

2018 Regular Session

HOUSE BILL NO. 436

BY REPRESENTATIVES JOHNSON AND LEBAS

INSURANCE/HEALTH: Provides relative to the regulation of pharmacy benefit managers

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), and 1864(A)(4), 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), and 1864(A)(4) are  
14 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 contract entered into in this state between an  
19 insurer, pharmacy benefit manager, or any other entity and a pharmacist or pharmacy  
20 shall contain a provision prohibiting the pharmacist from disclosing any relevant

1 information to an insured individual purchasing prescription medication, including  
 2 but not limited to the insured's cost share of the prescription medication, actual  
 3 reimbursement to the pharmacist for the sale of the prescription medication, efficacy  
 4 of the prescription medication, and the availability of any alternative medications  
 5 that are less expensive than the prescription medication.

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

9 \* \* \*

10 §1860.3. Reimbursements

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

17 \* \* \*

18 §1863. Definitions

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

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

23 \* \* \*

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

26 \* \* \*

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

1 §1864. Requirements for use of the National Drug Code by a pharmacy ~~benefits~~  
2 benefit manager

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

6 \* \* \*

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

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

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

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

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

19 \* \* \*

20 §1865. Appeals

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

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

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

5 (2) Permit the ~~challenging~~ appealing pharmacy or ~~pharmacist~~ and all other  
6 pharmacies in the network that filled prescriptions for patients covered under the  
7 same health benefit plan to reverse and ~~rebill the claim in question~~; resubmit claims  
8 and receive payment based on the adjusted maximum allowable cost from the initial  
9 date of service the appealed drug was dispensed.

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

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

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

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

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

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

27 E. For every drug for which the pharmacy benefit manager establishes a  
28 maximum allowable cost to determine the drug product reimbursement, the

1 pharmacy benefit manager shall make available to the commissioner, upon request,  
2 information that is needed to resolve an appeal.

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

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

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

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

14 G. The commissioner may impose a reasonable fee upon pharmacy benefit  
15 managers, in accordance with the Administrative Procedure Act, in addition to a  
16 license fee and annual report fee, in order to cover the costs of implementation and  
17 enforcement of this Section and R.S. 22:1641 through 1657, 1851 through 1864, and  
18 1961 through 1995, including fees to cover the cost of all of the following:

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

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

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

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

---

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

---

HB 436 Reengrossed

2018 Regular Session

Johnson

**Abstract:** Prohibit limitations on disclosures by pharmacists regarding drug costs and requires certain actions by pharmacy benefit managers after a successful appeal of a maximum allowable cost for a specific drug.

Proposed law prohibits a contract provision prohibiting a pharmacist from disclosing any relevant information to an insured individual purchasing prescription medication, including but not limited to the insured's cost share of the prescription medication, actual reimbursement to the pharmacist for the sale of the prescription medication, efficacy of the prescription medication, and the availability of any alternative medications that are less expensive than the prescription medication.

Proposed law updates the phrase "pharmacy benefits manager" to "pharmacy benefit manager".

Proposed law requires a pharmacy benefit manager to reimburse a pharmacy or pharmacist in this state an amount not less than the amount that the pharmacy benefit manager reimburses an affiliate of the pharmacy benefit manager for providing the same services.

Proposed law requires a pharmacy benefit manager, for every drug for which the pharmacy benefit manager establishes a maximum allowable cost to determine the drug product reimbursement, to make available to all pharmacies both of the following:

- (1) Information identifying the national drug pricing compendia or sources used to obtain the drug price data.
- (2) The comprehensive list of drugs subject to maximum allowable cost and the actual maximum allowable cost by plan for each drug.

Present law requires a pharmacy benefit manager to perform certain actions after an appeal relative to maximum allowable cost is upheld.

Proposed law requires the pharmacy benefit manager, if the appeal is granted, to take 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 appealing pharmacy and all other pharmacies in the network that filled prescriptions for patients covered under the same health benefit plan to reverse and resubmit claims 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 pharmacy benefit manager's network.
- (4) Make retroactive price adjustments in the next payment cycle.

Proposed law authorizes a pharmacist or pharmacy to file a complaint with the commissioner of insurance following a final decision of the pharmacy benefit manager and provides for the investigation of the complaint.

Proposed law authorizes the commissioner to impose a reasonable fee upon pharmacy benefit managers, in addition to a license fee and annual report fee, in order to cover the costs of implementation and enforcement of present law and proposed law.

Effective Jan. 1, 2019.

(Amends R.S. 22:1060.6(B), 1863(intro. para.), (1) and (6), 1864(A)(intro. para.) and (3) and (B)(intro. para.) and 1865; Adds R.S. 22:1060.6(C), 1860.3, 1863(8) and 1864(A)(4))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Delete proposed law requiring an appeal to be granted to the appealing pharmacy if the commissioner is unable to obtain information from the pharmacy benefit manager that is necessary to resolve the appeal.
2. Make technical changes.

#### The House Floor Amendments to the engrossed bill:

1. Require a reimbursement to a nonaffiliated pharmacy to be not less than the reimbursement to an affiliated pharmacy for the same service.
2. Clarify that proposed law applies to an insured individual.
3. Specify that a pharmacist may disclose the insured's cost share of the prescription.
4. Define "drug shortage list".
5. Require the list of the actual maximum allowable cost for each drug to be organized by health plan.
6. Extend the time period for an appeal of a maximum allowable cost from 7 business days to 15 business days.
7. Extend the time period for responding to an appeal from 7 business days to 15 business days.
8. Clarify that a complaint may be filed with the commissioner after an appeal is denied.
9. Change the time for filing a complaint from 30 calendar days to 15 business days.
10. Require the complaint investigation to find that a decision was not in compliance with the law prior to granting reimbursement to a pharmacy.
11. Require the fee to be reasonable and adopted in accordance with the APA.
12. Make technical changes.