

THE FLORIDA SENATE
2021 SUMMARY OF LEGISLATION PASSED
Committee on Health Policy

CS/HB 1057 — Agency for Health Care Administration

by Finance and Facilities Subcommittee and Rep. Garrison (CS/SB 1292 by Health Policy and Senator Bean)

The bill:

- Eliminates the requirement that the Agency for Health Care Administration (AHCA) submit a report to the Legislature by January 1 of each year on the operation of the Pharmaceutical Expense Assistance Program.
- Updates provisions setting reimbursement rates for providers of prescribed drugs. Under the bill, a provider of prescribed drugs will be reimbursed in an amount not to exceed the lesser of:
 - o The actual acquisition cost based on the federal CMS National Average Drug Acquisition Cost pricing files plus a professional dispensing fee;
 - o The wholesale acquisition cost plus a professional dispensing fee;
 - o The state maximum allowable cost plus a professional dispensing fee; or
 - o The usual and customary charge billed by the provider.
- Deletes obsolete language relating to the Medicaid payment of professional dispensing fees. Effective April 1, 2017, federal CMS implemented the use of the term “professional dispensing fee” and mandated that certain criteria be met in setting the dispensing fee. In response, the AHCA updated the Medicaid state plan with a new professional dispensing fee that does not conform to s. 409.908(14)(b) and (c), F.S.
- Deletes a provision requiring the AHCA to ensure that any therapeutic class of drugs, including drugs that have been removed from distribution to the public by their manufacturer or by the federal Food and Drug Administration (FDA) or that have been required to carry a black box warning label by the federal FDA because of safety concerns, is reviewed by the Medicaid Pharmaceutical and Therapeutics Committee at its next regularly scheduled meeting. If drugs covered by Florida Medicaid are removed from distribution for safety reasons or because of an FDA-mandated black box warning, the AHCA does not wait for the quarterly committee meetings or for its recommendations because the safety of enrollees could be at stake.
- Corrects a provision in current law to reflect that the AHCA is responsible for Medicaid fair hearings in which preferred drug formulary decisions are appealed, rather than the Department of Children and Families.
- Clarifies that AHCA must timely respond to requests for “prior authorizations” associated with prescribed drugs under the Medicaid fee for service (FFS) program, rather than responding to requests for “prior consultations.”
- Deletes outdated provisions requiring the AHCA to expand home delivery of pharmacy products. The FFS and managed care plans currently provide for mail order delivery of drugs.
- Deletes an obsolete provision limiting the doses of sexual or erectile dysfunction drugs, as Florida Medicaid does not cover such drugs based on a federal prohibition. In 2005, federal law was amended to prohibit Medicaid federal financial participation for drugs

used for the treatment of sexual or erectile dysfunction, unless such drugs were approved by the federal Food and Drug Administration to treat a different condition.

- Eliminates the requirement that the AHCA report quarterly to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the progress made on implementing s. 409.912(5), F.S., relating to Medicaid prescribed drug spending and its effect on expenditures.
- Repeals s. 409.91213, F.S., to eliminate the requirement that the AHCA submit a quarterly progress report and an annual report relating to the 1115 Managed Medical Assistance waiver to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability.
- Creates an exception to the requirement that determinations of medical necessity must be made by a licensed physician employed by or under contract with the AHCA. The exception enables doctoral-level, board-certified behavior analysts to make determinations of medical necessity for behavior analysis services in addition to licensed physicians. The bill also requires a determination of medical necessity to be based on information available at the time the goods or services are requested, rather than when they are provided. This change will bring Florida law into line with federal regulations.
- Repeals s. 765.53, F.S., to dissolve the Organ Transplant Advisory Council.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 40-0; House 118-0