

2019 Regular Session

SENATE BILL NO. 41

BY SENATOR MILLS

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

PHARMACEUTICALS. Provides relative to regulation of pharmacy benefit managers.  
(gov sig) (2/3 - CA7s2.1(A))

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

AN ACT

To amend and reenact R.S. 22:1863(2) and to enact R.S. 22:1863(9) and 1867, Part VII of Chapter 14 of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 37:1252 through 1254, and Chapter 36 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:2861 through 2871, relative to regulation of pharmacy benefit managers; to provide legislative intent and public health policy; to provide for protection of the public; to provide for general applicability; to provide for licensure by the Louisiana Department of Insurance; to provide for permitting by the Louisiana Board of Pharmacy; to provide for minimum licensure and permit criteria; to provide for rulemaking; to provide for penalties; to provide for unfair trade practices; to provide for enforcement; to provide for authority of the attorney general; to provide for written notice; to provide for a hearing; to provide for an appeal; to provide for a cause of action under the Unfair Trade Practices and Consumer Protection Law; to provide for severability; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1863(2) is hereby amended and reenacted and R.S. 22:1863(9)

1 and 1867 are hereby enacted to read as follows:

2 §1863. Definitions

3 As used in this Subpart, the following definitions apply:

4 \* \* \*

5 (2) "Maximum Allowable Cost List" means a listing of the National Drug  
6 Code **or other methodology, directly or indirectly**, used by a pharmacy benefit  
7 manager setting the maximum allowable ~~cost on which reimbursement~~ **payment** to  
8 a pharmacy or pharmacist ~~may be based.~~ **for a generic drug, brand-name drug,**  
9 **biologic product, or other prescription drug. "Maximum allowable cost list"**  
10 **includes, without limitation:**

11 **(a) Average acquisition cost, including national average drug acquisition**  
12 **cost.**

13 **(b) Average manufacturer price.**

14 **(c) Brand effective rate or generic effective rate.**

15 **(d) Discount indexing.**

16 **(e) Federal upper limits.**

17 **(f) Whole acquisition cost.**

18 **(g) Any other term that a pharmacy benefit manager or a healthcare**  
19 **insurer may use to establish reimbursement rates to a pharmacist or pharmacy**  
20 **for pharmacist services.**

21 \* \* \*

22 **(9) "Spread pricing" means any amount a pharmacy benefit manager**  
23 **charges or claims from a health plan provider or managed care organization for**  
24 **payment of a prescription or for pharmacy services that is in excess of the**  
25 **amount the pharmacy benefit manager paid to the pharmacist or pharmacy**  
26 **who filled the prescription or provided the pharmacy services.**

27 \* \* \*

28 **§1867. Prohibition on spread pricing**

29 **A pharmacy benefit manager is prohibited from conducting or**

1 **participating in spread pricing in this state.**

2 \* \* \*

3 Section 2. Part VII of Chapter 14 of Title 37 of the Louisiana Revised Statutes of  
4 1950, comprised of R.S. 37:1252 through 1254, is hereby enacted to read as follows:

5 **PART VII. PHARMACY BENEFIT MANAGERS**

6 **§1252. Louisiana Board of Pharmacy; authority to regulate pharmacy benefit**  
7 **managers**

8 **A. Pursuant to the authority vested in the board in this Chapter and as**  
9 **specifically provided for in the Pharmacy Benefit Manager Licensing Law, R.S.**  
10 **40:2861 et seq., the board shall create and issue a permit for pharmacy benefit**  
11 **managers as defined in R.S. 40:2863.**

12 **B. A pharmacy benefit manager shall also be required to be permitted**  
13 **under Part IV of this Chapter if it administers, develops, maintains, performs,**  
14 **or provides one or more of the pharmacy services in this state or that affects one**  
15 **or more beneficiaries of a pharmacy benefit management plan administered by**  
16 **the pharmacy benefit manager, as set forth in R.S. 40:2868.**

17 **§1253. Pharmacy benefit managers; permit; annual report; fees**

18 **A. The board shall promulgate rules and regulations to implement the**  
19 **provisions of this Part and the applicable provisions of the Pharmacy Benefit**  
20 **Manager Licensing Law.**

21 **B. The board shall have the authority to promulgate rules and**  
22 **regulations to specify the annual reporting requirements for the pharmacy**  
23 **benefit manager.**

24 **C. The board has the authority and responsibility to assess fees upon any**  
25 **entity practicing pharmacy in this state in accordance with R.S. 37:1184.**

26 **§1254. Pharmacy benefit managers; enforcement**

27 **Enforcement of the provisions of this Part by the board shall be as**  
28 **provided for in this Chapter and R.S. 40:2871.**

29 Section 3. Chapter 36 of Title 40 of the Louisiana Revised Statutes of 1950,

1 comprised of R.S. 40:2861 through 2871, is hereby enacted to read as follows:

2 **CHAPTER 36. REGULATION OF PHARMACY BENEFIT MANAGERS**

3 **§2861. Legislative intent and public health policy**

4 **It is the intent of the legislature that the purpose of this Chapter is to**  
5 **license, permit, and monitor pharmacy benefit managers to provide for the**  
6 **effective control and regulation of their activities, maintain and enforce order**  
7 **regarding the prescribing, dispensing, marketing, selling, managing, and use of**  
8 **prescription drugs in this state, and to protect the health, safety, and general**  
9 **welfare of the citizens and residents of this state.**

10 **§2862. Short title**

11 **This Chapter shall be known and may be cited as the "Pharmacy Benefit**  
12 **Manager Licensing Law".**

13 **§2863. Definitions**

14 **As used in this Chapter, the following definitions shall apply:**

15 **(1) "Attorney general" means the Louisiana attorney general.**

16 **(2) "Beneficiary" means a person who resides or is employed in this state**  
17 **and is covered or is eligible to be covered by a health plan.**

18 **(3) "Board of Pharmacy" means the Louisiana Board of Pharmacy.**

19 **(4) "Commissioner of insurance" means the Louisiana commissioner of**  
20 **insurance.**

21 **(5) "Department of Insurance" means the Louisiana Department of**  
22 **Insurance.**

23 **(6) "Department of Justice" means the Louisiana Department of Justice.**

24 **(7) "Health plan" means an individual or group plan or program,**  
25 **whether commercial, self-insured, or mandated or sponsored by any federal,**  
26 **state, or local government, which is established by contract, certificate, law,**  
27 **plan, policy, subscriber agreement, or by any other method and which is**  
28 **entered into, issued, or offered for the purpose of arranging for, delivering,**  
29 **paying for, providing, or reimbursing any of the costs of health or medical care,**

1 including pharmacy services, drugs, or devices.

2 (8) "Pharmacy benefit management plan" or "pharmacy benefits  
3 program" means a plan or program that pays for, reimburses, covers the cost  
4 of, or otherwise provides for pharmacist services, drugs, or devices to  
5 individuals who reside in or are employed in Louisiana.

6 (9) "Pharmacy benefit manager" or "PBM" means any person or  
7 business who administers the prescription drug or device program of one or  
8 more health plans on behalf of a third party in accordance with a pharmacy  
9 benefit program. This term includes any agent or representative of a pharmacy  
10 benefit manager hired or contracted by the pharmacy benefit manager to assist  
11 in the administering of the drug program and any wholly or partially owned or  
12 controlled subsidiary of a pharmacy benefit manager.

13 §2864. Duties of pharmacy benefit managers

14 A. A pharmacy benefit manager shall owe the beneficiaries of any  
15 pharmacy benefit management plan administered by the pharmacy benefit  
16 manager and to the entities that have entered into a contract with the pharmacy  
17 benefit manager the duties of good faith, honesty, trust, confidence, and candor.

18 B. The standard for the fulfillment of a pharmacy benefit manager's  
19 duties shall be to act with a high degree of care, skill, prudence, and diligence  
20 required of a reasonable and prudent person with substantial experience and  
21 expertise in the management of pharmacy benefit management programs and  
22 payment of claims.

23 §2865. General licensing and permitting requirements

24 A. Every pharmacy benefit manager that does business in this state or  
25 pays for benefits to a beneficiary through a pharmacy benefit management plan  
26 shall be licensed or permitted as required by this Chapter.

27 B. No license or permit shall be issued to a pharmacy benefit manager  
28 who has not registered with the Louisiana secretary of state to conduct business  
29 within the state.

1                    C. Each license and permit shall be valid only for the applicant listed on  
2 the application.

3                    D. A pharmacy benefit manager license or permit is not transferable.

4                    (1) No license or permit shall be subject to sale, assignment or other  
5 transfer, voluntary or involuntary.

6                    (2) In the event the ownership of the pharmacy benefit manager changes  
7 by fifty percent or more after the initial issuance of the license or permit, the  
8 ownership will be deemed sufficiently different as to require a new pharmacy  
9 benefit manager license or permit.

10                   (3) The continued operation of a pharmacy benefit manager under a  
11 license or permit issued pursuant to this Chapter after its ownership has  
12 changed by fifty percent or more shall constitute sufficient basis for finding that  
13 the pharmacy benefit manager is operating in this state without a valid license  
14 or permit in violation of this Chapter.

15 §2866. General applicability

16                   A. The licensure and regulation requirements set forth pursuant to this  
17 Chapter shall apply generally to any pharmacy benefit manager regardless of  
18 plan or benefit financing.

19                   B. Nothing in this Chapter shall be construed to require coverage of any  
20 specific drug in any health plan, but shall apply once a drug is covered or  
21 included on a health plan formulary.

22 §2867. Pharmacy benefit manager; regulation by commissioner of insurance;  
23 applicability of the Louisiana Insurance Code

24                   A. Every pharmacy benefit manager that does business in this state shall  
25 be licensed as required by the Louisiana Insurance Code.

26                   B. Every pharmacy benefit manager licensed by the commissioner of  
27 insurance shall abide by the provisions of the Louisiana Insurance Code and the  
28 rules and regulations of the insurance commissioner and the Department of  
29 Insurance regarding the pharmacy benefit manager's business regulated by the

1 commissioner of insurance.

2 §2868. Pharmacy benefit manager; regulation by Board of Pharmacy;  
3 requirements for permitting; attestation; penalties

4 A. A pharmacy benefit manager shall obtain and maintain a permit  
5 from the Board of Pharmacy if the pharmacy benefit manager administers,  
6 develops, maintains, performs, or provides one or more of the following  
7 pharmacy services in this state or that affects one or more beneficiaries of a  
8 pharmacy benefit management plan administered by the pharmacy benefit  
9 manager:

10 (1) Adjudication of appeals or grievances related to prescription drug  
11 coverage.

12 (2) Disease management programs. A "disease management program"  
13 means a program adopted to guide and care for beneficiaries with chronic  
14 health problems to improve the quality of healthcare provided to them and  
15 prevent future need for medical resources by using an integrated  
16 comprehensive approach.

17 (3) Drug formularies. A "drug formulary" means a list of prescription  
18 medications or pharmaceutical products developed and approved by each  
19 health plan that may be dispensed to a beneficiary through participating  
20 pharmacies. Drug formulary may also be referred to as a "preferred drug list",  
21 "prior authorization list", or "pharmacopeia".

22 (4) Drug regimen reviews. A "drug regimen review" means third-party  
23 review of all medications a beneficiary is currently using, whether prescribed  
24 or over the counter, and administered by any method.

25 (5) Prescription drug management programs. A "prescription drug  
26 management program" means a program developed and designed to administer  
27 the prescription drug benefit as part of a health plan, and as part of such  
28 administration a PBM may contract with pharmacies for implementation and  
29 dispensing drugs in accordance with the program.

1           (6) Processing of prior authorization requests. "Processing of prior  
2           authorization requests" means making a determination regarding payment  
3           coverage based on an advance approval request submitted by a physician or  
4           other healthcare provider before a specific procedure, service, device, supply,  
5           or medication is delivered to the beneficiary.

6           (7) Quality care dosing services. "Quality care dosing services" means  
7           electronically checking prescription medications before they are filled at the  
8           pharmacy to ensure that the quantity and dosage is consistent with the  
9           recommendations of the Food and Drug Administration (FDA) and others.

10           (8) Step therapy procedures. A "step therapy procedure" means  
11           protocols and policies that establish a specific sequence in which prescription  
12           drugs for a medical condition are approved for coverage by a health plan for a  
13           beneficiary which generally requires cheaper drugs to be used before more  
14           costly drugs. Step therapy may also be referred to as "fail first" protocol.

15           (9) Utilization management and utilization reviews. "Utilization  
16           management" and "utilization review" mean third-party review and approval  
17           of appropriateness and necessity of care that a healthcare provider has  
18           indicated for a beneficiary prior to delivery and coverage of such care.

19           (10) Any other act, service, operation, or transaction incidental to or  
20           forming a part of the compounding, filling, dispensing, exchanging, giving,  
21           offering for sale, or selling drugs, medicines, poisons, or devices in this state by  
22           pharmacists or pharmacies, pursuant to a prescription or an order of  
23           physicians, dentists, veterinarians, or other licensed practitioners, requiring,  
24           involving, or employing the science or art of any branch of the pharmacy  
25           profession, study, or training.

26           B. Every pharmacy benefit manager permitted by the Board of  
27           Pharmacy shall abide by the applicable provisions of the Louisiana Pharmacy  
28           Practice Act and the rules and regulations of the Board of Pharmacy.

29           C. The permitting requirements of this Section shall not apply to a

1 pharmacy benefit manager that does not perform any of the pharmacy services  
2 listed in this Section. Any pharmacy benefit manager that does not perform any  
3 of the pharmacy services listed in this Section may do business in this state or  
4 on behalf of a beneficiary without obtaining a permit from the Board of  
5 Pharmacy by filing an attestation clause with the Board of Pharmacy on a form  
6 approved by the board, and in accordance with the regulations established by  
7 the board.

8 D. If any pharmacy benefit manager administers, develops, maintains,  
9 performs, or provides one or more of the pharmacy services listed in this  
10 Section in this state or that affects one or more beneficiaries of a pharmacy  
11 benefit management plan administered by the pharmacy benefit manager after  
12 filing an attestation without first obtaining a permit from the Board of  
13 Pharmacy may be subject to any or all of the following penalties:

14 (1) A civil fine of up to five thousand dollars per violation, with each day  
15 the violation occurs being a separate violation.

16 (2) Suspension or revocation of the permit, or both, issued by the Board  
17 of Pharmacy.

18 (3) Placement of the permit on probation.

19 (4) Criminal prosecution under R.S. 14:133(A)(3) for filing false public  
20 records.

21 §2869. Pharmacy benefit manager monitoring advisory council; membership;  
22 functions

23 A. There is hereby created a pharmacy benefit manager monitoring  
24 advisory council, hereinafter referred to as "advisory council", that shall consist  
25 of the following members, each of whom may appoint a designee:

26 (1) The commissioner of the Louisiana Department of Insurance.

27 (2) The president of the Louisiana State Board of Medical Examiners.

28 (3) The president of the Louisiana Board of Pharmacy.

29 (4) The attorney general.

1                   **(5) The director of the Louisiana Department of Justice Consumer**  
2                   **Affairs Division.**

3                   **(6) The secretary of the Louisiana Department of Health.**

4                   **(7) The president of the Louisiana Academy of Physicians Assistants.**

5                   **(8) The president of the Louisiana State Medical Society.**

6                   **(9) The president of the Louisiana Association of Nurse Practitioners.**

7                   **(10) The president of the Louisiana Pharmacists Association.**

8                   **(11) The president of the Louisiana Independent Pharmacies Association.**

9                   **(12) The president of the National Association of Chain Drug Stores.**

10                  **(13) The president of the Pharmaceutical Research and Manufacturers**  
11                  **of America.**

12                  **(14) The president of the Louisiana Academy of Medical Psychologists.**

13                  **(15) The president of the Louisiana Association of Health Plans.**

14                  **(16) The president of a pharmacy benefit manager licensed by the**  
15                  **Louisiana Board of Pharmacy, selected by the Louisiana affiliate of the**  
16                  **Pharmaceutical Care Management Association from a list of interested and**  
17                  **qualified individuals.**

18                  **B. The members of the advisory council shall serve at the pleasure of**  
19                  **their respective appointing authorities. Seven members shall constitute a**  
20                  **quorum for the transaction of all business. The members shall elect a chairman**  
21                  **and vice chairman whose duties shall be established by the advisory council.**  
22                  **The member elected to serve as chairman shall fix a time and place for regular**  
23                  **meetings of the advisory council, which shall meet at least quarterly. The**  
24                  **advisory council shall establish policies and procedures necessary to carry out**  
25                  **its duties. Expenses for the administrative staffing of the advisory council shall**  
26                  **be provided for from the licensing fees paid by pharmacy benefit managers and**  
27                  **may be transferred between state agencies by memorandum of understanding**  
28                  **or cooperative endeavor agreement.**

29                  **C. The commissioner may utilize the full advisory council or individual**

1 member agency expertise for the purpose of investigating a complaint against  
2 a pharmacy benefit manager or conducting an audit of a pharmacy benefit  
3 manager. In exercising the authority provided for in this Subsection, the same  
4 provisions of confidentiality applicable to the Department of Insurance and  
5 Louisiana Board of Pharmacy during an investigation shall apply to the  
6 advisory council or individual member agencies whose expertise is being  
7 utilized. The advisory council may meet in executive session, as necessary, to  
8 discuss matters involving an active investigation.

9 D. The advisory council shall provide monitoring of pharmacy benefit  
10 managers in Louisiana to advise the legislature, commissioner of insurance, and  
11 Louisiana Board of Pharmacy on the most effective and efficient manner of  
12 regulation of pharmacy benefit managers to ensure the protection of the public.  
13 Any licensed pharmacy benefit manager operating in Louisiana shall provide  
14 full cooperation with the advisory council on matters including but not limited  
15 to those set forth in Subsection E of this Section.

16 E. The authority of the advisory council shall include but not be limited  
17 to matters involving the licensure and regulation of pharmacy benefit managers  
18 set forth in Title 22, Title 37, and Title 40 of the Louisiana Revised Statutes of  
19 1950, applicable rules, and federal laws or rules relative to pharmacy benefit  
20 managers.

21 §2870. Prohibited acts; unfair and deceptive trade practices

22 A. A pharmacy benefit manager in Louisiana shall not:

23 (1) Commit any unfair and deceptive trade practice prohibited by R.S.  
24 22:1964(15).

25 (2) Perform any act that violates the duties, obligations, and  
26 responsibilities imposed under the Louisiana Insurance Code on a pharmacy  
27 benefit manager.

28 (3) Buy, sell, transfer, or provide personal healthcare or contact  
29 information of any beneficiary to any other party for any purpose with one

1 exception. A pharmacy benefit manager may provide such information  
2 regarding beneficiaries of a health plan to that health plan provider if requested  
3 by the health plan provider.

4 (4) Participate in "spread pricing". For purposes of this Section, "spread  
5 pricing" means any amount a pharmacy benefit manager charges to or claims  
6 from a health plan provider or managed care organization for payment of a  
7 prescription or for pharmacy services that is in excess of the amount the  
8 pharmacy benefit manager paid to the pharmacist or pharmacy who filled the  
9 prescription or provided the pharmacy services.

10 (5) Directly or indirectly engage in patient steering. For purposes of this  
11 Section, "patient steering" means to encourage or entice any beneficiary to  
12 switch to another pharmacist or pharmacy, including a mail-order pharmacy,  
13 through unsolicited advice or mass marketing directed at a beneficiary of a  
14 health plan being administered by the pharmacy benefit manager. Indirect  
15 steering occurs when any agent, affiliated provider, contractor, employee, or  
16 subsidiary of the pharmacy benefit manager engages in the prohibited activity  
17 for or to the benefit of the pharmacy benefit manager.

18 (6) Penalize a beneficiary or provide an inducement to the beneficiary  
19 for the purpose of getting the beneficiary to use specific retail, mail order  
20 pharmacy, or another network pharmacy provider in which a pharmacy benefit  
21 manager has an ownership interest or that has an ownership interest in a  
22 pharmacy benefit manager. For purposes of this Section "inducement" means  
23 the providing of financial incentives, including variations in premiums,  
24 deductibles, copayments, or coinsurance.

25 (7) Retroactively denying or reducing a claim of a pharmacist or  
26 pharmacy for payment or demanding repayment of all or part of a claim, after  
27 the claim has been approved by the pharmacy benefit manager, unless:

28 (a) The original claim was submitted fraudulently.

29 (b) The original claim payment was incorrect because the pharmacy or

1 pharmacist had already been paid for the pharmacist services.

2 (c) The pharmacist services were not rendered by the pharmacy or  
3 pharmacist.

4 (8) Discriminate against any pharmacist or pharmacy in reimbursing the  
5 pharmacist or pharmacy for dispensing a drug or device or providing pharmacy  
6 services by paying the pharmacist or pharmacy less than the amount paid to  
7 any other pharmacist or pharmacy for the same drug, device, or service.

8 (a) A pharmacy benefit manager shall not pay a pharmacist or  
9 pharmacy, which is not a specialty or mail-order pharmacy or pharmacist, a  
10 lesser reimbursement rate that is paid to a specialty or mail-order pharmacist  
11 or pharmacy. For purposes of this Section "specialty drug" means a drug used  
12 to treat a chronic or specific disease or condition that requires frequent  
13 communication with other healthcare providers, extensive monitoring, case  
14 management, and comprehensive counseling with the beneficiary or his  
15 caregiver.

16 (b) A pharmacy benefit manager shall not reimburse local pharmacies,  
17 as defined in R.S. 46:460.36(A)(3), less than it reimburses chain pharmacies,  
18 mail-order pharmacies, or specialty pharmacies for the same drug or device or  
19 for the same pharmacy service.

20 (c) A pharmacy benefit manager shall not reimburse a pharmacy or  
21 pharmacist in this state an amount less than the amount that the pharmacy  
22 benefit manager reimburses an affiliate of the pharmacy benefit manager  
23 dispensing the same drug or device or for providing the same pharmacy  
24 services.

25 (9) Fail to update prices as required by R.S. 22:1857.

26 (10) Fail to honor maximum allowable cost (MAC) prices as set forth in  
27 R.S. 22:1863 et seq.

28 (a) Pharmacy benefit managers shall, upon request by anyone, provide  
29 factual evidence of in-state Louisiana wholesalers having drug pricing that

1 support the pharmacy benefit manager's MAC prices.

2 (b) A pharmacy benefit manager shall not require a pharmacist or  
3 pharmacy to purchase drugs from any particular wholesaler. However, if a  
4 pharmacy benefit manager recommends or provides a wholesaler, then that  
5 wholesaler must be willing and able to honor the pharmacy benefit manager's  
6 MAC price, ship the order, and have receipt of the order within two business  
7 days with no additional charge to the pharmacist.

8 (c) The wholesaler with the lowest price, which is listed as the MAC  
9 price, is not obligated to sell or ship to a nonmember pharmacist or pharmacy.  
10 If the wholesaler chooses not to sell the drug to the pharmacist or pharmacy,  
11 then the MAC price set by the pharmacy benefit manager must be adjusted to  
12 the price available to the pharmacist or pharmacy through another wholesaler.

13 (11) Fail to meet the payment standards established in R.S. 22:1856.

14 (12) Fail to provide detailed remittance advice to pharmacists and  
15 pharmacies. All remittance advice must be in compliance with R.S. 22:1856 and  
16 shall separate data for Medicare Part D claims, Medicaid claims, and  
17 commercial plan claims according to processor control number (PCN).

18 (13) Fail to pay any state or local sales tax imposed on any drug, device,  
19 or pharmacy services or to remit the sales tax to the appropriate pharmacist or  
20 pharmacy for the tax proceeds to be forwarded to the sales tax authority.

21 (a) Every pharmacy benefit manager shall be liable for paying all sales  
22 taxes due to any taxing authority imposing the sales tax. A pharmacy benefit  
23 manager who does not pay the sales tax shall be liable for the tax, interest,  
24 penalties, and any other fees or costs imposed by law for failure to pay sales  
25 taxes.

26 (b) No pharmacy benefit manager shall deduct the taxes from any  
27 amount due to a pharmacist or pharmacy for a drug, device, or pharmacy  
28 service.

29 (c) All pharmacy benefit managers who pay any out-of-state pharmacist

1 or pharmacy for drugs or devices shipped to a beneficiary in this state or for  
2 pharmacy services rendered to a beneficiary which is taxable in this state shall  
3 remit the tax directly to the appropriate taxing authority.

4 (d) Any pharmacist or pharmacy who does not receive sales tax proceeds  
5 from a pharmacy benefit manager for any drug, device, or pharmacy service  
6 which is subject to sales taxes shall have no responsibility for payment of the  
7 taxes if the pharmacist or pharmacy provides written notification to the  
8 appropriate taxing authority of the pharmacy benefit manager's failure to remit  
9 the sales taxes at the time the next sales tax return is due to be filed.

10 (14) Restrict early refills on maintenance drugs to an amount less than  
11 seven days.

12 (15) Require a beneficiary who has been stabilized on a drug to  
13 participate in a step therapy procedure if the drug has been prescribed by the  
14 beneficiary's physician and is covered by the patient's health plan.

15 (16) Delay the decision on a request for authorization to dispense a  
16 prescription drug past the time that the drug must first be taken by the  
17 beneficiary to be effective.

18 (17) Exploit prescription drug information obtained from beneficiaries  
19 for monetary gain or economic power over beneficiaries, pharmacists, or  
20 pharmacies.

21 (18) Sell, exchange, or use in any manner prescription drug information  
22 regarding a beneficiary obtained through a beneficiary's use of a prescription  
23 for purposes of marketing, solicitation, consumer steering, referral, or any other  
24 practice or act that provides the pharmacy benefit manager or any of its  
25 affiliates or subsidiaries economic power or control over pharmacists or  
26 pharmacies or interfere in the free choice of a beneficiary.

27 (19) Engage in drug repackaging and markups. A pharmacy benefit  
28 manager that owns or controls a mail-order pharmacy shall not allow the  
29 mail-order pharmacy to repackage drugs and sell the repackaged items at

1 higher prices than the original average wholesale price unless beneficiaries who  
2 may buy the repackaged drugs are informed in writing that the drugs have been  
3 repackaged and are being sold at the higher price.

4 (20) Operate in Louisiana without having a separate license in good  
5 standing, as required by this Chapter, with the Department of Insurance and  
6 a permit in good standing with the Louisiana Board of Pharmacy unless the  
7 required attestation has been filed as provided by this Chapter.

8 B. The commission of any of the acts prohibited by this Section shall be  
9 considered an unfair method of competition and unfair practice or act which  
10 shall subject the violator to any and all actions, including investigative demands  
11 and private actions, remedies and penalties provided for in the Unfair Trade  
12 Practices and Consumer Protection Law, R.S. 51:1401 et seq.

13 (1) For purposes of this Section, a violation shall be deemed to have  
14 occurred each time a prohibited act is committed. A pattern or practice of  
15 habitual violation need not be proved.

16 (2) Each day that a pharmacy benefit manager operates without any of  
17 the licenses or permits required by this Chapter or operates in violation of an  
18 attestation filed by the pharmacy benefit manager shall be deemed a separate  
19 violation.

20 §2871. Enforcement

21 A. Notwithstanding any provision of law to the contrary, enforcement of  
22 the Pharmacy Benefit Manager Licensing Law shall be as follows:

23 (1) The commissioner of insurance and the Louisiana Board of  
24 Pharmacy, hereinafter referred to in this Section as "regulatory bodies", shall  
25 be responsible for conducting random compliance audits relative to ensure  
26 compliance with this Chapter.

27 (2) A pharmacy benefit manager doing business in Louisiana shall make  
28 itself open and available to comply with compliance audit data requests.

29 (3) Compliance audits may be desk audits conducted based on data

1 provided by the pharmacy benefit manager.

2 B. The regulatory bodies shall be responsible for conducting complaint  
3 investigations as expeditiously as possible upon receipt of a complaint that a  
4 pharmacy benefit manager is in violation of this Chapter, the Insurance Code  
5 or the Louisiana Pharmacy Practice Act.

6 (1) Each regulatory body shall be responsible for investigating  
7 complaints that fall within the jurisdiction of that regulatory body.

8 (2) If a regulatory body receives a complaint that it believes is outside its  
9 jurisdiction, then that regulatory body shall refer it to the appropriate  
10 regulatory body.

11 (3) On the first day of every month the regulatory bodies shall submit  
12 to the attorney general a report of complaints and the date the complaint was  
13 received during the prior calendar month in a format prescribed by the  
14 attorney general. The report shall include a cumulative list of all complaints  
15 until final disposition.

16 C. Upon completion of a compliance audit or complaint investigation, the  
17 regulatory body may recommend to the attorney general:

18 (1) No action against the pharmacy benefit manager.

19 (2) Imposition of a fine for each violation not to exceed five thousand  
20 dollars per violation.

21 (3) Probation, suspension, or revocation of a license or permit.

22 (4) Imposition of a fine and probation, suspension, or revocation of a  
23 license or permit.

24 D. Upon completion of a compliance audit or complaint investigation the  
25 entire investigation case file and recommendation of the regulatory body shall  
26 be submitted to the Louisiana Department of Justice Consumer Affairs Division  
27 for review and action by the attorney general.

28 E. Upon receipt of the compliance audit or investigation case file, or  
29 upon lapse of action by the regulatory body for one hundred eighty days after

1 receipt of a complaint, the attorney general shall obtain full jurisdiction over  
2 the matter.

3 F. The attorney general may take the following action upon receipt of a  
4 file:

5 (1) Accept the recommendation of the regulatory body if that body's  
6 recommendation is to take no action.

7 (2) Find, based on the regulatory body's file, that no action is warranted  
8 and close the file.

9 (3) Conduct an independent review or investigation of the complaint to  
10 determine if an administrative adjudicatory hearing is warranted.

11 (4) Direct that an administrative adjudicatory hearing be conducted to  
12 determine if one or more violations have occurred.

13 G. The attorney general shall have all the powers granted to him under  
14 R.S. 51:1413 to enforce his investigative demands and issue subpoenas.

15 H. If the attorney general believes that one or more violations have  
16 occurred then he shall conduct an administrative adjudicatory hearing to  
17 determine if one or more violations have occurred.

18 (1) The administrative adjudicatory hearing shall be conducted in  
19 accordance with the provisions of the Louisiana Administrative Procedure Act.

20 (2) The attorney general may preside as the hearing officer or designate  
21 an assistant attorney general to preside as the hearing officer. If the attorney  
22 general is not the hearing officer then the hearing officer shall file a proposed  
23 findings of fact and conclusions of law with the attorney general along with his  
24 recommendation of any penalty to be imposed.

25 (3) The regulatory body with jurisdiction over the matter in the  
26 complaint shall prosecute the action before the attorney general.

27 (4) The attorney general shall issue the final decision in the matter.

28 (5) The attorney general may impose any or all of the following penalties:

29 (a) A civil fine of up to five thousand dollars per violation, with each day

1 the violation occurs being a separate violation.

2 (b) Suspension or revocation of any or all of the licenses and permits  
 3 issued by the commissioner of insurance and the Louisiana Board of Pharmacy.

4 (c) Placement of any or all of the licenses and permits on probation.

5 (6) The decision of the attorney general shall be appealable in accordance  
 6 with the Louisiana Administrative Procedure Act.

7 I. If a license or permit is suspended, revoked, or placed on probation by  
 8 the attorney general then the regulatory body that issued the license or permit  
 9 shall immediately take the appropriate action to enforce the decision of the  
 10 attorney general.

11 J. Nothing in this Section shall be construed as a limitation on the  
 12 attorney general's power to negotiate and enter into a stipulation or consent  
 13 decree with a pharmacy benefit manager in lieu of proceeding to a hearing on  
 14 the matter relative to violations of this Chapter.

15 Section 4. If any provision or item of this Act, or the application thereof, is held  
 16 invalid, such invalidity shall not affect other provisions, items, or applications of the act  
 17 which can be given effect without the invalid provision, item, or application and to this end  
 18 the provisions of this Act are hereby declared severable.

19 Section 5. This Act shall become effective upon signature by the governor or, if not  
 20 signed by the governor, upon expiration of the time for bills to become law without signature  
 21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 22 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 23 effective on the day following such approval.

---

The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Christine Arbo Peck.

---

DIGEST

SB 41 Engrossed

2019 Regular Session

Mills

Present law provides that pharmacy benefit managers must be licensed by the Louisiana  
 Department of Insurance as third party administrators.

Proposed law requires pharmacy benefit managers to be licensed by the Commissioner of  
 Insurance and permitted by the Louisiana Board of Pharmacy. Proposed law identifies those

two agencies collectively as "regulatory bodies". Proposed law requires pharmacy benefit managers to be licensed and permitted and in good standing with both regulatory bodies in order to operate in Louisiana.

Proposed law establishes the Louisiana "Pharmacy Benefit Manager Licensing Law" to provide substantive requirements for obtaining and maintaining a license or permit to operate in Louisiana in order to protect the health, safety, and welfare of our citizens, to regulate the practice of pharmacy and actions that threaten pharmacy access, and to regulate actions that impede medical decisions.

Proposed law defines "maximum allowable cost list" and "spread pricing" and prohibits spread pricing in Louisiana.

Proposed law provides for rulemaking by the Louisiana Board of Pharmacy and provides that the board has the authority and responsibility to assess fees pursuant to present law.

Proposed law provides for creation of a pharmacy benefit manager monitoring advisory council and provides for membership, functions, and authority of the council.

Proposed law provides legislative intent and public health policy findings. Proposed law provides definitions.

Proposed law establishes a duty to the beneficiaries of any pharmacy benefit management plan and to the entities that have entered into a contract with the pharmacy benefit manager.

Proposed law provides general licensing and permitting requirements. Proposed law provides for general applicability.

Proposed law provides for civil fines of up to five thousand dollars for every violation, civil penalties including suspension, revocation, or placement of the license on probation, and criminal prosecution for filing false records.

Proposed law provides a listing of acts or omissions that are deemed unfair and deceptive trade practices. Proposed law provides that commission of any of the unfair and deceptive trade practices shall subject the pharmacy benefit manager to any and all actions, including investigative actions and private rights of action. Proposed law provides for remedies and penalties under the Unfair Trade Practices and Consumer Protection Law.

Proposed law provides for enforcement of the Pharmacy Benefit Manager Licensing Law. Proposed law authorizes the regulatory bodies to conduct random compliance audits and complaint investigations. Proposed law requires a monthly report of opened complaints to be submitted to the attorney general.

Proposed law grants enforcement authority to the attorney general. Proposed law provides for a review process, administrative hearing, administrative ruling, and penalties that may be assessed by the attorney general. Proposed law provides for the decision of the attorney general to be appealable in accordance with the Louisiana Administrative Procedure Act.

Proposed law provides that nothing in proposed law shall be construed as a limitation on the power of the attorney general to negotiate or enter into a stipulation or consent decree with a pharmacy benefit manager.

Proposed law provides for severability.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 22:1863(2); adds R.S. 22:1863(9) and 1867, R.S. 37:1252-1254, and R.S. 40:2861-2871)

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Removes all provisions granting the Louisiana State Board of Medical Examiners authority to regulate pharmacy benefit managers.
2. Defines and clarifies what is considered a "maximum allowable cost list".
3. Defines and prohibits "spread pricing".
4. Provides that a duty is owed to beneficiaries and those contracted with pharmacy benefit managers to act with good faith, honesty, trust, confidence, and candor.
5. Creates the pharmacy benefit manager monitoring advisory council; provides for membership, functions, and authority.
6. Clarifies that the Louisiana Department of Insurance issues a license and the Louisiana Board of Pharmacy issues a permit.
7. Removes certain provisions of legislative intent.
8. Makes technical corrections.