

2023 Regular Session

SENATE BILL NO. 65

BY SENATOR FRED MILLS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PHARMACEUTICALS. Provides relative to state procurement of pharmacy benefit manager services by use of reverse auction technology. (8/1/23)

1 AN ACT

2 To amend and reenact R.S. 39:1600.1(C)(6), (D)(1), the introductory paragraph of
3 1600.1(D)(2), 1600.1(D)(2)(b), (3), (4), (6), (9), and (11)(a) and R.S. 42:802(B)(12),
4 relative to state procurement through the reverse auction process; to provide for the
5 procurement of pharmacy benefit manager services through reverse auction; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 39:1600.1(C)(6), (D)(1), the introductory paragraph of 1600.1(D)(2),
9 1600.1(D)(2)(b), (3), (4), (6), (9), and (11)(a) are hereby amended and reenacted to read as
10 follows:

11 §1600.1. Procurement of pharmacy benefit manager services by reverse auction

12 * * *

13 C. For purposes of this Section, the following definitions shall apply:

14 * * *

15 (6) "PBM reverse auction" means an automated, transparent, and dynamically
16 competitive bidding process conducted online that starts with an opening round of
17 bids and allows qualified pharmacy benefit manager bidders to counter-offer a lower

1 price for as many rounds of bidding as determined by ~~the~~ **a single health plan**
 2 **prescription drug** purchaser ~~for~~ **or** a multiple health plan prescription drug
 3 purchasing group. Except to the extent clearly provided by this Section, any
 4 pharmacy benefit manager reverse auction shall be conducted in accordance with
 5 R.S. 39:1600(D) and its corresponding regulations.

6 D. Contracts for pharmacy benefit manager services obtained through reverse
 7 auction shall comply with the following:

8 (1) Notwithstanding any provision of law to the contrary, the division of
 9 administration ~~may procure the~~ **shall implement the reverse auction procedures**
 10 **provided for in this Section for all procurements of** services of a pharmacy benefit
 11 manager for the administration of benefits under R.S. 42:801 et seq., in a transparent,
 12 online, and dynamically competitive process and in the manner specified in this
 13 Section.

14 (2) The division of administration ~~may~~ **shall** procure the following products
 15 and services as needed to implement this Section in accordance with this Chapter:

16 * * *

17 (b) ~~Related services from the~~ **The** provider of the technology platform
 18 identified in Subparagraph (a) of this Paragraph, ~~which shall include,~~ **be the sole**
 19 **provider of consulting services to the division of administration for the purpose**
 20 **of implementing the PBM reverse auction process. As such, the provider of the**
 21 **technology platform shall have capability,** at a minimum, **to provide** the following
 22 capabilities: **services:**

23 (i) Evaluation of the qualifications of PBM bidders.

24 **(ii) Consultation and support to the division of administration in**
 25 **development of the participant bidding agreement.**

26 ~~(ii)~~ **(iii)** Online automated reverse auction services to support the division of
 27 administration in comparing the pricing ~~for~~ **of PBM bids in** the PBM **reverse**
 28 **auction** procurement **process.**

29 **(iv) Evaluation of any qualitative factors that the division of**

1 administration may wish to weigh in the automated ordering of PBM rankings
2 in the reverse auction process based on both pricing and weighted qualitative
3 factors, in addition to ranking of PBM bids based strictly on comparison of the
4 pricing of PBM bids.

5 (iii) (v) Related professional services as necessary.

6 (3) ~~If the~~ The division of administration ~~exercises the authority provided for~~
7 ~~in this Section,~~ it shall procure the technology platform and related technology
8 platform provider with capacity to provide the services required by
9 Subparagraph (2)(b) of this Subsection no later than four months in advance of the
10 date scheduled for completion of the PBM reverse auction.

11 (4) The division of administration shall not award a contract for procurement
12 of the technology platform and technology provider services to a vendor that ~~is~~
13 meets any of the follow criteria:

14 (i) Is a PBM or a vendor that is managed by or a subsidiary or affiliate of a
15 PBM.

16 (ii) Receives, directly or indirectly, remuneration from a pharmacy
17 benefit manager for aggregating clients into a contractual relationship with a
18 pharmacy benefit manager.

19 (iii) Has earned revenues in the past for provision of consulting services
20 to the division of administration in support of procurement of pharmacy benefit
21 manager services through a conventional or nonreverse auction request for
22 proposals process.

23 * * *

24 (6) With technical assistance, consultation, and support provided by the
25 technology platform provider, the division of administration shall specify the terms
26 of the participant bidding agreement which shall not be modified except by specific
27 consent of the division of administration.

28 * * *

29 (9) The division of administration ~~may~~ shall perform a market check for

1 providing PBM services during the term of the existing PBM services contract,
 2 which shall be a technology-driven evaluation of the incumbent PBM's prescription
 3 drug pricing based on benchmark comparators derived from PBM reverse auction
 4 processes conducted in the United States over the previous twelve months in order
 5 to ensure continuing competitiveness of incumbent prescription drug pricing over the
 6 life of a PBM services contract. **If the incumbent prescription benefit manager**
 7 **fails to meet comparative benchmark pricing determined through conduct of**
 8 **a market check in any plan year of the PBM's contract with the state, the**
 9 **division of administration may, at its discretion, terminate the contract and**
 10 **conduct a new PBM reverse auction for procurement of pharmacy benefit**
 11 **manager services.**

* * *

13 (11)(a) The processes and procedures set forth in this Part apply to group
 14 benefit plans provided pursuant to R.S. 42:801 et seq., ~~if the division of~~
 15 ~~administration elects to exercise its authority to conduct a PBM reverse auction in~~
 16 ~~accordance with this Section.~~ This Section shall not apply in the case of a nonprofit,
 17 nongovernmental health maintenance organization with respect to managed care
 18 plans that provide a majority of covered professional services through a single
 19 contracted medical group.

* * *

21 Section 2. R.S. 42:802(B)(12) is hereby amended and reenacted to read as follows:

22 §802. Powers and duties; Office of Group Benefits

* * *

24 B. In addition, the office shall have the following powers and duties:

* * *

26 (12) To procure and negotiate pharmacy benefit manager contracts through
 27 the use of a reverse auction pursuant to R.S. 39:1600(D) and 1600.1 ~~when it has been~~
 28 ~~determined by the division of administration to be in the best interest of the state.~~

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