

SENATE BILL NO. 180

BY SENATOR FRED MILLS

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

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AN ACT

To amend and reenact R.S. 38:2271(A)(1) and (2)(b) and the introductory paragraph of 2271(C) and R.S. 39:1556(10)(a) and (50), 1600(D)(1) and (3), 1621(B), and 1648(C), and to enact R.S. 39:1600.1, R.S. 42:802(B)(12), and R.S. 46:450.7(C), relative to state procurement through the reverse auction process; to provide for the use of reverse auction technology in the procurement of consulting services by state and local governments; to provide for the definition of consulting service; to provide for the procurement of pharmacy benefit manager services through reverse auction; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 38:2271(A)(1) and (2)(b) and the introductory paragraph of 2271(C) are hereby amended and reenacted to read as follows:

§2271. Purchase of materials, supplies, ~~or~~ equipment, **or consulting services** by certain political subdivisions using certain auction methods

A.(1) The bidding provisions of this Chapter shall not apply when a political subdivision purchases materials, supplies, ~~or~~ equipment, **or consulting services** using a reverse auction as authorized by, and in the manner provided in, this Part. A political subdivision may use reverse auction only with the determination by its procurement officer that the best interests of the political subdivision would be served and that electronic online bidding is more advantageous than other procurement methods provided in this Chapter.

(2) For the purposes of this Part:

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

* * *

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

* * *

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

§1556. Definitions

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

* * *

(10)(a) "Consulting service" means work, other than professional, personal, or social service, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advice in formulating or implementing programs or services, or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, planning, information technology, **pharmacy benefit managers**, and advertising contracts, except for printing associated therewith.

* * *

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

1 and interactive environment.

2 * * *

3 §1600. Other procurement methods

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5 D. Reverse auction.

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

11 * * *

12 (3) Adequate public notice for the purchase of materials, supplies, services,
13 ~~or equipment,~~ or consulting services using a reverse auction shall be given. The
14 advertisement or notice shall conform to the requirements for public notice of sealed
15 bidding or small purchases as applicable, pursuant respectively to R.S. 39:1594 or
16 1596, such that the extent, timing, location, form, and duration of public notice
17 activities for the reverse auction process shall be fully consistent with the public
18 notice activities required for a sealed bid or small purchase of equivalent value.

19 * * *

20 **§1600.1. Procurement of pharmacy benefit manager services by reverse auction**

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

23 **B. The legislature finds and declares that it is the intent of this Section**
24 **to optimize prescription drug savings by the state through:**

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

27 **(2) Electronic review and validation of pharmacy benefit manager claims**
28 **as the foundation for reconciling pharmacy bills.**

29 **(3) Technology-driven evaluation of incumbent pharmacy benefit**
30 **manager prescription drug pricing based on benchmark comparatives derived**

1 from pharmacy benefit manager reverse auction processes conducted in the
2 United States over the previous twelve months.

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

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

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

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

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

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

13 (6) "Pharmacy benefit manager" or "PBM" means any person or
14 business who administers the prescription drug or device program of one or
15 more health plans on behalf of a third party in accordance with a pharmacy
16 benefit program. This term includes any agent or representative of a pharmacy
17 benefit manager hired or contracted by the pharmacy benefit manager to assist
18 in the administering of the drug program and any wholly or partially owned or
19 controlled subsidiary of a pharmacy benefit manager.

20 (7) "PBM reverse auction" means an automated, transparent, and
21 dynamically competitive bidding process conducted online that starts with an
22 opening round of bids and allows qualified pharmacy benefit manager bidders
23 to counter-offer a lower price for as many rounds of bidding as determined by
24 the purchaser for a multiple health plan prescription drug purchasing group.
25 Except to the extent clearly provided by this Section, any pharmacy benefit
26 manager reverse auction shall be conducted in accordance with R.S. 39:1600(D)
27 and its corresponding regulations.

28 (8) "Price" means the projected cost of a pharmacy benefit manager's
29 offer or bid for providing prescription drug benefits pursuant to this Section,
30 to enable direct comparison of the comparably calculated costs of competing

1 pharmacy benefit manager proposals over the duration of the pharmacy benefit
2 manager services contract.

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

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

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

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

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

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

20 (2) The division of administration may procure the following products
21 and services as needed to implement this Section in accordance with this
22 Chapter.

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

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

30 (ii) Automate repricing of diverse and complex PBM prescription drug

1 pricing proposals to enable direct comparison of the comparably calculated
2 costs to the state of PBM bids using one hundred percent of annual prescription
3 drug claims data available for state-funded health plans or a multiple health
4 plan prescription drug purchasing group and using code-based classification of
5 drugs from nationally accepted drug sources.

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

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

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

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

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

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

24 (iii) Related professional services as necessary.

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

29 (4) The division of administration shall not award a contract for
30 procurement of the technology platform and technology provider services to a

1 vendor that is a PBM or a vendor that is managed by or a subsidiary or affiliate
2 of a PBM.

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

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

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

17 (b) The division of administration shall reconcile the electronically
18 adjudicated pharmacy claims, as described in Subparagraph (a) of this
19 Paragraph, with PBM invoices on a monthly or quarterly basis to ensure that
20 state payments shall not exceed the terms specified in any PBM services
21 contract.

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

27 (8) Each PBM reverse auction shall be scheduled to be completed and the
28 PBM services contract shall be scheduled to be awarded to the winning PBM no
29 later than six months prior to termination or expiration of the existing PBM
30 services contract. The Joint Legislative Committee on the Budget shall be given

1 notice of the dates of the PBM reverse auction and the termination of the
2 existing PBM services contract. This Paragraph shall not be construed to alter
3 the effect of Part 6 of this Chapter.

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

11 (10) The division of administration shall implement a no-pay option that
12 obligates the winning PBM, rather than the state, to pay the cost of the
13 technology platform and related technology platform provider services by
14 assessing the PBM a per-prescription fee in an amount agreed to by the division
15 of administration and the technology provider and requiring the PBM to pay
16 these fees to the technology provider over the duration of the PBM services
17 contract. The obligation of the winning PBM to pay the per-prescription fees
18 would then be incorporated as a term of the participant bidding agreement and
19 the PBM services contract awarded to the PBM reverse auction winner.

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

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

1 rules and regulations issued by the office of state procurement. Service requirements
2 shall not be artificially divided so as to exempt contracts from the request for
3 proposal process.

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5 §1648. Medicaid contracts or subcontracts for pharmacy benefit manager services

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

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

15 * * *

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

17 §802. Powers and duties; Office of Group Benefits

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19 B. In addition, the office shall have the following powers and duties:

20 * * *

21 (12) To procure and negotiate pharmacy benefit manager contracts
22 through the use of a reverse auction pursuant to R.S. 39:1600(D) and R.S.
23 39:1600.1 when it has been determined by the division of administration to be
24 in the best interest of the state.

25 * * *

26 Section 4. R.S. 46:450.7(C) is hereby enacted to read as follows:

27 §450.7. Medicaid prescription drug benefit program

28 * * *

29 C. The Louisiana Department of Health may procure and negotiate
30 pharmacy benefit manager contracts through the use of a reverse auction

1 pursuant to R.S. 39:1600(D), R.S. 39:1600.1, and the requirements of this
2 Section.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____