AN ACT

To amend and reenact R.S. 22:1060.6(B), 1863(introductory paragraph), (1), and (6), 1864(A)(introductory paragraph) and (3) and (B)(introductory paragraph), and 1865 and to enact R.S. 22:1060.6(C), 1860.3, 1863(8), 1864(A)(4), and 1866, relative to coverage of prescription drugs; to prohibit limitations on certain disclosures by pharmacists; to update terminology; to provide for reimbursements to nonaffiliate pharmacies; to require disclosures by pharmacy benefit managers; to provide for appeals relative to maximum allowable cost; to impose a fee on pharmacy benefit managers; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1060.6(B), 1863(introductory paragraph), (1), and (6), 1864(A)(introductory paragraph) and (3) and (B)(introductory paragraph) and 1865 are hereby amended and reenacted and R.S. 22:1060.6(C), 1860.3, 1863(8), 1864(A)(4), and 1866, are hereby enacted to read as follows:

§1060.6. Limitation; patient payment

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B. The provision established in Subsection A of this Section shall become effective on January 1, 2017. No pharmacy benefit manager, insurer, or other entity that administers prescription drug benefits programs in this state shall prohibit by contract a pharmacy or pharmacist from informing a patient of all relevant options when acquiring his prescription medication, including but not limited to the cost and clinical efficacy of a more affordable alternative if one is available and the ability to pay cash if a cash price for the same drug is less than an insurance copayment or deductible payment amount.

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C. Any provision of a contract that violates the provisions of this Section shall be unenforceable and shall be deemed an unfair or deceptive act and practice pursuant to R.S. 22:1961 et seq.

§1860.3. Reimbursements

A pharmacy benefit manager or person acting on behalf of a pharmacy benefit manager shall not reimburse a pharmacy or pharmacist in this state an amount less than the amount that the pharmacy benefit manager reimburses an affiliate of the pharmacy benefit manager for providing the same services. The amount shall be calculated on a per-unit basis using the same generic product identifier or generic code number.

§1863. Definitions

As used in this Subpart, the following definitions shall apply:

(1) "Maximum Allowable Cost List" means a listing of the National Drug Code used by a pharmacy benefit manager setting the maximum allowable cost on which reimbursement to a pharmacy or pharmacist may be based.

(6) "Pharmacy benefit manager" means an entity that administers or manages a pharmacy benefits plan or program.

(8) "Drug Shortage List" means a list of drug products posted on the United States Food and Drug Administration drug shortage website.

§1864. Requirements for use of the National Drug Code by a pharmacy benefit manager

A. Before a pharmacy benefit manager places or continues a particular NDC or Maximum Allowable Cost List, the following requirements shall be met:

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(3) The prescription drug to which the NDC is assigned shall not be considered obsolete, temporarily unavailable, or listed on a drug shortage list.

(4) For every drug for which the pharmacy benefit manager establishes a maximum allowable cost to determine the drug product reimbursement, the pharmacy benefit manager shall make available to all pharmacies both of the following:

(a) Information identifying the national drug pricing compendia or sources used to obtain the drug price data.

(b) The comprehensive list of drugs subject to maximum allowable cost by plan and the actual maximum allowable cost by plan for each drug.

B. A pharmacy benefit manager shall be required to do all of the following:

§1865. Appeals

A. The pharmacy benefit manager shall provide a reasonable administrative appeal procedure to allow pharmacies to challenge maximum allowable costs for a specific NDC or NDCs as not meeting the requirements of this Subpart or being below the cost at which the pharmacy may obtain the NDC. Within seven fifteen business days after the applicable fill date, a pharmacy may file an appeal by following the appeal process as provided for in this Subpart. The pharmacy benefit manager shall respond to a challenge within seven fifteen business days after receipt of the challenge.

B. If an appeal made pursuant to this Section is upheld, granted, the pharmacy benefit manager shall take all of the following actions:

(1) Make the change in the Maximum Allowable Cost List to the initial date of service the appealed drug was dispensed.

(2) Permit the challenging appealing pharmacy or pharmacist and all other pharmacies in the network that filled prescriptions for patients covered under the same health benefit plan to reverse and rebill the claim in question. resubmit claims

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and receive payment based on the adjusted maximum allowable cost from the initial date of service the appealed drug was dispensed.

(3) Make the change effective for each similarly situated pharmacy as defined by the payor subject to the Maximum Allowable Cost List and individually notify all pharmacies in the network of that pharmacy benefit manager of both of the following:

(a) That a retroactive maximum allowable cost adjustment has been made as a result of a granted appeal effective to the initial date of service the appealed drug was dispensed.

(b) That the pharmacy may resubmit and receive payment based upon the adjusted maximum allowable cost price.

(4) Make retroactive price adjustments in the next payment cycle.

C. If an appeal made pursuant to this Section is denied, the pharmacy benefit manager shall provide the challenging pharmacy or pharmacist the NDC number of a drug product and source where it may be purchased for a price at or below the maximum allowable cost from national or regional wholesalers operating in Louisiana.

D. A violation of this Subpart shall be deemed an unfair or deceptive act and practice pursuant to R.S. 22:1961 et seq.

E. For every drug for which the pharmacy benefit manager establishes a maximum allowable cost to determine the drug product reimbursement, the pharmacy benefit manager shall make available to the commissioner, upon request, information that is needed to resolve the complaint. If the commissioner is unable to obtain information from the pharmacy benefit manager that is necessary to resolve the complaint, the reimbursement amount requested in the pharmacist's appeal shall be granted.

F.(1) A pharmacist or pharmacy may file a complaint with the commissioner following an appeal denied by the pharmacy benefit manager.
A complaint shall be submitted to the commissioner, on a form and in a manner set forth by the commissioner, no later than fifteen business days from the date of the pharmacy benefit manager’s final decision.

The commissioner may request additional information necessary to investigate a complaint from any party.

If the complaint investigation determines that the pharmacy benefit manager’s final decision was not in compliance with the provisions of this Section, the appealing pharmacy shall be reimbursed the higher of the pharmacy's actual acquisition cost of the drug or the maximum allowable cost price.

Information specifically designated as proprietary by the pharmacy benefit manager shall be given confidential treatment pursuant to R.S. 22:1656. The commissioner shall determine the appropriateness and validity of the designation.

The commissioner may impose a reasonable fee upon pharmacy benefit managers, in accordance with the Administrative Procedure Act, in addition to a license fee and annual report fee, in order to cover the costs of implementation and enforcement of this Section and R.S. 22:1641 through 1657, 1851 through 1864, and 1961 through 1995, including fees to cover the cost of all of the following:

Salaries and related benefits paid to the personnel of the department engaged in the investigation and enforcement.

Reasonable technology costs related to the investigatory and enforcement process. Technology costs shall include the actual cost of software and hardware used in the investigatory and enforcement process and the cost of training personnel in the proper use of the software or hardware.

Reasonable education and training costs incurred by the state to maintain the proficiency and competence of investigatory and enforcement personnel.

§1866. Rulemaking authority; administrative appeals

A. The commissioner may promulgate rules and regulations in accordance with the Administrative Procedure Act that are necessary or proper to carry out the provisions of this Subpart.
B. Any pharmacy benefit manager, insurer, or other entity that administers
prescription drug benefits programs in the state that is aggrieved by an act of the
commissioner may apply for a hearing pursuant to Chapter 12 of this Title, R.S. 22:2191 et
seq.

Section 2. This Act shall become effective on January 1, 2019.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _________________

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