurance fraud; assess current laws, rules and regulations; recommend new legislation; identify how agencies can best coordinate their efforts to become more effective; assess the feasibility of permitting insurance companies to share information regarding provider billing; and evaluate the impact of allowing persons who report fraud to receive a portion of the fine. *Id.* § 57(4), 1993 Fla. Laws at 710.

108. *Id.* § 2, 1993 Fla. Laws at 661 (amending FLA. STAT. § 20.42(2)(c) (Supp. 1992)); Health Care Staff Analysis, *supra* note 3, at 17.

109. Ch. 93-129, § 65, 1993 Fla. Laws 657, 714 (amending FLA. STAT. § 627.6699(3)(r) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(3)(w)); *see also supra* note 35.

110. Ch. 93-129, § 65, 1993 Fla. Laws 657, 714 (amending FLA. STAT. § 627.6699(5) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(5)(a), (c), (g)).

111. *Id.* (amending FLA. STAT. § 627.6699(3) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(3)(i)). However, policies issued to small employers with fewer than three employees may exclude coverage for a preexisting condition for up to 24 months. *Id.* (amending FLA. STAT. § 627.6699(5) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(5)(g)). A 12-month waiting period may be imposed for preexisting conditions if the small employer has more than three employees. *Id.* (amending FLA. STAT. § 627.6699(5) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(5)(f)). Credit must be given towards the preexisting condition limitation period for time covered under a previous qualifying policy if the small employer had been covered under the previous qualifying policy not more than 30 days prior to the effective date of the new policy. *Id.* (amending FLA. STAT. § 627.6699(5) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(5)(g)); FLA. H. REP. COMM. ON HEALTH CARE, *supra* note 19, at 12.

112. Ch. 93-129, § 65 1993 Fla. Laws 657, 714 (amending FLA. STAT. § 627.6699(5) (Supp.

Modified community rating methodology indicates the factors that can be included in determining small employers' rates.¹¹⁴ Under this methodology, premiums are to be determined "solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area."¹¹⁵ These factors are not mandatory; an insurance company or HMO may use any or all of them in determining rates.¹¹⁶ However, additional factors may not be used; for example, rates may not be based on health status or claims experience of any individual or group.¹¹⁷

The Act also institutes reforms to prevent insurers from issuing policies that will lead to a policy "death spiral."¹¹⁸ The death spiral occurs when an insurer establishes a low premium rate the first year a specific policy form is issued to a group. When the insurer stops issuing the policy to new policyholders, and as the claims experience of the group deteriorates, rates increase and healthy individuals obtain coverage elsewhere. This accelerates increases in the rates, increasing the incentive for healthy individuals to leave the policy group. Eventually, as the cycle continues, the policy is unaffordable for anyone, hence the term "death spiral."¹¹⁹

To prevent "death spiralling," the Act prohibits the following specific rating practices: select and ultimate premium schedules, durational rating, and attained age premium structures on policies where more than fifty percent of the policyholders are over sixty-five years old.¹²⁰ The Act also makes it more difficult for insurers to follow this rating practice by forcing insurers to wait five years before they may offer a new policy form with benefits similar to policy forms they have discontinued.¹²¹

1992), to be codified at FLA. STAT. § 627.6699(5)(g)1.); ASSOCIATION OF VOLUNTARY HOSPS. OF AM., *supra* note 27, at question 3.

113. Ch. 93-129, § 65, 1993 Fla. Laws 657, 714 (amending FLA. STAT. § 627.6699(5) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(5)(g)1.).

114. *Id.* (amending FLA. STAT. § 627.6699(3) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(3)(m)).

115. *Id.* (amending FLA. STAT. § 627.6699 (Supp. 1992), to be codified at FLA. STAT. § 627.6699(6)(b)1.). The boundaries of the geographic areas must coincide with the county boundaries. *Id.* (amending FLA. STAT. § 627.6699(5) (Supp. 1992), to be codified at FLA. STAT. § 627.6699(5)(k)).

116. *Id.* (amending FLA. STAT. § 627.6699 (Supp. 1992), to be codified at FLA. STAT. § 627.6699(6)(b)2.).

117. FLA. H. REP. COMM. ON HEALTH CARE, *supra* note 19, at 12.

118. Health Care Staff Analysis, *supra* note 3, at 26.

119. *Id.* at 26-27; see also Carol Gentry, *Chiles Views Reform Plan as His Legacy*, ST. PETERSBURG TIMES, Jan. 24, 1993, at 10.

120. Ch. 93-129, § 62, 1993 Fla. Laws 657, 713 (amending FLA. STAT. § 627.410 (Supp. 1992), to be codified at FLA. STAT. § 627.410(b)(e)2.). Health Care Staff Analysis, *supra* note 3, at 26.

121. Ch. 93-129, § 62, 1993 Fla. Laws 657, 713 (amending FLA. STAT. § 627.410 (Supp.

2. Rural Health Initiatives

The Act addresses the problems in Florida's rural areas¹²² by providing additional incentives for health care practitioners to practice in these areas and by the formation of "Rural Health Networks."¹²³

The Act provides several incentives for practicing in rural areas. For example, it expands the Florida Health Service Corps to offer scholarships, loan repayment assistance, and travel and relocation expenses to allopathic, osteopathic, chiropractic, podiatric, dental, physician assistant, and nursing students in return for service in a medically underserved area¹²⁴ upon completion of primary care training.¹²⁵ The loan repayment assistance and the travel and relocation reimbursement are particularly designed to assist health care practitioners with primary care specialties.¹²⁶

Rural Health Networks are nonprofit legal entities "consisting of rural and urban health care providers and others," organized to plan and deliver health care services on a cooperative basis in a rural area.¹²⁷ They are designed to provide efficient and effective delivery of health care services in rural areas through the coordination and integration of public and private health care providers.¹²⁸ To allow this coordination and integration, the Act protects Rural Health Networks from antitrust laws.¹²⁹

Rural Health Networks are also designed to increase the utilization of statutory rural hospitals and to help ensure their survival.¹³⁰ Rural hospitals are strengthened because the Act gives preference to mem-

1992), to be codified at FLA. STAT. § 627.410(6)(e)2.). The Department of Insurance has discretion to decrease the time period. *Id.*

122. Florida has approximately two million rural residents, and 34% of the counties in the state are rural. On average, the health status of Florida's rural residents is poorer than that of urban residents. Rural counties have approximately one-half the number of physicians that urban counties have, and approximately one-half of Florida's statutory rural hospitals are in financial difficulty. Health Care Staff Analysis, *supra* note 3, at 3.

123. Ch. 93-129, § 27, 1993 Fla. Laws 657, 688 (to be codified at FLA. STAT. § 381.0406).

124. *Id.* § 26, 1993 Fla. Laws at 685 (amending FLA. STAT. § 381.0302(2)(b)1. (Supp. 1992)). Prior to this amendment, the program was only authorized to offer "scholarships to medical, chiropractic, dental, and nursing students in return for service in a public health care program." *Id.* A "medically underserved area" includes: a geographic area, special population, or facility that has a shortage of health care professionals as defined by federal regulations; county, community, or migrant health centers; or a geographic area or facility designated by the department with a shortage of health care practitioners. *Id.* (amending FLA. STAT. § 381.0302(2)(c) (Supp. 1992)).

125. *Id.* (amending FLA. STAT. § 381.0302(5)(a) (Supp. 1992)).

126. *Id.* (amending FLA. STAT. § 381.0302 (Supp. 1992), to be codified at FLA. STAT. § 381.0302(6)).

127. *Id.* § 27, 1993 Fla. Laws at 688 (to be codified at FLA. STAT. § 381.0406(2)(c)).

128. *Id.* (to be codified at FLA. STAT. § 381.0406(1)(b)).

129. *Id.* § 29, 1993 Fla. Laws at 691 (to be codified at FLA. STAT. § 395.606(1)).

130. *Id.* § 27, 1993 Fla. Laws at 688 (to be codified at FLA. STAT. § 381.0406(1)(e)).

bers of certified Rural Health Networks in the award of certificates of need,¹³¹ and because the Act creates an additional disproportionate-share program for rural hospitals¹³² that agree to conform to Agency requirements, accept all patients on a space-available basis, and provide backup and referral services to the county public health units.¹³³

III. CONCLUSION

Florida made history when it became one of the first large states to institute a comprehensive market-based health care and delivery system.¹³⁴ Although not everyone is enthusiastic about the program,¹³⁵ and several areas must still be addressed, Florida has begun to confront the very real problems inherent in its present health care delivery system. As the legislation and rules continue to develop and evolve, hopefully, Florida will continue toward its goal of ensuring access to quality health care for all of its citizens.

131. *Id.* § 31, 1993 Fla. Laws at 693 (to be codified at FLA. STAT. § 408.043(4)).

132. Only nine statutory rural hospitals qualified for the section 409.911 disproportionate share program in 1992-93. Of these, the average payment was estimated to be \$6,697, and five of the hospitals were expected to receive less than \$1,000 each. Health Care Staff Analysis, *supra* note 3, at 5-6.

133. Ch. 93-129, § 33, 1993 Fla. Laws 657, 693 (to be codified at FLA. STAT. § 409.9116(5)). If the disproportionate share program cannot provide specific assistance to rural hospitals, the Act provides that the Rural Hospital Financial Assistance Program shall be created to allocate additional funds to rural hospitals. *Id.* (to be codified at FLA. STAT. § 409.9116(4)).

134. Doug Cook, *Why "Managed Competition"?*, MIAMI HERALD, June 1, 1993, at A11. Although many people argue that Florida is the first state to institute comprehensive managed competition reform, *see id.*, proponents of California's HIPC (Health Insurance Plan of California) might disagree. For information on this plan, see THE HIPC, THE HIPC EMPLOYEE BROCHURE AND APPLICATION (1993).

135. *See, e.g.*, Peter Alagona, Jr., M.D., *A Health Care Reform That's Ripe for Abuse*, WALL STREET J., May 17, 1993, at A17 (letter to the editor criticizing the plan as taking medical decision-making power from physicians).

CHPA Regions

APPENDIX A



