

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 41

2019 Regular Session

Mills

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

PHARMACEUTICALS. Provides relative to the regulation of pharmacy benefit managers. (See Act)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Provides 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 and shall not include the National Average Drug Acquisition Cost.
2. Revises definition of "health plan".
3. Provides 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 service in this state.
4. Provides that the commissioner of insurance shall be responsible for certain investigation and enforcement. Requires 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 Division.
5. Authorizes the commissioner of insurance to suspend or revoke a pharmacy benefit manager's permit, license, or registration in accordance with present law and rules relative to pharmacy benefit managers.
6. Provides that the La. Board of Pharmacy shall be responsible for investigation and enforcement of certain provisions of present law. 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.
7. Removes the president of America's Health Insurance Plans from the pharmacy benefit manager monitoring advisory council created by proposed law.
8. Makes technical and reference revisions.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

DIGEST

SB 41 Reengrossed

2019 Regular Session

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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.

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 certain investigation and enforcement. Requires that the commissioner refer any complaint he believes to be outside of his jurisdiction to the board or the La. Department of Justice. Authorizes the commissioner to suspend or revoke a pharmacy benefit manager's permit, license, or registration in accordance with present law and rule relative to pharmacy benefit managers.

Proposed law provides that the board shall be responsible for investigation of certain provisions. 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.

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.

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 with a pharmacy benefit manager.

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)

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