

DIGEST

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SB 41 Reengrossed

2019 Regular Session

Mills

Present law requires that pharmacy benefit managers be licensed by the La. Department of Insurance as third party administrators.

Proposed law requires pharmacy benefit managers to be licensed by the commissioner of insurance, registered with the La. secretary of state, and, if they perform certain services identified in proposed law, permitted by the La. Board of Pharmacy (referred to hereafter at the "board").

Proposed law establishes the Pharmacy Benefit Manager Licensing Law to provide substantive requirements for obtaining and maintaining a license or permit to operate in La. 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. Provides for enforcement of proposed law.

Proposed law defines the terms "maximum allowable cost list", "patient steering", and "spread pricing". Proposed law prohibits spread pricing unless the pharmacy benefit manager provides biannual notice to the policyholder of the aggregate amount of spread pricing it charged during the notice period.

Proposed law provides for rulemaking by the board. Provides that the board has the authority and responsibility to assess fees pursuant to present law.

Proposed law creates a pharmacy benefit manager monitoring advisory council and provides for its membership and functions. Specifies matters on which the council shall advise the board and the commissioner of insurance. Authorizes the board and the commissioner of insurance to utilize the expertise of the council to investigate complaints against pharmacy benefit managers.

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. Provides that the duty imposed by proposed law does not create a separate or independent cause of action.

Proposed law prohibits patient steering to a pharmacy in which the pharmacy benefit manager has an ownership interest without making a written disclosure to the patient and informing them that they have the right to use a different pharmacy. Proposed law provides that the prohibition against patient steering does not apply to employers or other persons identified in proposed law that employ, own, operate, control, or contract directly with a pharmacy or pharmacist for the purpose of managing or controlling prescription costs.

Proposed law provides a listing of acts or omissions that are deemed unfair and deceptive trade practices. Stipulates that commission of any of the unfair and deceptive trade practices shall subject the pharmacy benefit manager to investigative actions by the board or the Department of Insurance if the act is committed with such frequency that it indicates a general business practice.

Proposed law provides for remedies and penalties under present law known as the Unfair Trade Practices and Consumer Protection Law. Proposed law provides that a claim under the Unfair Trade Practices and Consumer Protection Law does not provide a private right of action.

Proposed law provides that nothing therein shall be construed to interfere with or violate a consumer's right to know where the consumer may have access to the lowest cost drugs, regardless of whether the consumer is utilizing insurance or other third-party reimbursement.

Proposed law provides that nothing therein shall be construed to interfere with the requirement that consumers receive notice of changes to pharmacy networks, such as the inclusion of new pharmacies or removal of existing pharmacies from networks.

Proposed law provides that the commissioner of insurance shall be responsible for investigation and enforcement of present law within the La. Insurance Code and applicable provisions of proposed law and present rule relative to pharmacy benefit managers. Requires that the commissioner refer any complaint he believes to be outside of his jurisdiction to the board or the La. Department of Justice Consumer Affairs Division for review, investigation, and action. Authorizes the commissioner to suspend or revoke a pharmacy benefit manager's permit, license, or registration in accordance with present law and present rule relative to pharmacy benefit managers.

Proposed law provides that the board shall be responsible for investigation of the provisions of present law within the La. Pharmacy Practice Act and applicable provisions of proposed law and present rule relative to pharmacy benefit managers. Requires the board to refer any complaint it believes to be outside of its jurisdiction to the Department of Insurance or the La. Department of Justice Consumer Affairs Division for review, investigation, and action.

Proposed law requires that all investigations conducted by the board be referred to the La. Department of Justice Consumer Affairs Division for review, investigation, and enforcement by the attorney general pursuant to the procedure set forth in proposed law.

Proposed law authorizes the board and the La. Department of Insurance to conduct random compliance audits and complaint investigations. Requires board to submit a monthly report of opened complaints received against pharmacy benefit managers to the La. Department of Justice Consumer Affairs Division.

Proposed law grants to the attorney general enforcement authority over claims investigated by the board. Proposed law provides for a review process, administrative hearing, administrative ruling, and penalties that may be assessed by the attorney general. Provides additionally that the decision of the attorney general is appealable in accordance with present law relative to administrative procedure.

Proposed law provides that nothing therein 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.

Proposed law provides that its provisions establishing the pharmacy benefit manager monitoring advisory council shall become effective August 1, 2019. Otherwise, proposed law becomes effective July 1, 2020.

(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 Senate

Committee 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.

Senate Floor Amendments to engrossed bill

1. Makes revisions to the definition of "maximum allowable cost list".
2. Makes revisions to the definition of "spread pricing".
3. Provides an exception to the prohibition on spread pricing.
4. Provides for notice required by a pharmacy benefit manager that utilizes spread pricing.
5. Provides that the imposition of duties on the pharmacy benefit manager does not create a separate or independent cause of action.
6. Provides that a pharmacy benefit manager may require permitting by the board of pharmacy if they perform certain services.
7. Removes requirement for attestation in the event that a pharmacy benefit manager does not perform the services identified in proposed law.
8. Removes certain authority of the board of pharmacy to impose penalties on a pharmacy benefit manager.
9. Adds additional members to the pharmacy benefit manager monitoring advisory council.
10. Clarifies that the expertise of the pharmacy benefit manager monitoring advisory council may be utilized by the commissioner of insurance and board of pharmacy to investigate complaints against pharmacy benefit managers.
11. Provides that "patient steering" is prohibited to a pharmacy in which the pharmacy benefit manager has an ownership interest without making a written disclosure to the patient and informing them that they have the right to use an alternate pharmacy.
12. Provides that the prohibition against patient steering and inducement does not apply to employers or other persons that employ, own, operate, control, or contract directly with a pharmacy or pharmacist for the purpose of managing or controlling prescription costs.
13. Removes certain provisions relative to discriminatory reimbursement and clarifies that a pharmacy benefit manager shall not reimburse a local pharmacist or local pharmacy less than the amount it reimburses chain pharmacies, mail-order pharmacies, specialty pharmacies or affiliates of the pharmacy benefit manager for the same drug or device or for the same pharmacy service in this state.
14. Removes requirement for separate data on remittance advices.

15. Removes requirement that the pharmacy benefit manager is liable for paying all sales taxes due to any taxing authority.
16. Prohibits the pharmacy benefit manager from charging a fee for payment of any required sales tax.
17. Provides that state or local taxes are considered part of the allowable cost on a claim submitted by a pharmacist.
18. Clarifies that prior authorization shall occur within 72 hours or 24 hours in exigent circumstances.
19. Clarifies that violations of the Unfair Trade Practices and Consumer Protection Law do not provide a private right of action.
20. Clarifies that implementation shall not be construed to interfere with a consumer's right to know where the consumer may have access to the lowest cost drugs, whether a consumer is utilizing insurance or other third-party reimbursement or not.
21. Clarifies that implementation shall not be construed to interfere with the requirement that consumers receive notice of changes to pharmacy networks, such as the inclusion of new pharmacies, or removal of existing pharmacies from networks.
22. Clarifies that the complaint reporting requirement applies only to complaints against pharmacy benefit managers.
23. Removes authority of the attorney general to impose monetary fines.
24. Provides that the creation of the pharmacy benefit manager monitoring advisory council shall become effective August 1, 2019.
25. Provides that the effective date for all other provisions of the Act shall be July 1, 2020.
26. Makes technical corrections.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the reengrossed bill:

1. Provide that the term "Maximum Allowable Cost List" shall not include any rate mutually agreed to and set forth in writing in the contract between the pharmacy benefit manager and the pharmacy or its agent.
2. Remove the chief executive officer of the La. Business Group on Health and the president of America's Health Insurance Plans from the pharmacy benefit manager monitoring advisory council created by proposed law.
3. Provide that the commissioner of insurance shall be responsible for investigation and enforcement of present law within the La. Insurance Code and applicable provisions of proposed law and present rule relative to pharmacy benefit managers. Require that the commissioner refer any complaint he believes to be outside of his jurisdiction to the La. Board of Pharmacy or the La. Department of Justice Consumer Affairs Division for review, investigation, and action.
4. Authorize the commissioner of insurance to suspend or revoke a pharmacy benefit manager's permit, license, or registration in accordance with present law and present rule relative to pharmacy benefit managers.

5. Provide that the La. Board of Pharmacy shall be responsible for investigation of the provisions of present law within the La. Pharmacy Practice Act and applicable provisions of proposed law and present rule relative to pharmacy benefit managers. Require the board to refer any complaint it believes to be outside of its jurisdiction to the Department of Insurance or the La. Department of Justice Consumer Affairs Division for review, investigation, and action.
6. Require that all investigations conducted by the La. Board of Pharmacy be referred to the La. Department of Justice Consumer Affairs Division for review, investigation, and enforcement by the attorney general pursuant to the procedure set forth in proposed law.
7. Remove the commissioner of insurance from the set of entities classified as "regulatory bodies" in certain provisions of proposed law relative to complaint investigations, compliance audits, and prosecution of actions before the attorney general.
8. Revise proposed law authorizing the attorney general to penalize a pharmacy benefit manager for certain violations of proposed law by suspending or revoking any license or permit issued by the commissioner of insurance or the La. Board of Pharmacy to provide instead that in such cases, the attorney general may suspend, revoke, or place on probation any permit or license issued to the pharmacy benefit manager or any entity in which the pharmacy benefit manager has an ownership or controlling interest.
9. Make technical changes.