

2018 Regular Session

HOUSE BILL NO. 436

BY REPRESENTATIVE JOHNSON

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) and 1864(A)(4), relative to coverage of prescription
5 drugs; to prohibit limitations on certain disclosures by pharmacists; to update
6 terminology; to require disclosures by pharmacy benefit managers; to provide for
7 appeals relative to maximum allowable cost; to impose a fee on pharmacy benefit
8 managers; to provide for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

14 §1060.6. Limitation; patient payment

15 * * *

16 B. ~~The provision established in Subsection A of this Section shall become~~
17 ~~effective on January 1, 2017.~~ No contract entered into in this state between an
18 insurer, pharmacy benefit manager, or any other entity and a pharmacist or pharmacy
19 shall contain a provision prohibiting the pharmacist from disclosing any relevant
20 information to an individual purchasing prescription medication, including but not

1 limited to the cost of the prescription medication, actual reimbursement to the
2 pharmacist for the sale of the prescription medication, efficacy of the prescription
3 medication, and the availability of any alternative medications that are less expensive
4 than the prescription medication.

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

8 * * *

9 §1863. Definitions

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

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

14 * * *

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

17 * * *

18 §1864. Requirements for use of the National Drug Code by a pharmacy ~~benefits~~
19 benefit manager

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

23 * * *

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

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

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

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

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

7 * * *

8 §1865. Appeals

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

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

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

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

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

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

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

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

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

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

14 E. For every drug for which the pharmacy benefit manager establishes a
15 maximum allowable cost to determine the drug product reimbursement, the
16 pharmacy benefit manager shall make available to the commissioner, upon request,
17 information that is needed to resolve an appeal.

18 F.(1) A pharmacist or pharmacy may file a complaint with the commissioner
19 following a final decision of the pharmacy benefit manager.

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

23 (3) The commissioner may request additional information necessary to
24 resolve a complaint from any party.

25 (4) If the complaint investigation determines that the pharmacy benefit
26 manager's final decision was erroneous, the appealing pharmacy shall be reimbursed
27 the higher of the pharmacy's actual acquisition cost of the drug or the maximum
28 allowable charge.

1 G. The commissioner may impose a fee upon pharmacy benefit managers,
2 in addition to a license fee and annual report fee, in order to cover the costs of
3 implementation and enforcement of this Section and R.S. 22:1641 through 1657,
4 1851 through 1864, and 1961 through 1995, including fees to cover the cost of all
5 of the following:

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

8 (2) Reasonable technology costs related to the investigatory and enforcement
9 process. Technology costs shall include the actual cost of software and hardware
10 used in the investigatory and enforcement process and the cost of training personnel
11 in the proper use of the software or hardware.

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

14 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 Engrossed

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 individual purchasing prescription medication, including but not limited to the cost 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, 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 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 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) 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.