

GREEN SHEET REDIGEST

HB 436

2018 Regular Session

Johnson

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

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

DIGEST

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 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 requires the pharmacy benefit manager to provide the commissioner, upon request, information that is needed to resolve a complaint. Provides 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 shall be granted.

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 applies only to pharmacies with fewer than 10 retail outlets physically located within the state that are under a common corporate umbrella.

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)

Summary of Amendments Adopted by House

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

1. Deletes 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. Makes technical changes.

The House Floor Amendments to the engrossed bill:

1. Requires a reimbursement to a nonaffiliated pharmacy to be not less than the reimbursement to an affiliated pharmacy for the same service.
2. Clarifies that proposed law applies to an insured individual.
3. Specifies that a pharmacist may disclose the insured's cost share of the prescription.
4. Defines "drug shortage list".
5. Requires the list of the actual maximum allowable cost for each drug to be organized by health plan.
6. Extends the time period for an appeal of a maximum allowable cost from 7 business days to 15 business days.
7. Extends the time period for responding to an appeal from 7 business days to 15 business days.

8. Clarifies that a complaint may be filed with the commissioner after an appeal is denied.
9. Changes the time for filing a complaint from 30 calendar days to 15 business days.
10. Requires the complaint investigation to find that a decision was not in compliance with the law prior to granting reimbursement to a pharmacy.
11. Requires the fee to be reasonable and adopted in accordance with the APA.
12. Makes technical changes.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the reengrossed bill

1. Prohibits 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. Requires the commissioner to grant the reimbursement amount requested in the pharmacist's appeal if the commissioner is unable to obtain information from the pharmacy benefit manager that is necessary to resolve a complaint.
3. Restricts application of proposed law to pharmacies with fewer than 10 retail outlets physically located within the state under a common corporate umbrella.
4. Requires information designated as proprietary by the pharmacy benefit manager to be given confidential treatment.
5. 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.
6. Permits an entity that administers prescription drug benefits programs to apply for an administrative hearing pursuant to present law.