

1                   A bill to be entitled  
 2           An act relating to fail-first protocols; creating s.  
 3           627.42393, F.S.; providing definitions; requiring  
 4           health insurers to provide a procedure to obtain  
 5           protocol exceptions on its website and in writing;  
 6           providing information that must be included in the  
 7           procedure; providing a timeframe in which health  
 8           insurers must make a determination to protocol  
 9           exception requests; providing notification  
 10          requirements for such determination; providing  
 11          circumstances in which health insurers must grant a  
 12          protocol exception request; authorizing health  
 13          insurers to request copies of certain medical records;  
 14          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 627.42393, Florida Statutes, is created  
 19 to read:

20           627.42393 Fail-first protocols.-  
 21           (1) As used in this section, the term:  
 22           (a) "Fail-first protocol" means a written policy that  
 23           specifies the order in which a certain medical procedure, course  
 24           of treatment, or prescription drug must be used to treat an  
 25           insured's condition.

26        (b) "Health insurer" means an authorized insurer offering  
27 health insurance as defined in s. 624.603 or a health  
28 maintenance organization as defined in s. 641.19(12).

29        (c) "Preceding prescription drug or medical treatment"  
30 means a medical procedure, course of treatment, or prescription  
31 drug that must be used to treat an insured's condition pursuant  
32 to a health insurer's fail-first protocol as a condition of  
33 coverage under a health insurance policy or a health maintenance  
34 contract.

35        (d) "Protocol exception" means a determination by a health  
36 insurer that a fail-first protocol is not medically appropriate  
37 or indicated for treatment of an insured's condition and the  
38 health insurer authorizes the use of another medical procedure,  
39 course of treatment, or prescription drug prescribed or  
40 recommended by the treating health care provider.

41        (e) "Urgent care situation" means the standard timeframe  
42 to treat the insured's injury or condition would, based on the  
43 opinion of a treating health care provider:

44        1. Seriously jeopardize the insured's life, health, or  
45 ability to regain maximum function; or

46        2. Subject the insured to pain that cannot be adequately  
47 managed.

48        (2) A health insurer must publish on its website, and  
49 provide to an insured in writing, the procedure for an insured  
50 or health care provider to request a protocol exception. The

51 procedure must include:

52 (a) A description of the manner in which an insured or  
53 health care provider may request a protocol exception.

54 (b) The manner and timeframe in which the health insurer  
55 is required to authorize or deny a protocol exception request or  
56 respond to an appeal of a health insurer's authorization or  
57 denial of a request.

58 (c) Conditions in which the protocol exception request  
59 must be granted.

60 (3)(a) The health insurer must authorize or deny a  
61 protocol exception request or respond to an appeal of an  
62 authorization or denial of a request within:

63 1. Three business days of obtaining a completed protocol  
64 exception request for a non-urgent care situation.

65 2. Twenty-four hours of obtaining a completed protocol  
66 exception request for an urgent care situation.

67 (b) An authorization of a protocol exception request must  
68 specify the approved medical procedure, course of treatment, or  
69 prescription drug benefits.

70 (c) A denial of a protocol exception request must include  
71 a detailed, written explanation of the reason for the denial,  
72 the clinical rationale that supports the denial, and the  
73 procedure to appeal the determination.

74 (4) A health insurer must grant a protocol exception  
75 request if:

76        (a) A preceding prescription drug or medical treatment is  
77        contraindicated or likely to cause an adverse reaction or  
78        physical or mental harm to the insured;

79        (b) A preceding prescription drug or medical treatment is  
80        expected to be ineffective, based on the medical history of the  
81        insured and the clinical evidence of the characteristics of the  
82        preceding prescription drug or medical treatment; or

83        (c) The insured has previously received a preceding  
84        prescription drug or medical treatment that is in the same  
85        pharmacologic class or has the same mechanism of action, and  
86        such drug or treatment lacked efficacy or effectiveness or  
87        adversely affected the insured.

88        (5) The health insurer may request a copy of relevant  
89        documentation from the insured's medical record in support of a  
90        protocol exception request.

91        Section 2. This act shall take effect July 1, 2017.