

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)

1 AN ACT  
2 To amend and reenact R.S. 22:1006.1(A) and 1053(A) and (D) and R.S. 44:4.1(B)(11) and  
3 R.S. 44:4.1(B)(11) as amended by Section 2 of Act 371 of the 2018 Regular Session,  
4 to enact R.S. 22:1053 (B)(4) and (5) and (E), and Subpart P of Part III of Chapter 4  
5 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.  
6 22:1260.41 through 1260.46, and to repeal R.S. 22:1657 and R.S. 22:1657 as  
7 amended by Section 1 of Act 371 of the 2018 Regular Session, relative to the  
8 administration of prescription drug benefits; to provide for prior authorization; to  
9 provide for step therapy; to provide for licensure of pharmacy benefit managers; to  
10 provide for prohibited conduct; to provide for consumer access to information; to  
11 provide for an exception to the Public Records Law; and to provide for related  
12 matters.

13 Be it enacted by the Legislature of Louisiana:

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

1 §1006.1. Prior authorization; forms required; criteria

2 A. As used in this Section:

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

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

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

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

23 \* \* \*

24 §1053. Requirement for coverage of step therapy or fail first protocols

25 A. Notwithstanding the provisions of R.S. 22:1047 to the contrary, any health  
 26 care coverage plan specific in Subsection ~~DE~~ of this Section which includes  
 27 prescription benefits as part of its policy or contract, which utilizes step therapy or  
 28 fail first protocols, and which is issued for delivery, delivered, renewed, or otherwise  
 29 contracted for in this state on or after January 1, 2011, shall comply with the

1 provisions of the Section.

2 B. When medications for the treatment of any medical condition are restricted  
3 for use by an insurer by a step therapy or fail first protocol, the prescribing physician  
4 shall have access to a clear and convenient process to expeditiously request an  
5 override of such restriction from the insurer. An override of such restriction shall be  
6 expeditiously granted by the insurer under any of the following circumstances:

7 \* \* \*

8 **(4) The prescribing physician can demonstrate to the health coverage**  
9 **plan that the preferred treatment required under the step therapy or fail first**  
10 **protocol was discontinued due to lack of efficacy or effectiveness, diminished**  
11 **effect, or an adverse event.**

12 **(5) The prescribing physician can demonstrate to the health coverage**  
13 **plan, the criteria set forth in Paragraphs (B)(1) through (4) have been satisfied**  
14 **under the insured's current or previous health coverage plan in the treatment**  
15 **of the insured's disease or medical condition.**

16 \* \* \*

17 D. **The provisions of this Section shall not be construed to prevent:**

18 **(1) A group health plan from requiring a patient to try a generic**  
19 **equivalent of a prescription drug before providing coverage for the equivalent**  
20 **brand-name prescription drug.**

21 **(2) A practitioner from prescribing a prescription drug that the**  
22 **practitioner has determined to be medically necessary.**

23 **E.** As used in this Section, a "health coverage plan" shall mean any hospital,  
24 health, or medical expense insurance policy, hospital or medical service contract,  
25 employee welfare benefit plan, contract or agreement with a health maintenance  
26 organization or a preferred provider organization, health and accident insurance  
27 policy, or any other insurance contract of this type, including a group insurance plan  
28 and the Office of Group Benefits programs **that may or may not be administered**  
29 **by a pharmacy benefit manager.**

1 \* \* \*

2 SUBPART P. PHARMACY BENEFIT MANAGERS

3 §1260.41. Short title

4 This Subpart shall be known and may be cited as the "Louisiana  
5 Pharmacy Benefit Manager Licensure and Regulation Act". This Subpart shall  
6 not be construed to contain the exclusive laws regulating the business of  
7 pharmacy benefit managers.

8 §1260.42. Findings and purpose

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

13 B. The purposes of this Subpart are:

14 (1) To promote, preserve, and protect the health, safety, and welfare of  
15 the public through effective licensure and regulation of pharmacy benefit  
16 managers.

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

18 (3) To provide for penalties and fines.

19 §1260.43. Pharmacy benefit manager; licensure

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

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

25 §1260.44. Enforcement

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

28 B. The commissioner may examine or audit the books and records of a  
29 pharmacy benefit manager in accordance with R.S. 22:1981 et seq. All

1 information or data acquired during an examination conducted pursuant to this  
 2 Section shall be considered proprietary, confidential, and not subject to  
 3 disclosure pursuant to R.S. 44:1 et seq.

4 §1260.45. Pharmacy benefit manager; prohibited conduct

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

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

15 §1260.46. Consumer access to information

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

19 B. For each of a pharmacy benefit manager's contractual or other  
 20 relationships with a health benefit plan or health insurance issuer, the  
 21 pharmacy benefit manager shall provide the department with the health benefit  
 22 plan's formulary and provide timely notification of formulary changes and  
 23 product exclusions. The information provided pursuant to this Subsection shall  
 24 be made available in a centralized location on the department's website in a  
 25 format that allows for consumer access, including links to pharmacy benefit  
 26 manager websites.

27 \* \* \*

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

29 §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), 976, 1008, 1019.2, 1203, **1260.44**, 1460, 1464, 1466, 1488, 1546, 1559, 1566(D), 1644, 1656, 1723, 1796, 1801, 1808.3, 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

\* \* \*

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

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

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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 Cathy R. Wells.

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DIGEST

SB 164 Reengrossed

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.

Proposed law authorizes additional override of restrictions if:

- (1) The prescribing physician can demonstrate to the health coverage plan that the preferred treatment required under the step therapy or fail first protocol was discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse event.
- (2) The prescribing physician can demonstrate to the health coverage plan that the criteria set forth in current law have been satisfied under the insured's current or previous health coverage plan in the treatment of the insured's disease or medical condition.

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(B)(4) and (5) and (E), 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.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Adds additional override of restrictions if certain conditions are met.