By the Committees on Health Policy; and Banking and Insurance; and Senator Mayfield

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1 A bill to be entitled
2 An act relating to consumer protection from nonmedical
3 changes to prescription drug formularies; creating s.
4 627.42393, F.S.; limiting, under specified
5 circumstances, changes to a health insurance policy
6 prescription drug formulary during a policy year;
7 providing construction and applicability; amending s.
8 627.6699, F.S.; requiring small employer carriers to
9 limit changes to prescription drug formularies under
10 certain circumstances; amending s. 641.31, F.S.;
11 limiting, under specified circumstances, changes to a
12 health maintenance contract prescription drug
13 formulary during a contract year; providing
14 construction and applicability; providing a
15 declaration of important state interest; providing an
16 effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
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20 Section 1. Section 627.42393, Florida Statutes, is created
21 to read:
22 627.42393 Insurance policies; limiting changes to
23 prescription drug formularies.—
24 (1) Other than at the time of coverage renewal, an
25 individual or group insurance policy that is delivered, issued
26 for delivery, renewed, amended, or continued in this state and
27 that provides medical, major medical, or similar comprehensive
28 coverage may not:
29 (a) Remove a covered prescription drug from its list of

30 covered drugs during the policy year unless the United States
31 Food and Drug Administration has issued a statement about the
32 drug which calls into question the clinical safety of the drug,
33 or the manufacturer of the drug has notified the United States
34 Food and Drug Administration of a manufacturing discontinuance
35 or potential discontinuance of the drug as required by s. 506C
36 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.
37 (b) Reclassify a drug to a more restrictive drug tier or
38 increase the amount that an insured must pay for a copayment,
39 coinsurance, or deductible for prescription drug benefits, or
40 reclassify a drug to a higher cost-sharing tier during the
41 policy year.
42 (2) This section does not prohibit the addition of
43 prescription drugs to the list of drugs covered under the policy
44 during the policy year.
45 (3) This section does not apply to a grandfathered health
46 plan as defined in s. 627.402 or to benefits set forth in s.
47 627.6513(1)-(14).
48 (4) This section does not alter or amend s. 465.025, which
49 provides conditions under which a pharmacist may substitute a
50 generically equivalent drug product for a brand name drug
51 product.
52 (5) This section does not alter or amend s. 465.0252, which
53 provides conditions under which a pharmacist may dispense a
54 substitute biological product for the prescribed biological
55 product.
56 Section 2. Paragraph (e) of subsection (5) of section
57 627.6699, Florida Statutes, is amended to read:
58 627.6699 Employee Health Care Access Act.—

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

59 (5) AVAILABILITY OF COVERAGE.—
60 (e) All health benefit plans issued under this section must
61 comply with the following conditions:
62 1. For employers who have fewer than two employees, a late
63 enrollee may be excluded from coverage for no longer than 24
64 months if he or she was not covered by creditable coverage
65 continually to a date not more than 63 days before the effective
66 date of his or her new coverage.
67 2. Any requirement used by a small employer carrier in
68 determining whether to provide coverage to a small employer
69 group, including requirements for minimum participation of
70 eligible employees and minimum employer contributions, must be
71 applied uniformly among all small employer groups having the
72 same number of eligible employees applying for coverage or
73 receiving coverage from the small employer carrier, except that
74 a small employer carrier that participates in, administers, or
75 issues health benefits pursuant to s. 381.0406 which do not
76 include a preexisting condition exclusion may require as a
77 condition of offering such benefits that the employer has had no
78 health insurance coverage for its employees for a period of at
79 least 6 months. A small employer carrier may vary application of
80 minimum participation requirements and minimum employer
81 contribution requirements only by the size of the small employer
82 group.
83 3. In applying minimum participation requirements with
84 respect to a small employer, a small employer carrier shall not
85 consider as an eligible employee employees or dependents who
86 have qualifying existing coverage in an employer-based group
87 insurance plan or an ERISA qualified self-insurance plan in

88 determining whether the applicable percentage of participation
89 is met. However, a small employer carrier may count eligible
90 employees and dependents who have coverage under another health
91 plan that is sponsored by that employer.
92 4. A small employer carrier shall not increase any
93 requirement for minimum employee participation or any
94 requirement for minimum employer contribution applicable to a
95 small employer at any time after the small employer has been
96 accepted for coverage, unless the employer size has changed, in
97 which case the small employer carrier may apply the requirements
98 that are applicable to the new group size.
99 5. If a small employer carrier offers coverage to a small
100 employer, it must offer coverage to all the small employer's
101 eligible employees and their dependents. A small employer
102 carrier may not offer coverage limited to certain persons in a
103 group or to part of a group, except with respect to late
104 enrollees.
105 6. A small employer carrier may not modify any health
106 benefit plan issued to a small employer with respect to a small
107 employer or any eligible employee or dependent through riders,
108 endorsements, or otherwise to restrict or exclude coverage for
109 certain diseases or medical conditions otherwise covered by the
110 health benefit plan.
111 7. An initial enrollment period of at least 30 days must be
112 provided. An annual 30-day open enrollment period must be
113 offered to each small employer's eligible employees and their
114 dependents. A small employer carrier must provide special
115 enrollment periods as required by s. 627.65615.
116 <u>8. A small employer carrier must limit changes to</u>

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117 prescription drug formularies as required by s. 627.42393.
118 Section 3. Subsection (36) of section 641.31, Florida
119 Statutes, is amended to read:
120 641.31 Health maintenance contracts.—
121 (36) A health maintenance organization may increase the
122 copayment for any benefit, or delete, amend, or limit any of the
123 benefits to which a subscriber is entitled under the group
124 contract only, upon written notice to the contract holder at
125 least 45 days in advance of the time of coverage renewal. The
126 health maintenance organization may amend the contract with the
127 contract holder, with such amendment to be effective immediately
128 at the time of coverage renewal. The written notice to the
129 contract holder must ~~shall~~ specifically identify any deletions,
130 amendments, or limitations to any of the benefits provided in
131 the group contract during the current contract period which will
132 be included in the group contract upon renewal. This subsection
133 does not apply to any increases in benefits. The 45-day notice
134 requirement does ~~shall~~ not apply if benefits are amended,
135 deleted, or limited at the request of the contract holder.
136 (a) Other than at the time of coverage renewal, a health
137 maintenance organization that provides medical, major medical,
138 or similar comprehensive coverage may not:
139 1. Remove a covered prescription drug from its list of
140 covered drugs during the contract year unless the United States
141 Food and Drug Administration has issued a statement about the
142 drug which calls into question the clinical safety of the drug,
143 or the manufacturer of the drug has notified the United States
144 Food and Drug Administration of a manufacturing discontinuance
145 or potential discontinuance of the drug as required by s. 506C

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146 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.
147 2. Reclassify a drug to a more restrictive drug tier or
148 increase the amount that an insured must pay for a copayment,
149 coinsurance, or deductible for prescription drug benefits, or
150 reclassify a drug to a higher cost-sharing tier during the
151 contract year.
152 (b) This subsection does not:
153 1. Prohibit the addition of prescription drugs to the list
154 of drugs covered during the contract year.
155 2. Apply to a grandfathered health plan as defined in s.
156 627.402 or to benefits set forth in s. 627.6513(1)-(14).
157 3. Alter or amend s. 465.025, which provides conditions
158 under which a pharmacist may substitute a generically equivalent
159 drug product for a brand name drug product.
160 4. Alter or amend s. 465.0252, which provides conditions
161 under which a pharmacist may dispense a substitute biological
162 product for the prescribed biological product.
163 Section 4. The Legislature finds that this act fulfills an
164 important state interest.
165 Section 5. This act shall take effect January 1, 2018.

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