

2019 Regular Session

SENATE BILL NO. 41

BY SENATOR MILLS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PHARMACEUTICALS. Provides relative to regulation of pharmacy benefit managers.
(gov sig) (2/3-CA7s2.1(A))

AN ACT

To amend and reenact R.S. 22:1657(B) and to enact Part VII of Chapter 14 of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 37:1252 through 1254, Part IX of Chapter 15 of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 37:1360.121 through 1360.123, and Chapter 36 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:2861 through 2871, relative to regulation of pharmacy benefit managers; to provide legislative intent and public health policy; to provide for protection of the public; to provide for general applicability; to provide for licensure by the Louisiana Department of Insurance, Louisiana Board of Pharmacy, and Louisiana State Board of Medical Examiners; to provide for permitting by the Louisiana Board of Pharmacy; to provide for minimum licensure and permit criteria; to provide for rulemaking; to provide for license fees; to provide for penalties; to provide for unfair trade practices; to provide for enforcement; to provide for authority of the attorney general; to provide for written notice; to provide for a hearing; to provide for an appeal; to provide for a cause of action under the Unfair Trade Practices and Consumer Protection Law; to provide for severability; to provide for an effective date; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 22:1657(B) is hereby amended and reenacted to read as follows:

3 §1657. Pharmacy benefit managers

4 * * *

5 **B. In addition to the general requirements for licensure as a third party**
6 **administrator set forth in this Part, the following provisions shall be adhered**
7 **to in order for a pharmacy benefit manager to hold a license under this Part**
8 **and to operate in this state:**

9 (1)(a) No pharmacy benefit manager or other entity that administers
10 prescription drug benefits in Louisiana shall prohibit, by contract, a pharmacy or
11 pharmacist from informing a patient of all relevant options when acquiring their
12 prescription medication, including but not limited to the cost and clinical efficacy of
13 a more affordable alternative if one is available and the ability to pay cash if a cash
14 payment for the same drug is less than an insurance copayment or deductible
15 payment amount.

16 ~~(2)~~ (b) On or after August 1, 2018, any contract provision prohibiting the
17 communication provided for in this ~~Subsection~~ **Paragraph** shall be severable from
18 the contract and considered void and not enforceable in Louisiana.

19 **(2) A pharmacy benefit manager shall satisfy the requirements for**
20 **licensure set forth in R.S. 40:2861 et seq.**

21 * * *

22 Section 2. Part VII of Chapter 14 of Title 37 of the Louisiana Revised Statutes of
23 1950, comprised of R.S. 37:1252 through 1254, and Part IX of Chapter 15 of Title 37 of the
24 Louisiana Revised Statutes of 1950, comprised of R.S. 37:1360.121 through 1360.123, are
25 hereby enacted to read as follows:

26 **PART VII. PHARMACY BENEFIT MANAGERS**

27 **§1252. Louisiana Board of Pharmacy; authority to regulate pharmacy benefit**
28 **managers**

29 **A. Pursuant to the authority vested in the board in this Chapter and as**

1 specifically provided for in the Pharmacy Benefit Manager Licensing Law, R.S.
2 40:2861 et seq., the board shall create and issue a license for pharmacy benefit
3 managers as defined in R.S. 40:2863.

4 B. A pharmacy benefit manager shall also be required to be permitted
5 under Part IV of this Chapter if it administers, develops, maintains, performs,
6 or provides one or more of the pharmacy services in this state or that affects one
7 or more beneficiaries of a pharmacy benefit management plan administered by
8 the pharmacy benefit manager, as set forth in R.S. 40:2868.

9 §1253. Pharmacy benefit managers; licensure; annual report; fees

10 A. The board shall promulgate rules and regulations to implement the
11 provisions of this Part and the applicable provisions of the Pharmacy Benefit
12 Manager Licensing Law.

13 B. The board shall have the authority to promulgate rules and
14 regulations to specify the annual reporting requirements for the pharmacy
15 benefit manager.

16 C. The board shall have the authority to assess fees as follows:

17 (1) Initial Licensing fee.....\$500.00

18 (2) Annual renewal license fee.....\$500.00

19 (3) Annual report filing fee.....\$500.00

20 §1254. Pharmacy benefit managers; enforcement

21 Enforcement of the provisions of this Part by the board shall be as
22 provided for in this Chapter and R.S. 40:2871.

23 * * *

24 PART IX. PHARMACY BENEFIT MANAGERS

25 §1360.121. Louisiana State Board of Medical Examiners; authority to regulate
26 pharmacy benefit managers

27 Pursuant to the authority vested in the board in this Chapter and as
28 specifically provided for in the Pharmacy Benefit Manager Licensing Law, R.S.
29 40:2861 et seq., the board shall create and issue a license for pharmacy benefit

1 managers as defined in R.S. 40:2863.

2 §1360.122. Pharmacy benefit managers; licensure; annual report; fees

3 A. The board shall promulgate rules and regulations to implement the
4 provisions of this Part and the applicable provisions of the Pharmacy Benefit
5 Manager Licensing Law.

6 (1)(a) No pharmacy benefit manager shall be allowed to alter in any way
7 the exact prescription generated by a physician or other prescribing
8 practitioner if the prescription is for a drug covered on the health plan
9 formulary except as provided for in Subparagraph (b) of this Paragraph.

10 (b) A pharmacy benefit manager shall be prohibited from changing or
11 substituting any prescription generated by a prescribing practitioner for a
12 patient in Louisiana. For purposes of this Subsection, any attempt to alter a
13 licensed prescribing practitioner's prescription shall be considered the practice
14 of medicine and shall warrant licensure by the board. The pharmacy benefit
15 manager may change or substitute a prescription only if the pharmacy benefit
16 manager has consent of the patient to enter into a prescriber-patient
17 relationship with the patient and only after a personal consultation with the
18 patient has taken place. No patient shall be forced to enter into a
19 prescriber-patient relationship with a pharmacy benefit manager and no
20 pharmacy benefit manager or managed care organization shall condition health
21 care coverage on consent to this relationship. The patient shall continue to have
22 access to any provider in his plan network and the pharmacy benefit manager
23 shall adhere to the prescription as written if the drug is a covered drug on the
24 plan formulary.

25 (2) No pharmacy benefit manager shall restrict early refills on
26 maintenance drugs to an amount less than seven days.

27 (3) No pharmacy benefit manager shall operate in Louisiana without
28 having a license in good standing with the Louisiana Department of Insurance
29 pursuant to R.S. 22:1651 et seq., the Louisiana Board of Pharmacy pursuant to

1 this Part, and the Louisiana State Board of Medical Examiners pursuant to R.S.
2 37:1360.121 et seq., as required by the Pharmacy Benefit Manager Licencing
3 Law set forth in R.S. 40:2861 et seq.

4 B. The board shall have the authority to promulgate rules and
5 regulations to specify the annual reporting requirements for the pharmacy
6 benefit manager.

7 C. The board shall have the authority to assess fees as follows:

8 (1) Initial Licensing fee.....\$500.00

9 (2) Annual renewal license fee.....\$500.00

10 (3) Annual report filing fee.....\$500.00

11 §1360.123. Pharmacy benefit managers; enforcement

12 Enforcement of the provisions of this Part by the board shall be as
13 provided for in this Chapter and R.S. 40:2871.

14 Section 3. Chapter 36 of Title 40 of the Louisiana Revised Statutes of 1950,
15 comprised of R.S. 40:2861 through 2871, is hereby enacted to read as follows:

16 CHAPTER 36. REGULATION OF PHARMACY BENEFIT MANAGERS

17 §2861. Legislative intent and public health policy

18 A. The legislature finds and declares that for more than one hundred
19 fifty years the state has exercised its authority to protect the public from
20 individuals and entities in the healthcare market who are unqualified to make
21 critical healthcare decisions for patients. Throughout the latter part of the
22 nineteenth century the legislature refined what it intended by way of regulation
23 and ultimately created the Louisiana State Board of Pharmacy in 1888 and the
24 Louisiana State Board of Medical Examiners in 1894. The sole purpose of these
25 boards is to protect the public by ensuring that those individuals making life
26 and death decisions regarding the medical care of a patient are qualified to do
27 so and are accountable for the decisions they make. An active and engaged
28 relationship between a patient, his physician, and his pharmacist is essential to
29 sustaining life, improving health outcomes, and promoting quality of life, and

1 any interference in that relationship deserves due attention.

2 B. The legislature further finds and declares that the state has long been
3 recognized as the primary regulator of insurance and those providing services
4 as part of the business of insurance. In the 1960s, the pharmacy benefit manager
5 (PBM) emerged as a third-party claims processor for health insurance
6 companies. Processing of claims was a seamless transaction for patients that
7 drew little attention. The PBMs capitalized on their anonymity in the market
8 and as the monetary value of the prescription drug market increased so did the
9 breadth of this for-profit industry such that conservative estimates now place
10 annual profits in excess of seven hundred eighty-three billion dollars for just the
11 top five PBMs in the country.

12 C. The legislature further finds and declares that there is no other
13 example in the modern history of a field as highly regulated as healthcare where
14 an entity without a medical license and with no relationship to the patient is able
15 to override the medical professionals who are directly treating the patient.

16 D. The legislature further finds and declares that there is a compelling
17 state interest in regulating pharmacy benefit managers with the same
18 regulatory scrutiny exercised over other healthcare providers who are integral
19 decision makers in the patient's treatment and care.

20 E. Therefore, it is the intent of the legislature to execute the plenary
21 power of the citizens of this state to protect their health, safety, and general
22 welfare by the exercise of the police powers of this state to provide such
23 protection by the adoption of this legislation.

24 F. It is further the intent of the legislature that the purpose of this
25 Chapter is to license pharmacy benefit managers to provide for the effective
26 control and regulation of their activities, maintain and enforce order regarding
27 the prescribing, dispensing, marketing, selling, managing, and use of
28 prescription drugs in this state, and to protect the health, safety, and general
29 welfare of the citizens and residents of this state.

1 **§2862. Short title**

2 **This Chapter shall be known and may be cited as the "Pharmacy Benefit**
3 **Manager Licensing Law".**

4 **§2863. Definitions**

5 **As used in this Chapter, the following definitions shall apply:**

6 **(1) "Attorney general" means the Louisiana attorney general.**

7 **(2) "Beneficiary" means a person who resides or is employed in this state**
8 **and is covered or is eligible to be covered by a health plan.**

9 **(3) "Board of Medical Examiners" means the Louisiana State Board of**
10 **Medical Examiners.**

11 **(4) "Board of Pharmacy" means the Louisiana Board of Pharmacy.**

12 **(5) "Commissioner of insurance" means the Louisiana commissioner of**
13 **insurance.**

14 **(6) "Department of Insurance" means the Louisiana Department of**
15 **Insurance.**

16 **(7) "Department of Justice" means the Louisiana Department of Justice.**

17 **(8) "Health plan" means an individual or group plan or program,**
18 **whether commercial, self-insured, or mandated or sponsored by any federal,**
19 **state, or local government, which is established by contract, certificate, law,**
20 **plan, policy, subscriber agreement, or by any other method and which is**
21 **entered into, issued, or offered for the purpose of arranging for, delivering,**
22 **paying for, providing, or reimbursing any of the costs of health or medical care,**
23 **including pharmacy services, drugs, or devices.**

24 **(9) "Pharmacy benefit management plan" or "pharmacy benefits**
25 **program" means a plan or program that pays for, reimburses, covers the cost**
26 **of, or otherwise provides for pharmacist services, drugs, or devices to**
27 **individuals who reside in or are employed in Louisiana.**

28 **(10) "Pharmacy benefit manager" or "PBM" means any person or**
29 **business who administers the prescription drug or device program of one or**

1 more health plans on behalf of a third party in accordance with a pharmacy
2 benefit program. This term includes any agent or representative of a pharmacy
3 benefit manager hired or contracted by the pharmacy benefit manager to assist
4 in the administering of the drug program and any wholly or partially owned or
5 controlled subsidiary of a pharmacy benefit manager.

6 §2864. Fiduciary duty of pharmacy benefit managers

7 A. A pharmacy benefit manager shall be a fiduciary to the beneficiaries
8 of any pharmacy benefit management plan administered by the pharmacy
9 benefit manager and to the pharmacists and pharmacies who provide pharmacy
10 services to those beneficiaries. The fiduciary duties shall include the duties of
11 good faith, trust, confidence, and candor.

12 B. The standard for the fulfillment of a pharmacy benefit manager's
13 fiduciary duties shall be to act with a high degree of care, skill, prudence, and
14 diligence required of a reasonable and prudent person with substantial
15 experience and expertise in the management of pharmacy benefit management
16 programs and payment of claims.

17 §2865. General licensing and permitting requirements

18 A. Every pharmacy benefit manager that does business in this state or
19 pays for benefits to a beneficiary through a pharmacy benefit management plan
20 shall be licensed or permitted as required by this Chapter.

21 B. No license or permit shall be issued to a pharmacy benefit manager
22 who has not registered with the Louisiana secretary of state to conduct business
23 within the state.

24 C. Each license and permit shall be valid only for the applicant listed on
25 the application.

26 D. A pharmacy benefit manager license or permit is not transferable.

27 (1) No license or permit shall be subject to sale, assignment or other
28 transfer, voluntary or involuntary.

29 (2) In the event the ownership of the pharmacy benefit manager changes

1 by fifty percent or more after the initial issuance of the license or permit, the
2 ownership will be deemed sufficiently different as to require a new pharmacy
3 benefit manager license or permit.

4 (3) The continued operation of a pharmacy benefit manager under a
5 license or permit issued pursuant to this Chapter after its ownership has
6 changed by fifty percent or more shall constitute sufficient basis for finding that
7 the pharmacy benefit manager is operating in this state without a valid license
8 or permit in violation of this Chapter.

9 §2866. General applicability

10 A. The licensure and regulation requirements set forth pursuant to this
11 Chapter shall apply generally to any pharmacy benefit manager regardless of
12 plan or benefit financing.

13 B. Nothing in this Chapter shall be construed to require coverage of any
14 specific drug in any health plan, but shall apply once a drug is covered or
15 included on a health plan formulary.

16 §2867. Pharmacy benefit manager; regulation by commissioner of insurance;
17 applicability of the Louisiana Insurance Code

18 A. Every pharmacy benefit manager that does business in this state shall
19 be licensed as a third party administrator by the commissioner of insurance
20 pursuant to R. S. 22:1657.

21 B. Every pharmacy benefit manager licensed by the commissioner of
22 insurance shall abide by the provisions of the Louisiana Insurance Code and the
23 rules and regulations of the insurance commissioner and the Department of
24 Insurance regarding the pharmacy benefit manager's business regulated by the
25 commissioner of insurance.

26 §2868. Pharmacy benefit manager; regulation by Board of Pharmacy;
27 requirements for licensure and permitting; attestation; penalties

28 A. A pharmacy benefit manager shall obtain and maintain a license and
29 permit from the Board of Pharmacy if the pharmacy benefit manager

1 administers, develops, maintains, performs, or provides one or more of the
2 following pharmacy services in this state or that affects one or more
3 beneficiaries of a pharmacy benefit management plan administered by the
4 pharmacy benefit manager:

5 (1) Adjudication of appeals or grievances related to prescription drug
6 coverage.

7 (2) Disease management programs. A "disease management program"
8 means a program adopted to guide and care for beneficiaries with chronic
9 health problems to improve the quality of healthcare provided to them and
10 prevent future need for medical resources by using an integrated
11 comprehensive approach.

12 (3) Drug formularies. A "drug formulary" means a list of prescription
13 medications or pharmaceutical products developed and approved by each
14 health plan that may be dispensed to a beneficiary through participating
15 pharmacies. Drug formulary may also be referred to as a "preferred drug list",
16 "prior authorization list", or "pharmacopeia".

17 (4) Drug regimen reviews. A "drug regimen review" means third-party
18 review of all medications a beneficiary is currently using, whether prescribed
19 or over the counter, and administered by any method.

20 (5) Prescription drug management programs. A "prescription drug
21 management program" means a program developed and designed to administer
22 the prescription drug benefit as part of a health plan, and as part of such
23 administration a PBM may contract with pharmacies for implementation and
24 dispensing drugs in accordance with the program.

25 (6) Processing of prior authorization requests. "Processing of prior
26 authorization requests" means making a determination regarding payment
27 coverage based on an advance approval request submitted by a physician or
28 other healthcare provider before a specific procedure, service, device, supply,
29 or medication is delivered to the beneficiary.

1 **(7) Quality care dosing services. "Quality care dosing services" means**
2 **electronically checking prescription medications before they are filled at the**
3 **pharmacy to ensure that the quantity and dosage is consistent with the**
4 **recommendations of the Food and Drug Administration (FDA) and others.**

5 **(8) Step therapy procedures. A "step therapy procedure" means**
6 **protocols and policies that establish a specific sequence in which prescription**
7 **drugs for a medical condition are approved for coverage by a health plan for a**
8 **beneficiary which generally requires cheaper drugs to be used before more**
9 **costly drugs. Step therapy may also be referred to as "fail first" protocol.**

10 **(9) Utilization management and utilization reviews. "Utilization**
11 **management" and "utilization review" mean third-party review and approval**
12 **of appropriateness and necessity of care that a healthcare provider has**
13 **indicated for a beneficiary prior to delivery and coverage of such care.**

14 **(10) Any other act, service, operation, or transaction incidental to or**
15 **forming a part of the compounding, filling, dispensing, exchanging, giving,**
16 **offering for sale, or selling drugs, medicines, poisons, or devices in this state by**
17 **pharmacists or pharmacies, pursuant to a prescription or an order of**
18 **physicians, dentists, veterinarians, or other licensed practitioners, requiring,**
19 **involving, or employing the science or art of any branch of the pharmacy**
20 **profession, study, or training.**

21 **B. Every pharmacy benefit manager licensed or permitted by the Board**
22 **of Pharmacy shall abide by the applicable provisions of the Louisiana Pharmacy**
23 **Practice Act and the rules and regulations of the Board of Pharmacy.**

24 **C. The licensure and permitting requirements of this Section shall not**
25 **apply to a pharmacy benefit manager that does not perform any of the**
26 **pharmacy services listed in this Section. Any pharmacy benefit manager that**
27 **does not perform any of the pharmacy services listed in this Section may do**
28 **business in this state or on behalf of a beneficiary without obtaining a license**
29 **and permit from the Board of Pharmacy by filing an attestation clause with the**

1 Board of Pharmacy on a form approved by the board, and in accordance with
2 the regulations established by the board.

3 D. If any pharmacy benefit manager administers, develops, maintains,
4 performs, or provides one or more of the pharmacy services listed in this
5 Section in this state or that affects one or more beneficiaries of a pharmacy
6 benefit management plan administered by the pharmacy benefit manager after
7 filing an attestation without first obtaining a license and permit from the Board
8 of Pharmacy may be subject to any or all of the following penalties:

9 (1) A civil fine of up to five thousand dollars per violation, with each day
10 the violation occurs being a separate violation.

11 (2) Suspension or revocation of the license or permit, or both, issued by
12 the Board of Pharmacy.

13 (3) Placement of the license or permit, or both, on probation.

14 (4) Criminal prosecution under R.S. 14:133(A)(3) for filing false public
15 records.

16 §2869. Pharmacy benefit manager; regulation by Louisiana State Board of

17 Medical Examiners; requirements for licensure; attestation;
18 penalties

19 A. A pharmacy benefit manager shall obtain and maintain a license from
20 the Board of Medical Examiners if the pharmacy benefit manager administers,
21 develops, maintains, performs, or provides one or more of the following acts or
22 services in this state that affects one or more beneficiaries of a pharmacy benefit
23 management plan administered by the pharmacy benefit manager:

24 (1) Altering in any way the exact prescription generated by a physician
25 or other prescribing practitioner if the prescription is for a drug covered on the
26 health plan formulary.

27 (2) Changing or substituting any prescription generated by a prescribing
28 practitioner for a beneficiary in this state.

29 (3) Restricting early refills on maintenance drugs.

1 (4) Requiring a beneficiary that has been stabilized on a drug to
2 participate in a step therapy procedure, to change drugs, or to participate in a
3 treatment program that does not utilize the stabilizing drug.

4 (5) Delaying the decision on a request for authorization to dispense a
5 prescription drug past the time that the drug must first be taken by the
6 beneficiary to be effective.

7 (6) Providing or performing any act or service, the practical effect of
8 which results in or directly effects the diagnosis, treatment, curing, or relieving
9 any human bodily or mental disease, condition, infirmity, deformity, defect,
10 ailment, or injury.

11 B. Every pharmacy benefit manager licensed by the Board of Medical
12 Examiners shall abide by the applicable provisions of R.S 37:1261 et seq. and
13 the rules and regulations of the board.

14 C. The licensure and permitting requirements of this Section shall not
15 apply to a pharmacy benefit manager that does not perform any of the acts
16 listed in this Section. Any pharmacy benefit manager that does not perform any
17 of the pharmacy services listed in this Section may do business in this state or
18 on behalf of a beneficiary without obtaining a license and permit from the
19 Board of Medical Examiners by filing an attestation with the board on a form
20 approved by the board, and in accordance with the regulations established by
21 the board.

22 D. If any pharmacy benefit manager commits one of the acts listed in this
23 Section in this state or affects one or more beneficiaries of a pharmacy benefit
24 management plan administered by the pharmacy benefit manager after filing
25 an attestation without first obtaining a license and permit from the Board of
26 Medical Examiners may be subject to any or all of the following penalties:

27 (1) A civil fine of up to five thousand dollars per violation, with each day
28 the violation occurs being a separate violation.

29 (2) Suspension or revocation of the license or permit, or both, issued by

1 the Board of Medical Examiners.

2 (3) Placement of the license or permit, or both, on probation.

3 (4) Criminal prosecution under R.S. 14:133(A)(3) for filing false public
4 records.

5 §2870. Prohibited acts; unfair and deceptive trade practices

6 A. A pharmacy benefit manager in Louisiana shall not:

7 (1) Commit any unfair and deceptive trade practice prohibited by R.S.
8 22:1964(15).

9 (2) Perform any act that violates the duties, obligations, and
10 responsibilities imposed under the Louisiana Insurance Code on a pharmacy
11 benefit manager as a third-party administrator under R.S. 22:1657.

12 (3) Buy, sell, transfer, or provide personal healthcare or contact
13 information of any beneficiary to any other party for any purpose with one
14 exception. A pharmacy benefit manager may provide such information
15 regarding beneficiaries of a health plan to that health plan provider if requested
16 by the health plan provider.

17 (4) Participate in "spread pricing". For purposes of this Section, "spread
18 pricing" means any amount a pharmacy benefit manager charges to or claims
19 from a health plan provider or managed care organization for payment of a
20 prescription or for pharmacy services that is in excess of the amount the
21 pharmacy benefit manager paid to the pharmacist or pharmacy who filled the
22 prescription or provided the pharmacy services.

23 (5) Directly or indirectly engage in patient steering. For purposes of this
24 Section, "patient steering" means to encourage or entice any beneficiary to
25 switch to another pharmacist or pharmacy, including a mail-order pharmacy,
26 through unsolicited advice or mass marketing directed at a beneficiary of a
27 health plan being administered by the pharmacy benefit manager. Indirect
28 steering occurs when any agent, affiliated provider, contractor, employee, or
29 subsidiary of the pharmacy benefit manager engages in the prohibited activity

1 for or to the benefit of the pharmacy benefit manager.

2 (6) Penalize a beneficiary or provide an inducement to the beneficiary
3 for the purpose of getting the beneficiary to use specific retail, mail order
4 pharmacy, or another network pharmacy provider in which a pharmacy benefit
5 manager has an ownership interest or that has an ownership interest in a
6 pharmacy benefit manager. For purposes of this Section "inducement" means
7 the providing of financial incentives, including variations in premiums,
8 deductibles, copayments, or coinsurance.

9 (7) Retroactively denying or reducing a claim of a pharmacist or
10 pharmacy for payment or demanding repayment of all or part of a claim, after
11 the claim has been approved by the pharmacy benefit manager, unless:

12 (a) The original claim was submitted fraudulently.

13 (b) The original claim payment was incorrect because the pharmacy or
14 pharmacist had already been paid for the pharmacist services.

15 (c) The pharmacist services were not rendered by the pharmacy or
16 pharmacist.

17 (8) Discriminate against any pharmacist or pharmacy in reimbursing the
18 pharmacist or pharmacy for dispensing a drug or device or providing pharmacy
19 services by paying the pharmacist or pharmacy less than the amount paid to
20 any other pharmacist or pharmacy for the same drug, device, or service.

21 (a) A pharmacy benefit manager shall not pay a pharmacist or
22 pharmacy, which is not a specialty or mail-order pharmacy or pharmacist, a
23 lesser reimbursement rate that is paid to a specialty or mail-order pharmacist
24 or pharmacy. For purposes of this Section "specialty drug" means a drug used
25 to treat a chronic or specific disease or condition that requires frequent
26 communication with other healthcare providers, extensive monitoring, case
27 management, and comprehensive counseling with the beneficiary or his
28 caregiver.

29 (b) A pharmacy benefit manager shall not reimburse local pharmacies,

1 as defined in R.S. 46:460.36(A)(3), less than it reimburses chain pharmacies,
2 mail-order pharmacies, or specialty pharmacies for the same drug or device or
3 for the same pharmacy service.

4 (c) A pharmacy benefit manager shall not reimburse a pharmacy or
5 pharmacist in this state an amount less than the amount that the pharmacy
6 benefit manager reimburses an affiliate of the pharmacy benefit manager
7 dispensing the same drug or device or for providing the same pharmacy
8 services.

9 (9) Fail to update prices as required by R.S. 22:1857.

10 (10) Fail to honor maximum allowable cost (MAC) prices as set forth in
11 R.S. 22:1863 et seq.

12 (a) Pharmacy benefit managers shall, upon request by anyone, provide
13 factual evidence of in-state Louisiana wholesalers having drug pricing that
14 support the pharmacy benefit manager's MAC prices.

15 (b) A pharmacy benefit manager shall not require a pharmacist or
16 pharmacy to purchase drugs from any particular wholesaler. However, if a
17 pharmacy benefit manager recommends or provides a wholesaler, then that
18 wholesaler must be willing and able to honor the pharmacy benefit manager's
19 MAC price, ship the order, and have receipt of the order within two business
20 days with no additional charge to the pharmacist.

21 (c) The wholesaler with the lowest price, which is listed as the MAC
22 price, is not obligated to sell or ship to a nonmember pharmacist or pharmacy.
23 If the wholesaler chooses not to sell the drug to the pharmacist or pharmacy,
24 then the MAC price set by the pharmacy benefit manager must be adjusted to
25 the price available to the pharmacist or pharmacy through another wholesaler.

26 (11) Fail to meet the payment standards established in R.S. 22:1856.

27 (12) Fail to provide detailed remittance advice to pharmacists and
28 pharmacies. All remittance advice must be in compliance with R.S. 22:1856 and
29 shall separate data for Medicare Part D claims, Medicaid claims, and

1 commercial plan claims according to processor control number (PCN).

2 (13) Fail to pay any state or local sales tax imposed on any drug, device,
3 or pharmacy services or to remit the sales tax to the appropriate pharmacist or
4 pharmacy for the tax proceeds to be forwarded to the sales tax authority.

5 (a) Every pharmacy benefit manager shall be liable for paying all sales
6 taxes due to any taxing authority imposing the sales tax. A pharmacy benefit
7 manager who does not pay the sales tax shall be liable for the tax, interest,
8 penalties, and any other fees or costs imposed by law for failure to pay sales
9 taxes.

10 (b) No pharmacy benefit manager shall deduct the taxes from any
11 amount due to a pharmacist or pharmacy for a drug, device, or pharmacy
12 service.

13 (c) All pharmacy benefit managers who pay any out-of-state pharmacist
14 or pharmacy for drugs or devices shipped to a beneficiary in this state or for
15 pharmacy services rendered to a beneficiary which is taxable in this state shall
16 remit the tax directly to the appropriate taxing authority.

17 (d) Any pharmacist or pharmacy who does not receive sales tax proceeds
18 from a pharmacy benefit manager for any drug, device, or pharmacy service
19 which is subject to sales taxes shall have no responsibility for payment of the
20 taxes if the pharmacist or pharmacy provides written notification to the
21 appropriate taxing authority of the pharmacy benefit manager's failure to remit
22 the sales taxes at the time the next sales tax return is due to be filed.

23 (14) Alter, change, substitute, or delay in any way the exact prescription
24 issued by a physician or other prescribing practitioner to a beneficiary if the
25 prescription is for a drug covered on the health plan formulary, except as
26 provided herein.

27 (a) A pharmacy benefit manager may alter, change, substitute, or delay
28 a prescription if the pharmacy benefit manager has written consent of the
29 beneficiary to enter into a prescriber-patient relationship with the beneficiary

1 and only after a personal consultation with the beneficiary has taken place.

2 (b) No beneficiary shall be forced to enter into a prescriber-patient
3 relationship with a pharmacy benefit manager.

4 (c) No health plan coverage that a beneficiary is eligible for shall be
5 conditioned on the beneficiary entering into a prescriber-patient relationship
6 with a pharmacy benefit manager.

7 (d) No prescriber-patient relationship between a beneficiary and a
8 pharmacy benefit manager shall preclude the beneficiary from having access
9 to any provider in his plan network and being prescribed medication or medical
10 devices by that healthcare provider.

11 (15) Restrict early refills on maintenance drugs to an amount less than
12 seven days.

13 (16) Require a beneficiary who has been stabilized on a drug to
14 participate in a step therapy procedure if the drug has been prescribed by the
15 beneficiary's physician and is covered by the patient's health plan.

16 (17) Delay the decision on a request for authorization to dispense a
17 prescription drug past the time that the drug must first be taken by the
18 beneficiary to be effective.

19 (18) Exploit prescription drug information obtained from beneficiaries
20 for monetary gain or economic power over beneficiaries, pharmacists, or
21 pharmacies.

22 (19) Sell, exchange, or use in any manner prescription drug information
23 regarding a beneficiary obtained through a beneficiary's use of a prescription
24 for purposes of marketing, solicitation, consumer steering, referral, or any other
25 practice or act that provides the pharmacy benefit manager or any of its
26 affiliates or subsidiaries economic power or control over pharmacists or
27 pharmacies or interfere in the free choice of a beneficiary.

28 (20) Engage in drug repackaging and markups. A pharmacy benefit
29 manager that owns or controls a mail-order pharmacy shall not allow the

1 mail-order pharmacy to repackaged drugs and sell the repackaged items at
2 higher prices than the original average wholesale price unless beneficiaries who
3 may buy the repackaged drugs are informed in writing that the drugs have been
4 repackaged and are being sold at the higher price.

5 (21) Operate in Louisiana without having a separate license in good
6 standing, as required by this Chapter, with the Department of Insurance, the
7 Board of Pharmacy, and the Louisiana State Board of Medical Examiners,
8 unless the required attestation has been filed as provided by this Chapter.

9 B. The commission of any of the acts prohibited by this Section shall be
10 considered an unfair method of competition and unfair practice or act which
11 shall subject the violator to any and all actions, including investigative demands
12 and private actions, remedies and penalties provided for in the Unfair Trade
13 Practices and Consumer Protection Law, R.S. 51:1401 et seq.

14 (1) For purposes of this Section, a violation shall be deemed to have
15 occurred each time a prohibited act is committed. A pattern or practice of
16 habitual violation need not be proved.

17 (2) Each day that a pharmacy benefit manager operates without any of
18 the licenses or permits required by this Chapter or operates in violation of an
19 attestation filed by the pharmacy benefit manager shall be deemed a separate
20 violation.

21 §2871. Enforcement

22 A. Notwithstanding any provision of law to the contrary, enforcement of
23 the Pharmacy Benefit Manager Licensing Law shall be as follows:

24 (1) The commissioner of insurance, Board of Pharmacy, and Board of
25 Medical Examiners, hereinafter referred to in this Section as "regulatory
26 bodies", shall be responsible for conducting random compliance audits relative
27 to ensure compliance with this Chapter.

28 (2) A pharmacy benefit manager doing business in Louisiana shall make
29 itself open and available to comply with compliance audit data requests.

1 (3) Compliance audits may be desk audits conducted based on data
2 provided by the pharmacy benefit manager.

3 B. The regulatory bodies shall be responsible for conducting complaint
4 investigations as expeditiously as possible upon receipt of a complaint that a
5 pharmacy benefit manager is in violation of this Chapter, the Insurance Code,
6 the Louisiana Pharmacy Practice Act, or R.S. 37:1261 et seq.

7 (1) Each regulatory body shall be responsible for investigating
8 complaints that fall within the jurisdiction of that regulatory body.

9 (2) If a regulatory body receives a complaint that it believes is outside its
10 jurisdiction, then that regulatory body shall refer it to the appropriate
11 regulatory body.

12 (3) On the first day of every month the regulatory bodies shall submit
13 to the attorney general a report of complaints and the date the complaint was
14 received during the prior calendar month in a format prescribed by the
15 attorney general. The report shall include a cumulative list of all complaints
16 until final disposition.

17 C. Upon completion of a compliance audit or complaint investigation, the
18 regulatory body may recommend to the attorney general:

19 (1) No action against the pharmacy benefit manager.

20 (2) Imposition of a fine for each violation not to exceed five thousand
21 dollars per violation.

22 (3) Probation, suspension, or revocation of a license or permit.

23 (4) Imposition of a fine and probation, suspension, or revocation of a
24 license or permit.

25 D. Upon completion of a compliance audit or complaint investigation the
26 entire investigation case file and recommendation of the regulatory body shall
27 be submitted to the Louisiana Department of Justice Consumer Affairs Division
28 for review and action by the attorney general.

29 E. Upon receipt of the compliance audit or investigation case file, or

1 upon lapse of action by the regulatory body for one hundred eighty days after
2 receipt of a complaint, the attorney general shall obtain full jurisdiction over
3 the matter.

4 F. The attorney general may take the following action upon receipt of a
5 file:

6 (1) Accept the recommendation of the regulatory body if that body's
7 recommendation is to take no action.

8 (2) Find, based on the regulatory body's file, that no action is warranted
9 and close the file.

10 (3) Conduct an independent review or investigation of the complaint to
11 determine if an administrative adjudicatory hearing is warranted.

12 (4) Direct that an administrative adjudicatory hearing be conducted to
13 determine if one or more violations have occurred.

14 G. The attorney general shall have all the powers granted to him under
15 R.S. 51:1413 to enforce his investigative demands and issue subpoenas.

16 H. If the attorney general believes that one or more violations have
17 occurred then he shall conduct an administrative adjudicatory hearing to
18 determine if one or more violations have occurred.

19 (1) The administrative adjudicatory hearing shall be conducted in
20 accordance with the provisions of the Louisiana Administrative Procedure Act.

21 (2) The attorney general may preside as the hearing officer or designate
22 an assistant attorney general to preside as the hearing officer. If the attorney
23 general is not the hearing officer then the hearing officer shall file a proposed
24 findings of fact and conclusions of law with the attorney general along with his
25 recommendation of any penalty to be imposed.

26 (3) The regulatory body with jurisdiction over the matter in the
27 complaint shall prosecute the action before the attorney general.

28 (4) The attorney general shall issue the final decision in the matter.

29 (5) The attorney general may impose any or all of the following penalties:

1 **(a) A civil fine of up to five thousand dollars per violation, with each day**
2 **the violation occurs being a separate violation.**

3 **(b) Suspension or revocation of any or all of the licenses and permits**
4 **issued by the commissioner of insurance, the Board of Pharmacy, and the**
5 **Louisiana State Board of Medical Examiners.**

6 **(c) Placement of any or all of the licenses and permits on probation.**

7 **(6) The decision of the attorney general shall be appealable in accordance**
8 **with the Louisiana Administrative Procedure Act.**

9 **I. If a license or permit is suspended, revoked, or placed on probation by**
10 **the attorney general then the regulatory body that issued the license or permit**
11 **shall immediately take the appropriate action to enforce the decision of the**
12 **attorney general.**

13 **J. Nothing in this Section shall be construed as a limitation on the**
14 **attorney general's power to negotiate and enter into a stipulation or consent**
15 **decree with a pharmacy benefit manager in lieu of proceeding to a hearing on**
16 **the matter relative to violations of this Chapter.**

17 Section 4. If any provision or item of this Act, or the application thereof, is held
18 invalid, such invalidity shall not affect other provisions, items, or applications of the act
19 which can be given effect without the invalid provision, item, or application and to this end
20 the provisions of this Act are hereby declared severable.

21 Section 5. This Act shall become effective upon signature by the governor or, if not
22 signed by the governor, upon expiration of the time for bills to become law without signature
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become
25 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Christine Arbo Peck.

DIGEST

SB 41 Original

2019 Regular Session

Mills

Present law provides that pharmacy benefit managers must be licensed by the Louisiana Department of Insurance as third party administrators.

Proposed law establishes the Louisiana "Pharmacy Benefit Manager Licensing Law" to provide substantive requirements for obtaining and maintaining licensure to operate in Louisiana in order to protect the health, safety, and welfare of our citizens, to regulate the practice of pharmacy and actions that threaten pharmacy access, and to regulate the practice of medicine and actions that impede medical decisions.

Proposed law requires pharmacy benefit managers to be licensed by the Commissioner of Insurance and the Louisiana State Board of Medical Examiners and to be licensed and permitted by the Louisiana Board of Pharmacy. Proposed law identifies those three agencies collectively as "regulatory bodies". Proposed law requires pharmacy benefit managers to be licensed and permitted and in good standing with all three regulatory bodies in order to operate in Louisiana.

Proposed law provides for rulemaking by the Louisiana Board of Pharmacy and the Louisiana State Board of Medical Examiners and proposed law provides both boards with fee assessment authority in the amount of \$500 for an initial license, \$500.00 for an annual renewal, and \$500 for annual reporting.

Proposed law provides for regulation by the Louisiana Board of Pharmacy relative to prohibited actions on prescription drugs and regulation by the Louisiana State Board of Medical Examiners relative to prohibited actions on prescriptive authority of those drugs.

Proposed law provides legislative intent and public health policy findings. Proposed law provides definitions.

Proposed law establishes a fiduciary duty to the beneficiaries of any pharmacy benefit management plan and to the pharmacists and pharmacies who provide pharmacy services to those beneficiaries.

Proposed law provides general licensing and permitting requirements. Proposed law provides for general applicability.

Proposed law provides for civil fines of up to five thousand dollars for every violation, civil penalties including suspension, revocation, or placement of the license on probation, and criminal prosecution for filing false records.

Proposed law provides a listing of acts or omissions that are deemed unfair and deceptive trade practices. Proposed law provides that commission of any of the unfair and deceptive trade practices shall subject the pharmacy benefit manager to any and all actions, including investigative actions and private rights of action. Proposed law provides for remedies and penalties under the Unfair Trade Practices and Consumer Protection Law.

Proposed law provides for enforcement of the Pharmacy Benefit Manager Licensing Law. Proposed law authorizes the regulatory bodies to conduct random compliance audits and complaint investigations. Proposed law requires a monthly report of opened complaints to be submitted to the attorney general.

Proposed law grants enforcement authority to the attorney general. Proposed law provides

for a review process, administrative hearing, administrative ruling, and penalties that may be assessed by the attorney general. Proposed law provides for the decision of the attorney general to be appealable in accordance with the Louisiana Administrative Procedure Act.

Proposed law provides that nothing in proposed law shall be construed as a limitation on the power of the attorney general to negotiate or enter into a stipulation or consent decree with a pharmacy benefit manager.

Proposed law provides for severability.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 22:1657(B); adds R.S. 37:1252 through 1254 and 1360.121 through 1360.123, and R.S. 40:2861 through 2871)