

Regular Session, 2014

SENATE BILL NO. 410

BY SENATOR MILLS

HEALTH/ACC INSURANCE. Provides for the transparency of Maximum Allowable Cost Lists for prescription drugs. (8/1/14)

1 AN ACT

2 To enact Subpart C-1 of Part II of Chapter 6 of Title 22 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 22:1863 through 1865, relative to Maximum
4 Allowable Cost Lists for prescription drugs; to provide with respect to definitions;
5 to provide for the regulation of pharmacy benefit manager's maintenance and use of
6 Maximum Allowable Cost Lists for prescription drugs; to provide with respect to an
7 appeals process; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Subpart C-1 of Part II of Chapter 6 of Title 22 of the Louisiana Revised
10 Statutes of 1950, comprised of R.S. 22:1863 through 1865, is hereby enacted to read as
11 follows:

12 **Subpart C-1. PHARMACY BENEFIT MANAGER'S MAINTENANCE AND USE**
13 **OF "MAXIMUM ALLOWABLE COST LISTS" FOR PRESCRIPTION DRUGS**

14 **§1863. Definitions**

15 **As used in this Subpart, the following definitions shall apply:**

16 **(1) "Maximum Allowable Cost List" means a listing of the National Drug**
17 **Code used by a pharmacy benefits manager setting the maximum allowable cost**

1 on which reimbursement to a pharmacy or pharmacist may be based.

2 (2) "NDC" means the National Drug Code, a numerical identifier
3 assigned to all prescription drugs.

4 (3) "Pharmacist" means a licensed pharmacist as defined in R.S.
5 22:1852(8).

6 (4) "Pharmacist services" means products, goods, or services provided
7 as a part of the practice of pharmacy as defined in R.S. 22:1852(9).

8 (5) "Pharmacy" means any appropriately licensed place where
9 prescription drugs are dispensed as defined in R.S. 22:1852(10).

10 (6) "Pharmacy benefits manager" means an entity that administers or
11 manages a pharmacy benefits plan or program.

12 (7) "Pharmacy benefits plan" or "pharmacy benefits program" means
13 a plan or program that pays for, reimburses, covers the cost of, or otherwise
14 provides for pharmacist services to individuals who reside in or are employed
15 in Louisiana.

16 §1864. Requirements for use of the NDC by a pharmacy benefits manager

17 A. Before a pharmacy benefits manager places or continues a particular
18 NDC or Maximum Allowable Cost List, the following requirements shall be
19 met:

20 (1) The NDC shall be listed as "A" or "B" rated in the most recent
21 version of the FDA's Approved Drug Products with Therapeutic Equivalence
22 Evaluations, also known as the Orange Book, or have an "NR" or "NA" rating
23 or a similar rating by a nationally recognized reference.

24 (2) The NDC shall be available for purchase by pharmacies in the state
25 from national or regional wholesalers.

26 (3) The NDC shall not be obsolete.

27 B. A pharmacy benefits manager shall be required to:

28 (1) Provide access to its Maximum Allowable Cost List to each pharmacy
29 subject to the list.

1 **(2) Update its Maximum Allowable Cost List on a timely basis, but in no**
2 **event longer than seven calendar days from a change in the methodology on**
3 **which the Maximum Allowable Cost List is based or in the value of a variable**
4 **involved in the methodology.**

5 **(3) Provide a process for each pharmacy subject to the list to review an**
6 **update to the Maximum Allowable Cost List.**

7 **§1865. Appeals**

8 **A. The pharmacy benefits manager shall provide a reasonable**
9 **administrative appeal procedure to allow pharmacies to challenge maximum**
10 **allowable costs for a specific NDC or NDCs as not meeting the requirements of**
11 **this Subpart or being below the cost at which the pharmacy may obtain the**
12 **NDC. Within seven business days after the applicable fill date, a pharmacy may**
13 **file an appeal by following the appeal process as provided for in this Subpart.**
14 **The pharmacy benefits manager shall respond to a challenge within seven**
15 **business days after receipt of the challenge.**

16 **B. If an appeal made pursuant to this Section is upheld, the pharmacy**
17 **benefits manager shall take the following actions:**

18 **(1) Make the change in the Maximum Allowable Cost List.**

19 **(2) Permit the challenging pharmacy or pharmacist to reverse and rebill**
20 **the claim in question.**

21 **(3) Make the change effective for each similarly situated pharmacy as**
22 **defined by the payor subject to the Maximum Allowable Cost List.**

23 **C. If an appeal made pursuant to this Section is denied, the pharmacy**
24 **benefits manager shall provide the challenging pharmacy or pharmacist the**
25 **NDC number from national or regional wholesalers operating in Louisiana.**

26 **D. A violation of this Subpart shall be deemed an unfair or deceptive act**
27 **and practice pursuant to R.S. 22:1961 et seq.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Cheryl Horne.

DIGEST

Mills (SB 410)

Proposed law provides for definitions of:

- (1) Maximum Allowable Cost List
- (2) National Drug Code (NDC)
- (3) Pharmacist
- (4) Pharmacist services
- (5) Pharmacy
- (6) Pharmacy benefits manager
- (7) Pharmacy benefits plan or program

Proposed law allows a pharmacy benefits manager to use the NDC only when the following conditions have been met:

- (1) The NDC is listed as "A" or "B" rated in the most recent version of the FDA's Orange Book.
- (2) The NDC is available for purchase by pharmacies in the state from national or regional wholesalers.
- (3) The NDC is not obsolete.

Proposed law requires a pharmacy benefits manager to:

- (1) Provide access to its Maximum Allowable Cost List.
- (2) Update its Maximum Allowable Cost List on a timely basis.
- (3) Provide a process for each pharmacy to review an update to the Maximum Allowable Cost List.

Proposed law requires a pharmacy benefits manager to provide a reasonable administrative appeal procedure. Permits a pharmacy to file an appeal by following the appeal process in proposed law. Requires the pharmacy benefits manager to respond to a challenge within seven business days after receipt of a challenge.

Proposed law requires a pharmacy benefits manager to perform the following if an appeal is upheld:

- (1) Make the change in the Maximum Allowable Cost List.
- (2) Permit the challenging pharmacy or pharmacist to reverse and rebill the claim.
- (3) Make the change effective for each similarly situated pharmacy.

Proposed law requires a pharmacy benefits manager to provide the challenging pharmacy

or pharmacist the NDC number if an appeal is denied.

Proposed law deems a violation of proposed law to be an unfair or deceptive act and practice pursuant to R.S. 22:1961 et seq.

Effective August 1, 2014.

(Adds R.S. 22:1863-1865)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill.

1. Permits a pharmacy to file an appeal within seven business days after the applicable fill date by following the appeal process in proposed law.
2. Provides that a violation of proposed law shall be deemed an unfair or deceptive act and practice pursuant to present law.