

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

November 18, 2021

A special meeting of the council was held on Thursday, November 18, 2021 in the Poydras Hearing Room at the Department of Insurance, located at 1702 North Third Street in Baton Rouge, Louisiana 70802.

1. Call to Order

Mr. Jeffrey Zewe, Chair, called the meeting to order at 9:04 a.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. 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. Aurdie Bellard (La. Pharmacists Association)
- Mr. Donelson Caffery (La. Independent Pharmacies Association)
- Ms. Shelly Dupre (National Association of Chain Drug Stores)
- Dr. Joseph Comaty (La. Academy of Medical Psychologists)
- Mr. Robert Rieger (Prime Therapeutics)
- Ms. Diane Davidson (La. Business Group on Health)
- Mr. Josh Sonnier (Louisiana AFL-CIO)
- 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
- Pharmaceutical Research & Manufacturers of America
- La. Association of Health Plans
- La. Association of Business & Industry

Staff Present:

- Mr. Malcolm Broussard (La. Board of Pharmacy)
- Mr. Joseph Fontenot (La. Board of Pharmacy)

Guests Present:

- Ms. Cheryl Tolbert (La. Business Group on Health)

Mr. Broussard certified 13 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 October 13, 2021 which had been circulated to the members. With

no corrections offered, Mr. Robert Rieger moved to approve the draft minutes as presented. With no objection to the motion, Mr. Zewe declared the minutes approved as presented.

4. Opportunity for Public Comment

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

5. Discussion of Potential Legislation for 2022 Legislature

Mr. Zewe reminded the members of their interest in convening an additional meeting prior to their next quarterly meeting in January 2022 for the purpose of discussing potential legislation anticipated for the 2022 Legislature. Mr. Zewe indicated the Dept. of Insurance had no intent at that time to offer PBM-related legislation in the 2022 Legislature. He solicited input from other council members.

Mr. Josh Sonnier recalled SB 218 from the 2021 Legislature. He related his organization's concerns with that bill: the use of a single Maximum Allowable Cost (MAC) list, the elimination of spread pricing, and a significant change to the pharmacy audit process by stipulating a specific number of prescriptions instead of a percentage thereof.

In reply to questioning from Mr. Zewe, Mr. Caffery indicated his membership did not, at that time, have any specific legislative proposal intended for the 2022 legislative session. He recalled the council's discussion of audit procedures during their last meeting and stated their concerns had not changed. He indicated his receipt and brief review the previous evening of a decision from the 8th Circuit of the U.S. Court of Appeals in support of the North Dakota law relative to PBMs.

Mr. Rieger questioned Mr. Caffery about LIPA's case currently pending in the 5th Circuit of the U.S. Court of Appeals relative to payment of the ten cent fee on prescriptions reimbursable by Medicare. Mr. Caffery reviewed the legal positions at issue and disclosed the filing of an amicus brief in support of LIPA's position by the La. Dept. of Health.

Several members discussed Direct and Indirect Remuneration (DIR) fees and determined those retroactive post-transaction assessments are no longer permitted in Louisiana.

Several members discussed spread pricing with multiple viewpoints. Ms. Davidson indicated her organization's concern was the state should not prohibit the use of that practice if the client organization believes it helps reduce their premium costs.

Mr. Zewe questioned whether his presentation of council recommendations to the legislature would give rise to any concern given his position as a state employee. Mr. Jeddie Smith indicated he would check on that issue.

On the topic of a single MAC list, Mr. Caffery indicated his members did not object to the use of such lists. Their objection is to the practice of a PBM retroactively changing their reimbursement from that quoted at the time of the transaction. Several members indicated their objection to that practice and suggested perhaps there is an opportunity to improve the description of the issue so as to reduce confusion about the true issue..

On the topic of pharmacy audits, Mr. Caffery indicated his members supported the use of fixed sample sizes of random prescription audits in lieu of percentages thereof. With audits for fraud, waste and abuse, LIPA agrees those audit samples

should not be artificially limited. Mr. Zewe related the department's use of tools to determine sample size necessary to achieve high levels of confidence in the results, and further, fixed sample sizes could result in either an excessive or insufficient number of prescriptions for the audit. Multiple members expressed their concern with fixed sample sizes for prescription audits.

On the topic of overpayments, the members agreed the pharmacy should not be subject to retroactive adjustments.

On the topic of specialty drugs, some of the members cited various criteria used to classify drugs as specialty drugs including clinical requirements, special storage conditions, and cost. Mr. Zewe related his awareness of Texas legislation that permits any pharmacy to dispense any specialty drug when they are licensed to do so. Some members expressed concern with using cost alone as justification for classifying drugs as specialty drugs and restricting their access to specialty pharmacies. In reply to a question whether the Board of Pharmacy defines specialty drug or specialty pharmacy, Mr. Broussard indicated the board does not have a classification for specialty pharmacy but instead classifies pharmacies primarily by their location – community, hospital, nonresident, etc. He also related the legislature requested the board a few years ago to study the topic of specialty drugs and specialty pharmacies, and that the board's report in response to that study resolution resides on the board's website. He related the board declined to suggest definitions for specialty drug or specialty pharmacy. He indicated the board is aware of a national membership organization of specialty pharmacies and their definition of that term. With respect to specialty drugs, the board suggested in their report the term should be defined in terms of unusual handling requirements or special treatment procedures but not price parameters.

Mr. Aurdie Bellard provided information from his perspective as a pharmacist. He related examples of certain drugs classified as specialty drugs which he is trained to dispense and is prohibited from doing so by certain PBMs. He questioned the criteria by which certain drugs are classified as specialty drugs. He then related examples of certain pharmacy audits where the audit seemed to focus on administrative procedures related to recording of prescriptions.

Mr. Sonnier questioned whether virtual meetings of the council were permitted. Mr. Smith related a recent amendment to the Open Meetings Law which established specific criteria for virtual meetings.

Finally, Mr. Zewe suggested little value in calling another special meeting in December given the absence of any specific legislative proposals. With no request for an additional meeting, Mr. Zewe reminded the members of the council's next scheduled meeting on January 12, 2022.

6. Other Matters

Mr. Zewe asked if there were any other matters for the council's consideration that day; none were requested.

7. 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 10:21 a.m.

Minutes prepared by Malcolm Broussard, Executive Director, La. Board of Pharmacy; approved as presented during subsequent meeting of the Council on January 12, 2022.