

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **SB 41** SLS 19RS 62

Bill Text Version: **ENROLLED**

Opp. Chamb. Action:

Proposed Amd.:

Sub. Bill For.:

Date: June 1, 2019	12:55 PM	Author: MILLS
Dept./Agy.: LA Dept. of Insurance/LA Board of Pharmacy		Analyst: Zachary Rau
Subject: Regulation of Pharmacy Benefit Managers		

PHARMACEUTICALS EN INCREASE SG EX See Note Page 1 of 2
Provides relative to the regulation of pharmacy benefit managers. (See Act)

Proposed law defines "spread pricing" and revises the present definition of "Maximum Allowable Cost List." Proposed law prohibits spread pricing by pharmacy benefit managers (PBMs) unless they provide written notices pursuant to proposed law. Proposed law allows the LA Board of Pharmacy (LBP) to regulate PBMs, including creation and issuance of permits for PBMs, levying of fees, rulemaking authority relative to annual reports of PBMs, as well as licensing PBMs as pharmacies if they perform one or more pharmacy services as defined in proposed law. Proposed law enumerates duties of PBMs and sets forth general licensing and permitting requirements of PBMs, general applicability of proposed law, and applicability of the LA Insurance Code via PBM regulation by the LA Dept. of Insurance (LDI). Proposed law creates the PBM Monitoring Advisory Council and provides for its membership, duties, and requirements. Proposed law enumerates prohibited acts of PBMs in present and proposed law and provides for further violations relative to operating without a current registration with the Secretary of State. Proposed law provides for enforcement of proposed law by LDI, LBP, and allows for the aforementioned entities to forward complaints outside of their jurisdiction to the Dept. of Justice. Provisions of proposed law relative to the PBM Monitoring Advisory Council

EXPENDITURES	2019-20	2020-21	2021-22	2022-23	2023-24	5 -YEAR TOTAL
State Gen. Fd.	SEE BELOW					
Agy. Self-Gen.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total						

REVENUES	2019-20	2020-21	2021-22	2022-23	2023-24	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total						

EXPENDITURE EXPLANATION

Proposed law will increase SGR expenditures for the LA Dept. of Insurance by an estimated \$101,559 in FY 20 with a phase-up to \$117,332 by FY 24. Additionally, proposed law will increase SGR expenditures for the LA Board of Pharmacy (LBP) by an indeterminable amount beginning in FY 20 and in subsequent fiscal years. Furthermore, proposed law may result in additional, indeterminable SGF expenditures for the Dept. of Justice (DOJ) to the extent the LBP and LDI determine complaints against PBMs are outside of their jurisdiction (see narratives below).

LA Dept. of Insurance (LDI)

LDI anticipates requiring one additional T.O. position for a Compliance Examiner 3 at an initial total cost of \$92,859 (\$58,788 salary, \$34,071 related benefits) to perform compliance audits as well as an estimated 29 additional market analyses on pharmacy benefit managers (PBMs) for the purpose of setting timing and frequency priorities for conducting random compliance audits. For reference, LDI has one employee that currently conducts 40 market analyses annually. Such analyses consist of examining data reported by the National Association of Insurance Commissioners regarding an insurer's performance regarding policyholder issues, as well as an examination of insurer financial data. The department anticipates this position to examine factors such as complaints, market share, market analyses and other state regulatory activity of the PBMs when setting priorities for random compliance audits. Furthermore, LDI currently receives \$8,700 in SGR collections annually (see Revenue Explanation) associated with PBMs filing annual reports and anticipates utilizing these revenues to defray administrative costs associated with the PBM Monitoring Advisory Council. **(See Expenditure Explanation cont. on Page 2)**

REVENUE EXPLANATION

Proposed law will increase SGR collections for the LA Board of Board of Pharmacy (LBP) by an estimated \$4,350 in FY 20 and \$3,625 in subsequent fiscal years. The LBP anticipates registering PBMs as pharmacies initially, with an initial permit fee of \$150 and annual renewal fee of \$125 thereafter. Data provided by the LA Dept. of Insurance indicates that 29 PBMs are currently active in Louisiana. To the extent each of these PBMs registers with the LBP, FY 20 permit revenues would total \$4,350 (\$150 * 29) with permit revenues totaling \$3,625 in subsequent fiscal years. However the exact increase is dependent upon the number of PBMs that register with the LBP, which is indeterminable.

Note: LDI currently collects a \$300 fee per report associated with PBMs filing annual reports with the department. The department reports 29 PBMs file such annual reports, yielding \$8,700 in revenue annually (\$300 * 29 PBMs).

Note: Provisions of proposed law relative to sales taxes will not affect state sales tax collections, as prescription drugs, medical devices, and pharmacy services are exempt from state sales tax. Furthermore, proposed law will not affect local sales tax collections to the extent prescription drugs, medical devices, and pharmacy services are currently taxable by local jurisdictions, as this measure clarifies that PBMs are subject to remitting sales taxes to local taxing authorities.

Senate
 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House
 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

Evan Brasseaux
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Staff Director

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CONTINUED EXPLANATION from page one:
(Expenditure Explanation cont. from Page 1)

LA Board of Pharmacy (LBP)

The LBP anticipates an indeterminable SGR expenditure increase associated with contracting with an entity to perform PBM compliance audits and amending an existing contract with outside counsel to carry out provisions of this measure. LBP reports that it does not have the staff expertise to conduct financial audits or fraud investigations, and that it presumes compliance audits would require general accounting or fraud examination expertise. Furthermore, the board anticipates potentially amending their current contract with outside legal counsel to accommodate a potential caseload increase associated with adjudicatory hearings that may be required pursuant to this measure. For reference, the LBP retains outside counsel for prosecutions before the board as the LBP's in-house counsel participates in the planning of case investigations.

The LBP anticipates minimal costs associated with proposed law to total approximately \$2,300 in FY 20 and \$300 in subsequent fiscal years. The \$2,300 FY 20 cost is composed of rulemaking (\$2,000) and creation and maintenance of a new PBM permit (\$300) in its licensing database, which is also projected in FY 21 and subsequent fiscal years. In addition, to the extent rulemaking associated with this measure cannot be included in the board's usual meeting schedule, the LBP anticipates a one-time cost of \$5,000 in FY 20 for travel reimbursements and per diems to conduct additional meetings. The board also anticipates being able to absorb complaints against PBMs regarding the pharmacy practice act with existing staff and resources.

The LBP is estimated to receive an additional \$4,350 in SGR collections in FY 20 associated with this measure and \$3,625 in subsequent fiscal years (see Revenue Explanation). To the extent the board's annual SGR collections are unable to accommodate these potential expenditure increases, they may be required to rely on their accrued fund balance. For reference, the LBP reports a project FY 20 fund balance of approximately \$141,000.

Dept. of Justice (DOJ)

The DOJ may realize indeterminable expenditure increases associated with this measure to the extent LBP and LDI determine complaints against PBMs are outside of their jurisdiction and forward such cases to the DOJ. Because the number of complaints that might be outside of the LBP and LDI's purview is unknown, it is unknown how many cases would be forwarded to the DOJ and the expenditures associated with such cases. The

Note: The LA Dept. of Health (LDH) and Office of Group Benefits (OGB) report no material expenditure impacts associated with this measure.

Senate

Dual Referral Rules

House

13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}

6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}

13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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