

2023 Regular Session

SENATE BILL NO. 65

BY SENATOR FRED MILLS

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

PHARMACEUTICALS. Provides relative to state procurement of pharmacy benefit manager services by use of reverse auction technology. (8/1/23)

1 AN ACT

2 To amend and reenact R.S. 39:1600.1(C)(6), (D)(1), the introductory paragraph of
3 1600.1(D)(2), 1600.1(D)(2)(b), (3), (4), (6), (9), and (11)(a) and R.S. 42:802(B)(12),
4 relative to state procurement through the reverse auction process; to provide for the
5 procurement of pharmacy benefit manager services through reverse auction; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 39:1600.1(C)(6), (D)(1), the introductory paragraph of 1600.1(D)(2),
9 1600.1(D)(2)(b), (3), (4), (6), (9), and (11)(a) are hereby amended and reenacted to read as
10 follows:

11 §1600.1. Procurement of pharmacy benefit manager services by reverse auction

12 * * *

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

14 * * *

15 (6) "PBM reverse auction" means an automated, transparent, and dynamically
16 competitive bidding process conducted online that starts with an opening round of
17 bids and allows qualified pharmacy benefit manager bidders to counter-offer a lower

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

6 * * *

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

9 (1)~~(a)~~ Notwithstanding any provision of law to the contrary, the division of
 10 administration ~~may procure the~~ **shall implement the reverse auction procedures**
 11 **provided for in this Section for all procurements of** services of a pharmacy benefit
 12 manager for the administration of benefits under R.S. 42:801 et seq., in a transparent,
 13 online, and dynamically competitive process and in the manner specified in this
 14 Section.

15 **(b) Any contract, emergency contract, or agreement for the procurement**
 16 **of pharmacy benefit manager services or consulting services related to**
 17 **pharmacy benefit manager services pursuant to the provisions of this**
 18 **Paragraph shall require approval by the Joint Legislative Committee on the**
 19 **Budget.**

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

22 * * *

23 ~~(b) Related services from the~~ **The** provider of the technology platform
 24 identified in Subparagraph (a) of this Paragraph, ~~which shall include,~~ **be the sole**
 25 **provider of consulting services to the division of administration for the purpose**
 26 **of implementing the PBM reverse auction process. As such, the provider of the**
 27 **technology platform shall have capability,** at a minimum, **to provide** the following
 28 capabilities: **services:**

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

1 **(ii) Consultation and support to the division of administration in**
2 **development of the participant bidding agreement.**

3 ~~(ii)~~ **(iii)** Online automated reverse auction services to support the division of
4 administration in comparing the pricing ~~for~~ **of PBM bids in** the PBM **reverse**
5 **auction** procurement **process.**

6 **(iv) Evaluation of any qualitative factors that the division of**
7 **administration may wish to weigh in the automated ordering of PBM rankings**
8 **in the reverse auction process based on both pricing and weighted qualitative**
9 **factors, in addition to ranking of PBM bids based strictly on comparison of the**
10 **pricing of PBM bids.**

11 ~~(iii)~~ **(v)** Related professional services as necessary.

12 (3) ~~If the~~ **The** division of administration ~~exercises the authority provided for~~
13 ~~in this Section,~~ it shall procure the technology platform and related technology
14 **platform** provider **with capacity to provide the services required by**
15 **Subparagraph (2)(b) of this Subsection** no later than four months in advance of the
16 date scheduled for completion of the PBM reverse auction.

17 (4) The division of administration shall not award a contract for procurement
18 of the technology platform and technology provider services to a vendor that is
19 **meets any of the follow criteria:**

20 **(i) Is** a PBM or a vendor that is managed by or a subsidiary or affiliate of a
21 PBM.

22 **(ii) Receives, directly or indirectly, remuneration from a pharmacy**
23 **benefit manager for aggregating clients into a contractual relationship with a**
24 **pharmacy benefit manager.**

25 **(iii) Has earned revenues in the past for provision of consulting services**
26 **to the division of administration in support of procurement of pharmacy benefit**
27 **manager services through a conventional or nonreverse auction request for**
28 **proposals process.**

29 * * *

1 (6) With technical assistance, consultation, and support provided by the
 2 technology platform provider, the division of administration shall specify the terms
 3 of the participant bidding agreement which shall not be modified except by specific
 4 consent of the division of administration.

* * *

6 (9) The division of administration ~~may~~ shall perform a market check for
 7 providing PBM services during the term of the existing PBM services contract,
 8 which shall be a technology-driven evaluation of the incumbent PBM's prescription
 9 drug pricing based on benchmark comparators derived from PBM reverse auction
 10 processes conducted in the United States over the previous twelve months in order
 11 to ensure continuing competitiveness of incumbent prescription drug pricing over the
 12 life of a PBM services contract. If the incumbent prescription benefit manager
 13 fails to meet comparative benchmark pricing determined through conduct of
 14 a market check in any plan year of the PBM's contract with the state, the
 15 division of administration may, at its discretion, terminate the contract and
 16 conduct a new PBM reverse auction for procurement of pharmacy benefit
 17 manager services.

* * *

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

* * *

27 Section 2. R.S. 42:802(B)(12) is hereby amended and reenacted to read as follows:
 28 §802. Powers and duties; Office of Group Benefits

* * *

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

2 * * *

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

6 * * *

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Brandi Cannon.

DIGEST

SB 65 Reengrossed

2023 Regular Session

Fred Mills

Present law provides that the division of administration may procure pharmacy benefit manager services for the administration of benefits provided by the Office of Group Benefits through the reverse auction process and establishes the standards and procedures. Proposed law revises present law to require, rather than authorize, the division of administration to procure pharmacy benefit manager services for the administration of benefits provided by the Office of Group Benefits through the reverse auction process.

Present 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 updates the contract minimum requirements.

Present law provides that the division of administration 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 retains present law and further prohibits the division from awarding the contract to a vendor that receives remuneration from a PBM for aggregating clients into a contractual relationship with a PBM or has earned revenues in the past for providing consulting services to the division in support of procurement of PBM services through a conventional or nonreverse auction RFP process.

Present law provides that the division of administration may perform a market check for providing PBM services during the term of the existing PBM services contract, which shall be a technology-driven evaluation of the incumbent PBM's prescription drug pricing. Proposed law requires the division to perform a market check and provides that, if the incumbent PBM fails to meet comparative benchmark pricing, the division of administration may terminate the contract and conduct a new PBM reverse auction.

Proposed law provides for approval by the Joint Legislative Committee on the Budget.

Effective August 1, 2023.

(Amends R.S. 39:1600.1(C)(6), (D)(1), 1600.1(D)(2)(intro para), 1600.1(D)(2)(b), (3), (4), (6), (9), and (11)(a) and R.S. 42:802(B)(12))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Provides for approval by the Joint Legislative Committee on the Budget.
2. Makes a technical change.