

By Senator Mayfield

17-00425-18

2018360__

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.; prohibiting specified changes to
 5 certain insurance policy prescription drug
 6 formularies, except under certain circumstances;
 7 providing construction and applicability; amending s.
 8 627.6699, F.S.; requiring small employer carriers to
 9 limit specified changes to prescription drug
 10 formularies under certain health benefit plans;
 11 amending s. 641.31, F.S.; prohibiting certain health
 12 maintenance organizations from making specified
 13 changes to health maintenance contract prescription
 14 drug formularies, except under certain circumstances;
 15 providing construction and applicability; providing a
 16 declaration of important state interest; providing an
 17 effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Section 627.42393, Florida Statutes, is created
 22 to read:

23 627.42393 Insurance policies; limiting changes to
 24 prescription drug formularies.—

25 (1) Other than at the time of coverage renewal, an
 26 individual or group insurance policy that is delivered, issued
 27 for delivery, renewed, amended, or continued in this state and
 28 that provides medical, major medical, or similar comprehensive
 29 coverage may not:

17-00425-18

2018360__

30 (a) Remove a covered prescription drug from its list of
31 covered drugs during the policy year unless the United States
32 Food and Drug Administration has issued a statement about the
33 drug which calls into question the clinical safety of the drug,
34 or the manufacturer of the drug has notified the United States
35 Food and Drug Administration of a manufacturing discontinuance
36 or potential discontinuance of the drug as required by s. 506C
37 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

38 (b) Reclassify a drug to a more restrictive drug tier or
39 increase the amount that an insured must pay for a copayment,
40 coinsurance, or deductible for prescription drug benefits, or
41 reclassify a drug to a higher cost-sharing tier during the
42 policy year.

43 (2) This section does not prohibit the addition of
44 prescription drugs to the list of drugs covered under the policy
45 during the policy year.

46 (3) This section does not apply to a grandfathered health
47 plan as defined in s. 627.402 or to benefits set forth in s.
48 627.6513(1)-(14).

49 (4) This section does not alter or amend s. 465.025, which
50 provides conditions under which a pharmacist may substitute a
51 generically equivalent drug product for a brand name drug
52 product.

53 (5) This section does not alter or amend s. 465.0252, which
54 provides conditions under which a pharmacist may dispense a
55 substitute biological product for the prescribed biological
56 product.

57 Section 2. Paragraph (e) of subsection (5) of section
58 627.6699, Florida Statutes, is amended to read:

17-00425-18

2018360__

59 627.6699 Employee Health Care Access Act.—

60 (5) AVAILABILITY OF COVERAGE.—

61 (e) All health benefit plans issued under this section must
62 comply with the following conditions:

63 1. For employers who have fewer than two employees, a late
64 enrollee may be excluded from coverage for no longer than 24
65 months if he or she was not covered by creditable coverage
66 continually to a date not more than 63 days before the effective
67 date of his or her new coverage.

68 2. Any requirement used by a small employer carrier in
69 determining whether to provide coverage to a small employer
70 group, including requirements for minimum participation of
71 eligible employees and minimum employer contributions, must be
72 applied uniformly among all small employer groups having the
73 same number of eligible employees applying for coverage or
74 receiving coverage from the small employer carrier, except that
75 a small employer carrier that participates in, administers, or
76 issues health benefits pursuant to s. 381.0406 which do not
77 include a preexisting condition exclusion may require as a
78 condition of offering such benefits that the employer has had no
79 health insurance coverage for its employees for a period of at
80 least 6 months. A small employer carrier may vary application of
81 minimum participation requirements and minimum employer
82 contribution requirements only by the size of the small employer
83 group.

84 3. In applying minimum participation requirements with
85 respect to a small employer, a small employer carrier shall not
86 consider as an eligible employee employees or dependents who
87 have qualifying existing coverage in an employer-based group

17-00425-18

2018360__

88 insurance plan or an ERISA qualified self-insurance plan in
89 determining whether the applicable percentage of participation
90 is met. However, a small employer carrier may count eligible
91 employees and dependents who have coverage under another health
92 plan that is sponsored by that employer.

93 4. A small employer carrier shall not increase any
94 requirement for minimum employee participation or any
95 requirement for minimum employer contribution applicable to a
96 small employer at any time after the small employer has been
97 accepted for coverage, unless the employer size has changed, in
98 which case the small employer carrier may apply the requirements
99 that are applicable to the new group size.

100 5. If a small employer carrier offers coverage to a small
101 employer, it must offer coverage to all the small employer's
102 eligible employees and their dependents. A small employer
103 carrier may not offer coverage limited to certain persons in a
104 group or to part of a group, except with respect to late
105 enrollees.

106 6. A small employer carrier may not modify any health
107 benefit plan issued to a small employer with respect to a small
108 employer or any eligible employee or dependent through riders,
109 endorsements, or otherwise to restrict or exclude coverage for
110 certain diseases or medical conditions otherwise covered by the
111 health benefit plan.

112 7. An initial enrollment period of at least 30 days must be
113 provided. An annual 30-day open enrollment period must be
114 offered to each small employer's eligible employees and their
115 dependents. A small employer carrier must provide special
116 enrollment periods as required by s. 627.65615.

17-00425-18

2018360__

117 8. A small employer carrier must limit changes to
118 prescription drug formularies as required by s. 627.42393.

119 Section 3. Subsection (36) of section 641.31, Florida
120 Statutes, is amended to read:

121 641.31 Health maintenance contracts.—

122 (36) A health maintenance organization may increase the
123 copayment for any benefit, or delete, amend, or limit any of the
124 benefits to which a subscriber is entitled under the group
125 contract only, upon written notice to the contract holder at
126 least 45 days in advance of the time of coverage renewal. The
127 health maintenance organization may amend the contract with the
128 contract holder, with such amendment to be effective immediately
129 at the time of coverage renewal. The written notice to the
130 contract holder must ~~shall~~ specifically identify any deletions,
131 amendments, or limitations to any of the benefits provided in
132 the group contract during the current contract period which will
133 be included in the group contract upon renewal. This subsection
134 does not apply to any increases in benefits. The 45-day notice
135 requirement does ~~shall~~ not apply if benefits are amended,
136 deleted, or limited at the request of the contract holder.

137 (a) Other than at the time of coverage renewal, a health
138 maintenance organization that provides medical, major medical,
139 or similar comprehensive coverage may not:

140 1. Remove a covered prescription drug from its list of
141 covered drugs during the contract year unless the United States
142 Food and Drug Administration has issued a statement about the
143 drug which calls into question the clinical safety of the drug,
144 or the manufacturer of the drug has notified the United States
145 Food and Drug Administration of a manufacturing discontinuance

17-00425-18

2018360__

146 or potential discontinuance of the drug as required by s. 506C
147 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

148 2. Reclassify a drug to a more restrictive drug tier or
149 increase the amount that an insured must pay for a copayment,
150 coinsurance, or deductible for prescription drug benefits, or
151 reclassify a drug to a higher cost-sharing tier during the
152 contract year.

153 (b) This subsection does not:

154 1. Prohibit the addition of prescription drugs to the list
155 of drugs covered during the contract year.

156 2. Apply to a grandfathered health plan as defined in s.
157 627.402 or to benefits set forth in s. 627.6513(1)-(14).

158 3. Alter or amend s. 465.025, which provides conditions
159 under which a pharmacist may substitute a generically equivalent
160 drug product for a brand name drug product.

161 4. Alter or amend s. 465.0252, which provides conditions
162 under which a pharmacist may dispense a substitute biological
163 product for the prescribed biological product.

164 Section 4. The Legislature finds that this act fulfills an
165 important state interest.

166 Section 5. This act shall take effect January 1, 2019.