

2019 Regular Session

SENATE BILL NO. 164

BY SENATOR MORRISH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HEALTH/ACC INSURANCE. Provides relative to the administration of prescription drug benefits. (8/1/19)

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AN ACT

To amend and reenact R.S. 22:1006.1(A) and 1053(D) and R.S. 44:4.1(B)(11) and R.S. 44:4.1(B)(11) as amended by Section 2 of Act 371 of the 2018 Regular Session, to enact R.S. 22:1053(E) and (F), and Subpart P of Part III of Chapter 4 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1260.41 through 1260.46, and to repeal R.S. 22:1657 and R.S. 22:1657 as amended by Section 1 of Act 371 of the 2018 Regular Session, relative to the administration of prescription drug benefits; to provide for prior authorization; to provide for step therapy; to provide for licensure of pharmacy benefit managers; to provide for prohibited conduct; to provide for consumer access to information; to provide for an exception to the Public Records Law; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1006.1(A) and 1053(D) are hereby amended and reenacted and R.S. 22:1053(E) and (F) and Subpart P of Part III of Chapter 4 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1260.41 through 1260.46, are hereby enacted to read as follows:

§1006.1. Prior authorization; forms required; criteria

1 A. As used in this Section:

2 (1) "Health benefit plan", "plan", "benefit", or "health insurance coverage"
3 means services consisting of medical care, provided directly, through insurance or
4 reimbursement, or otherwise, and including items and services paid for as medical
5 care under any hospital or medical service policy or certificate, hospital or medical
6 service plan contract, preferred provider organization, or health maintenance
7 organization contract offered by a health insurance issuer **that may or may not be**
8 **administered by a pharmacy benefit manager**. However, excepted benefits are not
9 included as a "health benefit plan".

10 (2) "Health insurance issuer" means ~~any~~ **an** entity that offers health insurance
11 coverage through a plan, policy, or certificate of insurance subject to state law that
12 regulates the business of insurance. "Health insurance issuer" shall also include a
13 health maintenance organization, as defined and licensed pursuant to Subpart I of
14 Part I of Chapter 2 of this Title.

15 (3) "Prior authorization" ~~shall mean~~ **means** a utilization management
16 criterion utilized to seek permission or waiver of a drug to be covered under a health
17 benefit plan that provides prescription drug benefits.

18 (4) "Prior authorization form" ~~shall mean~~ **means** a single uniform
19 prescription drug prior authorization form used by all health insurance issuers,
20 including any health insurance issuer pharmacy benefit managers, for the purpose of
21 obtaining prior authorization.

22 * * *

23 §1053. Requirement for coverage of step therapy or fail first protocols

24 * * *

25 **D. A group health plan shall not require a covered person to follow a**
26 **plan's step therapy protocol if the prescribed drug is on the plan's prescription**
27 **drug formulary and the patient has tried the step therapy required prescription**
28 **drug while under his current or previous health insurance or health benefit**
29 **plan, and the provider has submitted justification and supporting clinical**

1 documentation that such prescription drug was discontinued due to lack of
 2 efficacy or effectiveness, diminished effect, or an adverse event. Pharmacy drug
 3 samples shall not be considered trial and failure of a preferred prescription
 4 drug in lieu of trying the step therapy required prescription drug.

5 E. The provisions of this Section shall not be construed to prevent:

6 (1) A group health plan from requiring a patient to try a generic
 7 equivalent of a prescription drug before providing coverage for the equivalent
 8 brand-name prescription drug.

9 (2) A practitioner from prescribing a prescription drug that the
 10 practitioner has determined to be medically necessary.

11 D.F. As used in this Section, a "health coverage plan" shall mean any
 12 hospital, health, or medical expense insurance policy, hospital or medical service
 13 contract, employee welfare benefit plan, contract or agreement with a health
 14 maintenance organization or a preferred provider organization, health and accident
 15 insurance policy, or any other insurance contract of this type, including a group
 16 insurance plan and the Office of Group Benefits programs that may or may not be
 17 administered by a pharmacy benefit manager.

18 * * *

19 SUBPART P. PHARMACY BENEFIT MANAGERS

20 §1260.41. Short title

21 This Subpart shall be known and may be cited as the "Louisiana
 22 Pharmacy Benefit Manager Licensure and Regulation Act". This Subpart shall
 23 not be construed to contain the exclusive laws regulating the business of
 24 pharmacy benefit managers.

25 §1260.42. Findings and purpose

26 A. The legislature finds that it is necessary to establish standards and
 27 criteria for the regulation and licensure of pharmacy benefit managers. For
 28 purposes of this Subpart, "pharmacy benefit manager" shall have the same
 29 meaning as defined in R.S. 22:1641(8).

1 **B. The purposes of this Subpart are:**

2 **(1) To promote, preserve, and protect the health, safety, and welfare of**
3 **the public through effective licensure and regulation of pharmacy benefit**
4 **managers.**

5 **(2) To provide for powers and duties of the commissioner of insurance.**

6 **(3) To provide for penalties and fines.**

7 **§1260.43. Pharmacy benefit manager; licensure**

8 **A. A person or organization shall not establish or operate as a pharmacy**
9 **benefit manager in this state for health benefit plans without obtaining a license**
10 **from the commissioner of insurance pursuant to R.S. 22:1651.**

11 **B. As a condition of licensure, each pharmacy benefit manager shall**
12 **obtain a surety bond of no less than one million dollars.**

13 **§1260.44. Enforcement**

14 **A. The commissioner of insurance shall have enforcement authority**
15 **relative to pharmacy benefit managers as provided for under this Title.**

16 **B. The commissioner may examine or audit the books and records of a**
17 **pharmacy benefit manager in accordance with R.S. 22:1981 et seq. All**
18 **information or data acquired during an examination conducted pursuant to this**
19 **Section shall be considered proprietary, confidential, and not subject to**
20 **disclosure pursuant to R.S. 44:1 et seq.**

21 **§1260.45. Pharmacy benefit manager; prohibited conduct**

22 **A. No pharmacy benefit manager or other entity that administers**
23 **prescription drug benefits in Louisiana shall prohibit, by contract, a pharmacy**
24 **or pharmacist from informing a patient of all relevant options when acquiring**
25 **their prescription medication, including but not limited to the cost and clinical**
26 **efficacy of a more affordable alternative if one is available and the ability to pay**
27 **cash if a cash payment for the same drug is less than an insurance copayment**
28 **or deductible payment amount.**

29 **B. Any provision of a contract that violates the provisions of this Section**

1 shall be unenforceable and shall be deemed an unfair or deceptive act and
2 practice pursuant to R.S. 22:1961 et seq.

3 §1260.46. Consumer access to information

4 A. Effective January 1, 2020, the commissioner of insurance shall
5 provide a dedicated location on the department's website for pharmacy benefit
6 manager information and links.

7 B. For each of a pharmacy benefit manager's contractual or other
8 relationships with a health benefit plan or health insurance issuer, the
9 pharmacy benefit manager shall provide the department with the health benefit
10 plan's formulary and provide timely notification of formulary changes and
11 product exclusions. The information provided pursuant to this Subsection shall
12 be made available in a centralized location on the department's website in a
13 format that allows for consumer access, including links to pharmacy benefit
14 manager websites.

15 * * *

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

17 §4.1. Exceptions

18 * * *

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

24 * * *

25 (11) R.S. 22:2, 14, 31, 42.1, 88, 244, 263, 265, 461, 550.7, 571, 572, 572.1,
26 574, 618, 639, 691.4, 691.5, 691.6, 691.7, 691.8, 691.9, 691.9.1, 691.10, 691.38,
27 691.56, 732, 752, 753, 771, 834, 972(D), 976, 1008, 1019.2, 1203, **1260.44**, 1460,
28 1464, 1466, 1488, 1546, 1559, 1566(D), 1644, 1656, 1723, 1796, 1801, 1808.3,
29 1927, 1929, 1983, 1984, 2036, 2045, 2056, 2085, 2091, 2293, 2303

* * *

Section 3. R.S. 44:4.1(B)(11) as amended by Section 2 of Act 371 of the 2018 Regular Session is hereby amended and reenacted to read as follows:

§4.1. Exceptions

* * *

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

* * *

(11) R.S. 22:2, 14, 31, 42.1, 88, 244, 263, 265, 461, 550.7, 571, 572, 572.1, 574, 618, 639, 691.4, 691.5, 691.6, 691.7, 691.8, 691.9, 691.9.1, 691.10, 691.38, 691.56, 732, 752, 753, 771, 834, 972(D), 1008, 1019.2, 1203, **1260.44**, 1460, 1464, 1466, 1488, 1546, 1559, 1566(D), 1644, 1656, 1657.1, 1723, 1796, 1801, 1808.3, 1927, 1929, 1983, 1984, 2036, 2045, 2056, 2085, 2091, 2293, 2303

* * *

Section 4. R.S. 22:1657 and R.S. 22:1657 as amended by Section 1 of Act 371 of the 2018 Regular Session are hereby repealed.

Section 5. The provisions of Section 3 of this Act shall become effective on January 1, 2020.

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 Laura Gail Sullivan.

DIGEST

SB 164 Engrossed 2019 Regular Session Morrish

Present law provides for regulation of prior authorization procedures for prescription drugs. Proposed law retains present law and makes technical changes.

Present law requires insurers to provide certain override procedures for physicians when step therapy or fail first protocols are utilized. Proposed law retains present law and adds a process for exemption from step therapy for patients who have clinical documentation that a prescription drug was discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse event. Proposed law provides that a plan shall not be prevented from

requiring a patient to try a generic drug. Proposed law provides that a practitioner shall not be prevented from prescribing what he determines to be medically necessary.

Present law requires pharmacy benefit managers to be licensed by the commissioner of insurance as third party administrators. Proposed law repeals present law and establishes specific pharmacy benefit manager licensure and regulation authority for the commissioner of insurance. Proposed law provides for findings and purpose, rulemaking, license authority, and enforcement.

Present law prohibits pharmacy benefit managers from imposing contract provisions on pharmacists that prevent the pharmacist from informing patients of all relevant options when acquiring prescription drugs. Proposed law retains present law.

Present law establishes a dedicated location on the Department of Insurance's website for certain information regarding pharmacy benefit managers. Present law implements the website on January 1, 2020. Proposed law retains present law.

Effective August 1, 2019.

(Amends R.S. 22:1006.1(A) and 1053(D) and R.S. 44:4.1(B)(11) and 44:4.1(B) as amended by Section 2 of Act 371 of the 2018 Regular Session; adds R.S. 22:1053(E) and (F), and 1260.41 - 1260.46; repeals R.S. 22:1657 and 1657 as amended by Section 1 of Act 371 of the 2018 Regular Session)

Summary of Amendments Adopted by Senate

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

1. Makes technical changes.