

1 1864(C) are hereby enacted to read as follows:

2 §1856. Payment standard; limitations on claim filing and audits; remittance advice

3 * * *

4 ~~B. Health insurance issuers that limit the period of time that a pharmacist or~~
5 ~~pharmacy under contract for delivery of covered benefits has to submit claims for~~
6 ~~payment under R.S. 22:1853 or 1854 shall have the same limited period of time~~
7 ~~following payment of such claims to perform any review or audit for purposes of~~
8 ~~reconsidering the validity of such claims.~~

9 **A pharmacy record audit, reconsideration, or any other review of a**
10 **claim for delivery of covered benefits performed by a health insurance issuer**
11 **or their representative shall be done in accordance with R.S. 22:1856.1.**

12 C. Each remittance advice generated by a health insurance issuer or its agent
13 to a pharmacist or his agent or pharmacy or its agent shall be sent on the date of
14 payment and shall include the following information, clearly identified and totaled
15 for each claim listed:

16 * * *

17 **(16) Reimbursement paid to the health insurance issuer.**

18 **(17) Reimbursement paid to the pharmacy.**

19 * * *

20 **G. If, upon investigation, the commissioner finds that a violation has**
21 **occurred, the commissioner shall take appropriate enforcement action which**
22 **may include suspending or revoking a license or imposing a fine. Each violation**
23 **shall be a separate offense.**

24 **H. As used in this Section, "entity" means a managed care company,**
25 **insurance company, third-party payor, or the representative of the managed**
26 **care company including a pharmacy benefit manager, insurance company, or**
27 **third-party payor.**

28 §1856.1. Pharmacy record audits; recoupment; appeals

29 A.**(1)** As used in this Section, "entity" means a managed care company,

1 insurance company, third-party payor, or the representative of the managed care
2 company including a pharmacy benefit manager, insurance company, or third-party
3 payor.

4 **(2) Except for an alleged fraud, willful misrepresentation, or abuse audit**
5 **performed in accordance with R.S. 22:1856.1(G)(2), any entity that limits the**
6 **period of time that a pharmacist or pharmacy under contract for delivery of**
7 **covered benefits has to submit claims for payment pursuant to R.S. 22:1853 or**
8 **1854 shall have the same limited period of time following payment of the claims,**
9 **up to a maximum time period of one year from the date the claim was**
10 **adjudicated, to perform an audit, reconsideration, or any other review of a**
11 **claim.**

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

16 * * *

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

24 * * *

25 (3)(a) The entity or any vendor or subcontractor of the entity which conducts
26 the initial audit shall give the pharmacy notice **and a comprehensive list of claims**
27 **by prescription number to be audited** at least two weeks before conducting the
28 initial audit for each audit cycle. **The entity or vendor or subcontractor of the**
29 **entity shall not receive payment nor compensate the auditor based on the**

1 amount directly or indirectly recovered.

2 * * *

3 (4)(a)(i) Any clerical or record-keeping error, such as a typographical error,
4 scrivener's error, or computer error, regarding a required document or record shall
5 not necessarily constitute fraud.

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

8 * * *

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

12 * * *

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

18 * * *

19 E. * * *

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

24 * * *

25 G. This Section shall not apply to:

26 (1) Any quality assurance review, as defined by the time period prior to ~~the~~
27 ~~reimbursement by the entity to the pharmacy~~ **dispensing of the prescription.**

28 (2) An investigation that is initiated based on or that involves suspected or
29 alleged fraud, willful misrepresentation, or abuse. **The entity conducting the audit**

1 shall provide notice of any investigation initiated pursuant to this Subsection to
2 the division of insurance fraud of the Department of Insurance prior to auditing
3 the pharmacy.

4 H. If, upon investigation, the commissioner of insurance finds a violation
5 of this Section has occurred, either on his own initiative or in response to a
6 complaint filed with the Department of Insurance, the commissioner shall
7 suspend or revoke the license of the entity or, in lieu thereof, impose a fine.

8 **§1856.2. Pharmacy record auditors; testing**

9 No individual shall perform an audit on behalf of an entity pursuant to
10 R.S. 22:1856.1 or any other provision of this Subpart unless the individual has
11 passed an examination which tests the knowledge of the individual concerning
12 pharmacy record audits and the insurance laws and regulations of this state.
13 Examinations shall be developed and conducted in accordance with the rules
14 and regulations promulgated by the commissioner of insurance.

15 * * *

16 §1860.2. Certain pharmacy claims fees prohibited

17 A. A health insurance issuer, ~~or a pharmacy benefit manager,~~ **or pharmacy**
18 **services administrative organization** shall not directly or indirectly charge or hold
19 a pharmacist or pharmacy responsible for any fee related to a claim that is any of the
20 following:

21 * * *

22 §1860.3. Reimbursements

23 * * *

24 **C. No pharmacy benefit manager, pharmacy services administration**
25 **organization, or any person acting for or on behalf of a pharmacy benefit**
26 **manager or pharmacy services administration organization shall make or allow**
27 **any direct or indirect reduction of payment to a pharmacist or pharmacy for**
28 **a drug, device, or service under a reconciliation process to an effective rate of**
29 **reimbursement, including but not limited to generic effective rates, brand**

1 effective rates, direct and indirect remuneration fees, or any other reduction or
2 aggregate reduction of payment.

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

7 ~~E.~~ The commission of any act prohibited by this Section shall be
8 considered an unfair method of competition and unfair practice or act which shall
9 subject the violator to any and all actions, including investigative demands, private
10 actions, remedies, and penalties, provided for in the unfair trade practices
11 provisions of the Louisiana Insurance Code, R.S. 22:1961 et seq., or the Unfair
12 Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq.

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

15 * * *

16 §1863. Definitions

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

18 * * *

19 (2) "Maximum Allowable Cost List" means a listing of the National Drug
20 Code used by a pharmacy benefit manager setting the maximum allowable cost on
21 which reimbursement to a pharmacy or pharmacist may be based. "Maximum
22 Allowable Cost List" shall include any term that a pharmacy benefit manager or a
23 healthcare insurer may use to establish reimbursement rates for generic and
24 multi-source brand drugs to a pharmacist or pharmacy for pharmacist services. The
25 term "Maximum Allowable Cost List" shall not include any rate mutually agreed to
26 and set forth in writing in the contract between the pharmacy benefit manager and
27 the pharmacy or its agent and shall not include the National Average Drug
28 Acquisition Cost. ~~A pharmacy benefit manager may use effective rate pricing for a~~
29 ~~pharmacist or pharmacy that is not a local pharmacy or local pharmacist as defined~~

1 ~~in R.S. 46:460.36(A).~~

2 * * *

3 **(10) "Specialty drug" means a prescription drug that is not available for**
4 **order or purchase by a retail pharmacy or long-term care pharmacy, requires**
5 **special storage, and has distribution or inventory limitations not available at a**
6 **retail pharmacy or long-term care pharmacy.**

7 §1864. Requirements for use of the National Drug Code by a pharmacy benefit
8 manager

9 * * *

10 **C. A pharmacy benefits manager under contract with a health insurance**
11 **issuer shall use a single maximum amount to be paid by the health insurance**
12 **issuer to a pharmacy for a generic drug or a brand name drug that has at least**
13 **one generic alternative available. A health insurance issuer or pharmacy**
14 **benefits manager under contract with a health insurance issuer shall use the**
15 **same maximum allowable cost list for each pharmacy.**

16 * * *

17 §1867. Prohibition on spread pricing; notice exception

18 A. A pharmacy benefit manager **or pharmacy services administrative**
19 **organization** is prohibited from conducting or participating in spread pricing in this
20 state ~~unless the pharmacy benefit manager provides written notice as provided in~~
21 ~~Subsection B of this Section.~~

22 * * *

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

24 §1256. Louisiana Board of Pharmacy; authority to regulate pharmacy benefit
25 managers

26 * * *

27 B. A pharmacy benefit manager ~~may be but is not required to be permitted~~
28 **under shall obtain a permit pursuant to** Part IV of this Chapter if it administers,
29 develops, maintains, performs, or provides one or more pharmacy services in this

1 state or that affects one or more beneficiaries of a pharmacy benefit management
2 plan administered by the pharmacy benefit manager, as set forth in R.S. 40:2868.

3 Section 3. The introductory paragraph of R.S. 40:2868(A) and 2870(A)(4) are
4 hereby amended and reenacted and R.S. 40:2864(D) and 2870(A)(21), (22), and (23) are
5 hereby enacted to read as follows:

6 §2864. Duties of pharmacy benefit managers

7 * * *

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

12 * * *

13 §2868. Pharmacy benefit manager; regulation by **the Louisiana** Board of Pharmacy;
14 requirements for permitting

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

20 * * *

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

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

23 * * *

24 (4) Conduct or participate in spread pricing as defined in R.S. 22:1863(9)
25 ~~without providing the notice required by R.S. 22:1867.~~

26 * * *

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

1 **(22) Prohibit a pharmacy or pharmacist from offering and providing**
 2 **delivery services to a covered individual as an ancillary service of the pharmacy.**

3 **(23) Reimburse a pharmacy or pharmacist in this state an amount less**
 4 **than the amount that the pharmacy benefit manager was paid by the health**
 5 **plan provider for the same claim.**

6 Section 4. Provisions of this Act shall not invalidate or impede the enforcement of
 7 contacts existing at the time of the effective date between pharmacy benefit managers and
 8 health insurance issuers or pharmacies. No new agreements or extensions of existing
 9 agreements between a pharmacy benefit manager and a health insurance issuer allowing for
 10 spread pricing shall be entered into after January 1, 2022.

11 Section 5. The provisions of R.S. 22:1856.1, as enacted by this Act, shall become
 12 effective on July 1, 2022.

13 Section 6. The provisions of R.S. 22:1856(C), as enacted by this Act, shall become
 14 effective on January 1, 2023.

15 Section 7. Except as provided in Sections 5 and 6 of this Act, the provisions of this
 16 Act shall become effective upon signature by the governor or, if not signed by the governor,
 17 upon expiration of the time for bills to become law without signature by the governor, as
 18 provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the
 19 governor and subsequently approved by the legislature, this Act shall become effective on
 20 the day following such approval.

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

SB 218 Engrossed

DIGEST
 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 for the remittance advice generated by a health insurance issuer to a pharmacist or pharmacy to be sent on the date of payment and containing certain enumerated information, clearly identified and totaled for each claim listed. Proposed law adds the requirement to include the amount of reimbursement paid to the health insurance issuer and the reimbursement paid to the pharmacy.

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, except in cases of alleged fraud, willful misrepresentation, or abuse, 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 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.

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 individual shall perform an audit unless the individual has passed an examination which tests the knowledge of the individual concerning pharmacy record audits and the insurance laws and regulations of this state.

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 was paid by 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 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 actions of causing or knowingly permitting the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading, prohibiting a pharmacy from offering delivery services, and reimbursing a pharmacy less than the amount paid by the health plan.

Proposed law shall not invalidate or impede the enforcement of contracts existing at the time of the effective date of proposed law between PBMs and health insurance issuers or

pharmacies. Proposed law provides that no new agreements or extensions of existing agreements between a pharmacy benefit manager and a health insurance issuer allowing for spread pricing shall be entered into after January 1, 2022.

Proposed law relative to pharmacy record audits and recoupments shall become effective on July 1, 2022. Proposed law relative to remittance advice shall become effective on January 1, 2023. All other provisions of proposed law are effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 22:1856(B), 1856.1(A), 1856.1(B)(intro para), (B)(2)(a), (3)(a), and (4)(a), (D)(1)(b), (E)(5), and (G), 1860.2(A)(intro para), 1860.3(C) and (D), 1863(2), and 1867(A), R.S. 37:1256(B), and R.S. 40:2868(A)(intro para) and 2870(A)(4); adds R.S. 22:1856(C)(16) and (17), (G), and (H), 1856.1(H), 1856.2, 1860.3(E) and (F), 1863(10), and 1864(C) and R.S. 40:2864(D) and 2870(A)(21), (22), and (23))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Adds reimbursement amounts to the required content of a remittance advice.
2. Clarifies the permitted enforcement actions of the commissioner of insurance.
3. Restores present law relative to the review and audit of pharmacy claims.
4. Requires an individual to pass a test prior to conducting an audit.
5. Deletes proposed law relative to the fiduciary duty of a PBM.
6. Deletes the proposed repeal of the pharmacy benefit manager monitoring advisory council.
7. Provides for various effective dates.
8. Makes technical changes.