By the Committee on Banking and Insurance; and Senator Mayfield

597-03203-19 20191180c1

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, while the insured is taking a prescription

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30 drug that the insured's treating physician determines is
31 medically necessary:
32 (a) Remove the prescription drug from its list of covered
33 drugs during the policy year unless the United States Food and
34 Drug Administration has issued a statement about the drug which
35 calls into question the clinical safety of the drug or the
36 manufacturer of the drug has notified the United States Food and
37 Drug Administration of a manufacturing discontinuance or
38 potential discontinuance of the drug as required by s. 506C of
39 the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.
40 (b) Reclassify the drug to a more restrictive drug tier or
41 increase the amount that an insured must pay for a copayment,
42 coinsurance, or deductible for prescription drug benefits or
43 reclassify the drug to a higher cost-sharing tier during the
44 policy year.
45 (2) This section does not:
46 (a) Prohibit the addition of prescription drugs to the list
47 of drugs covered under the policy during the policy year.
48 (b) Apply to a grandfathered health plan as defined in s.
49 627.402 or to benefits set forth in s. 627.6513(1)-(14).
50 (c) Alter or amend s. 465.025, which provides conditions
51 under which a pharmacist may substitute a generically equivalent
52 drug product for a brand name drug product.
53 (d) Alter or amend s. 465.0252, which provides conditions
54 under which a pharmacist may dispense a substitute biological
55 product for the prescribed biological product.
56 (e) Apply to a Medicaid managed care plan under part IV of
57 chapter 409.
58 Section 2. Paragraph (e) of subsection (5) of section

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59 627.6699, Florida Statutes, is amended to read:
60 627.6699 Employee Health Care Access Act.—
61 (5) AVAILABILITY OF COVERAGE.—
62 (e) All health benefit plans issued under this section must
63 comply with the following conditions:
64 1. For employers who have fewer than two employees, a late
65 enrollee may be excluded from coverage for no longer than 24
66 months if he or she was not covered by creditable coverage
67 continually to a date not more than 63 days before the effective
68 date of his or her new coverage.
69 2. Any requirement used by a small employer carrier in
70 determining whether to provide coverage to a small employer
71 group, including requirements for minimum participation of
72 eligible employees and minimum employer contributions, must be
73 applied uniformly among all small employer groups having the
74 same number of eligible employees applying for coverage or
75 receiving coverage from the small employer carrier, except that
76 a small employer carrier that participates in, administers, or
77 issues health benefits pursuant to s. 381.0406 which do not
78 include a preexisting condition exclusion may require as a
79 condition of offering such benefits that the employer has had no
80 health insurance coverage for its employees for a period of at
81 least 6 months. A small employer carrier may vary application of
82 minimum participation requirements and minimum employer
83 contribution requirements only by the size of the small employer
84 group.
85 3. In applying minimum participation requirements with
86 respect to a small employer, a small employer carrier shall not
87 consider as an eligible employee employees or dependents who

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

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117 enrollment periods as required by s. 627.65615.
118 8. A small employer carrier must limit changes to
119 prescription drug formularies as required by s. 627.42393.
120 Section 3. Subsection (36) of section 641.31, Florida
121 Statutes, is amended to read:
122 641.31 Health maintenance contracts.—
123 (36) A health maintenance organization may increase the
124 copayment for any benefit, or delete, amend, or limit any of the
125 benefits to which a subscriber is entitled under the group
126 contract only, upon written notice to the contract holder at
127 least 45 days in advance of the time of coverage renewal. The
128 health maintenance organization may amend the contract with the
129 contract holder, with such amendment to be effective immediately
130 at the time of coverage renewal. The written notice to the
131 contract holder must ~~shall~~ specifically identify any deletions,
132 amendments, or limitations to any of the benefits provided in
133 the group contract during the current contract period which will
134 be included in the group contract upon renewal. This subsection
135 does not apply to any increases in benefits. The 45-day notice
136 requirement does ~~shall~~ not apply if benefits are amended,
137 deleted, or limited at the request of the contract holder.
138 (a) Other than at the time of coverage renewal, a health
139 maintenance contract that provides medical, major medical, or
140 similar comprehensive coverage may not, while the subscriber is
141 taking a prescription drug that the subscriber’s treating
142 physician determines is medically necessary:
143 1. Remove the prescription drug from its list of covered
144 drugs during the contract year unless the United States Food and
145 Drug Administration has issued a statement about the drug which

146 calls into question the clinical safety of the drug or the
147 manufacturer of the drug has notified the United States Food and
148 Drug Administration of a manufacturing discontinuance or
149 potential discontinuance of the drug as required by s. 506C of
150 the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.
151 2. Reclassify the drug to a more restrictive drug tier or
152 increase the amount that an insured must pay for a copayment,
153 coinsurance, or deductible for prescription drug benefits or
154 reclassify the drug to a higher cost-sharing tier during the
155 contract year.
156 (b) This subsection does not:
157 1. Prohibit the addition of prescription drugs to the list
158 of drugs covered during the contract year.
159 2. Apply to a grandfathered health plan as defined in s.
160 627.402 or to benefits set forth in s. 627.6513(1)-(14).
161 3. Alter or amend s. 465.025, which provides conditions
162 under which a pharmacist may substitute a generically equivalent
163 drug product for a brand name drug product.
164 4. Alter or amend s. 465.0252, which provides conditions
165 under which a pharmacist may dispense a substitute biological
166 product for the prescribed biological product.
167 5. Apply to a Medicaid managed care plan under part IV of
168 chapter 409.
169 Section 4. The Legislature finds that this act fulfills an
170 important state interest.
171 Section 5. This act shall take effect January 1, 2020.

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