

1                   A bill to be entitled  
2           An act relating to prescription drug benefits;  
3           providing a short title; providing legislative  
4           findings; amending s. 465.003, F.S.; providing the  
5           definitions of the terms "pharmacy benefit manager"  
6           and "pharmacy benefit management services"; creating  
7           s. 465.203, F.S.; providing definitions; providing  
8           that pharmacy benefit managers have a fiduciary duty  
9           and obligation to specified individuals and entities;  
10          providing requirements for service performance,  
11          contracts, and specified funds for pharmacy benefit  
12          managers; authorizing specified pharmacies and  
13          pharmacists to contract with pharmacy benefit  
14          managers; providing requirements for maximum allowable  
15          cost lists; requiring pharmacy benefit managers to  
16          respond to certain appeals within a specified  
17          timeframe; prohibiting pharmacy benefit managers from  
18          engaging in certain practices; requiring pharmacy  
19          benefit managers to allow payors access to specified  
20          records, data, and information; providing disclosure  
21          and reporting requirements; requiring certain income  
22          and financial benefits to be passed through to payors;  
23          requiring pharmacy benefit managers to allow the  
24          Department of Financial Services access to specified  
25          records, data, and information; requiring the

26 | department to investigate certain violations;  
27 | providing penalties; providing that specified  
28 | violations are subject to the Florida Deceptive and  
29 | Unfair Trade Practices Act; providing applicability;  
30 | amending s. 624.490, F.S.; conforming provisions to  
31 | changes made by the act; creating s. 627.42385, F.S.;  
32 | providing definitions; requiring group health plans,  
33 | health insurers, and certain pharmacy benefit managers  
34 | to base plan beneficiaries' and insureds' coinsurance  
35 | obligations for certain prescription drugs on  
36 | specified drug prices; providing applicability;  
37 | prohibiting such group health plans, health insurers,  
38 | and pharmacy benefit managers from revealing specified  
39 | information; requiring such entities to protect such  
40 | information and impose the confidentiality protections  
41 | on other entities; providing penalties; requiring the  
42 | department to investigate certain violations;  
43 | providing construction; amending ss. 627.64741,  
44 | 627.6572, and 641.314, F.S.; conforming provisions to  
45 | changes made by the act; providing circumstances under  
46 | which contracts between health insurers or health  
47 | maintenance organizations and pharmacy benefit  
48 | managers are void and against the public policy;  
49 | providing requirements for contracts; requiring the  
50 | department to investigate certain violations;

51 providing penalties; amending ss. 409.9201, 458.331,  
52 459.015, 465.014, 465.015, 465.0156, 465.016,  
53 465.0197, 465.022, 465.023, 465.1901, 499.003, and  
54 893.02, F.S.; conforming cross-references; providing  
55 severability; providing an effective date.

56  
57 Be It Enacted by the Legislature of the State of Florida:

58  
59 Section 1. This act may be cited as the "Prescription Drug  
60 Cost Reduction Act."

61 Section 2. The Legislature finds that the use of spread  
62 pricing, the practice of directing patients to pharmacies owned  
63 in whole or in part by pharmacy benefit managers, and other  
64 practices by pharmacy benefit managers such as charging drug  
65 manufacturers rebates to be included on a drug formulary and  
66 keeping the rebates for their own financial gain rather than  
67 passing the savings on to health plans, health plan sponsors and  
68 providers, health insurers, and patients contribute to the high  
69 cost of prescription drugs. In order to reduce the cost of  
70 prescription drugs in this state, such practices should be  
71 prohibited.

72 Section 3. Section 465.003, Florida Statutes, is amended  
73 to read:

74 465.003 Definitions.—As used in this chapter, the term:

75 (1) "Administration" means the obtaining and giving of a

76 single dose of medicinal drugs by a legally authorized person to  
77 a patient for her or his consumption.

78 (3)~~(2)~~ "Board" means the Board of Pharmacy.

79 (9)~~(3)~~ "Consultant pharmacist" means a pharmacist licensed  
80 by the department and certified as a consultant pharmacist  
81 pursuant to s. 465.0125.

82 (10)~~(4)~~ "Data communication device" means an electronic  
83 device that receives electronic information from one source and  
84 transmits or routes it to another, including, but not limited  
85 to, any such bridge, router, switch, or gateway.

86 (11)~~(5)~~ "Department" means the Department of Health.

87 (12)~~(6)~~ "Dispense" means the transfer of possession of one  
88 or more doses of a medicinal drug by a pharmacist to the  
89 ultimate consumer or her or his agent. As an element of  
90 dispensing, the pharmacist shall, prior to the actual physical  
91 transfer, interpret and assess the prescription order for  
92 potential adverse reactions, interactions, and dosage regimen  
93 she or he deems appropriate in the exercise of her or his  
94 professional judgment, and the pharmacist shall certify that the  
95 medicinal drug called for by the prescription is ready for  
96 transfer. The pharmacist shall also provide counseling on proper  
97 drug usage, either orally or in writing, if in the exercise of  
98 her or his professional judgment counseling is necessary. The  
99 actual sales transaction and delivery of such drug shall not be  
100 considered dispensing. The administration shall not be

101 considered dispensing.

102 (13)~~(7)~~ "Institutional formulary system" means a method  
103 whereby the medical staff evaluates, appraises, and selects  
104 those medicinal drugs or proprietary preparations which in the  
105 medical staff's clinical judgment are most useful in patient  
106 care, and which are available for dispensing by a practicing  
107 pharmacist in a Class II or Class III institutional pharmacy.

108 (14)~~(8)~~ "Medicinal drugs" or "drugs" means those  
109 substances or preparations commonly known as "prescription" or  
110 "legend" drugs which are required by federal or state law to be  
111 dispensed only on a prescription, but shall not include patents  
112 or proprietary preparations as hereafter defined.

113 (17)~~(9)~~ "Patent or proprietary preparation" means a  
114 medicine in its unbroken, original package which is sold to the  
115 public by, or under the authority of, the manufacturer or  
116 primary distributor thereof and which is not misbranded under  
117 the provisions of the Florida Drug and Cosmetic Act.

118 (18)~~(10)~~ "Pharmacist" means any person licensed pursuant  
119 to this chapter to practice the profession of pharmacy.

120 (19)~~(11)~~(a) "Pharmacy" includes a community pharmacy, an  
121 institutional pharmacy, a nuclear pharmacy, a special pharmacy,  
122 and an Internet pharmacy.

123 1. The term "community pharmacy" includes every location  
124 where medicinal drugs are compounded, dispensed, stored, or sold  
125 or where prescriptions are filled or dispensed on an outpatient

126 basis.

127       2. The term "institutional pharmacy" includes every  
128 location in a hospital, clinic, nursing home, dispensary,  
129 sanitarium, extended care facility, or other facility,  
130 hereinafter referred to as "health care institutions," where  
131 medicinal drugs are compounded, dispensed, stored, or sold.

132       3. The term "nuclear pharmacy" includes every location  
133 where radioactive drugs and chemicals within the classification  
134 of medicinal drugs are compounded, dispensed, stored, or sold.  
135 The term "nuclear pharmacy" does not include hospitals licensed  
136 under chapter 395 or the nuclear medicine facilities of such  
137 hospitals.

138       4. The term "special pharmacy" includes every location  
139 where medicinal drugs are compounded, dispensed, stored, or sold  
140 if such locations are not otherwise defined in this subsection.

141       5. The term "Internet pharmacy" includes locations not  
142 otherwise licensed or issued a permit under this chapter, within  
143 or outside this state, which use the Internet to communicate  
144 with or obtain information from consumers in this state and use  
145 such communication or information to fill or refill  
146 prescriptions or to dispense, distribute, or otherwise engage in  
147 the practice of pharmacy in this state. Any act described in  
148 this definition constitutes the practice of pharmacy as defined  
149 in subsection (23) ~~(13)~~.

150       (b) The pharmacy department of any permittee shall be

151 considered closed whenever a Florida licensed pharmacist is not  
152 present and on duty. The term "not present and on duty" shall  
153 not be construed to prevent a pharmacist from exiting the  
154 prescription department for the purposes of consulting or  
155 responding to inquiries or providing assistance to patients or  
156 customers, attending to personal hygiene needs, or performing  
157 any other function for which the pharmacist is responsible,  
158 provided that such activities are conducted in a manner  
159 consistent with the pharmacist's responsibility to provide  
160 pharmacy services.

161 (20) "Pharmacy benefit manager" means an entity that  
162 performs pharmacy benefit management services for a health plan,  
163 a health plan sponsor, a health plan provider, a health insurer,  
164 or any other payor. The term does not include a provider as  
165 defined in s. 641.19, a physician as defined in s. 458.305, or  
166 an osteopathic physician as defined in s. 459.003.

167 (21) "Pharmacy benefit management services" means services  
168 that:

169 (a) Are provided, directly or through another entity, to a  
170 health plan, a health plan sponsor, a health plan provider, a  
171 health insurer, or any other payor, regardless of whether the  
172 services provider and the health plan, health plan sponsor,  
173 health plan provider, health insurer, or other payor are related  
174 or associated by ownership, common ownership, organization, or  
175 otherwise.

176 (b) Include the procurement of prescription drugs to be  
 177 dispensed to patients and the administration or management of  
 178 prescription drug benefits, including, but not limited to, any  
 179 of the following:

- 180 1. Mail service pharmacy or specialty pharmacy.
- 181 2. Claims processing, retail network management, or  
 182 payment of claims to pharmacies for dispensing drugs.
- 183 3. Clinical or other formulary or preferred-drug-list  
 184 development or management.
- 185 4. Negotiation, administration, or receipt of rebates,  
 186 discounts, payment differentials, or other incentives, to  
 187 include particular drugs in a particular category or to promote  
 188 the purchase of particular drugs.
- 189 5. Patients' compliance, therapeutic intervention, or  
 190 generic substitution programs.
- 191 6. Disease management.
- 192 7. Drug use review, step-therapy protocol, or prior  
 193 authorization.
- 194 8. Adjudication of appeals or grievances related to  
 195 prescription drug coverage.
- 196 9. Contracts with network pharmacies.
- 197 10. Control of the cost of covered prescription drugs.

198 (22)-(12) "Pharmacy intern" means a person who is currently  
 199 registered in, and attending, a duly accredited college or  
 200 school of pharmacy, or who is a graduate of such a school or

201 college of pharmacy, and who is duly and properly registered  
202 with the department as provided for under its rules.

203 (23)~~(13)~~ "Practice of the profession of pharmacy" includes  
204 compounding, dispensing, and consulting concerning contents,  
205 therapeutic values, and uses of any medicinal drug; consulting  
206 concerning therapeutic values and interactions of patent or  
207 proprietary preparations, whether pursuant to prescriptions or  
208 in the absence and entirely independent of such prescriptions or  
209 orders; and conducting other pharmaceutical services. For  
210 purposes of this subsection, "other pharmaceutical services"  
211 means the monitoring of the patient's drug therapy and assisting  
212 the patient in the management of his or her drug therapy, and  
213 includes review of the patient's drug therapy and communication  
214 with the patient's prescribing health care provider as licensed  
215 under chapter 458, chapter 459, chapter 461, or chapter 466, or  
216 similar statutory provision in another jurisdiction, or such  
217 provider's agent or such other persons as specifically  
218 authorized by the patient, regarding the drug therapy. However,  
219 nothing in this subsection may be interpreted to permit an  
220 alteration of a prescriber's directions, the diagnosis or  
221 treatment of any disease, the initiation of any drug therapy,  
222 the practice of medicine, or the practice of osteopathic  
223 medicine, unless otherwise permitted by law. "Practice of the  
224 profession of pharmacy" also includes any other act, service,  
225 operation, research, or transaction incidental to, or forming a

226 part of, any of the foregoing acts, requiring, involving, or  
227 employing the science or art of any branch of the pharmaceutical  
228 profession, study, or training, and shall expressly permit a  
229 pharmacist to transmit information from persons authorized to  
230 prescribe medicinal drugs to their patients. The practice of the  
231 profession of pharmacy also includes the administration of  
232 vaccines to adults pursuant to s. 465.189 and the preparation of  
233 prepackaged drug products in facilities holding Class III  
234 institutional pharmacy permits.

235 (24)~~(14)~~ "Prescription" includes any order for drugs or  
236 medicinal supplies written or transmitted by any means of  
237 communication by a duly licensed practitioner authorized by the  
238 laws of the state to prescribe such drugs or medicinal supplies  
239 and intended to be dispensed by a pharmacist. The term also  
240 includes an orally transmitted order by the lawfully designated  
241 agent of such practitioner. The term also includes an order  
242 written or transmitted by a practitioner licensed to practice in  
243 a jurisdiction other than this state, but only if the pharmacist  
244 called upon to dispense such order determines, in the exercise  
245 of her or his professional judgment, that the order is valid and  
246 necessary for the treatment of a chronic or recurrent illness.  
247 The term "prescription" also includes a pharmacist's order for a  
248 product selected from the formulary created pursuant to s.  
249 465.186. Prescriptions may be retained in written form or the  
250 pharmacist may cause them to be recorded in a data processing

251 system, provided that such order can be produced in printed form  
252 upon lawful request.

253 (15) "Nuclear pharmacist" means a pharmacist licensed by  
254 the department and certified as a nuclear pharmacist pursuant to  
255 s. 465.0126.

256 (5)~~(16)~~ "Centralized prescription filling" means the  
257 filling of a prescription by one pharmacy upon request by  
258 another pharmacy to fill or refill the prescription. The term  
259 includes the performance by one pharmacy for another pharmacy of  
260 other pharmacy duties such as drug utilization review,  
261 therapeutic drug utilization review, claims adjudication, and  
262 the obtaining of refill authorizations.

263 (2)~~(17)~~ "Automated pharmacy system" means a mechanical  
264 system that delivers prescription drugs received from a Florida  
265 licensed pharmacy and maintains related transaction information.

266 (8)~~(18)~~ "Compounding" means combining, mixing, or altering  
267 the ingredients of one or more drugs or products to create  
268 another drug or product.

269 (16)~~(19)~~ "Outsourcing facility" means a single physical  
270 location registered as an outsourcing facility under the federal  
271 Drug Quality and Security Act, Pub. L. No. 113-54, at which  
272 sterile compounding of a drug or product is conducted.

273 (7)~~(20)~~ "Compounded sterile product" means a drug that is  
274 intended for parenteral administration, an ophthalmic or oral  
275 inhalation drug in aqueous format, or a drug or product that is

276 required to be sterile under federal or state law or rule, which  
 277 is produced through compounding, but is not approved by the  
 278 United States Food and Drug Administration.

279 (4) ~~(21)~~ "Central distribution facility" means a facility  
 280 under common control with a hospital holding a Class III  
 281 institutional pharmacy permit that may dispense, distribute,  
 282 compound, or fill prescriptions for medicinal drugs; prepare  
 283 prepackaged drug products; and conduct other pharmaceutical  
 284 services.

285 (6) ~~(22)~~ "Common control" means the power to direct or  
 286 cause the direction of the management and policies of a person  
 287 or an organization, whether by ownership of stock, voting  
 288 rights, contract, or otherwise.

289 Section 4. Section 465.203, Florida Statutes, is created  
 290 to read:

291 465.203 Pharmacy benefit managers.—

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

293 (a) "Affiliate" means a pharmacy:

294 1. In which a pharmacy benefit manager, directly or  
 295 indirectly, has an investment, financial interest, or ownership  
 296 interest; or

297 2. The ownership of which is shared, directly or  
 298 indirectly, with a pharmacy benefit manager.

299 (b) "Covered individual" means a member, participant,  
 300 enrollee, contract holder, policyholder, or beneficiary of a

301 payor.

302 (c) "Make a referral" means any of the following:

303 1. To order, direct, or influence, orally or in writing, a  
304 covered individual to use an affiliate, including by sending  
305 messages to the covered individual through electronic mail, a  
306 cellular telephone, or a facsimile machine, or by making  
307 telephone calls.

308 2. To offer or implement plan designs that require a  
309 covered individual to use an affiliate.

310 3. To target a covered individual or a prospective patient  
311 with advertisement, marketing, or promotion of an affiliate,  
312 including by placing a specific pharmacy name on an insurance  
313 card or health plan card supplied to the covered individual.

314 (d) "Maximum allowable cost" means the per-unit amount  
315 that a pharmacy benefit manager reimburses a pharmacy or  
316 pharmacist for a generic drug, brand name drug, specialty drug,  
317 biological product, or other prescription drug, excluding  
318 dispensing fees, before the application of copayments,  
319 coinsurance, and other cost-sharing charges, if any.

320 (e) "Maximum allowable cost list" means a listing of  
321 generic drugs, brand name drugs, specialty drugs, biological  
322 products, or other prescription drugs or other methodology used  
323 directly or indirectly by a pharmacy benefit manager to set the  
324 maximum allowable costs for the drugs.

325 (f) "Payor" means a health plan, a health plan sponsor, a

326 health plan provider, a health insurer, or any other payor that  
327 uses pharmacy benefit management services in this state.

328 (g) "Spread pricing" means the practice by a pharmacy  
329 benefit manager of charging or claiming from a payor an amount  
330 that is more than the amount the pharmacy benefit manager paid  
331 to the pharmacy or pharmacist who filled the prescription or who  
332 provided the pharmacy services.

333 (2) (a) A pharmacy benefit manager has a fiduciary duty and  
334 obligation to the covered individuals and the payor. A pharmacy  
335 benefit manager shall perform pharmacy benefit management  
336 services with care, skill, prudence, diligence, and  
337 professionalism and for the best interests of the covered  
338 individuals and the payor.

339 (b) Any provision in a contract between a pharmacy benefit  
340 manager and a payor which limits or prohibits the fiduciary duty  
341 or obligation of a pharmacy benefit manager to the covered  
342 individuals and the payor is void and against the public policy  
343 of the state.

344 (c) All funds received by a pharmacy benefit manager in  
345 relation to providing pharmacy benefit management services shall  
346 be received by the pharmacy benefit manager in trust for the  
347 payor. A pharmacy benefit manager shall use or distribute such  
348 funds only for the benefit of the covered individuals or the  
349 payor.

350 (3) A pharmacy or pharmacist licensed or registered under

351 this chapter which has a pharmacy permit and is in good standing  
352 with the Board of Pharmacy may contract directly or indirectly  
353 with a pharmacy benefit manager within 30 days after filing an  
354 application with the pharmacy benefit manager, without a  
355 probation period, an exclusion period, or minimum inventory  
356 requirements.

357 (4) (a) A maximum allowable cost list must include:

358 1. Average acquisition cost, including national average  
359 drug acquisition cost.

360 2. Average manufacturer price.

361 3. Average wholesale price.

362 4. Brand effective rate or generic effective rate.

363 5. Discount indexing.

364 6. Federal upper limits.

365 7. Wholesale acquisition cost.

366 8. Any other item that a pharmacy benefit manager or a  
367 payor may use to establish reimbursement rates to a pharmacist  
368 or pharmacy for filling prescriptions or providing other  
369 pharmacy services.

370 (b) A pharmacy benefit manager must respond within 7 days  
371 after receipt of an appeal to a maximum allowable cost by a  
372 pharmacy, a pharmacist, or a pharmacy services administrative  
373 organization on behalf of a pharmacy or pharmacist. The pharmacy  
374 benefit manager's failure to respond within 7 days shall be  
375 deemed approval of the appeal.

376 (5) A pharmacy benefit manager may not do any of the  
377 following:

378 (a) Conduct or participate in spread pricing in this  
379 state.

380 (b) Charge a pharmacy or pharmacist a fee related to the  
381 adjudication of a claim, including, without limitation, a fee  
382 for:

383 1. The submission of a claim;

384 2. The enrollment or participation in a retail pharmacy  
385 network; or

386 3. The development or management of claims processing  
387 services or claims payment services related to participation in  
388 a retail pharmacy network.

389 (c) Deny a pharmacy or pharmacist the opportunity to  
390 participate in a pharmacy network at the preferred participation  
391 status even though the pharmacy or pharmacist is willing to  
392 accept, as a condition of the preferred participation status,  
393 the terms and conditions that the pharmacy benefit manager has  
394 established for other pharmacies that are in a pharmacy network  
395 at the preferred participation status and that are not owned in  
396 whole or in part by the pharmacy benefit manager.

397 (d) Impose registration or permit requirements for a  
398 pharmacy or accreditation standards or recertification  
399 requirements for a pharmacist which are inconsistent with, more  
400 stringent than, or in addition to federal and state requirements

401 for licensure as a pharmacy or pharmacist in this state.

402 (e) Pay or reimburse a pharmacy or pharmacist an amount

403 for a drug, product, or pharmacy service in the state which is:

404 1. Less than the amount the pharmacy benefit manager

405 reimburses a pharmacy benefit manager affiliate for providing

406 the same drug, product, or pharmacy service in this state;

407 2. Less than the actual cost incurred by the pharmacy or

408 pharmacist for providing the drug, product, or pharmacy service

409 in this state; or

410 3. Different from the combined maximum allowable cost and

411 dispensing fees for a drug. The dispensing fees must be a least

412 equal to the fees for service set by the Agency for Health Care

413 Administration.

414 (f) Retroactively deny, hold back, or reduce reimbursement

415 for a covered service claim after paying a claim, unless the

416 original claim was submitted fraudulently.

417 (g) Prohibit a pharmacy or pharmacist from providing

418 information regarding drug pricing, contract terms, or drug

419 reimbursement rates to a member of the Legislature.

420 (h) Drop a pharmacy or pharmacist from a pharmacy network

421 or plan or otherwise engage in any action to retaliate against a

422 pharmacy or pharmacist for providing information regarding drug

423 pricing, contract terms, or drug reimbursement rates to a member

424 of the Legislature.

425 (i) Engage in the practice of the profession of pharmacy.

426 (j) Engage in the practice of medicine as defined s.  
427 458.305 or the practice of osteopathic medicine as defined in s.  
428 459.003.

429 (k) Make a referral.

430 (l) Publish or otherwise reveal information regarding the  
431 actual amount of rebates, discounts, payment differentials,  
432 concessions, reductions, or any other incentives that the  
433 pharmacy benefit plan receives on a product-, manufacturer-, or  
434 pharmacy-specific basis. The pharmacy benefit manager shall  
435 protect such information as a trade secret and shall impose the  
436 confidentiality protections on any vendor or third-party entity  
437 performing services on behalf of the pharmacy benefit manager  
438 that has access to rebate, discount, payment differential,  
439 concession, reduction, or any other incentive information.

440 (6) A payor shall have access to all financial and  
441 utilization records, data, and information used by the pharmacy  
442 benefit manager in relation to the pharmacy benefit management  
443 services provided to the payor.

444 (7) A pharmacy benefit manager shall:

445 (a) Disclose in writing to the payor any activity, policy,  
446 practice, contract, or arrangement of the pharmacy benefit  
447 manager which directly or indirectly presents conflicts of  
448 interest with the pharmacy benefit manager's relationship with,  
449 or fiduciary duty or obligation to, the covered individuals and  
450 the payor.

451 (b) Report quarterly to the payor any income resulting  
452 from pricing discounts, rebates of any kind, inflationary  
453 payments, credits, clawbacks, fees, grants, chargebacks,  
454 reimbursements, or other financial benefits received by the  
455 pharmacy benefit manager from any person or entity. The pharmacy  
456 benefit manager shall ensure that such income and financial  
457 benefits are passed through in full, at least quarterly, to the  
458 payor to reduce the cost of prescription drugs and pharmacy  
459 services to covered individuals.

460 (8) The Department of Financial Services shall have access  
461 to all financial and utilization records, data, and information  
462 used by pharmacy benefit managers in relation to pharmacy  
463 benefit management services provided to payors in this state.  
464 The department shall investigate any alleged violation of this  
465 section.

466 (9) (a) A pharmacy benefit manager that violates this  
467 section is liable for a civil fine of \$10,000 for each violation  
468 and may have its registration revoked by the Department of  
469 Financial Services.

470 (b) A violation of this section which is committed or  
471 performed with such frequency as to indicate a general business  
472 practice is subject to the Florida Deceptive and Unfair Trade  
473 Practices Act under part II of chapter 501.

474 (10) This section applies to contracts entered into or  
475 renewed on or after January 1, 2021.

476 Section 5. Subsection (1) of section 624.490, Florida  
477 Statutes, is amended to read:

478 624.490 Registration of pharmacy benefit managers.—

479 (1) As used in this section, the term "pharmacy benefit  
480 manager" means an a person or entity that performs pharmacy  
481 benefit management services for a health plan, a health plan  
482 sponsor, a health plan provider, a health insurer, or any other  
483 payor that uses pharmacy benefit management services doing  
484 business in this state which contracts to administer  
485 prescription drug benefits on behalf of a health insurer or a  
486 health maintenance organization to residents of this state. The  
487 term does not include a provider as defined in s. 641.19, a  
488 physician as defined in s. 458.305, or an osteopathic physician  
489 as defined in s. 459.003. As used in this subsection, the term  
490 "pharmacy benefit management services" means services that:

491 (a) Are provided, directly or through another entity, to a  
492 health plan, a health plan sponsor, a health plan provider, a  
493 health insurer, or any other payor, regardless of whether the  
494 services provider and the health plan, health plan sponsor,  
495 health plan provider, health insurer, or other payor are related  
496 or associated by ownership, common ownership, organization, or  
497 otherwise.

498 (b) Include the procurement of prescription drugs to be  
499 dispensed to patients and the administration or management of  
500 prescription drug benefits, including, but not limited to, any

501 of the following:

502 1. Mail service pharmacy or specialty pharmacy.

503 2. Claims processing, retail network management, or  
 504 payment of claims to pharmacies for dispensing drugs.

505 3. Clinical or other formulary or preferred-drug-list  
 506 development or management.

507 4. Negotiation, administration, or receipt of rebates,  
 508 discounts, payment differentials, or other incentives, to  
 509 include particular drugs in a particular category or to promote  
 510 the purchase of particular drugs.

511 5. Patients' compliance, therapeutic intervention, or  
 512 generic substitution programs.

513 6. Disease management.

514 7. Drug use review, step-therapy protocol, or prior  
 515 authorization.

516 8. Adjudication of appeals or grievances related to  
 517 prescription drug coverage.

518 9. Contracts with network pharmacies.

519 10. Control of the cost of covered prescription drugs.

520 Section 6. Section 627.42385, Florida Statutes, is created  
 521 to read:

522 627.42385 Coinsurance obligations for prescription drugs.—

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

524 (a) "Coinsurance" means, with respect to prescription drug  
 525 coverage under a group health plan or health insurance coverage,

526 a payment obligation of a plan beneficiary or an insured that is  
527 based on a percentage of the specified cost of a prescription  
528 drug, which may be up to 100 percent of that cost.

529 (b) "Deductible" means the payment obligation of a group  
530 health plan beneficiary or a health insurance coverage insured  
531 before the plan or coverage will pay any portion of the cost of  
532 prescription drug coverage.

533 (c) "Health insurer" has the same meaning as provided in  
534 s. 627.42392.

535 (d) "List price" means the manufacturer's price for a drug  
536 for wholesalers or direct purchasers in this country, not  
537 including any rebate, discount, payment differential,  
538 concession, or reduction in price, for the most recent month for  
539 which the information is available, as reported in wholesale  
540 price guides or other publications of drug or biological pricing  
541 data.

542 (e) "Net price" means the price of a drug paid by a group  
543 health plan or a health insurer, or a pharmacy benefit manager  
544 performing pharmacy benefit management services for a group  
545 health plan or a health insurer, after all rebates, discounts,  
546 payment differentials, concessions, and reductions in price have  
547 been applied to the list price.

548 (f) "Pharmacy benefit manager" has the same meaning as  
549 provided in s. 465.003.

550 (g) "Pharmacy benefit management services" has the same

551 meaning as provided in s. 465.003.

552 (h) "Prescription drug" has the same meaning as provided  
553 in s. 409.9201.

554 (2) Unless otherwise expressly provided in this section, a  
555 group health plan or a health insurer offering group or  
556 individual health insurance coverage, or a pharmacy benefit  
557 manager performing pharmacy benefit management services for a  
558 group health plan or a health insurer, shall base a plan  
559 beneficiary's or an insured's coinsurance obligation for a  
560 prescription drug covered by the plan or coverage on the net  
561 price, and not the list price, of the drug.

562 (3) (a) Subsection (2) applies to a prescription drug  
563 benefit if a plan beneficiary or an insured is required to pay a  
564 deductible with respect to such benefit and if the plan  
565 beneficiary or insured:

566 1. Has not yet satisfied the deductible under the plan or  
567 coverage; or

568 2. Has another coinsurance obligation with respect to such  
569 benefit under the plan or coverage.

570 (b) Subsection (2) does not apply if, with respect to the  
571 dispensed quantity of a prescription drug, the net price and  
572 list price of the drug are different by not more than 1 percent.

573 (4) In complying with this section, a group health plan or  
574 a health insurer, or a pharmacy benefit manager performing  
575 pharmacy benefit management services for a group health plan or

576 a health insurer, may not publish or otherwise reveal  
577 information regarding the actual amount of rebates, discounts,  
578 payment differentials, concessions, or reductions in price that  
579 the plan, health insurer, or pharmacy benefit plan receives on a  
580 product-, manufacturer-, or pharmacy-specific basis. The plan,  
581 health insurer, or pharmacy benefit manager shall protect such  
582 information as a trade secret and shall impose the  
583 confidentiality protections on any vendor or third party  
584 performing health care or pharmacy administrative services on  
585 behalf of the plan, health insurer, or pharmacy benefit manager  
586 that have access to rebate, discount, payment differential,  
587 concession, or reduction information.

588 (5) A group health plan, health insurer, or pharmacy  
589 benefit manager that violates any provision of this section is  
590 liable for a civil fine of \$10,000 for each violation and may be  
591 required to discontinue the issuance or renewal of the plan or  
592 health insurance coverage or the provision of pharmacy benefit  
593 management services, as applicable.

594 (6) The department shall investigate any alleged violation  
595 of this section.

596 (7) This section does not prevent a group health plan,  
597 health insurer, or pharmacy benefit manager from requiring a  
598 copayment for any prescription drug if such copayment is not  
599 tied to a percentage of the cost of the drug.

600 Section 7. Section 627.64741, Florida Statutes, is amended

601 to read:

602 627.64741 Pharmacy benefit manager contracts.—

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

604 (a) "Maximum allowable cost" means the per-unit amount  
605 that a pharmacy benefit manager reimburses a pharmacy or  
606 pharmacist for a generic drug, brand name drug, specialty drug,  
607 biological product, or other prescription drug, excluding  
608 dispensing fees, before ~~prior to~~ the application of copayments,  
609 coinsurance, and other cost-sharing charges, if any.

610 (b) "Maximum allowable cost list" means a listing of  
611 generic drugs, brand name drugs, specialty drugs, biological  
612 products, or other prescription drugs or other methodology used  
613 directly or indirectly by a pharmacy benefit manager to set the  
614 maximum allowable costs for the drugs.

615 (c) "Payor" means a health plan, a health plan sponsor, a  
616 health plan provider, or any other payor that uses pharmacy  
617 benefit management services in this state.

618 (d) ~~(b)~~ "Pharmacy benefit manager" means an a person or  
619 entity that performs pharmacy benefit management services for  
620 doing business in this state which contracts to administer or  
621 manage prescription drug benefits on behalf of a health insurer  
622 or payor to residents of this state. The term does not include a  
623 provider as defined in s. 641.19, a physician as defined in s.  
624 458.305, or an osteopathic physician as defined in s. 459.003.

625 (e) "Pharmacy benefit management services" means services

626 that:

627 1. Are provided, directly or through another entity, to a  
628 health insurer or payor, regardless of whether the services  
629 provider and the health insurer or payor are related or  
630 associated by ownership, common ownership, organization, or  
631 otherwise.

632 2. Include the procurement of prescription drugs to be  
633 dispensed to patients and the administration or management of  
634 prescription drug benefits, including, but not limited to, any  
635 of the following:

636 a. Mail service pharmacy or specialty pharmacy.

637 b. Claims processing, retail network management, or  
638 payment of claims to pharmacies for dispensing drugs.

639 c. Clinical or other formulary or preferred-drug-list  
640 development or management.

641 d. Negotiation, administration, or receipt of rebates,  
642 discounts, payment differentials, or other incentives, to  
643 include particular drugs in a particular category or to promote  
644 the purchase of particular drugs.

645 e. Patients' compliance, therapeutic intervention, or  
646 generic substitution programs.

647 f. Disease management.

648 g. Drug use review, step-therapy protocol, or prior  
649 authorization.

650 h. Adjudication of appeals or grievances related to

651 prescription drug coverage.

652 i. Contracts with network pharmacies.

653 j. Control of the cost of covered prescription drugs.

654 (2) A contract between a health insurer or payor and a  
655 pharmacy benefit manager must require that the pharmacy benefit  
656 manager:

657 (a) Update maximum allowable cost pricing information at  
658 least every 7 calendar days.

659 (b) Maintain a process that will, in a timely manner,  
660 eliminate drugs from maximum allowable cost lists or modify drug  
661 prices to remain consistent with changes in pricing data used in  
662 formulating maximum allowable cost prices and product  
663 availability.

664 (3) A contract between a health insurer or payor and a  
665 pharmacy benefit manager must prohibit the pharmacy benefit  
666 manager from limiting a pharmacy's or pharmacist's ability to  
667 disclose whether the cost-sharing obligation exceeds the retail  
668 price for a covered prescription drug, and the availability of a  
669 more affordable alternative drug, pursuant to s. 465.0244.

670 (4) A contract between a health insurer or payor and a  
671 pharmacy benefit manager must prohibit the pharmacy benefit  
672 manager from requiring an insured to make a payment for a  
673 prescription drug at the point of sale in an amount that exceeds  
674 the lesser of:

675 (a) The applicable cost-sharing amount; or

676 (b) The retail price of the drug in the absence of  
677 prescription drug coverage.

678 (5) (a) A pharmacy benefit manager has a fiduciary duty and  
679 obligation to the insureds and to the health insurer that uses  
680 pharmacy benefit management services or the payor. The pharmacy  
681 benefit manager must meet all the requirements of s. 465.203 and  
682 must perform pharmacy benefit management services with care,  
683 skill, prudence, diligence, and professionalism and for the best  
684 interests of the insureds and the health insurer or payor.

685 (b) A provision in a contract between a health insurer or  
686 payor and a pharmacy benefit manager is void and against the  
687 public policy of the state if the policy:

688 1. Limits or prohibits the fiduciary duty or obligation of  
689 the pharmacy benefit manager to the insureds and the health  
690 insurer or payor; or

691 2. Violates any provision of s. 465.203.

692 (c) All funds received by a pharmacy benefit manager in  
693 relation to providing pharmacy benefit management services shall  
694 be received by the pharmacy benefit manager in trust for the  
695 health insurer or payor and shall be used or distributed only  
696 for the benefit of the insureds or the health insurer or payor.

697 (6) A contract between a health insurer or payor and a  
698 pharmacy benefit manager must require the maximum allowable cost  
699 list to include:

700 (a) Average acquisition cost, including national average

701 drug acquisition cost.

702 (b) Average manufacturer price.

703 (c) Average wholesale price.

704 (d) Brand effective rate or generic effective rate.

705 (e) Discount indexing.

706 (f) Federal upper limits.

707 (g) Wholesale acquisition cost.

708 (h) Any other item that a pharmacy benefit manager or a

709 health insurer or payor may use to establish reimbursement rates

710 to a pharmacist or pharmacy for filling prescriptions or

711 providing other pharmacy services.

712 (7) A health insurer that uses pharmacy benefit management

713 services or a payor shall have access to all financial and

714 utilization records, data, and information used by the pharmacy

715 benefit manager in relation to the pharmacy benefit management

716 services provided to the health insurer or payor.

717 (8) A pharmacy benefit manager shall:

718 (a) Disclose in writing to the health insurer that uses

719 pharmacy benefit management services or payor any activity,

720 policy, practice, contract, or arrangement of the pharmacy

721 benefit manager which directly or indirectly presents conflicts

722 of interest with the pharmacy benefit manager's relationship

723 with, or fiduciary duty or obligation to, the insureds and the

724 health insurer or payor.

725 (b) Report quarterly to the health insurer or payor any

726 income resulting from pricing discounts, rebates of any kind,  
727 inflationary payments, credits, clawbacks, fees, grants,  
728 chargebacks, reimbursements, or other financial benefits  
729 received by the pharmacy benefit manager from any person or  
730 entity. The pharmacy benefit manager shall ensure that such  
731 income and financial benefits are passed through in full, at  
732 least quarterly, to the health insurer or payor to reduce the  
733 cost of prescription drugs and pharmacy services to the  
734 insureds.

735 (9) The department shall investigate any alleged violation  
736 of this section.

737 (10) (a) A pharmacy benefit manager that violates any  
738 provision of this section is liable for a civil fine of \$10,000  
739 for each violation and may have its registration revoked by the  
740 department.

741 (b) A violation by a pharmacy benefit manager of any  
742 provision of this section which is committed or performed with  
743 such frequency as to indicate a general business practice is  
744 subject to the Florida Deceptive and Unfair Trade Practices Act  
745 under part II of chapter 501.

746 (11) ~~(5)~~ This section applies to contracts entered into or  
747 renewed on or after January 1, 2021 ~~July 1, 2018~~.

748 Section 8. Section 627.6572, Florida Statutes, is amended  
749 to read:

750 627.6572 Pharmacy benefit manager contracts.—

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

752 (a) "Maximum allowable cost" means the per-unit amount  
 753 that a pharmacy benefit manager reimburses a pharmacy or  
 754 pharmacist for a generic drug, brand name drug, specialty drug,  
 755 biological product, or other prescription drug, excluding  
 756 dispensing fees, before ~~prior to~~ the application of copayments,  
 757 coinsurance, and other cost-sharing charges, if any.

758 (b) "Maximum allowable cost list" means a listing of  
 759 generic drugs, brand name drugs, specialty drugs, biological  
 760 products, or other prescription drugs or other methodology used  
 761 directly or indirectly by a pharmacy benefit manager to set the  
 762 maximum allowable costs for the drugs.

763 (c) "Payor" means a health plan, a health plan sponsor, a  
 764 health plan provider, or any other payor that uses pharmacy  
 765 benefit management services in this state.

766 (d) ~~(b)~~ "Pharmacy benefit manager" means an ~~a person or~~  
 767 entity that performs pharmacy benefit management services for  
 768 doing business in this state which contracts to administer or  
 769 manage prescription drug benefits on behalf of a health insurer  
 770 or payor to residents of this state. The term does not include a  
 771 provider as defined in s. 641.19, a physician as defined in s.  
 772 458.305, or an osteopathic physician as defined in s. 459.003.

773 (e) "Pharmacy benefit management services" means services  
 774 that:

775 1. Are provided, directly or through another entity, to a

776 health insurer or payor, regardless of whether the services  
777 provider and the health insurer or payor are related or  
778 associated by ownership, common ownership, organization, or  
779 otherwise.

780 2. Include the procurement of prescription drugs to be  
781 dispensed to patients and the administration or management of  
782 prescription drug benefits, including, but not limited to, any  
783 of the following:

784 a. Mail service pharmacy or specialty pharmacy.

785 b. Claims processing, retail network management, or  
786 payment of claims to pharmacies for dispensing drugs.

787 c. Clinical or other formulary or preferred-drug-list  
788 development or management.

789 d. Negotiation, administration, or receipt of rebates,  
790 discounts, payment differentials, or other incentives, to  
791 include particular drugs in a particular category or to promote  
792 the purchase of particular drugs.

793 e. Patients' compliance, therapeutic intervention, or  
794 generic substitution programs.

795 f. Disease management.

796 g. Drug use review, step-therapy protocol, or prior  
797 authorization.

798 h. Adjudication of appeals or grievances related to  
799 prescription drug coverage.

800 i. Contracts with network pharmacies.

801            j. Control of the cost of covered prescription drugs.

802            (2) A contract between a health insurer or payor and a  
803 pharmacy benefit manager must require that the pharmacy benefit  
804 manager:

805            (a) Update maximum allowable cost pricing information at  
806 least every 7 calendar days.

807            (b) Maintain a process that will, in a timely manner,  
808 eliminate drugs from maximum allowable cost lists or modify drug  
809 prices to remain consistent with changes in pricing data used in  
810 formulating maximum allowable cost prices and product  
811 availability.

812            (3) A contract between a health insurer or payor and a  
813 pharmacy benefit manager must prohibit the pharmacy benefit  
814 manager from limiting a pharmacy's or pharmacist's ability to  
815 disclose whether the cost-sharing obligation exceeds the retail  
816 price for a covered prescription drug, and the availability of a  
817 more affordable alternative drug, pursuant to s. 465.0244.

818            (4) A contract between a health insurer or payor and a  
819 pharmacy benefit manager must prohibit the pharmacy benefit  
820 manager from requiring an insured to make a payment for a  
821 prescription drug at the point of sale in an amount that exceeds  
822 the lesser of:

823            (a) The applicable cost-sharing amount; or

824            (b) The retail price of the drug in the absence of  
825 prescription drug coverage.

826       (5) (a) A pharmacy benefit manager has a fiduciary duty and  
827 obligation to the insureds and to the health insurer that uses  
828 pharmacy benefit management services or the payor. The pharmacy  
829 benefit manager must meet all the requirements of s. 465.203 and  
830 must perform pharmacy benefit management services with care,  
831 skill, prudence, diligence, and professionalism and for the best  
832 interests of the insureds and the health insurer or payor.

833       (b) A provision in a contract between a health insurer or  
834 payor and a pharmacy benefit manager is void and against the  
835 public policy of the state if the policy:

836       1. Limits or prohibits the fiduciary duty or obligation of  
837 the pharmacy benefit manager to the insureds and the health  
838 insurer or payor; or

839       2. Violates any provision of s. 465.203.

840       (c) All funds received by a pharmacy benefit manager in  
841 relation to providing pharmacy benefit management services shall  
842 be received by the pharmacy benefit manager in trust for the  
843 health insurer or payor and shall be used or distributed only  
844 for the benefit of the insureds or the health insurer or payor.

845       (6) A contract between a health insurer or payor and a  
846 pharmacy benefit manager must require the maximum allowable cost  
847 list to include:

848       (a) Average acquisition cost, including national average  
849 drug acquisition cost.

850       (b) Average manufacturer price.

- 851        (c) Average wholesale price.
- 852        (d) Brand effective rate or generic effective rate.
- 853        (e) Discount indexing.
- 854        (f) Federal upper limits.
- 855        (g) Wholesale acquisition cost.
- 856        (h) Any other item that a pharmacy benefit manager or a  
857 health insurer or payor may use to establish reimbursement rates  
858 to a pharmacist or pharmacy for filling prescriptions or  
859 providing other pharmacy services.
- 860        (7) A health insurer that uses pharmacy benefit management  
861 services or a payor shall have access to all financial and  
862 utilization records, data, and information used by the pharmacy  
863 benefit manager in relation to the pharmacy benefit management  
864 services provided to the health insurer or payor.
- 865        (8) A pharmacy benefit manager shall:
- 866        (a) Disclose in writing to the health insurer that uses  
867 pharmacy benefit management services or the payor any activity,  
868 policy, practice, contract, or arrangement of the pharmacy  
869 benefit manager which directly or indirectly presents conflicts  
870 of interest with the pharmacy benefit manager's relationship  
871 with, or fiduciary duty or obligation to, the insureds and the  
872 health insurer or payor.
- 873        (b) Report quarterly to the health insurer or payor any  
874 income resulting from pricing discounts, rebates of any kind,  
875 inflationary payments, credits, clawbacks, fees, grants,

876 chargebacks, reimbursements, or other financial benefits  
877 received by the pharmacy benefit manager from any person or  
878 entity. The pharmacy benefit manager shall ensure that such  
879 income and financial benefits are passed through in full, at  
880 least quarterly, to the health insurer or payor to reduce the  
881 cost of prescription drugs and pharmacy services to the  
882 insureds.

883 (9) The department shall investigate any alleged violation  
884 of this section.

885 (10) (a) A pharmacy benefit manager that violates any  
886 provision of this section is liable for a civil fine of \$10,000  
887 for each violation and may have its registration revoked by the  
888 department.

889 (b) A violation by a pharmacy benefit manager of any  
890 provision of this section which is committed or performed with  
891 such frequency as to indicate a general business practice is  
892 subject to the Florida Deceptive and Unfair Trade Practices Act  
893 under part II of chapter 501.

894 (11) ~~(5)~~ This section applies to contracts entered into or  
895 renewed on or after January 1, 2021 ~~July 1, 2018~~.

896 Section 9. Section 641.314, Florida Statutes, is amended  
897 to read:

898 641.314 Pharmacy benefit manager contracts.—

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

900 (a) "Maximum allowable cost" means the per-unit amount

901 that a pharmacy benefit manager reimburses a pharmacy or  
902 pharmacist for a generic drug, brand name drug, specialty drug,  
903 biological product, or other prescription drug, excluding  
904 dispensing fees, before ~~prior to~~ the application of copayments,  
905 coinsurance, and other cost-sharing charges, if any.

906 (b) "Maximum allowable cost list" means a listing of  
907 generic drugs, brand name drugs, specialty drugs, biological  
908 products, or other prescription drugs or other methodology used  
909 directly or indirectly by a pharmacy benefit manager to set the  
910 maximum allowable costs for the drugs.

911 (c) "Payor" means a health plan, a health plan sponsor, a  
912 health plan provider, or any other payor that uses pharmacy  
913 benefit management services in this state.

914 (d) ~~(b)~~ "Pharmacy benefit manager" means an a person or  
915 entity that performs pharmacy benefit management services for  
916 ~~doing business in this state which contracts to administer or~~  
917 ~~manage prescription drug benefits on behalf of a health~~  
918 ~~maintenance organization or payor to residents of this state.~~  
919 The term does not include a provider as defined in s. 641.19, a  
920 physician as defined in s. 458.305, or an osteopathic physician  
921 as defined in s. 459.003.

922 (e) "Pharmacy benefit management services" means services  
923 that:

924 1. Are provided, directly or through another entity, to a  
925 health maintenance organization or payor, regardless of whether

926 the services provider and the health maintenance organization or  
927 payor are related or associated by ownership, common ownership,  
928 organization, or otherwise.

929 2. Include the procurement of prescription drugs to be  
930 dispensed to patients and the administration or management of  
931 prescription drug benefits, including, but not limited to, any  
932 of the following:

933 a. Mail service pharmacy or specialty pharmacy.

934 b. Claims processing, retail network management, or  
935 payment of claims to pharmacies for dispensing drugs.

936 c. Clinical or other formulary or preferred-drug-list  
937 development or management.

938 d. Negotiation, administration, or receipt of rebates,  
939 discounts, payment differentials, or other incentives, to  
940 include particular drugs in a particular category or to promote  
941 the purchase of particular drugs.

942 e. Patients' compliance, therapeutic intervention, or  
943 generic substitution programs.

944 f. Disease management.

945 g. Drug use review, step-therapy protocol, or prior  
946 authorization.

947 h. Adjudication of appeals or grievances related to  
948 prescription drug coverage.

949 i. Contracts with network pharmacies.

950 j. Control of the cost of covered prescription drugs.

951 (2) A contract between a health maintenance organization  
 952 or payor and a pharmacy benefit manager must require that the  
 953 pharmacy benefit manager:

954 (a) Update maximum allowable cost pricing information at  
 955 least every 7 calendar days.

956 (b) Maintain a process that will, in a timely manner,  
 957 eliminate drugs from maximum allowable cost lists or modify drug  
 958 prices to remain consistent with changes in pricing data used in  
 959 formulating maximum allowable cost prices and product  
 960 availability.

961 (3) A contract between a health maintenance organization  
 962 or payor and a pharmacy benefit manager must prohibit the  
 963 pharmacy benefit manager from limiting a pharmacy's or  
 964 pharmacist's ability to disclose whether the cost-sharing  
 965 obligation exceeds the retail price for a covered prescription  
 966 drug, and the availability of a more affordable alternative  
 967 drug, pursuant to s. 465.0244.

968 (4) A contract between a health maintenance organization  
 969 or payor and a pharmacy benefit manager must prohibit the  
 970 pharmacy benefit manager from requiring a subscriber to make a  
 971 payment for a prescription drug at the point of sale in an  
 972 amount that exceeds the lesser of:

973 (a) The applicable cost-sharing amount; or

974 (b) The retail price of the drug in the absence of  
 975 prescription drug coverage.

976 (5) (a) A pharmacy benefit manager has a fiduciary duty and  
977 obligation to the subscribers and to the health maintenance  
978 organization that uses pharmacy benefit management services or a  
979 payor. The pharmacy benefit manager must meet all the  
980 requirements of s. 465.203 and must perform pharmacy benefit  
981 management services with care, skill, prudence, diligence, and  
982 professionalism and for the best interests of the subscribers  
983 and the health maintenance organization or payor.

984 (b) A provision in a contract between a health maintenance  
985 organization or payor and a pharmacy benefit manager is void and  
986 against the public policy of this state if the policy:

987 1. Limits or prohibits the fiduciary duty or obligation of  
988 the pharmacy benefit manager to the insureds and the health  
989 maintenance organization or payor; or

990 2. Violates any provision of s. 465.203.

991 (c) All funds received by a pharmacy benefit manager in  
992 relation to providing pharmacy benefit management services shall  
993 be received by the pharmacy benefit manager in trust for the  
994 health maintenance organization or payor and shall be used or  
995 distributed only for the benefit of the insureds or the health  
996 maintenance organization or payor.

997 (6) A contract between a health maintenance organization  
998 or payor and a pharmacy benefit manager must require the maximum  
999 allowable cost list to include:

1000 (a) Average acquisition cost, including national average

1001 drug acquisition cost.

1002 (b) Average manufacturer price.

1003 (c) Average wholesale price.

1004 (d) Brand effective rate or generic effective rate.

1005 (e) Discount indexing.

1006 (f) Federal upper limits.

1007 (g) Wholesale acquisition cost.

1008 (h) Any other item that a pharmacy benefit manager or a

1009 health maintenance organization or payor may use to establish

1010 reimbursement rates to a pharmacist or pharmacy for filling

1011 prescriptions or providing other pharmacy services.

1012 (7) A health maintenance organization that uses pharmacy

1013 benefit management services or a payor shall have access to all

1014 financial and utilization records, data, and information used by

1015 the pharmacy benefit manager in relation to the pharmacy benefit

1016 management services provided to the health maintenance

1017 organization or payor.

1018 (8) A pharmacy benefit manager shall:

1019 (a) Disclose in writing to the maintenance organization

1020 that uses pharmacy benefit management services or the payor any

1021 activity, policy, practice, contract, or arrangement of the

1022 pharmacy benefit manager which directly or indirectly presents

1023 conflicts of interest with the pharmacy benefit manager's

1024 relationship with, or fiduciary duty or obligation to, the

1025 subscribers and the health maintenance organization or payor.

1026        (b) Report quarterly to the health maintenance  
 1027 organization or payor any income resulting from pricing  
 1028 discounts, rebates of any kind, inflationary payments, credits,  
 1029 clawbacks, fees, grants, chargebacks, reimbursements, or other  
 1030 financial benefits received by the pharmacy benefit manager from  
 1031 any person or entity. The pharmacy benefit manager shall ensure  
 1032 that such income and financial benefits are passed through in  
 1033 full, at least quarterly, to the health maintenance organization  
 1034 or payor to reduce the cost of prescription drugs and pharmacy  
 1035 services to the subscribers.

1036        (9) The department shall investigate any alleged violation  
 1037 of this section.

1038        (10) (a) A pharmacy benefit manager that violates any  
 1039 provision of this section is liable for a civil fine of \$10,000  
 1040 for each violation and may have its registration revoked by the  
 1041 department.

1042        (b) A violation of any provision of this section which is  
 1043 committed or performed with such frequency as to indicate a  
 1044 general business practice is subject to the Florida Deceptive  
 1045 and Unfair Trade Practices Act under part II of chapter 501.

1046        (11) ~~(5)~~ This section applies to contracts entered into or  
 1047 renewed on or after ~~July 1, 2018~~ January 1, 2021.

1048        Section 10. Paragraph (a) of subsection (1) of section  
 1049 409.9201, Florida Statutes, is amended to read:

1050        409.9201 Medicaid fraud.—

1051 (1) As used in this section, the term:

1052 (a) "Prescription drug" means any drug, including, but not  
 1053 limited to, finished dosage forms or active ingredients that are  
 1054 subject to, defined in, or described in s. 503(b) of the Federal  
 1055 Food, Drug, and Cosmetic Act or in s. 465.003(14) ~~465.003(8)~~, s.  
 1056 499.003(17), s. 499.007(13), or s. 499.82(10).

1057  
 1058 The value of individual items of the legend drugs or goods or  
 1059 services involved in distinct transactions committed during a  
 1060 single scheme or course of conduct, whether involving a single  
 1061 person or several persons, may be aggregated when determining  
 1062 the punishment for the offense.

1063 Section 11. Paragraph (pp) of subsection (1) of section  
 1064 458.331, Florida Statutes, is amended to read:

1065 458.331 Grounds for disciplinary action; action by the  
 1066 board and department.—

1067 (1) The following acts constitute grounds for denial of a  
 1068 license or disciplinary action, as specified in s. 456.072(2):

1069 (pp) Applicable to a licensee who serves as the designated  
 1070 physician of a pain-management clinic as defined in s. 458.3265  
 1071 or s. 459.0137:

1072 1. Registering a pain-management clinic through  
 1073 misrepresentation or fraud;

1074 2. Procuring, or attempting to procure, the registration  
 1075 of a pain-management clinic for any other person by making or

1076 causing to be made, any false representation;

1077 3. Failing to comply with any requirement of chapter 499,  
 1078 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the  
 1079 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,  
 1080 the Drug Abuse Prevention and Control Act; or chapter 893, the  
 1081 Florida Comprehensive Drug Abuse Prevention and Control Act;

1082 4. Being convicted or found guilty of, regardless of  
 1083 adjudication to, a felony or any other crime involving moral  
 1084 turpitude, fraud, dishonesty, or deceit in any jurisdiction of  
 1085 the courts of this state, of any other state, or of the United  
 1086 States;

1087 5. Being convicted of, or disciplined by a regulatory  
 1088 agency of the Federal Government or a regulatory agency of  
 1089 another state for, any offense that would constitute a violation  
 1090 of this chapter;

1091 6. Being convicted of, or entering a plea of guilty or  
 1092 nolo contendere to, regardless of adjudication, a crime in any  
 1093 jurisdiction of the courts of this state, of any other state, or  
 1094 of the United States which relates to the practice of, or the  
 1095 ability to practice, a licensed health care profession;

1096 7. Being convicted of, or entering a plea of guilty or  
 1097 nolo contendere to, regardless of adjudication, a crime in any  
 1098 jurisdiction of the courts of this state, of any other state, or  
 1099 of the United States which relates to health care fraud;

1100 8. Dispensing any medicinal drug based upon a

1101 communication that purports to be a prescription as defined in  
 1102 s. 465.003 ~~465.003(14)~~ or s. 893.02 if the dispensing  
 1103 practitioner knows or has reason to believe that the purported  
 1104 prescription is not based upon a valid practitioner-patient  
 1105 relationship; or

1106 9. Failing to timely notify the board of the date of his  
 1107 or her termination from a pain-management clinic as required by  
 1108 s. 458.3265(3).

1109 Section 12. Paragraph (rr) of subsection (1) of section  
 1110 459.015, Florida Statutes, is amended to read:

1111 459.015 Grounds for disciplinary action; action by the  
 1112 board and department.—

1113 (1) The following acts constitute grounds for denial of a  
 1114 license or disciplinary action, as specified in s. 456.072(2):

1115 (rr) Applicable to a licensee who serves as the designated  
 1116 physician of a pain-management clinic as defined in s. 458.3265  
 1117 or s. 459.0137:

1118 1. Registering a pain-management clinic through  
 1119 misrepresentation or fraud;

1120 2. Procuring, or attempting to procure, the registration  
 1121 of a pain-management clinic for any other person by making or  
 1122 causing to be made, any false representation;

1123 3. Failing to comply with any requirement of chapter 499,  
 1124 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the  
 1125 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,

1126 | the Drug Abuse Prevention and Control Act; or chapter 893, the  
 1127 | Florida Comprehensive Drug Abuse Prevention and Control Act;

1128 |         4. Being convicted or found guilty of, regardless of  
 1129 | adjudication to, a felony or any other crime involving moral  
 1130 | turpitude, fraud, dishonesty, or deceit in any jurisdiction of  
 1131 | the courts of this state, of any other state, or of the United  
 1132 | States;

1133 |         5. Being convicted of, or disciplined by a regulatory  
 1134 | agency of the Federal Government or a regulatory agency of  
 1135 | another state for, any offense that would constitute a violation  
 1136 | of this chapter;

1137 |         6. Being convicted of, or entering a plea of guilty or  
 1138 | nolo contendere to, regardless of adjudication, a crime in any  
 1139 | jurisdiction of the courts of this state, of any other state, or  
 1140 | of the United States which relates to the practice of, or the  
 1141 | ability to practice, a licensed health care profession;

1142 |         7. Being convicted of, or entering a plea of guilty or  
 1143 | nolo contendere to, regardless of adjudication, a crime in any  
 1144 | jurisdiction of the courts of this state, of any other state, or  
 1145 | of the United States which relates to health care fraud;

1146 |         8. Dispensing any medicinal drug based upon a  
 1147 | communication that purports to be a prescription as defined in  
 1148 | s. 465.003 ~~465.003(14)~~ or s. 893.02 if the dispensing  
 1149 | practitioner knows or has reason to believe that the purported  
 1150 | prescription is not based upon a valid practitioner-patient

1151 relationship; or

1152 9. Failing to timely notify the board of the date of his  
 1153 or her termination from a pain-management clinic as required by  
 1154 s. 459.0137(3).

1155 Section 13. Subsection (1) of section 465.014, Florida  
 1156 Statutes, is amended to read:

1157 465.014 Pharmacy technician.—

1158 (1) A person other than a licensed pharmacist or pharmacy  
 1159 intern may not engage in the practice of the profession of  
 1160 pharmacy, except that a licensed pharmacist may delegate to  
 1161 pharmacy technicians who are registered pursuant to this section  
 1162 those duties, tasks, and functions that do not fall within the  
 1163 purview of s. 465.003(23) ~~465.003(13)~~. All such delegated acts  
 1164 must be performed under the direct supervision of a licensed  
 1165 pharmacist who is responsible for all such acts performed by  
 1166 persons under his or her supervision. A registered pharmacy  
 1167 technician, under the supervision of a pharmacist, may initiate  
 1168 or receive communications with a practitioner or his or her  
 1169 agent, on behalf of a patient, regarding refill authorization  
 1170 requests. A licensed pharmacist may not supervise more than one  
 1171 registered pharmacy technician unless otherwise permitted by the  
 1172 guidelines adopted by the board. The board shall establish  
 1173 guidelines to be followed by licensees or permittees in  
 1174 determining the circumstances under which a licensed pharmacist  
 1175 may supervise more than one pharmacy technician.

1176 Section 14. Paragraph (c) of subsection (2) of section  
 1177 465.015, Florida Statutes, is amended to read:

1178 465.015 Violations and penalties.—

1179 (2) It is unlawful for any person:

1180 (c) To sell or dispense drugs as defined in s. 465.003(14)  
 1181 ~~465.003(8)~~ without first being furnished with a prescription.

1182 Section 15. Subsection (9) of section 465.0156, Florida  
 1183 Statutes, is amended to read:

1184 465.0156 Registration of nonresident pharmacies.—

1185 (9) Notwithstanding s. 465.003(18) ~~465.003(10)~~, for  
 1186 purposes of this section, the registered pharmacy and the  
 1187 pharmacist designated by the registered pharmacy as the  
 1188 prescription department manager or the equivalent must be  
 1189 licensed in the state of location in order to dispense into this  
 1190 state.

1191 Section 16. Paragraph (s) of subsection (1) of section  
 1192 465.016, Florida Statutes, is amended to read:

1193 465.016 Disciplinary actions.—

1194 (1) The following acts constitute grounds for denial of a  
 1195 license or disciplinary action, as specified in s. 456.072(2):

1196 (s) Dispensing any medicinal drug based upon a  
 1197 communication that purports to be a prescription as defined in  
 1198 ~~by~~ s. 465.003 ~~465.003(14)~~ or s. 893.02 when the pharmacist knows  
 1199 or has reason to believe that the purported prescription is not  
 1200 based upon a valid practitioner-patient relationship.

1201 Section 17. Subsection (4) of section 465.0197, Florida  
 1202 Statutes, is amended to read:

1203 465.0197 Internet pharmacy permits.—

1204 (4) Notwithstanding s. 465.003(18) ~~465.003(10)~~, for  
 1205 purposes of this section, the Internet pharmacy and the  
 1206 pharmacist designated by the Internet pharmacy as the  
 1207 prescription department manager or the equivalent must be  
 1208 licensed in the state of location in order to dispense into this  
 1209 state.

1210 Section 18. Paragraph (j) of subsection (5) of section  
 1211 465.022, Florida Statutes, is amended to read:

1212 465.022 Pharmacies; general requirements; fees.—

1213 (5) The department or board shall deny an application for  
 1214 a pharmacy permit if the applicant or an affiliated person,  
 1215 partner, officer, director, or prescription department manager  
 1216 or consultant pharmacist of record of the applicant:

1217 (j) Has dispensed any medicinal drug based upon a  
 1218 communication that purports to be a prescription as defined in  
 1219 ~~by~~ s. 465.003 ~~465.003(14)~~ or s. 893.02 when the pharmacist knows  
 1220 or has reason to believe that the purported prescription is not  
 1221 based upon a valid practitioner-patient relationship that  
 1222 includes a documented patient evaluation, including history and  
 1223 a physical examination adequate to establish the diagnosis for  
 1224 which any drug is prescribed and any other requirement  
 1225 established by board rule under chapter 458, chapter 459,

1226 chapter 461, chapter 463, chapter 464, or chapter 466.

1227

1228 For felonies in which the defendant entered a plea of guilty or  
1229 nolo contendere in an agreement with the court to enter a  
1230 pretrial intervention or drug diversion program, the department  
1231 shall deny the application if upon final resolution of the case  
1232 the licensee has failed to successfully complete the program.

1233 Section 19. Paragraph (h) of subsection (1) of section  
1234 465.023, Florida Statutes, is amended to read:

1235 465.023 Pharmacy permittee; disciplinary action.—

1236 (1) The department or the board may revoke or suspend the  
1237 permit of any pharmacy permittee, and may fine, place on  
1238 probation, or otherwise discipline any pharmacy permittee if the  
1239 permittee, or any affiliated person, partner, officer, director,  
1240 or agent of the permittee, including a person fingerprinted  
1241 under s. 465.022(3), has:

1242 (h) Dispensed any medicinal drug based upon a  
1243 communication that purports to be a prescription as defined in  
1244 ~~by s. 465.003~~ 465.003(14) or s. 893.02 when the pharmacist knows  
1245 or has reason to believe that the purported prescription is not  
1246 based upon a valid practitioner-patient relationship that  
1247 includes a documented patient evaluation, including history and  
1248 a physical examination adequate to establish the diagnosis for  
1249 which any drug is prescribed and any other requirement  
1250 established by board rule under chapter 458, chapter 459,

1251 chapter 461, chapter 463, chapter 464, or chapter 466.

1252 Section 20. Section 465.1901, Florida Statutes, is amended  
1253 to read:

1254 465.1901 Practice of orthotics and pedorthics.—The  
1255 provisions of chapter 468 relating to orthotics or pedorthics do  
1256 not apply to any licensed pharmacist or to any person acting  
1257 under the supervision of a licensed pharmacist. The practice of  
1258 orthotics or pedorthics by a pharmacist or any of the  
1259 pharmacist's employees acting under the supervision of a  
1260 pharmacist shall be construed to be within the meaning of the  
1261 term "practice of the profession of pharmacy" as defined ~~set~~  
1262 ~~forth~~ in s. 465.003 ~~465.003(13)~~, and shall be subject to  
1263 regulation in the same manner as any other pharmacy practice.  
1264 The Board of Pharmacy shall develop rules regarding the practice  
1265 of orthotics and pedorthics by a pharmacist. Any pharmacist or  
1266 person under the supervision of a pharmacist engaged in the  
1267 practice of orthotics or pedorthics is not precluded from  
1268 continuing that practice pending adoption of these rules.

1269 Section 21. Subsection (40) of section 499.003, Florida  
1270 Statutes, is amended to read:

1271 499.003 Definitions of terms used in this part.—As used in  
1272 this part, the term:

1273 (40) "Prescription drug" means a prescription, medicinal,  
1274 or legend drug, including, but not limited to, finished dosage  
1275 forms or active pharmaceutical ingredients subject to, defined

1276 by, or described by s. 503(b) of the federal act or s.  
 1277 465.003(14) ~~465.003(8)~~, s. 499.007(13), subsection (31), or  
 1278 subsection (47), except that an active pharmaceutical ingredient  
 1279 is a prescription drug only if substantially all finished dosage  
 1280 forms in which it may be lawfully dispensed or administered in  
 1281 this state are also prescription drugs.

1282 Section 22. Paragraph (c) of subsection (24) of section  
 1283 893.02, Florida Statutes, is amended to read:

1284 893.02 Definitions.—The following words and phrases as  
 1285 used in this chapter shall have the following meanings, unless  
 1286 the context otherwise requires:

1287 (24) "Prescription" includes any order for drugs or  
 1288 medicinal supplies which is written or transmitted by any means  
 1289 of communication by a licensed practitioner authorized by the  
 1290 laws of this state to prescribe such drugs or medicinal  
 1291 supplies, is issued in good faith and in the course of  
 1292 professional practice, is intended to be dispensed by a person  
 1293 authorized by the laws of this state to do so, and meets the  
 1294 requirements of s. 893.04.

1295 (c) A prescription for a controlled substance may not be  
 1296 issued on the same prescription blank with another prescription  
 1297 for a controlled substance that is named or described in a  
 1298 different schedule or with another prescription for a medicinal  
 1299 drug, as defined in s. 465.003 ~~465.003(8)~~, that is not a  
 1300 controlled substance.

HB 961

2020

1301           Section 23. If any provision of this act or its  
1302 application to any person or circumstance is held invalid, the  
1303 invalidity does not affect other provisions or applications of  
1304 the act which can be given effect without the invalid provision  
1305 or application, and to this end the provisions of this act are  
1306 severable.

1307           Section 24. This act shall take effect January 1, 2021.