

1 A bill to be entitled
2 An act relating to access to pharmacies and
3 prescription drugs under insurance and pharmacy
4 benefit managers policies; amending s. 624.3161, F.S.;
5 requiring the Office of Insurance Regulation to
6 examine pharmacy benefit managers to ascertain
7 compliance with specified laws; conforming a provision
8 to changes made by the act; amending s. 624.490, F.S.;
9 requiring the office to suspend or revoke
10 registrations for pharmacy benefit managers and impose
11 fines and civil penalties for certain violations;
12 providing fines and civil penalties; providing that
13 such violations are unfair methods of competition or
14 unfair or deceptive acts or practices; providing that
15 such violations are subject to certain actions,
16 remedies, and penalties; providing applicability;
17 creating s. 624.4901, F.S.; providing purpose;
18 providing definitions; requiring pharmacy benefit
19 managers to establish pharmacy benefit networks for a
20 specified purpose; requiring pharmacy benefit managers
21 to have standard contracts with pharmacies; providing
22 requirements for such contracts' terms and conditions;
23 requiring pharmacy benefit managers to provide copies
24 of such standard contracts within a specified
25 timeframe to requesting pharmacies and pharmacists;

26 | prohibiting pharmacy benefit managers from denying
27 | pharmacies and pharmacists in the state the right to
28 | participate as contract providers under certain
29 | circumstances; providing construction; authorizing
30 | certain persons and entities to bring actions and
31 | injunctive relief under certain circumstances;
32 | authorizing the Department of Financial Services to
33 | adopt rules; creating s. 624.4902, F.S.; providing
34 | purpose; providing definitions; prohibiting pharmacy
35 | benefit managers from engaging in certain acts against
36 | patients and covered individuals; providing that such
37 | acts are unfair methods of competition or unfair or
38 | deceptive acts or practices; providing that such acts
39 | are subject to certain actions, remedies, and
40 | penalties; authorizing the department to adopt rules;
41 | creating s. 627.42398, F.S.; providing definitions;
42 | prohibiting health insurers and pharmacy benefit
43 | managers from engaging in certain acts relating to
44 | covered clinician-administered drugs; providing that
45 | such acts constitute unfair methods of competition or
46 | unfair or deceptive acts or practices and are subject
47 | to certain actions, remedies, and penalties; providing
48 | an effective date.

49 |
50 | Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Subsections (1) and (3) of section 624.3161,
 53 Florida Statutes, are amended to read:

54 624.3161 Market conduct examinations.—

55 (1) As often as it deems necessary, the office shall
 56 examine each pharmacy benefit manager as defined in s. 624.490,
 57 each licensed rating organization, each advisory organization,
 58 each group, association, carrier, as defined in s. 440.02, or
 59 other organization of insurers which engages in joint
 60 underwriting or joint reinsurance, and each authorized insurer
 61 transacting in this state any class of insurance to which the
 62 provisions of chapter 627 are applicable. The examination shall
 63 be for the purpose of ascertaining compliance by the person
 64 examined with the applicable provisions of chapters 440, 624,
 65 626, 627, and 635.

66 (3) The examination may be conducted by an independent
 67 professional examiner under contract to the office, in which
 68 case payment shall be made directly to the contracted examiner
 69 by the entity ~~insurer~~ examined in accordance with the rates and
 70 terms agreed to by the office and the examiner.

71 Section 2. Subsections (6) and (7) of section 624.490,
 72 Florida Statutes, are renumbered as subsections (8) and (9),
 73 respectively, and new subsections (6) and (7) are added to that
 74 section, to read:

75 624.490 Registration of pharmacy benefit managers.—

76 (6) (a) The office may suspend or revoke a pharmacy benefit
 77 manager's registration or impose a fine or civil penalty if it
 78 finds that the pharmacy benefit manager has violated s.
 79 624.4901, s. 624.4902, s. 624.491, s. 627.42398, s. 627.6131, s.
 80 627.64741, s. 627.6572, s. 641.314, or s. 641.3155. The fine or
 81 civil penalty shall be in the amount of \$10,000 for each
 82 violation, which shall accrue for each day the pharmacy benefit
 83 manager is in violation of the law.

84 (b) The violation of any section enumerated in paragraph
 85 (a) constitutes an unfair method of competition or an unfair or
 86 deceptive act or practice, subject to actions, remedies, and
 87 penalties provided by the Florida Deceptive and Unfair Trade
 88 Practices Act and consumer protection laws.

89 (7) Subsection (6) applies to contracts between a pharmacy
 90 benefit manager and a pharmacy that participates in a retail
 91 pharmacy network of the pharmacy benefit manager.

92 Section 3. Section 624.4901, Florida Statutes, is created
 93 to read:

94 624.4901 Pharmacy benefit manager contracts with
 95 pharmacies.-

96 (1) The purpose of this section is to give patients
 97 convenient access to affordable prescription drugs through a
 98 pharmacy of their choice.

99 (2) As used in this section, the term:

100 (a) "Affiliate" means a pharmacy in which a pharmacy

101 benefit manager, directly or indirectly, has an investment or
102 ownership interest or shares common ownership.

103 (b) "Pharmacy" means a pharmacy licensed under chapter
104 465, a nonresident pharmacy registered under s. 465.0156, or a
105 nonresident pharmacy or outsourcing facility holding an active
106 permit pursuant to s. 465.0158 to dispense drugs to patients
107 located in this state.

108 (c) "Pharmacy benefit manager" has the same meaning as in
109 s. 624.490(1).

110 (3) A pharmacy benefit manager shall establish a
111 reasonably adequate and accessible pharmacy benefit network to
112 provide patients with convenient access to prescription drugs
113 through pharmacies that are located within a reasonable distance
114 from a patient's residence.

115 (4) A pharmacy benefit manager shall have a standard
116 contract with reasonable and relevant terms and conditions of
117 participation in the pharmacy benefit network, whereby any
118 willing pharmacy may participate as a network pharmacy. Terms
119 and conditions must include provisions reasonable and relevant
120 to unique pharmacy, pharmacy business, and pharmacy service
121 models.

122 (5) A pharmacy benefit manager shall provide a copy of the
123 standard contract to a requesting pharmacy or pharmacist within
124 7 business days after receiving such a request from the pharmacy
125 or pharmacist.

126 (6) If a pharmacy benefit manager's affiliate participates
127 in the pharmacy benefit network, the pharmacy benefit manager
128 may not deny another pharmacy or pharmacist in this state the
129 right to participate as a contract provider under the policy or
130 plan, provided that the pharmacy or pharmacist agrees to:

131 (a) Provide pharmaceutical services that meet all
132 reasonable and relevant terms and conditions.

133 (b) Include the same administrative, financial, and
134 professional conditions that apply to pharmacy and pharmacists
135 that have been designated as providers under the policy or plan.

136 (7) The decision of a pharmacy or pharmacist to accept a
137 contract with the pharmacy benefit manager is not admissible
138 proof that the contract is reasonable and relevant.

139 (8) Without regard to any other remedy or relief to which
140 a pharmacy is entitled, a pharmacy, a pharmacist, or a person,
141 firm, corporation, association, entity, or any agent or employee
142 of a pharmacy or pharmacist which is aggrieved by a violation of
143 this section may bring an action to recover damages, plus
144 attorney fees and costs, and injunctive relief.

145 (9) The department may adopt rules to implement this
146 section.

147 Section 4. Section 624.4902, Florida Statutes, is created
148 to read:

149 624.4902 Pharmacy benefit managers' prohibited acts.—

150 (1) The purpose of this section is to protect patient

151 welfare by establishing minimum standards for patient access to
152 a pharmacy provider and by prohibiting restrictions imposed by a
153 pharmacy benefit manager on a patient's right to choose a
154 pharmacy.

155 (2) As used in this section, the term:

156 (a) "Affiliate" means a pharmacy in which a pharmacy
157 benefit manager, directly or indirectly, has an investment or
158 ownership interest or shares common ownership. As used in this
159 paragraph, the term "pharmacy" has the same meaning as in s.
160 624.4901(2).

161 (b) "Pharmacy benefit manager" has the same meaning as in
162 s. 624.490(1).

163 (c) "Wholesale acquisition cost" means the amount that a
164 pharmaceutical wholesaler charges for a pharmaceutical product
165 as listed on the pharmacy's billing invoice.

166 (3) A pharmacy benefit manager may not:

167 (a) Offer, incentivize, or implement a plan design that
168 requires a patient or covered individual to use an affiliate;

169 (b) Refer or incentivize a patient or covered individual
170 to use an affiliate or any pharmacy in which the pharmacy
171 benefit manager has any direct or indirect financial interest or
172 ownership;

173 (c) Restrict the choice of a patient or covered individual
174 of an in-network provider for prescription drugs;

175 (d) Reimburse a pharmacy or pharmacist in this state an

176 amount less than the amount that the pharmacy benefit manager
177 reimburses an affiliate for providing the same drug products,
178 drug product ingredients, or pharmacist services; or

179 (e) Reimburse a pharmacy or pharmacist in this state for a
180 drug product, drug product ingredient, or pharmacist services an
181 amount less than the national average drug acquisition cost, or,
182 if the national average drug acquisition cost is unavailable,
183 the wholesale acquisition cost.

184 (4) The commission of any act prohibited under subsection
185 (3) constitutes an unfair method of competition or an unfair or
186 deceptive act or practice, subject to actions, remedies, and
187 penalties provided by the Florida Deceptive and Unfair Trade
188 Practices Act and consumer protection laws.

189 (5) The department may adopt rules necessary to implement
190 this section.

191 Section 5. Section 627.42398, Florida Statutes, is created
192 to read:

193 627.42398 Coverage of clinician-administered drugs by
194 health insurers and pharmacy benefit managers.—

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

196 (a) "Clinician-administered drug" means a prescription
197 drug other than a vaccine which:

198 1. Has not been approved by the United States Food and
199 Drug Administration as a self-administered drug or self-
200 administered biologic, or cannot reasonably be administered by

201 the patient to whom the drug is prescribed or by an individual
202 other than a health care provider.

203 2. Is typically administered in a physician's office,
204 hospital, outpatient infusion center, or other clinical setting.

205 (b) "Health care provider" means a health care
206 professional, health care facility, or entity licensed or
207 certified to provide health care services in this state which
208 meets the criteria established by the Department of Health.

209 (c) "Insurer" means an insurer as defined in s. 624.03
210 which provides health insurance coverage, a multiple-employer
211 welfare arrangement as defined in s. 624.437(1), self-insurance
212 as defined in s. 624.031, a prepaid limited health service
213 organization as defined in s. 636.003(7), a health maintenance
214 organization as defined in s. 641.19(12), a prepaid health
215 clinic as defined in s. 641.402, a fraternal benefit society as
216 defined in s. 632.601 which provides health care benefits, or
217 any health care arrangement that assumes some risk.

218 (d) "Participating provider" means a health care provider
219 that participates in the network of an insurer or pharmacy
220 benefit manager.

221 (e) "Pharmacy benefit manager" has the same meaning as in
222 s. 624.490(1).

223 (f) "White bagging" means the policy of an insurer or
224 pharmacy benefit manager which requires a prescription drug to
225 be:

226 1. Dispensed by a specialty pharmacy selected by the
 227 insurer or pharmacy benefit manager.

228 2. Transported to a health care provider for
 229 administration to a patient.

230

231 As used in this paragraph, the term "specialty pharmacy" means a
 232 pharmacy that focuses on high-cost medications and personalized
 233 support for patients with chronic or complex conditions.

234 (2) An insurer or pharmacy benefit manager that covers a
 235 clinician-administered drug may not:

236 (a) Condition, deny, or reduce payment to a participating
 237 provider for providing the covered clinician-administered drug
 238 and related services to an insured if all the criteria for the
 239 medical necessity for providing and administering the clinician-
 240 administered drug are met, regardless of whether the clinician-
 241 administered drug is obtained from a pharmacy selected by the
 242 insurer or pharmacy benefit manager. For the purposes of this
 243 section, the location of receiving the clinician-administered
 244 drug may not be considered a medical necessity criterion.

245 (b) Interfere with the insured's right to choose to obtain
 246 the covered clinician-administered drug from a participating
 247 provider or a pharmacy of choice, through any inducement,
 248 steering, or financial or other incentive offer.

249 (c) Require the covered clinician-administered drug to be
 250 dispensed by a pharmacy selected by the insurer or pharmacy

251 benefit manager, including, but not limited to, through white
252 bagging.

253 (d) If the covered clinician-administered drug is not
254 dispensed by a pharmacy selected by the insurer or pharmacy
255 benefit manager:

256 1. Reimburse for the clinician-administered drug at a
257 lesser amount than the amount that would otherwise be
258 reimbursed;

259 2. Limit or exclude coverage or benefits for the
260 clinician-administered drug; or

261 3. Require the insured to pay an additional fee, a higher
262 copayment, a higher coinsurance, a second copayment, a second
263 coinsurance, or any other form of an increased cost-sharing
264 amount over the price paid for the clinician-administered drug
265 dispensed by a pharmacy selected by the insurer or pharmacy
266 benefit manager.

267 (e) Require that the covered clinician-administered drug
268 be administered using home infusion or be sent directly to a
269 third party or to the insured for home infusion, unless the
270 insured's treating physician determines that home infusion of
271 the clinician-administered drug will not jeopardize the
272 insured's health.

273 (3) The commission of any act prohibited under subsection
274 (2) constitutes an unfair method of competition or an unfair or
275 deceptive act or practice, subject to actions, remedies, and

HB 203

2023

276 | penalties provided by the Florida Deceptive and Unfair Trade
277 | Practices Act and consumer protection laws.

278 | Section 6. This act shall take effect July 1, 2023.