

HB 1347

2004

A bill to be entitled

An act relating to prescription drug practices; providing definitions; providing that a pharmacy benefits manager owes a fiduciary duty to covered entities and individuals; providing duties and responsibilities of a pharmacy benefits manager; providing criteria for dispersing substitute prescription drugs; requiring a pharmacy benefits manager to pass on certain payments to covered entities or individuals; restricting a pharmacy benefits manager from contracting in a manner inconsistent with this act; providing that any agreement to waive the provisions of this act is against public policy; providing that a violation of this act is a violation of the Florida Deceptive and Unfair Trade Practices Act; authorizing private civil actions and civil action by the Attorney General; providing for injunctive relief, civil penalties, costs, expert fees, and attorney fees; providing for dispensation of Canadian prescription drugs; providing criteria for such dispensation; providing for purchase of Canadian prescription medicines; providing definitions; requiring that certain medications be purchased at a certain rate; exempting pharmacy benefits managers from certain requirements and actions for certain dispensations; providing an effective date.

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

Section 1. Prescription drug practices.--

(1) As used in this section:

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30        (a) "Covered entity" means a nonprofit hospital, medical  
31 service organization, insurer, health coverage plan, or health  
32 maintenance organization licensed in this state; a health  
33 program administered by the Department of Health in the capacity  
34 of provider of health coverage; or an employer, labor union, or  
35 other group of persons organized in this state that provides  
36 health coverage to covered individuals who are employed or  
37 reside in this state. Covered entity does not include a health  
38 plan that provides coverage only for accidental injury,  
39 specified disease, hospital indemnity, Medicare supplement,  
40 disability income, or other long-term care.

41        (b) "Covered individual" means a member, participant,  
42 enrollee, contract holder, policy holder, or beneficiary of a  
43 covered entity who is provided health coverage by the covered  
44 entity. Covered individual includes a dependent or other person  
45 provided health coverage through a policy, contract, or plan for  
46 a covered individual.

47        (c) "Generic drug" means a chemically equivalent copy of a  
48 brand-name drug with an expired patent.

49        (d) "Labeler" means an entity or person that receives  
50 prescription drugs from a manufacturer or wholesaler and  
51 repackages those drugs for later retail sale and has a labeler  
52 code from the United States Food and Drug Administration.

53        (e) "Pharmacy benefits management" means the procurement  
54 of prescription drugs at a negotiated rate for dispensation  
55 within this state to covered individuals, the administration or  
56 management of prescription drug benefits provided by a covered  
57 entity for the benefit of covered individuals, or any of the  
58 following services provided with regard to the administration of

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59 pharmacy benefits:

60 1. Mail service pharmacy.

61 2. Claims processing, retail network management, and  
 62 payment of claims to pharmacies for prescription drugs dispensed  
 63 to covered individuals.

64 3. Clinical formulary development and management services.

65 4. Rebate contracting and administration.

66 5. Patient compliance, therapeutic intervention, and  
 67 generic substitution programs.

68 6. Disease management programs.

69 (f) "Pharmacy benefits manager" means an entity that  
 70 performs pharmacy benefits management, including a person or  
 71 entity acting in a contractual or employment relationship.

72 (2) A pharmacy benefits manager owes a fiduciary duty to  
 73 covered entities and individuals and shall discharge that duty  
 74 in accordance with the provisions of state and federal law. A  
 75 pharmacy benefits manager shall:

76 (a) Perform duties with care, skill, prudence, and  
 77 diligence and in accordance with the standards of conduct  
 78 applicable to a fiduciary in an enterprise of a like character  
 79 and with like aims.

80 (b) Discharge duties with respect to the covered entity  
 81 and covered individuals solely in the interests of the covered  
 82 individuals and for the primary purpose of providing benefits to  
 83 covered individuals and defraying reasonable expenses of  
 84 administering health plans.

85 (c) Notify the covered entity in writing of any activity,  
 86 policy, or practice of the pharmacy benefits manager that  
 87 directly or indirectly presents any conflict of interest with

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88 the duties imposed by this section.

89 (d) Provide to a covered entity all financial and  
90 utilization information requested by the covered entity relating  
91 to the provision of benefits to covered individuals through that  
92 covered entity and all financial and utilization information  
93 relating to services to that covered entity. A pharmacy benefits  
94 manager providing information under this paragraph shall comply  
95 with all rules established pursuant to s. 465.017, Florida  
96 Statutes, in handling such information. Information designated  
97 as confidential by a pharmacy benefits manager and provided to a  
98 covered entity under this paragraph may not be disclosed to any  
99 person without the consent of the pharmacy benefits manager,  
100 except that disclosure may be made in a court filing under the  
101 Florida Deceptive and Unfair Trade Practices Act or when  
102 authorized by that act or ordered by a court of this state for  
103 good cause shown.

104 (e) Transfer in full to the covered entity or covered  
105 individuals any benefit or payment received in any form by the  
106 pharmacy benefits manager as a result of the prescription drug  
107 substitution.

108 (f) Disclose to the covered entity all financial terms and  
109 arrangements for remuneration of any kind that apply between the  
110 pharmacy benefits manager and any prescription drug manufacturer  
111 or labeler, including, without limitation, formulary management  
112 and drug-switch programs, educational support, claims  
113 processing, and pharmacy network fees that are charged from  
114 retail pharmacies and data sales fees.

115 (3) With regard to the dispensation of a substitute  
116 prescription drug for a prescribed drug to a covered individual,

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117 the pharmacy benefits manager:

118 (a) May substitute a lower-priced generic drug for a  
 119 higher-priced prescribed drug.

120 (b) May not substitute a higher-priced generic drug for a  
 121 lower-priced prescribed drug.

122 (c) Shall consult with the prescribing health professional  
 123 or that person's authorized representative.

124 (d) Shall disclose the costs of both drugs to the covered  
 125 individual and the covered entity and any benefit or payment  
 126 directly or indirectly accruing to the pharmacy benefits manager  
 127 as a result of the substitution.

128 (e) Shall obtain the approval of the prescribing health  
 129 professional or that person's authorized representative for the  
 130 substitution.

131 (4) A pharmacy benefits manager that derives any payment  
 132 or benefit for the dispensation of prescription drugs based on  
 133 volume of sales for certain prescription drugs or classes or  
 134 brands of drugs shall pass on that payment or benefit, in full,  
 135 to the covered entity or covered individuals.

136 (5) A pharmacy benefits manager may not, in a contract  
 137 with a covered entity, prescription drug manufacturer, or  
 138 labeler, accept or agree to an obligation that is inconsistent  
 139 with the fiduciary duties imposed by state or federal law.

140 (6) Any agreement to waive the provisions of this section  
 141 is against public policy and is void.

142 (7) A violation of this section is a violation of the  
 143 Florida Deceptive and Unfair Trade Practices Act. Compliance  
 144 with this section may be enforced through a private civil action  
 145 or a civil action by the Attorney General.

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146 (a) A covered entity, covered individual, or other person  
 147 injured as a result of a violation of this section is eligible  
 148 to bring a private civil action pursuant to the Florida  
 149 Deceptive and Unfair Trade Practices Act.

150 (b) A civil action by the Attorney General pursuant to  
 151 this section is subject to the provisions of the Florida  
 152 Deceptive and Unfair Trade Practices Act. Each violation of this  
 153 section is a separate civil violation for which the Attorney  
 154 General may obtain, in addition to other remedies, injunctive  
 155 relief and a fine in an amount not to exceed \$10,000 per  
 156 violation, plus the costs of suit, including necessary and  
 157 reasonable investigative costs, reasonable expert fees, and  
 158 reasonable attorney's fees.

159 Section 2. Dispensing of Canadian prescriptions.--  
 160 Notwithstanding any other provision of law, a pharmacist  
 161 licensed in this state shall be permitted to dispense, sell,  
 162 market, or deliver a prescription that was originally dispensed  
 163 by a Canadian pharmacy, or otherwise legally imported from  
 164 Canada, provided that:

165 (1) The pharmacist has reason to believe that the  
 166 prescription for such medication is valid.

167 (2) Such medication is eligible for importation from  
 168 Canada pursuant to applicable federal law.

169 (3) The pharmacist does not believe that the medication is  
 170 counterfeit.

171 Section 3. Purchase of Canadian medications.--

172 (1) As used in this section, the term:

173 (a) "Canadian lower cost alternative" means any medication  
 174 that:

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175 1. Has been certified by the United States Department of  
176 Health and Human Services or its designee as eligible for  
177 importation from Canada pursuant to federal law.

178 2. Is offered for sale by a Canadian drug wholesaler at a  
179 price lower in amount than the average wholesale price of such  
180 medication in the United States.

181 (b) "Lowest Canadian cost alternative" means the amount of  
182 the lowest price at which a Canadian lower-cost alternative is  
183 offered for sale by any drug wholesaler.

184 (2) Any medication the cost of which is reimbursed or  
185 financed in whole or in part by state revenues shall be  
186 purchased at a rate not higher than the lowest Canadian cost  
187 alternative, if any.

188 (3) A pharmacy benefits manager shall be exempt from all  
189 of the mandatory requirements and obligations, as well as from  
190 the civil enforcement provisions, set forth in this act for all  
191 medication that is dispensed to a covered individual if such  
192 medication meets the definition of a lowest Canadian cost  
193 alternative for purposes of this section.

194 Section 4. This act shall take effect July 1, 2004.