

By Senator Wright

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1                                   A bill to be entitled  
2       An act relating to prescription drug coverage;  
3       amending s. 624.3161, F.S.; authorizing the Office of  
4       Insurance Regulation to examine pharmacy benefit  
5       managers; specifying that certain examination costs  
6       are payable by persons examined; transferring,  
7       renumbering, and amending s. 465.1885, F.S.; revising  
8       the entities conducting pharmacy audits to which  
9       certain requirements and restrictions apply;  
10      authorizing audited pharmacies to appeal certain  
11      findings; providing that health insurers and health  
12      maintenance organizations that transfer a certain  
13      payment obligation to pharmacy benefit managers remain  
14      responsible for certain violations; amending ss.  
15      627.64741 and 627.6572, F.S.; revising the definition  
16      of the term "maximum allowable cost"; authorizing the  
17      office to require health insurers to submit to the  
18      office certain contracts or contract amendments  
19      entered into with pharmacy benefit managers;  
20      authorizing the office to order health insurers to  
21      cancel such contracts under certain circumstances;  
22      authorizing the commission to adopt rules; revising  
23      applicability; amending s. 627.6699, F.S.; requiring  
24      certain health benefit plans covering small employers  
25      to comply with certain provisions; amending s.  
26      641.314, F.S.; revising the definition of the term  
27      "maximum allowable cost"; authorizing the office to  
28      require health maintenance organizations to submit to  
29      the office certain contracts or contract amendments

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30 entered into with pharmacy benefit managers;  
31 authorizing the office to order health maintenance  
32 organizations to cancel such contracts under certain  
33 circumstances; authorizing the commission to adopt  
34 rules; revising applicability; providing an effective  
35 date.

36  
37 Be It Enacted by the Legislature of the State of Florida:

38  
39 Section 1. Subsections (1) and (3) of section 624.3161,  
40 Florida Statutes, are amended to read:

41 624.3161 Market conduct examinations.—

42 (1) As often as it deems necessary, the office shall  
43 examine each pharmacy benefit manager as defined in s. 624.490;  
44 each licensed rating organization;~~;~~ each advisory organization;~~;~~  
45 each group, association, carrier~~;~~ as defined in s. 440.02, or  
46 other organization of insurers which engages in joint  
47 underwriting or joint reinsurance;~~;~~ and each authorized insurer  
48 transacting in this state any class of insurance to which the  
49 provisions of chapter 627 are applicable. The examination shall  
50 be for the purpose of ascertaining compliance by the person  
51 examined with the applicable provisions of chapters 440, 624,  
52 626, 627, and 635.

53 (3) The examination may be conducted by an independent  
54 professional examiner under contract to the office, in which  
55 case payment shall be made directly to the contracted examiner  
56 by the insurer or person examined in accordance with the rates  
57 and terms agreed to by the office and the examiner.

58 Section 2. Section 465.1885, Florida Statutes, is

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59 transferred, renumbered as section 624.491, Florida Statutes,  
60 and amended to read:

61 624.491 ~~465.1885~~ Pharmacy audits; ~~rights.~~—

62 (1) A health insurer or health maintenance organization  
63 providing pharmacy benefits through a major medical individual  
64 or group health insurance policy or a health maintenance  
65 organization contract, respectively, shall comply with the  
66 requirements of this section when the insurer or health  
67 maintenance organization or any person or entity acting on  
68 behalf of the insurer or health maintenance organization,  
69 including, but not limited to, a pharmacy benefit manager as  
70 defined in s. 624.490, audits the records of a pharmacy licensed  
71 under chapter 465. The person or entity conducting such audit  
72 must ~~If an audit of the records of a pharmacy licensed under~~  
73 ~~this chapter is conducted directly or indirectly by a managed~~  
74 ~~care company, an insurance company, a third-party payor, a~~  
75 ~~pharmacy benefit manager, or an entity that represents~~  
76 ~~responsible parties such as companies or groups, referred to as~~  
77 ~~an "entity" in this section, the pharmacy has the following~~  
78 ~~rights:~~

79 (a) Except as provided in subsection (3), notify the  
80 pharmacy ~~To be notified~~ at least 7 calendar days before the  
81 initial onsite audit for each audit cycle.

82 (b) Not schedule an ~~To have the~~ onsite audit during  
83 ~~scheduled after~~ the first 3 calendar days of a month unless the  
84 pharmacist consents otherwise.

85 (c) Limit the duration of ~~To have~~ the audit period ~~limited~~  
86 to 24 months after the date a claim is submitted to or  
87 adjudicated by the entity.

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88           (d) In the case of ~~To have~~ an audit that requires clinical  
89 or professional judgment, conduct the audit in consultation  
90 with, or allow the audit to be conducted by, ~~or in consultation~~  
91 ~~with~~ a pharmacist.

92           (e) Allow the pharmacy to use the written and verifiable  
93 records of a hospital, physician, or other authorized  
94 practitioner, which are transmitted by any means of  
95 communication, to validate the pharmacy records in accordance  
96 with state and federal law.

97           (f) Reimburse the pharmacy ~~To be reimbursed~~ for a claim  
98 that was retroactively denied for a clerical error,  
99 typographical error, scrivener's error, or computer error if the  
100 prescription was properly and correctly dispensed, unless a  
101 pattern of such errors exists, fraudulent billing is alleged, or  
102 the error results in actual financial loss to the entity.

103           (g) Provide the pharmacy with a copy of ~~To receive~~ the  
104 preliminary audit report within 120 days after the conclusion of  
105 the audit.

106           (h) Allow the pharmacy to produce documentation to address  
107 a discrepancy or audit finding within 10 business days after the  
108 preliminary audit report is delivered to the pharmacy.

109           (i) Provide the pharmacy with a copy of ~~To receive~~ the  
110 final audit report within 6 months after receipt of ~~receiving~~  
111 the preliminary audit report.

112           (j) Calculate any ~~To have~~ recoupment or penalties based on  
113 actual overpayments and not according to the accounting practice  
114 of extrapolation.

115           (2) ~~The rights contained in~~ This section does ~~de~~ not apply  
116 to:

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117 (a) Audits in which suspected fraudulent activity or other  
118 intentional or willful misrepresentation is evidenced by a  
119 physical review, review of claims data or statements, or other  
120 investigative methods;

121 (b) Audits of claims paid for by federally funded programs;  
122 or

123 (c) Concurrent reviews or desk audits that occur within 3  
124 business days after ~~of~~ transmission of a claim and where no  
125 chargeback or recoupment is demanded.

126 (3) An entity that audits a pharmacy located within a  
127 Health Care Fraud Prevention and Enforcement Action Team (HEAT)  
128 Task Force area designated by the United States Department of  
129 Health and Human Services and the United States Department of  
130 Justice may dispense with the notice requirements of paragraph  
131 (1) (a) if such pharmacy has been a member of a credentialed  
132 provider network for less than 12 months.

133 (4) Pursuant to s. 408.7057, and after receipt of the final  
134 audit report issued by the health insurer or health maintenance  
135 organization, a pharmacy may appeal the findings of the final  
136 audit as to whether a claim payment is due and as to the amount  
137 of a claim payment.

138 (5) A health insurer or health maintenance organization  
139 that, under terms of a contract, transfers to a pharmacy benefit  
140 manager the obligation to pay any pharmacy licensed under  
141 chapter 465 for any pharmacy benefit claims arising from  
142 services provided to or for the benefit of any insured or  
143 subscriber remains responsible for any violations of this  
144 section, s. 627.6131, or s. 641.3155, as applicable.

145 Section 3. Section 627.64741, Florida Statutes, is amended

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146 to read:

147 627.64741 Pharmacy benefit manager contracts.—

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

149 (a) "Maximum allowable cost" means the per-unit amount that  
150 a pharmacy benefit manager reimburses a pharmacist for a  
151 prescription drug:

152 1. As specified at the time of claim processing and  
153 directly or indirectly reported on the initial remittance advice  
154 of an adjudicated claim for a generic drug, brand name drug,  
155 biological product, or specialty drug;

156 2. Which amount must be based on pricing published in the  
157 Medi-Span Master Drug Database or, if the pharmacy benefit  
158 manager uses only FDB MedKnowledge, on pricing published in FDB  
159 MedKnowledge; and

160 3. Excluding dispensing fees, prior to the application of  
161 copayments, coinsurance, and other cost-sharing charges, if any.

162 (b) "Pharmacy benefit manager" means a person or entity  
163 doing business in this state which contracts to administer or  
164 manage prescription drug benefits on behalf of a health insurer  
165 to residents of this state.

166 (2) A health insurer may contract only with a pharmacy  
167 benefit manager that satisfies all of the following conditions ~~A~~  
168 ~~contract between a health insurer and a pharmacy benefit manager~~  
169 ~~must require that the pharmacy benefit manager:~~

170 (a) Updates ~~Update~~ maximum allowable cost pricing  
171 information at least every 7 calendar days.

172 (b) Maintains ~~Maintain~~ a process that ~~will~~, in a timely  
173 manner, will eliminate drugs from maximum allowable cost lists  
174 or modify drug prices to remain consistent with changes in

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175 pricing data used in formulating maximum allowable cost prices  
176 and product availability.

177 (c)(3) Does not limit ~~A contract between a health insurer~~  
178 ~~and a pharmacy benefit manager must prohibit the pharmacy~~  
179 ~~benefit manager from limiting~~ a pharmacist's ability to disclose  
180 whether the cost-sharing obligation exceeds the retail price for  
181 a covered prescription drug, and the availability of a more  
182 affordable alternative drug, pursuant to s. 465.0244.

183 (d)(4) Does not require ~~A contract between a health insurer~~  
184 ~~and a pharmacy benefit manager must prohibit the pharmacy~~  
185 ~~benefit manager from requiring~~ an insured to make a payment for  
186 a prescription drug at the point of sale in an amount that  
187 exceeds the lesser of:

188 1.(a) The applicable cost-sharing amount; or

189 2.(b) The retail price of the drug in the absence of  
190 prescription drug coverage.

191 (3) The office may require a health insurer to submit to  
192 the office any contract or amendments to a contract for the  
193 administration or management of prescription drug benefits by a  
194 pharmacy benefit manager on behalf of the insurer.

195 (4) After review of a contract submitted under subsection  
196 (3), the office may order the insurer to cancel the contract in  
197 accordance with the terms of the contract and applicable law if  
198 the office determines that any of the following conditions  
199 exists:

200 (a) The fees to be paid by the insurer are so unreasonably  
201 high as compared with similar contracts entered into by  
202 insurers, or as compared with similar contracts entered into by  
203 other insurers in similar circumstances, that the contract is

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204 detrimental to the policyholders of the insurer.

205 (b) The contract does not comply with this section or any  
206 other provision of the Florida Insurance Code.

207 (c) The pharmacy benefit manager is not registered with the  
208 office as required under s. 624.490.

209 (5) The commission may adopt rules to administer this  
210 section.

211 (6)~~(5)~~ This section applies to contracts entered into,  
212 amended, or renewed on or after July 1, 2021 ~~2018~~. All contracts  
213 entered into or renewed between July 1, 2018, and June 30, 2021,  
214 are governed by the law in effect at the time the contract was  
215 entered into or renewed.

216 Section 4. Section 627.6572, Florida Statutes, is amended  
217 to read:

218 627.6572 Pharmacy benefit manager contracts.—

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

220 (a) "Maximum allowable cost" means the per-unit amount that  
221 a pharmacy benefit manager reimburses a pharmacist for a  
222 prescription drug;

223 1. As specified at the time of claim processing and  
224 directly or indirectly reported on the initial remittance advice  
225 of an adjudicated claim for a generic drug, brand name drug,  
226 biological product, or specialty drug;

227 2. Which amount must be based on pricing published in the  
228 Medi-Span Master Drug Database or, if the pharmacy benefit  
229 manager uses only FDB MedKnowledge, on pricing published in FDB  
230 MedKnowledge; and

231 3. ~~Excluding~~ dispensing fees, prior to the application of  
232 copayments, coinsurance, and other cost-sharing charges, if any.



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233 (b) "Pharmacy benefit manager" means a person or entity  
234 doing business in this state which contracts to administer or  
235 manage prescription drug benefits on behalf of a health insurer  
236 to residents of this state.

237 (2) A health insurer may contract only with a pharmacy  
238 benefit manager that satisfies all of the following conditions ~~A~~  
239 ~~contract between a health insurer and a pharmacy benefit manager~~  
240 ~~must require that the pharmacy benefit manager:~~

241 (a) Updates ~~Update~~ maximum allowable cost pricing  
242 information at least every 7 calendar days.

243 (b) Maintains ~~Maintain~~ a process that ~~will~~, in a timely  
244 manner, will eliminate drugs from maximum allowable cost lists  
245 or modify drug prices to remain consistent with changes in  
246 pricing data used in formulating maximum allowable cost prices  
247 and product availability.

248 (c) ~~(3)~~ Does not limit ~~A contract between a health insurer~~  
249 ~~and a pharmacy benefit manager must prohibit the pharmacy~~  
250 ~~benefit manager from limiting~~ a pharmacist's ability to disclose  
251 whether the cost-sharing obligation exceeds the retail price for  
252 a covered prescription drug, and the availability of a more  
253 affordable alternative drug, pursuant to s. 465.0244.

254 (d) ~~(4)~~ Does not require ~~A contract between a health insurer~~  
255 ~~and a pharmacy benefit manager must prohibit the pharmacy~~  
256 ~~benefit manager from requiring~~ an insured to make a payment for  
257 a prescription drug at the point of sale in an amount that  
258 exceeds the lesser of:

259 1.(a) The applicable cost-sharing amount; or

260 2.(b) The retail price of the drug in the absence of  
261 prescription drug coverage.

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262 (3) The office may require a health insurer to submit to  
263 the office any contract or amendments to a contract for the  
264 administration or management of prescription drug benefits by a  
265 pharmacy benefit manager on behalf of the insurer.

266 (4) After review of a contract submitted under subsection  
267 (3), the office may order the insurer to cancel the contract in  
268 accordance with the terms of the contract and applicable law if  
269 the office determines that any of the following conditions  
270 exists:

271 (a) The fees to be paid by the insurer are so unreasonably  
272 high as compared with similar contracts entered into by  
273 insurers, or as compared with similar contracts entered into by  
274 other insurers in similar circumstances, that the contract is  
275 detrimental to the policyholders of the insurer.

276 (b) The contract does not comply with this section or any  
277 other provision of the Florida Insurance Code.

278 (c) The pharmacy benefit manager is not registered with the  
279 office as required under s. 624.490.

280 (5) The commission may adopt rules to administer this  
281 section.

282 (6)~~(5)~~ This section applies to contracts entered into,  
283 amended, or renewed on or after July 1, 2021 ~~2018~~. All contracts  
284 entered into or renewed between July 1, 2018, and June 30, 2021,  
285 are governed by the law in effect at the time the contract was  
286 entered into or renewed.

287 Section 5. Paragraph (h) is added to subsection (5) of  
288 section 627.6699, Florida Statutes, to read:

289 627.6699 Employee Health Care Access Act.—

290 (5) AVAILABILITY OF COVERAGE.—

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291 (h) A health benefit plan covering small employers which is  
292 issued or renewed in this state on or after July 1, 2021, must  
293 comply with s. 627.6572.

294 Section 6. Section 641.314, Florida Statutes, is amended to  
295 read:

296 641.314 Pharmacy benefit manager contracts.—

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

298 (a) "Maximum allowable cost" means the per-unit amount that  
299 a pharmacy benefit manager reimburses a pharmacist for a  
300 prescription drug:

301 1. As specified at the time of claim processing and  
302 directly or indirectly reported on the initial remittance advice  
303 of an adjudicated claim for a generic drug, brand name drug,  
304 biological product, or specialty drug;

305 2. Which amount must be based on pricing published in the  
306 Medi-Span Master Drug Database or, if the pharmacy benefit  
307 manager uses only FDB MedKnowledge, on pricing published in FDB  
308 MedKnowledge; and

309 3. ~~Excluding~~ dispensing fees, prior to the application of  
310 copayments, coinsurance, and other cost-sharing charges, if any.

311 (b) "Pharmacy benefit manager" means a person or entity  
312 doing business in this state which contracts to administer or  
313 manage prescription drug benefits on behalf of a health  
314 maintenance organization to residents of this state.

315 (2) A health maintenance organization may contract only  
316 with a pharmacy benefit manager that satisfies all of the  
317 following conditions ~~A contract between a health maintenance~~  
318 ~~organization and a pharmacy benefit manager must require that~~  
319 ~~the pharmacy benefit manager:~~

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320 (a) Updates ~~Update~~ maximum allowable cost pricing  
321 information at least every 7 calendar days.

322 (b) Maintains ~~Maintain~~ a process that ~~will~~, in a timely  
323 manner, will eliminate drugs from maximum allowable cost lists  
324 or modify drug prices to remain consistent with changes in  
325 pricing data used in formulating maximum allowable cost prices  
326 and product availability.

327 ~~(c)(3) Does not limit A contract between a health~~  
328 ~~maintenance organization and a pharmacy benefit manager must~~  
329 ~~prohibit the pharmacy benefit manager from limiting a~~  
330 ~~pharmacist's ability to disclose whether the cost-sharing~~  
331 ~~obligation exceeds the retail price for a covered prescription~~  
332 ~~drug, and the availability of a more affordable alternative~~  
333 ~~drug, pursuant to s. 465.0244.~~

334 ~~(d)(4) Does not require A contract between a health~~  
335 ~~maintenance organization and a pharmacy benefit manager must~~  
336 ~~prohibit the pharmacy benefit manager from requiring a~~  
337 ~~subscriber to make a payment for a prescription drug at the~~  
338 ~~point of sale in an amount that exceeds the lesser of:~~

339 ~~1.(a) The applicable cost-sharing amount; or~~

340 ~~2.(b) The retail price of the drug in the absence of~~  
341 ~~prescription drug coverage.~~

342 (3) The office may require a health maintenance  
343 organization to submit to the office any contract or amendments  
344 to a contract for the administration or management of  
345 prescription drug benefits by a pharmacy benefit manager on  
346 behalf of the health maintenance organization.

347 (4) After review of a contract submitted under subsection  
348 (3), the office may order the health maintenance organization to

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349 cancel the contract in accordance with the terms of the contract  
350 and applicable law if the office determines that any of the  
351 following conditions exists:

352 (a) The fees to be paid by the health maintenance  
353 organization are so unreasonably high as compared with similar  
354 contracts entered into by health maintenance organizations, or  
355 as compared with similar contracts entered into by other health  
356 maintenance organizations in similar circumstances, that the  
357 contract is detrimental to the subscribers of the health  
358 maintenance organization.

359 (b) The contract does not comply with this section or any  
360 other provision of the Florida Insurance Code.

361 (c) The pharmacy benefit manager is not registered with the  
362 office as required under s. 624.490.

363 (5) The commission may adopt rules to administer this  
364 section.

365 (6)~~(5)~~ This section applies to pharmacy benefit manager  
366 contracts entered into, amended, or renewed on or after July 1,  
367 2021 ~~2018~~. All contracts entered into or renewed between July 1,  
368 2018, and June 30, 2021, are governed by the law in effect at  
369 the time the contract was entered into or renewed.

370 Section 7. This act shall take effect July 1, 2021.