

ACT No. 597

2018 Regular Session

HOUSE BILL NO. 436

BY REPRESENTATIVES JOHNSON AND LEBAS

1 AN ACT

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

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 22:1060.6(B), 1863(introductory paragraph), (1), and (6),
12 1864(A)(introductory paragraph) and (3) and (B)(introductory paragraph) and 1865 are
13 hereby amended and reenacted and R.S. 22:1060.6(C), 1860.3, 1863(8), 1864(A)(4), and
14 1866, are hereby enacted to read as follows:

15 §1060.6. Limitation; patient payment

16 * * *

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

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

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

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

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

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

13 * * *

14 §1865. Appeals

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

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

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

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

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

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

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

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

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

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

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

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

27 F.(1) A pharmacist or pharmacy may file a complaint with the commissioner
28 following an appeal denied by the pharmacy benefit manager.

1 (2) A complaint shall be submitted to the commissioner, on a form and in a
2 manner set forth by the commissioner, no later than fifteen business days from the
3 date of the pharmacy benefit manager's final decision.

4 (3) The commissioner may request additional information necessary to
5 investigate a complaint from any party.

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

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

13 G. The commissioner may impose a reasonable fee upon pharmacy benefit
14 managers, in accordance with the Administrative Procedure Act, in addition to a
15 license fee and annual report fee, in order to cover the costs of implementation and
16 enforcement of this Section and R.S. 22:1641 through 1657, 1851 through 1864, and
17 1961 through 1995, including fees to cover the cost of all of the following:

18 (1) Salaries and related benefits paid to the personnel of the department
19 engaged in the investigation and enforcement.

20 (2) Reasonable technology costs related to the investigatory and enforcement
21 process. Technology costs shall include the actual cost of software and hardware
22 used in the investigatory and enforcement process and the cost of training personnel
23 in the proper use of the software or hardware.

24 (3) Reasonable education and training costs incurred by the state to maintain
25 the proficiency and competence of investigatory and enforcement personnel.

26 §1866. Rulemaking authority; administrative appeals

27 A. The commissioner may promulgate rules and regulations in accordance
28 with the Administrative Procedure Act that are necessary or proper to carry out the
29 provisions of this Subpart.

1 B. Any pharmacy benefit manager, insurer, or other entity that administers
 2 prescription drug benefits programs in the state that is aggrieved by an act of the
 3 commissioner may apply for a hearing pursuant to Chapter 12 of this Title, R.S. 22:2191 et
 4 seq.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____