

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, Prime Therapeutics, *a PBM licensed by the Board of Pharmacy and selected by the Pharmaceutical Care Management Association*
President, La. Association of Business & Industry {vacancy}
Chief Executive Officer, La. Business Group on Health
President, La. AFL-CIO
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 21, 2022

A regular meeting of the council was held on Thursday, April 21, 2022 in the office of the Louisiana Board of Pharmacy, located at 3388 Brentwood Drive in Baton Rouge, Louisiana 70809.

1. *Call to Order*

Mr. Jeffrey Zewe, Chair, called the meeting to order at 2:11 p.m.

2. *Quorum Call*

Mr. Zewe asked Mr. Malcolm Broussard to call the roll of members to establish a quorum.

Members Present:

Mr. Jeff Zewe (Dept. of Insurance)
Mr. Joseph Fontenot (La. Board of Pharmacy)
Ms. Chimene St. Amant (La. Attorney General)
Dr. Lisa Bayhi (La. Association of Nurse Practitioners)
Mr. Aurdie Bellard (La. Pharmacists Association)
Mr. Donelson Caffery (La. Independent Pharmacies Association)
Ms. Cheryl McCormick (La. Association of Health Plans)
Mr. Robert Rieger (Prime Therapeutics)
Ms. Diane Davidson (La. Business Group on Health)
Mr. Joshua Sonnier (Louisiana AFL-CIO)
Ms. Kristy Copeland (La. Association of Health Underwriters)

Members Absent:

La. State Board of Medical Examiners
La. Dept. of Justice, Public Protection Division
La. Dept. of Health
La. Academy of Physician Assistants
La. State Medical Society
National Association of Chain Drug Stores
Pharmaceutical Research & Manufacturers of America
La. Academy of Physician Assistants
La. Association of Business & Industry

Staff Present:

Mr. Malcolm Broussard (La. Board of Pharmacy)
Mr. Carlos Finalet (La. Board of Pharmacy)

Guests Present:

Mr. Matthew Cross (La. Independent Pharmacies Association)
Mr. Randal Johnson (La. Independent Pharmacies Association)
Ms. Cheryl Tolbert (La. Business Group on Health)

Mr. Broussard certified 11 of 20 members were present, constituting a quorum for the conduct of official business.

3. Consideration of Minutes from Previous Meeting

Mr. Zewe asked if there were any corrections to be made to the draft minutes of the previous meeting on January 12, 2022 which had been circulated to the members. With no corrections offered, Mr. Rieger moved to approve the draft minutes as presented. The motion was adopted after a unanimous vote in the affirmative. Mr. Zewe declared the minutes were approved as presented.

4. Opportunity for Public Comment

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

5. Review of Industry Trends and Emerging Issues

Mr. Zewe solicited information from the members about industry trends or emerging issues other than those anticipated during the discussion on pending legislative instruments. There were no member or public comments on this topic.

6. Review of Rulemaking Activity

Mr. Zewe asked Mr. Broussard if the Board of Pharmacy had any update on their rulemaking activity related to PBMs. Mr. Broussard reviewed the current status of their proposed rule change repealing the requirement for the inclusion of an audited financial statement in the application for the initial issuance of the pharmacy benefit manager permit. Mr. Rieger asked when that rule would become effective. Mr. Broussard replied the Board would conduct a public hearing on May 27 to solicit public comments. Since the Board must return to the Occupational Licensing Review Commission (OLRC) for their second review of that proposed rule change and the OLRC meeting schedule had not yet been announced, Mr. Broussard indicated he was not in a position to know the effective date of the rule change at that time but estimated a summer effective date.

Mr. Zewe reported the Dept. of Insurance was engaged in rulemaking relative to pharmacy services administrative organizations (PSAOs) as directed by Act 192 of the 2021 Legislature. He reported the department issued a request for information the previous fall; there were three replies to that request. The department used that information to draft proposed rules. The department received four comments during the public hearing on the notice of intent. Mr. Zewe indicated the department was still evaluating the comments and did not yet have a proposed timeline for the completion of the promulgation process.

7. Review of Potential Legislation

Mr. Zewe directed the members to copies of five legislative instruments in their meeting packet – SB 32, HB 595, HB 673, HB 939, and SB 99. He asked if any of the members wanted to discuss any other bills but none were requested.

- SB 32 (F. Mills) cleared the Senate on April 11 and was pending at the House Committee on Insurance. Mr. Zewe indicated the bill sought to amend Title 22 with respect to pharmacy audits, limiting the number of prescriptions to be audited to 100 per year except for investigations of fraud, waste or abuse, and requiring advance notice to the pharmacy of the prescriptions to be audited.

Mr. Sonnier expressed his frustration with the lack of an opportunity to discuss elements to this legislation prior to its filing, something the council members repeatedly requested since the October 2021 meeting. Mr. Zewe noted the bill was prefiled on February 11 and recalled Mr. Caffery's comment during the council's January 2022 meeting that LIPA did not have any proposed legislation at that time. Mr. Caffery responded that LIPA did not discuss the elements of SB 32 with Sen. Mills prior to its pre-filing and they were not aware it would be pre-filed.

Mr. Zewe raised the issue of a finite number of prescriptions to be audited and the selection of the number 100. Some council members suggested such limits provide a competitive advantage to larger pharmacies and questioned why LIPA would support that limit. Mr. Caffery replied LIPA was more concerned for its small member pharmacies than the larger pharmacies. Some council members suggested a percentage limit would be preferable to a fixed number limit. Dr. Bayhi suggested an alternative that would use a tiered approach, using a specific number to be audited within a certain number of prescriptions filled, with a higher number to be audited for a larger number of prescriptions filled, with several tiers possible.

Mr. Rieger indicated his client was contemplating a potential amendment replacing the fixed number limit with a percentage limit.

- HB 595 (C. Turner) was on the April 19 agenda for the House Committee on Insurance but it was not considered. Mr. Zewe indicated the bill sought to amend Title 22 with respect to the required notice issued to policyholders with prescriptions affected by spread pricing to require additional information to be included in such notices.

Mr. Sonnier expressed his concern for the elimination of spread pricing and the adverse economic impact on his client. Mr. Zewe clarified the bill does not eliminate spread pricing, but rather requires additional information to be included in the notice to policyholders about spread pricing. Mr. Rieger noted the bill requires such information to be provided for each prescription, presumably on the remittance advice. He cautioned that some of the information requested may not be available in real time but could be provided retrospectively on perhaps an annual notice.

Mr. Zewe observed the author was perhaps more interested in transparency and less interested in the timing of that transparency and suggested an amendment to that effect might be appropriate.

- HB 673 (E. Jordan) had not yet been considered by the House Committee on Health & Welfare. Mr. Zewe indicated the bill sought to amend Title 40 relative to the composition of the PBM Monitoring Advisory Council by adding the governor to the membership of the council.

Mr. Rieger indicated the addition of the governor was offered to raise the membership of the council to an odd number to prevent a potential tie vote on any motion considered by the council. He also indicated a potential amendment to the effect of requiring any legislation relative to PBMs introduced for consideration to have been previously reviewed by the council, and he requested the members' reaction to that concept. Several members indicated the current law authorizes such discussion by the council and directs the council to advise the legislature on such matters.

- HB 939 (R. Owen) had not yet been considered by the House Committee on Insurance. Mr. Zewe indicated the bill sought to amend Title 22 with respect to prior authorizations used by health insurers, to prohibit a PBM from requiring a prior authorization for generic drugs with an exception relative to quantity limits of generic drugs.

Mr. Rieger expressed his client's concern for the negative economic impact of such prohibition. Mr. Sonnier indicated his client would also oppose the bill for same concern for the removal of economic savings associated with the use of prior authorizations.

- SB 99 (F. Mills) had cleared the Senate and referred the previous day to the House Committee on Health & Welfare. Mr. Zewe indicated the bill sought to amend Title 40 with respect to the PBM Licensing Law, to change the provision indicating a PBM "may" obtain a license from the Board of Pharmacy if it engages in the practice of pharmacy as defined in that law to instead indicate a PBM "shall" obtain a license from the Board if it engages in that practice.

Mr. Rieger expressed his client's opposition to the bill based on the lack of PBM representation on the Board of Pharmacy as well as the antitrust implications. He indicated his client was considering a potential amendment that would move enforcement actions from the Board of Pharmacy to the Dept. of Insurance and moving the administrative hearing process from the Board of Pharmacy to the Div. of Administrative Law.

Mr. Broussard reminded the council the Board did not seek the 2019 legislation which enacted the PBM Licensing Law. The legislature directed the Board to implement a licensing regime. In response, the Board completed the rulemaking process and initiated the licensing program. Of the approximately 40 PBMs active in the state, only a dozen or so had obtained permits from the Board, with others citing the "may" language in the law. The Board determined it appropriate to seek clarification from the legislature on whether it intended the Board to license and regulate a voluntary program or a mandatory program of PBM regulation.

Mr. Zewe noted Mr. Broussard's scheduled retirement from the Board on June 30, 2022 and expressed his appreciation to Mr. Broussard for his assistance with the council's administration. Several other members expressed their appreciation to Mr. Broussard as well.

Mr. Sonnier moved, and Mr. Rieger seconded, for the council to send a letter to every senator and representative in the Louisiana Legislature reminding them of the PBM Licensing Law, with the transmittal of the letter to include a copy of that law. There were no objections to the motion, and Mr. Zewe indicated he would send that letter in his role as Council Chair.

Mr. Sonnier moved, and Mr. Rieger seconded, to invite drafters and legislative sponsors of legislation relative to PBMs to meet with the council to review such legislation prior to its consideration by the legislature. Due to unanswered questions about the motion relative to the inclusion of current or anticipated legislation, identification of specific persons and other issues, Mr. Sonnier asked to table his motion. Without objection to that request, Mr. Zewe ruled the motion was tabled.

8. Calendar Notes

Mr. Zewe reminded the members of the remaining scheduled meeting dates for Calendar Year 2022 – July 13, and October 12.

9. Other Matters

Mr. Zewe asked if there were any other matters for the council's consideration that day. There were no member or public comments.

10. 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 3:37 p.m.

Minutes prepared by Malcolm Broussard, La. Board of Pharmacy, and approved during subsequent meeting of the Council on July 13, 2022.