

2021 Regular Session

HOUSE BILL NO. 244

BY REPRESENTATIVES TURNER AND JORDAN

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

INSURANCE/HEALTH: Provides for the regulation of pharmacy services administrative organizations

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AN ACT

To amend and reenact R.S. 44:4.1(B)(11) and to enact R.S. 22:821(B)(39) and Part III-A of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1660.1 through 1660.11, relative to pharmacy services administrative organizations; to provide for definitions; to require licensing and a related fee; to provide grounds for denial, suspension, and revocation of a license; to require submission of an annual report and filing fee; to authorize the commissioner of insurance to examine certain documents; to require maintenance and confidentiality of such documents; to provide for exceptions; to provide for duties and responsibilities; to provide fines for violations; to provide for contractual agreements; to provide for fee reimbursement; to authorize rulemaking; to modify relative to exceptions to public records requests; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:821(B)(39) and Part III-A of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1660.1 through 1660.11, are hereby enacted to read as follows:

§821. Fees

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B. The commissioner shall collect the following fees in advance:

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1 (1) All basic organizational documents of the pharmacy services
2 administrative organization, including any articles of incorporation, articles of
3 association, partnership agreements, trade name certificates, trust agreements,
4 shareholders' agreements, and other applicable documents and all amendments to
5 such documents.

6 (2) The bylaws, rules, regulations, or similar documents regulating the
7 internal affairs of the pharmacy services administrative organization.

8 (3) The names, addresses, official positions, and professional qualifications
9 of the individuals who are responsible for the conduct of affairs of the pharmacy
10 services administrative organization, including all members of the board of directors,
11 board of trustees, executive committee or other governing board or committee, the
12 principal officers in the case of a corporation or the partners or members in the case
13 of a partnership or association, shareholders holding directly or indirectly ten percent
14 or more of the voting securities of the pharmacy services administrative
15 organization, and any other person who exercises control or influence over the affairs
16 of the pharmacy services administrative organization.

17 (4) An affidavit signed by the president or other authorized officer stating
18 that the pharmacy services administrative organization has its latest financial
19 statement available for inspection by the commissioner.

20 (5) The applicant shall submit summary information concerning its business
21 organization and employees sufficient to fulfill the requirements of this Part.

22 (6) Such other pertinent information as may be required by the
23 commissioner.

24 C. Upon request by the commissioner, the applicant shall make available for
25 inspection by the commissioner copies of contracts with pharmacists, pharmacies,
26 pharmacy benefit managers, or other persons utilizing the services of the pharmacy
27 services administrative organization in order to determine qualification for licensure.

28 D. The commissioner may refuse to issue a license if the commissioner
29 determines that the pharmacy services administrative organization, or any individual

1 responsible for the conduct of affairs of the pharmacy services administrative
2 organization as defined in this Part, is not competent, trustworthy, financially
3 responsible or of good personal and business reputation, or has had an insurance or
4 a pharmacy services administrative organization license denied or revoked for cause
5 by any state.

6 E. A license issued pursuant to this Section shall remain valid, unless
7 surrendered, suspended, or revoked by the commissioner, as long as the pharmacy
8 services administrative organization continues in business in this state and remains
9 in compliance with this Part.

10 F. A pharmacy services administrative organization is not required to hold
11 a license as a pharmacy services administrative organization in this state if the
12 pharmacy services administrative organization meets both of the following
13 conditions:

14 (1) The pharmacy services administrative organization has its principal place
15 of business in another state.

16 (2) The pharmacy services administrative organization is not soliciting
17 business as a pharmacy services administrative organization in this state.

18 G. On an annual basis, a licensed pharmacy services administrative
19 organization shall notify the commissioner if there is any material change in fact or
20 circumstance affecting its qualification for a license in this state. The notice shall
21 include any documentation as the commissioner may require upon a form to be
22 furnished by the commissioner.

23 §1660.3. Annual report; filing fee

24 A. Each pharmacy services administrative organization shall file an annual
25 report for the preceding calendar year with the commissioner on or before March
26 first of each year, or within such extension of time as the commissioner may grant
27 for good cause. The report shall be in the form and contain all information as the
28 commissioner requires and shall be verified by at least two officers of the pharmacy
29 services administrative organization.

1 B. The annual report shall include the number of pharmacists or pharmacies
2 with which the pharmacy services administrative organization has an agreement with
3 in the state.

4 C. At the time of filing its annual report, the pharmacy services
5 administrative organization shall pay a filing fee in the amount set forth in R.S.
6 22:821.

7 §1660.4. Grounds for denial, suspension, or revocation of license

8 A. The commissioner shall suspend or revoke the license of a pharmacy
9 services administrative organization, deny the application for a license, or, in lieu
10 thereof, impose a fine for each separate violation not to exceed five hundred dollars
11 per violation if the pharmacy services administrative organization has failed to pay
12 any judgment rendered against it in this state within sixty days after the judgment has
13 become final.

14 B. The commissioner may suspend or revoke the license of a pharmacy
15 services administrative organization, deny the application for a license, or, in lieu
16 thereof, impose a fine not to exceed five hundred dollars per violation if the
17 commissioner finds that a pharmacy services administrative organization has either
18 of the following to apply:

19 (1) Has violated any lawful rule or order of the commissioner or any
20 provision of the insurance laws of this state that is within the sole authority of the
21 pharmacy services administrative organization.

22 (2) Has refused to be examined or to produce its accounts, records, and files
23 for examination or if any of its officers have refused to give information with respect
24 to its affairs or has refused to perform any other legal obligations as to such
25 examination, when required by the commissioner.

26 (3) Is affiliated with or under the same general management or interlocking
27 directorate or ownership as another pharmacy services administrative organization
28 which unlawfully transacts business in this state without having a license.

1 (4) At any time fails to meet any qualification for which issuance of the
2 license could have been refused had such failure then existed and been known to the
3 commissioner.

4 (5) Has been convicted of, or has entered a plea of guilty or nolo contendere
5 to, a felony without regard to whether adjudication was withheld.

6 (6) Is under suspension or revocation in another state.

7 (7) Has provided incorrect, misleading, incomplete, or materially false
8 information or omitted material information in the license application.

9 C. The commissioner may, in his discretion and without advance notice or
10 hearing, immediately suspend the license of any pharmacy services administrative
11 organization if the commissioner finds that either of the following circumstances
12 exists:

13 (1) A proceeding for receivership, conservatorship, rehabilitation, or other
14 delinquency proceeding regarding the pharmacy services administrative organization
15 has been commenced in any state.

16 (2) The financial condition or business practices of the pharmacy services
17 administrative organization otherwise pose an imminent threat to the public health,
18 safety, or welfare of the residents of this state.

19 §1660.5. Maintenance of information; exceptions

20 The commissioner may access the books and records maintained by a
21 pharmacy services administrative organization for the purposes of examination,
22 audit, and inspection. The commissioner shall keep any trade secrets contained in
23 such books and records confidential; however, the commissioner may use such
24 information in any proceeding instituted against the pharmacy services
25 administrative organization.

26 §1660.6. Examination authority

27 The commissioner may cause an examination, as prescribed by the provisions
28 of Chapter 8 of this Title, of any pharmacy services administrative organization

1 when in the opinion of the commissioner it is necessary for such an examination to
2 be made.

3 §1660.7. Confidentiality; documents and information; exceptions

4 Information provided to the commissioner by a pharmacy services
5 administrative organization pursuant to R.S. 22:1660.2(B) and 1660.3, as well as the
6 terms and conditions of any contract between a pharmacy services administrative
7 organization and a pharmacy benefit manager, a pharmacist, or a pharmacy except
8 for the identity of the contracting parties, and such other proprietary information as
9 specifically identified by the pharmacy services administrative organization shall be
10 given confidential treatment, shall not be subject to subpoena, and shall not be made
11 public by the commissioner, the National Association of Insurance Commissioners,
12 or any other person, except to the insurance departments of other states or in any
13 adjudicatory hearing or court proceeding invoked by the commissioner in accordance
14 with the provisions of this Part.

15 §1660.8. Rules and regulations

16 The commissioner may adopt rules and regulations in accordance with the
17 Administrative Procedure Act as are necessary to implement this Part.

18 §1660.9. Duties and responsibilities; nonimposition of liability; rulemaking
19 authority

20 A. A pharmacy services administrative organization that contracts with a
21 pharmacy to perform any activity related to prescription drug benefits or to act as the
22 pharmacy's agent is obligated to that pharmacy for the duties of care, competence,
23 good faith and fair dealing, and loyalty.

24 B. A pharmacy services administrative organization is not responsible for
25 any of the activities that are solely within the purview of a pharmacy benefits
26 manager.

27 C. The commissioner of insurance shall promulgate rules that define the
28 roles and responsibilities solely within the purview of both of the following:

29 (1) Pharmacy benefits managers.

1 (2) Pharmacy services administrative organizations.

2 D. A pharmacy services administrative organization shall notify the
3 contracted pharmacy in writing of any activity, policy, or practice that presents a
4 conflict of interest that interferes with the duties imposed by this Section.

5 E. A pharmacy services administrative organization shall not engage in any
6 acts, methods, or practices prohibited by Part IV of Chapter 7 of Title 22 of the
7 Louisiana Revised Statutes of 1950.

8 §1660.10. Contractual agreements; receipt and payment of claims

9 A. After the receipt of a clean claim by a pharmacy, the plan sponsor, or an
10 agent of the plan sponsor such as a pharmacy benefits manager, shall not
11 retroactively reduce payment on the claim, either directly or indirectly, through
12 aggregated effective rates or otherwise except in situations where a claim is found
13 not to be a clean claim during the course of a routine audit as permitted pursuant to
14 written agreements between the plan sponsor and the pharmacy. For purposes of this
15 Section, "clean claim" has the same meaning provided for in R.S. 22:1188.1.

16 B. Subsection A of this Section does not prohibit any retroactive increase in
17 payment to a pharmacy pursuant to a written agreement between a plan sponsor, or
18 an agent of the plan sponsor such as a pharmacy benefits manager, and a pharmacy,
19 or an agent of a pharmacy such as a pharmacy services administrative organization.

20 C. Upon request by a contracted pharmacy, a pharmacy services
21 administrative organization shall provide the pharmacy access to complete and
22 unredacted contracts executed on its behalf within a reasonable time frame.

23 §1660.11. Reimbursement; fees

24 A. A pharmacy services administrative organization shall remit to a
25 contracted pharmacy any reimbursements, including sales and use taxes, received on
26 behalf of the pharmacy within five business days after receipt of the reimbursement.

27 B. A pharmacy services administrative organization shall not retain any
28 portion of reimbursements, including dispensing fees, direct or indirect remuneration
29 fees, sales and use taxes, or any other amount owed to the pharmacy.

Proposed law requires a pharmacy services administrative organization operating within the state of La. to be registered and licensed with the Dept. of Insurance by submission of an application and registration fee to the commissioner of insurance. Requires a pharmacy services administrative organization to file an annual report. Further sets a \$300.00 licensing fee and a \$150.00 annual report filing fee.

Proposed law prohibits a person from acting as a pharmacy services administrative organization in this state without a valid license issued by the commissioner. Requires a pharmacy services administrative organization's application for licensure to include certain documents and pertinent information. Authorizes the commissioner, upon his request, to inspect copies of certain contracts in order to determine qualification for licensure. Further authorizes the commissioner to deny or revoke a license for certain cause.

Proposed law provides for a license to remain valid as long as the pharmacy services administrative organization continues business in this state and remains in compliance with proposed law. Exempts a pharmacy services administrative organization from La. licensure requirements when certain out-of-state conditions apply.

Proposed law requires a pharmacy services administrative organization to notify the commissioner of any material changes in fact or circumstance relative to its license qualification.

Proposed law requires the commissioner to suspend, revoke, or deny the license or a pharmacy services administrative organization, or to impose a fine for violations not in excess of \$500.00 per violation when the pharmacy services administrative organization has failed to timely pay a judgment rendered against it. Further authorizes the commissioner to suspend, revoke, or deny the license or a pharmacy services administrative organization or impose a fine for certain other violations.

Proposed law authorizes the commissioner to access the books and records maintained by a pharmacy services administrative organization for the purposes of examination, audit, and inspection, and authorizes the commissioner to cause an examination of a pharmacy services administrative organization, when deemed necessary. Requires the commissioner to keep any trade secrets contained in books and records confidential; however, the commissioner is authorized to use such information in any proceeding instituted against the pharmacy services administrative organization.

Proposed law requires information provided to the commissioner by a pharmacy services administrative organization and certain terms and contracts between certain parties to remain confidential. Such information is not subject to subpoena and is not public information, except it may be provided to insurance departments in other states for certain purposes.

Proposed law provides that a pharmacy services administrative organization is not responsible for activities solely within the purview of a pharmacy benefits manager. Further requires the commissioner to promulgate rules to define roles and responsibilities solely within the purview of pharmacy benefits managers and pharmacy services administrative organizations.

Proposed law requires a pharmacy services administrative organization to notify a contracted pharmacy in writing of any activity, policy, or practice that presents a conflict of interest. Further prohibits a pharmacy services administrative organization from engaging in any act, method, or practice prohibited by present law provisions of Unfair Trade Practices (R.S. 22:1961 et seq.).

Proposed law prohibits a plan sponsor or pharmacy benefits manager from retroactively reducing payments on clean claims unless certain conditions apply. Provides that if a written agreement exists, retroactive increases in payment to a pharmacy are allowable. Further requires a pharmacy services administrative organization to provide a contracted pharmacy

with access to the pharmacy's complete and unredacted contracts upon the pharmacy's request.

Proposed law requires a pharmacy services administrative organization to remit to a contracted pharmacy any reimbursements, including sales and use taxes, received on behalf of a pharmacy within 5 business days after receipt of the reimbursement.

Proposed law prohibits a pharmacy services administrative organization from retaining any portion of reimbursements, including dispensing fees, direct or indirect remuneration fees, sales and use taxes, or any other amount owed to a pharmacy.

Proposed law provides that when a pharmacy services administrative organization has not yet received final payment, retroactive adjustments, or reconciliations from a plan sponsor or pharmacy benefits manager, or funds are being held to pay amounts owed by the pharmacy, proposed law (R.S. 22:1660.5) regarding reimbursement and fees does not apply.

Proposed law authorizes the commissioner to adopt rules in accordance with the APA to implement proposed law.

Proposed law creates an exception to present law, Public Records Law (R.S. 44:4.1(B)).

(Adds R.S. 22:1660.1-1660.11)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Specify for the commissioner's registration fee to not exceed \$300.00.
2. Delete language that would have subjected pharmacy services administrative organizations to present law (R.S. 40:2861 et seq.) regulations for pharmacy benefits managers.
3. Delete language with respect to conflicts of interests, other conduct, and the duty of a fiduciary relationship owed by a pharmacy services administrative organization to a pharmacy.
4. Provide that a pharmacy services administrative organization is not responsible for the activities solely within the purview of a pharmacy benefits manager.
5. Require the commissioner of insurance to promulgate rules to define the roles and responsibilities solely within the purview of pharmacy benefits managers and pharmacy services administrative organizations.
6. Define the term "clean claim" and prohibit a plan sponsor or pharmacy benefits manager from retroactively reducing payments on clean claims unless certain conditions apply; however, if a written agreement exists, retroactive increases in payment to a pharmacy are allowable.
7. Require a pharmacy services administrative organization to provide a contracted pharmacy with access to the pharmacy's complete and unredacted contracts upon the pharmacy's request.
8. Provide that when a pharmacy services administrative organization has not yet received final payment, retroactive adjustments, or reconciliations from a plan

sponsor or pharmacy benefits manager, or funds are being held to pay amounts owed by the pharmacy, proposed law (R.S. 22:1660.5) does not apply.

9. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Set a \$300.00 licensing fee and a \$150.00 annual report filing fee payable by pharmacy services administrative organizations to the commissioner of insurance.
2. Prohibit a person from acting as a pharmacy services administrative organization in this state without a valid license issued by the commissioner. Require a pharmacy services administrative organization's application for licensure to include certain documents and pertinent information.
3. Authorize the commissioner, upon his request, to inspect copies of certain contracts in order to determine qualification for licensure. Authorize the commissioner to deny or revoke a license for certain cause.
4. Provide for a license to remain valid as long as the pharmacy services administrative organization continues business in this state and remains in compliance.
5. Exempt a pharmacy services administrative organization from La. licensure requirements when certain out-of-state conditions apply.
6. Require a pharmacy services administrative organization to notify the commissioner of any material changes in fact or circumstance relative to license qualification.
7. Require a pharmacy services administrative organization to file with the commissioner an annual report for the preceding calendar year. Require the report to meet certain conditions of verification.
8. Require the commissioner to suspend, revoke, or deny the license of a pharmacy services administrative organization, or to impose a fine for violations not in excess of \$500.00 per violation when the pharmacy services administrative organization has failed to timely pay a judgment rendered against it. Authorize the commissioner to suspend, revoke, or deny the license of a pharmacy services administrative organization, or impose a fine for certain other violations.
9. Authorize the commissioner to access the books and records maintained by a pharmacy services administrative organization for the purposes of examination, audit, and inspection, and authorize an examination of the pharmacy services administrative organization when deemed necessary. Require the commissioner to keep any trade secrets contained in such books and records confidential; however, the commissioner is authorized to use such information in any proceeding instituted against the pharmacy services administrative organization.
10. Require information provided to the commissioner by a pharmacy services administrative organization and certain terms and contracts between certain parties to remain confidential. Such information is not subject to subpoena and is not public information, except it may be provided to insurance departments in other states for certain purposes.

11. Provide for exception to present law, Public Records Law, with respect to information provided to the commissioner.
12. Change "a reasonable amount to time" to "5 business days" with respect to the amount of time a pharmacy services administrative organization has to remit certain reimbursements to contracted pharmacies.
13. Authorize the commissioner to promulgate and adopt rules in accordance with the APA to implement proposed law.
14. Make technical changes with respect to the title, citations, and exceptions to public records requests (R.S. 44:4.1(B)).