

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

April 21, 2022

1 A regular meeting of the council was held on Thursday, April 21, 2022 in the office of
2 the Louisiana Board of Pharmacy, located at 3388 Brentwood Drive in Baton Rouge,
3 Louisiana 70809.

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5 **1. Call to Order**

6 Mr. Jeffrey Zewe, Chair, called the meeting to order at 2:11 p.m.

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8 **2. Quorum Call**

9 Mr. Zewe asked Mr. Malcolm Broussard to call the roll of members to establish a
10 quorum.

11
12 **Members Present:**

13 Mr. Jeff Zewe (Dept. of Insurance)
14 Mr. Joseph Fontenot (La. Board of Pharmacy)
15 Ms. Chimene St. Amant (La. Attorney General)
16 Dr. Lisa Bayhi (La. Association of Nurse Practitioners)
17 Mr. Aurdie Bellard (La. Pharmacists Association)
18 Mr. Donelson Caffery (La. Independent Pharmacies Association)
19 Ms. Cheryl McCormick (La. Association of Health Plans)
20 Mr. Robert Rieger (Prime Therapeutics)
21 Ms. Diane Davidson (La. Business Group on Health)
22 Mr. Joshua Sonnier (Louisiana AFL-CIO)
23 Ms. Kristy Copeland (La. Association of Health Underwriters)

24
25 **Members Absent:**

26 La. State Board of Medical Examiners
27 La. Dept. of Justice, Public Protection Division
28 La. Dept. of Health
29 La. Academy of Physician Assistants
30 La. State Medical Society
31 National Association of Chain Drug Stores
32 Pharmaceutical Research & Manufacturers of America
33 La. Academy of Physician Assistants
34 La. Association of Business & Industry

35
36 **Staff Present:**

37 Mr. Malcolm Broussard (La. Board of Pharmacy)
38 Mr. Carlos Finalet (La. Board of Pharmacy)

39
40 **Guests Present:**

41 Mr. Matthew Cross (La. Independent Pharmacies Association)
42 Mr. Randal Johnson (La. Independent Pharmacies Association)
43 Ms. Cheryl Tolbert (La. Business Group on Health)

44
45 Mr. Broussard certified 11 of 20 members were present, constituting a quorum for the
46 conduct of official business.

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48

49 **3. Consideration of Minutes from Previous Meeting**

50 Mr. Zewe asked if there were any corrections to be made to the draft minutes of the
51 previous meeting on January 12, 2022 which had been circulated to the members. With
52 no corrections offered, Mr. Rieger moved to approve the draft minutes as presented.
53 The motion was adopted after a unanimous vote in the affirmative. Mr. Zewe declared
54 the minutes were approved as presented.

55

56 **4. Opportunity for Public Comment**

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

59

60 **5. Review of Industry Trends and Emerging Issues**

61 Mr. Zewe solicited information from the members about industry trends or emerging
62 issues other than those anticipated during the discussion on pending legislative
63 instruments. There were no member or public comments on this topic.

64

65 **6. Review of Rulemaking Activity**

66 Mr. Zewe asked Mr. Broussard if the Board of Pharmacy had any update on their
67 rulemaking activity related to PBMs. Mr. Broussard reviewed the current status of their
68 proposed rule change repealing the requirement for the inclusion of an audited financial
69 statement in the application for the initial issuance of the pharmacy benefit manager
70 permit. Mr. Rieger asked when that rule would become effective. Mr. Broussard replied
71 the Board would conduct a public hearing on May 27 to solicit public comments. Since
72 the Board must return to the Occupational Licensing Review Commission (OLRC) for
73 their second review of that proposed rule change and the OLRC meeting schedule had
74 not yet been announced, Mr. Broussard indicated he was not in a position to know the
75 effective date of the rule change at that time but estimated a summer effective date.

76 Mr. Zewe reported the Dept. of Insurance was engaged in rulemaking relative to
77 pharmacy services administrative organizations (PSAOs) as directed by Act 192 of the
78 2021 Legislature. He reported the department issued a request for information the
79 previous fall; there were three replies to that request. The department used that
80 information to draft proposed rules. The department received four comments during the
81 public hearing on the notice of intent. Mr. Zewe indicated the department was still
82 evaluating the comments and did not yet have a proposed timeline for the completion of
83 the promulgation process.

84

85 **7. Review of Potential Legislation**

86 Mr. Zewe directed the members to copies of five legislative instruments in their meeting
87 packet – SB 32, HB 595, HB 673, HB 939, and SB 99. He asked if any of the members
88 wanted to discuss any other bills but none were requested.

- 89
- 90 • SB 32 (F. Mills) cleared the Senate on April 11 and was pending at the House
91 Committee on Insurance. Mr. Zewe indicated the bill sought to amend Title 22
92 with respect to pharmacy audits, limiting the number of prescriptions to be
93 audited to 100 per year except for investigations of fraud, waste or abuse, and
94 requiring advance notice to the pharmacy of the prescriptions to be audited.

95 Mr. Sonnier expressed his frustration with the lack of an opportunity to
96 discuss elements to this legislation prior to its filing, something the council
members repeatedly requested since the October 2021 meeting. Mr. Zewe

97 noted the bill was prefiled on February 11 and recalled Mr. Caffery's comment
98 during the council's January 2022 meeting that LIPA did not have any proposed
99 legislation at that time. Mr. Caffery responded that LIPA did not discuss the
100 elements of SB 32 with Sen. Mills prior to its pre-filing and they were not aware it
101 would be pre-filed.

102 Mr. Zewe raised the issue of a finite number of prescriptions to be audited
103 and the selection of the number 100. Some council members suggested such
104 limits provide a competitive advantage to larger pharmacies and questioned why
105 LIPA would support that limit. Mr. Caffery replied LIPA was more concerned for
106 its small member pharmacies than the larger pharmacies. Some council
107 members suggested a percentage limit would be preferable to a fixed number
108 limit. Dr. Bayhi suggested an alternative that would use a tiered approach, using
109 a specific number to be audited within a certain number of prescriptions filled,
110 with a higher number to be audited for a larger number of prescriptions filled, with
111 several tiers possible.

112 Mr. Rieger indicated his client was contemplating a potential amendment
113 replacing the fixed number limit with a percentage limit.

- 114 • HB 595 (C. Turner) was on the April 19 agenda for the House Committee on
115 Insurance but it was not considered. Mr. Zewe indicated the bill sought to amend
116 Title 22 with respect to the required notice issued to policyholders with
117 prescriptions affected by spread pricing to require additional information to be
118 included in such notices.

119 Mr. Sonnier expressed his concern for the elimination of spread pricing
120 and the adverse economic impact on his client. Mr. Zewe clarified the bill does
121 not eliminate spread pricing, but rather requires additional information to be
122 included in the notice to policyholders about spread pricing. Mr. Rieger noted the
123 bill requires such information to be provided for each prescription, presumably on
124 the remittance advice. He cautioned that some of the information requested may
125 not be available in real time but could be provided retrospectively on perhaps an
126 annual notice.

127 Mr. Zewe observed the author was perhaps more interested in
128 transparency and less interested in the timing of that transparency and
129 suggested an amendment to that effect might be appropriate.

- 130 • HB 673 (E. Jordan) had not yet been considered by the House Committee on
131 Health & Welfare. Mr. Zewe indicated the bill sought to amend Title 40 relative to
132 the composition of the PBM Monitoring Advisory Council by adding the governor
133 to the membership of the council.

134 Mr. Rieger indicated the addition of the governor was offered to raise the
135 membership of the council to an odd number to prevent a potential tie vote on
136 any motion considered by the council. He also indicated a potential amendment
137 to the effect of requiring any legislation relative to PBMs introduced for
138 consideration to have been previously reviewed by the council, and he requested
139 the members' reaction to that concept. Several members indicated the current
140 law authorizes such discussion by the council and directs the council to advise
141 the legislature on such matters.

- 142 • HB 939 (R. Owen) had not yet been considered by the House Committee on
143 Insurance. Mr. Zewe indicated the bill sought to amend Title 22 with respect to
144 prior authorizations used by health insurers, to prohibit a PBM from requiring a

145 prior authorization for generic drugs with an exception relative to quantity limits of
146 generic drugs.

147 Mr. Rieger expressed his client's concern for the negative economic
148 impact of such prohibition. Mr. Sonnier indicated his client would also oppose
149 the bill for same concern for the removal of economic savings associated with the
150 use of prior authorizations.

- 151 • SB 99 (F. Mills) had cleared the Senate and referred the previous day to the
152 House Committee on Health & Welfare. Mr. Zewe indicated the bill sought to
153 amend Title 40 with respect to the PBM Licensing Law, to change the provision
154 indicating a PBM "may" obtain a license from the Board of Pharmacy if it
155 engages in the practice of pharmacy as defined in that law to instead indicate a
156 PBM "shall" obtain a license from the Board if it engages in that practice.

157 Mr. Rieger expressed his client's opposition to the bill based on the lack of
158 PBM representation on the Board of Pharmacy as well as the antitrust
159 implications. He indicated his client was considering a potential amendment that
160 would move enforcement actions from the Board of Pharmacy to the Dept. of
161 Insurance and moving the administrative hearing process from the Board of
162 Pharmacy to the Div. of Administrative Law.

163 Mr. Broussard reminded the council the Board did not seek the 2019
164 legislation which enacted the PBM Licensing Law. The legislature directed the
165 Board to implement a licensing regime. In response, the Board completed the
166 rulemaking process and initiated the licensing program. Of the approximately 40
167 PBMs active in the state, only a dozen or so had obtained permits from the
168 Board, with others citing the "may" language in the law. The Board determined it
169 appropriate to seek clarification from the legislature on whether it intended the
170 Board to license and regulate a voluntary program or a mandatory program of
171 PBM regulation.

172
173 Mr. Zewe noted Mr. Broussard's scheduled retirement from the Board on June 30, 2022
174 and expressed his appreciation to Mr. Broussard for his assistance with the council's
175 administration. Several other members expressed their appreciation to Mr. Broussard
176 as well.

177
178 Mr. Sonnier moved, and Mr. Rieger seconded, for the council to send a letter to every
179 senator and representative in the Louisiana Legislature reminding them of the PBM
180 Licensing Law, with the transmittal of the letter to include a copy of that law. There
181 were no objections to the motion, and Mr. Zewe indicated he would send that letter in
182 his role as Council Chair.

183
184 Mr. Sonnier moved, and Mr. Rieger seconded, to invite drafters and legislative sponsors
185 of legislation relative to PBMs to meet with the council to review such legislation prior to
186 its consideration by the legislature. Due to unanswered questions about the motion
187 relative to the inclusion of current or anticipated legislation, identification of specific
188 persons and other issues, Mr. Sonnier asked to table his motion. Without objection to
189 that request, Mr. Zewe ruled the motion was tabled.

190 191 *8. Calendar Notes*

192 Mr. Zewe reminded the members of the remaining scheduled meeting dates for

193 Calendar Year 2022 – July 13, and October 12.

194

195 **9. Other Matters**

196 Mr. Zewe asked if there were any other matters for the council's consideration that day.

197 There were no member or public comments.

198

199 **10. Adjourn**

200 Having completed the tasks itemized on the posted agenda, with no further business

201 pending before the council and without objection, Mr. Zewe adjourned the meeting at

202 3:37 p.m.

203

204 *Minutes prepared by Malcolm Broussard, La. Board of Pharmacy.*