

2018 Regular Session

SENATE BILL NO. 282

BY SENATORS MILLS AND BARROW

HEALTH/ACC INSURANCE. Provides relative to prescription drug pricing. (8/1/18)

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(11) and to enact R.S. 22:976, relative to prescription
3 drug pricing; to provide for confidentiality; to provide for disclosure; to provide for
4 certification; to provide for enforcement; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 22:976 is hereby enacted to read as follows:

7 **§976. Disclosure of prescription drug consumer cost burden; certification**

8 **A. As used in this Section:**

9 **(1) "Excess consumer cost burden" means an amount charged to an**
10 **enrollee for a covered prescription drug that is greater than the amount that an**
11 **enrollee's health insurance issuer pays, or would pay absent the enrollee cost**
12 **sharing, after accounting for rebates, or where an enrollee is subject to a**
13 **coinsurance amount of less than one hundred percent, a prorated amount of the**
14 **issuer cost based on the enrollee's coinsurance amount.**

15 **(2) "Health benefit plan", "plan", "benefit", or "health insurance**
16 **coverage" means services consisting of medical care provided directly through**
17 **insurance, reimbursement, or other means, and including items and services**

1 paid for as medical care under any hospital or medical service policy or
2 certificate, hospital or medical service plan contract, preferred provider
3 organization, or health maintenance organization contract offered by a health
4 insurance issuer. However, excepted benefits are not included as a "health
5 benefit plan".

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

11 (4) "Rebates" means:

12 (a) Negotiated price concessions, including but not limited to base
13 rebates and reasonable estimates of any price protection rebates and
14 performance-based rebates that may accrue directly or indirectly to the health
15 insurance issuer during the coverage year from a manufacturer, dispensing
16 pharmacy, or other party to the transaction.

17 (b) Reasonable estimates of any fees and other administrative costs that
18 are passed through to the health insurance issuer and serve to reduce the health
19 insurance issuer's prescription drug liabilities for the coverage year.

20 B. In the case of a health insurance issuer that offers or renews a health
21 benefit plan for sale in the state on or after January 1, 2019, if the health
22 insurance issuer may charge enrollees cost sharing amounts that may result in
23 an excess consumer cost burden for covered prescription drugs, the health
24 insurance issuer shall disclose to enrollees and prospective enrollees the fact
25 that enrollees may be subject to an excess consumer cost burden. The notice
26 shall be provided in health benefit plan documents, including but not limited to
27 inclusion in evidence of coverage materials, formulary or preferred drug guides,
28 and all marketing materials.

29 C. A health insurance issuer that offers or renews a health benefit plan

1 for sale in the state on or after January 1, 2019, shall annually certify to the
 2 commissioner of insurance that, during the prior benefit year, the health
 3 insurance issuer made available to enrollees at the point of sale at least an
 4 amount greater than fifty percent of rebates received by the insurer.

5 D. In complying with the provisions of this Section a health insurance
 6 issuer shall not publish or otherwise reveal information regarding the actual
 7 amount of rebates the health insurance issuer receives, including but not limited
 8 to information regarding the amount of rebates it receives on a product,
 9 manufacturer, or pharmacy specific basis. Such information is a trade secret,
 10 is not a public record as defined under R.S. 44:1 et seq. and shall not be
 11 disclosed directly or indirectly. A health insurance issuer shall impose the
 12 confidentiality protections of this Section on any third parties or vendors with
 13 which it contracts that may receive or have access to rebate information.

14 E. The commissioner of insurance shall have enforcement authority over
 15 this Section. Among other enforcement mechanisms, the commissioner of
 16 insurance may, after a hearing, suspend or revoke a health insurance issuer's
 17 license for failure to comply with the requirements of this Section, or providing
 18 a false certification under this Section.

19 Section 2. R.S. 44:4.1(B)(11) is hereby amended and reenacted to read as follows:

20 §4.1. Exceptions

21 * * *

22 B. The legislature further recognizes that there exist exceptions, exemptions,
 23 and limitations to the laws pertaining to public records throughout the revised
 24 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
 25 limitations are hereby continued in effect by incorporation into this Chapter by
 26 citation:

27 * * *

28 (11) R.S. 22:2, 14, 31, 42.1, 88, 244, 263, 265, 461, 550.7, 571, 572, 572.1,
 29 574, 618, 639, 691.4, 691.5, 691.6, 691.7, 691.8, 691.9, 691.9.1, 691.10, 691.38,

1 691.56, 732, 752, 753, 771, 834, 972(D), **976**, 1008, 1019.2, 1203, 1460, 1464, 1466,
 2 1488, 1546, 1559, 1566(D), 1644, 1656, 1723, 1796, 1801, 1808.3, 1927, 1929,
 3 1983, 1984, 2036, 2045, 2056, 2085, 2091, 2293, 2303

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The original instrument was prepared by Christine Arbo Peck. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

DIGEST

SB 282 Reengrossed 2018 Regular Session Mills

Proposed law requires certain health insurance issuers to notify enrollees that they are subject to an excess consumer cost burden when they are charged more for a prescription drug than their insurer pays or would pay after considering drug rebates from the drug manufacturer into the total cost of the drug.

Proposed law requires certain health insurance issuers to certify to the commissioner of insurance that they passed on to the consumer at least 50% of the rebates received from drug manufacturers. Proposed law provides that in making this certification all information given to the commissioner shall be confidential.

Proposed law provides for enforcement against a health insurance issuer's license for failure to comply with proposed law, or providing a false certification.

Effective August 1, 2018.

(Amends R.S. 44:4.1(B)(11); adds R.S. 22:976)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Removes provision applying proposed law to pharmacy benefit managers participating in the Medicaid program.
2. Makes a technical change.
3. Changes definition of "excess consumer cost burden".