## SLS 21RS-39

#### REENGROSSED

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. (See Act)

1	AN ACT
2	To amend and reenact R.S. 22:1856(B), 1856.1(A), the introductory paragraph of 1856.1(B),
3	1856.1(B)(2)(a), (3)(a), and (4)(a), (D)(1)(b), (E)(5), and (G), 1860(C), the
4	introductory paragraph of 1860.2(A), 1860.3(C) and (D), and 1867(A), R.S.
5	37:1256(B), and the introductory paragraph of R.S. 40:2868(A) and 2870(A)(4) and
6	to enact R.S. 22:1856(C)(16) and (17) and (G), 1856.1(H), 1856.2, 1860.3(E) and
7	(F), 1863(10) and (11), and 1864(C) and R.S. 40:2864(D) and 2870(A)(21), (22), and
8	(23), relative to the payment of pharmacy claims; to provide for pharmacy audits; to
9	provide for reimbursements; to provide for definitions; to prohibit spread pricing; to
10	provide for pharmacy benefit manager permits; to provide for the duties of pharmacy
11	benefit managers; to provide for prohibited acts; to provide for an effective date; and
12	to provide for related matters.
13	Be it enacted by the Legislature of Louisiana:
14	Section 1. R.S. 22:1856(B), 1856.1(A), the introductory paragraph of 1856.1(B),
15	1856.1(B)(2)(a), (3)(a), and (4)(a), (D)(1)(b), (E)(5), and (G), 1860(C), the introductory
16	paragraph of 1860.2(A), and 1860.3(C) and (D), and 1867(A) are hereby amended and
17	reenacted and R.S. 22:1856(C)(16) and (17) and (G), 1856.1(H), 1856.2, 1860.3(E) and (F),

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Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions.

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	<b>G.</b> 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.

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1	(2) Except for an alleged fraud, willful misrepresentation, or abuse audit
2	performed in accordance with R.S. 22:1856.1(G)(2), any entity that limits the
3	period of time that a pharmacist or pharmacy under contract for delivery of
4	covered benefits has to submit claims for payment pursuant to R.S. 22:1853 or
5	1854 shall have the same limited period of time following payment of the claims,
6	up to a maximum time period of one year from the date the claim was
7	adjudicated, to perform an audit, reconsideration, or any other review of a
8	<u>claim.</u>
9	B. Notwithstanding any other provision of law to the contrary, when an $\underline{a}$
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	* * *
22	(3)(a) The entity or any vendor or subcontractor of the entity which conducts
23	the initial audit shall give the pharmacy notice and a comprehensive list of claims
24	by prescription number to be audited at least two weeks before conducting the
25	initial audit for each audit cycle. The entity or vendor or subcontractor of the
26	entity shall not receive payment nor compensate the auditor based on the
27	amount directly or indirectly recovered.
28	* * *
29	(4)(a) (i) Any clerical or record-keeping error, such as a typographical error,

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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	H. If, upon investigation, the commissioner of insurance finds a violation
2	of this Section has occurred, either on his own initiative or in response to a
3	complaint filed with the Department of Insurance, the commissioner shall
4	suspend or revoke the license of the entity or, in lieu thereof, impose a fine.
5	§1856.2. Pharmacy record auditors; testing
6	On or after January 1, 2022, no individual shall perform an audit on
7	behalf of an entity pursuant to R.S. 22:1856.1 or any other provision of this
8	Subpart unless the individual has passed an examination which tests the
9	knowledge of the individual concerning pharmacy record audits and the
10	insurance laws and regulations of this state. Examinations shall be developed
11	and conducted in accordance with the rules and regulations promulgated by the
12	<u>commissioner of insurance.</u>
13	* * *
14	§1860. Violations; cease and desist orders; penalties
15	* * *
16	C. An aggrieved party, which may include a pharmacy benefit manager,
17	affected by the commissioner's decision, act, or order may demand a hearing in
18	accordance with Chapter 12 of this Title, R.S. 22:2191 et seq.
19	* * *
20	§1860.2. Certain pharmacy claims fees prohibited
21	A. A health insurance issuer, or a pharmacy benefit manager, or pharmacy
22	services administrative organization shall not directly or indirectly charge or hold
23	a pharmacist or pharmacy responsible for any fee related to a claim that is any of the
24	following:
25	* * *
26	§1860.3. Reimbursements
27	* * *
28	C.(1) No pharmacy benefit manager, pharmacy services administration
29	organization, or any person acting for or on behalf of a pharmacy benefit

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1	manager or pharmacy services administration organization shall make or allow
2	any direct or indirect reduction of payment to a pharmacist or pharmacy for
3	a drug, device, or service under a reconciliation process to an effective rate of
4	reimbursement, including but not limited to generic effective rates, brand
5	effective rates, direct and indirect remuneration fees, or any other reduction or
6	aggregate reduction of payment.
7	(2) The provisions of Paragraph (1) of this Subsection shall only apply
8	to a local pharmacy as defined in R.S. 22:1863.
9	D. No new agreements or extensions of existing agreements for the
10	provision of pharmacy benefit manager services allowing for the
11	reimbursement of a pharmacy or pharmacist in an amount less than the amount
12	that the pharmacy benefit manager was paid by the health plan provider for the
13	same claim shall be entered into after January 1, 2022.
14	C.E. The commission of any act prohibited by this Section shall be
15	considered an unfair method of competition and unfair practice or act which shall
16	subject the violator to any and all actions, including investigative demands, private
17	actions, remedies, and penalties, provided for in the unfair trade practices
18	provisions of the Louisiana Insurance Code, R.S. 22:1961 et seq., or the Unfair
19	Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq.
20	$\mathbf{D}$ . <b>F</b> . Any provision of a contract that is contrary to any provision of this
21	Section shall be null, void, and unenforceable in this state.
22	* * *
23	§1863. Definitions
24	As used in this Subpart, the following definitions apply:
25	* * *
26	(10) "Local pharmacy" means any pharmacy domiciled in at least one
27	Louisiana parish that has fewer than ten retail outlets under its corporate
28	umbrella.
29	(11) "Specialty Drug" means a prescription drug that is not readily

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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	<b>C. A pharmacy benefits manager under contract with a health insurance</b>
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.

1	* * *
2	Section 2. R.S. 37:1256(B) is hereby amended and reenacted to read as follows:
3	§1256. Louisiana Board of Pharmacy; authority to regulate pharmacy benefit
4	managers
5	* * *
6	B. A pharmacy benefit manager may be but is not required to be permitted
7	under shall obtain a permit pursuant to Part IV of this Chapter if it administers,
8	develops, maintains, performs, or provides one or more pharmacy services in this
9	state or that affects one or more beneficiaries of a pharmacy benefit management
10	plan administered by the pharmacy benefit manager, as set forth in R.S. 40:2868.
11	Section 3. The introductory paragraph of R.S. 40:2868(A) and 2870(A)(4) are
12	hereby amended and reenacted and R.S. 40:2864(D) and 2870(A)(21), (22), and (23) are
13	hereby enacted to read as follows:
14	§2864. Duties of pharmacy benefit managers
15	* * *
16	<b>D.</b> A pharmacy benefit manager shall notify a health insurance issuer
17	in writing of any activity, policy, or practice of the pharmacy benefit manager
18	that directly or indirectly presents a conflict of interest with the duties provided
19	for in this Chapter.
20	* * *
21	§2868. Pharmacy benefit manager; regulation by the Louisiana Board of Pharmacy;
22	requirements for permitting
23	A. A pharmacy benefit manager may shall obtain and maintain a permit
24	from the Louisiana Board of Pharmacy if the pharmacy benefit manager
25	administers, develops, maintains, performs, or provides one or more of the following
26	pharmacy services in this state or that affects one or more beneficiaries of a
27	pharmacy benefit management plan administered by the pharmacy benefit manager:
28	* * *
29	§2870. Prohibited acts; unfair and deceptive trade practices

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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	<u>delivery services to a covered individual as an ancillary service of the pharmacy.</u>
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,

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.

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

<u>Present law</u> 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.

<u>Present law</u> 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. <u>Proposed law</u> 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.

<u>Present law</u> 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. <u>Proposed law</u> 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.

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

<u>Present law</u> 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. <u>Proposed law</u> adds the requirement for the auditor to provide a comprehensive list of claims by prescription number to be audited.

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

<u>Proposed law</u> 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. <u>Proposed law</u> requires the commissioner of insurance to take appropriate enforcement action.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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. <u>Proposed law</u> applies only to local

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#### pharmacies.

<u>Proposed law</u> 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.

<u>Present law</u> 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. <u>Proposed law</u> removes the written notice exception and prohibits spread pricing after January 1, 2025.

<u>Present law</u> 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. <u>Proposed law</u> 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.

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

<u>Present law</u> provides for certain prohibited acts or unfair and deceptive trade practices by PBMs. <u>Proposed law</u> 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.

<u>Proposed law</u> 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 <u>proposed</u> <u>law</u>. <u>Proposed law</u> 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 <u>present law</u> relative to the review and audit of pharmacy claims.
- 4. Requires an individual to pass a test prior to conducting an audit.
- 5. Deletes <u>proposed law</u> relative to the fiduciary duty of a PBM.

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- 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.