



# Louisiana Board of Pharmacy

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October 7, 2020

Senator P. Page Cortez  
President, Louisiana Senate  
Via Email: [APA.SenatePresident@legis.la.gov](mailto:APA.SenatePresident@legis.la.gov)

## Electronic Mail – Delivery Receipt Requested

Re: Report No. 1 of 3 for Regulatory Project 2020-4 ~ Pharmacy Benefit Managers

Dear Senator Cortez:

The Board has initiated the rulemaking process to create a new chapter of rules to license and regulate pharmacy benefit managers as directed by Act 124 of the 2019 Legislature. The Occupational Licensing Review Commission approved the initiation of this project during their meeting on September 10. In connection with this regulatory project, the following items are enclosed:

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As indicated in the solicitation, we will convene a public hearing on November 25, 2020 to receive public comments and testimony on this proposed rule. We will summarize those comments and our responses thereto in our next report to you. In the event you have any questions or need additional information about this project, please contact me directly at [mbroussard@pharmacy.la.gov](mailto:mbroussard@pharmacy.la.gov) or 225.925.6481.

For the Board:

Malcolm J. Broussard  
Executive Director

cc: Chair, Senate Health & Welfare Committee  
Via Email: [APA.S-H&W@legis.la.gov](mailto:APA.S-H&W@legis.la.gov)  
Speaker, House of Representatives  
Via Email: [APA.HouseSpeaker@legis.la.gov](mailto:APA.HouseSpeaker@legis.la.gov)  
Chair, House Health & Welfare Committee  
Via Email: [APA.H-HW@legis.la.gov](mailto:APA.H-HW@legis.la.gov)  
Director, Community Outreach Services, La. Economic Development  
Via Email: [Pat.Witty@la.gov](mailto:Pat.Witty@la.gov)  
Editor, *Louisiana Register*  
Via Email: [Reg.Submission@la.gov](mailto:Reg.Submission@la.gov)  
Reference File

## NOTICE OF INTENT

### Department of Health Board of Pharmacy

#### Pharmacy Benefit Managers (LAC 46:LIII.Chapter 30)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 *et seq.*), the Pharmacy Benefit Manager Licensing Law (R.S. 40:2861 *et seq.*), and the Pharmacy Practice Act (R.S. 37:1161 *et seq.*), the Louisiana Board of Pharmacy hereby gives notice of its intent to promulgate a new chapter of rules for pharmacy benefit managers (PBMs). The new rule is intended to implement the provisions of Act 124 of the 2019 Legislature which requires the Board of Pharmacy to license and regulate PBMs when they engage in one or more of the following activities construed to be within the scope of the practice of pharmacy: (1) adjudication of appeals or grievances related to prescription drug coverage. (2) disease management programs. (3) drug formularies. (4) drug regimen reviews. (5) prescription drug management programs. (6) processing of prior authorization requests. (7) quality care dosing services. (8) step therapy procedures. (9) utilization management and utilization reviews. (10) any other act, service, operation, or transaction incidental to or forming a part of the compounding, filling, dispensing, exchanging, giving, offering for sale, or selling drugs, medicines, poisons, or devices in this state by pharmacists or pharmacies, pursuant to a prescription or an order of physicians, dentists, veterinarians, or other licensed practitioners, requiring, involving, or employing the science or art of any branch of the pharmacy profession, study, or training. Section 3001 provides for definitions of certain terms. Section 3003 requires a PBM engaged in any of the activities enumerated within R.S. 40:2868 to obtain a PBM permit from the board, requires the PBM to register with the secretary of state, and provides that a PBM permit is not transferable from one owner to another. Section 3005 provides the procedures for the board to follow with respect to applications for the initial issuance of the permit, the renewal of the permit, applications for the reinstatement of disciplined permits, as well as the permanent closure of a permit.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIII. Pharmacists

#### **Chapter 30. Pharmacy Benefit Managers**

##### **§3001. Definitions**

A. The following terms shall have the meaning ascribed to them in this Section:

*Audited financial statement*—the financial statement and related disclosures prepared by an independent certified public accountant in accordance with United States Generally Accepted Accounting Principles (GAAP) of the specific entity or licensee intending to operate or operating in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1253.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR

##### **§3003. Pharmacy Benefit Manager Permit**

A. A pharmacy benefit manager, as defined at R.S. 40:2863, shall obtain and maintain a pharmacy benefit manager permit from the board prior to conducting business in Louisiana if it administers, develops, maintains, performs, or provides one or more of the pharmacy services enumerated in R.S. 40:2868 in the state or that affects one or more beneficiaries of a pharmacy benefit management plan, as defined at R.S. 40:2863, administered by the pharmacy benefit manager.

B. A pharmacy benefit manager permit shall authorize the permit holder to administer pharmacy benefit management services.

C. The board shall not issue a pharmacy benefit manager permit to any person or other entity which has not yet registered with the Louisiana Secretary of State to conduct business within the state.

D. A pharmacy benefit manager permit is not transferable from the original owner. The permit shall not be subject to sale.

assignment or other transfer, voluntary or involuntary. Moreover, in the event the ownership of the pharmacy benefit manager changes by 50 percent or more after the initial issuance of the permit, the ownership will be deemed sufficiently different as to require a new pharmacy benefit manager permit. The continued operation of a pharmacy benefit manager permit after its ownership has changed by 50 percent or more shall constitute sufficient basis for the board to issue a finding for the operation of a pharmacy benefit manager without a valid permit, in violation of R.S. 40:2865.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1253.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR

### **§3005. Permitting Procedures**

#### **A. Application for Initial Issuance of Permit**

1. The board shall develop an application form suitable for the pharmacy benefit manager permit. The board may revise that application form on its own initiative in order to collect the information it deems necessary to properly evaluate an applicant.

2. The application shall include copies of the following documents:

a. Governance documents, including articles of incorporation, articles of association, partnership agreements, trade name certificates, trust agreements, shareholder agreements, and all amendments to such documents.

b. The applicant's standard generic contract template which it uses for contracts entered into by the applicant and pharmacies or pharmacy services administrative organizations in this state in the administration of pharmacy benefits for healthcare insurers, providers, or payors.

c. An audited financial statement for the applicant's previous fiscal year.

3. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fee.

4. Once received by the board, an application for the permit shall expire one year thereafter.

5. In the event any information contained in the application or accompanying documents changes after being submitted to the board and before the issuance of the permit, the applicant shall immediately notify the board in writing and provide corrected information.

6. The applicant may be required to personally appear before the board or any of its committees prior to any decision on the permit application.

7. Upon approval of the application, the board shall issue the pharmacy benefit manager permit to the applicant.

#### **B. Application for Renewal of Permit**

1. All pharmacy benefit manager permits shall expire two years after the date of its initial issuance and the renewals shall expire every two years thereafter on that anniversary date.

2. The board shall not process applications received by facsimile, or that are incomplete.

3. In the event a pharmacy benefit manager does not submit a properly completed renewal application to the board prior to the expiration of the permit, the permit shall be rendered null and void. The continued operation of a pharmacy benefit manager with an expired permit shall constitute sufficient basis for the board to issue a finding for the operation of a pharmacy benefit manager without a valid permit, in violation of R.S. 40:2865.

4. A pharmacy benefit manager permit not renewed by 30 days after the expiration date shall be automatically terminated by the board.

#### **C. Application for Reinstatement of Terminated, Suspended, or Revoked Permit**

1. The applicant shall complete the application form for this specific purpose supplied by the board.

2. Upon the receipt of a properly completed application form, the board staff shall refer the application to the board's reinstatement committee for its consideration and shall notify the applicant of the time and place for the committee meeting.

#### **D. Maintenance of Permit**

1. A pharmacy benefit manager permit shall be valid for the entity to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary.

2. Upon receipt of a written request and payment of the fee authorized in R.S. 37:1184, the board shall issue a duplicate or replacement permit to the applicant; however, such duplicate or replacement permit shall not serve or be used as an additional or second permit.

#### E. Permanent Closure of Permit

1. In the event the pharmacy benefit manager contemplates permanent closure of the pharmacy benefit manager business, the owner of the permit shall notify the board, in writing, 10 days prior to the anticipated date of closure and surrender its permit.

2. The notice required in this Subsection shall include an acknowledgement of the firm's obligation to maintain copies of all records for all patients and pharmacies in Louisiana for a minimum of two years following the date of closure and surrender of its permit, and further, the point of contact for all inquiries and requests for such records during that two year period of time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1253.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR

### **Family Impact Statement**

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the *Louisiana Register* with the proposed agency Rule.

1. The Effect on the Stability of the Family. The proposed rule will have no effect on the stability of the family.
2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. The Effect on the Functioning of the Family. The proposed rule will have no effect on the functioning of the family.
4. The Effect on Family Earnings and Family Budget. The proposed rule will have no effect on family earnings or family budget.
5. The Effect on the Behavior and Personal Responsibility of Children. The proposed rule will have no effect on the behavior and personal responsibility of children.
6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The proposed rule will have no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

### **Poverty Impact Statement**

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The Effect on Household Income, Assets, and Financial Security. The proposed rule will have no effect on household income, assets, or financial security.
2. The Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed rule will have no effect on early childhood development or preschool through postsecondary education development.
3. The Effect on Employment and Workforce Development. The proposed rule will have no effect on employment or workforce development.
4. The Effect on Taxes and Tax Credits. The proposed rule will have no effect on taxes or tax credits.
5. The Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. The proposed rule will have no effect on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

### **Small Business Analysis**

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. The proposed rule contains no compliance or reporting requirements.

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. The proposed rule contains no schedules or deadlines for compliance or reporting requirements.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. The proposed rule contains no compliance or reporting requirements.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. There no design or operational standards in the proposed rule.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the Proposed Rule. There are no exemptions for small businesses.

#### **Provider Impact Statement**

In accordance with House Concurrent Resolution No. 170 of the Regular Session of the 2014 Legislature, there is hereby submitted a provider impact statement on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, the following effects on the providers of services to individuals with developmental disabilities:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed rule will have no effect on the staffing level requirements or the qualifications for that staff to provide the same level of service.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed rule will have no effect on the cost to the provider to provide the same level of service.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of service. The proposed rule will have no effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to Malcolm J Broussard, Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding the proposed Rule amendment.

#### **Public Hearing**

A public hearing to solicit comments and testimony on the proposed rule is scheduled for 9:00 am on Wednesday, November 25, 2020. During the hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 p.m. noon that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225.925.6496.

Malcolm J Broussard

Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Pharmacy Benefit Managers**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed will require the Louisiana Board of Pharmacy (LBP) to license and regulate any pharmacy benefit manager (PBM) operating within the state and engaging in one or more of ten specifically identified activities construed to be within the practice of pharmacy.

The proposed rule will require LBP to publish the proposed and final rules in the state register, at a cost of \$2,000 in FY 21. To operationalize the credentialing aspect of the rule, the Board will incur a fee of \$500 per year to create and maintain the PBM permit in its licensure information system. There will be no additional expenditures or cost savings for other state or local governmental units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will generate approximately \$20,000 per fiscal year for LBP from permit fees paid by pharmacy benefit managers. The

proposed rule will not affect revenue collections for other state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will require a PBM operating within the state to obtain and maintain a PBM permit from LBP at a cost of \$500 per year.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will not affect competition or employment.

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

Person Preparing Statement:	Malcolm J. Broussard Executive Director	Dept.:	Dept. of Health
Telephone:	225.925.6481	Office:	Board of Pharmacy
Return Address:	3388 Brentwood Drive Baton Rouge, LA 70809	Title:	Pharmacy Benefit Managers
		Effective Date of Rule:	Upon promulgation March 1, 2021 (est.)

SUMMARY  
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will require the Louisiana Board of Pharmacy (LBP) to license and regulate any pharmacy benefit manager (PBM) operating within the state and engaging in one or more of ten specifically identified activities construed to be within the practice of pharmacy.

The proposed rule will require LBP to publish the proposed and final rules in the state register, at a cost of \$2,000 in FY 21. To operationalize the credentialing aspect of the rule, the Board will incur a fee of \$500 per year to create and maintain the PBM permit in its licensure information system. There will be no additional expenditures or cost savings for other state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will generate approximately \$20,000 per fiscal year for LBP from permit fees paid by pharmacy benefit managers. The proposed rule will not affect revenue collections for other state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rule will require a PBM operating within the state to obtain and maintain a PBM permit from LBP at a cost of \$500 per year.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will not affect competition or employment.

Malcolm J. Broussard  
Digitally signed by Malcolm J. Broussard  
Date: 2020.10.07 10:40:15 -05'00'

Signature of Agency Head or Designee

  
Legislative Fiscal Officer or Designee

Malcolm J. Broussard, Executive Director  
Typed Name and Title of Agency Head

Date of Signature

October 7, 2020  
Date of Signature

10/7/20

**FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET**

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

The Board proposes to license and regulate any pharmacy benefit manager (PBM) operating within the state which engages in one or more of the following activities construed to be within the practice of pharmacy:

- (1) Adjudication of appeals or grievances related to prescription drug coverage.
  - (2) Disease management programs.
  - (3) Drug formularies.
  - (4) Drug regimen reviews.
  - (5) Prescription drug management programs.
  - (6) Processing of prior authorization requests.
  - (7) Quality care dosing services.
  - (8) Step therapy procedures.
  - (9) Utilization management and utilization reviews.
  - (10) Any other act, service, operation, or transaction incidental to or forming a part of the compounding, filling, dispensing, exchanging, giving, offering for sale or selling drugs, medicines, poisons, or devices in this state by pharmacists or pharmacies, pursuant to a prescription or order of physicians, dentists, veterinarians, or other licensed practitioners; requiring, involving, or employing the science or art of any branch of the pharmacy profession, study, or training.
- A copy of the notice of intent and proposed rule are appended.

- B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

Act 124 of the 2019 Legislature requires the Board to license and regulate PBMs operating within the state which engage in certain activities construed to be within the scope of the practice of pharmacy and which are enumerated within R.S. 40:2868. The proposed rule is responsive to the legislative mandate. A copy of the act is appended.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The Board has allocated \$2,000 in FY 21 for printing the Notice of Intent and the Rule. The creation and maintenance of the PBM permit in its licensure information system will cost the Board \$500 per year. The Board operates on self-generated funds.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) \_\_\_\_\_ Yes. If yes, attach documentation.  
 (b)   No   No. If no, provide justification as to why this rule change should be published at this time

The Board operates on self-generated funds, and the proposed rule implements the legislative mandate in Act 124 of the 2019 Legislature.

**I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED**

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 21	FY 22	FY 23
Personal Services			
Operating Expenses	\$ 2,500	\$ 500	\$ 500
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
<b>TOTAL</b>	<b>\$ 2,500</b>	<b>\$ 500</b>	<b>\$ 500</b>
<b>POSITIONS (#)</b>			

**FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET**

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The proposed rule will result in a one-time expenditure of \$2,000 in FY 21 for the Board to publish the proposed and final rules in the state register.

To operationalize the credentialing aspect of the rule, the Board will create a new category of credentials – PBM permit – in its elicense information system. The elicense vendor maintenance fee for each category of credentials is \$500 per year. The only other state board of pharmacy which licenses PBMs is the Mississippi Board of Pharmacy; that agency reports approximately 40 PBMs under its jurisdiction. Given that state's proximity to Louisiana, we anticipate a similar number of credentials. For that approximate number of permits, we estimate no additional personnel will be required to manage the credentialing process for PBM permits.

The enabling legislation requires the Board to regulate the practices of PBMs which are construed to be within the practice of pharmacy. For the number of credentials anticipated, we estimate no additional pharmacist compliance officers will be required. What is unknown at this time is the skill mix required of persons conducting investigations of complaints against PBMs, e.g., will investigators need financial auditing skills or other types of skills not currently in our inventory.

There will be no additional expenditures or cost savings for other state agencies.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 21	FY 22	FY 23
State General Fund			
Agency Self-Generated	\$ 2,500	\$ 500	\$ 500
Dedicated			
Federal Funds			
Other (Specify)			
TOTAL	\$ 2,500	\$ 500	\$ 500

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The Board has sufficient self-generated funds available to implement the proposed rule.

**B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.**

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.
2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

SOURCE	FY 21	FY 22	FY 23
State General Fund			
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
TOTAL	None	None	None

The proposed rule will not impact local governmental units.

**II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS**

- A. What increase (decrease) in revenues can be anticipated from the proposed action?

The proposed rule will generate approximately \$20,000 per year for LBP from permit fees paid by pharmacy benefit managers. The proposed rule will not affect the revenue collections for other state or local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

REVENUE INCREASE/DECREASE	FY 21	FY 22	FY 23
State General Fund			
Agency Self-Generated	\$20,000	\$20,000	\$20,000
Dedicated Funds*			
Federal Funds			
State Funds			

TOTAL

\$20,000

\$20,000

\$20,000

\*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The permit fee established by the legislature is \$500 per year. Based on estimates from a neighboring state board of pharmacy which also licenses and regulates pharmacy benefit managers, we estimate approximately 40 pharmacy benefit managers seeking licensure.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS

A. What persons, small businesses, or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

The proposed rule will require pharmacy benefit managers operating within the state and engaging in one or more of ten specifically identified activities construed to be within the scope of the practice of pharmacy to obtain and maintain a pharmacy benefit manager permit from the Board at a cost of \$500 per year. The proposed rule will require the submission of copies of governance documents and an audited financial statement with the application for the initial issuance of the permit. There are no recordkeeping or reporting requirements associated with the proposed rule.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

The proposed rule does not impact receipts or revenue of the pharmacy benefit manager.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The proposed rule will not affect competition or employment.

SENATE BILL NO. 41

BY SENATOR MILLS AND REPRESENTATIVES ADAMS, AMEDEE, ARMES, BAGNERIS, BERTHELOT, BILLIOT, BISHOP, CHAD BROWN, TERRY BROWN, ROBBY CARTER, STEVE CARTER, CHANEY, CONNICK, COX, DAVIS, DEVILLIER, GISCLAIR, GUINN, JIMMY HARRIS, LANCE HARRIS, HILL, HOFFMANN, HORTON, HOWARD, JACKSON, JEFFERSON, JENKINS, MIKE JOHNSON, JONES, MCMAHEN, MIGUEZ, DUSTIN MILLER, GREGORY MILLER, JAY MORRIS, PIERRE, PUGH, PYLANT, SCHEXNAYDER, TURNER, WHITE AND ZERINGUE

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. 22:1863(2) and to enact R.S. 22:1863(9) and 1867, Part VII of Chapter 14 of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 37:1252 through 1254, and Chapter 36 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:2861 through 2871, relative to regulation of pharmacy benefit managers; to provide legislative intent and public health policy; to provide for protection of the public; to provide for general applicability; to provide for licensure by the Louisiana Department of Insurance; to provide for permitting by the Louisiana Board of Pharmacy; to provide for minimum licensure and permit criteria; to provide for rulemaking; to provide for penalties; to provide for unfair trade practices; to provide for enforcement; to provide for authority of the attorney general; to provide for written notice; to provide for a hearing; to provide for an appeal; to provide for a cause of action under the Unfair Trade Practices and Consumer Protection Law; to provide for severability; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1863(2) is hereby amended and reenacted and R.S. 22:1863(9) and 1867 are hereby enacted to read as follows:

§1863. Definitions

1 As used in this Subpart, the following definitions apply:

2 \* \* \*

3 (2) "Maximum Allowable Cost List" means a listing of the National Drug  
4 Code used by a pharmacy benefit manager setting the maximum allowable cost on  
5 which reimbursement to a pharmacy or pharmacist may be based. **"Maximum**  
6 **Allowable Cost List"** shall include any term that a pharmacy benefit manager  
7 **or a healthcare insurer may use to establish reimbursement rates for generic**  
8 **and multi-source brand drugs to a pharmacist or pharmacy for pharmacist**  
9 **services. The term "Maximum Allowable Cost List" shall not include any rate**  
10 **mutually agreed to and set forth in writing in the contract between the**  
11 **pharmacy benefit manager and the pharmacy or its agent and shall not include**  
12 **the National Average Drug Acquisition Cost. A pharmacy benefit manager may**  
13 **use effective rate pricing for a pharmacist or pharmacy that is not a local**  
14 **pharmacy or local pharmacist as defined in R.S. 46:460.36(A).**

15 \* \* \*

16 (9) **"Spread pricing" means any amount a pharmacy benefit manager**  
17 **charges or claims from a health plan provider or managed care organization for**  
18 **payment of a prescription or for pharmacy services that is different than the**  
19 **amount the pharmacy benefit manager paid to the pharmacist or pharmacy**  
20 **who filled the prescription or provided the pharmacy services.**

21 \* \* \*

22 **§1867. Prohibition on spread pricing; notice exception**

23 **A. A pharmacy benefit manager is prohibited from conducting or**  
24 **participating in spread pricing in this state unless the pharmacy benefit**  
25 **manager provides written notice as provided in Subsection B of this Section.**

26 **B. The notice issued by a pharmacy benefit manager, or a health**  
27 **insurance issuer where the health insurance issuer has agreed to issue the**  
28 **notice, that utilizes spread pricing shall be:**

29 **(1) Required for each health insurance issuer or plan provider in which**  
30 **the pharmacy benefit manager engaged or participated in spread pricing.**

- 1                    (2) Delivered to the policy holder.
- 2                    (3) Provided at least biannually.
- 3                    (4) Indicative of the aggregate amount of spread pricing charged by the
- 4                    pharmacy benefit manager during the period.
- 5                    (5) Written in plain, simple, and understandable English.
- 6                    C. Any violation of this Section that is committed or performed with such
- 7                    frequency as to indicate a general business practice shall be subject to the
- 8                    provisions of the Unfair Trade Practices and Consumer Protection Law, R.S.
- 9                    51:1401 et seq., as provided in R.S. 40:2870(B).

\* \* \*

Section 2. Part VII of Chapter 14 of Title 37 of the Louisiana Revised Statutes of 1950, comprised of R.S. 37:1252 through 1254, is hereby enacted to read as follows:

**PART VII. PHARMACY BENEFIT MANAGERS**

**§1252. Louisiana Board of Pharmacy; authority to regulate pharmacy benefit managers**

**A. Pursuant to the authority vested in the board in this Chapter and as specifically provided for in the Pharmacy Benefit Manager Licensing Law, R.S. 40:2861 et seq., the board shall create and issue a permit for pharmacy benefit managers as defined in R.S. 40:2863.**

**B. A pharmacy benefit manager may be but is not required to be permitted under 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.**

**§1253. Pharmacy benefit managers; permit; annual report; fees**

**A. The board shall promulgate rules and regulations to implement the provisions of this Part and the applicable provisions of the Pharmacy Benefit Manager Licensing Law.**

**B. The board may promulgate rules and regulations to specify the annual reporting requirements for the pharmacy benefit manager.**

1           **§1254. Pharmacy benefit managers; enforcement**

2                   **The board shall enforce the provisions of this Part as provided for in this**  
3           **Chapter and R.S. 40:2871.**

4           Section 3. Chapter 36 of Title 40 of the Louisiana Revised Statutes of 1950,  
5           comprised of R.S. 40:2861 through 2871, is hereby enacted to read as follows:

6           **CHAPTER 36. REGULATION OF PHARMACY BENEFIT MANAGERS**

7           **§2861. Legislative intent and public health policy**

8                   **It is the intent of the legislature that the purpose of this Chapter is to**  
9           **license, permit, and monitor pharmacy benefit managers to provide for the**  
10          **effective control and regulation of their activities, maintain and enforce order**  
11          **regarding the prescribing, dispensing, marketing, selling, managing, and use of**  
12          **prescription drugs in this state, and to protect the health, safety, and general**  
13          **welfare of the citizens and residents of this state.**

14          **§2862. Short title**

15                  **This Chapter shall be known and may be cited as the "Pharmacy Benefit**  
16          **Manager Licensing Law".**

17          **§2863. Definitions**

18                  **As used in this Chapter, the following definitions shall apply:**

19                  **(1) "Attorney general" means the Louisiana attorney general.**

20                  **(2) "Beneficiary" means a person who resides or is employed in this state**  
21          **and is covered or is eligible to be covered by a health plan.**

22                  **(3) "Board of Pharmacy" means the Louisiana Board of Pharmacy.**

23                  **(4) "Commissioner of insurance" means the Louisiana commissioner of**  
24          **insurance.**

25                  **(5) "Department of Insurance" means the Louisiana Department of**  
26          **Insurance.**

27                  **(6) "Department of Justice" means the Louisiana Department of Justice.**

28                  **(7) "Health plan" means an individual or group plan or program which**  
29          **is established by contract, certificate, law, plan, policy, subscriber agreement,**  
30          **or by any other method and which is entered into, issued, or offered for the**

1 purpose of arranging for, delivering, paying for, providing, or reimbursing any  
2 of the costs of health or medical care, including pharmacy services, drugs, or  
3 devices.

4 (8) "Pharmacy benefit management plan" and "pharmacy benefits  
5 program" mean a plan or program that pays for, reimburses, covers the cost of,  
6 or otherwise provides for pharmacist services, drugs, or devices to individuals  
7 who reside in or are employed in Louisiana.

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

15 §2864. Duties of pharmacy benefit managers

16 A. A pharmacy benefit manager shall owe the beneficiaries of any  
17 pharmacy benefit management plan administered by the pharmacy benefit  
18 manager and to the entities that have entered into a contract with the pharmacy  
19 benefit manager the duties of good faith, honesty, trust, confidence, and candor.

20 B. The standard for the fulfillment of a pharmacy benefit manager's  
21 duties shall be to act with a high degree of care, skill, prudence, and diligence  
22 required of a reasonable and prudent person with substantial experience and  
23 expertise in the management of pharmacy benefit management plans and  
24 payment of claims.

25 C. Failure of a pharmacy benefit manager to satisfy the duties  
26 established in this Section shall not create a separate or independent cause of  
27 action nor shall it be construed to prohibit any cause of action established by or  
28 recognized in federal or state law.

29 §2865. General licensing and permitting requirements

30 A. Every pharmacy benefit manager that does business in this state or

1 pays for benefits for a beneficiary through a pharmacy benefit management  
2 plan shall be licensed or permitted as required by this Chapter.

3 B. No license or permit shall be issued to a pharmacy benefit manager  
4 who has not registered with the Louisiana secretary of state to conduct business  
5 within the state.

6 C. Each license and permit shall be valid only for the applicant listed on  
7 the application.

8 D.(1) A pharmacy benefit manager license or permit is not transferable.

9 (2) No license or permit shall be subject to sale, assignment or other  
10 transfer, voluntary or involuntary.

11 (3) In the event the ownership of the pharmacy benefit manager changes  
12 by fifty percent or more after the initial issuance of the license or permit, the  
13 ownership shall be deemed sufficiently different as to require a new pharmacy  
14 benefit manager license or permit.

15 (4) The continued operation of a pharmacy benefit manager under a  
16 license or permit issued pursuant to this Chapter after its ownership has  
17 changed by fifty percent or more shall constitute sufficient basis for finding that  
18 the pharmacy benefit manager is operating in this state without a valid license  
19 or permit in violation of this Chapter.

20 §2866. General applicability

21 A. The licensure and regulation requirements set forth pursuant to this  
22 Chapter shall apply generally to any pharmacy benefit manager regardless of  
23 plan or benefit financing.

24 B. Nothing in this Chapter shall be construed to require coverage of any  
25 specific drug in any health plan, but shall apply once a drug is covered or  
26 included on a health plan formulary.

27 §2867. Pharmacy benefit manager; regulation by commissioner of insurance;  
28 applicability of the Louisiana Insurance Code

29 A. Every pharmacy benefit manager that does business in this state shall  
30 be licensed as required by the Louisiana Insurance Code.

1           B. Every pharmacy benefit manager licensed by the commissioner of  
2           insurance shall abide by the provisions of the Louisiana Insurance Code and the  
3           rules and regulations of the Department of Insurance regarding the pharmacy  
4           benefit manager's business regulated by the commissioner of insurance.

5           §2868. Pharmacy benefit manager; regulation by Board of Pharmacy;  
6           requirements for permitting

7           A. A pharmacy benefit manager may obtain and maintain a permit from  
8           the Board of Pharmacy if the pharmacy benefit manager administers, develops,  
9           maintains, performs, or provides one or more of the following pharmacy  
10           services in this state or that affects one or more beneficiaries of a pharmacy  
11           benefit management plan administered by the pharmacy benefit manager:

12           (1) Adjudication of appeals or grievances related to prescription drug  
13           coverage.

14           (2) Disease management programs. For purposes of this Subsection,  
15           "disease management program" means a program adopted to guide and care  
16           for beneficiaries with chronic health problems to improve the quality of health  
17           care provided to them and prevent future need for medical resources by using  
18           an integrated comprehensive approach.

19           (3) Drug formularies. For purposes of this Subsection, "drug formulary"  
20           means a list of prescription medications or pharmaceutical products developed  
21           and approved by each health plan that may be dispensed to a beneficiary  
22           through participating pharmacies. A drug formulary may also be referred to  
23           as a "preferred drug list", "prior authorization list", or "pharmacopeia".

24           (4) Drug regimen reviews. For purposes of this Subsection, "drug  
25           regimen review" means third-party review of all medications a beneficiary is  
26           currently using, whether prescribed or over-the-counter, and administered by  
27           any method.

28           (5) Prescription drug management programs. For purposes of this  
29           Subsection, "prescription drug management program" means a program  
30           developed and designed to administer the prescription drug benefit as part of

1 a health plan, and as part of such administration a PBM may contract with  
2 pharmacies for implementation and dispensing drugs in accordance with the  
3 program.

4 (6) Processing of prior authorization requests. For purposes of this  
5 Subsection, "processing of prior authorization requests" means making a  
6 determination regarding payment coverage based on an advance approval  
7 request submitted by a physician or other healthcare provider before a specific  
8 procedure, service, device, supply, or medication is delivered to the beneficiary.

9 (7) Quality care dosing services. For purposes of this Subsection,  
10 "quality care dosing services" means electronically checking prescription  
11 medications before they are filled at the pharmacy to ensure that the quantity  
12 and dosage is consistent with the recommendations of the United States Food  
13 and Drug Administration and others.

14 (8) Step therapy procedures. For purposes of this Subsection, "step  
15 therapy procedure" means protocols and policies that establish a specific  
16 sequence in which prescription drugs for a medical condition are approved for  
17 coverage by a health plan for a beneficiary which generally requires cheaper  
18 drugs to be used before more costly drugs. Step therapy may also be referred  
19 to as "fail first" protocol.

20 (9) Utilization management and utilization reviews. For purposes of this  
21 Subsection, "utilization management" and "utilization review" mean  
22 third-party review and approval of appropriateness and necessity of care that  
23 a healthcare provider has indicated for a beneficiary prior to delivery and  
24 coverage of such care.

25 (10) Any other act, service, operation, or transaction incidental to or  
26 forming a part of the compounding, filling, dispensing, exchanging, giving,  
27 offering for sale, or selling drugs, medicines, poisons, or devices in this state by  
28 pharmacists or pharmacies, pursuant to a prescription or an order of  
29 physicians, dentists, veterinarians, or other licensed practitioners, requiring,  
30 involving, or employing the science or art of any branch of the pharmacy

1           profession, study, or training.

2                   B. Every pharmacy benefit manager permitted by the Board of  
 3           Pharmacy shall abide by the applicable provisions of the Louisiana Pharmacy  
 4           Practice Act and the rules and regulations of the Board of Pharmacy.

5           §2869. Pharmacy benefit manager monitoring advisory council; membership;  
 6                   functions

7                   A. There is hereby created a pharmacy benefit manager monitoring  
 8           advisory council, referred to hereafter in this Chapter as the "advisory  
 9           council", that shall consist of the following members, each of whom may  
 10          appoint a designee:

11                   (1) The commissioner of the Department of Insurance.

12                   (2) The president of the Louisiana State Board of Medical Examiners.

13                   (3) The president of the Louisiana Board of Pharmacy.

14                   (4) The attorney general.

15                   (5) The director of the public protection division of the Department of  
 16          Justice.

17                   (6) The secretary of the Louisiana Department of Health.

18                   (7) The president of the Louisiana Academy of Physician Assistants.

19                   (8) The president of the Louisiana State Medical Society.

20                   (9) The president of the Louisiana Association of Nurse Practitioners.

21                   (10) The president of the Louisiana Pharmacists Association.

22                   (11) The president of the Louisiana Independent Pharmacies Association.

23                   (12) The president of the National Association of Chain Drug Stores.

24                   (13) The president of the Pharmaceutical Research and Manufacturers  
 25          of America.

26                   (14) The president of the Louisiana Academy of Medical Psychologists.

27                   (15) The president of the Louisiana Association of Health Plans.

28                   (16) The president of a pharmacy benefit manager licensed by the  
 29          Louisiana Board of Pharmacy, selected by the Louisiana affiliate of the  
 30          Pharmaceutical Care Management Association from a list of interested and

1 qualified individuals.

2 (17) The president of the Louisiana Association of Business and Industry.

3 (18) The chief executive officer of the Louisiana Business Group on  
4 Health.

5 (19) The president of the Louisiana AFL-CIO.

6 (20) The president of the Louisiana Association of Health Underwriters.

7 B. The members of the advisory council shall serve at the pleasure of  
8 their respective appointing authorities. Seven members shall constitute a  
9 quorum for the transaction of all business. The members shall elect a chairman  
10 and vice chairman whose duties shall be established by the advisory council.  
11 The member elected to serve as chairman shall fix a time and place for regular  
12 meetings of the advisory council, which shall meet at least quarterly. The  
13 advisory council shall establish policies and procedures necessary to carry out  
14 its duties. Expenses for the administrative staffing of the advisory council shall  
15 be provided for from the licensing fees paid by pharmacy benefit managers and  
16 may be transferred between state agencies by memorandum of understanding  
17 or cooperative endeavor agreement.

18 C. The commissioner of insurance and the Board of Pharmacy may  
19 utilize the full advisory council or individual member agency expertise for the  
20 purpose of investigating a complaint against a pharmacy benefit manager or  
21 conducting an audit of a pharmacy benefit manager. In exercising the authority  
22 provided for in this Subsection, the same provisions of confidentiality applicable  
23 to the Department of Insurance and Louisiana Board of Pharmacy during an  
24 investigation shall apply to the advisory council or individual member agencies  
25 whose expertise is being utilized. The advisory council may meet in executive  
26 session, as necessary, to discuss matters involving an active investigation.

27 D. The advisory council shall provide monitoring of pharmacy benefit  
28 managers in Louisiana to advise the legislature, commissioner of insurance, and  
29 Board of Pharmacy on the most effective and efficient manner of regulation of  
30 pharmacy benefit managers to ensure the protection of the public. Any licensed

1 pharmacy benefit manager operating in Louisiana shall provide full cooperation  
2 with the advisory council on matters including but not limited to those set forth  
3 in Subsection E of this Section.

4 E. The advisory council shall advise on matters that include but are not  
5 limited to the licensure and regulation of pharmacy benefit managers set forth  
6 in Title 22, Title 37, and Title 40 of the Louisiana Revised Statutes of 1950,  
7 applicable rules and regulations of state agencies, and federal laws or rules  
8 relative to pharmacy benefit managers.

9 §2870. Prohibited acts; unfair and deceptive trade practices

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

11 (1) Commit any unfair and deceptive trade practice prohibited by R.S.  
12 22:1964(15).

13 (2) Perform any act that violates the duties, obligations, and  
14 responsibilities imposed under the Louisiana Insurance Code on a pharmacy  
15 benefit manager.

16 (3) Buy, sell, transfer, or provide personal healthcare or contact  
17 information of any beneficiary to any other party for any purpose with one  
18 exception. A pharmacy benefit manager may provide such information  
19 regarding beneficiaries of a health plan to that health plan provider if requested  
20 by the health plan provider.

21 (4) Conduct or participate in spread pricing as defined in R.S. 22:1863(9)  
22 without providing the notice required by R.S. 22:1867.

23 (5)(a) Directly or indirectly engage in patient steering to a pharmacy in  
24 which the pharmacy benefit manager maintains an ownership interest or  
25 control without making a written disclosure and receiving acknowledgment  
26 from the patient. The disclosure required by this Paragraph shall provide notice  
27 that the pharmacy benefit manager has an ownership interest in or control of  
28 the pharmacy, and that the patient has the right under the law to use any  
29 alternate pharmacy that they choose. The pharmacy benefit manager is  
30 prohibited from retaliation or further attempts to influence the patient, or treat

1 the patient or the patient's claim any differently if the patient chooses to use the  
2 alternate pharmacy.

3 (b) The provisions of this Paragraph shall not apply to employers,  
4 unions, associations, or other persons who employ, own, operate, control, or  
5 contract directly with a pharmacy or pharmacist for the purpose of managing  
6 or controlling prescription costs paid for the benefit of an employee or member  
7 or those covered by the employee or member's plan, or when the persons  
8 contract with a pharmacy benefit manager to steer employees or members to  
9 pharmacists or pharmacies which the person owns, operates, or controls.

10 (6)(a) Penalize a beneficiary or provide an inducement to the beneficiary  
11 for the purpose of getting the beneficiary to use specific retail, mail order  
12 pharmacy, or another network pharmacy provider in which a pharmacy benefit  
13 manager has an ownership or controlling interest or that has an ownership or  
14 controlling interest in a pharmacy benefit manager.

15 (b) For purposes of this Paragraph, "inducement" means the providing  
16 of financial incentives, including variations in premiums, deductibles,  
17 copayments, or coinsurance.

18 (c) The provisions of this Paragraph shall not apply to employers, unions,  
19 associations, or other persons who employ, own, operate, control, or contract  
20 directly with a pharmacy or pharmacist for the purpose of managing or  
21 controlling prescription costs paid for the benefit of an employee or member or  
22 those covered by the employee or member's plan, or when the persons contract  
23 with a pharmacy benefit manager to steer employees or members to  
24 pharmacists or pharmacies which the person owns, operates, or controls.

25 (7) Retroactively deny or reduce a claim of a pharmacist or pharmacy  
26 for payment or demand repayment of all or part of a claim after the claim has  
27 been approved by the pharmacy benefit manager as authorized by R.S.  
28 22:1856.1.

29 (8) Reimburse a local pharmacist or local pharmacy, as defined in R.S.  
30 46:460.36(A), less than the amount it reimburses chain pharmacies, mail-order

1 pharmacies, specialty pharmacies, or affiliates of the pharmacy benefit manager  
2 for the same drug or device or for the same pharmacy service in this state.

3 (9) Fail to update prices as required by R.S. 22:1857.

4 (10)(a) Fail to honor maximum allowable cost (MAC) prices as set forth  
5 in R.S. 22:1863 et seq.

6 (b) A pharmacy benefit manager shall not require a pharmacist or  
7 pharmacy to purchase drugs from any particular wholesaler. However, if a  
8 pharmacy benefit manager recommends or provides a wholesaler, then that  
9 wholesaler must be willing and able to honor the pharmacy benefit manager's  
10 MAC price, ship the order, and have receipt of the order within two business  
11 days with no additional charge to the pharmacist.

12 (c) The wholesaler with the lowest price, which is listed as the MAC  
13 price, is not obligated to sell or ship to a nonmember pharmacist or pharmacy.  
14 If the wholesaler chooses not to sell the drug to the pharmacist or pharmacy,  
15 then the MAC price set by the pharmacy benefit manager must be adjusted to  
16 the price available to the pharmacist or pharmacy through another wholesaler.

17 (11) Fail to meet the payment standards established in R.S. 22:1856.

18 (12) Fail to provide detailed remittance advice to pharmacists and  
19 pharmacies in compliance with R.S. 22:1856.

20 (13)(a) Fail to pay any state or local sales tax imposed on any drug,  
21 device, or pharmacy services or to remit the sales tax to the appropriate  
22 pharmacist or pharmacy for the tax proceeds to be forwarded to the sales tax  
23 authority.

24 (b) A pharmacy benefit manager who does not pay the sales tax shall be  
25 liable to the taxing authority for the tax, interest, penalties, and any other fees  
26 or costs imposed by law for failure to pay sales taxes.

27 (c) No pharmacy benefit manager shall deduct the taxes from any  
28 amount due to a pharmacist or pharmacy for a drug, device, or pharmacy  
29 service or charge or pay anyone a fee or surcharge for paying any sales tax or  
30 remitting any sales tax proceeds to a pharmacist or pharmacy if that fee or

1 surcharge would be imposed directly or indirectly on the pharmacist or  
2 pharmacy.

3 (d) All pharmacy benefit managers who pay any out-of-state pharmacist  
4 or pharmacy for drugs or devices shipped to a beneficiary in this state or for  
5 pharmacy services rendered to a beneficiary which is taxable in this state shall  
6 remit the tax directly to the appropriate taxing authority.

7 (e) Any pharmacist or pharmacy who does not receive sales tax proceeds  
8 from a pharmacy benefit manager for any drug, device, or pharmacy service  
9 which is subject to sales taxes shall have no responsibility for payment of the  
10 taxes if the pharmacist or pharmacy provides written notification to the  
11 appropriate taxing authority, the Department of Insurance, and the Board of  
12 Pharmacy of the pharmacy benefit manager's failure to remit the sales taxes at  
13 the time the next sales tax return is due to be filed.

14 (f) State or local sales taxes and other applicable state-imposed taxes or  
15 fees shall be considered as part of the allowable cost and shall be included in the  
16 claim submitted by a pharmacist or pharmacy.

17 (14) Restrict early refills on maintenance drugs to an amount less than  
18 seven days for a prescription of at least a thirty-day supply. However, at the  
19 direction of the Louisiana Department of Health, for purposes of administering  
20 the Medicaid pharmacy benefit program, a pharmacy benefit manager may  
21 apply a more restrictive early refill policy without violating the provisions of  
22 this Paragraph.

23 (15) Require a beneficiary to follow a plan's step therapy protocol if the  
24 prescribed drug is on the health plan's prescription drug formulary, the  
25 beneficiary has tried the step therapy required prescription drug while under  
26 his current or previous health plan, and the provider has submitted a  
27 justification and supporting clinical documentation that such prescription drug  
28 was discontinued due to lack of efficacy or effectiveness, diminished effect, or  
29 an adverse effect or event.

30 (16) Delay a decision on a request for authorization to dispense a

1 prescription drug for more than seventy-two hours, or twenty-four hours in  
2 exigent circumstances in which the patient, in the opinion of the prescribing  
3 provider, pharmacy, or pharmacist submitting the authorization request, is  
4 suffering from a health condition that may seriously jeopardize the patient's  
5 life, health, or ability to regain maximum function. A request for authorization  
6 shall include relevant data or appropriate documentation to render a decision  
7 on a request for authorization.

8 (17) Exploit prescription drug information obtained from beneficiaries  
9 for monetary gain or economic power over beneficiaries, pharmacists, or  
10 pharmacies.

11 (18) Sell, exchange, or use in any manner prescription drug information  
12 regarding a beneficiary obtained through a beneficiary's use of a prescription  
13 for purposes of marketing, solicitation, consumer steering, referral, or any other  
14 practice or act, except as otherwise provided for in this Section, that provides  
15 the pharmacy benefit manager or any of its affiliates or subsidiaries economic  
16 power or control over pharmacists or pharmacies or interfere in the free choice  
17 of a beneficiary.

18 (19) Engage in drug repackaging and markups. A pharmacy benefit  
19 manager that owns or controls a mail-order pharmacy shall not allow the  
20 mail-order pharmacy to repackage drugs and sell the repackaged items at  
21 higher prices than the original average wholesale price unless beneficiaries who  
22 may buy the repackaged drugs are informed in writing that the drugs have been  
23 repackaged and are being sold at the higher price.

24 (20) Operate in Louisiana without either being registered with and in  
25 good standing with the Louisiana secretary of state to do business in Louisiana  
26 or being licensed by and in good standing with the commissioner of insurance,  
27 as provided by this Chapter.

28 B.(1) The commission of any of the acts or any combination of acts  
29 prohibited by this Section shall be considered an unfair method of competition  
30 and unfair practice or act in accordance with the Unfair Trade Practices and

1           Consumer Protection Law, R.S. 51:1401 et seq., if the violations are committed  
2           or performed with such frequency as to indicate a general business practice.  
3           Notwithstanding any provision of law to the contrary, the private right of action  
4           created by R.S. 51:1409 shall not apply to this Section.

5           (2) For purposes of this Section, a violation shall be considered to have  
6           occurred each time a prohibited act is committed.

7           (3) Each day that a pharmacy benefit manager operates without being  
8           registered with and in good standing with the secretary of state to do business  
9           in Louisiana or without being licensed by and in good standing with the  
10          commissioner of insurance, as provided by this Chapter, shall be considered a  
11          separate violation.

12          C.(1) Nothing in this Section shall be construed to interfere with or  
13          violate a consumer's right to know where the consumer may have access to the  
14          lowest cost drugs, whether a consumer is utilizing insurance or other  
15          third-party reimbursement or not.

16          (2) Nothing in this Section shall be construed to interfere with the  
17          requirement that consumers receive notice of changes to pharmacy networks,  
18          such as the inclusion of new pharmacies or removal of existing pharmacies from  
19          networks.

20          §2871. Enforcement

21          A. Notwithstanding any provision of law to the contrary, enforcement  
22          of the Pharmacy Benefit Manager Licensing Law shall be conducted in  
23          accordance with the following requirements:

24          (1)(a) The commissioner of insurance shall be responsible for  
25          investigation and enforcement of the provisions of the Louisiana Insurance  
26          Code, the applicable provisions of this Chapter, and any rules or regulations  
27          promulgated by the Department of Insurance relative to pharmacy benefit  
28          managers. The commissioner shall refer any complaint he believes to be outside  
29          of his jurisdiction to the Board of Pharmacy or the Louisiana Department of  
30          Justice.

1           **(b) The commissioner of insurance may suspend or revoke a pharmacy**  
2           **benefit manager's permit, license, or registration in accordance with the**  
3           **Louisiana Insurance Code and the rules and regulations promulgated by the**  
4           **Department of Insurance relative to pharmacy benefit managers.**

5           **(2)(a) The Board of Pharmacy shall be responsible for investigation and**  
6           **enforcement of the provisions of the Louisiana Pharmacy Practice Act, the**  
7           **applicable provisions of this Chapter, and any rules or regulations promulgated**  
8           **by the Board of Pharmacy relative to pharmacy benefit managers. The Board**  
9           **of Pharmacy shall refer any complaint it believes to be outside of its jurisdiction**  
10           **to the Department of Insurance or the Louisiana Department of Justice.**

11           **(b) Upon completion of a complaint investigation or compliance audit,**  
12           **and after notice and an opportunity for an adjudicatory hearing held in**  
13           **accordance with the Administrative Procedure Act, the Board of Pharmacy may**  
14           **suspend, revoke, or place on probation a license, permit, or registration issued**  
15           **to the pharmacy benefit manager or any entity in which the pharmacy benefit**  
16           **manager has an ownership or controlling interest, or take any other action**  
17           **authorized by the Louisiana Pharmacy Practice Act or the rules and regulations**  
18           **of the Board of Pharmacy.**

19           **B.(1) The commissioner of insurance and the Board of Pharmacy shall**  
20           **be responsible for conducting random compliance audits, which may be desk**  
21           **audits based on data provided by the pharmacy benefit manager, to ensure**  
22           **compliance with this Chapter.**

23           **(2) A pharmacy benefit manager doing business in Louisiana shall make**  
24           **itself open and available to comply with compliance audit data requests.**

25           **C. On the first day of each month, the Board of Pharmacy shall submit**  
26           **to the attorney general a report of complaints received against pharmacy**  
27           **benefit managers and the date that each complaint was received during the**  
28           **prior calendar month in a format prescribed by the attorney general. The**  
29           **report shall include a cumulative list of all complaints received against**  
30           **pharmacy benefit managers until final disposition.**

1                    **D. Nothing in this Section shall be construed as a limitation on the**  
2                    **attorney general's power to enforce the Unfair Trade Practices and Consumer**  
3                    **Protection Law, R.S. 51:1401 et seq., or to limit his authority in any way under**  
4                    **that law, or as a limitation on the attorney general's power to negotiate and**  
5                    **enter into a stipulation with a pharmacy benefit manager. Furthermore,**  
6                    **nothing in this Section shall prohibit the Board of Pharmacy from referring a**  
7                    **complaint or audit finding to the Louisiana Department of Justice.**

8                    Section 4. If any provision or item of this Act, or the application thereof, is held  
9                    invalid, such invalidity shall not affect other provisions, items, or applications of the act  
10                   which can be given effect without the invalid provision, item, or application and to this end  
11                   the provisions of this Act are hereby declared severable in accordance with R.S. 24:175.

12                   Section 5. The provisions of R.S. 40:2869, as enacted by this Act, shall become  
13                   effective on August 1, 2019.

14                   Section 6. Except as provided in Section 5 of this Act, the provisions of this Act shall  
15                   become effective on July 1, 2020.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_