

Louisiana Revised Statutes of 1950

Title 40 – Public Health and Safety

Chapter 36 – Regulation of Pharmacy Benefit Managers

[Editor’s Note: This new Chapter, composed of Sections 2861 through 2871, was created by Act 124 of 2019 Legislature. Section 2869 became effective August 1, 2019; all other sections became effective July 1, 2020. Subsequent amendments are noted herein.]

§2861. Legislative intent and public health policy

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

§2862. Short title

This Chapter shall be known and may be cited as the “Pharmacy Benefit Manager Licensing Law”.

§2863. Definitions

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

- (1) “Attorney general” means the Louisiana attorney general.
- (2) “Beneficiary” means a person who resides or is employed in this state and is covered or is eligible to be covered by a health plan.
- (3) “Board of Pharmacy” means the Louisiana Board of Pharmacy.
- (4) “Commissioner of insurance” means the Louisiana commissioner of insurance.
- (5) “Department of Insurance” means the Louisiana Department of Insurance.
- (6) “Department of Justice” means the Louisiana Department of Justice.
- (7) “Health plan” means an individual or group plan or program which is established by contract, certificate, law, plan, policy, subscriber agreement, or by any other method and which is entered into, issued, or offered for the purpose of arranging for, delivering, paying for, providing, or reimbursing any of the costs of health or medical care, including pharmacy services, drugs, or devices.
- (8) “Pharmacy benefit management plan” and “pharmacy benefits program” mean a plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services, drugs, or devices to individuals who reside in or are employed in Louisiana.
- (9) “Pharmacy benefit manager” and “PBM” mean any person or business who administers the prescription drug or device program of one or more health plans on behalf of a third party in accordance with a pharmacy benefit program. This term includes any agent or representative of a pharmacy benefit manager hired or contracted by the pharmacy benefit manager to assist in the administering of the drug program and any wholly or partially owned or controlled subsidiary of a pharmacy benefit manager.

§2864. Duties of pharmacy benefit managers

- A. A pharmacy benefit manager shall owe the beneficiaries of any pharmacy benefit management plan administered by the pharmacy benefit manager and to the entities that have entered into a contract with the pharmacy benefit manager the duties of good faith, honesty, trust, confidence, and candor.
- B. The standard for the fulfillment of a pharmacy benefit manager’s duties shall be to act with a high degree of care, skill, prudence, and diligence required of a reasonable and prudent person with substantial experience and expertise in the management of pharmacy benefit management plans and payment of claims.
- C. Failure of a pharmacy benefit manager to satisfy the duties established in this Section shall not create a separate or independent cause of action nor shall it be construed to prohibit any cause of action established by or recognized in federal or state law.

§2865. General licensing and permitting requirements

- A. Every pharmacy benefit manager that does business in this state or pays for benefits for a beneficiary through a pharmacy benefit management plan shall be licensed or permitted as required by this Chapter.

- B. No license or permit shall be issued to a pharmacy benefit manager who has not registered with the Louisiana secretary of state to conduct business within the state.
- C. Each license and permit shall be valid only for the applicant listed on the application.
- D. (1) A pharmacy benefit manager license or permit is not transferable.
- (2) No license or permit shall be subject to sale, assignment or other transfer, voluntary or involuntary.
- (3) In the event the ownership of the pharmacy benefit manager changes by fifty percent or more after the initial issuance of the license or permit, the ownership shall be deemed sufficiently different as to require a new pharmacy benefit manager license or permit.
- (4) The continued operation of a pharmacy benefit manager under a license or permit issued pursuant to this Chapter after its ownership has changed by fifty percent or more shall constitute sufficient basis for finding that the pharmacy benefit manager is operating in this state without a valid license or permit in violation of this Chapter.

§2866. General applicability

- A. The licensure and regulation requirements set forth pursuant to this Chapter shall apply generally to any pharmacy benefit manager regardless of plan or benefit financing.
- B. Nothing in this Chapter shall be construed to require coverage of any specific drug in any health plan, but shall apply once a drug is covered or included on a health plan formulary.

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

- A. Every pharmacy benefit manager that does business in this state shall be licensed as required by the Louisiana Insurance Code.
- B. Every pharmacy benefit manager licensed by the commissioner of insurance shall abide by the provisions of the Louisiana Insurance Code and the rules and regulations of the Department of Insurance regarding the pharmacy benefit manager's business regulated by the commissioner of insurance.

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

- A. A pharmacy benefit manager may obtain and maintain a permit from the Board of Pharmacy if the pharmacy benefit manager administers, develops, maintains, performs, or provides one or more of the following pharmacy services in the state or that affects one or more beneficiaries of a pharmacy benefit management plan administered by the pharmacy benefit manager:
 - (1) Adjudication of appeals or grievances related to prescription drug coverage.
 - (2) Disease management programs. For purposes of this Subsection, "disease management program" means a program adopted to guide and care for beneficiaries with chronic health problems to improve the quality of health care provided to them and prevent future need for medical resources by using an integrated comprehensive approach.
 - (3) Drug formularies. For purposes of this Subsection, "drug formulary" means a list of prescription medications or pharmaceutical products developed and approved by each health plan that may be dispensed to a beneficiary through participating pharmacies. A drug formulary may also be referred to as a "preferred drug list", "prior authorization list", or "pharmacopeia".
 - (4) Drug regimen reviews. For purposes of this Subsection, "drug regimen review" means third-party review of all medications a beneficiary is currently using, whether prescribed or over-the-counter, and administered by any method.
 - (5) Prescription drug management programs. For purposes of this Subsection, "prescription drug management program" means a program developed and designed to administer the prescription drug benefit as part of a health plan, and as part of such administration a PBM may contract with pharmacies for implementation and dispensing drugs in accordance with the program.
 - (6) Processing of prior authorization requests. For purposes of this Subsection, "processing of prior authorization requests" means making a determination regarding payment coverage based on an advance approval request submitted by a physician or other healthcare provider before a specific procedure, service, device, supply, or medication is delivered to the beneficiary.
 - (7) Quality care dosing services. For purposes of this Subsection, "quality care dosing services" means electronically checking prescription medications before they are filled at the pharmacy to ensure that the quantity and dosage is consistent with the recommendations of the United States Food and Drug Administration and others.

- (8) Step therapy procedures. For purposes of this Subsection, “step therapy procedure” means protocols and policies that establish a specific sequence in which prescription drugs for a medical condition are approved for coverage by a health plan for a beneficiary which generally requires cheaper drugs to be used before more costly drugs. Step therapy may also be referred to as “fail first” protocol.
 - (9) Utilization management and utilization reviews. For purposes of this Subsection, “utilization management” and “utilization review” mean third-party review and approval of appropriateness and necessity of care that a healthcare provider has indicated for a beneficiary prior to delivery and coverage of such care.
 - (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.
- B. Every pharmacy benefit manager permitted by the Board of Pharmacy shall abide by the applicable provisions of the Louisiana Pharmacy Practice Act and the rules and regulations of the Board of Pharmacy.

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

- A. There is hereby created a pharmacy benefit manager monitoring advisory council, referred to hereafter in this Chapter as the “advisory council”, that shall consist of the following members, each of whom may appoint a designee:
- (1) The commissioner of the Department of Insurance.
 - (2) The president of the Louisiana State Board of Medical Examiners.
 - (3) The president of the Louisiana Board of Pharmacy.
 - (4) The attorney general.
 - (5) The director of the public protection division of the Department of Justice.
 - (6) The secretary of the Louisiana Department of Health.
 - (7) The president of the Louisiana Academy of Physician Assistants.
 - (8) The president of the Louisiana State Medical Society.
 - (9) The president of the Louisiana Association of Nurse Practitioners.
 - (10) The president of the Louisiana Pharmacists Association.
 - (11) The president of the Louisiana Independent Pharmacies Association.
 - (12) The president of the National Association of Chain Drug Stores.
 - (13) The president of the Pharmaceutical Research and Manufacturers of America.
 - (14) The president of the Louisiana Academy of Medical Psychologists.
 - (15) The president of the Louisiana Association of Health Plans.
 - (16) The president of a pharmacy benefit manager licensed by the Louisiana Board of Pharmacy, selected by the Louisiana affiliate of the Pharmaceutical Care Management Association from a list of interested and qualified individuals.
 - (17) The president of the Louisiana Association of Business and Industry.
 - (18) The chief executive officer of the Louisiana Business Group on Health.
 - (19) The president of the Louisiana AFL-CIO.
 - (20) The president of the Louisiana Association of Health Underwriters.
- B. The members of the advisory council shall serve at the pleasure of their respective appointing authorities. Seven members shall constitute a quorum for the transaction of all business. The members shall elect a chairman and vice chairman whose duties shall be established by the advisory council. The member elected to serve as chairman shall fix a time and place for regular meetings of the advisory council, which shall meet at least quarterly. The advisory council shall establish policies and procedures necessary to carry out its duties. Expenses for the administrative staffing of the advisory council shall be provided for from the licensing fees paid by pharmacy benefit managers and may be transferred between state agencies by memorandum of understanding or cooperative endeavor agreement.
- C. The commissioner of insurance and the Board of Pharmacy may utilize the full advisory council or individual member agency expertise for the purpose of investigating a complaint against a pharmacy benefit manager or conducting an audit of a pharmacy benefit manager. In exercising the authority provided for in this Subsection, the same provisions of confidentiality applicable to the Department of Insurance and Louisiana Board of Pharmacy during an investigation shall apply to the advisory council or individual member agencies whose expertise is being utilized. The advisory council may meet in executive session, as necessary, to discuss matters involving an active investigation.

- D. The advisory council shall provide monitoring of pharmacy benefit managers in Louisiana to advise the legislature, commissioner of insurance, and Board of Pharmacy on the most effective and efficient manner of regulation of pharmacy benefit managers to ensure the protection of the public. Any licensed pharmacy benefit manager operating in Louisiana shall provide full cooperation with the advisory council on matters including but not limited to those set forth in Subsection E of this Section.
- E. The advisory council shall advise on matters that include but are not limited to the licensure and regulation of pharmacy benefit managers set forth in Title 22, Title 37, and Title 40 of the Louisiana Revised Statutes of 1950, applicable rules and regulations of state agencies, and federal laws or rules relative to pharmacy benefit managers.

§2870. Prohibited acts; unfair and deceptive trade practices

- A. A pharmacy benefit manager in Louisiana shall not:
 - (1) Commit any unfair and deceptive trade practice prohibited by [R.S. 22:1964\(15\)](#).
 - (2) Perform any act that violates the duties, obligations, and responsibilities imposed under the Louisiana Insurance Code on a pharmacy benefit manager.
 - (3) Buy, sell, transfer, or provide personal healthcare or contact information of any beneficiary to any other party for any purpose with one exception. A pharmacy benefit manager may provide such information regarding beneficiaries of a health plan to that health plan if requested by the health plan provider.
 - (4) Conduct or participate in spread pricing, as defined in R.S. 22:1863(9) without providing the notice required by R.S. 22:1867.
 - (5)
 - (a) Directly or indirectly engage in patient steering to a pharmacy in which the pharmacy benefit manager maintains an ownership interest or control without making a written disclosure and receiving acknowledgment from the patient. The disclosure required by this Paragraph shall provide notice that the pharmacy benefit manager has an ownership interest in or control of the pharmacy, and that the patient has the right under the law to use any alternate pharmacy that they choose. The pharmacy benefit manager is prohibited from retaliation or further attempts to influence the patient, or treat the patient or the patient's claim any differently if the patient chooses to use the alternate pharmacy.
 - (b) The provisions of this Paragraph shall not apply to employers, unions, associations, or other persons who employ, own, operate, control, or contract directly with a pharmacy or pharmacist for the purpose of managing or controlling prescription costs paid for the benefit of an employee or member or those covered by the employee or member's plan, or when the persons contract with a pharmacy benefit manager to steer employees or members to pharmacists or pharmacies which the person owns, operates, or controls.
 - (6)
 - (a) Penalize a beneficiary or provide an inducement to the beneficiary for the purpose of getting the beneficiary to use specific retail, mail order pharmacy, or another network pharmacy provider in which a pharmacy benefit manager has an ownership or controlling interest or that has an ownership or controlling interest in a pharmacy benefit manager.
 - (b) For purposes of this Paragraph, "inducement" means the providing of financial incentives, including variations in premiums, deductibles, copayments, or coinsurance.
 - (c) The provisions of this Paragraph shall not apply to employers, unions, associations, or other persons who employ, own, operate, control, or contract directly with a pharmacy or pharmacist for the purpose of managing or controlling prescription costs paid for the benefit of an employee or member or those covered by the employee or member's plan, or when the persons contract with a pharmacy benefit manager to steer employees or members to pharmacists or pharmacies which the person owns, operates, or controls.
 - (7) Retroactively deny or reduce a claim of a pharmacist or pharmacy for payment or demand repayment of all or part of a claim after the claim has been approved by the pharmacy benefit manager as authorized by [R.S. 22:1856.1](#).
 - (8) Reimburse a local pharmacist or local pharmacy, as defined in [R.S. 46:460.36\(A\)](#), less than the amount it reimburses chain pharmacies, mail-order pharmacies, specialty pharmacies, or affiliates of the pharmacy benefit manager for the same drug or device or for the same pharmacy service in this state.
 - (9) Fail to update prices as required by [R.S. 22:1857](#).
 - (10)
 - (a) Fail to honor maximum allowable cost (MAC) prices as set forth in [R.S. 22:1863 et seq.](#)
 - (b) A pharmacy benefit manager shall not require a pharmacist or pharmacy to purchase drugs from any particular wholesaler. However, if a pharmacy benefit manager recommends or provides a wholesaler, then that wholesaler must be willing and able to honor the pharmacy benefit

manager's MAC price, ship the order, and have receipt of the order within two business days with no additional charge to the pharmacist.

- (c) The wholesaler with the lowest prices, which is listed as the MAC price, is not obligated to sell or ship to a nonmember pharmacist or pharmacy. If the wholesaler chooses not to sell the drug to the pharmacist or pharmacy, then the MAC price set by the pharmacy benefit manager must be adjusted to the price available to the pharmacist or pharmacy through another wholesaler.
- (11) Fail to meet the payment standards established in [R.S. 22:1856](#).
 - (12) Fail to provide detailed remittance advice to pharmacists and pharmacies in compliance with [R.S. 22:1856](#).
 - (13)
 - (a) Fail to pay any state or local sales tax imposed on any drug, device, or pharmacy services or to remit the sales tax to the appropriate pharmacist or pharmacy for the tax proceeds to be forwarded to the sales tax authority.
 - (b) A pharmacy benefit manager who does not pay the sales tax shall be liable to the taxing authority for the tax, interest, penalties, and any other fees or costs imposed by law for failure to pay sales taxes.
 - (c) No pharmacy benefit manager shall deduct the taxes from any amount due to a pharmacist or pharmacy for a drug, device, or pharmacy service or charge or pay anyone a fee or surcharge for paying any sales tax or remitting any sales tax proceeds to a pharmacist or pharmacy if that fee or surcharge would be imposed directly or indirectly on the pharmacist or pharmacy.
 - (d) All pharmacy benefit managers who pay any out-of-state pharmacist or pharmacy for drugs or devices shipped to a beneficiary in this state or for pharmacy services rendered to a beneficiary which is taxable in this state shall remit the tax directly to the appropriate taxing authority.
 - (e) Any pharmacist or pharmacy who does not receive sales tax proceeds from a pharmacy benefit manager for any drug, device, or pharmacy service which is subject to sales taxes shall have no responsibility for payment of the taxes if the pharmacist or pharmacy provides written notification to the appropriate taxing authority, the Department of Insurance, and the Board of Pharmacy of the pharmacy benefit manager's failure to remit the sales taxes at the time the next sales tax return is due to be filed.
 - (f) State or local sales taxes and other applicable state-imposed taxes or fees shall be considered as part of the allowable cost and shall be included in the claim submitted by a pharmacist or pharmacy.
 - (14) Restrict early refills on maintenance drugs to an amount less than seven days for a prescription of at least a thirty-day supply. However, at the direction of the Louisiana Department of Health, for purposes of administering the Medicaid pharmacy benefit program, a pharmacy benefit manager may apply a more restrictive early refill policy without violating the provisions of this Paragraph.
 - (15) Require a beneficiary to follow a plan's step therapy protocol if the prescribed drug is on the health plan's prescription drug formulary, the beneficiary has tried the step therapy required prescription drug while under his current or previous health plan, and the provider has submitted a justification and supporting clinical documentation that such prescription drug was discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse effect or event.
 - (16) Delay a decision on a request for authorization to dispense a prescription drug for more than seventy-two hours, or twenty-four hours in exigent circumstances in which the patient, in the opinion of the prescribing provider, pharmacy, or pharmacist submitting the authorization request, is suffering from a health condition that may seriously jeopardize the patient's life, health, or ability to regain maximum function. A request for authorization shall include relevant data or appropriate documentation to render a decision on a request for authorization.
 - (17) Exploit prescription drug information obtained from beneficiaries for monetary gain or economic power over beneficiaries, pharmacists, or pharmacies.
 - (18) Sell, exchange, or use in any manner prescription drug information regarding a beneficiary obtained through a beneficiary's use of a prescription for purposes of marketing, solicitation, consumer steering, referral, or any other practice or act, except as otherwise provided for in this Section, that provides the pharmacy benefit manager or any of its affiliates or subsidiaries economic power or control over pharmacists or pharmacies or interfere in the free choice of a beneficiary.
 - (19) Engage in drug repackaging and markups. A pharmacy benefit manager that owns or controls a mail-order pharmacy shall not allow the mail-order pharmacy to repackage drugs and sell the repackaged items at higher prices than the original average wholesale price unless beneficiaries who may buy the repackaged drugs are informed in writing that the drugs have been repackaged and are being sold at the higher price.

- (20) Operate in Louisiana without either being registered with and in good standing with the Louisiana secretary of state to do business in Louisiana or being licensed by and in good standing with the commissioner of insurance, as provided by this Chapter.
- B. (1) The commission of any of the acts or any combination of the acts prohibited by this Section shall be considered an unfair method of competition and unfair practice or act in accordance with the Unfair Trade Practices and Consumer Protection Law, [R.S. 51:1401](#) *et seq.*, if the violations are committed or performed with such frequency as to indicate a general business practice. Notwithstanding any provision of law to the contrary, the private right of action created by [R.S. 51:1409](#) shall not apply to this Section.
 - (2) For purposes of this Section, a violation shall be considered to have occurred each time a prohibited act is committed.
 - (3) Each day that a pharmacy benefit manager operates without being registered with and in good standing with the secretary of state to do business in Louisiana or without being licensed by and in good standing with the commissioner of insurance, as provided by this Chapter, shall be considered a separate violation.
- C. (1) Nothing in this Section shall be construed to interfere with or violate a consumer's right to know where the consumer may have access to the lowest cost drugs, whether a consumer is utilizing insurance or other third-party reimbursement or not.
 - (2) Nothing in this Section shall be construed to interfere with the requirement that consumers receive notice of changes to pharmacy networks, such as the inclusion of new pharmacies or removal of existing pharmacies from networks.

§2871. Enforcement

- A. Notwithstanding any provision of law to the contrary, enforcement of the Pharmacy Benefit Manager Licensing Law shall be conducted in accordance with the following requirements:
 - (1) (a) The commissioner of insurance shall be responsible for investigation and enforcement of the provisions of the Louisiana Insurance Code, the applicable provisions of this Chapter, and any rules or regulations promulgated by the Department of Insurance relative to pharmacy benefit managers. The commissioner shall refer any complaint he believes to be outside of his jurisdiction to the Board of Pharmacy or the Louisiana Department of Justice.
 - (b) The commissioner of insurance may suspend or revoke a pharmacy benefit manager's permit, license, or registration in accordance with the Louisiana Insurance Code and the rules and regulations promulgated by the Department of Insurance relative to pharmacy benefit managers.
 - (2) (a) The Board of Pharmacy shall be responsible for investigation and enforcement of the provisions of the Louisiana Pharmacy Practice Act, the applicable provisions of this Chapter, and any rules or regulations promulgated by the Board of Pharmacy relative to pharmacy benefit managers. The Board of Pharmacy shall refer any complaint it believes to be outside of its jurisdiction to the Department of Insurance or the Louisiana Department of Justice.
 - (b) Upon completion of a complaint investigation or compliance audit, and after notice and an opportunity for an adjudicatory hearing held in accordance with the Administrative Procedure Act, the Board of Pharmacy may suspend, revoke, or place on probation a license, permit, or registration issued to the pharmacy benefit manager or any entity in which the pharmacy benefit manager has an ownership or controlling interest, or take any other action authorized by the Louisiana Pharmacy Practice Act or the rules and regulations of the Board of Pharmacy.
- B. (1) The commissioner of insurance and the Board of Pharmacy shall be responsible for conducting random compliance audits, which may be desk audits based on data provided by the pharmacy benefit manager, to ensure compliance with this Chapter.
 - (2) A pharmacy benefit manager doing business in Louisiana shall make itself open and available to comply with compliance audit data requests.
- C. On the first day of each month, the Board of Pharmacy shall submit to the attorney general a report of complaints received against pharmacy benefit managers and the date that each complaint was received during the prior calendar month in a format prescribed by the attorney general. The report shall include a cumulative list of all complaints received against pharmacy benefit managers until final disposition.
- D. Nothing in this Section shall be construed as a limitation on the attorney general's power to enforce the Unfair Trade Practices and Consumer Protection Law, [R.S. 51:1401](#) *et seq.*, or to limit his authority in any way under that law, or as a limitation on the attorney general's power to negotiate and enter into a stipulation with a pharmacy benefit manager. Furthermore, nothing in this Section shall prohibit the Board of Pharmacy from referring a complaint or audit finding to the Louisiana Department of Justice.

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(end of Chapter 36)

(end of Title 40)