

Amendment No.

CHAMBER ACTION

Senate

House

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Representatives Bovo and Jones offered the following:

Substitute Amendment to Amendment (385527) (with title amendment)

Between lines 1696 and 1697, insert:

Section 34. Sections 409.1100, 409.1101, 409.1102, 409.1103, 409.1104, 409.1105, 409.1106, 409.1107, and 409.1108, Florida Statutes, are created to read:

409.1100 Short title.—Sections 409.110-409.1108 may be cited as the "Prescription and Medical Equipment Medicaid Access and Pricing Protection Act."

409.1101 Legislative findings and intent.—The Legislature finds that fair and healthy competition in the wholesaling and distribution of prescription drugs and medical supplies, soft goods, and equipment benefits patients in this state and the Medicaid program, and that certain marketing and distribution

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17 practices which impair such competition are contrary to the
18 public interest. Predatory practices and, under certain
19 conditions, discriminatory practices, are unfair trade practices
20 and restraints which adversely affect access to quality and
21 affordable health care. It is the intent of the Legislature to
22 encourage competition and promote the general welfare of
23 citizens of this state by prohibiting such unfair practices.

24 409.1103 Definitions.—In addition to the definitions
25 contained in s. 409.962, the definitions of the following terms
26 shall apply to ss. 409.1100-409.1108:

27 (1) "Affiliate" means any person whose stock or ownership
28 interest is more than 30 percent owned by, or who, regardless of
29 stock ownership, is controlled by, or who, regardless of stock
30 ownership, is under common control with, any qualified plan or
31 Medicaid provider.

32 (2) "Competition" means the vying for prescription drug or
33 medical supplies, soft goods, and equipment wholesales or
34 distributions between any two Medicaid providers in the same
35 relevant geographic market.

36 (3) "Pharmacy" means any entity licensed under chapter 465
37 other than a wholesaler, who is engaged in the business of
38 selling or dispensing prescription drugs to Medicaid patients
39 and is a Medicaid provider under chapter 400.

40 (4) "Equipment provider" means any person licensed under
41 Chapter 400 to sell home medical equipment or durable medical
42 supplies, soft goods, and equipment, other than a wholesaler,
43 engaged in the selling of home medical equipment or durable

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44 medical equipment to Medicaid patients and is a Medicaid
45 provider under chapter 400.

46 409.1104 Predatory practices unlawful; exceptions.-

47 (1) (a) It is unlawful for any person engaged in
48 distribution of prescription drugs, as defined in s. 499.003(17)
49 or any seller of medical supplies, soft goods, and equipment in
50 this state to sell any prescription drugs or medical supplies,
51 soft goods, and equipment in this state to any pharmacy
52 provider, home medical equipment provider or durable medical
53 supplies, soft goods, and equipment provider at any outlet below
54 wholesale cost, where the effect or intent is to injure
55 competition.

56 (b) It is unlawful for any qualified plan or Medicaid
57 provider in this state to sell any prescription drugs, home
58 medical equipment or durable medical supplies, soft goods, and
59 equipment in any outlet, where the effect is to injure
60 competition.

61 (c) No Affiliate of a qualified plan may also act as a
62 member of a provider network for such qualified plan.

63 (2) An isolated, inadvertent incident involving activity
64 prohibited pursuant to subsection (1) or subsection (3) shall
65 not be a violation of ss. 409.1100-409.1108.

66 (3) Notwithstanding any other provision of law to the
67 contrary, it is unlawful for a prescription drug wholesaler or
68 distributor, including any affiliate or agent thereof, to sell
69 any prescription drug to a retail pharmacy at a price that is
70 below the price charged by that wholesaler or distributor under
71 written contract for the alike brand and quality of such

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72 prescription drug, to the extent that the wholesaler or
73 distributor resells in the relevant geographic market where the
74 wholesaler's or distributor's wholesale price is in effect.

75 409.1105 Discriminatory practices unlawful; exceptions.-

76 (1) It is unlawful for any person engaged in distributing
77 prescription drugs or durable medical supplies, soft goods, and
78 equipment in this state:

79 (a) To sell for resale any prescription drugs or durable
80 supplies, soft goods, and medical equipment at a price lower
81 than the price at which the seller contemporaneously sells
82 prescription drugs or durable supplies, soft goods, and medical
83 equipment at a like brand and quality to another retail outlet
84 on the same level of distribution, in the same class of trade,
85 and within the same relevant geographic market as the purchaser;
86 or

87 (b) To knowingly receive for resale any prescription drugs
88 or durable medical equipment at a price lower than the price at
89 which the seller from which the prescription drugs or durable
90 medical equipment is purchased or received contemporaneously
91 sells prescription drugs or durable medical equipment of like
92 brand and quality to another person on the same level of
93 distribution, in the same class of trade, and within the same
94 relevant geographic market as the purchaser;

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96 where the effect is to injure competition.

97 (2) A sale of prescription drugs or durable medical
98 supplies, soft goods, and equipment of like brand and quality at
99 different prices to persons at the same level of distribution is

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100 not a violation of this section if the difference in price is
101 due to a difference in the cost of sale or delivery resulting
102 from differing methods or quantities in which the prescription
103 drugs or durable medical supplies, soft goods, and equipment is
104 sold or delivered.

105 409.1107 Unfair practices unlawful.—It shall be unlawful
106 for a prescription drug or durable medical supplies, soft goods,
107 and equipment wholesaler or distributor to fix or maintain the
108 retail price of prescription drugs or durable medical supplies,
109 soft goods, and equipment at a retail outlet supplied by that
110 wholesaler or distributor.

111 409.1108 Enforcement; civil penalties; exclusion from
112 program.—

113 (1) Any person who knowingly violates ss. 409.1100-
114 409.1108 shall be subject to a civil penalty not to exceed
115 \$10,000 per violation. Each day that a violation of ss.
116 409.1100-409.1108 occurs shall be considered a separate
117 violation, but no civil penalty shall exceed \$250,000. Any such
118 person shall also be liable for attorney's fees and shall be
119 subject to an action for injunctive relief.

120 (2) The civil penalty imposed under this section may be
121 assessed and recovered in a civil action brought by the agency
122 in any court of competent jurisdiction. If the agency prevails
123 in a civil action, the court may award it reasonable attorneys'
124 fees as it deems appropriate.

125 (3) Any Medicaid provider or qualified plan who violates
126 ss. 409.1100-409.1108 shall be subject to disqualification from
127 the Medicaid program.

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T I T L E A M E N D M E N T

Remove line 159 and insert:

recipients; creating ss. 409.1100-409.1108, F.S., the
"Prescription and Medical Equipment Medicaid Access and Pricing
Protection Act"; providing definitions; providing legislative
findings and intent; providing that certain predatory,
discriminatory, and unfair practices are unlawful; providing
exceptions; providing for enforcement; providing penalties;
providing for exclusion from the program; providing an effective
date.