

By Senator Garcia

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1 A bill to be entitled
2 An act relating to pharmacy benefit managers; creating
3 s. 465.1862, F.S.; defining terms; specifying contract
4 terms that must be included in a contract between a
5 pharmacy benefit manager and a pharmacy; providing
6 restrictions on the inclusion of prescriptions drugs
7 on a list that specifies the maximum allowable cost
8 for such drugs; requiring the pharmacy benefit manager
9 to disclose certain information to a plan sponsor;
10 requiring a contract between a pharmacy benefit
11 manager and a pharmacy to include an appeal process;
12 requiring a pharmacy benefit manager to contractually
13 commit to providing a certain reimbursement rate for
14 generic drugs; providing an effective date.

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

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18 Section 1. Section 465.1862, Florida Statutes, is created
19 to read:

20 465.1862 Pharmacy benefit managers.—

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

22 (a) "Average wholesale price" (AWP) means the published or
23 suggested cost of pharmaceuticals charged to a pharmacy by a
24 large group of pharmaceutical wholesalers.

25 (b) "AWP Discount," also known as the generic effective
26 rate, means the negotiated amount a plan sponsor pays to
27 pharmacies for the ingredient cost of a prescription and
28 commonly expressed as a percentage of AWP.

29 (c) "Maximum allowable cost" (MAC) means the upper limit or

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30 maximum amount that an insurance or managed care plan will pay
31 for generic, or brand-name drugs that have generic versions
32 available, which are included on a PBM-generated list of
33 products.

34 (e) "Plan sponsor" means an employer, insurer, managed care
35 organization, prepaid limited health service organization,
36 third-party administration, or other entity contracting for
37 pharmacy benefit manager services.

38 (d) "Pharmacy benefit manager" (PBM) means a person,
39 business, or other entity that provides administrative services
40 related to processing and paying prescription claims for
41 pharmacy benefit and coverage programs. Such services may
42 include contracting with a pharmacy or network of pharmacies;
43 establishing payment levels for provider pharmacies; negotiating
44 discounts and rebate arrangements with drug manufacturers;
45 developing and managing prescription formularies, preferred drug
46 lists, and prior authorization programs; assuring audit
47 compliance; and providing management reports.

48 (2) A pharmacy benefit manager contracting with pharmacies
49 in this state shall annually contract with a pharmacy on or
50 before January 1 of the contract year. Such contract must:

51 (a) Include the basis of the methodology and sources used
52 to determine the MAC pricing administered by the pharmacy
53 benefit manager, update the pricing information on such a list
54 at least every 7 calendar days, and establish a reasonable
55 process for the prompt notification of such pricing updates to
56 network pharmacies; and

57 (b) Maintain a procedure to eliminate products from the
58 list or modify the MAC pricing in a timely fashion in order to

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59 remain consistent with pricing changes in the marketplace.

60 (3) In order to place a particular prescription drug on a
61 MAC list, the pharmacy benefit manager must, at a minimum,
62 ensure that:

63 (a) The drug has at least three or more nationally
64 available, therapeutically equivalent, multiple-source generic
65 drugs that have a significant cost difference;

66 (b) The products are listed as therapeutically and
67 pharmaceutically equivalent or "A" rated in the United States
68 Food and Drug Administration's most recent version of the Orange
69 Book; and

70 (c) The product is available for purchase without
71 limitations by all pharmacies in the state from national or
72 regional wholesalers and may not be obsolete or temporarily
73 unavailable.

74 (4) The pharmacy benefit manager must disclose the
75 following to the plan sponsor:

76 (a) The basis of the methodology and sources used to
77 establish applicable MAC pricing in the contract between the
78 pharmacy benefit manager and the plan sponsor. Applicable MAC
79 lists must be updated and provided to the plan sponsor whenever
80 there is a change.

81 (b) Whether the pharmacy benefit manager uses a MAC list
82 for drugs dispensed at retail but does not use a MAC list for
83 drugs dispensed by mail order in the contract between the
84 pharmacy benefit manager and the plan sponsor or within 21
85 business days after implementation of the practice.

86 (c) Whether the pharmacy benefit manager is using the
87 identical MAC list with respect to billing the plan sponsor as

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88 it does when reimbursing all network pharmacies. If multiple MAC
89 lists are used, the pharmacy benefit manager must disclose any
90 difference between the amount paid to a pharmacy and the amount
91 charged to the plan sponsor.

92 (5) All contracts between a pharmacy benefit manager and a
93 contracted pharmacy must include:

94 (a) A process for appealing, investigating, and resolving
95 disputes regarding MAC pricing. The process must:

96 1. Limit the right to appeal to 90 calendar days following
97 the initial claim;

98 2. Investigate and resolve the dispute within 7 days; and

99 3. Provide the telephone number at which a network pharmacy
100 may contact the pharmacy benefit manager and speak with an
101 individual who is responsible for processing appeals.

102 (b) If the appeal is denied, the pharmacy benefit manager
103 shall provide the reason for the denial and identify the
104 national drug code of a drug product that may be purchased by a
105 contracted pharmacy at a price at or below the MAC.

106 (c) If an appeal is upheld, the pharmacy benefit manager
107 shall make an adjustment retroactive to the date of
108 adjudication. The pharmacy benefit manager shall make the
109 adjustment effective for all similarly situated pharmacies in
110 this state which are within the network.

111 (6) A pharmacy benefit manager shall contractually commit
112 to providing a particular aggregate average reimbursement rate
113 for generics or a maximum average AWP discount on multi-source
114 generics as a whole. For the purposes of the AWP discount
115 amount, a pharmacy benefit manager must use an AWP published by
116 a nationally available compendia. The aggregate average rate for

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117 reimbursement shall be calculated using the actual amount paid
118 to the pharmacy, excluding the dispensing fee. The reimbursement
119 rate may not be calculated solely according to the amount
120 allowed by the plan and must include all generics dispensed,
121 regardless of whether they are subject to MAC pricing.

122 Section 2. This act shall take effect July 1, 2014.