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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to prescription drug coverage;
amending s. 624.3161, F.S.; authorizing the Office of
Insurance Regulation to examine pharmacy benefit
managers; specifying that certain examination costs
are payable by persons examined; transferring,
renumbering, and amending s. 465.1885, F.S.; revising
entities conducting pharmacy audits to which certain
requirements and restrictions apply; authorizing
audited pharmacies to appeal certain findings;
providing that health insurers and health maintenance
organizations that transfer a certain payment
obligation to pharmacy benefit managers remain
responsible for certain violations; creating s.
624.492, F.S.; providing applicability; requiring
health insurers and health maintenance organizations,
or pharmacy benefit managers on behalf of health
insurers and health maintenance organizations, to
annually report specified information to the office;
requiring reporting pharmacy benefit managers to also
provide the information to health insurers and health
maintenance organizations they contract with;
authorizing the Financial Services Commission to adopt
rules; amending ss. 627.64741, 627.6572, and 641.314,
F.S.; authorizing the office to require health
insurers or health maintenance organizations to submit
to the office certain contracts or contract amendments



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28 entered into with pharmacy benefit managers;
29 authorizing the office to order insurers or health
30 maintenance organizations to cancel such contracts
31 under certain circumstances; authorizing the
32 commission to adopt rules; revising applicability;
33 providing an effective date.

34

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

36

37 Section 1. Subsections (1) and (3) of section 624.3161,
38 Florida Statutes, are amended to read:

39 624.3161 Market conduct examinations.—

40 (1) As often as it deems necessary, the office shall
41 examine each pharmacy benefit manager, each licensed rating
42 organization, each advisory organization, each group,
43 association, carrier, as defined in s. 440.02, or other
44 organization of insurers which engages in joint underwriting or
45 joint reinsurance, and each authorized insurer transacting in
46 this state any class of insurance to which the provisions of
47 chapter 627 are applicable. The examination shall be for the
48 purpose of ascertaining compliance by the person examined with
49 the applicable provisions of chapters 440, 624, 626, 627, and
50 635.

51 (3) The examination may be conducted by an independent
52 professional examiner under contract to the office, in which
53 case payment shall be made directly to the contracted examiner
54 by the insurer or person examined in accordance with the rates
55 and terms agreed to by the office and the examiner.

56 Section 2. Section 465.1885, Florida Statutes, is



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57 transferred, renumbered as s. 624.491, Florida Statutes, and
58 amended to read:

59 624.491 ~~465.1885~~ Pharmacy audits; rights.-

60 (1) A health insurer or health maintenance organization
61 providing pharmacy benefits through a major medical individual
62 or group health insurance policy or health maintenance contract,
63 respectively, shall comply with the requirements of this section
64 when the insurer or health maintenance organization or any
65 entity acting on behalf of the insurer or health maintenance
66 organization, including, but not limited to, a pharmacy benefit
67 manager, audits the records of a pharmacy licensed under chapter
68 465. Such audit must comply with the following requirements ~~if~~
69 ~~an audit of the records of a pharmacy licensed under this~~
70 ~~chapter is conducted directly or indirectly by a managed care~~
71 ~~company, an insurance company, a third-party payor, a pharmacy~~
72 ~~benefit manager, or an entity that represents responsible~~
73 ~~parties such as companies or groups, referred to as an "entity"~~
74 ~~in this section, the pharmacy has the following rights:~~

75 (a) The pharmacy must ~~To~~ be notified at least 7 calendar
76 days before the initial onsite audit for each audit cycle.

77 (b) An ~~To have the onsite audit~~ may not be scheduled during
78 ~~after~~ the first 3 calendar days of a month unless the pharmacist
79 consents otherwise.

80 (c) The scope of ~~To have~~ the audit period must be limited
81 to 24 months after the date a claim is submitted to or
82 adjudicated by the entity.

83 (d) ~~To have~~ An audit that requires clinical or professional
84 judgment must be conducted by or in consultation with a
85 pharmacist.



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86 (e) A pharmacy may ~~To~~ use the written and verifiable
87 records of a hospital, physician, or other authorized
88 practitioner, which are transmitted by any means of
89 communication, to validate the pharmacy records in accordance
90 with state and federal law.

91 (f) A pharmacy must ~~To~~ be reimbursed for a claim that was
92 retroactively denied for a clerical error, typographical error,
93 scrivener's error, or computer error if the prescription was
94 properly and correctly dispensed, unless a pattern of such
95 errors exists, fraudulent billing is alleged, or the error
96 results in actual financial loss to the entity.

97 (g) A copy of ~~To receive~~ the preliminary audit report must
98 be provided to the pharmacy within 120 days after the conclusion
99 of the audit.

100 (h) A pharmacy may ~~To~~ produce documentation to address a
101 discrepancy or audit finding within 10 business days after the
102 preliminary audit report is delivered to the pharmacy.

103 (i) A copy of ~~To receive~~ the final audit report must be
104 provided to the pharmacy within 6 months after receipt of
105 ~~receiving~~ the preliminary audit report.

106 (j) Any ~~To have~~ recoupment or penalties must be calculated
107 based on actual overpayments and not according to the accounting
108 practice of extrapolation.

109 (2) ~~The rights contained in~~ This section does ~~de~~ not apply
110 to:

111 (a) Audits in which suspected fraudulent activity or other
112 intentional or willful misrepresentation is evidenced by a
113 physical review, review of claims data or statements, or other
114 investigative methods;



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115 (b) Audits of claims paid for by federally funded programs;
116 or

117 (c) Concurrent reviews or desk audits that occur within 3
118 business days after ~~of~~ transmission of a claim and where no
119 chargeback or recoupment is demanded.

120 (3) An entity that audits a pharmacy located within a
121 Health Care Fraud Prevention and Enforcement Action Team (HEAT)
122 Task Force area designated by the United States Department of
123 Health and Human Services and the United States Department of
124 Justice may dispense with the notice requirements of paragraph
125 (1) (a) if such pharmacy has been a member of a credentialed
126 provider network for less than 12 months.

127 (4) Pursuant to s. 408.7057 and after receipt of the final
128 audit report issued by the health insurer or health maintenance
129 organization, a pharmacy may appeal the findings of the final
130 audit as to whether a claim payment is due or the amount of a
131 claim payment.

132 (5) If a health insurer or health maintenance organization
133 transfers to a pharmacy benefit manager through a contract the
134 obligation to pay any pharmacy licensed under chapter 465 for
135 any pharmacy benefit claims arising from services provided to or
136 for the benefit of any insured or subscriber, the health insurer
137 or health maintenance organization remains responsible for any
138 violations of this section, s. 627.6131, or s. 641.3155.

139 Section 3. Section 624.492, Florida Statutes, is created to
140 read:

141 624.492 Health insurer, health maintenance organization,
142 and pharmacy benefit manager reporting requirements.-

143 (1) This section applies to:



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144 (a) A health insurer or health maintenance organization
145 issuing, delivering, or issuing for delivery comprehensive major
146 medical individual or group insurance policies or health
147 maintenance contracts, respectively, in this state; and

148 (b) A pharmacy benefit manager providing pharmacy benefit
149 management services on behalf of a health insurer or health
150 maintenance organization described in paragraph (a) and managing
151 prescription drug coverage under a contract with the health
152 insurer or health maintenance organization.

153 (2) By March 1 annually, a health insurer or health
154 maintenance organization, or a pharmacy benefit manager on
155 behalf of a health insurer or health maintenance organization,
156 shall report, in a form and manner as prescribed by the
157 commission, the following information to the office with respect
158 to services provided by the health insurer or health maintenance
159 organization, or the pharmacy benefit manager on behalf of the
160 insurer or health maintenance organization, for the immediately
161 preceding policy or contract year:

162 (a) The total number of prescriptions that were dispensed.

163 (b) The number and percentage of all prescriptions that
164 were provided through retail pharmacies compared to mail-order
165 pharmacies. This paragraph applies to pharmacies licensed under
166 chapter 465 which dispense drugs to the general public and which
167 were paid by the health insurer, health maintenance
168 organization, or pharmacy benefit manager under the contract.

169 (c) For retail pharmacies and mail-order pharmacies
170 described in paragraph (b), the general dispensing rate, which
171 is the number and percentage of prescriptions for which a
172 generic drug was available and dispensed.



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173 (d) The aggregate amount and types of rebates, discounts,
174 price concessions, or other earned revenues that the health
175 insurer, health maintenance organization, or pharmacy benefit
176 manager negotiated for and are attributable to patient
177 utilization under the plan, excluding bona fide service fees
178 that include, but are not limited to, distribution service fees,
179 inventory management fees, product stocking allowances, and fees
180 associated with administrative services agreements and patient
181 care programs.

182 (e) If negotiated by the pharmacy benefit manager, the
183 aggregate amount of the rebates, discounts, or price concessions
184 under paragraph (d) which were passed through to the health
185 insurer or health maintenance organization.

186 (f) If the health insurer or health maintenance
187 organization contracted with a pharmacy benefit manager, the
188 aggregate amount of the difference between the amount the health
189 insurer or health maintenance organization paid the pharmacy
190 benefit manager and the amount the pharmacy benefit manager paid
191 retail pharmacies and mail order pharmacies.

192 (3) A pharmacy benefit manager that reports the information
193 under subsection (2) to the office shall also provide the
194 information to the health insurer or health maintenance
195 organization with which the pharmacy benefit manager is under
196 contract.

197 (4) The commission may adopt rules to administer this
198 section.

199 Section 4. Section 627.64741, Florida Statutes, is amended
200 to read:

201 627.64741 Pharmacy benefit manager contracts.—



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

203 (a) "Maximum allowable cost" means the per-unit amount that
204 a pharmacy benefit manager reimburses a pharmacist for a
205 prescription drug, excluding dispensing fees, prior to the
206 application of copayments, coinsurance, and other cost-sharing
207 charges, if any.

208 (b) "Pharmacy benefit manager" means a person or entity
209 doing business in this state which contracts to administer or
210 manage prescription drug benefits on behalf of a health insurer
211 to residents of this state.

212 (2) A health insurer may contract only with a pharmacy
213 benefit manager that ~~A contract between a health insurer and a~~
214 ~~pharmacy benefit manager must require that the pharmacy benefit~~
215 ~~manager:~~

216 (a) Updates ~~Update~~ maximum allowable cost pricing
217 information at least every 7 calendar days.

218 (b) Maintains ~~Maintain~~ a process that will, in a timely
219 manner, eliminate drugs from maximum allowable cost lists or
220 modify drug prices to remain consistent with changes in pricing
221 data used in formulating maximum allowable cost prices and
222 product availability.

223 (c) ~~(3)~~ Does not limit ~~A contract between a health insurer~~
224 ~~and a pharmacy benefit manager must prohibit the pharmacy~~
225 ~~benefit manager from limiting~~ a pharmacist's ability to disclose
226 whether the cost-sharing obligation exceeds the retail price for
227 a covered prescription drug, and the availability of a more
228 affordable alternative drug, pursuant to s. 465.0244.

229 (d) ~~(4)~~ Does not require ~~A contract between a health insurer~~
230 ~~and a pharmacy benefit manager must prohibit the pharmacy~~



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231 ~~benefit manager from requiring~~ an insured to make a payment for
232 a prescription drug at the point of sale in an amount that
233 exceeds the lesser of:

234 1.~~(a)~~ The applicable cost-sharing amount; or

235 2.~~(b)~~ The retail price of the drug in the absence of
236 prescription drug coverage.

237 (3) The office may require a health insurer to submit to
238 the office any contract, or amendments to a contract, for the
239 administration or management of prescription drug benefits by a
240 pharmacy benefit manager on behalf of the insurer.

241 (4) After review of a contract under subsection (3), the
242 office may order the insurer to cancel the contract in
243 accordance with the terms of the contract and applicable law if
244 the office determines that any of the following conditions
245 exist:

246 (a) The fees to be paid by the insurer are so unreasonably
247 high as compared with similar contracts entered into by
248 insurers, or as compared with similar contracts entered into by
249 other insurers in similar circumstances, that the contract is
250 detrimental to the policyholders of the insurer.

251 (b) The contract does not comply with the Florida Insurance
252 Code.

253 (c) The pharmacy benefit manager is not registered with the
254 office pursuant to s. 624.490.

255 (5) The commission may adopt rules to administer this
256 section.

257 (6)~~(5)~~ This section applies to contracts entered into,
258 amended, or renewed on or after July 1, 2020 ~~2018~~.

259 Section 5. Section 627.6572, Florida Statutes, is amended



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260 to read:

261 627.6572 Pharmacy benefit manager contracts.—

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

263 (a) "Maximum allowable cost" means the per-unit amount that
264 a pharmacy benefit manager reimburses a pharmacist for a
265 prescription drug, excluding dispensing fees, prior to the
266 application of copayments, coinsurance, and other cost-sharing
267 charges, if any.

268 (b) "Pharmacy benefit manager" means a person or entity
269 doing business in this state which contracts to administer or
270 manage prescription drug benefits on behalf of a health insurer
271 to residents of this state.

272 (2) A health insurer may contract only with a pharmacy
273 benefit manager that ~~A contract between a health insurer and a~~
274 ~~pharmacy benefit manager must require that the pharmacy benefit~~
275 ~~manager:~~

276 (a) Updates ~~Update~~ maximum allowable cost pricing
277 information at least every 7 calendar days.

278 (b) Maintains ~~Maintain~~ a process that will, in a timely
279 manner, eliminate drugs from maximum allowable cost lists or
280 modify drug prices to remain consistent with changes in pricing
281 data used in formulating maximum allowable cost prices and
282 product availability.

283 (c) ~~(3)~~ Does not limit ~~A contract between a health insurer~~
284 ~~and a pharmacy benefit manager must prohibit the pharmacy~~
285 ~~benefit manager from limiting~~ a pharmacist's ability to disclose
286 whether the cost-sharing obligation exceeds the retail price for
287 a covered prescription drug, and the availability of a more
288 affordable alternative drug, pursuant to s. 465.0244.



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289 (d) ~~(4)~~ Does not require A contract between a health insurer
290 and a pharmacy benefit manager must prohibit the pharmacy
291 benefit manager from requiring an insured to make a payment for
292 a prescription drug at the point of sale in an amount that
293 exceeds the lesser of:

294 1. ~~(a)~~ The applicable cost-sharing amount; or

295 2. ~~(b)~~ The retail price of the drug in the absence of
296 prescription drug coverage.

297 (3) The office may require a health insurer to submit to
298 the office any contract, or amendments to a contract, for the
299 administration or management of prescription drug benefits by a
300 pharmacy benefit manager on behalf of the insurer.

301 (4) After review of a contract under subsection (3), the
302 office may order the insurer to cancel the contract in
303 accordance with the terms of the contract and applicable law if
304 the office determines that any of the following conditions
305 exist:

306 (a) The fees to be paid by the insurer are so unreasonably
307 high as compared with similar contracts entered into by
308 insurers, or as compared with similar contracts entered into by
309 other insurers in similar circumstances, that the contract is
310 detrimental to the policyholders of the insurer.

311 (b) The contract does not comply with the Florida Insurance
312 Code.

313 (c) The pharmacy benefit manager is not registered with the
314 office pursuant to s. 624.490.

315 (5) The commission may adopt rules to administer this
316 section.

317 (6) ~~(5)~~ This section applies to contracts entered into,



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318 amended, or renewed on or after July 1, 2020 ~~2018~~.

319 Section 6. Section 641.314, Florida Statutes, is amended to
320 read:

321 641.314 Pharmacy benefit manager contracts.-

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

323 (a) "Maximum allowable cost" means the per-unit amount that
324 a pharmacy benefit manager reimburses a pharmacist for a
325 prescription drug, excluding dispensing fees, prior to the
326 application of copayments, coinsurance, and other cost-sharing
327 charges, if any.

328 (b) "Pharmacy benefit manager" means a person or entity
329 doing business in this state which contracts to administer or
330 manage prescription drug benefits on behalf of a health
331 maintenance organization to residents of this state.

332 (2) A health maintenance organization may contract only
333 with a pharmacy benefit manager that ~~A contract between a health~~
334 ~~maintenance organization and a pharmacy benefit manager must~~
335 ~~require that the pharmacy benefit manager:~~

336 (a) Updates ~~Update~~ maximum allowable cost pricing
337 information at least every 7 calendar days.

338 (b) Maintains ~~Maintain~~ a process that will, in a timely
339 manner, eliminate drugs from maximum allowable cost lists or
340 modify drug prices to remain consistent with changes in pricing
341 data used in formulating maximum allowable cost prices and
342 product availability.

343 (c) ~~(3) Does not limit~~ A contract between a health
344 ~~maintenance organization and a pharmacy benefit manager must~~
345 ~~prohibit the pharmacy benefit manager from limiting a~~
346 pharmacist's ability to disclose whether the cost-sharing



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347 obligation exceeds the retail price for a covered prescription
348 drug, and the availability of a more affordable alternative
349 drug, pursuant to s. 465.0244.

350 ~~(d)(4) Does not require A contract between a health~~
351 ~~maintenance organization and a pharmacy benefit manager must~~
352 ~~prohibit the pharmacy benefit manager from requiring a~~
353 subscriber to make a payment for a prescription drug at the
354 point of sale in an amount that exceeds the lesser of:

- 355 1. ~~(a)~~ The applicable cost-sharing amount; or
356 2. ~~(b)~~ The retail price of the drug in the absence of
357 prescription drug coverage.

358 (3) The office may require a health maintenance
359 organization to submit to the office any contract, or amendments
360 to a contract, for the administration or management of
361 prescription drug benefits by a pharmacy benefit manager on
362 behalf of the health maintenance organization.

363 (4) After review of a contract under subsection (3), the
364 office may order the health maintenance organization to cancel
365 the contract in accordance with the terms of the contract and
366 applicable law if the office determines that any of the
367 following conditions exist:

368 (a) The fees to be paid by the health maintenance
369 organization are so unreasonably high as compared with similar
370 contracts entered into by health maintenance organizations, or
371 as compared with similar contracts entered into by other health
372 maintenance organizations in similar circumstances, that the
373 contract is detrimental to the subscribers of the health
374 maintenance organization.

375 (b) The contract does not comply with the Florida Insurance



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376 Code.

377 (c) The pharmacy benefit manager is not registered with the
378 office pursuant to s. 624.490.

379 (5) The commission may adopt rules to administer this
380 section.

381 (6) ~~(5)~~ This section applies to pharmacy benefit manager
382 contracts entered into, amended, or renewed on or after July 1,
383 2020 ~~2018~~.

384 Section 7. This act shall take effect July 1, 2020.