

# STATE OF FLORIDA

## OFFICE OF THE GOVERNOR

### EXECUTIVE ORDER NUMBER 22-164

(Increasing Transparency and Accountability in the Pharmaceutical Industrial Complex)

**WHEREAS**, my Administration is committed to serving Floridians with transparency and accountability, and that expectation extends to entities that do business with the State of Florida; and

**WHEREAS**, my Administration continues to champion health care policy reforms that increase quality, reduce costs to consumers, promote transparency in health care spending, and hold the pharmaceutical industrial complex accountable; and

**WHEREAS**, my Administration is currently implementing reforms to bypass middlemen and leverage the State of Florida's buying power through the Canadian Prescription Drug Importation Program outlined in Section 381.02035, Florida Statutes, which continues to be stalled by Federal bureaucracy, and through the direct purchase of drugs ineligible for importation, as outlined in Chapter 2022-157, Laws of Florida; and

**WHEREAS**, Pharmacy Benefit Managers (PBMs) contract to administer or manage prescription drug benefits on behalf of a health insurer to residents of the State of Florida; and

**WHEREAS**, PBMs operate under the veil of efficiency and cost containment, but are known to engage in deceptive practices, such as spread pricing (when the PBM retains a portion of the amount, or spread, between what the employer or health plan pays the PBM and the amount that the PBM reimburses the pharmacy for a beneficiary's prescription) and financial clawbacks (when PBMs include contractual provisions that allow for the recoupment of overpayments to network pharmacies and the PBM retains such recoupments); and

**WHEREAS**, several states have enacted laws regulating PBMs or mandating provisions in PBM contracts that increase reporting requirements to protect consumers and ensure transparency and accountability; and

**WHEREAS**, over several consecutive legislative sessions, the Legislature has considered significant reforms to PBMs, but legislative proposals have been met with resistance from special interests; and

**WHEREAS**, executive agencies, including the Agency for Health Care Administration (AHCA) and the Department of Management Services (DMS), utilize PBMs, either directly or as a subcontractor or third-party administrator, to perform various health care management functions, including establishing provider networks, processing prescription drug claims, negotiating rebates to establish preferred drug lists and performing utilization management; and

**WHEREAS**, over the next two years, executive agencies will competitively procure contracts with PBMs either directly or through a managed health plan; and

**WHEREAS**, executive agencies have discretion when drafting and negotiating contracts and renewals or extensions thereof; and

**WHEREAS**, Florida law requires all agencies to include contractual provisions regarding auditing, oversight, and access to documents, papers, or other materials made or received by the vendor in conjunction with the contract.

**NOW, THEREFORE, I, RON DESANTIS**, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution, and all other applicable laws, promulgate the following Executive Order, to take immediate effect:

Section 1. I hereby direct all executive agencies to include the following provisions in all future contracts (including solicitations thereof) that include PBM services in the scope of work, regardless of whether such services are provided by the primary vendor or a subcontractor: (1)

provisions that prohibit PBMs from the use of spread pricing and financial clawbacks; and (2) provisions that require data reporting measures including, but not limited to, data regarding rebates and payments from drug manufacturers, insurers, and pharmacies, if applicable.

Section 2. I further direct all executive agencies, to the extent feasible, to include the provisions outlined in Section 1 of this Order in all existing contracts between the executive agencies and any PBM, or any subcontractor who contracts with a PBM, at the next opportunity to extend or renew such contracts.

Section 3. I direct the Secretary of AHCA to commence an audit of all PBMs that perform or have performed services for a Medicaid Managed Care Plan during the past five fiscal years. This audit should include, but need not be limited to, a detailed review of potential inflation of dispensing fees and payments from drug manufacturers, insurers, and pharmacies, as such pertain to a Medicaid Managed Care Plan. The purpose of this audit is to ensure that all costs incurred by the State of Florida are justified.

Section 4. I direct the Secretary of DMS to commence an audit of all PBMs that perform or have performed services for the Division of State Group Insurance during the past five fiscal years. This audit should include, but need not be limited to, a detailed review of potential inflation of dispensing fees and of rebates and payments from drug manufacturers, insurers, and pharmacies, as such pertain to the State Group Health Insurance claims. The purpose of this audit is to ensure that all costs incurred by the State of Florida are justified.

Section 5. I direct the Secretary of AHCA to expeditiously implement the provisions of Chapter 2022-157, Laws of Florida related to the negotiation of prices for prescribed drugs and biological products ineligible for the Canadian Prescription Drug Importation Program, including, but not limited to, insulin and epinephrine. The contract shall provide for the direct negotiation and purchase of these drugs and the contracted vendor shall be compensated on a contingency basis paid

from a portion of the savings achieved by its negotiation or purchase of prescription drugs and biological products.

Section 6. The information requested by this Executive Order may only be collected, shared, or disclosed in accordance with federal and state law, including any relevant privacy laws related to proprietary or confidential information.

Section 7. If any provision of this Executive Order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this Executive Order and the application of its other provisions to any other persons or circumstances shall not be affected thereby.

Section 8. This Executive Order is effective immediately.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 8th day of July, 2022.

  
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RON DESANTIS, GOVERNOR

ATTEST

  
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SECRETARY OF STATE

DEPARTMENT OF STATE  
TALLAHASSEE, FL

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