

# State of Louisiana

## Pharmacy Benefit Manager (PBM) Monitoring Advisory Council

Commissioner, La. Dept. of Insurance  
President, La. State Board of Medical Examiners  
President, La. Board of Pharmacy  
Attorney General  
Director, Public Protection Division, La. Dept. of Justice  
Secretary, La. Dept. of Health  
President, La. Academy of Physician Assistants {vacancy}  
President, La. State Medical Society  
President, La. Association of Nurse Practitioners  
President, La. Pharmacists Association  
President, La. Independent Pharmacies Association  
President, National Association of Chain Drug Stores  
President, Pharmaceutical Research & Manufacturers of America {vacancy}  
President, La. Academy of Medical Psychologists  
President, La. Association of Health Plans  
President, Pharmacy Benefit Manager *licensed by the Board of Pharmacy and selected by the Pharmaceutical Care Management Association* {vacancy}  
President, La. Association of Business & Industry {vacancy}  
Chief Executive Officer, La. Business Group on Health  
President, La. AFL-CIO {vacancy}  
President, La. Association of Health Underwriters

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. 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. [La. R.S. 40:2869]

### Meeting Minutes

April 14, 2021

A regular meeting of the council was held on Wednesday, April 14, 2021 in the Poydras Hearing Room at the Department of Insurance, located at 1702 N. Third Street in Baton Rouge, Louisiana.

*1. Call to Order*

Mr. Jeffrey Zewe, Chair, called the meeting to order at 10:37 a.m.

*2. Amendments to Council Roster*

Mr. Zewe noted there were still four vacancies on the council, with no members representing the La. Academy of Physician Assistants, Pharmaceutical Research & Manufacturers of America, Louisiana AFL-CIO, or a PBM licensed by the Board of Pharmacy and selected by the Pharmaceutical Care Management Association (PCMA).

*3. Quorum Call*

Mr. Zewe called upon Mr. Carlos Finalet to call the roll of members to establish a quorum.

**Members Present:**

- Mr. Jeff Zewe (Dept. of Insurance)
- Mr. Marty McKay (La. Board of Pharmacy)
- Mr. D. Jeddie Smith, Jr. (La. Attorney General)
- Mr. Michael Dupree (La. Dept. of Justice – Public Protection Division)
- Ms. Lauren Bailey (La. State Medical Society)
- Mr. Randal Johnson (La. Independent Pharmacies Association)
- Dr. Joseph Comaty (La. Academy of Medical Psychologists)
- Mr. Jeff Drozda (La. Association of Health Plans)
- Ms. Diane Davidson (La. Business Group on Health)
- Ms. Kristy Copeland (La. Association of Health Underwriters)

**Members Absent:**

- La. State Board of Medical Examiners
- La. Dept. of Health
- La. Academy of Physician Assistants
- La. Association of Nurse Practitioners
- La. Pharmacists Association
- National Association of Chain Drug Stores
- Pharmaceutical Research & Manufacturers of America
- PBM licensed by Board of Pharmacy and selected by PCMA
- La. Association of Business & Industry
- La. AFL-CIO

**Staff Present:**

- Mr. Carlos Finalet (La. Board of Pharmacy)
- Mr. Joe Fontenot (La. Board of Pharmacy)

**Guests Present:**

- Mr. Donelson Caffery (La. Independent Pharmacies Association)
- Mr. Robert Rieger (Pharmaceutical Care Management Association)

Mr. Finalet certified 10 of 20 members were present, constituting a quorum for the conduct of official business.

#### *4. Call for Additional Agenda Items & Adoption of Agenda*

Mr. Zewe queried the members for any additional agenda items. With no requests for additional items and no objection to the adoption of the posted agenda, Mr. Zewe declared the posted agenda dated April 6, 2021 was adopted.

#### *5. Consideration of Minutes from Previous Meeting*

Mr. Zewe asked if there were any corrections to be made to the draft minutes which had been circulated to the members. Hearing no corrections and without objection, Mr. Zewe declared the minutes were approved as presented.

#### *6. Opportunity for Public Comment*

Mr. Zewe solicited general public comments about non-agenda matters; there were none.

#### *7. Consideration of Proposed Council Policies and Procedures*

Mr. Zewe directed the members to the proposed council policies and procedures which had been distributed in the advance meeting packet. He noted Dr. Comaty, Mr. Johnson, Mr. Caffery, and Mr. Broussard had assisted in preparing the proposed policy document. Ms. Bailey moved to approve the proposal, and Mr. Drozda seconded the motion. During the discussion of the motion, Mr. Johnson requested clarity on the council's authority relative to rulemaking. It was noted the PBM Licensing Law indicates *"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 PBMs to ensure the protection of the public."* [La. R.S. 40:2869] There is no statutory authority for the council to engage in rulemaking. There were no further member questions or public comments. The motion to approve the council policies and procedures was adopted after a unanimous vote in the affirmative.

#### *8. Review of Legislation*

Mr. Zewe directed the members to copies of five pre-filed bills which had been included in the advance meeting packet.

- A. SB 94 relates to prohibitions on certain health insurance cost-sharing practices and provides for fairness in enrollee cost-sharing. The bill authorizes the insurance commissioner to promulgate rules to implement the new law. Mr. Zewe summarized the legislation. There were no member or public comments.
- B. SB 181 relates to modification of drug coverage for any drug costing over \$300 per prescription or refill with an increase in the wholesale acquisition cost of 25% or more in the previous 365-day period. Mr. Zewe summarized the legislation. There were no member or public comments.
- C. SB 191 relates to physician-administered drugs and the pharmacies supplying such drugs. Mr. Zewe summarized the legislation. He related the insurance department's concern for the creation of new insurance

requirements in Title 40 instead of Title 22; he indicated the department had contacted the author to see about a transfer of the contents to Title 22. There were no member or public comments.

- D. SB 218 relates to payment of pharmacy claims. Mr. Zewe summarized the legislation. He indicated the insurance department would seek an amendment to the portion of the bill related to unfair trade practices. Mr. Drozda asked the purpose of seeking the repeal of the law which established this council. Mr. Johnson indicated the bill is sponsored by LIPA, and then suggested that since the council had only met three times since the law was adopted in 2019 there was an apparent lack of interest. Mr. Zewe indicated the council was not permitted to meet virtually since the enactment of legislation in the 2020 session. Ms. Davidson suggested there is an interest and questioned the need to abolish the council based a lack of meetings during a public health emergency. Mr. Zewe solicited public comments. Mr. Rieger expressed surprise for the attempt to disband the council before it had an opportunity to serve its intended purpose as a collaborative body to discuss regulation of PBMs.

Mr. Rieger went on to express concern for the portion of the bill relating to audit procedures. He indicated the legislation, taken as a whole, would increase the operating costs of PBMs which would then be extended to their clients, the insurers. He requested consideration for a vote of opposition to the bill. Mr. Zewe indicated the council would take no formal positions on any of the legislation discussed that day. Mr. Johnson offered information to the council on contemporary auditing procedures and the impact those procedures have on pharmacies attempting to maintain their patient care operations. Mr. Zewe expressed concern for some of the proposed limitations on auditing procedures. Ms. Davidson questioned the purpose of identify a specific number of prescriptions for an audit as opposed to a percentage. Mr. Caffery pointed out text in the bill that would exclude fraud, waste and abuse audits from the proposed audit procedures. There were no other member or public comments.

- E. HB 244 relates to licensure and regulation of pharmacy services administrative organizations (PSAOs). Mr. Zewe summarized the legislation. He indicated the insurance department would likely seek amendments to provide more regulatory and enforcement authority for this new class of licensee. Mr. Johnson indicated LIPA believed the placement of the text where it exists in the bill already provided that authority but would work with the department to provide the necessary oversight procedures. Mr. Zewe questioned whether the PSAOs should be regulated by the insurance department or by the pharmacy board. From his perspective, the PBMs lie on the payor side and the PSAOs lie on the pharmacy side. Mr. Dupree indicated some uncertainty as to what specific functions the PSAOs perform and therefore was not prepared to agree which agency should hold the regulatory authority; however, he did agree the justice department had oversight for unfair trade practices wherever they occur. Mr. McKay indicated the pharmacy board regulates the practice of pharmacy and has no oversight on economic issues, and therefore would not be an appropriate regulatory agency for PSAOs. There were no further member or public comments.

Mr. Zewe queried the members if they wished to discuss any other proposed legislation; there were no requests to do so.

*9. Review of Rulemaking Activity*

Mr. Zewe reminded the members the pharmacy board had been engaged in the rulemaking process to license and regulate PBMs, and he requested an update. Mr. McKay reported the board was planning to print the final rule in the May 2021 edition of the state register, and that would include an August 1, 2021 deadline for PBMs to submit an application for their PBM permit. There were no member or public comments.

*10. Review of Industry Trends and Emerging Issues*

Mr. Zewe solicited comments or suggestions for this standing agenda topic; there were none.

*11. New Agenda Items Added During Meeting*

No new agenda items were added during the meeting.

*12. Calendar Notes*

Mr. Zewe reminded the members of their meeting schedule preference: 10:30 a.m. on the second Wednesday of the first month of the calendar quarter. He indicated he would call the next meeting for July 7, 2021 and the following meeting for October 13, 2021, both at 10:30 a.m., but with locations not yet determined.

*13. Adjourn*

Having completed the tasks itemized on the posted agenda, with no further business pending before the council, and without objection, Mr. Zewe adjourned the meeting at 11:23 a.m.

*Minutes prepared by Malcolm Broussard, Executive Director, La. Board of Pharmacy; approved as presented during subsequent meeting of the Council on July 7, 2021.*