

2020 Regular Session

HOUSE BILL NO. 609

BY REPRESENTATIVE JORDAN

INSURANCE/HEALTH: Provides relative to the regulation of pharmacy benefit managers

1 AN ACT

2 To amend and reenact R.S. 40:2870, relative to the regulation of pharmacy benefit
3 managers; to provide for prohibited acts for pharmacy benefit managers; to provide
4 for exceptions to prohibited acts; to provide for an effective date; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 40:2870 is hereby amended and reenacted to read as follows:

8 §2870. Prohibited acts; unfair and deceptive trade practices

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

10 (1) Commit any unfair and deceptive trade practice prohibited by R.S.
11 22:1964(15).

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

14 (3) Buy, sell, transfer for compensation or remuneration, or provide personal
15 healthcare or contact information of any beneficiary to any other party for any
16 purpose with one exception. A pharmacy benefit manager may provide ~~such~~ the
17 information regarding beneficiaries of a health plan to that health plan provider if
18 requested by the health plan provider or other entity authorized pursuant to federal
19 law to direct or request the information.

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

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

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

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

24 (b) For purposes of this Paragraph, "inducement" means the providing of
25 financial incentives, including variations in premiums, deductibles, copayments, or
26 coinsurance.

27 (c) The provisions of this Paragraph shall not apply to employers, unions,
28 associations, or other persons who employ, own, operate, control, or contract directly
29 with a pharmacy or pharmacist for the purpose of managing or controlling

1 prescription costs paid for the benefit of an employee or member or those covered
2 by the employee or member's plan, or when the persons contract with a pharmacy
3 benefit manager to steer employees or members to pharmacists or pharmacies which
4 the person owns, operates, or controls.

5 (7) Retroactively deny or reduce a claim of a pharmacist or pharmacy for
6 payment or demand repayment of all or part of a claim after the claim has been
7 approved by the pharmacy benefit manager as authorized by R.S. 22:1856.1.

8 (8) Reimburse a local pharmacist or local pharmacy, as defined in R.S.
9 46:460.36(A), less than the amount it reimburses chain pharmacies, mail-order
10 pharmacies, specialty pharmacies, or affiliates of the pharmacy benefit manager for
11 the same drug or device or for the same pharmacy service in this state.

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

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

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

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

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

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

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

4 (b) A pharmacy benefit manager who does not pay the sales tax shall be
5 liable to the taxing authority for the tax, interest, penalties, and any other fees or
6 costs imposed by law for failure to pay sales taxes.

7 (c) No pharmacy benefit manager shall deduct the taxes from any amount
8 due to a pharmacist or pharmacy for a drug, device, or pharmacy service or charge
9 or pay anyone a fee or surcharge for paying any sales tax or remitting any sales tax
10 proceeds to a pharmacist or pharmacy if that fee or surcharge would be imposed
11 directly or indirectly on the pharmacist or pharmacy.

12 (d) All pharmacy benefit managers who pay any out-of-state pharmacist or
13 pharmacy for drugs or devices shipped to a beneficiary in this state or for pharmacy
14 services rendered to a beneficiary which is taxable in this state shall remit the tax
15 directly to the appropriate taxing authority.

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

23 (f) State or local sales taxes and other applicable state-imposed taxes or fees
24 shall be considered as part of the allowable cost and shall be included in the claim
25 submitted by a pharmacist or pharmacy.

26 (14) Restrict early refills on maintenance drugs to an amount less than seven
27 days for a prescription of at least a thirty-day supply. However, at the direction of
28 the Louisiana Department of Health, for purposes of administering the Medicaid

1 pharmacy benefit program, a pharmacy benefit manager may apply a more restrictive
2 early refill policy without violating the provisions of this Paragraph.

3 (15) Require a beneficiary to follow a plan's step therapy protocol if the
4 prescribed drug is on the health plan's prescription drug formulary, the beneficiary
5 has tried the step therapy required prescription drug while under his current or
6 previous health plan, and the provider has submitted a justification and supporting
7 clinical documentation that such prescription drug was discontinued due to lack of
8 efficacy or effectiveness, diminished effect, or 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 exigent
11 circumstances in which the patient, in the opinion of the prescribing provider,
12 pharmacy, or pharmacist submitting the authorization request, is suffering from a
13 health condition that may seriously jeopardize the patient's life, health, or ability to
14 regain maximum function. A request for authorization shall include relevant data or
15 appropriate documentation to render a decision on a request for authorization.

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

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

24 (19) Engage in drug repackaging and markups. A pharmacy benefit manager
25 that owns or controls a mail-order pharmacy shall not allow the mail-order pharmacy
26 to repackage drugs and sell the repackaged items at higher prices than the original
27 average wholesale price unless beneficiaries who may buy the repackaged drugs are
28 informed in writing that the drugs have been repackaged and are being sold at the
29 higher price.

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

5 B.(1) The commission of any of the acts or any combination of acts
6 prohibited by this Section shall be considered an unfair method of competition and
7 unfair practice or act in accordance with the Unfair Trade Practices and Consumer
8 Protection Law, R.S. 51:1401 et seq., if the violations are committed or performed
9 with such frequency as to indicate a general business practice. Notwithstanding any
10 provision of law to the contrary, the private right of action created by R.S. 51:1409
11 shall not apply to this Section.

12 (2) For purposes of this Section, a violation shall be considered to have
13 occurred each time a prohibited act is committed.

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

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

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

26 Section 2. The provisions of Section 1 of this Act supercede the provisions of
27 Section 3 of Act 124 of the 219 Regular Session of the Legislature that enacts R.S. 40:2870.

28 Section 3.(A) Section 1 of this Act shall become effective when Section 3 of Act 124
29 of the 2019 Regular Session of the Legislature becomes effective.

1 (B) Section 2 and this Section of this Act shall become effective on July 1, 2020.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 609 Original

2020 Regular Session

Jordan

Abstract: Prohibits pharmacy benefit managers from transferring personal information for compensation and allows the release of protected information to an entity authorized by federal law to request the information.

Present law prohibits pharmacy benefit managers from buying, selling, transferring, or providing personal healthcare or contact information of any beneficiary to any other party for any purpose.

Proposed law retains present law but narrows the prohibition on transferring personal healthcare or contact information to transfers for compensation or remuneration.

Present law provides an exception to present law by authorizing a pharmacy benefit manager to provide the protected information regarding beneficiaries of a health plan to that health plan provider if requested by the health plan provider

Proposed law retains present law and further authorizes the release of the protected information to any other entity authorized pursuant to federal law to direct or request the information.

Effective July 1, 2020.

(Amends R.S. 40:2870)