

2021 Regular Session

SENATE BILL NO. 180

BY SENATOR FRED MILLS

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

PROCUREMENT CODE. Provides relative to state procurement of certain services by use of reverse auction technology. (8/1/21)

1 AN ACT

2 To amend and reenact R.S. 38:2271(A)(1) and (2)(b) and the introductory paragraph of

3 2271(C) and R.S. 39:1556(10)(a) and (50), 1600(D)(1) and (3), 1621(B), and

4 1648(C), and to enact R.S. 39:1600.1, R.S. 42:802(B)(12), and R.S. 46:450.7(C),

5 relative to state procurement through the reverse auction process; to provide for the

6 use of reverse auction technology in the procurement of consulting services by state

7 and local governments; to provide for the definition of consulting service; to provide

8 for the procurement of pharmacy benefit manager services through reverse auction;

9 and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 38:2271(A)(1) and (2)(b) and the introductory paragraph of 2271(C)

12 are hereby amended and reenacted to read as follows:

13 §2271. Purchase of materials, supplies, ~~or~~ equipment, **or consulting services** by

14 certain political subdivisions using certain auction methods

15 A.(1) The bidding provisions of this Chapter shall not apply when a political

16 subdivision purchases materials, supplies, ~~or~~ equipment, **or consulting services**

17 using a reverse auction as authorized by, and in the manner provided in, this Part. A

1 political subdivision may use reverse auction only with the determination by its
 2 procurement officer that the best interests of the political subdivision would be
 3 served and that electronic online bidding is more advantageous than other
 4 procurement methods provided in this Chapter.

5 (2) For the purposes of this Part:

6 * * *

7 (b) "Reverse auction" means a competitive online solicitation process on the
 8 Internet for equipment, supplies, and other materials **or consulting services** in which
 9 vendors compete against each other online in real time in an open and interactive
 10 environment.

11 * * *

12 C. Adequate public notice for the purchases of materials, supplies, ~~or~~
 13 equipment, **or consulting services** by a political subdivision using a reverse auction
 14 shall be given as follows:

15 * * *

16 Section 2. R.S. 39:1556(10)(a) and (50), 1600(D)(1) and (3), 1621(B), and 1648(C)
 17 are hereby amended and reenacted and R.S. 39:1600.1 is hereby enacted to read as follows:

18 §1556. Definitions

19 As used in this Chapter, the words defined in this Section shall have the
 20 meanings set forth below, unless the context in which they are used clearly requires
 21 a different meaning or a different definition is prescribed for a particular Part or
 22 provision:

23 * * *

24 (10)(a) "Consulting service" means work, other than professional, personal,
 25 or social service, rendered by either individuals or firms who possess specialized
 26 knowledge, experience, and expertise to investigate assigned problems or projects
 27 and to provide counsel, review, design, development, analysis, or advice in
 28 formulating or implementing programs or services, or improvements in programs or
 29 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 * * *

4 (50) "Reverse auction" means a competitive online solicitation process on the
5 Internet for materials, supplies, services, products, ~~or~~ equipment, **or consulting**
6 **services** in which vendors compete against each other online in real time in an open
7 and interactive environment.

8 * * *

9 §1600. Other procurement methods

10 * * *

11 D. Reverse auction.

12 (1) Notwithstanding the provisions of Subpart A of this Part, with the
13 approval of the state chief procurement officer that the best interests of the state
14 would be served, a reverse auction may be utilized for the acquisition of materials,
15 supplies, services of any type, products, ~~or~~ equipment, **or consulting services** of any
16 monetary amount, including small purchases.

17 * * *

18 (3) Adequate public notice for the purchase of materials, supplies, services,
19 ~~or~~ equipment, **or consulting services** using a reverse auction shall be given. The
20 advertisement or notice shall conform to the requirements for public notice of sealed
21 bidding or small purchases as applicable, pursuant respectively to R.S. 39:1594 or
22 1596, such that the extent, timing, location, form, and duration of public notice
23 activities for the reverse auction process shall be fully consistent with the public
24 notice activities required for a sealed bid or small purchase of equivalent value.

25 * * *

26 **§1600.1. Procurement of pharmacy benefit manager services by reverse auction**

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

29 **B. The legislature finds and declares that it is the intent of this Section**

1 to optimize prescription drug savings by the state through:

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

4 (2) Electronic review and validation of pharmacy benefit manager claims
5 as the foundation for reconciling pharmacy bills.

6 (3) Technology-driven evaluation of incumbent pharmacy benefit
7 manager prescription drug pricing based on benchmark comparatives derived
8 from pharmacy benefit manager reverse auction processes conducted in the
9 United States over the previous twelve months.

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

11 (1) "AWP" means average wholesale price.

12 (2) "GNC" means guaranteed net cost.

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

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

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

20 (6) "Pharmacy benefit manager" or "PBM" means any person or
21 business who administers the prescription drug or device program of one or
22 more health plans on behalf of a third party in accordance with a pharmacy
23 benefit program. This term includes any agent or representative of a pharmacy
24 benefit manager hired or contracted by the pharmacy benefit manager to assist
25 in the administering of the drug program and any wholly or partially owned or
26 controlled subsidiary of a pharmacy benefit manager.

27 (7) "PBM reverse auction" means an automated, transparent, and
28 dynamically competitive bidding process conducted online that starts with an
29 opening round of bids and allows qualified pharmacy benefit manager bidders

1 to counter-offer a lower price for as many rounds of bidding as determined by
2 the purchaser for a multiple health plan prescription drug purchasing group.
3 Except to the extent clearly provided by this Section, any pharmacy benefit
4 manager reverse auction shall be conducted in accordance with R.S. 39:1600(D)
5 and its corresponding regulations.

6 (8) "Price" means the projected cost of a pharmacy benefit manager's
7 offer or bid for providing prescription drug benefits pursuant to this Section,
8 to enable direct comparison of the comparably calculated costs of competing
9 pharmacy benefit manager proposals over the duration of the pharmacy benefit
10 manager services contract.

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

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

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

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

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

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

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

1 Chapter.

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

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

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

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

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

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

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

1 (i) Evaluation of the qualifications of PBM bidders.

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

4 (iii) Related professional services as necessary.

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

9 (4) The division of administration shall not award a contract for
10 procurement of the technology platform and technology provider services to a
11 vendor that is a PBM or a vendor that is managed by or a subsidiary or affiliate
12 of a PBM.

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

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

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

27 (b) The division of administration shall reconcile the electronically
28 adjudicated pharmacy claims, as described in Subparagraph (a) of this
29 Paragraph, with PBM invoices on a monthly or quarterly basis to ensure that

1 state payments shall not exceed the terms specified in any PBM services
2 contract.

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

8 (8) Each PBM reverse auction shall be scheduled to be completed and the
9 PBM services contract shall be scheduled to be awarded to the winning PBM no
10 later than six months prior to termination or expiration of the existing PBM
11 services contract. The Joint Legislative Committee on the Budget shall be given
12 notice of the dates of the PBM reverse auction and the termination of the
13 existing PBM services contract. This Paragraph shall not be construed to alter
14 the effect of Part 6 of this Chapter.

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

22 (10) The division of administration shall implement a no-pay option that
23 obligates the winning PBM, rather than the state, to pay the cost of the
24 technology platform and related technology platform provider services by
25 assessing the PBM a per-prescription fee in an amount agreed to by the division
26 of administration and the technology provider and requiring the PBM to pay
27 these fees to the technology provider over the duration of the PBM services
28 contract. The obligation of the winning PBM to pay the per-prescription fees
29 would then be incorporated as a term of the participant bidding agreement and

1 the PBM services contract awarded to the PBM reverse auction winner.

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

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

13 (c) (i) After completion of the first PBM reverse auction, self-funded
14 private sector health plans with substantial participation by Louisiana
15 employees and their dependents shall have the option, upon approval by the
16 division of administration, to participate in a joint purchasing pool with state
17 employees for subsequent PBM reverse auctions in accordance with rules
18 promulgated by the division of administration.

19 (ii) The group benefit plans provided pursuant to R.S. 42:801 et seq., and
20 any self-funded public sector health plans or self-funded private sector health
21 plans that opt to participate with the state employees group benefits plan in a
22 joint PBM reverse auction purchasing pool shall retain full autonomy over
23 determination of their respective prescription drug formularies and pharmacy
24 benefit designs and shall not be required to adopt a common prescription drug
25 formulary or common prescription pharmacy benefit design. Any such entity
26 or purchasing group shall agree, before participating in the PBM reverse
27 auction, to accept the prescription drug pricing plan that is selected through the
28 PBM reverse auction process.

29 (iii) Any PBM providing services to the division of administration, to

1 self-funded public sector health plans, or to self-funded private sector health
 2 plans as described in this section shall provide the division of administration
 3 and the plan access to complete pharmacy claims data necessary to conduct the
 4 reverse auction and carry out their administrative and management duties.

5 E. The Joint Legislative Committee on the Budget shall review and
 6 approve any proposed contract to implement the PBM reverse auction provided
 7 for in this Section.

8 * * *

9 §1621. Consulting service contracts

10 * * *

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

17 * * *

18 §1648. Medicaid contracts or subcontracts for pharmacy benefit manager services

19 * * *

20 C.(1) After August 1, 2018, any subsequent requests for proposal issued by
 21 the Louisiana Department of Health for Medicaid managed care organization
 22 services that include the provision of pharmacy or pharmacy benefit manager
 23 services shall include the provisions of Subsection A of this Section.

24 (2) The Louisiana Department of Health may procure and negotiate
 25 pharmacy benefit manager contracts through the use of a reverse auction
 26 pursuant to R.S. 39:1600(D), R.S. 39:1600.1, and the requirements of this
 27 Section.

28 * * *

29 Section 3. R.S. 42:802(B)(12) is hereby enacted to read as follows:

auction process and establishes the standards and procedures. Proposed law provides for legislative intent and defines key terms.

Proposed law provides for the mandatory content of contracts for PBM services obtained through reverse auction including the minimum capabilities of the technology platform, the required related services from the technology platform provider, and the time limit for procuring the technology platform and related technology provider.

Proposed law provides that if the division of administration uses a reverse auction to procure PBM services as authorized by proposed law, the division shall not award a contract for the technology platform and related provider services to a PBM and prohibits the vendor from outsourcing any part of the reverse auction or review of invoiced drug claims.

Proposed law provides that the technology platform used to conduct the reverse auction shall be repurposed over the duration of the PBM services contract as an automated pharmacy claims adjudication engine to perform real-time, electronic, line-by-line, claim-by-claim review of 100% of invoiced PBM prescription drug claims, and identify all deviations from the specific terms of the PBM services contract. Proposed law requires the division of administration to reconcile the electronically adjudicated pharmacy claims with PBM invoices on a monthly or quarterly basis to ensure that state payments shall not exceed the terms specified in any PBM services contract.

Proposed law provides for the timeline for the completion of each PBM reverse auction and requires notice of the dates of the scheduled PBM reverse auction and the termination of the existing PBM services contract to be given to the Joint Legislative Committee on the Budget.

Proposed law provides that the division of administration shall implement a no-pay option that obligates the winning PBM, rather than the state, to pay the cost of the technology platform and related technology platform provider services by assessing the PBM a per-prescription fee in an amount agreed to by the division of administration and the technology provider and requiring the PBM to pay these fees to the technology provider over the duration of the PBM services contract.

Proposed law does not apply in the case of a nonprofit, nongovernmental health maintenance organization with respect to managed care plans that provide a majority of covered professional services through a single contracted medical group.

Proposed law provides that any other self-funded public sector health plan may use the processes and procedures established in proposed law individually, collectively, or as a joint purchasing group with the group benefit plans provided by the Office of Group Benefits. Proposed law further authorizes, after completion of the first PBM reverse auction, self-funded private sector health plans with substantial participation by La. employees and their dependents to participate in a joint purchasing pool with state employees for subsequent PBM reverse auctions.

Present law provides that the Louisiana Department of Health (LDH) shall administer the Medicaid prescription drug benefit program and requires contracts for PBM services, either directly with LDH or as a subcontractor or subsidiary of a managed care organization, to meet certain requirements. Proposed law adds authority for LDH to procure and negotiate PBM contracts through the use of a reverse auction.

Present law provides that the Office of Group Benefits may negotiate and contract directly for the provision of other health care services to the program's covered persons. Proposed law adds authority for OGB to procure and negotiate PBM contracts through the use of a reverse auction.

Proposed law provides that the Jt. Legislative Committee on the Budget shall review and

approve any proposed contract to implement a PBM reverse auction.

Effective August 1, 2021.

(Amends R.S. 38:2271(A)(1) and (2)(b) and 2271(C)(intro para) and R.S. 39:1556(10)(a) and (50), 1600(D)(1) and (3), 1621(B), and 1648(C); adds R.S. 39:1600.1, R.S. 42:802(B)(12), and R.S. 46:450.7(C))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the original bill

1. Makes technical changes.
2. Changes the procurement classification of PBM services from professional services to consulting services and updates proposed law references.
3. Provides for the standards and procedures for the procurement of PBM services through reverse auction.
4. Specifies that the procurement of PBM services through reverse auction shall be done in accordance with proposed law.

Senate Floor Amendments to engrossed bill

1. Make technical changes.
2. Require the division of administration to implement a no-pay option that obligates the PBM to pay the technology costs.
3. Require JLCB approval of proposed contracts to implement a PBM reverse auction.