
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 noting 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.