
SENATE COMMITTEE AMENDMENTS

2021 Regular Session

Amendments proposed by Senate Committee on Finance to Original Senate Bill No. 180 by Senator Fred Mills

1 AMENDMENT NO. 1

2 On page 1, line 3, change "R.S. 39:1556(42)" to "R.S. 39:1556(10)(a)" and after "1600(D)(1)"
3 and (3)," insert "1621(B),"

4 AMENDMENT NO. 2

5 On page 1, line 4, after "enact" insert "R.S. 39:1600.1," and after "R.S. 42:802(B)(12)" insert
6 a comma ","

7 AMENDMENT NO. 3

8 On page 1, line 6, change "professional" to "consulting"

9 AMENDMENT NO. 4

10 On page 1, line 7, change "professional" to "consulting"

11 AMENDMENT NO. 5

12 On page 1, line 12, change "**professional**" to "**consulting**"

13 AMENDMENT NO. 6

14 On page 1, line 15, change "**professional**" to "**consulting**"

15 AMENDMENT NO. 7

16 On page 2, line 7, change "**professional**" to "**consulting**"

17 AMENDMENT NO. 8

18 On page 2, line 12, change "**professional**" to "**consulting**"

19 AMENDMENT NO. 9

20 On page 2, line 15, change "R.S. 39:1556(42)" to "R.S. 39:1556(10)(a)" and after
21 "1600(D)(1) and (3)," insert "1621(B),"

22 AMENDMENT NO. 10

23 On page 2, line 16, after "reenacted" insert "and R.S. 39:1600.1 is hereby enacted"

24 AMENDMENT NO. 11

25 On page 2, delete lines 23 through 29, and on page 3, delete lines 1 through 10 and insert the
26 following:

27 "(10)(a) "Consulting service" means work, other than professional, personal,
28 or social service, rendered by either individuals or firms who possess specialized
29 knowledge, experience, and expertise to investigate assigned problems or projects
30 and to provide counsel, review, design, development, analysis, or advice in
31 formulating or implementing programs or services, or improvements in programs or
32 services, including but not limited to such areas as management, personnel, finance,

1 accounting, planning, information technology, **pharmacy benefit managers**, and
2 advertising contracts, except for printing associated therewith."

3 AMENDMENT NO. 12

4 On page 3, line 13, change "**professional**" to "**consulting**"

5 AMENDMENT NO. 13

6 On page 3, line 23, change "**professional**" to "**consulting**"

7 AMENDMENT NO. 14

8 On page 3, line 27, change "**professional**" to "**consulting**"

9 AMENDMENT NO. 15

10 On page 4, between lines 4 and 5, insert the following:

11 **§1600.1. Procurement of pharmacy benefit manager services by reverse**
12 **auction**

13 **A. This Section shall be known and may be cited as the "Louisiana**
14 **Competitive Pharmacy Benefit Managers Marketplace Act".**

15 **B. The legislature finds and declares that it is the intent of this Section**
16 **to optimize prescription drug savings by the state through:**

17 **(1) Development of a dynamically competitive reverse auction process**
18 **for state health plan selection of pharmacy benefit managers.**

19 **(2) Electronic review and validation of pharmacy benefit manager claims**
20 **as the foundation for reconciling pharmacy bills.**

21 **(3) Technology-driven evaluation of incumbent pharmacy benefit**
22 **manager prescription drug pricing based on benchmark comparatives derived**
23 **from pharmacy benefit manager reverse auction processes conducted in the**
24 **United States over the previous twelve months.**

25 **C. For purposes of this Section, the following definitions shall apply:**

26 **(1) "AWP" means average wholesale price.**

27 **(2) "GNC" means guaranteed net cost.**

28 **(3) "NADAC" means national average drug acquisition cost.**

29 **(4) "NIST" means national institute of standards and technology.**

30 **(5) "Participant bidding agreement" means an online agreement that**
31 **details common definitions, prescription drug classifications, rules, data access**
32 **and use rights, and other optimal contract terms benefitting the state that all**
33 **pharmacy benefit manager bidders must accept as a prerequisite for**
34 **participation in a pharmacy benefit manager reverse auction.**

35 **(6) "Pharmacy benefit manager" or "PBM" means any person or**
36 **business who administers the prescription drug or device program of one or**
37 **more health plans on behalf of a third party in accordance with a pharmacy**
38 **benefit program. This term includes any agent or representative of a pharmacy**
39 **benefit manager hired or contracted by the pharmacy benefit manager to assist**
40 **in the administering of the drug program and any wholly or partially owned or**
41 **controlled subsidiary of a pharmacy benefit manager.**

42 **(7) "PBM reverse auction" means an automated, transparent, and**
43 **dynamically competitive bidding process conducted online that starts with an**
44 **opening round of bids and allows qualified pharmacy benefit manager bidders**
45 **to counter-offer a lower price for as many rounds of bidding as determined by**
46 **the purchaser for a multiple health plan prescription drug purchasing group.**
47 **Except to the extent clearly provided by this Section, any pharmacy benefit**
48 **manager reverse auction shall be conducted in accordance with R.S. 39:1600(D)**
49 **and its corresponding regulations.**

50 **(8) "Price" means the projected cost of a pharmacy benefit manager's**
51 **offer or bid for providing prescription drug benefits pursuant to this Section,**
52 **to enable direct comparison of the comparably calculated costs of competing**

pharmacy benefit manager proposals over the duration of the pharmacy benefit manager services contract.

(9) "Real-time" means within no more than one hour.

(10) "Self-funded private sector health plan" means any self-funded private sector employer or multi-employer health plan.

(11) "Self-funded public sector health plan" means any group benefit plan provided pursuant to R.S. 42:801 et seq., any state-funded health plan or self-funded parish, municipal, or other local government employee health plan, and any public school employee health plan, health plan of the Louisiana State University System, any Louisiana public four-year college, or any Louisiana community college system.

(12) "Soc 2" means service organization control 2.

D. Contracts for pharmacy benefit manager services obtained through reverse auction shall comply with the following:

(1) Notwithstanding any provision of law to the contrary, the division of administration may procure the services of a pharmacy benefit manager for the administration of benefits under R.S. 42:801 et seq., in a transparent, online, and dynamically competitive process and in the manner specified in this Section.

(2) The division of administration may procure the following products and services as needed to implement this Section in accordance with this Chapter.

(a) A technology platform with required capabilities for conducting a PBM reverse auction that shall, at a minimum, possess the capacity to:

(i) Conduct an automated, online, reverse auction of PBM services using a software application and high-performance data infrastructure to intake, cleanse, and normalize PBM data with development methods and information security standards that have been validated by receiving Soc 2 and NIST certification.

(ii) Automate repricing of diverse and complex PBM prescription drug pricing proposals to enable direct comparison of the comparably calculated costs to the state of PBM bids using one hundred percent of annual prescription drug claims data available for state-funded health plans or a multiple health plan prescription drug purchasing group and using code-based classification of drugs from nationally accepted drug sources.

(iii) Simultaneously evaluate, in real-time, diverse and complex multiple proposals from full service PBMs, including AWP, GNC, and NADAC pricing models, as well as proposals from pharmacy benefit administrators and specialty drug and rebate carve out service providers.

(iv) Produce an automated report and analysis of PBM bids, including the ranking of PBM bids based on the comparative costs and qualitative aspects of the bids within a one-hour period following the close of each round of reverse auction bidding.

(v) Perform real-time, electronic, line-by-line, claim-by-claim review of one hundred percent of invoiced PBM prescription drug claims, and identify all deviations from the specific terms of the PBM services contract resulting from the reserve auction process.

(b) Related services from the provider of the technology platform identified in Paragraph (2)(a) of this Subsection, which shall include, at a minimum, the following capabilities:

(i) Evaluation of the qualifications of PBM bidders.

(ii) Online automated reverse auction services to support the division of administration in comparing the pricing for the PBM procurement.

(iii) Related professional services as necessary.

(3) If the division of administration exercises the authority provided for in this Section, it shall procure the technology platform and related technology provider no later than four months in advance of the date scheduled for completion of the PBM reverse auction.

(4) The division of administration shall not award a contract for procurement of the technology platform and technology provider services to a

1 vendor that is a PBM or a vendor that is managed by or a subsidiary or affiliate
2 of a PBM.

3 (5) The vendor awarded the contract by the division of administration
4 shall not outsource any part of the PBM reverse auction or the automated,
5 real-time, electronic, line-by-line, claim-by-claim review of invoiced PBM
6 prescription drug claims.

7 (6) With technical assistance and support provided by the technology
8 platform provider, the division of administration shall specify the terms of the
9 participant bidding agreement which shall not be modified except by specific
10 consent of the division of administration.

11 (7)(a) The technology platform used to conduct the reverse auction shall
12 be repurposed over the duration of the PBM services contract as an automated
13 pharmacy claims adjudication engine to perform real-time, electronic,
14 line-by-line, claim-by-claim review of one hundred percent of invoiced PBM
15 prescription drug claims, and identify all deviations from the specific terms of
16 the PBM services contract.

17 (b) The division of administration shall reconcile the electronically
18 adjudicated pharmacy claims, as described in Paragraph (7)(a) of this
19 Subsection, with PBM invoices on a monthly or quarterly basis to ensure that
20 state payments shall not exceed the terms specified in any PBM services
21 contract.

22 (c) If, following state payment to the PBM on the basis of such
23 reconciliation, the PBM asserts that the division of administration has
24 underpaid on the amount owed, the PBM may seek resolution through a
25 mutually acceptable dispute resolution process, which the parties shall have
26 agreed to previously in the terms of their contract.

27 (8) Each PBM reverse auction shall be scheduled to be completed and the
28 PBM services contract shall be scheduled to be awarded to the winning PBM no
29 later than six months prior to termination or expiration of the existing PBM
30 services contract. The Joint Legislative Committee on the Budget shall be given
31 notice of the dates of the PBM reverse auction and the termination of the
32 existing PBM services contract. This Paragraph shall not be construed to alter
33 the effect of Part 6 of this Chapter.

34 (9) The division of administration may perform a market check for
35 providing PBM services during the term of the existing PBM services contract,
36 which shall be a technology-driven evaluation of the incumbent PBM's
37 prescription drug pricing based on benchmark comparators derived from PBM
38 reverse auction processes conducted in the United States over the previous
39 twelve months in order to ensure continuing competitiveness of incumbent
40 prescription drug pricing over the life of a PBM services contract.

41 (10) The division of administration may implement a no-pay option that
42 obligates the winning PBM, rather than the state, to pay the cost of the
43 technology platform and related technology platform provider services by
44 assessing the PBM a per-prescription fee in an amount agreed to by the division
45 of administration and the technology provider and requiring the PBM to pay
46 these fees to the technology provider over the duration of the PBM services
47 contract. The obligation of the winning PBM to pay the per-prescription fees
48 would then be incorporated as a term of the participant bidding agreement and
49 the PBM services contract awarded to the PBM reverse auction winner.

50 (11) (a) The processes and procedures set forth in this part apply to
51 group benefit plans provided pursuant to R.S. 42:801 et seq., if the division of
52 administration elects to exercise its authority to conduct a PBM reverse auction
53 in accordance with this Section. This Section shall not apply in the case of a
54 nonprofit, nongovernmental health maintenance organization with respect to
55 managed care plans that provide a majority of covered professional services
56 through a single contracted medical group.

57 (b) Any other self-funded public sector health plan may use the processes
58 and procedures set forth in this Section individually, collectively, or as a joint
59 purchasing group with the group benefit plans provided pursuant to R.S. 42:801
60 et seq.

1 **(c)(i) After completion of the first PBM reverse auction, self-funded**
2 **private sector health plans with substantial participation by Louisiana**
3 **employees and their dependents shall have the option, upon approval by the**
4 **division of administration, to participate in a joint purchasing pool with state**
5 **employees for subsequent PBM reverse auctions in accordance with rules**
6 **promulgated by the division of administration.**

7 **(ii) The group benefit plans provided pursuant to R.S. 42:801 et seq., and**
8 **any self-funded public sector health plans or self-funded private sector health**
9 **plans that opt to participate with the state employees group benefits plan in a**
10 **joint PBM reverse auction purchasing pool shall retain full autonomy over**
11 **determination of their respective prescription drug formularies and pharmacy**
12 **benefit designs and shall not be required to adopt a common prescription drug**
13 **formulary or common prescription pharmacy benefit design. Any such entity**
14 **or purchasing group shall agree, before participating in the PBM reverse**
15 **auction, to accept the prescription drug pricing plan that is selected through the**
16 **PBM reverse auction process.**

17 **(iii) Any PBM providing services to the division of administration, to**
18 **self-funded public sector health plans, or to self-funded private sector health**
19 **plans as described in this section shall provide the division of administration**
20 **and the plan access to complete pharmacy claims data necessary to conduct the**
21 **reverse auction and carry out their administrative and management duties.**

22 * * *

23 §1621. Consulting service contracts

24 * * *

25 B. Contracts for consulting services which have a total maximum amount of
26 compensation of seventy-five thousand dollars or more for a twelve-month period
27 shall be awarded through a request for proposal **or reverse auction** process under
28 rules and regulations issued by the office of state procurement. Service requirements
29 shall not be artificially divided so as to exempt contracts from the request for
30 proposal process.

31 * * *

32 AMENDMENT NO. 16

33 On page 4, line 13, after "**R.S. 39:1600(D)**" delete "**in compliance with**" and insert ", **R.S.**
34 **39:1600.1, and**"

35 AMENDMENT NO. 17

36 On page 4, line 22, after "**R.S. 39:1600(D)**" insert "**and R.S. 39:1600.1 when it has been**
37 **determined by the division of administration to be in the best interest of the state**"

38 AMENDMENT NO. 18

39 On page 4, line 29, after "**R.S. 39:1600(D)**" delete "**in compliance with**" and insert ", **R.S.**
40 **39:1600.1, and**"