

2019 Regular Session

SENATE BILL NO. 48

BY SENATOR MILLS

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

MEDICAID. Provides relative to Medicaid pharmacy services. (8/1/19)

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AN ACT

To amend and reenact R.S. 39:1648 and R.S. 46:153.3(A) and (B)(2)(a), relative to Medicaid pharmacy services; to provide for the administration of Medicaid pharmacy services; to provide for compliance with licensure under state law; to provide for procurement of a single pharmacy benefit manager contract; to provide for minimum contract requirements; to provide for contract award disqualification; to provide for a single preferred drug list; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 39:1648 is hereby amended and reenacted to read as follows:

§1648. Medicaid contracts ~~or subcontracts~~ for pharmacy benefit manager services

A. Effective January 1, 2021, the Louisiana Department of Health shall assume direct staff administrative responsibility for the Medicaid pharmacy program or contract with a single pharmacy benefit manager to administer the program. If the department elects to administer the program under a single contract, it shall be procured in accordance with the Louisiana Procurement Code, R.S. 39:1551 et seq., to be effective January 1, 2021. Notwithstanding any provision of law to the contrary, a single pharmacy benefit manager contract

1 shall require adherence to all provisions of state law regarding the licensure and
2 state regulation of pharmacy benefit managers, including but not limited to
3 those in Title 22 of the Louisiana Revised Statutes of 1950. In addition, a single
4 pharmacy benefit manager contract shall, at a minimum, include the following
5 contract provisions: ~~Contracts for pharmacy benefit manager services, either~~
6 ~~directly with the Louisiana Department of Health or as a subcontractor or subsidiary~~
7 ~~of a managed care organization that has a contract with the Louisiana Department~~
8 ~~of Health, shall be awarded based only on the following provisions:~~

9 (1) Any contract for pharmacy benefit manager services shall be limited to
10 a transaction fee ~~only, based on a set rate established by the Louisiana Department~~
11 ~~of Health~~ to be paid to the pharmacy benefit manager for each Medicaid pharmacy
12 claim processed. The amount of the transaction fee shall be set through
13 competitive bid in accordance with the procurement process provided for in this
14 Section.

15 (2) No pharmacy benefit manager may retain any portion of state
16 supplemental rebates or credits submitted to the state by any pharmaceutical
17 manufacturer.

18 (3) No pharmacy benefit manager may retain any portion of "spread pricing".
19 For purposes of this Section, "spread pricing" shall mean any amount charged or
20 claimed by a pharmacy benefit manager to a managed care organization that is in
21 excess of the amount paid to the pharmacy that filled the prescription.

22 (4) No pharmacy benefit manager may buy, sell, transfer, or provide
23 Medicaid recipient personal healthcare or contact information to any other
24 party, including subsidiaries of the pharmacy benefit manager, for any purpose
25 unless specifically authorized to do so by the department, and under no
26 circumstance may such activity be for the purpose of patient steering. For
27 purposes of this Section, "patient steering" means encourage or entice any
28 Medicaid recipient to switch to any pharmacy, including a mail-order
29 pharmacy, through unsolicited advice or mass-marketing directed at a

1 Medicaid recipient by a pharmacy benefit manager, including any employees,
2 affiliated providers, agents, or contractors, that is intended to influence or can
3 reasonably be concluded to influence the Medicaid recipient to change
4 pharmacies.

5 (5) No pharmacy benefit manager shall deny any Louisiana licensed
6 pharmacy or Louisiana licensed pharmacist the right to be a participating
7 provider in the pharmacy benefit manager's provider network if the pharmacy
8 or pharmacist meets all requirements of participation in the state Medicaid
9 program.

10 (6) No pharmacy benefit manager shall deduct healthcare provider fees
11 due to the state pursuant to R.S. 46:2625 from any amount due as
12 reimbursement to a pharmacist or pharmacy.

13 (7) No pharmacy benefit manager shall deduct sales taxes owed to any
14 taxing authority imposing the sales tax pursuant to R.S. 47:337.11.1 from any
15 amount due as reimbursement to a pharmacist or pharmacy.

16 B. Any Louisiana Department of Health contract in existence on ~~August 1,~~
17 2018 **January 1, 2021**, with a ~~pharmacy benefit manager or with a~~ managed care
18 organization that subcontracts or has a subsidiary pharmacy benefit manager ~~may~~
19 **shall** be amended to comply with the provisions of this Section. The department ~~may~~
20 **shall** terminate the contract with any managed care organization ~~or pharmacy benefit~~
21 ~~manager~~ who is not willing to amend their contract to comply with the provisions of
22 this Section, ~~and the provision of this service shall be opened for bid to other~~
23 ~~pharmacy benefit managers in accordance with the Louisiana Procurement Code,~~
24 ~~R.S. 39:1551 et seq.~~

25 C. After ~~August 1, 2018~~ **January 1, 2021**, any subsequent requests for
26 proposal issued by the Louisiana Department of Health for Medicaid ~~managed care~~
27 ~~organization services that include the provision of pharmacy or pharmacy benefit~~
28 ~~manager services shall include, at a minimum,~~ the provisions of ~~Subsection A of~~
29 this Section.

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(2)(a) The department ~~may~~ shall establish a **single preferred** drug list that utilizes a prior approval process or any other process or combination of processes that prove to be cost-effective in the medical assistance program. **The single preferred drug list shall include all covered therapeutic drug classes that are subject to prior authorization.** At a minimum any prior approval process shall meet all of the following criteria:

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

DIGEST

SB 48 Original 2019 Regular Session Mills

Present law provides minimum requirements for Medicaid pharmacy benefit manager (PBM) services. Proposed law retains the minimum requirements in present law, adds additional minimum requirements, and provides effective January 1, 2021, administration of the Medicaid pharmacy program shall be by the Louisiana Department of Health or pursuant to a single PBM contract awarded in a competitive bid process in compliance with the Louisiana Procurement Code.

Proposed law disqualifies any PBM from being awarded the contract established in proposed law if they have been in violation of the provisions in present law relative to remittance of the pharmacy healthcare provider fee or the pharmacy local sales and use tax.

Present law authorizes the Louisiana Department of Health to implement a prior approval process for Medicaid prescription drugs. Proposed law retains present law and mandates a single preferred drug list that shall include all therapeutic drug classes that are subject to prior authorization.

Effective August 1, 2019.

(Amends R.S. 39:1648 and R.S. 46:153.3(A) and (B)(2)(a))