

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 the regulation of pharmacy benefit managers.
(See Act)

AN ACT

To amend and reenact R.S. 22:1863(2) and to enact R.S. 22:1863(9) and 1867, 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, 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; 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 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.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1863(2) is hereby amended and reenacted and R.S. 22:1863(9)

1 and 1867 are hereby enacted to read as follows:

2 §1863. Definitions

3 As used in this Subpart, the following definitions apply:

4 * * *

5 (2) "Maximum Allowable Cost List" means a listing of the National Drug
6 Code used by a pharmacy benefit manager setting the maximum allowable cost on
7 which reimbursement to a pharmacy or pharmacist may be based. **"Maximum**
8 **Allowable Cost List" shall include any term that a pharmacy benefit manager**
9 **or a healthcare insurer may use to establish reimbursement rates for generic**
10 **and multi-source brand drugs to a pharmacist or pharmacy for pharmacist**
11 **services. The term "Maximum Allowable Cost List" shall not include any rate**
12 **mutually agreed to and set forth in writing in the contract between the**
13 **pharmacy benefit manager and the pharmacy. However, this definition shall not**
14 **be interpreted to preclude a pharmacy benefit manager from establishing**
15 **effective rate pricing for a pharmacist or pharmacy that is not a local pharmacy**
16 **or local pharmacist as defined in R.S. 46:460.36(A)(3).**

17 * * *

18 (9) **"Spread pricing" means any amount a pharmacy benefit manager**
19 **charges or claims from a health plan provider or managed care organization for**
20 **payment of a prescription or for pharmacy services that is different than the**
21 **amount the pharmacy benefit manager paid to the pharmacist or pharmacy**
22 **who filled the prescription or provided the pharmacy services.**

23 * * *

24 **§1867. Prohibition on spread pricing; notice exception**

25 **A. A pharmacy benefit manager is prohibited from conducting or**
26 **participating in spread pricing in this state unless the pharmacy benefit**
27 **manager provides written notice as provided in Subsection B of this Section.**

28 **B. The notice issued by a pharmacy benefit manager, or a health**
29 **insurance issuer where the health insurance issuer has agreed to issue the**

1 notice, that utilizes spread pricing shall be:

2 (1) Required for each health insurance issuer or plan provider in which
3 the pharmacy benefit manager engaged or participated in spread pricing.

4 (2) Delivered to the policyholder.

5 (3) Provided at least biannually.

6 (4) The aggregate amount of spread pricing charged by the pharmacy
7 benefit manager during the period.

8 (5) Written in plain, simple, and understandable English.

9 C. Any violation of this Section that is committed or performed with such
10 frequency as to indicate a general business practice shall be subject to the
11 provisions of the Unfair Trade Practices and Consumer Protection Law, R.S.
12 51:1401 et seq.

13 * * *

14 Section 2. Part VII of Chapter 14 of Title 37 of the Louisiana Revised Statutes of
15 1950, comprised of R.S. 37:1252 through 1254, is hereby enacted to read as follows:

16 **PART VII. PHARMACY BENEFIT MANAGERS**

17 **§1252. Louisiana Board of Pharmacy; authority to regulate pharmacy benefit**
18 **managers**

19 **A. Pursuant to the authority vested in the board in this Chapter and as**
20 **specifically provided for in the Pharmacy Benefit Manager Licensing Law, R.S.**
21 **40:2861 et seq., the board shall create and issue a permit for pharmacy benefit**
22 **managers as defined in R.S. 40:2863.**

23 **B. A pharmacy benefit manager may be but is not required to be**
24 **permitted under Part IV of this Chapter if it administers, develops, maintains,**
25 **performs, or provides one or more pharmacy services in this state or that affects**
26 **one or more beneficiaries of a pharmacy benefit management plan administered**
27 **by the pharmacy benefit manager, as set forth in R.S. 40:2868.**

28 **§1253. Pharmacy benefit managers; permit; annual report; fees**

29 **A. The board shall promulgate rules and regulations to implement the**

1 provisions of this Part and the applicable provisions of the Pharmacy Benefit
 2 Manager Licensing Law.

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

6 C. The board has the authority and responsibility to assess fees upon any
 7 entity practicing pharmacy in this state in accordance with R.S. 37:1184.

8 **§1254. Pharmacy benefit managers; enforcement**

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

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

13 **CHAPTER 36. REGULATION OF PHARMACY BENEFIT MANAGERS**

14 **§2861. Legislative intent and public health policy**

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

21 **§2862. Short title**

22 This Chapter shall be known and may be cited as the "Pharmacy Benefit
 23 Manager Licensing Law".

24 **§2863. Definitions**

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

26 (1) "Attorney general" means the Louisiana attorney general.

27 (2) "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 (3) "Board of Pharmacy" means the Louisiana Board of Pharmacy.

1 (4) "Commissioner of insurance" means the Louisiana commissioner of
2 insurance.

3 (5) "Department of Insurance" means the Louisiana Department of
4 Insurance.

5 (6) "Department of Justice" means the Louisiana Department of Justice.

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

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

17 (9) "Pharmacy benefit manager" or "PBM" means any person or
18 business who administers the prescription drug or device program of one or
19 more health plans on behalf of a third party in accordance with a pharmacy
20 benefit program. This term includes any agent or representative of a pharmacy
21 benefit manager hired or contracted by the pharmacy benefit manager to assist
22 in the administering of the drug program and any wholly or partially owned or
23 controlled subsidiary of a pharmacy benefit manager.

24 §2864. Duties of pharmacy benefit managers

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

29 B. The standard for the fulfillment of a pharmacy benefit manager's

1 duties shall be to act with a high degree of care, skill, prudence, and diligence
2 required of a reasonable and prudent person with substantial experience and
3 expertise in the management of pharmacy benefit management programs and
4 payment of claims.

5 C. Failure of a pharmacy benefit manager to satisfy the duties
6 established in this Section shall not create a separate or independent cause of
7 action nor shall it be construed to prohibit any cause of action established by or
8 recognized in federal or state law.

9 §2865. General licensing and permitting requirements

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

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

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

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

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

21 (2) In the event the ownership of the pharmacy benefit manager changes
22 by fifty percent or more after the initial issuance of the license or permit, the
23 ownership shall be deemed sufficiently different as to require a new pharmacy
24 benefit manager license or permit.

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

1 **§2866. General applicability**

2 **A. The licensure and regulation requirements set forth pursuant to this**
3 **Chapter shall apply generally to any pharmacy benefit manager regardless of**
4 **plan or benefit financing.**

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

8 **§2867. Pharmacy benefit manager; regulation by commissioner of insurance;**
9 **applicability of the Louisiana Insurance Code**

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

12 **B. Every pharmacy benefit manager licensed by the commissioner of**
13 **insurance shall abide by the provisions of the Louisiana Insurance Code and the**
14 **rules and regulations of the insurance commissioner and the Department of**
15 **Insurance regarding the pharmacy benefit manager's business regulated by the**
16 **commissioner of insurance.**

17 **§2868. Pharmacy benefit manager; regulation by Board of Pharmacy;**
18 **requirements for permitting**

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

24 **(1) Adjudication of appeals or grievances related to prescription drug**
25 **coverage.**

26 **(2) Disease management programs. A "disease management program"**
27 **means a program adopted to guide and care for beneficiaries with chronic**
28 **health problems to improve the quality of healthcare provided to them and**
29 **prevent future need for medical resources by using an integrated**

1 comprehensive approach.

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

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

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

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

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

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

29 (9) Utilization management and utilization reviews. "Utilization

1 management" and "utilization review" mean third-party review and approval
2 of appropriateness and necessity of care that a healthcare provider has
3 indicated for a beneficiary prior to delivery and coverage of such care.

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

11 B. Every pharmacy benefit manager permitted by the Board of
12 Pharmacy shall abide by the applicable provisions of the Louisiana Pharmacy
13 Practice Act and the rules and regulations of the Board of Pharmacy.

14 §2869. Pharmacy benefit manager monitoring advisory council; membership;
15 functions

16 A. There is hereby created a pharmacy benefit manager monitoring
17 advisory council, hereinafter referred to as "advisory council", that shall consist
18 of the following members, each of whom may appoint a designee:

19 (1) The commissioner of the Department of Insurance.

20 (2) The president of the Louisiana State Board of Medical Examiners.

21 (3) The president of the Louisiana Board of Pharmacy.

22 (4) The attorney general.

23 (5) The director of the Louisiana Department of Justice Consumer
24 Affairs Division.

25 (6) The secretary of the Louisiana Department of Health.

26 (7) The president of the Louisiana Academy of Physicians Assistants.

27 (8) The president of the Louisiana State Medical Society.

28 (9) The president of the Louisiana Association of Nurse Practitioners.

29 (10) The president of the Louisiana Pharmacists Association.

1 (11) The president of the Louisiana Independent Pharmacies Association.

2 (12) The president of the National Association of Chain Drug Stores.

3 (13) The president of the Pharmaceutical Research and Manufacturers
4 of America.

5 (14) The president of the Louisiana Academy of Medical Psychologists.

6 (15) The president of the Louisiana Association of Health Plans.

7 (16) The president of a pharmacy benefit manager licensed by the
8 Louisiana Board of Pharmacy, selected by the Louisiana affiliate of the
9 Pharmaceutical Care Management Association from a list of interested and
10 qualified individuals.

11 (17) The president of the Louisiana Association of Business and Industry.

12 (18) The chief executive officer of the Louisiana Business Group on
13 Health.

14 (19) The president of America's Health Insurance Plans.

15 (20) The president of the Louisiana AFL-CIO.

16 (21) The president of the Louisiana Association of Health Underwriters.

17 B. The members of the advisory council shall serve at the pleasure of
18 their respective appointing authorities. Seven members shall constitute a
19 quorum for the transaction of all business. The members shall elect a chairman
20 and vice chairman whose duties shall be established by the advisory council.
21 The member elected to serve as chairman shall fix a time and place for regular
22 meetings of the advisory council, which shall meet at least quarterly. The
23 advisory council shall establish policies and procedures necessary to carry out
24 its duties. Expenses for the administrative staffing of the advisory council shall
25 be provided for from the licensing fees paid by pharmacy benefit managers and
26 may be transferred between state agencies by memorandum of understanding
27 or cooperative endeavor agreement.

28 C. The commissioner and the board of pharmacy may utilize the full
29 advisory council or individual member agency expertise for the purpose of

1 investigating a complaint against a pharmacy benefit manager or conducting
2 an audit of a pharmacy benefit manager. In exercising the authority provided
3 for in this Subsection, the same provisions of confidentiality applicable to the
4 Department of Insurance and Louisiana Board of Pharmacy during an
5 investigation shall apply to the advisory council or individual member agencies
6 whose expertise is being utilized. The advisory council may meet in executive
7 session, as necessary, to discuss matters involving an active investigation.

8 D. The advisory council shall provide monitoring of pharmacy benefit
9 managers in Louisiana to advise the legislature, commissioner of insurance, and
10 Louisiana Board of Pharmacy on the most effective and efficient manner of
11 regulation of pharmacy benefit managers to ensure the protection of the public.
12 Any licensed pharmacy benefit manager operating in Louisiana shall provide
13 full cooperation with the advisory council on matters including but not limited
14 to those set forth in Subsection E of this Section.

15 E. The advisory council shall advise on matters that include but are not
16 limited to the licensure and regulation of pharmacy benefit managers set forth
17 in Title 22, Title 37, and Title 40 of the Louisiana Revised Statutes of 1950,
18 applicable rules and regulations of state agencies, and federal laws or rules
19 relative to pharmacy benefit managers.

20 §2870. Prohibited acts; unfair and deceptive trade practices

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

22 (1) Commit any unfair and deceptive trade practice prohibited by R.S.
23 22:1964(15).

24 (2) Perform any act that violates the duties, obligations, and
25 responsibilities imposed under the Louisiana Insurance Code on a pharmacy
26 benefit manager.

27 (3) Buy, sell, transfer, or provide personal healthcare or contact
28 information of any beneficiary to any other party for any purpose with one
29 exception. A pharmacy benefit manager may provide such information

1 regarding beneficiaries of a health plan to that health plan provider if requested
2 by the health plan provider.

3 (4) Conduct or participate in "spread pricing" as defined in R.S.
4 22:1863(9) without providing the notice required by R.S. 22:1867.

5 (5)(a) Directly or indirectly engage in patient steering to a pharmacy in
6 which the pharmacy benefit manager maintains an ownership interest or
7 control, without making a written disclosure and receiving acknowledgment
8 from the patient. The disclosure required by this Paragraph shall provide notice
9 that the pharmacy benefit manager has an ownership interest in the pharmacy,
10 and that the patient has the right under the law to use any alternate pharmacy
11 that they choose. The pharmacy benefit manager is prohibited from retaliation
12 or further attempts to influence the patient, or treat the patient or the patient's
13 claim any differently if the patient chooses to use the alternate pharmacy.

14 (b) The provisions of this Paragraph shall not apply to employers,
15 unions, associations, or other persons who employ, own, operate, control, or
16 contract directly with a pharmacy or pharmacist for the purpose of managing
17 or controlling prescription costs paid for the benefit of an employee or member
18 or those covered by the employee or member's plan, or when the persons
19 contract with a pharmacy benefit manager to steer employees or members to
20 pharmacists or pharmacies which the person owns, operates, or controls.

21 (6) Penalize a beneficiary or provide an inducement to the beneficiary
22 for the purpose of getting the beneficiary to use specific retail, mail order
23 pharmacy, or another network pharmacy provider in which a pharmacy benefit
24 manager has an ownership interest or that has an ownership interest in a
25 pharmacy benefit manager.

26 (a) For purposes of this Section "inducement" means the providing of
27 financial incentives, including variations in premiums, deductibles, copayments,
28 or coinsurance.

29 (b) The provisions of this Paragraph shall not apply to employers,

1 unions, associations, or other persons who employ, own, operate, control, or
2 contract directly with a pharmacy or pharmacist for the purpose of managing
3 or controlling prescription costs paid for the benefit of an employee or member
4 or those covered by the employee or member's plan, or when the persons
5 contract with a pharmacy benefit manager to steer employees or members to
6 pharmacists or pharmacies which the person owns, operates, or controls.

7 (7) Retroactively denying or reducing a claim of a pharmacist or
8 pharmacy for payment or demanding repayment of all or part of a claim, after
9 the claim has been approved by the pharmacy benefit manager as authorized
10 by R.S. 22:1856.1.

11 (8) Fail to reimburse a local pharmacist or local pharmacy, as defined
12 in R.S. 46:460.36(A)(3), an amount that is not greater than or equal to the
13 amount it reimburses chain pharmacies, mail-order pharmacies, specialty
14 pharmacies or affiliates of the pharmacy benefit manager for the same drug or
15 device or for the same pharmacy service in this state.

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

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

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

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

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

2 (12) Fail to provide detailed remittance advice to pharmacists and
3 pharmacies in compliance with R.S. 22:1856.

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

7 (a) A pharmacy benefit manager who does not pay the sales tax shall be
8 liable for the tax, interest, penalties, and any other fees or costs imposed by law
9 for failure to pay sales 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 or charge or pay anyone a fee or surcharge for paying any sales tax or
13 remitting any sales tax proceeds to a pharmacist or pharmacy if that fee or
14 surcharge would be imposed directly or indirectly on the pharmacist or
15 pharmacy.

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

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

26 (e) State or local sales taxes and other applicable state imposed taxes or
27 fees shall be considered as part of the allowable cost and shall be included in the
28 claim submitted by a pharmacist or pharmacy.

29 (14) Restrict early refills on maintenance drugs to an amount less than

1 seven days for a prescription of at least a thirty-day supply.

2 (15) Require a beneficiary to follow a plan's step therapy protocol if the
3 prescribed drug is on the health plan's prescription drug formulary, the
4 beneficiary has tried the step therapy required prescription drug while under
5 his current or previous health plan, and the provider has submitted a
6 justification and supporting clinical documentation that such prescription drug
7 was discontinued due to lack of efficacy or effectiveness, diminished effect, or
8 an adverse effect or event.

9 (16) Delay a decision on a request for authorization to dispense a
10 prescription drug for more than seventy-two hours, or twenty-four hours in
11 exigent circumstances in which the patient, in the opinion of the prescribing
12 provider, pharmacy, or pharmacist submitting the authorization request, is
13 suffering from a health condition that may seriously jeopardize the patient's
14 life, health, or ability to regain maximum function. A request for authorization
15 shall include relevant data or appropriate documentation to render a decision
16 on a request for authorization.

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

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

27 (19) Engage in drug repackaging and markups. A pharmacy benefit
28 manager that owns or controls a mail-order pharmacy shall not allow the
29 mail-order pharmacy to repackage drugs and sell the repackaged items at

1 higher prices than the original average wholesale price unless beneficiaries who
2 may buy the repackaged drugs are informed in writing that the drugs have been
3 repackaged and are being sold at the higher price.

4 (20) Operate in Louisiana without being registered with and in good
5 standing with the Louisiana secretary of state to do business in Louisiana or
6 without being licensed by and in good standing with the commissioner of
7 insurance, as provided by this Chapter.

8 B. The commission of any of the acts or any combination of acts
9 prohibited by this Section shall be considered an unfair method of competition
10 and unfair practice or act in accordance with the Unfair Trade Practices and
11 Consumer Protection Law, R.S. 51:1401 et seq., if the violations are committed
12 or performed with such frequency as to indicate a general business practice.
13 Notwithstanding any provision of law to the contrary, the private right of action
14 created by R.S. 51:1409 shall not apply to this Section.

15 (1) For purposes of this Section, a violation shall be considered to have
16 occurred each time a prohibited act is committed.

17 (2) Each day that a pharmacy benefit manager operates without being
18 registered with and in good standing with the secretary of state to do business
19 in Louisiana or without being licensed by and in good standing with the
20 commissioner of insurance, as provided by this Chapter shall be considered a
21 separate violation.

22 C.(1) Nothing in this Section shall be construed to interfere or violate a
23 consumer's right to know where the consumer may have access to the lowest
24 cost drugs, whether a consumer is utilizing insurance or other third-party
25 reimbursement or not.

26 (2) Nothing in this Section shall be construed to interfere with the
27 requirement that consumers receive notice of changes to pharmacy networks,
28 such as the inclusion of new pharmacies, or removal of existing pharmacies
29 from networks.

1 **§2871. Enforcement**

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

4 **(1) The commissioner of insurance and the Louisiana Board of**
5 **Pharmacy, hereinafter referred to in this Section as "regulatory bodies", shall**
6 **be responsible for conducting random compliance audits relative to ensure**
7 **compliance with this Chapter.**

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

10 **(3) Compliance audits may be desk audits conducted based on data**
11 **provided by the pharmacy benefit manager.**

12 **B. The regulatory bodies shall be responsible for conducting complaint**
13 **investigations as expeditiously as possible upon receipt of a complaint that a**
14 **pharmacy benefit manager is in violation of this Chapter, the Insurance Code,**
15 **or the Louisiana Pharmacy Practice Act.**

16 **(1) Each regulatory body shall be responsible for investigating**
17 **complaints that fall within the jurisdiction of that regulatory body.**

18 **(2) If a regulatory body receives a complaint that it believes is outside its**
19 **jurisdiction, then that regulatory body shall refer it to the appropriate**
20 **regulatory body.**

21 **(3) On the first day of every month the regulatory bodies shall submit**
22 **to the attorney general a report of complaints received against pharmacy**
23 **benefit managers and the date the complaint was received during the prior**
24 **calendar month in a format prescribed by the attorney general. The report shall**
25 **include a cumulative list of all complaints received against pharmacy benefit**
26 **managers until final disposition.**

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

29 **(1) No action against the pharmacy benefit manager.**

1 **(2) Probation, suspension, or revocation of a license or permit.**

2 **D. Upon completion of a compliance audit or complaint investigation the**
3 **entire investigation case file and recommendation of the regulatory body shall**
4 **be submitted to the Louisiana Department of Justice Consumer Affairs Division**
5 **for review and action by the attorney general.**

6 **E. Upon receipt of the compliance audit or investigation case file, or**
7 **upon lapse of action by the regulatory body for one hundred eighty days after**
8 **receipt of a complaint, the attorney general shall obtain full jurisdiction over**
9 **the matter.**

10 **F. The attorney general may take the following action upon receipt of a**
11 **file:**

12 **(1) Accept the recommendation of the regulatory body if that body's**
13 **recommendation is to take no action.**

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

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

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

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

22 **H. If the attorney general believes that one or more violations have**
23 **occurred then he shall conduct an administrative adjudicatory hearing to**
24 **determine if one or more violations have occurred.**

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

27 **(2) The attorney general may preside as the hearing officer or designate**
28 **an assistant attorney general to preside as the hearing officer. If the attorney**
29 **general is not the hearing officer then the hearing officer shall file a proposed**

1 findings of fact and conclusions of law with the attorney general along with his
2 recommendation of any penalty to be imposed.

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

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

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

7 (a) Suspension or revocation of any or all of the licenses and permits
8 issued by the commissioner of insurance and the Louisiana Board of Pharmacy.

9 (b) Placement of any or all of the licenses and permits on probation.

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

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

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

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

24 Section 5. The provisions of R.S. 40:2869, as enacted by this Act, shall become
25 effective on August 1, 2019.

26 Section 6. Except as provided in Section 5 of this Act, the provisions of this Act shall
27 become effective on July 1, 2020.

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

DIGEST

SB 41 Reengrossed

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 requires pharmacy benefit managers to be licensed by the Commissioner of Insurance, registered with the Louisiana secretary of state to do business in Louisiana, and may require permitting by the Louisiana Board of Pharmacy if the pharmacy benefit manager performs certain services identified in proposed law.

Proposed law establishes the Louisiana "Pharmacy Benefit Manager Licensing Law" to provide substantive requirements for obtaining and maintaining a license or permit 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 actions that impede medical decisions.

Proposed law defines "maximum allowable cost list" and "spread pricing". Proposed law prohibits spread pricing in Louisiana unless the pharmacy benefit manager provides biannual notice to the policyholder of the aggregate amount of spread pricing charged by the pharmacy benefit manager during the notice period.

Proposed law provides for rulemaking by the Louisiana Board of Pharmacy and provides that the board has the authority and responsibility to assess fees pursuant to present law.

Proposed law provides for creation of a pharmacy benefit manager monitoring advisory council and provides for membership, functions, and matters for the council to advise the commissioner of insurance and the board of pharmacy on relative to regulation of pharmacy benefit managers. Proposed law provides that the commissioner of insurance and board of pharmacy may utilize the expertise of the council to investigate complaints against pharmacy benefit managers.

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

Proposed law establishes a duty to the beneficiaries of any pharmacy benefit management plan and to the entities that have entered into a contract with the pharmacy benefit manager. Proposed law provides that the duty imposed by proposed law does not create a separate or independent cause of action.

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

Proposed law prohibits "patient steering" to a pharmacy in which the pharmacy benefit manager has an ownership interest without making a written disclosure to the patient and informing them that they have the right to use an alternate pharmacy. Proposed law provides that the prohibition against "patient steering" does not apply to employers or other persons identified in proposed law that employ, own, operate, control, or contract directly with a pharmacy or pharmacist for the purpose of managing or controlling prescription costs.

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 investigative actions by the Department of Insurance or board of pharmacy if the act is committed with such frequency

that it indicates a general business practice. Proposed law provides for remedies and penalties under the Unfair Trade Practices and Consumer Protection Law. Proposed law provides that a claim under the Unfair Trade Practices and Consumer Protection Law does not provide a private right of action

Proposed law provides that nothing in proposed law shall be construed to interfere or violate a consumer's right to know where the consumer may have access to the lowest cost drugs, whether a consumer is utilizing insurance or other third-party reimbursement or not.

Proposed law provides that nothing in proposed law shall be construed to interfere with the requirement that consumers receive notice of changes to pharmacy networks, such as the inclusion of new pharmacies, or removal of existing pharmacies from networks.

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 received against pharmacy benefit managers to be submitted to the Louisiana Department of Justice Consumer Affairs Division.

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.

Proposed law provides that the provisions of proposed law establishing the pharmacy benefit manager monitoring advisory council become effective August 1, 2019.

Effective July 1, 2020.

(Amends R.S. 22:1863(2); adds R.S. 22:1863(9) and 1867, R.S. 37:1252-1254, and R.S. 40:2861-2871)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Removes all provisions granting the Louisiana State Board of Medical Examiners authority to regulate pharmacy benefit managers.
2. Defines and clarifies what is considered a "maximum allowable cost list".
3. Defines and prohibits "spread pricing".
4. Provides that a duty is owed to beneficiaries and those contracted with pharmacy benefit managers to act with good faith, honesty, trust, confidence, and candor.
5. Creates the pharmacy benefit manager monitoring advisory council; provides for membership, functions, and authority.
6. Clarifies that the Louisiana Department of Insurance issues a license and the

Louisiana Board of Pharmacy issues a permit.

7. Removes certain provisions of legislative intent.
8. Makes technical corrections.

Senate Floor Amendments to engrossed bill

1. Makes revisions to the definition of "maximum allowable cost list".
2. Makes revisions to the definition of "spread pricing".
3. Provides an exception to the prohibition on spread pricing.
4. Provides for notice required by a pharmacy benefit manager that utilizes spread pricing.
5. Provides that the imposition of duties on the pharmacy benefit manager does not create a separate or independent cause of action.
6. Provides that a pharmacy benefit manager may require permitting by the board of pharmacy if they perform certain services.
7. Removes requirement for attestation in the event that a pharmacy benefit manager does not perform the services identified in proposed law.
8. Removes certain authority of the board of pharmacy to impose penalties on a pharmacy benefit manager.
9. Adds additional members to the pharmacy benefit manager monitoring advisory council.
10. Clarifies that the expertise of the pharmacy benefit manager monitoring advisory council may be utilized by the commissioner of insurance and board of pharmacy to investigate complaints against pharmacy benefit managers.
11. Provides that "patient steering" is prohibited to a pharmacy in which the pharmacy benefit manager has an ownership interest without making a written disclosure to the patient and informing them that they have the right to use an alternate pharmacy.
12. Provides that the prohibition against patient steering and inducement does not apply to employers or other persons that employ, own, operate, control, or contract directly with a pharmacy or pharmacist for the purpose of managing or controlling prescription costs.
13. Removes certain provisions relative to discriminatory reimbursement and clarifies that a pharmacy benefit manager shall not reimburse a local pharmacist or local pharmacy less than the amount it reimburses chain pharmacies, mail-order pharmacies, specialty pharmacies or affiliates of the pharmacy benefit manager for the same drug or device or for the same pharmacy service in this state.
14. Removes requirement for separate data on remittance advices.
15. Removes requirement that the pharmacy benefit manager is liable for paying all sales taxes due to any taxing authority.
16. Prohibits the pharmacy benefit manager from charging a fee for payment of

any required sales tax.

17. Provides that state or local taxes are considered part of the allowable cost on a claim submitted by a pharmacist.
18. Clarifies that prior authorization shall occur within 72 hours or 24 hours in exigent circumstances.
19. Clarifies that violations of the Unfair Trade Practices and Consumer Protection Law do not provide a private right of action.
20. Clarifies that implementation shall not be construed to interfere with a consumer's right to know where the consumer may have access to the lowest cost drugs, whether a consumer is utilizing insurance or other third-party reimbursement or not.
21. Clarifies that implementation shall not be construed to interfere with the requirement that consumers receive notice of changes to pharmacy networks, such as the inclusion of new pharmacies, or removal of existing pharmacies from networks.
22. Clarifies that the complaint reporting requirement applies only to complaints against pharmacy benefit managers.
23. Removes authority of the attorney general to impose monetary fines.
24. Provides that the creation of the pharmacy benefit manager monitoring advisory council shall become effective August 1, 2019.
25. Provides that the effective date for all other provisions of the Act shall be July 1, 2020.
26. Makes technical corrections.