

1 1863(10) and (11), and 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) On or after January 1, 2023, reimbursement paid to the health**
18 **insurance issuer.**

19 **(17) On or after January 1, 2023, reimbursement paid to the pharmacy.**

20 * * *

21 **G. The agent of a pharmacist or pharmacy, including but not limited to**
22 **a pharmacy services administrative organization, shall send the pharmacist or**
23 **pharmacy the complete remittance advice required by Subsection C of this**
24 **Section on the date of payment for each claim.**

25 §1856.1. Pharmacy record audits; recoupment; appeals

26 A.**(1)** As used in this Section, "entity" means a managed care company,
27 insurance company, third-party payor, or the representative of the managed care
28 company including a pharmacy benefit manager, insurance company, or third-party
29 payor.

1 scrivener's error, or computer error, regarding a required document or record shall
2 not necessarily constitute fraud.

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

5 * * *

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

9 * * *

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

15 * * *

16 E. * * *

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

21 * * *

22 G. This Section shall not apply to:

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

25 (2) An investigation that is initiated based on or that involves suspected or
26 alleged fraud, willful misrepresentation, or abuse. **The entity conducting the audit**
27 **shall provide notice of any investigation initiated pursuant to this Subsection to**
28 **the division of insurance fraud of the Department of Insurance prior to auditing**
29 **the pharmacy.**

1 available at a retail pharmacy, is prescribed for a person with a chronic,
2 complex, life-threatening, or rare medical condition, and requires either of the
3 following:

4 (a) Specialized product handling or administration by the dispensing
5 pharmacy.

6 (b) Specialized clinical care, including requirement dosing adjustments,
7 intensive clinical monitoring, or expanded services for patients. For the
8 purposes of this Paragraph, "expanded services" may include intensive patient
9 counseling, education, or ongoing clinical support beyond traditional dispensing
10 actives such as individualized disease and therapy management to support
11 improved health outcomes.

12 §1864. Requirements for use of the National Drug Code by a pharmacy benefit
13 manager

14 * * *

15 C. A pharmacy benefits manager under contract with a health insurance
16 issuer shall use a single maximum amount to be paid by the health insurance
17 issuer to a pharmacy for a generic drug or a brand name drug that has at least
18 one generic alternative available. A health insurance issuer or pharmacy
19 benefits manager under contract with a health insurance issuer shall use the
20 same maximum allowable cost list for each pharmacy.

21 * * *

22 §1867. Prohibition on spread pricing; notice exception

23 A. ~~A~~ On or before December 31, 2024, a pharmacy benefit manager or
24 pharmacy services administrative organization is prohibited from conducting or
25 participating in spread pricing in this state unless the pharmacy benefit manager
26 provides written notice as provided in Subsection B of this Section. Effective
27 January 1, 2022, no new agreement or extension of an existing agreement for
28 the provision of pharmacy benefit manager services shall allow for spread
29 pricing.

* * *

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

§1256. Louisiana Board of Pharmacy; authority to regulate pharmacy benefit 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. The introductory paragraph of R.S. 40:2868(A) and 2870(A)(4) are hereby amended and reenacted and R.S. 40:2864(D) and 2870(A)(21), (22), and (23) are hereby enacted to read as follows:

§2864. Duties of pharmacy benefit managers

* * *

D. 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.

* * *

§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

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

2 * * *

3 (4) ~~Conduct~~ **On or before December 31, 2024, conduct** or participate in
4 spread pricing as defined in R.S. 22:1863(9) without providing the notice required
5 by R.S. 22:1867 **or, effective January 1, 2022, enter into a new agreement or**
6 **extension of an existing agreement for the provision of pharmacy manager**
7 **benefit services allowing for spread pricing.**

8 * * *

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

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

14 **(23) On or after January 1, 2025, reimburse a pharmacy or pharmacist**
15 **in this state an amount less than the amount that the pharmacy benefit manager**
16 **was paid by the health plan provider for the same claim or, effective January**
17 **1, 2022, enter into a new agreement or extension of an existing agreement for**
18 **the provision of pharmacy benefit manager services allowing for the**
19 **reimbursement of a pharmacy or pharmacist in an amount less than the amount**
20 **that the pharmacy benefit manager was paid by the health plan provider for the**
21 **same claim.**

22 Section 4. Provisions of this Act shall not invalidate or impede the enforcement of
23 contacts existing at the time of the effective date of this Act. Effective January 1, 2022, no
24 new agreement or extension of an existing agreement for the provision of pharmacy benefit
25 manager services shall allow for spread pricing.

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

28 Section 6. Except as provided in Section 5 of this Act, the provisions of this Act
29 shall become effective upon signature by the governor or, if not signed by the governor,

1 upon expiration of the time for bills to become law without signature by the governor, as
 2 provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the
 3 governor and subsequently approved by the legislature, this Act shall become effective on
 4 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.

DIGEST

SB 218 Reengrossed

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, effective January 1, 2023, 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, effective January 1, 2022, 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 applies only to local

pharmacies.

Proposed law provides that, effective January 1, 2025, 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, until December 31, 2024, 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 after January 1, 2025.

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 for the provision of pharmacy benefit manager services existing at the time of the effective date of proposed law. Proposed law provides that, effective January 1, 2022, no new agreement or extension of an existing agreement for the provision of pharmacy benefit manager services shall allow for spread pricing.

Proposed law provides for various effective dates.

(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(C), 1860.2(A)(intro para), 1860.3(C) and (D), 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), and (G), 1856.1(H), 1856.2, 1860.3(E) and (F), 1863(10) and (11), 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.

Senate Floor Amendments to engrossed bill

1. Provides for effective dates.
2. Deletes provision relative to enforcement by the commissioner of insurance.
3. Deletes definition of entity.
4. Specifies that the remittance advice is to be sent on the date of payment for each claim.
5. Specifies that the prohibition on direct or indirect reduction of payment to an effective rate of reimbursement applies only to local pharmacies.
6. Adds definitions for local pharmacy and specialty drug.
7. Makes technical changes.