

SENATE FLOOR AMENDMENTS

2019 Regular Session

Amendments proposed by Senator Claitor to Engrossed Senate Bill No. 41 by Senator Mills

1 AMENDMENT NO. 1

2 On page 1, line 2, after "1867" delete the comma "," and delete the remainder of the line and
3 delete lines 3 through 5 insert "and Subpart P of Part III of Chapter 4 of Title 22 of the
4 Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1260.41 through 1260.49,
5 relative to"

6 AMENDMENT NO. 2

7 On page 1, delete lines 9 through 14, and insert "provide"

8 AMENDMENT NO. 3

9 On page 1, line 17, after "reenacted and" insert "Subpart P of Part III of Chapter 4 of Title
10 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1260.41 through
11 1260.49, and"

12 AMENDMENT NO. 4

13 On page 2, between lines 1 and 2 insert the following:

14 **"SUBPART P. REGULATION OF PHARMACY BENEFIT MANAGERS**

15 **§1260.41. Legislative intent and public health policy**

16 **It is the intent of the legislature that the purpose of this Subpart is to**
17 **license, permit, and monitor pharmacy benefit managers to provide for the**
18 **effective control and regulation of their activities, maintain and enforce order**
19 **regarding the prescribing, dispensing, marketing, selling, managing, and use of**
20 **prescription drugs in this state, and to protect the health, safety, and general**
21 **welfare of the citizens and residents of this state.**

22 **§1260.42. Short title**

23 **This Subpart shall be known and may be cited as the "Pharmacy Benefit**
24 **Manager Licensing Law".**

25 **§1260.43. Definitions**

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

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

29 **(2) "Commissioner of insurance" means the Louisiana commissioner of**
30 **insurance.**

31 **(3) "Department of Insurance" means the Louisiana Department of**
32 **Insurance.**

33 **(4) "Health plan" means an individual or group plan or program,**
34 **whether commercial, self-insured, or mandated or sponsored by any federal,**
35 **state, or local government, which is established by contract, certificate, law,**
36 **plan, policy, subscriber agreement, or by any other method and which is**
37 **entered into, issued, or offered for the purpose of arranging for, delivering,**
38 **paying for, providing, or reimbursing any of the costs of health or medical care,**
39 **including pharmacy services, drugs, or devices.**

40 **(5) "Pharmacy benefit management plan" or "pharmacy benefits**
41 **program" means a plan or program that pays for, reimburses, covers the cost**
42 **of, or otherwise provides for pharmacist services, drugs, or devices to**
43 **individuals who reside in or are employed in Louisiana.**

44 **(6) "Pharmacy benefit manager" or "PBM" means any person or**
45 **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 §1260.44. Duties of pharmacy benefit managers

7 A. A pharmacy benefit manager shall owe the beneficiaries of any
 8 pharmacy benefit management plan administered by the pharmacy benefit
 9 manager and to the entities that have entered into a contract with the pharmacy
 10 benefit manager the duties of good faith, honesty, trust, confidence, and candor.

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

16 §1260.45. General licensing requirements

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

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

23 C. Each license shall be valid only for the applicant listed on the
 24 application.

25 D. A pharmacy benefit manager license is not transferable.

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

28 (2) In the event the ownership of the pharmacy benefit manager changes
 29 by fifty percent or more after the initial issuance of the license, the ownership
 30 will be deemed sufficiently different as to require a new pharmacy benefit
 31 manager license.

32 (3) The continued operation of a pharmacy benefit manager under a
 33 license issued pursuant to this Subpart after its ownership has changed by fifty
 34 percent or more shall constitute sufficient basis for finding that the pharmacy
 35 benefit manager is operating in this state without a valid license in violation of
 36 this Subpart.

37 §1260.46. General applicability

38 A. The licensure and regulation requirements set forth pursuant to this
 39 Subpart shall apply generally to any pharmacy benefit manager regardless of
 40 plan or benefit financing.

41 B. Nothing in this Subpart shall be construed to require coverage of any
 42 specific drug in any health plan, but shall apply once a drug is covered or
 43 included on a health plan formulary.

44 §1260.47. Pharmacy benefit manager; regulation by commissioner of
 45 insurance; applicability of the Louisiana Insurance Code

46 A. Every pharmacy benefit manager that does business in this state shall
 47 be licensed as required by the Louisiana Insurance Code.

48 B. Every pharmacy benefit manager licensed by the commissioner of
 49 insurance shall abide by the provisions of the Louisiana Insurance Code and the
 50 rules and regulations of the insurance commissioner and the Department of
 51 Insurance regarding the pharmacy benefit manager's business regulated by the
 52 commissioner of insurance.

53 §1260.48. Pharmacy benefit manager; regulation; functions; subject to
 54 licensure

55 A. A pharmacy benefit manager shall obtain and maintain a license
 56 from the Department of Insurance if the pharmacy benefit manager
 57 administers, develops, maintains, performs, or provides one or more of the
 58 following pharmacy services in this state or that affects one or more
 59 beneficiaries of a pharmacy benefit management plan administered by the
 60 pharmacy benefit manager:

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

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

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

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

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

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

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

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

35 (9) Utilization management and utilization reviews. "Utilization
 36 management" and "utilization review" mean third-party review and approval
 37 of appropriateness and necessity of care that a healthcare provider has
 38 indicated for a beneficiary prior to delivery and coverage of such care.

39 (10) Any other act, service, operation, or transaction incidental to or
 40 forming a part of the compounding, filling, dispensing, exchanging, giving,
 41 offering for sale, or selling drugs, medicines, poisons, or devices in this state by
 42 pharmacists or pharmacies, pursuant to a prescription or an order of
 43 physicians, dentists, veterinarians, or other licensed practitioners, requiring,
 44 involving, or employing the science or art of any branch of the pharmacy
 45 profession, study, or training.

46 B. Every pharmacy benefit manager licensed by the Department of
 47 Insurance shall abide by the applicable provisions of the Louisiana Pharmacy
 48 Practice Act and the rules and regulations of the board of pharmacy.

49 C. The requirements of this Section shall not apply to a pharmacy benefit
 50 manager that does not perform any of the pharmacy benefit manager services
 51 listed in this Section. Any pharmacy benefit manager that does not perform any
 52 of the services listed in this Section may do business in this state or on behalf of
 53 a beneficiary without obtaining a license.

54 D. If any pharmacy benefit manager administers, develops, maintains,
 55 performs, or provides one or more of the services listed in this Section in this
 56 state or that affects one or more beneficiaries of a plan administered by the
 57 pharmacy benefit manager after filing an attestation without first obtaining a
 58 license from the Department of Insurance may be subject to any or all of the
 59 following penalties:

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

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

3 (3) Placement of the license on probation.

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

6 §1260.49. Investigations; interagency cooperation

7 The Department of Insurance shall have the authority to inquire with
8 and make requests of other state agencies and boards when an investigation of
9 a pharmacy benefit manager necessitates additional expertise. The department
10 may employ memorandums of understanding, cooperative endeavor
11 agreements, and other appropriate means between such entities to effectuate
12 this Section.

13 * * *

14 AMENDMENT NO. 5

15 On page 3, delete line 29 and delete pages 4 through 18 in their entirety and on page 19
16 delete line 1 through 14

17 AMENDMENT NO. 6

18 On page 19, line 15, change "Section 4." to "Section 2."

19 AMENDMENT NO. 7

20 On page 19, line 19, delete lines 19 through 23 and insert in lieu thereof:

21 "Section 3. The provisions of this Act shall become effective July 1,
22 2020."