

By Senator Aronberg

27-1878A-04

See HB 1347

1                                   A bill to be entitled  
2           An act relating to prescription drug practices;  
3           providing definitions; providing that a  
4           pharmacy benefits manager owes a fiduciary duty  
5           to covered entities and individuals; providing  
6           duties and responsibilities of a pharmacy  
7           benefits manager; providing criteria for  
8           dispensing substitute prescription drugs;  
9           requiring a pharmacy benefits manager to pass  
10          on certain payments to covered entities or  
11          individuals; restricting a pharmacy benefits  
12          manager from contracting in a manner  
13          inconsistent with this act; providing that any  
14          agreement to waive the provisions of this act  
15          is against public policy; providing that a  
16          violation of this act is a violation of the  
17          Florida Deceptive and Unfair Trade Practices  
18          Act; authorizing private civil actions and  
19          civil action by the Attorney General; providing  
20          for injunctive relief, civil penalties, costs,  
21          expert fees, and attorney's fees; providing for  
22          dispensation of Canadian prescription drugs;  
23          providing criteria for such dispensation;  
24          providing for purchase of Canadian prescription  
25          medicines; providing definitions; requiring  
26          that certain medications be purchased at a  
27          certain rate; exempting pharmacy benefits  
28          managers from certain requirements and actions  
29          for certain dispensations; providing an  
30          effective date.  
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Prescription drug practices.--

4 (1) As used in this section:

5 (a) "Covered entity" means a nonprofit hospital,  
6 medical service organization, insurer, health coverage plan,  
7 or health maintenance organization licensed in this state; a  
8 health program administered by the Department of Health in the  
9 capacity of provider of health coverage; or an employer, labor  
10 union, or other group of persons organized in this state that  
11 provides health coverage to covered individuals who are  
12 employed or reside in this state. Covered entity does not  
13 include a health plan that provides coverage only for  
14 accidental injury, specified disease, hospital indemnity,  
15 Medicare supplement, disability income, or other long-term  
16 care.

17 (b) "Covered individual" means a member, participant,  
18 enrollee, contract holder, policy holder, or beneficiary of a  
19 covered entity who is provided health coverage by the covered  
20 entity. Covered individual includes a dependent or other  
21 person provided health coverage through a policy, contract, or  
22 plan for a covered individual.

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

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

29 (e) "Pharmacy benefits management" means the  
30 procurement of prescription drugs at a negotiated rate for  
31 dispensation within this state to covered individuals, the

1 administration or management of prescription drug benefits  
2 provided by a covered entity for the benefit of covered  
3 individuals, or any of the following services provided with  
4 regard to the administration of pharmacy benefits:  
5       1. Mail service pharmacy.  
6       2. Claims processing, retail network management, and  
7 payment of claims to pharmacies for prescription drugs  
8 dispensed to covered individuals.  
9       3. Clinical formulary development and management  
10 services.  
11       4. Rebate contracting and administration.  
12       5. Patient compliance, therapeutic intervention, and  
13 generic substitution programs.  
14       6. Disease management programs.  
15       (f) "Pharmacy benefits manager" means an entity that  
16 performs pharmacy benefits management, including a person or  
17 entity acting in a contractual or employment relationship.  
18       (2) A pharmacy benefits manager owes a fiduciary duty  
19 to covered entities and individuals and shall discharge that  
20 duty in accordance with the provisions of state and federal  
21 law. A pharmacy benefits manager shall:  
22       (a) Perform duties with care, skill, prudence, and  
23 diligence and in accordance with the standards of conduct  
24 applicable to a fiduciary in an enterprise of a like character  
25 and with like aims.  
26       (b) Discharge duties with respect to the covered  
27 entity and covered individuals solely in the interests of the  
28 covered individuals and for the primary purpose of providing  
29 benefits to covered individuals and defraying reasonable  
30 expenses of administering health plans.  
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1           (c) Notify the covered entity in writing of any  
2 activity, policy, or practice of the pharmacy benefits manager  
3 that directly or indirectly presents any conflict of interest  
4 with the duties imposed by this section.

5           (d) Provide to a covered entity all financial and  
6 utilization information requested by the covered entity  
7 relating to the provision of benefits to covered individuals  
8 through that covered entity and all financial and utilization  
9 information relating to services to that covered entity. A  
10 pharmacy benefits manager providing information under this  
11 paragraph shall comply with all rules established pursuant to  
12 section 465.017, Florida Statutes, in handling such  
13 information. Information designated as confidential by a  
14 pharmacy benefits manager and provided to a covered entity  
15 under this paragraph may not be disclosed to any person  
16 without the consent of the pharmacy benefits manager, except  
17 that disclosure may be made in a court filing under the  
18 Florida Deceptive and Unfair Trade Practices Act or when  
19 authorized by that act or ordered by a court of this state for  
20 good cause shown.

21           (e) Transfer in full to the covered entity or covered  
22 individuals any benefit or payment received in any form by the  
23 pharmacy benefits manager as a result of the prescription drug  
24 substitution.

25           (f) Disclose to the covered entity all financial terms  
26 and arrangements for remuneration of any kind that apply  
27 between the pharmacy benefits manager and any prescription  
28 drug manufacturer or labeler, including, without limitation,  
29 formulary management and drug-switch programs, educational  
30 support, claims processing, and pharmacy network fees that are  
31 charged from retail pharmacies and data sales fees.

1           (3) With regard to the dispensation of a substitute  
2 prescription drug for a prescribed drug to a covered  
3 individual, the pharmacy benefits manager:

4           (a) May substitute a lower-priced generic drug for a  
5 higher-priced prescribed drug.

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

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

10           (d) Shall disclose the costs of both drugs to the  
11 covered individual and the covered entity and any benefit or  
12 payment directly or indirectly accruing to the pharmacy  
13 benefits manager as a result of the substitution.

14           (e) Shall obtain the approval of the prescribing  
15 health professional or that person's authorized representative  
16 for the substitution.

17           (4) A pharmacy benefits manager that derives any  
18 payment or benefit for the dispensation of prescription drugs  
19 based on volume of sales for certain prescription drugs or  
20 classes or brands of drugs shall pass on that payment or  
21 benefit, in full, to the covered entity or covered  
22 individuals.

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

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

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

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

7 (b) A civil action by the Attorney General pursuant to  
8 this section is subject to the provisions of the Florida  
9 Deceptive and Unfair Trade Practices Act. Each violation of  
10 this section is a separate civil violation for which the  
11 Attorney General may obtain, in addition to other remedies,  
12 injunctive relief and a fine in an amount not to exceed  
13 \$10,000 per violation, plus the costs of suit, including  
14 necessary and reasonable investigative costs, reasonable  
15 expert fees, and reasonable attorney's fees.

16 Section 2. Dispensing of Canadian  
17 prescriptions.--Notwithstanding any other provision of law, a  
18 pharmacist licensed in this state shall be permitted to  
19 dispense, sell, market, or deliver a prescription that was  
20 originally dispensed by a Canadian pharmacy, or otherwise  
21 legally imported from Canada, provided that:

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

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

26 (3) The pharmacist does not believe that the  
27 medication is counterfeit.

28 Section 3. Purchase of Canadian medications.--

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

30 (a) "Canadian lower cost alternative" means any  
31 medication that:

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

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

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

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

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

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