

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

January 12, 2022

A regular meeting of the council was held on Wednesday, January 12, 2022 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 10:35 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. Malcolm Broussard (La. Board of Pharmacy)
- Mr. D. Jeddie Smith, Jr. (La. Attorney General)
- Ms. Lauren Bailey (La. State Medical Society)
- Ms. Crystal Carter (La. Pharmacists Association)
- Mr. Donelson Caffery (La. Independent Pharmacies Association)
- Dr. Joseph Comaty (La. Academy of Medical Psychologists)
- Mr. Jeff Drozda (La. Association of Health Plans)
- Mr. Robert Rieger (Prime Therapeutics)
- Ms. Cheryl Tolbert (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. Association of Nurse Practitioners
- National Association of Chain Drug Stores
- Pharmaceutical Research & Manufacturers of America
- La. Association of Business & Industry

Staff Present:

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

Guests Present:

- Mr. Matt Cross (La. Independent Pharmacies Association)
- Mr. Luke Breard (La. Association of Health Underwriters)
- Mr. Jack Duvernay (La. Association of Health Underwriters)
- Ms. Julie Spier (La. Alliance of Retail Pharmacies)
- Ms. Shelly Dupre (La. Alliance of Retail Pharmacies)
- Ms. Kim Elston (Novo Nordisk)

Mr. Broussard certified 12 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 November 18, 2021 which had been circulated to the members. With no corrections offered, Mr. Jeff Drozda 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 reported on his recent review of the November 2021 ruling from the 8th Circuit of the U.C. Court of Appeals relative to PBM laws in the state of North Dakota. In brief, that ruling indicated pharmacy benefit manager regulation in that state's PBM law was not preempted by ERISA but other aspects of that law relative to insurance plan design were preempted by ERISA. Mr. Zewe reported his analysis indicated the DIR fee language in Louisiana was the same as that in North Dakota, and therefore, the DIR language in Louisiana would be enforceable.

He asked whether any other groups were contemplating legislation relative to PBMs in the 2022 legislative session. Mr. Broussard reported the Board of Pharmacy's Regulation Revision Committee – the group tasked with drafting both legislative and regulatory proposals – had met on January 5 and voted to recommend several legislative and regulatory proposals to the full Board for their approval. In particular, the legislative proposal seeks to amend Subsection A of R.S. 40:2868. The current language indicates a PBM performing any of the 10 specified activities construed to be within the practice of pharmacy may apply for a permit. The proposal seeks to change the word 'may' to 'shall.' The regulatory proposal seeks to amend the Board's rule relative to the application process for a new PBM permit. The current rule includes a requirement for an audited financial statement of the applicant's previous fiscal year as part of the application for the initial issuance of the permit. The regulatory proposals seeks to remove the requirement for an audited financial statement. Mr. Broussard reported copies of both proposals were publicly posted on the Board's website.

Mr. Robert Rieger asked Mr. Broussard the circumstances of the legislative proposal, noting the Board was not the sponsor of the original legislation. Mr. Broussard replied the Board had evaluated applications from about a dozen or so applicants. Within the fiscal note of the original legislation, the Board noted the Mississippi Board of Pharmacy currently licenses about 40 or so PBMs conducting business in that state. At least one major PBM has indicated to the Board they would not apply for the PBM permit even though they are performing activities identified in the PBM Licensing Law, pointing to the word 'may' in R.S. 40:2868(A). The Board's committee believes it appropriate to offer the legislature an opportunity to clarify their intent whether a PBM should obtain a permit from the Board of Pharmacy.

Mr. Broussard reported the full Board would consider both proposals during their next meeting on February 16 [later re-scheduled to February 17]. A favorable vote on the legislative proposal would include an instruction to staff to secure a sponsor and file the bill, while a favorable vote on the regulatory proposal would include an instruction to staff to initiate the formal promulgation process.

Mr. Zewe asked Mr. Caffery whether LIPA was prepared to discuss any potential legislation. Mr. Caffery replied the LIPA Board of Directors was scheduled to meet the following week. They were also reviewing recent litigation and analyzing the impact on current state laws and rules. He further indicated he had not prepared any draft legislation.

6. Review of Rulemaking Activity

Mr. Zewe noted the Board of Pharmacy had already reported on their current rulemaking activity. He reported the Dept. of Insurance was nearing completion of a rule relative to pharmacy services administrative organizations (PSAOs). He reminded the members that rulemaking activity was directed by Act 192 of the 2021 Legislature.

Mr. Zewe asked whether any other organizations were contemplating rulemaking; no one replied

7. Review of Potential Legislation

Mr. Zewe asked whether any other organizations were contemplating legislation; no one replied.

8. Calendar Notes

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

9. Other Matters

Mr. Zewe asked if there were any other matters for the council's consideration that day. Mr. Rieger requested an opportunity to take note of the passing of Mr. Carl Aron, President Emeritus of the Board of Pharmacy, on January 5. Mr. Rieger noted Mr. Aron's 50 years of continuous service on the Board of Pharmacy as well as his impact on the profession of pharmacy not only in Louisiana but across the United States.

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 10:50 a.m.

Minutes prepared by Malcolm Broussard, Executive Director, La. Board of Pharmacy: approved as presented during subsequent meeting of the Council on April 21, 2022.