

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, 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 {vacancy}
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 & 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

October 13, 2022

A regular meeting of the council was held on Thursday, October 13, 2022 at the Louisiana Department of Health (Bienville Bldg.), Conference Room #118, located at 628 N. 4th Street in Baton Rouge, Louisiana 70802. As ordered by the council, the meeting was held in a hybrid meeting format (both in person and by electronic means).

1. Call to Order

Vice-Chairman Chris Turner called the meeting to order at approximately 10:36 AM.

2. Quorum Call

Vice-Chairman Turner asked Mr. Fontenot to call the roll of members to establish a quorum. Mr. Frank Opelka, with the La. Dept. of Insurance, called for a point of order and expressed his concerns in regards to the council meeting being held in a hybrid meeting format which is not expressly permitted in law and could be a violation of open meetings law. Mr. Opelka asked if an opinion from the Attorney General was obtained. Chairman Mills replied by stating it was debated and the Council decided to hold the meeting in a hybrid format. Chairman Mills also stated, the hybrid meeting format is occurring and well accepted by other boards locally, he went on to say he did not seek an opinion from the Attorney General. Mr. Opelka said the Dept. of Insurance is happy to seek an opinion from the Attorney General but he must abstain until an opinion is received. Mr. Opelka then exited the room. Mr. Fontenot proceeded to call the roll at the request of Vice-Chairman Turner.

Members Present:

Mr. Frank Opelka (La. Dept. of Insurance) – in person, then exited - **abstain**
Mr. Marty McKay (La. Board of Pharmacy) – in person
Mr. D. Jeddie Smith, Jr. (La. Attorney General) – in person - **abstain**
Ms. E. Sue Fontenot (La. Dept. of Health) – in person
Ms. Kim Wixson (La. Pharmacists Association) – in person
Ms. Lauren Bailey (La. State Medical Society) – in person
Mr. Randal Johnson (La. Independent Pharmacies Association) – in person
Ms. Shelly Dupre (National Association of Chain Drug Stores) – in person
Mr. Jeff Drozda (La. Association of Health Plans) – in person
Dr. Kenneth Chris Rachel (La. Academy of Medical Psychologists) – electronic
Mr. Robert Rieger (Prime Therapeutics / PCMA) – in person
Ms. Diane Davidson (La. Business Group on Health) – electronic
Mr. Joshua Sonnier (Louisiana AFL-CIO) – in person
Ms. Kristy Copeland (La. Association of Health Underwriters) – in person
Rep. Mike Huval (House Committee on Insurance) – in person
Rep. Chris Turner (House Committee on Health & Wealth) – in person
Sen. Fred H. Mills, Jr. (Senate Committee on Health & Wealth) – electronic

Members Absent:

Director of the Public Protection Division of the DOJ
Pharmaceutical Research & Manufacturers of America
La. Academy of Physician Assistants
La. Association of Nurse Practitioners
La. Association of Business & Industry
The Governor
Senate Committee on Insurance
La. State Board of Medical Examiners

Staff Present:

Mr. Joe Fontenot (La. Board of Pharmacy) – in person
Mr. Carlos Finalet (La. Board of Pharmacy) – in person

Guests Present:

Allyce Trapp – Adams & Reese – in person
Derrell Choon – Capitol Partners for CVS Health – in person
Steven McCall – CVS Caremark – in person

Guests Registered and/or Joined Electronically:

Robert Rock	Kellie Elisar
Patrick Boggs	Casey Montes
Danielle Hodge	Kimberly Frost
Pat Brian	Jenny Hancock
Julie Fuselier	Shalonda Hudson
Jordan Gleason	Rima Arora
Katie Mitchell	Richard Bordelon
Brandon Sims	Larry Bagley
Lisa Streete	Olatundun Olawoyin
Shakharie LaCaze	Matt Vian
Trina Stewart	Joseph Batterton
Shannon Brunet	Brandi Cannon
Lesha Ghoston	Chi Tran
Hieu Pham	Jerrett Richter
Paula Cannon	Bishoy Ramzy
Chrissy Burkhardt	Tammy Stutes
Ngoc Kim	Releida James
Clyde Dearman	Max Huff
Benjamin Dukes	Matthew Spradley
Terrilyn Taylor	Katie McKeogh
Earl Williams	Karen Baird
Brianna Rios	Kathryn Bernier
Pat Brain	Mary Terrebonne
Adria Kerr	Jeffrey Zewe
Kevin LaGrange	Senate H&W

Mr. Jeddie Smith, representing the Attorney General, was present but stated that anticipating an opinion being sought from the Attorney General he will abstain from

participation.

Mr. Fontenot certified 15 of 25 members were present, constituting a quorum for the conduct of official business.

3. Consideration of Minutes from Previous Meeting

Vice-Chairman Turner asked if there were any corrections to be made to the draft minutes of the previous meeting on July 13, 2022 which had been circulated to the members. With no corrections offered, Vice-Chairman Turner waived the reading of minutes and moved to approve the draft minutes as presented. Ms. Fontenot (LDH) abstained because she was not present at the previous meeting. The motion was adopted after a unanimous vote of the remaining members in the affirmative. Vice-Chairman Turner declared the minutes were approved as presented.

4. Opportunity for Public Comment

No public comments were received electronically prior to the meeting or offered at this time.

5. Review of Industry Trends and Emerging Issues

Mr. Randal Johnson, with the La. Independent Pharmacies Association (LIPA), wanted to add to the record of the meeting his association's concern regarding PBM complaints to the Dept. of Insurance which number nearly 80,000 complaints over 8 months. Mr. Johnson was hoping to receive feedback from the Dept. of Insurance on how things were progressing or what additional information was needed.

6. Pharmacy Audits

Mr. Rob Rieger, representing PCMA, introduced a representative from the Pharmacy Benefit Manager industry, Mr. Steve McCall, to speak about pharmacy audits which has been a topic of legislation over the last couple of years. Mr. McCall is Vice President in charge of audits with CVS Caremark. Before Mr. McCall began his presentation, Mr. Rieger spoke as to how the plan sponsor directs the PBM on how audits take place. Mr. Rieger stressed in his presentation that the rules for pharmacy audits are set by the people who pay the premiums and those that sponsor the programs. Mr. Rieger also emphasized there are a number of tools available to pharmacies to significantly reduce the number of claims subject to audit.

Mr. McCall spoke in regards to audit function success stories which was presented as part of delivering health benefits. Mr. McCall explained one of the tools available, which Mr. Rieger spoke of, is a publication referred to as "audit tips" and provided anecdotal stories.

Chairman Mills had an opportunity to speak and requested that the following be placed in the minutes of the meeting even though it is not directly related to Mr. McCall's presentation. Chairman Mills referenced Act 723 (HB 673) of the 2022 Regular Session which amended La R.S. 42:17.2(A) so that the council could meet by electronic means. The bill (HB 673) was amended in the Senate Health & Welfare Committee and agreed upon by the author, Rep. Edmund Jordan, to permit the council to meet by electronic means which was passed unanimously in committee.

Chairman Mills then asked Mr. McCall, “what is the number of prescriptions that statistically an auditor should be looking at, if a pharmacy is in total compliance?” Mr. McCall explained it is difficult because of the different types of pharmacies. Mr. McCall explained that he has seen a number of 250 prescriptions audited or a certain percentage. Chairman Mills asked if there was a standardization among the PBM industry for audit practices. Mr. McCall replied, “it depends.” However, Mr. McCall stated there is not a standardization amongst the commercial realms of PBMs.

Chairman Mills then described 2 points he is hearing from pharmacists. The first, pharmacists are saying my time is precious and the Chairman inquired as to what is the industry position on providing an advanced list of prescriptions for audit so that the pharmacist can be prepared to discuss and if there are administrative errors, they could be adjusted and handled. Second, pharmacists are saying auditors are not briefed or proficient on Louisiana law.

Mr. McCall responded by providing anecdotal stories and incidences in which he has been involved from a CVS Caremark perspective. Mr. McCall explained that the challenges of providing an advanced list of prescriptions for audit is the absence having an “indelible record of what happened” in a software package. Pharmacists may be tempted to make changes to avoid a potential charge back by altering the system. With respect to auditors not being proficient on Louisiana law, Mr. McCall agreed that auditors should understand the various laws in play when entering a state.

Chairman Mills expressed a desire for a standardization of auditing to help all involved.

Mr. Sonnier (AFL-CIO) asked Mr. McCall if the auditor conducting the audit is part of their in-house staff or a third party. Mr. McCall answered by stating CVS Caremark uses their own staff. However, he has heard of third-party vendors being used by others.

Ms. Wixson (LPA) commented by stating “every profession has bad apples” and she fully supports auditing the bad players. Ms. Wixson questioned a comment made by Mr. McCall that audit protocols are established by the plan sponsors. Mr. McCall stated that the number of audits conducted is set by the plan sponsors and Mr. McCall clarified the protocols are set by the auditing entity.

Ms. Wixson also questioned Mr. McCall on the use of precheck edits in real time and why would the PBM allow the pharmacy to fill an expensive medication that it expects would harm the patient and then continue to allow refills month after month. Mr. McCall explained that the plan sponsors make the decision on every reject.

Ms. Wixson also commented that each PBM has their own audit tips and they are different in their guidance. She referenced the calculated number of drops per milliliter for eye drops is different among PBMs.

Ms. Wixson asked Mr. McCall to clarify an earlier comment that PBMs are re-adjudicating claims without pharmacy knowledge. Mr. McCall stated a re-adjudication

would be with the pharmacy's knowledge or in a pharmacy neutral position. Rep. Huval (Chairman, House Committee on Insurance) questioned Mr. McCall in regards to establishing a number of prescriptions to audit. Mr. McCall explained it is difficult to establish a set number.

Rep. Huval also questioned Mr. McCall in regards to advanced notice to the pharmacist of prescriptions to be audited and the reason as to why it is a problem. Mr. McCall explained that a pharmacist could correct an error retrospectively, which could be a felony, and that is why indelible records would be needed for an advanced notice.

Rep. Huval asked Mr. McCall if there would be an alternative to providing advanced notice and Mr. McCall responded by offering an education component to pharmacists and to eliminate the need for an audit with pre-edits.

Rep. Huval questioned Mr. McCall in regards to the auditors not being familiar with Louisiana laws. Mr. McCall stated, assigning auditors specific states, with knowledge of those states, solves the problem.

Mr. Randal Johnson (LIPA) expressed concerns with the impact on pharmacies and their businesses that these audits create and asked Mr. McCall for a solution to assist the pharmacists in saving time and being able provide the records needed for audit. Mr. McCall responded by stating that this money belongs to the plan sponsors, it is not for the pharmacy or Caremark, so there will always be a certain amount of audit. Mr. McCall stated that the pharmacies have a choice of participating in the Caremark network, they are not forced to participate. If they choose to participate, they must agree to the terms and conditions. Mr. McCall reinforced his earlier comments of utilizing an indelible record as a solution.

Mr. Johnson asked Mr. McCall a question in regards to a CVS Caremark \$2000 fee to pharmacies who are wanting to serve the Medicaid population. Mr. McCall was not aware and could not answer Mr. Johnson's question.

Mr. Johnson continued with a question on understanding why audits are performed on specifically expensive medications when patient safety was mentioned as a major reason for audits. Mr. McCall explained by stating CVS Caremark uses DUR rejects and DUR controls on all drugs. Mr. McCall went on to say, price is not totally independent of the audit process. Mr. McCall explained that pre-edits and training on expensive medications should assist on the front end with potential auditable claims. The discussion continued on this topic with examples of incidences provided by Mr. McCall.

Mr. Johnson had questions in regards to audits impacting the imposition of DIR fees and effective rate pricing on pharmacies. Mr. McCall responded that he does not deal with contracting. The discussion continued in regards to Med D audits and audits regarding fraud from the Caremark perspective.

Vice-Chairman Turner had a question for Mr. McCall in regards to the difference between what CVS Caremark views in the billing and what CVS Caremark finds with fraud, when entering a pharmacy. Mr. McCall explained certain fields of information

(e.g., directions, allergies, and pharmacist notes) are not transmitted and provided in billing. Mr. McCall continued to explain that when an auditor walks into a pharmacy, observations are noted in regards to whether the pharmacy is busy or not. On site audits can lead to a potential fraud referral.

Vice-Chairman Turner questioned whether area information is used to identify fraud. Mr. McCall provided his viewpoint with a description of occurrences

Mr. Jerrett Richter, an electronic participant in the meeting, asked the question - Who regulates an "auditor" in Louisiana? Is that defined? Mr. McCall explained, if there are issues with not following pharmacy audit laws, CVS Caremark is usually contacted by the Dept. of Insurance and they deal with that agency. Mr. McCall also stated, at times they are contacted by the attorney general's office.

7. Review of Rulemaking Activity

Members offered no discussion on this topic.

8. Calendar Notes

Vice-Chairman Turner provided the members with the four scheduled meeting dates in calendar year 2023 – January 11, April 12, July 12, and October 11.

Chairman Mills thanked the Dept. of Health for allowing the council to use their facility and technology for the meeting, as well as the Board of Pharmacy. Chairman Mills noted, if members needed reports from the Dept. of Insurance, he would be happy to make a request and provide the information to the members.

Mr. Johnson (LIPA) wanted the record to reflect how many people were in attendance electronically. Mr. Fontenot reported the numbers reflected up to 52 participants electronically.

9. Other Matters

Vice-Chairman Turner asked if there were any other matters for the council's consideration. Mr. Joshua Sonnier (AFL-CIO) asked the council to entertain a motion to request the Attorney General's office to render an opinion in regards to the open meetings law discussed earlier. The Chairman objected and stated it was very clear in the law he noted earlier. Mr. Sonnier acknowledged his understanding but wanted the Dept. of Insurance and the Attorney General's representatives to participate.

10. Adjourn

Having completed the tasks itemized on the posted agenda, with no further business pending before the council and without objection, Vice-Chairman Turner adjourned the meeting at approximately 1:21 p.m.