

By the Committee on Banking and Insurance; and 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.; authorizing the office  
16      to require health insurers to submit to the office  
17      certain contracts or contract amendments entered into  
18      with pharmacy benefit managers; authorizing the office  
19      to order health insurers to cancel such contracts  
20      under certain circumstances; authorizing the  
21      commission to adopt rules; revising applicability;  
22      amending s. 627.6699, F.S.; requiring certain health  
23      benefit plans covering small employers to comply with  
24      certain provisions; amending s. 641.314, F.S.;  
25      authorizing the office to require health maintenance  
26      organizations to submit to the office certain  
27      contracts or contract amendments entered into with  
28      pharmacy benefit managers; authorizing the office to  
29      order health maintenance organizations to cancel such

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30 contracts under certain circumstances; authorizing the  
31 commission to adopt rules; revising applicability;  
32 providing an effective date.  
33

34 Be It Enacted by the Legislature of the State of Florida:  
35

36 Section 1. Subsections (1) and (3) of section 624.3161,  
37 Florida Statutes, are amended to read:

38 624.3161 Market conduct examinations.—

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

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

55 Section 2. Section 465.1885, Florida Statutes, is  
56 transferred, renumbered as section 624.491, Florida Statutes,  
57 and amended to read:

58 624.491 ~~465.1885~~ Pharmacy audits; ~~rights~~.—

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

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

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

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

85           (d) In the case of ~~To have~~ an audit that requires clinical  
86 or professional judgment, conduct the audit in consultation  
87 with, or allow the audit to be conducted by, ~~or in consultation~~

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88 ~~with~~ a pharmacist.

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

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

100 (g) Provide the pharmacy with a copy of ~~To receive~~ the  
101 preliminary audit report within 120 days after the conclusion of  
102 the audit.

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

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

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

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

114 (a) Audits in which suspected fraudulent activity or other  
115 intentional or willful misrepresentation is evidenced by a  
116 physical review, review of claims data or statements, or other

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117 investigative methods;

118 (b) Audits of claims paid for by federally funded programs;  
119 or

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

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

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

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

142 Section 3. Section 627.64741, Florida Statutes, is amended  
143 to read:

144 627.64741 Pharmacy benefit manager contracts.—

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

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146 (a) "Maximum allowable cost" means the per-unit amount that  
147 a pharmacy benefit manager reimburses a pharmacist for a  
148 prescription drug, excluding dispensing fees, prior to the  
149 application of copayments, coinsurance, and other cost-sharing  
150 charges, if any.

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

155 (2) A health insurer may contract only with a pharmacy  
156 benefit manager that satisfies all of the following conditions ~~A~~  
157 ~~contract between a health insurer and a pharmacy benefit manager~~  
158 ~~must require that the pharmacy benefit manager:~~

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

161 (b) Maintains ~~Maintain~~ a process that ~~will~~, in a timely  
162 manner, will eliminate drugs from maximum allowable cost lists  
163 or modify drug prices to remain consistent with changes in  
164 pricing data used in formulating maximum allowable cost prices  
165 and product availability.

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

172 (d) ~~(4)~~ Does not require ~~A contract between a health insurer~~  
173 ~~and a pharmacy benefit manager must prohibit the pharmacy~~  
174 ~~benefit manager from requiring~~ an insured to make a payment for

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175 a prescription drug at the point of sale in an amount that  
176 exceeds the lesser of:

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

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

180 (3) The office may require a health insurer to submit to  
181 the office any contract or amendments to a contract for the  
182 administration or management of prescription drug benefits by a  
183 pharmacy benefit manager on behalf of the insurer.

184 (4) After review of a contract submitted under subsection  
185 (3), the office may order the insurer to cancel the contract in  
186 accordance with the terms of the contract and applicable law if  
187 the office determines that any of the following conditions  
188 exist:

189 (a) The contract does not comply with this section or any  
190 other provision of the Florida Insurance Code.

191 (b) The pharmacy benefit manager is not registered with the  
192 office as required under s. 624.490.

193 (5) The commission may adopt rules to administer this  
194 section.

195 (6)~~(5)~~ This section applies to contracts entered into,  
196 amended, or renewed on or after July 1, 2021 ~~2018~~. All contracts  
197 entered into or renewed between July 1, 2018, and June 30, 2021,  
198 are governed by the law in effect at the time the contract was  
199 entered into or renewed.

200 Section 4. Section 627.6572, Florida Statutes, is amended  
201 to read:

202 627.6572 Pharmacy benefit manager contracts.—

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

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204 (a) "Maximum allowable cost" means the per-unit amount that  
205 a pharmacy benefit manager reimburses a pharmacist for a  
206 prescription drug, excluding dispensing fees, prior to the  
207 application of copayments, coinsurance, and other cost-sharing  
208 charges, if any.

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

213 (2) A health insurer may contract only with a pharmacy  
214 benefit manager that satisfies all of the following conditions ~~A~~  
215 ~~contract between a health insurer and a pharmacy benefit manager~~  
216 ~~must require that the pharmacy benefit manager:~~

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

219 (b) Maintains ~~Maintain~~ a process that ~~will~~, in a timely  
220 manner, will eliminate drugs from maximum allowable cost lists  
221 or modify drug prices to remain consistent with changes in  
222 pricing data used in formulating maximum allowable cost prices  
223 and product availability.

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

230 (d) ~~(4)~~ Does not require ~~A contract between a health insurer~~  
231 ~~and a pharmacy benefit manager must prohibit the pharmacy~~  
232 ~~benefit manager from requiring~~ an insured to make a payment for

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233 a prescription drug at the point of sale in an amount that  
234 exceeds the lesser of:

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

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

238 (3) The office may require a health insurer to submit to  
239 the office any contract or amendments to a contract for the  
240 administration or management of prescription drug benefits by a  
241 pharmacy benefit manager on behalf of the insurer.

242 (4) After review of a contract submitted under subsection  
243 (3), the office may order the insurer to cancel the contract in  
244 accordance with the terms of the contract and applicable law if  
245 the office determines that any of the following conditions  
246 exist:

247 (a) The contract does not comply with this section or any  
248 other provision of the Florida Insurance Code.

249 (b) The pharmacy benefit manager is not registered with the  
250 office as required under s. 624.490.

251 (5) The commission may adopt rules to administer this  
252 section.

253 (6)~~(5)~~ This section applies to contracts entered into,  
254 amended, or renewed on or after July 1, 2021 ~~2018~~. All contracts  
255 entered into or renewed between July 1, 2018, and June 30, 2021,  
256 are governed by the law in effect at the time the contract was  
257 entered into or renewed.

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

260 627.6699 Employee Health Care Access Act.—

261 (5) AVAILABILITY OF COVERAGE.—

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

265 Section 6. Section 641.314, Florida Statutes, is amended to  
266 read:

267 641.314 Pharmacy benefit manager contracts.—

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

269 (a) "Maximum allowable cost" means the per-unit amount that  
270 a pharmacy benefit manager reimburses a pharmacist for a  
271 prescription drug, excluding dispensing fees, prior to the  
272 application of copayments, coinsurance, and other cost-sharing  
273 charges, if any.

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

278 (2) A health maintenance organization may contract only  
279 with a pharmacy benefit manager that satisfies all of the  
280 following conditions ~~A contract between a health maintenance~~  
281 ~~organization and a pharmacy benefit manager must require that~~  
282 ~~the pharmacy benefit manager:~~

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

285 (b) Maintains ~~Maintain~~ a process that ~~will~~, in a timely  
286 manner, will eliminate drugs from maximum allowable cost lists  
287 or modify drug prices to remain consistent with changes in  
288 pricing data used in formulating maximum allowable cost prices  
289 and product availability.

290 (c) ~~(3)~~ Does not limit ~~A contract between a health~~

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291 ~~maintenance organization and a pharmacy benefit manager must~~  
292 ~~prohibit the pharmacy benefit manager from limiting a~~  
293 ~~pharmacist's ability to disclose whether the cost-sharing~~  
294 ~~obligation exceeds the retail price for a covered prescription~~  
295 ~~drug, and the availability of a more affordable alternative~~  
296 ~~drug, pursuant to s. 465.0244.~~

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

302 1. (a) The applicable cost-sharing amount; or  
303 2. (b) The retail price of the drug in the absence of  
304 prescription drug coverage.

305 (3) The office may require a health maintenance  
306 organization to submit to the office any contract or amendments  
307 to a contract for the administration or management of  
308 prescription drug benefits by a pharmacy benefit manager on  
309 behalf of the health maintenance organization.

310 (4) After review of a contract submitted under subsection  
311 (3), the office may order the health maintenance organization to  
312 cancel the contract in accordance with the terms of the contract  
313 and applicable law if the office determines that any of the  
314 following conditions exist:

315 (a) The contract does not comply with this section or any  
316 other provision of the Florida Insurance Code.

317 (b) The pharmacy benefit manager is not registered with the  
318 office as required under s. 624.490.

319 (5) The commission may adopt rules to administer this

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320 section.

321 (6)~~(5)~~ This section applies to pharmacy benefit manager  
322 contracts entered into, amended, or renewed on or after July 1,  
323 2021 ~~2018~~. All contracts entered into or renewed between July 1,  
324 2018, and June 30, 2021, are governed by the law in effect at  
325 the time the contract was entered into or renewed.

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