

2018 Regular Session

SENATE BILL NO. 282

BY SENATOR MILLS

HEALTH/ACC INSURANCE. Provides relative to prescription drug pricing. (8/1/18)

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(11) and to enact R.S. 22:976, relative to prescription
3 drug pricing; to provide for confidentiality; to provide for disclosure; to provide for
4 certification; to provide for enforcement; to provide for applicability to Medicaid;
5 and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 22:976 is hereby enacted to read as follows:

8 **§976. Disclosure of prescription drug consumer cost burden; certification**

9 **A. As used in this Section:**

10 **(1) "Excess consumer cost burden" means a cost burden amount**
11 **charged to an enrollee for a covered prescription drug that is greater than the**
12 **amount that an enrollee's health insurance issuer pays, or would pay absent the**
13 **enrollee cost sharing, after accounting for rebates, or where an enrollee is**
14 **subject to a coinsurance amount of less than one hundred percent, a prorated**
15 **amount of the issuer cost based on the enrollee's coinsurance amount.**

16 **(2) "Health benefit plan", "plan", "benefit", or "health insurance**
17 **coverage" means services consisting of medical care provided directly through**

1 insurance, reimbursement, or other means, and including items and services
2 paid for as medical care under any hospital or medical service policy or
3 certificate, hospital or medical service plan contract, preferred provider
4 organization, or health maintenance organization contract offered by a health
5 insurance issuer. However, excepted benefits are not included as a "health
6 benefit plan".

7 (3) "Health insurance issuer" means any entity that offers health
8 insurance coverage through a plan, policy, or certificate of insurance subject to
9 state law that regulates the business of insurance. "Health insurance issuer"
10 shall also include a health maintenance organization, as defined and licensed
11 pursuant to Subpart I of Part I of Chapter 2 of this Title.

12 (4) "Rebates" means:

13 (a) Negotiated price concessions, including but not limited to base
14 rebates and reasonable estimates of any price protection rebates and
15 performance-based rebates that may accrue directly or indirectly to the health
16 insurance issuer during the coverage year from a manufacturer, dispensing
17 pharmacy, or other party to the transaction.

18 (b) Reasonable estimates of any fees and other administrative costs that
19 are passed through to the health insurance issuer and serve to reduce the health
20 insurance issuer's prescription drug liabilities for the coverage year.

21 B. In the case of a health insurance issuer that offers or renews a health
22 benefit plan for sale in the state on or after January 1, 2019, if the health
23 insurance issuer may charge enrollees cost sharing amounts that may result in
24 an excess consumer cost burden for covered prescription drugs, the health
25 insurance issuer shall disclose to enrollees and prospective enrollees the fact
26 that enrollees may be subject to an excess consumer cost burden. The notice
27 shall be provided in health benefit plan documents, including but not limited to
28 inclusion in evidence of coverage materials, formulary or preferred drug guides,
29 and all marketing materials.

1 C. A health insurance issuer that offers or renews a health benefit plan
 2 for sale in the state on or after January 1, 2019, shall annually certify to the
 3 commissioner of insurance that, during the prior benefit year, the health
 4 insurance issuer made available to enrollees at the point of sale at least an
 5 amount greater than fifty percent of rebates received by the insurer.

6 D. In complying with the provisions of this Section a health insurance
 7 issuer shall not publish or otherwise reveal information regarding the actual
 8 amount of rebates the health insurance issuer receives, including but not limited
 9 to information regarding the amount of rebates it receives on a product,
 10 manufacturer, or pharmacy specific basis. Such information is a trade secret,
 11 is not a public record as defined under R.S. 44:1 et seq. and shall not be
 12 disclosed directly or indirectly. A health insurance issuer shall impose the
 13 confidentiality protections of this Section on any third parties or vendors with
 14 which it contracts that may receive or have access to rebate information.

15 E. The commissioner of insurance shall have enforcement authority over
 16 this Section. Among other enforcement mechanisms, the commissioner of
 17 insurance may, after a hearing, suspend or revoke a health insurance issuer's
 18 license for failure to comply with the requirements of this Section, or providing
 19 a false certification under this Section.

20 F. Notwithstanding any provision of law to the contrary, the provisions
 21 of this Section shall apply to any pharmacy benefit manager that has a contract
 22 with the Louisiana Department of Health or is a subcontractor with a managed
 23 care organization that has a contract with the Louisiana Department of Health
 24 for the provision of services in the Medicaid program.

25 Section 2. R.S. 44:4.1(B)(11) is hereby amended and reenacted to read as follows:

26 §4.1. Exceptions

27 * * *

28 B. The legislature further recognizes that there exist exceptions, exemptions,
 29 and limitations to the laws pertaining to public records throughout the revised

1 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
2 limitations are hereby continued in effect by incorporation into this Chapter by
3 citation:

4 * * *

5 (11) R.S. 22:2, 14, 31, 42.1, 88, 244, 263, 265, 461, 550.7, 571, 572, 572.1,
6 574, 618, 639, 691.4, 691.5, 691.6, 691.7, 691.8, 691.9, 691.9.1, 691.10, 691.38,
7 691.56, 732, 752, 753, 771, 834, 972(D), **976**, 1008, 1019.2, 1203, 1460, 1464, 1466,
8 1488, 1546, 1559, 1566(D), 1644, 1656, 1723, 1796, 1801, 1808.3, 1927, 1929,
9 1983, 1984, 2036, 2045, 2056, 2085, 2091, 2293, 2303

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

DIGEST

SB 282 Engrossed

2018 Regular Session

Mills

Proposed law requires certain health insurance issuers to notify enrollees that they are subject to an excess consumer cost burden when they are charged more for a prescription drug than their insurer pays or would pay after considering drug rebates from the drug manufacturer into the total cost of the drug.

Proposed law requires certain health insurance issuers to certify to the commissioner of insurance that they passed on to the consumer at least 50% of the rebates received from drug manufacturers. Proposed law provides that in making this certification all information given to the commissioner shall be confidential.

Proposed law provides for enforcement against the pharmacy benefit manager's license for failure to comply with proposed law.

Proposed law applies to pharmacy benefit managers participating in the Medicaid program.

Effective August 1, 2018.

(Amends R.S. 44:4.1(B)(11); adds R.S. 22:976)