SENATE COMMITTEE AMENDMENTS

2025 Regular Session

Amendments proposed by Senate Committee on Insurance to Reengrossed House Bill No. 264 by Representative Echols

AMENDMENT NO. 1

On page 1, line 2, after "reenact" delete the remainder of the line and delete line 3 and insert "the heading of Subpart C-1 of Part II of Chapter 6 of Title 22 of the Louisiana Revised Statutes of 1950, R.S. 22:1863, 1865 (Section heading), and 1867, R.S. 40:2869(A) and (B) and 2870(A)(4) and (5)(a), and R.S. 44:4.1(B)(11), to enact R.S. 22:1868, 1868.1, 1869, and 1870 and to repeal R.S. 22:1657.1, 1860.3(E), and R.S. 40:2870(A)(5)(b), relative to pharmacy"

AMENDMENT NO. 2

On page 1, line 4, delete "to modify the definition" and insert "to prohibit the retention"

AMENDMENT NO. 3

On page 1, line 6, after "programs;" insert "to provide for appeals; to provide for definitions; to prohibit effective rate pricing and spread pricing; to provide for reporting; to provide for advisory council membership; to provide for enforcement and effective dates; to prohibit patient steering;"

AMENDMENT NO. 4

On page 1, delete lines 9 through 18, delete page 2, and on page 3, delete lines 1 through 16 and insert the following:

"Section 1. The heading of Subpart C-1 of Part II of Chapter 6 of Title 22 of the Louisiana Revised Statutes of 1950, R.S. 22:1863, 1865 (Section heading), and 1867 are hereby amended and reenacted and R.S. 22:1868, 1869, and 1870 are hereby enacted to read as follows:

SUBPART C-1. PHARMACY BENEFIT MANAGERS ~~MANAGER'S MAINTENANCE AND USE OF MAXIMUM ALLOWABLE COST LISTS FOR PRESCRIPTION DRUGS~~

§1863. Definitions

As used in this Subpart, the following definitions apply:

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

(2) "Effective rate pricing" means any payment reduction for pharmacist or pharmacy services by a pharmacy benefit manager under a reconciliation process for direct or indirect remuneration fees, a brand or generic effective rate of reimbursement, or any other reduction or aggregate reduction of payment.

(3) "Health benefit plan", "health plan", "plan", "benefit", or "health insurance coverage" means services consisting of medical care provided directly through insurance, reimbursement, or other means, and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization contract, or health maintenance organization contract offered by a health insurance issuer. However, excepted benefits are not included as a "health benefit plan".

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

(5) "Local pharmacy" means a pharmacy as defined in the North American Industry Classsification System (NAICS) Code 456110, which is domiciled in Louisiana and has fewer than ten retail outlets under its corporate umbrella.

~~(2)~~ (6)"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. "Maximum Allowable Cost List" shall include any term that a pharmacy benefit manager or a healthcare insurer may use to establish reimbursement rates for generic and multi-source brand drugs to a pharmacist or pharmacy for pharmacist services. ~~The term "Maximum Allowable Cost List" shall not include any rate mutually agreed to and set forth in writing in the contract between the pharmacy benefit manager and the pharmacy or its agent and shall not include the National Average Drug Acquisition Cost. A pharmacy benefit manager may use effective rate pricing for a pharmacist or pharmacy that is not a local pharmacy or local pharmacist as defined in R.S. 46:460.36(A).~~

~~(3)~~ (7) "NDC" means the National Drug Code, a numerical identifier assigned to all prescription drugs.

~~(4)~~ (8) "Pharmacist" means a licensed pharmacist as defined in R.S. 22:1852(8).

~~(5)~~ (9) "Pharmacist services" means products, goods, or services provided as a part of the practice of pharmacy as defined in R.S. 22:1852(9).

~~(6)~~ (10) "Pharmacy" means any appropriately licensed place where prescription drugs are dispensed as defined in R.S. 22:1852(10).

~~(7)~~ (11) "Pharmacy benefit manager" ~~means an entity that administers or manages a pharmacy benefits plan or program~~ has the same meaning as the term defined in R.S. 22:1641(8) and includes any person, either directly or indirectly, that provides one or more pharmacy benefit management services on behalf of an insurer or health plan, and any agent, contractor, intermediary, affiliate, subsidiary, or related entity of such person who facilitates, provides, directs, or oversees the provision of the pharmacy benefit management services.

~~(8)~~ (12) "Pharmacy benefits plan" or "pharmacy benefits program" means a plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services to individuals who reside in or are employed in Louisiana.

(13) "Rebates" means all rebates, discounts, and other price concessions, based on utilization of a prescription drug and paid by the manufacturer or other party other than an enrollee, directly or indirectly, to the pharmacy benefit manager after the claim has been adjudicated at the pharmacy. Rebates shall include a reasonable estimate of any volume-based discount or other discounts.

(14) "Specialty drug" means a drug that meets all of the following criteria:

(a) The drug is used to treat and is prescribed for a person with a complex, chronic, or rare medical condition that is progressive, can be debilitating or fatal if left untreated or undertreated, or for which there is no known cure.

(b) The drug is not routinely stocked at a majority of pharmacies within this state.

(c) The drug has special handling, storage, inventory, or distribution requirements.

(d) Patients receiving the drug require complex education and treatment maintenance, such as complex dosing, intensive monitoring, or clinical oversight.

~~(9)~~(15) "Spread pricing" means any amount charged or claimed by a pharmacy benefit manager ~~charges or claims from a health plan provider or managed care organization~~ for ~~payment of~~ a prescription ~~or for pharmacy services that is different than~~ drug that exceeds the amount paid by the pharmacy benefit manager ~~paid~~ to the pharmacist or pharmacy ~~who filled the prescription or provided the pharmacy services~~ for the dispensing of the prescription drug, minus a pharmacy benefit management fee.

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§1865. Appeals; maximum allowable costs

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§1867. Prohibition on spread pricing; ~~notice exception~~ effective rate pricing

A. A pharmacy benefit manager is prohibited from conducting or participating in spread pricing in this state ~~unless the pharmacy benefit manager provides written notice as provided in Subsection B of this Section~~.

B. ~~The notice issued by a pharmacy benefit manager, or a health insurance issuer where the health insurance issuer has agreed to issue the notice, that utilizes spread pricing shall be:~~ A pharmacy benefit manager is prohibited from using effective rate pricing for a local pharmacy.

~~(1) Required for each health insurance issuer or plan provider in which the pharmacy benefit manager engaged or participated in spread pricing.~~

~~(2) Delivered to the policy holder.~~

~~(3) Provided at least biannually.~~

~~(4) Indicative of the aggregate amount of spread pricing charged by the pharmacy benefit manager during the period.~~

~~(5) Written in plain, simple, and understandable English.~~

C. Any violation of this Section that is committed or performed with such frequency as to indicate a general business practice shall be subject to the provisions of the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq., as provided in R.S. 40:2870(B).

§1868. Local pharmacy reimbursement; National Average Drug Acquisition Costs; appeals

A.(1) No pharmacy benefit manager or person acting on behalf of a pharmacy benefit manager shall reimburse a pharmacy or pharmacist in this state an amount less than the acquisition cost for the covered drug, device, or service. The provisions of this Section shall apply only to reimbursement for a contracted pharmacist or local pharmacy.

(2) For purposes of this Section, the following definitions shall apply:

(a) "Acquisition cost" means the set of National Average Drug Acquisition Costs, "NADAC", as calculated by the Centers for Medicaid and Medicaid Services and reflected in the most recently released public file.

(b) "Adjustment" means a percentage-based change to the prescription drug pricing benchmark, such as average wholesale price or national average drug acquisition cost, applied uniformly across a class of drugs.

(c) "Claim payment error" means a pharmacy or pharmacist claim payment amount that fails to reimburse at or above acquisition cost.

(d) "Reimbursement formula" means a prescription drug reimbursement calculation involving an ingredient price, calculated based on a prescription drug pricing benchmark plus an adjustment factor, and a professional dispensing fee.

(3) Notwithstanding any provision of law to the contrary, effective January 1, 2026, a pharmacy benefit manager shall meet all of the following requirements for claims submitted by any local pharmacy to a pharmacy benefit manager administering claims on behalf of a health plan, except for the office of group benefits:

(a) Adopt a reimbursement formula using either NADAC as the prescription drug pricing benchmark or, with prior written approval by the commissioner, an alternative prescription drug pricing benchmark that results in claim payment errors that are both comparable to or less than NADAC in terms of frequency and smaller than NADAC in terms of magnitude.

(b) Adopt a reimbursement formula using an adjustment factor that, based on claims experience data available to the pharmacy benefit manager, is reasonably expected to result in a claim payment error rate of no more than two percent per drug as identified by its national drug code.

(c) Adopt an appeal process for pharmacists to challenge claim payment errors that, at a minimum, meets the following requirements:

(i) A network pharmacy contract executed by and between a pharmacy benefit manager and a pharmacy located in Louisiana shall, at a minimum, contain a provision expressly acknowledging that if a Louisiana pharmacy's reimbursement for any covered drug or device is less than the pharmacy's acquisition cost for that drug or device, the pharmacy has the right to appeal that reimbursement and, if successful, receive additional payment so that the total reimbursement is equal to the pharmacy's demonstrated acquisition cost. The pharmacy benefit manager shall

direct the pharmacy to the pharmacy benefit manager's electronic and written appeal locations.

(ii) Permit appeals to be filed for a period of fifteen days following the applicable date of payment.

(iii) If an appeal is filed with the pharmacy benefit manager, the pharmacy must include a written invoice from the wholesaler that includes the drug name, national drug code number, purchase date, and cost of the drug.

(iv) If a claim payment error occurred, the pharmacy benefit manager shall make an additional payment to the pharmacy to increase the reimbursement amount to the acquisition cost.

(v) If a pharmacy benefit manager determines that a claim payment error did not occur, it shall provide the pharmacy or pharmacist with an explanation of why it has upheld the payment, including a specific documentation of the acquisition cost on the date of service. The explanation shall be provided electronically or in writing through customary means of communication between the pharmacy benefit manager and the pharmacy or pharmacist. The explanation shall also include a notice in at least ten point font stating that, if the pharmacy or pharmacist disagrees with the decision, the pharmacy or pharmacist may file a complaint with the Department of Insurance.

§1868.1. Pharmacy benefit manager rebate retention restrictions; fee disclosure

A. A pharmacy benefit manager may negotiate, but shall not retain any portion of rebates received from a drug manufacturer. All manufacturer rebates shall be passed through to the plan sponsor.

B. All pharmacy benefit management fees shall be disclosed in writing and set forth clearly in the contract between the pharmacy benefit manager and the insurer or health plan.

C. On or before December thirty-first of each calendar year, each pharmacy benefit manager shall certify under oath to the commissioner of insurance that it has fully complied with the provisions of this Section for the prior calendar year. The certification shall be signed by the chief executive officer or chief financial officer of the pharmacy benefit manager and shall be subject to audit and penalty for false statements.

D. Any violation of this Section shall be considered an unfair or deceptive act or practice in the business of insurance and shall be subject to all enforcement authority granted to the commissioner pursuant to this Title.

E. For purposes of this Section, the following definitions apply:

(1) "Pharmacy benefit management fee" means a fee paid by an insurer or health plan to a pharmacy benefit manager for pharmacy benefit management services provided.

(2) "Rebates" means all rebates, discounts, and other price concessions, based on utilization of a prescription drug and paid by the manufacturer or other party other than an enrollee, directly or indirectly, to the pharmacy benefit manager after the claim has been adjudicated at the pharmacy. Rebates shall include a reasonable estimate, as determined by the commissioner, of any volume-based discount or other discounts.

§1869. Compensation program; review by commissioner; exceptions

A. The commissioner may review the compensation program of a pharmacy benefit manager or person acting on behalf of a pharmacy benefit manager with a health insurance issuer, pharmacy services administrative organization, pharmacy, or pharmacist, or any person acting on their behalf, to ensure that the reimbursement for drugs, devices, and services paid to the pharmacist or pharmacy is fair and reasonable.

B. Information provided to the commissioner pursuant to Subsection A of this Section and specifically identified as confidential by the pharmacy benefit manager, including the terms and conditions of any contract and other proprietary information, shall be confidential and shall not be subject to disclosure. However, the commissioner may disclose confidential information to insurance departments of other states or for the purposes of any adjudicatory hearing or court proceeding invoked by the commissioner in accordance with the provisions of this Part.

§1870. Pharmacy benefit manager transparency report; examination by commissioner

A. Each pharmacy benefit manager licensed by the commissioner shall submit an annual transparency report as a condition of maintaining licensure.

B.(1) On March 1 of each year, each licensed pharmacy benefit manager shall submit a transparency report containing data from the prior calendar year to the department. The transparency report shall contain the following information for each of the pharmacy benefit manager's contractual or other relationships with a health benefit plan or health insurance issuer:

(a) The total amount of all rebates that the pharmacy benefit manager received from pharmaceutical manufacturers.

(b) The total amount of all administrative fees that the pharmacy benefit manager received.

(c) The total amount of all negotiated price concessions such as base price concessions, reasonable estimates of any price protection rebates other than manufacturer rebates, and performance-based price concessions.

(d) The total amount of all rebates passed to enrollees at the point of sale of a prescription drug.

(e) The total amount of all reimbursement paid to network pharmacies in this state, specifically identified by local pharmacy and non-local pharmacy.

(f) The total amount of all specialty drug rebates that the pharmacy benefit manager received.

(g) The total number of other services provided by the pharmacy benefit manager or its affiliates or subsidiaries in addition to prescription drugs. The total amount reported shall include identification of the service, the number of services provided, by whom they were provided, and the dollar amount relative to the provision of the services.

(h) The complete corporate vertical integration structure of all components related to the pharmacy benefit manager including the insurer, pharmacy benefit manager, group purchasing organization, manufacturer, wholesale distributor, special or mail order pharmacy, retail or long term care pharmacy, and provider.

(2) The transparency report shall be made available in a form that does not disclose the identity of a specific health benefit plan, the prices charged for specific drugs or classes of drugs, or the amount of any rebates provided for specific drugs or classes of drugs.

(3) Within sixty days of receipt, the Department of Insurance shall publish the transparency report on the department's website in a location designated for pharmacy benefit manager information.

(4) The pharmacy benefit manager and the Department of Insurance shall not publish or disclose any information that would reveal the identity of a specific health benefit plan, the prices charged for a specific drug or class of drugs, or the amount of any rebates provided for a specific drug or class of drugs. Any such information shall be protected from disclosure as confidential and proprietary information and shall not be regarded as a public record pursuant to the Public Records Law.

(5) Not more than thirty days after an increase in wholesale acquisition cost of fifty percent or greater for a drug with a wholesale acquisition cost of one hundred dollars or more for a thirty-day supply, a pharmaceutical drug manufacturer shall notify the commissioner by electronic mail of any such change.

C.(1) The commissioner may examine the books or records of a pharmacy benefit manager to determine the accuracy of the transparency report.

(2) This Section does not limit the power of the commissioner to examine or audit the books or records of a pharmacy benefit manager.

Section 2. R.S. 40:2869(A) and (B) and 2870(A)(4) and (5)(a) are hereby amended and reenacted to read as follows:

§2869. Pharmacy benefit manager monitoring advisory council; membership; functions

A. There is hereby created within the Department of Insurance a pharmacy benefit manager monitoring advisory council, referred to hereafter in this Chapter as the "advisory council", that shall consist of the following members~~, each of whom may appoint a designee~~:

(1) The commissioner of the Department of Insurance, or his designee from the department.

~~(2) The president of the Louisiana State Board of Medical Examiners.~~

~~(3) The president of the Louisiana Board of Pharmacy.~~

~~(4)~~ (2) The attorney general, or her designee from the department.

~~(5) The director of the public protection division of the Department of Justice.~~

~~(6)~~ (3) The secretary of the Louisiana Department of Health, or his designee from the department.

~~(7) The president of the Louisiana Academy of Physician Assistants.~~

~~(8) The president of the Louisiana State Medical Society.~~

~~(9) The president of the Louisiana Association of Nurse Practitioners.~~

~~(10)~~ (4)~~The president of~~ A pharmacist who works for a chain drug store appointed by the Louisiana Pharmacists Association.

~~(11)~~ (5) ~~The president of~~ An independent pharmacist appointed by the Louisiana Independent Pharmacies Association.

~~(12) The president of the National Association of Chain Drug Stores.~~

~~(13)~~ (6) The president of the Pharmaceutical Research and Manufacturers of America, or his designee.

~~(14) The president of the Louisiana Academy of Medical Psychologists.~~

~~(15)~~ (7)The president of the Louisiana Association of Health Plans, or his designee.

~~(16)~~ (8) ~~The president~~ An employee of a pharmacy benefit manager licensed by the Louisiana Board of Pharmacy, selected by the Louisiana affiliate of the Pharmaceutical Care Management Association from a list of interested and qualified individuals. The employee shall have responsibility for and experience in daily administrative functions of the business practices of the pharmacy benefit manager.

~~(17) The president of the Louisiana Association of Business and Industry.~~

~~(18) The chief executive officer of the Louisiana Business Group on Health.~~

~~(19) The president of the Louisiana AFL-CIO.~~

~~(20) The president of the Louisiana Association of Health Underwriters.~~

~~(21)~~ (9) The governor, or his designee from the office of the governor.

~~(22)~~ (10)The chairman of the House Committee on Insurance, or his desgnee, who shall serve as vice chairman of the council.

~~(23)~~ (11) The chairman of the Senate Committee on Insurance, or his designee, who shall serve as the chairman of the council.

~~(24)~~ (12) The chairman of the House Committee on Health and Welfare.

~~(25)~~ (13) The chairman of the Senate Committee on Health and Welfare.

B. The members of the advisory council shall serve at the pleasure of their respective appointing authorities. Seven members shall constitute a quorum for the transaction of all business. ~~The members shall elect a chairman and vice chairman whose duties shall be established by the advisory council.~~ The ~~member elected to serve as~~ chairman shall fix a time and place for regular meetings of the advisory council, which shall meet at least quarterly. The advisory council shall establish policies and procedures necessary to carry out its duties. Expenses for the administrative staffing of the advisory council shall be provided for from the licensing fees paid by pharmacy benefit managers and may be transferred between state agencies by memorandum of understanding or cooperative endeavor agreement.

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§2870. Prohibited acts; unfair and deceptive trade practices

A. A pharmacy benefit manager in Louisiana shall not:

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

(5)(a) Directly or indirectly engage in patient steering to a pharmacy in which the pharmacy benefit manager maintains an ownership interest or control ~~without making a written disclosure and receiving acknowledgment from the patient. The disclosure required by this Paragraph shall provide notice that the pharmacy benefit manager has an ownership interest in or control of the pharmacy, and that the patient has the right under the law to use any alternate pharmacy that they choose~~. Patient steering includes but is not limited to any communication by a pharmacy benefit

manager through data mining or other similar process of any patient information generated or obtained throughout the prescription filling process at any pharmacy, including contacting the patient verbally or in writing to directly or indirectly influence the patient or provide the patient with the option to use an alternate pharmacy that is a preferred carve-out or is in a strategic relationship with the pharmacy benefit manager or in which the pharmacy benefit manager maintains an ownership interest or control or contracts with to process prescriptions on its behalf. ~~The~~ A pharmacy benefit manager is prohibited from retaliation or ~~further~~ attempts to influence the patient~~, or treat the patient or the patient's claim any differently if the patient chooses~~ to use the alternate pharmacy. However, a pharmacy benefit manager may implement copay assistance benefit plans, also known as copay maximizer plans, for use by its insured members, as permitted by federal law.

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AMENDMENT NO. 5

On page 3, line 17, change "Section 2." to "Section 3."

AMENDMENT NO. 6

On page 4, line 1, change "1860.3" to "1869"

AMENDMENT NO. 7

On page 4, after line 3, insert the following:

"Section 4. R.S. 22:1657.1, 1860.3(E), and R.S 40:2870(A)(5)(b) are hereby repealed.

Section 5. Enforcement of the provisions of R.S. 22:1867 and R.S. 40:2870(A)(4) as provided for in this Act shall begin on January 1, 2027.

Section 6. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval."