

By the Committee on Banking and Insurance; and Senator Mayfield

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A bill to be entitled

An act relating to consumer protection from nonmedical changes to prescription drug formularies; creating s. 627.42393, F.S.; limiting changes to a health insurance policy prescription drug formulary during a policy year; providing applicability and construction; amending s. 627.6699, F.S.; requiring small employer carriers to limit changes to prescription drug formularies under certain circumstances; amending s. 641.31, F.S.; limiting changes to a health maintenance contract prescription drug formulary during a contract year; providing applicability and construction; providing an effective date.

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

Section 1. Section 627.42393, Florida Statutes, is created to read:

627.42393 Insurance policies; limiting changes to prescription drug formularies.-

(1) Other than during an open enrollment period, an individual or group insurance policy that is delivered, issued for delivery, renewed, amended, or continued in this state and that provides medical, major medical, or similar comprehensive coverage may not:

(a) Remove a covered prescription drug from its list of covered drugs during the policy year unless the United States Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug, or the manufacturer of the drug has notified the United States Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C

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33 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

34 (b) Reclassify a drug to a more restrictive drug tier or  
35 increase the amount that an insured must pay for a copayment,  
36 coinsurance, or deductible for prescription drug benefits, or  
37 reclassify a drug to a higher cost-sharing tier during the  
38 policy year.

39 (2) This section does not prohibit the addition of  
40 prescription drugs to the list of drugs covered under the policy  
41 during the policy year.

42 (3) This section does not apply to a grandfathered health  
43 plan as defined in s. 627.402 or to benefits set forth in s.  
44 627.6513(1)-(14).

45 (4) This section does not alter or amend s. 465.025, which  
46 provides conditions under which a pharmacist may substitute a  
47 generically equivalent drug product for a brand name drug  
48 product.

49 (5) This section does not alter or amend s. 465.0252, which  
50 provides conditions under which a pharmacist may dispense a  
51 substitute biological product for the prescribed biological  
52 product.

53 Section 2. Paragraph (e) of subsection (5) of section  
54 627.6699, Florida Statutes, is amended to read:

55 627.6699 Employee Health Care Access Act.—

56 (5) AVAILABILITY OF COVERAGE.—

57 (e) All health benefit plans issued under this section must  
58 comply with the following conditions:

59 1. For employers who have fewer than two employees, a late  
60 enrollee may be excluded from coverage for no longer than 24  
61 months if he or she was not covered by creditable coverage

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62 continually to a date not more than 63 days before the effective  
63 date of his or her new coverage.

64 2. Any requirement used by a small employer carrier in  
65 determining whether to provide coverage to a small employer  
66 group, including requirements for minimum participation of  
67 eligible employees and minimum employer contributions, must be  
68 applied uniformly among all small employer groups having the  
69 same number of eligible employees applying for coverage or  
70 receiving coverage from the small employer carrier, except that  
71 a small employer carrier that participates in, administers, or  
72 issues health benefits pursuant to s. 381.0406 which do not  
73 include a preexisting condition exclusion may require as a  
74 condition of offering such benefits that the employer has had no  
75 health insurance coverage for its employees for a period of at  
76 least 6 months. A small employer carrier may vary application of  
77 minimum participation requirements and minimum employer  
78 contribution requirements only by the size of the small employer  
79 group.

80 3. In applying minimum participation requirements with  
81 respect to a small employer, a small employer carrier shall not  
82 consider as an eligible employee employees or dependents who  
83 have qualifying existing coverage in an employer-based group  
84 insurance plan or an ERISA qualified self-insurance plan in  
85 determining whether the applicable percentage of participation  
86 is met. However, a small employer carrier may count eligible  
87 employees and dependents who have coverage under another health  
88 plan that is sponsored by that employer.

89 4. A small employer carrier shall not increase any  
90 requirement for minimum employee participation or any

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91 requirement for minimum employer contribution applicable to a  
92 small employer at any time after the small employer has been  
93 accepted for coverage, unless the employer size has changed, in  
94 which case the small employer carrier may apply the requirements  
95 that are applicable to the new group size.

96 5. If a small employer carrier offers coverage to a small  
97 employer, it must offer coverage to all the small employer's  
98 eligible employees and their dependents. A small employer  
99 carrier may not offer coverage limited to certain persons in a  
100 group or to part of a group, except with respect to late  
101 enrollees.

102 6. A small employer carrier may not modify any health  
103 benefit plan issued to a small employer with respect to a small  
104 employer or any eligible employee or dependent through riders,  
105 endorsements, or otherwise to restrict or exclude coverage for  
106 certain diseases or medical conditions otherwise covered by the  
107 health benefit plan.

108 7. An initial enrollment period of at least 30 days must be  
109 provided. An annual 30-day open enrollment period must be  
110 offered to each small employer's eligible employees and their  
111 dependents. A small employer carrier must provide special  
112 enrollment periods as required by s. 627.65615.

113 8. A small employer carrier must limit changes to  
114 prescription drug formularies as required by s. 627.42393.

115 Section 3. Subsection (44) is added to section 641.31,  
116 Florida Statutes, to read:

117 641.31 Health maintenance contracts.—

118 (44) (a) Other than during an open enrollment period, a  
119 health maintenance contract that is delivered, issued for

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120 delivery, renewed, amended, or continued in this state and that  
121 provides medical, major medical, or similar comprehensive  
122 coverage may not:

123 1. Remove a covered prescription drug from its list of  
124 covered drugs during the contract year unless the United States  
125 Food and Drug Administration has issued a statement about the  
126 drug which calls into question the clinical safety of the drug,  
127 or the manufacturer of the drug has notified the United States  
128 Food and Drug Administration of a manufacturing discontinuance  
129 or potential discontinuance of the drug as required by s. 506C  
130 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

131 2. Reclassify a drug to a more restrictive drug tier or  
132 increase the amount that an insured must pay for a copayment,  
133 coinsurance, or deductible for prescription drug benefits, or  
134 reclassify a drug to a higher cost-sharing tier during the  
135 contract year.

136 (b) This subsection does not prohibit the addition of  
137 prescription drugs to the list of drugs covered during the  
138 contract year.

139 (c) This subsection does not apply to a grandfathered  
140 health plan as defined in s. 627.402 or to benefits set forth in  
141 s. 627.6513(1)-(14).

142 (d) This subsection does not alter or amend s. 465.025,  
143 which provides conditions under which a pharmacist may  
144 substitute a generically equivalent drug product for a brand  
145 name drug product.

146 (e) This subsection does not alter or amend s. 465.0252,  
147 which provides conditions under which a pharmacist may dispense  
148 a substitute biological product for the prescribed biological

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149 product.

150 Section 4. This act shall take effect January 1, 2018.