

2021 Regular Session

SENATE BILL NO. 218

BY SENATOR FRED MILLS

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

PHARMACEUTICALS. Provides relative to the payment of pharmacy claims. (gov sig)

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AN ACT

To amend and reenact R.S. 22:1856(B), the introductory paragraph of 1856.1(B), 1856.1(B)(2), (3), and (4)(a), (D)(1)(b), (E)(5), and (G), 1860.3(C) and (D), 1863(2), and 1867(A), R.S. 37:1256(B), and R.S. 40:2864, the introductory paragraph of 2868(A), and 2870(A)(4), to enact R.S. 22:1856.1(H) and 1860.3(E) and (F) and R.S. 40:2870(A)(21), and to repeal R.S. 22:1865.1(D)(1)(c) and 1867(B) and R.S. 40:2869, relative to the payment of pharmacy claims; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1856(B), the introductory paragraph of 1856.1(B), 1856.1(B)(2), (3), and (4)(a), (D)(1)(b), (E)(5), and (G), 1860.3(C) and (D), 1863(2), and 1867(A) are hereby amended and reenacted and R.S. 22:1856.1(H) and 1860.3(E) and (F) are hereby enacted to read as follows:

§1856. Payment standard; limitations on claim filing and audits; remittance advice

\* \* \*

B. Health insurance issuers that limit the period of time that a pharmacist or pharmacy under contract for delivery of covered benefits has to submit claims for

1 payment under R.S. 22:1853 or 1854 shall have the same limited period of time  
2 following payment of ~~such~~ the claims up to a maximum time period of one year  
3 from the date a claim was adjudicated to perform any ~~review or audit for purposes~~  
4 ~~of reconsidering the validity of such claims.~~ review, reconsideration, or other  
5 audit of the claim.

6 \* \* \*

7 §1856.1. Pharmacy record audits; recoupment; appeals

8 \* \* \*

9 B. Notwithstanding any other provision of law to the contrary, ~~when an a~~  
10 review, reconsideration, or any other audit of the records of a pharmacy is  
11 conducted by an entity, ~~the audit~~ shall be conducted in accordance with the following  
12 criteria:

13 \* \* \*

14 (2)(a) No entity shall conduct an audit at a particular pharmacy more than  
15 one time or for more than one hundred prescriptions annually. However, the  
16 provisions of this Paragraph shall not apply when an entity must return to a  
17 pharmacy to complete an audit already in progress, or there is an identified history  
18 of errors, an identified activity which a reasonable man would believe to be  
19 inappropriate, or illegal activity that the entity has brought to the attention of the  
20 pharmacy owner or corporate headquarters of the pharmacy.

21 ~~(b) Nothing in this Paragraph shall prohibit review of a claim filed by a~~  
22 ~~pharmacy to determine if the claim is payable or is paid correctly. Such review may~~  
23 ~~require the submission of prescription copies and other documentation related to the~~  
24 ~~specific claims under review but shall not require the pharmacy to provide any~~  
25 ~~additional information not related to those specific claims.~~

26 (3)(a) The entity or any vendor or subcontractor of the entity which conducts  
27 the initial audit shall give the pharmacy notice and a comprehensive list of claims  
28 by prescription number to be audited at least two weeks before conducting the  
29 initial audit for each audit cycle. The entity or vendor or subcontractor of the

1 entity shall not receive payment nor compensate the auditor based on the  
2 amount directly or indirectly recovered.

3 ~~(b) If the audit, review, or investigation is initiated based on or involves~~  
4 ~~alleged fraud or willful misrepresentation, notice before the initial audit is not~~  
5 ~~mandatory where it could impede the audit, review, or investigation.~~

6 (4)(a)(~~†~~) Any clerical or record-keeping error, such as a typographical error,  
7 scrivener's error, or computer error, regarding a required document or record shall  
8 not necessarily constitute fraud.

9 ~~(ii) A claim arising pursuant to the provisions of this Section may be subject~~  
10 ~~to recoupment.~~

11 \* \* \*

12 D.(1) No pharmacy shall be subject to recoupment of any portion of the  
13 reimbursement for the dispensed product of a prescription unless one or more of the  
14 following has occurred at the point of adjudication:

15 \* \* \*

16 (b) The pharmacy has engaged in dispensing in excess of the benefit design,  
17 as established by the plan sponsor, **or has not filled prescriptions in accordance**  
18 **with the prescriber's order, unless the only commercially available package size**  
19 **exceeds the maximum days' supply or the prescription is for unit-of-use items**  
20 **up to the manufacturer's recommendations.**

21 \* \* \*

22 E. \* \* \*

23 (5) Notwithstanding any other provision of law to the contrary, the ~~agency~~  
24 **entity** conducting the audit shall not use the accounting practice of extrapolation in  
25 calculating recoupment or penalties for audits, unless ~~otherwise agreed to by the~~  
26 ~~pharmacy~~ or mandated by a government agency or in the case of fraud.

27 \* \* \*

28 G. This Section shall not apply to:

29 (1) Any quality assurance review, ~~as defined by the time period prior to the~~

1 reimbursement by the entity to the pharmacy.

2 (2) ~~An~~ an investigation that is initiated based on or that involves suspected  
3 or alleged fraud, willful misrepresentation, or abuse. The entity conducting the  
4 audit shall provide notice of any investigation initiated pursuant to this  
5 Subsection to the division of insurance fraud of the Department of Insurance  
6 prior to auditing the pharmacy.

7 H. If, upon investigation, the commissioner of insurance finds a violation  
8 of this Section has occurred, either on his own initiative or in response to a  
9 complaint filed with the Department of Insurance, the commissioner shall take  
10 appropriate enforcement action, which may include suspending or revoking a  
11 pharmacy benefit manger's license in accordance with this Title.

12 \* \* \*

13 §1860.3. Reimbursements

14 \* \* \*

15 C. No pharmacy benefit manager, pharmacy services administration  
16 organization, or any person acting for or on behalf of a pharmacy benefit  
17 manager or pharmacy services administration organization shall make or allow  
18 any direct or indirect reduction of payment to a pharmacist or pharmacy for  
19 a drug, device, or service under a reconciliation process to an effective rate of  
20 reimbursement, including but not limited to generic effective rates, brand  
21 effective rates, direct and indirect remuneration fees, or any other reduction or  
22 aggregate reduction of payment.

23 D. A pharmacy benefit manager or person acting on behalf of a  
24 pharmacy benefit manager shall not reimburse a pharmacy or pharmacist in  
25 this state an amount less than the amount that the pharmacy benefit manager  
26 bills to the health plan provider for the same claim.

27 ~~E.~~ E. The commission of any act prohibited by this Section shall be  
28 considered an unfair method of competition and unfair practice or act which shall  
29 subject the violator to any and all actions, including investigative demands, private

1 actions, remedies, and penalties, provided for in the Unfair Trade Practices and  
2 Consumer Protection Law, R.S. 51:1401 et seq.

3 ~~D.F.~~ Any provision of a contract that is contrary to any provision of this  
4 Section shall be null, void, and unenforceable in this state.

5 \* \* \*

6 §1863. Definitions

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

8 \* \* \*

9 (2) "Maximum Allowable Cost List" means a listing of the National Drug  
10 Code used by a pharmacy benefit manager setting the maximum allowable cost on  
11 which reimbursement to a pharmacy or pharmacist may be based. "Maximum  
12 Allowable Cost List" shall include any term that a pharmacy benefit manager or a  
13 healthcare insurer may use to establish reimbursement rates for generic and  
14 multi-source brand drugs to a pharmacist or pharmacy for pharmacist services. The  
15 term "Maximum Allowable Cost List" shall not include ~~any rate mutually agreed to~~  
16 ~~and set forth in writing in the contract between the pharmacy benefit manager and~~  
17 ~~the pharmacy or its agent and shall not include~~ the National Average Drug  
18 Acquisition Cost. ~~A pharmacy benefit manager may use effective rate pricing for a~~  
19 ~~pharmacist or pharmacy that is not a local pharmacy or local pharmacist as defined~~  
20 ~~in R.S. 46:460.36(A).~~

21 \* \* \*

22 §1867. Prohibition on spread pricing; notice exception

23 A. A pharmacy benefit manager is prohibited from conducting or  
24 participating in spread pricing in this state ~~unless the pharmacy benefit manager~~  
25 ~~provides written notice as provided in Subsection B of this Section.~~

26 \* \* \*

27 Section 2. R.S. 37:1256(B) is hereby amended and reenacted to read as follows:

28 §1256. Louisiana Board of Pharmacy; authority to regulate pharmacy benefit  
29 managers

\* \* \*

B. A pharmacy benefit manager ~~may be but is not required to be permitted~~  
**under shall obtain a permit pursuant to** Part IV of this Chapter if it administers,  
develops, maintains, performs, or provides one or more pharmacy services in this  
state or that affects one or more beneficiaries of a pharmacy benefit management  
plan administered by the pharmacy benefit manager, as set forth in R.S. 40:2868.

Section 3. R.S. 40:2864, the introductory paragraph of 2868(A), and 2870(A)(4) are  
hereby amended and reenacted and R.S. 40:2870(A)(21) is hereby enacted to read as  
follows:

§2864. Duties of pharmacy benefit managers

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

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

**B. A pharmacy benefit manager shall notify a health insurance issuer  
in writing of any activity, policy, or practice of the pharmacy benefit manager  
that directly or indirectly presents a conflict of interest with the duties provided  
for in this Chapter.**

~~C. Failure of a pharmacy benefit manager to satisfy the duties established in  
this Section shall not create a separate or independent cause of action nor shall it be  
construed to prohibit any cause of action established by or recognized in federal or  
state law.~~

**C. Any contract provision that attempts to waive the provisions of this  
Section shall be severable from the contract and considered void and not  
enforceable in Louisiana.**

\* \* \*

§2868. Pharmacy benefit manager; regulation by the Louisiana Board of Pharmacy;  
requirements for permitting

A. A pharmacy benefit manager ~~may~~ **shall** obtain and maintain a permit from the Louisiana Board of Pharmacy if the pharmacy benefit manager administers, develops, maintains, performs, or provides one or more of the following pharmacy services in this state or that affects one or more beneficiaries of a pharmacy benefit management plan administered by the pharmacy benefit manager:

\* \* \*

§2870. Prohibited acts; unfair and deceptive trade practices

A. A pharmacy benefit manager in Louisiana shall not:

\* \* \*

(4) Conduct or participate in spread pricing as defined in R.S. 22:1863(9) ~~without providing the notice required by R.S. 22:1867.~~ **or reimburse a pharmacy or pharmacist in this state an amount less than the amount that the pharmacy benefit manager bills to the health plan provider for the same claim.**

\* \* \*

**(21) Cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.**

Section 4. R.S. 22:1865.1(D)(1)(c) and 1867(B) and R.S. 40:2869 are hereby repealed.

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

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Brandi Cannon.

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## DIGEST

SB 218 Original

2021 Regular Session

Fred Mills

Present law provides for the payment for prescription drugs, other products and supplies, and pharmacist services submitted by a pharmacist or pharmacy under a contract for the provision of covered benefits with a health insurance issuer.

Present law provides that health insurance issuers that limit the period of time that a pharmacist or pharmacy has to submit claims for payment shall have the same limited period of time following payment of the claims to reconsider the validity of the claims. Proposed law provides that the time period shall not exceed one year from the date a claim was adjudicated to perform any review, reconsideration, or any other audit of the claim.

Present law provides for the audit of pharmacy records and prohibits the conducting of an audit at a particular pharmacy more than one time annually. Proposed law also prohibits an audit for more than one hundred prescriptions annually.

Present law provides for the review of a pharmacy claim to determine if the claim is payable or paid correctly which may require the submission of prescription copies and other documentation related to the specific claim under review but shall not require the pharmacy to provide any additional information not related to the specific claim. Proposed law repeals present law.

Present law provides that the entity which conducts the initial audit shall give the pharmacy notice at least two weeks before conducting the initial audit except in cases of alleged fraud or willful misrepresentation when notice before the initial audit could impede the audit, review, or investigation. Proposed law adds the requirement for the auditor to provide a comprehensive list of claims by prescription number to be audited and removes the notice exception for cases of alleged fraud or willful misrepresentation.

Proposed law provides that the auditor shall not receive payment nor be compensated based on the amount directly or indirectly recovered.

Proposed law provides that the auditor shall provide notice of any investigation initiated based upon fraud to the division of insurance fraud of the Department of Insurance prior to auditing the pharmacy. Proposed law requires the commissioner of insurance to take appropriate enforcement action.

Proposed law provides that no pharmacy benefit manager (PBM) or pharmacy services administration organization (PSAO) shall make or allow any direct or indirect reduction of payment to a pharmacist or pharmacy for a drug, device, or service under a reconciliation process to an effective rate of reimbursement.

Proposed law provides that no PBM shall reimburse a pharmacy or pharmacist in this state an amount less than the amount that the PBM bills to the health plan provider for the same claim.

Present law provides that a PBM is prohibited from conducting or participating in spread pricing in this state unless written notice is provided to the policyholders. Proposed law removes the written notice exception and prohibits spread pricing.

Present law provides that a PBM has the duties of good faith, honesty, trust, confidence, and candor and provides for the standard for the fulfillment of the PBM's duties. Proposed law adds a fiduciary duty and provides for a PBM to notify a health insurance issuer in writing



of any activity, policy, or practice of the PBM that directly or indirectly presents a conflict of interest.

Present law provides that a PBM may obtain and maintain a permit from the La. Board of Pharmacy if the PBM provides certain pharmacy services. Proposed law requires a PBM to obtain and maintain the permit.

Present law provides for certain prohibited acts or unfair and deceptive trade practices by PBMs. Proposed law adds the action of causing or knowingly permitting the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

Proposed law repeals the pharmacy benefit manager monitoring advisory council.

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

(Amends R.S. 22:1856(B), 1856.1(B)(intro para), 1856.1(B)(2), (3), and (4)(a), (D)(1)(b), (E)(5), and (G), 1860.3(C) and (D), 1863(2), and 1867(A), R.S. 37:1256(B), and R.S. 40:2864, 2868(A)(intro para), and 2870(A)(4); adds R.S. 22:1856.1(H) and 1860.3(E) and (F) and R.S. 40:2870(A)(21); repeals R.S. 22:1865.1(D)(1)(c) and 1867(B) and R.S. 40:2869)