

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
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
President, La. Academy of Medical Psychologists
President, La. Association of Health Plans
President, of a *PBM licensed by the Board of Pharmacy and selected by the Louisiana affiliate of the Pharmaceutical Care Management Association*
President, La. Association of Business & Industry
Chief Executive Officer, La. Business Group on Health
President, La. AFL-CIO
President, La. Association of Health Underwriters
The Governor
Chair, House Committee on Insurance
Chair, Senate Committee on Insurance
Chair, House Committee on Health & Welfare
Chair, Senate Committee on Health & Welfare

Meeting Minutes

February 7, 2024

A regular meeting of the council was held on Wednesday, February 7, 2024 in the Poydras Hearing Room at the Louisiana Department of Insurance (LDI), located at 1702 North Third Street in Baton Rouge, Louisiana 70802. The meeting was conducted in a hybrid meeting format, in-person and by electronic means (Zoom).

1. *Call to Order*

Chairman Mills called the meeting to order at approximately 10:33 a.m.

2. *Quorum Call*

Chairman Mills asked Mr. Fontenot to call the roll of members to establish a quorum.

Members Present:

Mr. Frank Opelka (For the Commissioner, Louisiana Dept. of Insurance)
Mr. Marty McKay (President, Louisiana Board of Pharmacy)
Mr. D. Jeddie Smith, Jr. (For the Attorney General) *
Ms. E. Sue Fontenot (For the Secretary, Louisiana Dept. of Health) *
Ms. Lauren Bailey (For the President, Louisiana State Medical Society)
Dr. Lisa Bayhi (For the President, La. Association of Nurse Practitioners) *
Ms. Crystal Carter (For the President, Louisiana Pharmacists Association)
Mr. Don Caffery (For the President, Louisiana Independent Pharmacies Assoc.)
Ms. Shelly Dupre (For the President, National Association of Chain Drug Stores)
Dr. K. Chris Rachal (For the President, La. Academy of Medical Psychologists) *
Mr. Jeff Drozda (For the President, Louisiana Association of Health Plans)
Mr. Robert Rieger (For the President of a PBM / Prime Therapeutics / PCMA)
Ms. Diane Davidson (For the CEO, Louisiana Business Group on Health)
Mr. Josh Sonnier (For the President, Louisiana AFL-CIO)
Ms. Kristy Copeland (For the President, La. Assoc. of Health Underwriters)
Ms. Kimberly L. Sullivan (For the Governor) *
Rep. Gabe Firment (Chairman, House Committee on Insurance)
Rep. Chris Turner (For the Chairman, House Committee on Health & Welfare)
Mr. Fred H. Mills, Jr. (For the Chairman, Senate Committee - Health & Welfare)
(* - participated by electronic means)

Members Absent:

The President of the Louisiana State Board of Medical Examiners
The Director of the Public Protection Division of the Louisiana Dept. of Justice
The President of the Louisiana Academy of Physician Assistants
The President of the Pharmaceutical Research & Manufacturers of America
The President of the Louisiana Association of Business & Industry
The Chairman of the Senate Committee on Insurance

Staff Present:

Mr. Joe Fontenot (Executive Director, La. Board of Pharmacy)

Guests Present:

Ms. Nina S. Hunter, Louisiana Department of Insurance
Mr. Michael Peoples, Lilly
Ms. Cheryl Tolbert, Louisiana Business Group on Health
Ms. Jessica Monroe, Pfizer
Mr. David Whitehurst, Louisiana Independent Pharmacies Association
Mr. Matthew Cross, Louisiana Independent Pharmacies Association
Ms. Ashley Prejean, Louisiana Department of Insurance
Ms. Mary Fabre, Louisiana Department of Insurance
Ms. Kallie Ruggiero Somme, Louisiana Department of Insurance
Mr. Randal Johnson, Louisiana Independent Pharmacies Association
Mr. Eric Martin, Pfizer
Ms. Sheri Huval, Pharmcare Louisiana

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

Chairman Mills asked for a motion to approve the draft minutes of the previous meeting held on October 11, 2023. A motion was offered by Rep. Chris Turner, seconded by Mr. Josh Sonnier, and then adopted after a unanimous vote of the remaining members in the affirmative declaring the minutes approved.

4. Opportunity for Public Comment

Chairman Mills solicited public comments from those in attendance.

Ms. Sheri Huval introduced herself and said she represents a new organization called Pharmcare Louisiana which is founded on pharmacists for patient care in Louisiana. She stated, "the organization was formed to increase patient care."

There were no other public comments from those in attendance both in-person and electronically, and no comments were provided through email prior to the meeting as noticed on the agenda.

5. Analysis of PCMA vs. Mulready

Chairman Mills called upon Mr. Opelka (LDI) to provide a review of *PCMA vs. Mulready*.

Mr. Opelka provided a handout to those present in the room and shared the document with those attending through electronic means. Mr. Opelka stated that *PCMA vs. Mulready* involves ERISA preemption, with Mulready being the Oklahoma Insurance Commissioner. In the case, 13 elements of Oklahoma law were challenged and Mr. Opelka's handout provided the 13 laws with an analysis comparing similar Louisiana laws. The lower court upheld that the laws were permissible under *Rutledge vs. PCMA*. The Oklahoma laws on the document in black font were permitted by the lower court and not challenged by PCMA. The laws in red font were the challenged provisions, in which PCMA prevailed at the tenth circuit. (see attached)

In response, Mr. Caffery (LIPA) noted that Louisiana is not under the jurisdiction of the tenth circuit and we are operating under Rutledge. He also noted that Oklahoma has said they plan to appeal the decision up to the Supreme Court.

Mr. Rieger responded to Mr. Caffery's comment by stating Oklahoma sought rehearing before the entire circuit and was unanimously denied. All the judges in that jurisdiction decided the state of Oklahoma's assertions that the decision was inaccurate was rejected completely. He also stated this shows the need for caution to anyone trying to legislate in this area, in the ERISA space, which is important to our Louisiana based employers and employees.

There were no additional comments regarding this agenda item.

6. Review of Legislation – Federal Legislation

Chairman Mills noted a link to the document being discussed is embedded in the agenda for those participating by electronic means. He then called upon Mr. Caffery for a review.

Mr. Caffery provided a brief overview of the document provided (see attached).

Chairman Mills expressed a wish for the advisory council to come to a consensus on issues that we agree upon or have commonality, prior to a legislative session.

Mr. Rieger said there are things that can be done by our legislature to urge congress or other federal agencies to give relief to our independent pharmacies. These include DIR reform, allowing pharmacists to practice at the top of their license, and drug shortages.

In response, Chairman Mills brought forth the idea of the council collectively getting behind an initiative to support.

Mr. Drozda commented that he supports the idea but would like to have something in writing to examine and make sure everyone is of the same understanding on the topic.

Chairman Mills challenged the members to bring a draft to the next meeting for a discussion by the council.

7. Review of Industry Trends and Emerging Issues

Mr. Opelka explained there has been an erosion of the state regulated commercial market for health insurance in Louisiana over the last 5 years. In 2018, 17% of covered lives in Louisiana were in the state regulated commercial market. In 2023, it fell below 13%. The cause of the decline was people moving from the individual market into Medicaid. The result is a significant lessening of state authority over the health insurance market.

Chairman Mills expressed concerns in regards to pharmacies closing, causing a network adequacy issue. He suggested that PCMA and independent pharmacies get together to do a pilot study to determine what it actually cost to fill a prescription in Louisiana.

Mr. Caffery referenced a recent survey with the Department of Health Medicaid Program using Myers and Stauffer. They determined the average cost to fill a prescription, before the cost of the medication, was \$12.00.

Ms. Diane Davidson stated that at Roy O. Martin they are in a unique position having a self-insured ERISA plan and a pharmacy. They recently placed their retirees over 65 years of age on a Blue Cross Advantage plan, and they are no longer considered their members. Their pharmacy is not a preferred pharmacy in the Medicare network because of their size. She explained that she sees first hand how a pharmacy loses money on a Medicare plan, sometimes \$400 on a single prescription. She added because Medicare is so huge, a significant number of patients are being turned away from pharmacies which will result in "patients getting sicker." Ms. Davidson wanted the following on the record - in our medical world, at some point, the patient has to matter, it cannot be all about the money.

Chairman Mills expressed a goal of his is that PBMs, prescribers, and pharmacists partner up to offer more than a commodity and be paid for it.

Mr. Caffery responded that LIPA is fully supportive of helping pharmacies expand their practices and being paid for the services they provide. However, if pharmacies continue losing \$400 on each prescription they fill, as referenced by Ms. Davidson, they will no longer exist to provide that service. He added, the reimbursement model must first be fixed, with transparency in that model.

8. Review of Rulemaking Activity

The members had no rulemaking activity to report.

The members continued the conversation in regards to pharmacy reimbursement and the cost to fill a prescription.

Chairman Mills suggested an invitation to representatives from some of the larger PBMs to join our next meeting and discuss how can a pharmacy in Louisiana be reimbursed \$150 per prescription below costs and explain that business model. There were no objections to the suggestion.

9. Calendar Notes

Chairman Mills asked Mr. Fontenot to update the members in regards to calendar notes. Mr. Fontenot reminded the members that the 3 remaining tentative meeting dates for calendar year 2024 are April 10, July 10, and October 9.

Chairman Mills called for any comments from anyone joining the meeting by electronic means, there were none.

10. Adjourn

Having completed the tasks itemized on the posted agenda, with no further business pending before the council and without objection, Chairman Mills adjourned the meeting at approximately 11:34 a.m.

Minutes approved during subsequent meeting of the Council on April 11, 2024.

Comparison of Oklahoma's Patient's Right to Pharmacy Choice to Current Louisiana Laws	
Oklahoma Law	Louisiana Law
Any Willing Provider Provision -- PBM must use any provider willing to accept the terms established by the PBM	La. R.S. 22:1964(15)(a)(ii) and R.S. 40:2202 -- Any willing provider provision (Already preempted in 5th Circuit under <i>Cigna Healthplan of Louisiana v. Louisiana (1996)</i>)
Retail-Only Pharmacy Access Standards -- Requires a percentage of covered individuals residing in a certain service area within a certain number of miles. Cannot meet through mail order.	La. R.S. 22:1011 -- Restricts an employer from requiring employee use a mail order pharmacy
Affiliated Pharmacy Prohibition Standard -- PBM cannot require patients to use pharmacies directly or indirectly owned by the PBM	La. R.S. 40:2870(A)(5) -- Anti-steering statute
Probation-Based Pharmacy Limitation Prohibition -- Prevents the PBM from choosing not to use pharmacies with a pharmacist with a probationary license status	None
Network Provider Restriction Prohibition -- PBM is prohibited from restricting patient's choice of in-network provider	La. R.S. 22:1964(15)(a)(i) -- Prohibits denial of patient choice
Cost Sharing Discount Provision -- Prohibits PBM from promoting in-network pharmacies by offering reduced copays or other discounts	La. R.S. 40:2870(A)(5) -- Anti-steering statute
Promotional Materials Provision -- PBM cannot include name of a pharmacy on promotional materials	None
PBM cannot charge pharmacy to adjudicate a claim	La. R.S. 22:1856(F) -- PBM cannot unilaterally determine a processing fee; must be agreed by the parties. Definitions in this subpart already exclude ERISA plans regardless of preemption.
PBM cannot reimburse a pharmacy at an amount less than it reimburses a PBM-owned pharmacy	La. R.S. 40:2870(8) and R.S. 22:1860.3 -- PBM cannot reimburse a pharmacist less than the amount paid to a chain, mail order, or affiliate
PBM cannot retroactively deny or reduce reimbursement for a covered claim after returning a paid claim.	La. R.S. 22:1856.1(D) -- PBM may reduce or retroactively deny a claim, but only in limited circumstances.
PBM cannot fail to make a payment due to a pharmacy due only to the pharmacy being removed from its network	None
Spread pricing prohibited	La. R.S. 22:1867 -- Spread pricing without notice prohibited
Statutory limits on PBM audit rights	La. R.S. 22:1867 -- Statutory limits on PBM audit rights
PBM's required to report on rebates	La. R.S. 1657.1 -- PBM's required to report on rebates

Current Federal Legislation

SENATE

PBM Reform in Medicare Part D and Medicaid Managed Care

- The Modernizing and Ensuring Patient Access (MEPA) Act
 - Promotes PBM transparency and limits anti-competitive practices.
 - Bill Package:
 - [S. 1038](#) the Drug Price Transparency in Medicaid Act by Sen. Peter Welch
 - Prohibits spread pricing by PBMs in Medicaid managed care programs.
 - Moves to a fair and transparent pharmacy reimbursement system based on average acquisition cost plus the state's Medicaid fee-for-service dispensing fee.
 - Requires completion of NADAC surveys.
 - [S. 2052](#) the Protect Patients Access to Pharmacies Act by Sen. Jon Tester
 - Clarifies and enforces any willing provider laws.
 - Requires, at a minimum, a pharmacies cost to acquire and dispense a covered Medicare Part D drug is covered.
 - [S. 2405](#) the Strengthening Pharmacy Access for Seniors Act by Sen. John Thune
 - Requires PBMs to disclose criteria used to classify drugs as specialty.
 - Prevents patient steering to PBM-affiliated specialty pharmacies.

PBM Transparency for Plan Sponsors and Consumers

- [S. 127](#) the Pharmacy Benefit Manager Transparency Act of 2023 by Sen. Maria Cantwell
 - Bans deceptive, unfair pricing practices.
 - Prohibits spread pricing and arbitrary clawbacks.
 - Requires PBMs to report to the FTC how much money they make through spread pricing and pharmacy fees.
 - Clarifies enforcement authority of the FTC and state attorneys general to prohibit unfair/deceptive PBM practices used against community pharmacies.

HOUSE

Medicaid Managed Care Payment Reform and Mandated Transparency for PBMs

- [H.R. 3561](#) the Promoting Access to Treatments and Increasing Extremely Needed Transparency (PATIENT) Act by Rep. Cathy McMorris Rodgers
 - Provisions to lower prescription drug prices and increase transparency to anticompetitive PBM practices.
 - INCLUDES:
 - [H.R. 1613](#) the Drug Price Transparency in Medicaid Act by Rep. Buddy Carter
 - Prohibits use of spread pricing in Medicaid managed care programs.
 - Moves to a fair and transparent pharmacy reimbursement system based on average acquisition cost plus the state's Medicaid fee-for-service dispensing fee.
 - Estimated to save taxpayers over \$1 Billion.

Protect Patients, Taxpayers, and Pharmacies from Harmful PBM Practices in Medicare Part D

- [H.R. 2880](#) the Protecting Patients Against PBM Abuses Act by Rep. Buddy Carter
 - Protects from PBM practices that make high quality healthcare inaccessible and unaffordable.
 - Prohibits PBMs from reimbursing non-affiliated pharmacies at a rate less than they reimburse their own pharmacies (removes steering incentives)
 - Prohibits spread pricing in the Medicare Part D program.
 - Delinks PBM compensation from the cost of medications (PBMs no longer benefit from pricier drugs and greater rebates).
 - Requires PBMs to publicly report all rebates and fees they receive from drug manufacturers.

Medicare Payment for Advanced Pharmacy Services

- [H.R. 1770](#) the Equitable Community Access to Pharmacist Services Act by Rep. Adrian Smith
 - Ensures Medicare beneficiaries can easily receive care by allowing pharmacists to test and treat COVID, flu, RSV, and strep throat.
 - Establishes Medicare Part B direct reimbursement for those pharmacist services (to recognize pharmacists and the role they have for improving healthcare access).
 - Ensures continues patient access and local independent pharmacies.