

CONFERENCE COMMITTEE REPORT

HB 436

2018 Regular Session

Johnson

May 18, 2018

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 436 by Representative Johnson, recommend the following concerning the Reengrossed bill:

1. That the set of Senate Committee Amendments by the Senate Committee on Insurance (#3178) be adopted.
2. That the set of Senate Floor Amendments by Senator Mills (#3508) be adopted.
3. That the set of Senate Floor Amendments by Senator Mills (#3562) be rejected.

Respectfully submitted,

Representative Robert A. Johnson

Senator John R. Smith

Representative Kirk Talbot

Senator Fred Mills

Representative Thomas Carmody

Senator Rick Ward, III

 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)]

CONFERENCE COMMITTEE REPORT DIGEST
HB 436**2018 Regular Session****Johnson**
Keyword and oneliner of the instrument as it left the House

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

Report adopts Senate amendments to:

1. Prohibit an entity that administers prescription drug benefits programs from prohibiting by contract a pharmacy or pharmacist from informing a patient of all relevant options including 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.
2. Require the reimbursement amount requested in a pharmacist's appeal to be granted if the commissioner of insurance is unable to obtain information from the pharmacy benefit manager that is necessary to resolve the pharmacist's complaint.
3. Require information designated as proprietary by the pharmacy benefit manager to be given confidential treatment.
4. Authorize the commissioner to promulgate rules and regulations necessary or proper to carry out the provisions of proposed law.
5. Permit an entity that administers prescription drug benefits programs to apply for an administrative hearing pursuant to present law.
6. Delete the Senate committee amendment that narrowed the applicability of proposed law to pharmacies with fewer than 10 retail outlets physically located within the state under a common corporate umbrella.

Report rejects Senate amendments which would have:

1. Prohibited a health insurance insurer or pharmacy benefit manager from requiring any pharmacy or pharmacist to hold a license, accreditation, affiliation, or registration other than that required by federal or state law, rules, or regulations.
2. Made any contract provision requiring any pharmacy or pharmacist to hold a license, accreditation, affiliation, or registration other than that required by federal or state law, rules, or regulations severable from the contract and considered null and void and not enforceable in La.
3. Authorized the attorney general to enforce proposed law against any health insurance issuer or pharmacy benefit manager who fails to comply with the jurisdiction, regulatory, or licensing authority of the commissioner which may subject the health insurance issuer or pharmacy benefit manager to action under the Unfair Trade Practices and Consumer Protection Law.

Digest of the bill as proposed by the Conference Committee

Proposed law prohibits a pharmacy benefit manager, insurer, or other entity that administers prescription drug benefits programs in La. from prohibiting 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.

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 by plan 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 requires the pharmacy benefit manager to provide the commissioner, upon request, information that is needed to resolve a pharmacist's complaint regarding the pharmacist's appeal to the pharmacy benefit manager. Proposed law further requires, 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 to be granted.

Proposed law requires information specifically designated as proprietary by the pharmacy benefit manager to be given confidential treatment pursuant to present law.

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.

Proposed law permits the commissioner to promulgate rules and regulations, in accordance with the Administrative Procedure Act, that are necessary or proper to carry out the provisions of proposed law.

Proposed law allows any pharmacy benefit manager, insurer, or other entity that administers prescription drug benefits programs that is aggrieved by an act of the commissioner to apply for a hearing pursuant to present 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), 1864(A)(4), and 1866)