

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 & Welfare
Chair, Senate Committee on Health & Welfare

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 6, 2023

A regular meeting of the council was held on Thursday, April 6, 2023 in the Poydras Hearing Room at the Louisiana Department of Insurance (LDI), located at 1702 North Third Street in Baton Rouge, Louisiana 70802.

1. *Call to Order*

Chairman Mills called the meeting to order at approximately 10:06 AM.

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. Joe Fontenot (For the President, Louisiana Board of Pharmacy)
Mr. D. Jeddie Smith, Jr. (For the Louisiana Attorney General)
Mr. Michael Dupree (Director, Public Protection Division of the DOJ)
Ms. E. Sue Fontenot (For the Secretary, Louisiana Dept. of Health) *
Dr. Lisa Bayhi (For the President, La. Association of Nurse Practitioners) *
Mr. Ricky Guidry (President, Louisiana Pharmacists Association) *
Mr. Randal Johnson (President, La. 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. Joshua Sonnier (For the President, Louisiana AFL-CIO)
Mr. Jack Duvernay (For the President, La. Assoc. of Health Underwriters) *
Ms. Tara LeBlanc (For the Governor)
Rep. Mike Huval (Chairman, House Committee on Insurance)
Rep. Chris Turner (For the Chairman, House Committee on Health & Welfare)
Sen. Fred H. Mills, Jr. (Chairman, Senate Committee on Health & Welfare)
(* - participated by electronic means)

Members Absent:

The President of the Louisiana State Board of Medical Examiners
The President of the Louisiana State Medical Society
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:

Christine Peck – Louisiana Senate
Crystal Carter – Louisiana Pharmacists Association
Matthew Cross – Louisiana Independent Pharmacies Association
Cheryl Tolbert – Louisiana Business Group on Health
Rachel Farmer – Cornerstone Government Affairs
MaryBeth Wilkerson – Adams & Reese
Crystal Lewis – Louisiana Department of Insurance
Sarah Perkins – Breazeale, Sachse & Wilson
Kenneth Lacoste – Blue Cross Blue Shield of Louisiana
David Lavergne – Blue Cross Blue Shield of Louisiana
Bud Courson – Courson Nickel
Nina S. Hunter – Louisiana Department of Insurance
Nathan Strebeck – Louisiana Department of Insurance
Alyson Michener – Louisiana Attorney General
Katherine I. Funk – Baker Donelson – Presenter *
(* - participated by electronic means)

Mr. Fontenot certified 19 of 25 members were present, constituting a quorum for the conduct of official business.

Chairman Mills asked about public comments for the meeting. Mr. Fontenot explained the posted agenda provides an opportunity for public comment both prior to and during the meeting. The deadline for receiving comments electronically through email prior to the meeting was 4:00 p.m. on Wednesday, April 5, 2023 and no comments were received. During the meeting there will be another opportunity for public comment under agenda item 4 and for every item requiring a vote of the members.

Chairman Mills requested authority to re-order the agenda with no objections noted.

5. Review of Industry Trends and Emerging Issues

Chairman Mills referred to the handout provided at the last meeting entitled “*Vertical Business Relationships Among Insurers, PBMs, Specialty Pharmacies, Retail Pharmacies, Mail-Order Pharmacies and Providers, 2022*” and he offered additional copies to the members.

Chairman Mills then presented Ms. Katherine I. Funk with Baker Donelson who represents the National Community Pharmacy Association (NCPA) as outside counsel and antitrust expert. Ms. Funk then began her presentation regarding the impact of vertical integration referenced by Chairman Mills in the attached handout.

Ms. Funk reviewed the relationships of the entities identified in each column of the handout and the impact of those relationships upon community pharmacies and the communities they serve.

Chairman Mills opened the floor to questions.

Ms. Diane Davidson (La. Business Group on Health) commented on the issue of an employer wanting to select an outside PBM from the vertical relationship of the insurer which results in a significant penalty being charged which impacts the employer.

Mr. Jack Duvernay (La. Association of Health Underwriters) provided a follow up to Ms. Davidson's comment and asked Ms. Funk if she was aware of any states with laws which would prevent insurers from charging penalties for carving out and selecting their own PBM. Ms. Funk was not aware of any such laws.

Chairman Mills asked Ms. Funk to provide an overview of federal level activities over the next few years regarding NCPA, the insurers, and PBMs.

Ms. Funk stated in June 2022, the Federal Trade Commission (FTC) issued a "6B study" for the FTC to engage in industry studies. Subpoenas were issued to PBMs for information regarding business practices – specifically, in regards to contracting and rebates. Unfortunately, collecting the information to perform the study is not occurring in a timely manner which prevents production of a report, despite a request for an expedited report from congress.

Ms. Funk also mentioned the occurrence of Senate hearings on PBMs. A topic discussed in the hearings included PBMs creating Group Purchasing Organizations (GPOs) with companies overseas creating a middleman, a shell game. Theories regarding the creation of GPOs include a mechanism to shield scrutiny of manufacturer rebates. Ms. Funk mentioned, we are talking about PBMs today but she believes in the next few years we will be looking at GPOs and their role in the supply chain.

Mr. Randal Johnson (La. Independent Pharmacies Association) requested an explanation of how the GPOs are working in the PBM space.

Ms. Funk explained, in theory, the space where a PBM would traditionally negotiate with the manufacturer for a rebate, will be replaced by the GPO. Instead of a rebate being incurred by the PBM, it will now be an administrative fee for the GPO. The rebate which is required to be passed down to the customer or sponsor will no longer exist, it will now be an administrative fee which has no such requirement. It is essentially adding an additional layer to shield the flow of funds from scrutiny.

Mr. Joshua Sonnier (La. AFL-CIO) asked if the pharmacy could purchase the drug directly from the manufacturer. Ms. Funk explained it depends on the size of the pharmacy, but most pharmacies purchase from a wholesaler.

There were no additional questions and Chairman Mills thanked Ms. Funk for her presentation.

3. Consideration of Minutes from Previous Meeting

Chairman Mills asked for a motion to accept the draft minutes of the previous meeting held on January 11, 2023. A motion was offered, Mr. Randal Johnson seconded the motion, and the motion was adopted after a unanimous vote of the remaining members in the affirmative declaring the minutes approved as presented.

4. Opportunity for Public Comment

Chairman Mills solicited general public comments; there were none.

6. Review of Legislation

- Mr. Randal Johnson (LIPA) reviewed HB 529 by Representative Rick Edmond.
- Mr. Frank Opelka (LDI) reviewed HB 190 by Representative Paul Hollis.
- Chairman Mills and Mr. Rieger reviewed SB 171 and responded to member questions regarding the bill.

7. Review of Rulemaking Activity

- Mr. Fontenot informed the members that the Board of Pharmacy continues to make progress in regards to Regulatory Project 2023-03 PBMs.
- Mr. Opelka had no rulemaking activities to note but he mentioned regulatory action LDI has taken against Express Scripts.

8. Calendar Notes

Mr. Fontenot reminded the council members that the 2 remaining scheduled meetings for calendar year 2023 are scheduled for July 12 and October 11 at 10:30 a.m.

9. Other Matters

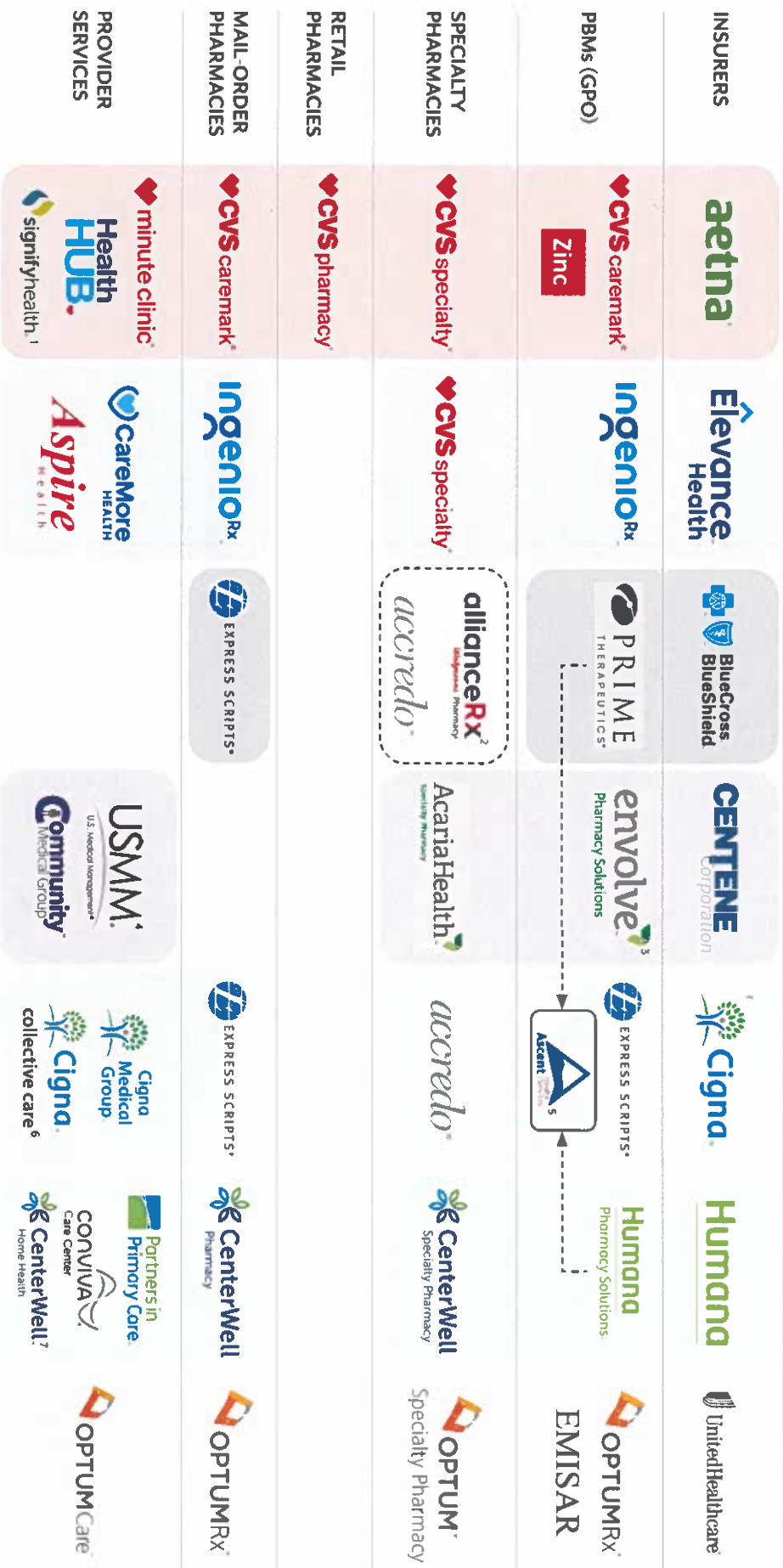
No other matters were discussed.

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 11:21 a.m.

Minutes prepared by Joe Fontenot, Executive Director, La. Board of Pharmacy. Minutes approved during subsequent meeting of the Council on July 12, 2023

Vertical Business Relationships Among Insurers, PBMs, Specialty Pharmacies, Retail Pharmacies, Mail-Order Pharmacies and Providers, 2022



1 In September 2022, CVS Health announced its acquisition of Signify Health. The transaction is expected to close in 2023.

2 Since January 2021, Prime's Blue Cross and Blue Shield plans have had the option to use Express Scripts or AllianceRx. Wolgreens Prime for mail and specialty pharmacy services. On Dec. 31, 2021, Wolgreens purchased Prime Therapeutics' 45% interest in AllianceRx. Wolgreens Prime, so this business has no PBM ownership in 2022. Effective June 2022, the company has been known as AllianceRx Wolgreens Pharmacy.

3 In 2021, Centene has announced its intention to consolidate all PBM operations onto a single platform and outsource its PBM operations to an external company.

4 In 2021, Centene sold a majority stake in its U.S. Medical Management to a group of private equity firms.

5 Since 2020, Prime has sourced formulary rebates via Ascend Health Services. In 2021, Humana began sourcing formulary rebates via Ascend Health Services for its commercial plans.

6 Cigna also partners with providers via its Cigna Collaborative Care program.

7 In 2022, Humana announced an agreement to divest its majority interest in Kindred at Home's Hospice and Personal Care Divisions to Clayton, Dubilier & Rice. In 2022, Kindred at Home was rebranded as CenterWell Home Health.

Sources: Drug Channels Institute research and Nepron. Companies are listed alphabetically by insurer name.