

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
Chair, House Committee on Insurance
Chair, Senate Committee on Insurance
Chair, House Committee on Health & Wealth
Chair, Senate Committee on Health & Wealth

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

July 13, 2022

A regular meeting of the council was held on Wednesday, July 13, 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 10:34 AM.

2. *Quorum Call*

Mr. Zewe asked Mr. Joe Fontenot 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)
Dr. Lisa Bayhi (La. Association of Nurse Practitioners)
Mr. Aurdie Bellard (La. Pharmacists Association)
Ms. Lauren Bailey (La. State Medical Society)
Mr. Randall Johnson (La. Independent Pharmacies Association)
Ms. Shelly Dupre (National Association of Chain Drug Stores)
Mr. Jeff Drozda (La. Association of Health Plans)
Mr. Kenneth Chris Rachel (La. Academy of Medical Psychologists)
Mr. Robert Rieger (Prime Therapeutics)
Ms. Cheryl D. Tolbert (La. Business Groupon Health)
Mr. Joshua Sonnier (Louisiana AFL-CIO)
Ms. Kristy Copeland (La. Association of Health Underwriters)
Ms. Tara LeBlanc (The Governor)
Rep. Mike Huval (House Committee on Insurance)
Rep. Chris Turner (House Committee on Health & Wealth)
Sen. Fred H. Mills, Jr. (Senate Committee on Health & Wealth)

Members Absent:

La. Dept. of Health
Pharmaceutical Research & Manufacturers of America
La. Academy of Physician Assistants
La. Association of Business & Industry
Senate Committee on Insurance
La. State Board of Medical Examiners

Staff Present:

Mr. Joe Fontenot (La. Board of Pharmacy)
Mr. Carlos Finalet (La. Board of Pharmacy)
Mrs. Sarah Stevens (La. Board of Pharmacy)

Guests Present:

Mr. Grayson Walsh (La. Independent Pharmacies Association)
Ms. Dana Antoon (Channel Drugs)
Mr. Errol Duplantis, Jr. (Llyod's Remedies Pharmacy)
Mr. Minh Nguyen (Willow Bark Pharmacy)
Mr. David Osborn (Schilling Pharmacy)
Ms. Crystal Carter (La. Pharmacists Association)
Ms. Katie Mitchell (The Ehrhardt Group)
Ms. Katie McKeogh (The Ehrhardt Group)
Ms. Sarah Lehman (La. Dept. of Health)
Mr. Jerrett Richter
Mr. Richard Indovina
Ms. Mary Peyton (LSBME)

Mr. Fontenot certified 19 of 25 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 April 21, 2022 which had been circulated to the members. With no corrections offered, Mr. Zewe waived the reading of minutes and 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. Errol Duplantis, Jr. (Lloyd's Remedies Pharmacy) expressed his concerns that some companies, specifically PSAOs, are circumventing Louisiana laws to the detriment of patients, providers, and tax payers. He further stated, that Mr. Jeff Zewe (Dept. of Insurance) is using his resources to review these practices and identify entities that may be in violation of Louisiana laws.

5. Election of Council Officers

Mr. Zewe conducted the annual election of council officers. He reminded the members the two council officer positions are chair and vice chair. He noted the term of office was one year and the officers would assume their respective positions upon their election.

Mr. Zewe then solicited nominations for the office of chair. Mr. Joshua Sonnier nominated Mr. Jeff Zewe and the nomination was seconded by Mr. Rieger. Mr. Marty McKay nominated Sen. Fred H. Mills, Jr. and the nomination was seconded by Mr. Randall Johnson. Mr. Joe Fontenot then completed the role-call vote resulting in the following:

Mr. Jeff Zewe (Dept. of Insurance) - Abstains
Mr. Marty McKay (La. Board of Pharmacy) – Sen. Mills
Mr. D. Jeddie Smith, Jr. (La. Attorney General) – Sen. Mills
Mr. Michael Dupree (La. Dept. of Justice) – Sen. Mills

Dr. Lisa Bayhi (La. Association of Nurse Practitioners) – Sen. Mills
Mr. Aurdie Bellard (La. Pharmacists Association) – Sen. Mills
Ms. Lauren Bailey (La. State Medical Society) – Sen. Mills
Mr. Randall Johnson (La. Independent Pharmacies Association) – Sen. Mills
Ms. Shelly Dupre (National Association of Chain Drug Stores) – Sen. Mills
Mr. Jeff Drozda (La. Association of Health Plans) - Abstains
Mr. Kenneth Chris Rachel (La. Academy of Medical Psychologists) – Sen. Mills
Mr. Robert Rieger (Prime Therapeutics) – Mr. Zewe
Ms. Cheryl D. Tolbert (La. Business Groupon Health) – Mr. Zewe
Mr. Joshua Sonnier (Louisiana AFL-CIO) – Mr. Zewe
Ms. Kristy Copeland (La. Association of Health Underwriters) – Mr. Zewe
Ms. Tara LeBlanc (Office of The Governor) – Sen. Mills
Rep. Mike Huval (House Committee on Insurance) – Sen. Mills
Rep. Chris Turner (House Committee on Health & Wealth) – Sen. Mills
Sen. Fred H. Mills, Jr. (Senate Committee on Health & Wealth) - Abstains

By majority of vote, 12 to 4 (with 3 abstaining), Sen. Fred H. Mills, Jr. was elected as Council Chair. Sen. Mills deferred assuming the chair position until after the meeting.

Mr. Zewe solicited nominations for the office of vice chair. Rep. Chris Turner was nominated by Randall Johnson and seconded. Rep. Chris Turner was elected, with no objection, by acclamation.

6. Review of Industry Trends and Emerging Issues

Mr. Zewe provided an overview of which bills passed and failed for the 2022 legislative session before asking for further conversation on House Bill 673, now Act No. 723. He stated that House Bill 673 amended the PBM Licensing Law to add 5 members (governor, chairs of legislative insurance committees, and chairs of legislative health and welfare committees). A new section was added to permit the PBM Monitoring Advisory Council to meet via electronic means. The act also created a new section (42:17.2) in the Open Meetings Law to provide a specific exception to allow the PBM Monitoring Advisory Council to meet electronically, subject to compliance with a number of requirements identified in that new section of law.

Mr. Zewe asked Mr. Smith for an opinion from the Attorney General's office regarding meeting in a hybrid format. Mr. Smith stated that there has been a previous ruling and he would supply that to the Council. Mr. Johnson proposed that Sen. Mills offer insight regarding the legislative intent and the impact of that intent on a hybrid meeting. Sen. Mills construed if suitable technology was used, the use of a hybrid format would be appropriate. Mr. Johnson stated that the use of a hybrid format would be beneficial to pharmacists across the state by not removing them from their practice setting for an extended amount of time, and beneficial to the public and members of the council.

Mr. Johnson then made a motion to allow for the conducting of meetings of the Council in hybrid or electronic format. Sen. Mills seconded the motion. Mr. Rieger objected to the motion expressing that he would prefer to wait to review the opinion from the Attorney General so as not to be part of an organization that could potentially violate the open meetings law which is based constitutionally. Mr. Rieger further stated exceptions

to public meetings law need to be strictly construed and played out appropriately with the right legal guidance so he would ask to defer this motion allowing the Attorney General to opine or provide an opinion if one has not already been rendered. Dr. Bayhi shared concern with Mr. Rieger that the opinion would be required first. Sen. Mills expressed that he is already involved with public meetings through the St. Martin Economic Development Authority, a public body, that uses a hybrid meeting format that was approved, furthermore he stated this model works in government and is highly accepted. Public comment in favor of the motion was provided by Ming Nguyen, Willow Bark Pharmacy. Mr. Joe Fontenot then completed the role-call vote resulting in the following:

Mr. Jeff Zewe (Dept. of Insurance) - Against
Mr. Marty McKay (La. Board of Pharmacy) – For
Mr. D. Jeddie Smith, Jr. (La. Attorney General) - Abstains
Mr. Michael Dupree (La. Dept. of Justice) - Abstains
Dr. Lisa Bayhi (La. Association of Nurse Practitioners) - For
Mr. Aurdie Bellard (La. Pharmacists Association) - For
Ms. Lauren Bailey (La. State Medical Society) - Abstains
Mr. Randall Johnson (La. Independent Pharmacies Association) - For
Ms. Shelly Dupre (National Association of Chain Drug Stores) - For
Mr. Jeff Drozda (La. Association of Health Plans) - Against
Mr. Kenneth Chris Rachel (La. Academy of Medical Psychologists) - For
Mr. Robert Rieger (Prime Therapeutics) - Against
Ms. Cheryl D. Tolbert (La. Business Groupon Health) - Against
Mr. Joshua Sonnier (Louisiana AFL-CIO) - Against
Ms. Kristy Copeland (La. Association of Health Underwriters) - Against
Ms. Tara LeBlanc (Office of The Governor) - Against
Rep. Mike Huval (House Committee on Insurance) - For
Rep. Chris Turner (House Committee on Health & Wealth) - For
Sen. Fred H. Mills, Jr. (Senate Committee on Health & Wealth) - For

By majority of vote, 9 to 7 (with 3 abstaining), motion carries. Future meetings of the Council will be in hybrid format, allowing in-person and electronic attendance.

Mr. Zewe asked Sen. Mills if he had any further legislative matters that need to be discussed. Sen. Mills expressed the need for the committee to further discuss SB 32 which was intended to amend the state insurance law to set time limits on when the pharmacy may be audited by a third-party payor, and further, limits audits to a maximum of 100 prescriptions per year, with certain exceptions. The bill failed to pass. Sen. Mills asked that the committee revisit and discuss the number of prescriptions that should be looked at in an audit, asking for input from the provider side and the PBM side.

Members of the Council (Mr. Johnson and Mr. Bellard) and members of the public (Mr. Duplantis, Ms. Dana Antoon, and Mr. Richard Indovina) shared their experiences with being audited. Each included details of the audit being overly burdensome on the pharmacy's resources including time and staff as well as concerns for the impact the audits have on patient care by removing staff from care duties to complete audits.

Mr. Johnson and Mr. Duplantis both expressed that some companies are not complying with Louisiana laws when requiring the audits. Both explained that not all companies have these practices. Sen. Mills offered that this may be an enforcement issue opposed to a legislative issue and reminded those present, complaints can be filed through the Dept. of Insurance and/or the Louisiana Board of Pharmacy. Mr. Johnson explained that LIPA has been working to identify and report companies that appear to be in violation of Louisiana laws and regulations. Mr. Zewe confirmed that his agency has taken these complaints and will continue to but advised that the status of many ongoing complaint investigations is not public record and will not be disclosed. Should the agency take action, the information will become public record.

Ms. Copeland questions where the number 100 came from as the proposed number to be audited. Sen. Mills explained he is not set on that number but needed a starting number for the matter. Further, he stated that he would like to open the lines of communication to discuss what an appropriate number would be or if a number is even the best way to go, making suggestions for other methods.

Jared Richter offered public comment sharing recent hardships with obtaining a refund after having to pay out of pocket for a family members prescription due to a denial. He stated it took six months to receive the refund and that the amount refund was incorrect. Mr. Richter submitted a packet of information to the committee. He stated that he would like to know when leaving that the matter would be followed up on by the Dept of Insurance. Mr. Zewe advised that he must follow the proper complaint procedures.

Mr. Zewe and Sen. Mills asked for input from the PBM representative on the committee. Mr. Rieger stated that he will request that the PBMs share auditing information and bring that information to the committee for review. He requested that PBMs not complying with Louisiana laws and regulations also be reported to Pharmaceutical Care Management Association.

Sen. Mills asked that the Medical Society take a look at the delay in patient care when a prior authorization cannot be obtained after business hours. Ms. Bailey stated that the Medical Society worked with several groups to bring legislation this past session in regards to this matter and that this is a high priority. Sen. Mills stressed the importance of not delaying patients access to medication.

Sen. Mills shared he and Mr. Rieger have discussed ideas that would be possible if all parties; prescribers, pharmacies, and pharmacy benefit managers worked together to assist in patient initiatives and pilot programs advising of the success of these initiatives in the past through other alliances.

Mr. Zewe advised that his department has promulgated rules in regards to PBMs and PSAOs. The written comment and discussion are still being reviewed and is under advisory.

7. Review of Rulemaking Activity

Mr. Zewe asked Mr. Fontenot if the Board of Pharmacy had any update on their rulemaking activity related to PBMs. Mr. Fontenot stated that the Louisiana Board of

Pharmacy has a current regulatory project to remove the requirement for an audited financial statement with the initial application for a PBM. He also stated, in response to Act 536 (SB99) the Board intends to repromulgate the current PBM rule.

8. Calendar Notes

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

9. Other Matters

Mr. Zewe asked if there were any other matters for the council's consideration. 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 12:10 p.m.

Minutes prepared by Sarah Stevens and Joe Fontenot, La. Board of Pharmacy. Approved as presented during subsequent meeting of the Council on October 13, 2022