

By Senator Margolis

35-1571-03

See HB 1599

1 A bill to be entitled
 2 An act relating to pharmacy benefit managers;
 3 creating s. 465.189, F.S.; establishing
 4 standards and criteria for regulation and
 5 licensing of pharmacy benefit managers;
 6 providing a popular name; providing purpose,
 7 intent, and applicability; providing
 8 definitions; requiring a biennial certificate
 9 of authority and an annual license; providing
 10 rulemaking authority to the Board of Pharmacy
 11 and the Office of Insurance Regulation;
 12 requiring an annual statement; providing for
 13 financial examinations; providing for
 14 assessments and fees; providing for pharmacy
 15 benefit manager contracts; providing for
 16 enforcement; providing for medication
 17 reimbursement costs; specifying prohibited
 18 practices; preserving existing contracts and
 19 providing prospective application for new
 20 contracts; providing for control over
 21 conflicting provisions of law; providing an
 22 effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

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 26 Section 1. Section 465.189, Florida Statutes, is
 27 created to read:

28 465.189 Pharmacy benefit managers.--
 29 (1) POPULAR NAME.--This section shall be known by the
 30 popular name the "Florida Pharmacy Benefit Management
 31 Regulation Act."

1 (2) PURPOSE AND INTENT; APPLICABILITY.--
2 (a)1. This section establishes standards and criteria
3 for the regulation and licensing of pharmacy benefit managers.
4 2. The purpose of this section is to:
5 a. Promote, preserve, and protect the public health,
6 safety, and welfare through effective regulation and licensing
7 of pharmacy benefit managers.
8 b. Provide for certain powers and duties for certain
9 state agencies and officers.
10 c. Prescribe penalties for violations of this section.
11 (b) A pharmacy benefit manager is subject to this
12 section if the pharmacy benefit manager provides
13 claims-processing services, other prescription drug or device
14 services, or both, to patients who are residents of this
15 state.
16 (c) A pharmacy benefit manager may not do business or
17 provide services in this state unless the pharmacy benefit
18 manager is in full compliance with this section.
19 (3) DEFINITIONS.--For purposes of this section, the
20 term:
21 (a) "Board" means the Board of Pharmacy.
22 (b) "Cease and desist order" means an order of the
23 board or office prohibiting a pharmacy benefit manager or
24 other person or entity from continuing a particular course of
25 conduct that violates this section or rules adopted under this
26 section.
27 (c) "Claims-processing services" means the
28 administrative services performed in connection with the
29 processing and adjudication of claims relating to pharmacist's
30 services, including, but not limited to, making payments to
31 pharmacists and pharmacies.

1 (d) "Maintenance drug" means a drug prescribed by a
2 practitioner who is licensed to prescribe drugs and used to
3 treat a medical condition for a period greater than 30 days.

4 (e) "Multi-source drug" means a drug that is stocked
5 and available from three or more suppliers.

6 (f) "Office" means the Office of Insurance Regulation
7 of the Financial Services Commission.

8 (g) "Other prescription drug or device services" means
9 services other than claims-processing services, provided
10 directly or indirectly by a pharmacy benefit manager, whether
11 in connection with or separate from claims-processing
12 services, including, but not limited to:

13 1. Negotiating rebates, discounts, or other financial
14 incentives and arrangements with drug companies.

15 2. Disbursing or distributing rebates.

16 3. Managing or participating in incentive programs or
17 arrangements for pharmacist's services.

18 4. Negotiating or entering into contractual
19 arrangements with pharmacists or pharmacies, or both.

20 5. Developing formularies.

21 6. Designing prescription benefit programs.

22 7. Advertising or promoting claims-processing services
23 or other prescription drug or device services.

24 (h) "Pharmacist" means an individual licensed as a
25 pharmacist under this chapter.

26 (i) "Pharmacist's services" means the practice of the
27 profession of pharmacy as defined in s. 465.003.

28 (j) "Pharmacy" means pharmacy as defined in s.
29 465.003.

30 (k)1. "Pharmacy benefit manager" means a person,
31 business, or other entity, and any wholly or partially owned

1 or controlled subsidiary of a pharmacy benefit manager, that
2 provides claims-processing services or other prescription drug
3 or device services, or both, to third parties.

4 2. "Pharmacy benefit manager" does not include
5 licensed health care facilities, pharmacies, licensed health
6 care professionals, insurance companies, unions, or health
7 maintenance organizations.

8 (1) "Single-source drug" means a drug that is not a
9 multi-source drug.

10 (m)1. "Third parties" means any person, business, or
11 other entity other than a pharmacy benefit manager.

12 2. "Third parties" does not include:

13 a. A person, business, or other entity that owns or
14 holds a controlling interest in the pharmacy benefit manager;
15 or

16 b. A person, business, or other entity in which the
17 pharmacy benefit manager owns or holds a controlling interest.

18 (n) "Usual and customary price" means the price that a
19 pharmacist or pharmacy would have charged cash-paying
20 patients, excluding patients for whom reimbursement rates are
21 set by contract, for the same services on the same date.

22 (4) CERTIFICATE OF AUTHORITY.--

23 (a)1. No person or organization shall establish or
24 operate as a pharmacy benefit manager in this state without
25 obtaining a certificate of authority from the board in
26 accordance with this section and all applicable federal and
27 state laws.

28 2. A pharmacy benefit manager doing business in this
29 state shall obtain a certificate of authority from the board
30 within 120 days after the effective date of this section and
31 every 2 years thereafter. The certificate of authority shall

1 expire on December 31 in the year following the year the
2 certificate of authority was first issued and then may be
3 renewed for successive 2-year periods.

4 (b)1. Any organization or person may apply to the
5 board to obtain a certificate of authority to establish and
6 operate a pharmacy benefit manager under this section.

7 2. A nonrefundable application fee of \$300, payable to
8 the board, shall accompany each application for a certificate
9 of authority and each application for renewal of a certificate
10 of authority.

11 (c) The board shall not issue a certificate of
12 authority to any pharmacy benefit manager until the board is
13 satisfied that the pharmacy benefit manager:

14 1. Holds a current license issued by the office to do
15 business in this state as a pharmacy benefit manager.

16 2. Is ready and able to arrange for pharmacist's
17 services in this state.

18 3. Meets the requirements set forth in this section
19 and in rules adopted under this section.

20 4. Is in compliance with all applicable state and
21 federal laws and regulations.

22 (d) The board may suspend or revoke any certificate of
23 authority issued to a pharmacy benefit manager under this
24 section, deny an application for a certificate of authority to
25 an applicant, or deny an application for renewal of a
26 certificate of authority if it finds that:

27 1. The pharmacy benefit manager is operating
28 materially in contravention of:

29 a. Its application or other information submitted as a
30 part of its application for a certificate of authority or
31 renewal of its certificate of authority; or

1 b. Any condition imposed by the board with regard to
2 the issuance or renewal of its certificate of authority;

3 2. The pharmacy benefit manager does not arrange for
4 pharmacist's services;

5 3. The pharmacy benefit manager has failed to
6 continuously meet the requirements for issuance of a
7 certificate of authority as set forth in this section or any
8 rules adopted under this section;

9 4. The pharmacy benefit manager has otherwise failed
10 to substantially comply with this section or any rules adopted
11 under this section;

12 5. The continued operation of the pharmacy benefit
13 manager may be hazardous to patients; or

14 6. The pharmacy benefit manager has failed to
15 substantially comply with any applicable state or federal law
16 or regulation.

17 (e)1. When the certificate of authority of a pharmacy
18 benefit manager is revoked, the manager shall:

19 a. Proceed, immediately following the effective date
20 of the order of revocation, to wind up its affairs.

21 b. Conduct no further business except as may be
22 essential to the orderly conclusion of its affairs.

23 2. The board may permit any further operation of the
24 pharmacy benefit manager as the board may find to be in the
25 best interest of patients to the end that patients will have
26 the greatest practical opportunity to obtain pharmacist's
27 services.

28 (5) LICENSE TO DO BUSINESS.--

29 (a)1. No person or organization shall establish or
30 operate as a pharmacy benefit manager in this state without

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1 first obtaining a license from the office in accordance with
2 this section and all applicable federal and state laws.

3 2. A pharmacy benefit manager doing business in this
4 state shall obtain a license from the office within 60 days
5 after the effective date of this section and each year
6 thereafter.

7 (b)1. An application for a license to operate in this
8 state as a pharmacy benefit manager shall be in a form
9 prescribed by the office and shall be verified by an officer
10 or authorized representative of the pharmacy benefit manager.

11 2. The application shall include at least the
12 following:

13 a. All organizational documents, including, but not
14 limited to, articles of incorporation, bylaws, and other
15 similar documents and any amendments.

16 b. The names, addresses, and titles of individuals
17 responsible for the business and services provided, including
18 all claims-processing services and other prescription drug or
19 device services.

20 c. The names, addresses, titles, and qualifications of
21 the members and officers of the board of directors, board of
22 trustees, or other governing body or committee, or the
23 partners or owners in case of a partnership, other entity, or
24 association.

25 d. A detailed description of the claims-processing
26 services and other prescription drug or device services
27 provided or to be provided.

28 e. The name and address of the agent for service of
29 process in this state.

30 f. Financial statements for the current and the
31 preceding year showing the assets, liabilities, direct or

1 indirect income, and any other sources of financial support
2 sufficient, as deemed by the office, to show financial
3 stability and viability to meet its full obligations to
4 pharmacies and pharmacists.

5 g. A bond in an amount determined by the office by
6 rule to ensure that funds received by the pharmacy benefit
7 manager for pharmacist's services are, in fact, paid to
8 appropriate pharmacies and pharmacists.

9 h. All incentive arrangements or programs such as
10 rebates, discounts, disbursements, or any other similar
11 financial program or arrangement relating to income or
12 consideration received or negotiated, directly or indirectly,
13 with any pharmaceutical company that relates to other
14 prescription drug or device services, including, but not
15 limited to:

16 (I) Information on the formula or other method for
17 calculation and amount of the incentive arrangements, rebates,
18 or other disbursements.

19 (II) The identity of the associated drug or device.

20 (III) The dates and amounts of the disbursements.

21 i. Other information as the office may require.

22 (c) The office shall not issue an annual pharmacy
23 benefit manager license to do business in this state to any
24 pharmacy benefit manager until the office is satisfied that
25 the pharmacy benefit manager has:

26 1. Paid all fees, taxes, and charges required by law.

27 2. Filed a financial statement or statements and any
28 reports, certificates, or other documents the office considers
29 necessary to secure a full and accurate knowledge of the
30 pharmacy benefit manager's affairs and financial condition.

31 3.a. Established its solvency.

1 b. Satisfied the office that the pharmacy benefit
2 manager's financial condition, method of operation, and manner
3 of doing business make it possible for the pharmacy benefit
4 manager to meet its obligations to pharmacies and pharmacists.

5 4. Otherwise complied with all the requirements of
6 law.

7 5. Obtained a bond in an amount determined by the
8 office to ensure that funds received by the pharmacy benefit
9 manager for pharmacist's services are, in fact, paid to
10 appropriate pharmacies and pharmacists.

11 (d)1. The annual pharmacy benefit manager license
12 shall be in addition to the certificate of authority issued by
13 the board.

14 2. A nonrefundable license application fee of \$500
15 shall accompany each application for a license to transact
16 business in this state.

17 3. The fee shall be collected by the office and paid
18 directly into the Insurance Commissioner' s Regulatory Trust
19 Fund to provide expenses for the regulation, supervision, and
20 examination of all entities subject to regulation under this
21 section.

22 (e) The pharmacy benefit manager license shall be
23 signed by the office or an authorized agent of the office and
24 shall expire 1 year after the date the license becomes
25 effective.

26 (f)1. A pharmacy benefit manager transacting business
27 in this state shall obtain an annual renewal of its license
28 from the office.

29 2. The office may refuse to renew the license of any
30 pharmacy benefit manager or may renew the license, subject to
31 any restrictions considered appropriate by the office, if the

1 office finds that the pharmacy benefit manager has not
2 satisfied all the conditions stated in this section.

3 3.a. Before denying renewal of a license, the office
4 shall provide the pharmacy benefit manager:

5 (I) At least 10 days' advance notice of the denial.

6 (II) An opportunity to appear at a formal or informal
7 hearing.

8 b. The office and the pharmacy benefit manager may
9 jointly waive the required notice.

10 (6) RULES.--

11 (a) The board may adopt rules not inconsistent with
12 this section regulating pharmacy benefit managers with regard
13 to professional, public health, and public safety issues.

14 (b) The office may adopt rules not inconsistent with
15 this section regulating pharmacy benefit managers with regard
16 to business and financial issues.

17 (c) Rules adopted under this section may set
18 penalties, including, but not limited to, monetary fines, for
19 violations of this section and rules adopted under this
20 section.

21 (7) ANNUAL STATEMENT.--

22 (a)1. A pharmacy benefit manager doing business in
23 this state shall file a statement with the office annually by
24 March 1.

25 2. The statement shall be verified by at least two
26 principal officers of the pharmacy benefit manager and shall
27 cover the preceding calendar year.

28 (b) The statement shall be on forms prescribed by the
29 office and shall include:

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1 1. A financial statement of the organization,
2 including its balance sheet and income statement for the
3 preceding year.

4 2. The number and dollar value of claims for
5 pharmacist's services processed by the pharmacy benefit
6 manager during the preceding year with respect to patients who
7 are residents of this state.

8 3. Any other information relating to the operations of
9 the pharmacy benefit manager required by the office.

10 (c) If a pharmacy benefit manager is audited annually
11 by an independent certified public accountant, a copy of each
12 certified audit report shall be promptly filed with the
13 office.

14 (d)1. The office may extend the time prescribed for
15 any pharmacy benefit manager for filing annual statements or
16 other reports or exhibits for good cause shown.

17 2. The office may not extend the time for filing
18 annual statements beyond 60 days after the time prescribed in
19 this section.

20 3. Until the annual statement is filed, the office may
21 revoke or suspend the license of a pharmacy benefit manager
22 that fails to file its annual statement within the time
23 prescribed by this section.

24 (8) FINANCIAL EXAMINATION.--

25 (a)1. The office shall regularly conduct financial
26 examinations of all pharmacy benefit managers doing business
27 in this state pursuant to a schedule and in a manner
28 established by rule.

29 2. The examination shall verify:
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1 a. The financial ability of the pharmacy benefit
2 manager to meet its full obligations to pharmacies and
3 pharmacists.

4 b. Information submitted to the office as a part of an
5 application for a license or renewal of a license.

6 c. Compliance with this section.

7 (b) In lieu of, or in addition to, making the
8 financial examination of a pharmacy benefit manager, the
9 office may accept the report of a financial examination of the
10 pharmacy benefit manager under the laws of another state
11 certified by its insurance office, similar regulatory agency,
12 or state health agency to the extent that the report of
13 financial examination covers the minimum requirements
14 specified in paragraph (a).

15 (c)1. The office shall coordinate financial
16 examinations of pharmacy benefit managers to ensure an
17 appropriate level of regulatory oversight and to avoid any
18 undue duplication of effort or regulation.

19 2. The pharmacy benefit manager being examined shall
20 pay the cost of the examination.

21 3. The cost of the examination shall be deposited into
22 the Insurance Commissioner's Regulatory Trust Fund to provide
23 all expenses for the regulation, supervision, and examination
24 of all entities subject to regulation under this section.

25 (9) ASSESSMENT.--

26 (a) Except as provided in subparagraph (8)(c)3., the
27 expense of administering this section incurred by the office
28 shall be assessed annually by the office against all pharmacy
29 benefit managers operating in this state.

30 (b) The office shall assess each pharmacy benefit
31 manager annually for its share of the office's estimated

1 expenses with regard to this section in proportion to the
2 business done in this state, as determined by the office in
3 the office's reasonable discretion.

4 (c)1. The office shall give each pharmacy benefit
5 manager notice of the assessment, which shall be paid to the
6 office before March 2 of each year.

7 2. A pharmacy benefit manager that fails to pay the
8 assessment before March 2 of each year shall be subject to a
9 penalty imposed by the office.

10 3. The penalty shall be 10 percent of the assessment
11 plus interest for the period between the due date and the date
12 of full payment.

13 4. If a payment is made in an amount later found to be
14 in error, the office shall:

15 a. If an additional amount is due:

16 (I) Notify the pharmacy benefit manager of the
17 additional amount due.

18 (II) Order the pharmacy benefit manager to pay the
19 additional amount within 14 days after the date of the notice.

20 b. If an overpayment is made, order a refund to the
21 pharmacy benefit manager.

22 (d)1. If an assessment made under this section is not
23 paid to the office by the prescribed date, the amount of the
24 assessment, plus any penalty, may be recovered from the
25 defaulting pharmacy benefit manager on motion of the office
26 made in the name and for the use of the State of Florida in
27 the Circuit Court of Leon County, after 10 days' notice to the
28 pharmacy benefit manager.

29 2. The license of any defaulting pharmacy benefit
30 manager to transact business in this state may be revoked or
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1 suspended by the office until the pharmacy benefit manager has
2 paid the assessment.

3 (e) All fees assessed under this section and paid to
4 the office shall be deposited into the Insurance
5 Commissioner's Regulatory Trust Fund to provide all expenses
6 for the regulation, supervision, and examination by the office
7 of all entities subject to regulation under this section.

8 (f) If a pharmacy benefit manager becomes insolvent or
9 ceases to do business in this state in any assessable or
10 license year, the pharmacy benefit manager shall remain liable
11 for the payment of the assessment for the period in which it
12 operated as a pharmacy benefit manager in this state.

13 (10) PHARMACY BENEFIT MANAGER CONTRACTS.--

14 (a)1. A pharmacy benefit manager that contracts with a
15 pharmacy or pharmacist to provide pharmacist's services in
16 this state shall first inform the pharmacy or pharmacist in
17 writing of the number of, and other relevant information
18 concerning, patients to be served by the pharmacy or
19 pharmacist under the contract.

20 2. There shall be a separate contract with each
21 pharmacy or pharmacist for each of the pharmacy benefit
22 manager's provider networks.

23 3. Contracts providing for indemnity of the pharmacy
24 or pharmacist shall be separate from contracts providing for
25 cash discounts.

26 4. A pharmacy benefit manager shall not require that a
27 pharmacy or pharmacist participate in one contract in order to
28 participate in another contract.

29 (b) Each pharmacy benefit manager shall provide
30 contracts to the pharmacies and pharmacists that are written
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1 in plain English, using terms that will be generally
2 understood by pharmacists.

3 (c) All contracts between a pharmacy benefit manager
4 and a pharmacy or pharmacist shall provide specific time
5 limits for the pharmacy benefit manager to pay the pharmacy or
6 pharmacist for pharmacist's services rendered.

7 (d) No pharmacy benefit manager contract may mandate
8 that any pharmacy or pharmacist change a patient's maintenance
9 drug unless the prescribing practitioner so orders.

10 (e)1. In handling moneys received by the pharmacy
11 benefit manager for pharmacist's services, the pharmacy
12 benefit manager acts as a fiduciary of the pharmacy,
13 pharmacist, or both, that provided the pharmacist's services.

14 2. A pharmacy benefit manager shall distribute all
15 moneys the pharmacy benefit manager receives for pharmacist's
16 services to the pharmacies and pharmacists that provided the
17 pharmacist's services and shall do so within a time
18 established by the office.

19 (f)1. A pharmacy benefit manager that contracts with a
20 pharmacy or pharmacist to provide pharmacist's services in
21 this state shall file the contract forms with the office 30
22 days before the execution of the contract.

23 2.a. The contract forms are approved unless the office
24 disapproves the contract forms within 30 days after filing
25 with the office.

26 b. Disapproval shall be in writing, stating the
27 reasons for the disapproval, and a copy shall be delivered to
28 the pharmacy benefit manager.

29 c. The office shall develop formal criteria for the
30 approval and disapproval of pharmacy benefit manager contract
31 forms.

1 (g)1. A pharmacy benefit manager that initiates an
2 audit of a pharmacy or pharmacist under the contract shall
3 limit the audit to methods and procedures that are recognized
4 as fair and equitable for both the pharmacy benefit manager
5 and the pharmacy or pharmacist, or both.

6 2. Extrapolation calculations in an audit are
7 prohibited.

8 3. A pharmacy benefit manager may not recoup any
9 moneys due from an audit by setoff from future remittances
10 until the results of the audit are finalized.

11 (h) Before terminating a pharmacy or pharmacist from a
12 pharmacy benefit manager's provider network, the pharmacy
13 benefit manager shall give the pharmacy or pharmacist a
14 written explanation of the reason for the termination 30 days
15 before the actual termination unless the termination is taken
16 in reaction to:

17 1. Loss of license;

18 2. Loss of professional liability insurance; or

19 3. Conviction of fraud or misrepresentation.

20 (i)1. No pharmacy or pharmacist may be held
21 responsible for the acts or omissions of a pharmacy benefit
22 manager.

23 2. No pharmacy benefit manager may be held responsible
24 for the acts or omissions of a pharmacy or pharmacist.

25 (11) ENFORCEMENT.--

26 (a)1. Enforcement of this section shall be the
27 responsibility of the board and the office.

28 2. The board or the office, or both, shall take action
29 or impose appropriate penalties to bring a noncomplying
30 pharmacy benefit manager into full compliance with this
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1 section or shall terminate the pharmacy benefit manager's
2 certificate of authority or license.

3 (b)1. The board and the office shall each adopt
4 procedures for formal investigation of complaints concerning
5 the failure of a pharmacy benefit manager to comply with this
6 section.

7 2.a. The office may refer a complaint received under
8 this section to the board if the complaint involves a
9 professional or patient health or safety issue.

10 b. The board may refer a complaint received under this
11 section to the office if the complaint involves a business or
12 financial issue.

13 3.a. If the board or the office has reason to believe
14 that there may have been a violation of this section, the
15 board or office shall issue and serve upon the pharmacy
16 benefit manager a statement of the charges and a notice of a
17 hearing.

18 b. The hearing shall be held at a time and place fixed
19 in the notice, and not be less than 30 days after the notice
20 is served.

21 c. At the hearing, the pharmacy benefit manager shall
22 have an opportunity to be heard and to show cause why the
23 board or the office should not:

24 (I) Issue a cease and desist order against the
25 pharmacy benefit manager; or

26 (II) Take any other necessary or appropriate action,
27 including, but not limited to, termination of the pharmacy
28 benefit manager's certificate of authority or license.

29 (c)1. The board may conduct an investigation
30 concerning the quality of services of any pharmacy benefit
31 manager, pharmacy, or pharmacist with whom the pharmacy

1 benefit manager has contracts, as the board deems necessary
2 for the protection of the interests of the residents of this
3 state.

4 2. In addition to applying penalties and remedies
5 under this section for a pharmacy benefit manager's violation
6 of this section, the board may also apply penalties and
7 remedies under any provision of state law for violation
8 thereof.

9 (12) MEDICATION REIMBURSEMENT COSTS.--

10 (a) Pharmacy benefit managers shall use a current
11 nationally recognized benchmark to base reimbursements for
12 medications and products dispensed by pharmacies or
13 pharmacists with whom the pharmacy benefit manager contracts
14 as follows:

15 1. For brand single-source drugs and brand
16 multi-source drugs, either the Average Wholesale Price as
17 listed in First Data Bank (Hearst Publications) or Facts &
18 Comparisons (formerly Medispan) shall be used as an index.

19 2. For generic multi-source drugs, maximum allowable
20 costs shall be established by referencing the Baseline Price
21 as listed in either First Data Bank or Facts & Comparisons.

22 a. Only products that are in compliance with pharmacy
23 laws as equivalent and generically interchangeable with a
24 United States Food and Drug Administration Orange Book rating
25 of A-B may be reimbursed from a maximum allowable cost price
26 methodology.

27 b. If a generic multi-source drug product has no
28 baseline price, then it shall be treated as a brand
29 single-source drug for the purpose of valuing reimbursement.

30 (b) If the publications specified in paragraph (a)
31 cease to be nationally recognized benchmarks used to base

1 reimbursement for medications and products dispensed by
2 pharmacies and pharmacists, other current nationally
3 recognized benchmarks, as are then current and in effect, may
4 be utilized so long as the benchmark is established and
5 published by a person, business, or other entity with which no
6 pharmacy benefit manager has a financial or business interest
7 or connection.

8 (13) PROHIBITED PRACTICES.--

9 (a) Neither a pharmacy benefit manager nor a
10 representative of a pharmacy benefit manager may cause or
11 knowingly permit the use of any advertisement, promotion,
12 solicitation, proposal, or offer that is untrue, deceptive, or
13 misleading.

14 (b) A pharmacy benefit manager may not discriminate on
15 the basis of race, creed, color, sex, or religion in the
16 selection of pharmacies or pharmacists with which the pharmacy
17 benefit manager contracts.

18 (c) A pharmacy benefit manager may not unreasonably
19 discriminate against or between pharmacies or pharmacists.

20 (d) A pharmacy benefit manager shall be entitled to
21 access a pharmacy's or pharmacist's usual and customary price
22 only for comparison to specific claims for payment made by the
23 pharmacy or pharmacist to the pharmacy benefit manager, and
24 any other use or disclosure by the pharmacy benefit manager is
25 prohibited.

26 (e) A pharmacy benefit manager may not, directly or
27 indirectly, overtly or covertly, in cash or in kind, receive
28 or accept any rebate, kickback, or any special payment, favor,
29 or advantage of any valuable consideration or inducement for
30 influencing or switching a patient's drug product unless the
31 rebate, kickback, payment, favor, valuable consideration, or

1 inducement is specified in a written contract that has been
2 filed with the office.

3 (f)1. Claims for pharmacist's services paid by a
4 pharmacy benefit manager may not be retroactively denied or
5 adjusted after adjudication of the claims, unless:

6 a. The original claim was submitted fraudulently;

7 b. The original claim payment was incorrect because
8 the pharmacy or pharmacist had already been paid for the
9 pharmacist's services; or

10 c. The pharmacist's services were not, in fact,
11 rendered by the pharmacy or pharmacist.

12 2. An acknowledgement of eligibility may not be
13 retroactively reversed.

14 (g) A pharmacy benefit manager may not terminate a
15 contract with a pharmacy or pharmacist, or terminate, suspend,
16 or otherwise limit the participation of a pharmacy or
17 pharmacist in a pharmacy benefit manager's provider network,
18 because:

19 1. The pharmacy or pharmacist expresses disagreement
20 with the pharmacy benefit manager's decision to deny or limit
21 benefits to a patient;

22 2. The pharmacist discusses with a patient any aspect
23 of the patient's medical condition or treatment alternatives;

24 3. The pharmacist makes personal recommendations
25 regarding selecting a pharmacy benefit manager based on the
26 pharmacist's personal knowledge of the health needs of the
27 patient;

28 4. The pharmacy or pharmacist protests or expresses
29 disagreement with a decision, policy, or practice of the
30 pharmacy benefit manager;

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1 5. The pharmacy or pharmacist has in good faith
2 communicated with or advocated on behalf of any patient
3 related to the needs of the patient regarding the method by
4 which the pharmacy or pharmacist is compensated for services
5 provided under the contract with the pharmacy benefit manager;

6 6. The pharmacy or pharmacist complains to the board
7 or office that the pharmacy benefit manager has failed to
8 comply with this section; or

9 7. The pharmacy or pharmacist asserts rights under the
10 contract with the pharmacy benefit manager.

11 (h) Termination of a contract between a pharmacy
12 benefit manager and a pharmacy or pharmacist, or termination
13 of a pharmacy or pharmacist from a pharmacy benefit manager's
14 provider network, shall not release the pharmacy benefit
15 manager from the obligation to make any payment due to the
16 pharmacy or pharmacist for pharmacist's services rendered.

17 (i) A pharmacy benefit manager may not intervene in
18 the delivery or transmission of prescriptions from the
19 prescriber to the pharmacist or pharmacy for the purpose of:

20 1. Influencing the prescriber's choice of therapy;
21 2. Influencing the patient's choice of pharmacist or
22 pharmacy; or

23 3. Altering the prescription information, including,
24 but not limited to, switching the prescribed drug without the
25 express written authorization of the prescriber.

26 (j) A pharmacy benefit manager may not engage in or
27 interfere with the practice of medicine or intervene in the
28 practice of medicine between prescribers and their patients.

29 (k) A pharmacy benefit manager may not engage in any
30 activity that violates any requirement of Florida law.

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1 (14) NO IMPAIRMENT OF EXISTING CONTRACTS.--To avoid
2 impairment of existing contracts, this section shall apply
3 only to contracts entered into or renewed after the effective
4 date of this section.

5 (15) SUPPLEMENTAL NATURE.--This section is
6 supplemental to all other laws and supersedes only those laws
7 or parts of laws in direct conflict with it.

8 Section 2. This act shall take effect upon becoming a
9 law.

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