

# Louisiana Independent Pharmacies Association

## What's New and What to Watch

### LIPA Newsletter:

Bringing you the latest news and information concerning independent pharmacies and the profession at-large....



### Dates to Know:

**May 25th – FTC Comment Period on PBMs Ends**

**June 6 — Legislative Session Adjourns No Later Than 6 PM**

**June 30—Medicaid Provider Re-enrollment Deadline (Pending CMS Approval)**

**July 7-9 — LPA Conference, Biloxi, MS**

As we pass the mid-way point of the 2022 Regular Legislative Session, legislators are beginning to see the light at the end of the tunnel. Instruments are moving to opposite chambers and are being heard in committee. This brings a new dynamic to the legislature as legislators are occasionally in unfamiliar territory in the opposite chamber. As always, past success may not be indicative of similar results in the future.

Déjà vu? Does everything old become new, again? [House Bill 681](#) by House Speaker Clay Schexnayder—a centralized sales tax collection bill—will be debated in the Senate after the House unanimously advanced an amended version which removes the concerns of local government. In November of 2021, Louisiana voters said no to a new method of sales tax collection, but members of the House want to give voters another shot at reform. If the proposed constitutional amendment is successful, voters will see revised ballot language that is easier to understand for the upcoming statewide election on November 8, 2022. We are sure PBM-owned mail order pharmacies have enjoyed the five and a half or so percent increase they have received in revenue by avoiding paying the local and municipal tax on prescription drugs.

Other hot topics of interest this week included a renewed bid to [ban forms of corporal punishment](#) in public schools, a [repeal](#) of the “Raise the Age” law that keeps 17-year-olds from being sent to adult prisons, and measures that overhaul the state’s DUI laws, including efforts to [expand the use of interlock devices](#). The aforementioned were all moved favorably from their respective committees and will advance to the next phase in the legislative process. Speaking of health care... vaccine and marijuana bills continue to dominate committee work. Another lengthy debate that made headlines this week was a proposal [to allow for surgical castration](#) of certain convicted sex offenders in Louisiana. This bill was voluntarily shelved by its author, Senator Regina Barrow, who announced her intent to file a study resolution.

Another surprising resignation rocked the political class this week—this time from inside the White House. Former Louisiana Congressman Cedric Richmond left his congressional seat to join the Biden Administration as a Senior Advisor to the President and Director of the Office of Public Engagement. [Richmond announced](#) he will be leaving that role to work as a political operative in partnership with the Democratic National Committee and to serve as a surrogate for the Biden Administration.

Stay tuned for Monday May 2<sup>nd</sup>, when [House Bill 1](#), the budget, will hear public comment in Senate Finance at 9:00 am.

### **Certain Pharmacists (as Well as Pharmacies) Must Re-enroll in Medicaid by 6/30**

Last week, LIPA received from LDH the list of nearly 1,700 Pharmacists enrolled in Medicaid as a “prescriber only” who had not yet initiated the required Medicaid re-enrollment through the online portal. Since 2009, providers—including prescribers—who “order, prescribe, or refer” must enroll in Louisiana Medicaid for the service—such as immunizations—to be payable by Medicaid. Recall that a significant use of the pharmacist as a prescriber is related to vaccination and the pharmacist issuing the dispensing order in addition to or as the prescriber for the immunizer.

Gainwell has mailed multiple letters to pharmacists but those “invitation” letters went to the mailing address on file and in many cases, the pharmacist is no longer at that address. The LIPA Team has begun reaching out by e-mail, phone, text, or DM to pharmacists on the list who are practicing in independent pharmacies to make them aware of the need to re-enroll by the June 30<sup>th</sup> deadline. The critical information needed to re-enroll is the Medicaid Provider ID # and NPI along with city, state, and zip on the Medicaid file. These data elements are on the file we received from Medicaid, and we can share with pharmacists so that they can complete the re-enrollment process. You can view the list containing active pharmacist OPR (Order, Prescribe, Refer) providers shown as still pending by Gainwell as of 4/18/22 [here](#). If the Enrollment Effective Date (Column G on spreadsheet) is after 6/30/21, you will receive an invitation to complete your re-enrollment via the Medicaid online portal [at a later date](#).

Do you have questions about your Medicaid Provider Re-enrollment Status? LIPA can confirm pharmacies and pharmacists that are listed as pending as of mid-April. You can check your status by e-mailing (please include NPI and/or Medicaid Provider #) to [kennedy@lipa.org](mailto:kennedy@lipa.org).

### **State Chief Procurement Officer Issues Decision on United’s Medicaid MCO Award Protest**

The Office of State Procurement issued a ruling on UnitedHealthcare Community’s Plan’s protest of the Medicaid MCO contract awards last Friday, April 22<sup>nd</sup>. The previously announced awards were **rescinded** and proposal evaluation was remanded back to LDH because they used two different evaluation teams to score the proposals. LDH’s stated reason for doing so was that they had concerns about the findings of the first Evaluation Team so they restarted the process. The Department was directed by OSP to have the first Evaluation Team review the proposals again and submit the results within a month (no later than May 20<sup>th</sup>).

### **Louisiana Medicaid Members Can Get **\$200** Gift Cards for First & Second Doses of COVID Vaccine**

LDH has indicated that up to 100,000 Medicaid enrollees ages 5 and older can receive a **\$200** VISA gift card through their Medicaid MCO if they get the COVID-19 vaccine (first or second dose but not booster dose) on or after 4/5/22. This program is available to Medicaid members who

are 5 years of age or older. MCO [Contract Amendment # 10](#) requires the MCOs to administer the program, for which they receive a 9% administrative fee. Medicaid enrollees can receive the COVID vaccine from any provider and do not need to take any special action to request the gift card. No action is needed by the provider other than to input the vaccine information in LINKS and submit a claim for the vaccine administration fee to the Medicaid MCO. The MCOs are contractually required to send out the gift cards within five days of establishing eligibility (which is done through claims and LINKS files that the MCOs get from LDH). The LDH website for the initiative is [www.ldh.la.gov/vaccinegiftcard](http://www.ldh.la.gov/vaccinegiftcard)

### **OGB's Contract with Express Scripts Continues to Raise Questions**

Four months into 2022, LIPA pharmacies continue to realize the adverse impact to their business and losses experienced when filling prescriptions for Louisiana OGB retirees, active employees, and dependents. Through painstaking review of Remittance Advices and setting up computer systems to calculate eventual DIR fees that will be clawed back, it has become evident that for some OGB plans, pharmacies are losing money when they fill not just brand but generic prescriptions as well.

With OGB plan members in every parish, we know some pharmacies have a greater share and are therefore taking a bigger “hit.” LIPA has a lengthy list of questions that our members have asked and that we are working to get answered but we are still working to identify the questions you have. Transparency is important and OGB members are enrolled in multiple pharmacy benefit plans including **different** Express Scripts plans—and reimbursement policies-- for retirees with Medicare and retirees without Medicare.

While enrollees and pharmacy providers need relief and reasonable reimbursement policies now, OGB will be making decisions that impact PBM services for 2023 as the current contract with Express Scripts expires 12/31/22. How OGB pharmacy benefits are structured and paid for in 2023 will be decided long before the New Year begins. LIPA is closely monitoring the actions taken by the state government and will continue to provide feedback in an effort to avoid a repeat of what we are seeing in 2022. Access is a very real concern as we are seeing evidence that chain pharmacies are summarily refusing to fill scripts when reimbursement is below cost, and patients are being referred to independent pharmacies. Failure to reimburse even the full acquisition cost of prescription meds is an unfair business practice that cannot be allowed to continue.

### **Express Scripts Violations of Louisiana Law Appear to Continue Unabated**

We continue to see blatant violations of Louisiana law when it comes to information on Remittance Advices (RAs) and even prompt payment. This week we reviewed RAs with one pharmacy and established a clear pattern that RAs were consistently being issued to them eight days prior to the direct deposit (payment) date. The actual payment was not within the 15-day prompt pay window for claims.

The one recourse that pharmacies have in such situations is to file [complaints](#) with the Louisiana Department of Insurance and there is strength in numbers. LIPA is asking all member pharmacies to send us **every** remittance advice from ExpressScripts (with PHI redacted) that you have received in the calendar year 2022. We have already met with Louisiana Department of Insurance Commissioner Jim Donelon to get these violations on his radar screen but we need to document and show that this is not just a “one off” but a pervasive problem that impacts hundreds of pharmacies. ExpressScripts can be fined up to one thousand dollars for each and every violation,

and if ESI knew or reasonably should have known it was in violation, they can be fined up to twenty-five thousand dollars per occurrence. The Commissioner can even suspend or revoke their certificate of authority to operate in Louisiana. Speak with us about what is needed from your remittance advice and what needs to be redacted to present to the OGB Executive Director and Commissioner.

### [Letter to Commissioner Donelon of LDI](#)

## **Regulatory Revision Committee Updates**

Members of your LIPA team attended the Louisiana Board of Pharmacy's Regulatory Revision Committee on Wednesday to hear several new proposals and keep members informed on any changes. The committee reviewed several regulatory proposals that could directly affect pharmacies state-wide.

*Request to incorporate interim policy PPM.I.D.12 ~ COVID-19 Public Health Emergency: Flexible Staffing Ratios into Board rules—*

[PPM\\_I.D.12\\_FlexibleStaffingRatios\\_2021-1117.pdf](#)

In response to the COVID-19 pandemic, the Board initiated a rule waiver to give pharmacists staffing flexibility by adjusting the ratios of different categories of personnel as long as the current maximum of four licensed persons is maintained. The committee's discussion this week was on how the Board should proceed after the waiver is terminated in December of 2022.

Some committee members believe the PIC should decide how to staff their pharmacies and that the staffing ratio must be adjusted to address the current pharmacy technician shortage. Other members of the committee stated that more technicians are not always better, and that more pharmacists are needed to relieve workload concerns. The committee decided to draft language to make the rule waiver permanent but did not move to make any other changes. There is no question that the pandemic directly impacted the practice of pharmacy; however, putting the pharmacist in charge of more technicians could detract from the value of pharmacy by taking time away from patient counsel.

*Request for interim policy relative to the temporary closure of pharmacies:*

[RegProp2022-L\\_TemporaryClosure\\_Draft1.pdf](#)

Proposal 2022-L deals with the Pharmacist Absence subsection of Louisiana Administrative Code Title 46 – Professional and Occupational Standards Part LIII.

*“Prescriptions prepared for delivery to the patient may be placed in a secured area, adjoining the secured prescription department, where access to the prescriptions is restricted to individuals designated by the pharmacist-in-charge. Prescriptions may be transferred to the patient when the pharmacist is not on duty with the approval of the pharmacist-in-charge. The pharmacist-in-charge shall be responsible for the implementation of policies and procedures to address the secured area which shall include but is not limited to access, delivery to the patient, storage, patient confidentiality, record keeping, and counseling.”*

The proposed language intends to increase patient access, while addressing chain pharmacy concerns of COVID-19 causing pharmacy closures. Patient access is a crucial aspect of patient care, but many of these concerns could be alleviated by employing an adequate number of

pharmacists and not just treating them as a commodity. As independent pharmacies, you all understand the tremendous value of consulting with patients when they come into your store. Patient consultation is not a skill that technicians are educated or trained for and are prohibited from engaging in.

### **The PBM Audits Keep Coming**

We heard from additional member pharmacies this week that they have received requests from Express Scripts for 24 months of claims for an onsite audit. This violates Louisiana state law, because of information provided by ESI in their own Pharmacy Provider Records. According to these records, a pharmacy can submit a claim for up to 365 days after the point of adjudication, which then limits ESI to the same window for reviews or audits.

RS 22:1860 and 22:1856.1 are the primary audit laws in Louisiana, however LIPA incorporates the entire pharmacy practice act and insurance code to review audits by PBMs or their third-party auditors. LIPA stands ready to assist on audits from PBMs. You can reach us at our office at (225) 308-2030 or by emailing [legal@lipa.org](mailto:legal@lipa.org)

**LIPA is available and willing to partner with you to aid in any way that we can. Let LIPA know immediately if you receive advance notice of an audit, and we will be happy to assist you or answer any questions you may have.**

Legislation that was passed unanimously out of Senate Health & Welfare would clarify the audit process in response to changing practices through the COVID-19 pandemic. [SB 32](#) by Senator Fred Mills recognizes the amount of time these audits take away from the pharmacist being behind the counter. It is important to note that this bill does **not** prevent, limit, or impact fraud and abuse audits. Instead, it offers transparency to the process by requiring the PBM to notify the Department of Insurance when it is suspected. SB 32 is currently pending the House Insurance Committee and we will update you when it is put on the agenda.

### **Services Available to Pharmacies to Increase DIR Fee Transparency at Point of Sale**

We have received feedback from a number of LIPA members on the value and benefit they are seeing through DIR fee consulting services arranged for with Benjamin Jolley. You can view the services offered—and book without even needing to place a phone call at [this link](#). Among the consulting services Ben offers are:

- A half-hour call in which Ben will walk you through inputting DIR fee estimation into your pharmacy software. He will discuss how you want each fee programmed and methods to ensure accurate estimation. The fee is \$200.
- A half-hour follow-up call to discuss software settings, pulling data out of e-scripts, how to use DIR estimators beyond the basics, etc. The fee is \$200 for this call as well.

Here is a sampling of recent feedback posted in the LIPA *GroupMe* Business Practices chat group from LIPA pharmacies who have arranged for DIR fee-related consulting from Mr. Jolley:

*“It is truly amazing how knowledgeable he is about all of this. I probably understand 5% of what he is talking about. He programs each plan in there with a specific code so he knows what he is dealing with, and it is not just “secure horizons” for the plan name, or whatever. He goes into each patient and flags if they’re low-income subsidy eligible (many in LA are and they can change*

*up to 3 times a year, not just during open enrollment). He then goes to the Medicare website for specific parish/county to identify the number of plan participants in that area. He renegotiated contracts directly with part d plans because he showed them he has 10% of their customers and would move them all to a different plan. He runs specific reports on profitability of plans in his computer to identify areas where he could switch them and make his store way more profitable.”*  
-TJ Woodard, Prescriptions to Geaux; Baton Rouge

*“After Jolley did my DIR fee schedule, I had PioneerRx make a space on rx label to show DIR fees when Rx is filled so do not have to look back in computer screen for it. In less than a month I already have saved enough to pay his fee and not pay DIR to PBM! Was one of best things I’ve done to help combat DIR.”*-Pat Boggs, Kelly Pharmacy; Plain Dealing

### **National Spotlight Has Been on Paxlovid This Week**

The Administration’s efforts to create more awareness of Paxlovid got a boost this week when Vice President Harris tested positive for COVID and was prescribed Paxlovid, the oral antiviral that has been shown to reduce hospitalizations and deaths from COVID by almost 90%. The federal government [announced](#) on April 26 that they have acquired an additional twenty million doses. The White House now describes the supply of Paxlovid as “ample” and according to NPR, *a new campaign aims to double the number of places the pills are available in the coming weeks by allowing tens of thousands of pharmacy locations to order the treatment directly from the federal government.*

In the meantime, pharmacies already enrolled in HPOP to receive Paxlovid should place their orders directly.

- There will no longer be a request for an allocation by the state.
- Instead, each site will log into HPOP and request the products needed for the week. Refer to page 6 of [HPOP Provider Manual](#) for complete instructions.
- OPH Pharmacy Services Director Leah Michael will then review and process the requests. Please complete your requests by noon each Wednesday so that she has adequate time to review and process them.
- The quantity that you receive will depend on the state allocation and demand by all sites.

As previously noted, there has been an expiration date extension for Paxlovid to 10/31/22 or 11/30/22, depending on the Lot. Lot # FR9088’s expiration date is 11/30/22, while Lot #’s FL 4517, FL 4517 and FR 7229 expiration dates are now 10/31/22. Evusheld will likely have an expiration date extension as well.

Also, LDH requests that pharmacies with either Paxlovid or Evusheld in stock report on their inventory at least weekly in the online portal. Otherwise, you will not appear in the federal locator tool.

### **Share Your PBM Experiences with the FTC—It Can Make a Difference!**

A big shout out to our LIPA member, Miley Meds Pharmacy in Pearl River, for their written Comment submitted to the FTC regarding PBM business practices, which are characterized as “unjust” “anti-competitive” and “unethical at best.” You can read the full Comment [here](#). We suspect that 100% of our LIPA member pharmacies can share similar data, views, facts, or opinions about PBM business practices and how they impact patients and independent pharmacies. The FTC has **extended** the period for the public to provide Comments on PBM business practices with

the new deadline being May 25<sup>th</sup>. They have stated that they are interested in learning more about PBM contract terms, rebates, fees, pricing policies, steering methods, conflicts of interest, and consolidation practices and their impact on patients, physicians, employers, independent and chain pharmacies, and other businesses across the distribution system. Members of the public can comment on any issues or concerns they believe are relevant or appropriate for the agency's consideration by submitting written **data, views, facts, and opinions** addressing this subject.

You can view the Call for Comments that gives more detail on what the FTCs wants to hear from the public about [here](#). NCPA has created a [list](#) of some of the issues that independent pharmacies face. Note that it is not necessary to prepare and upload a formal letter to the FTC. In fact, we recommend that form letters **not** be sent, even if you do some personalization to it. You can just type (or cut/paste) comments directly into the [FTC Comments form](#).

### **AG Jeff Landry Files Suit Against OptumRx**

Last week, Attorney General Jeff Landry filed suit against OptumRx and UnitedHealthcare in the 19th Judicial District Court in Baton Rouge.

The medical loss ratio is at the heart of the case. The state alleges United counts artificially inflated payments to its wholly owned PBM, OptumRx, as an "expense" to satisfy its statutorily required medical loss ratio. The more these "expenses" are inflated, the greater the illicit profits for Optum and United.

This scheme exploits the secrecy of the drug supply chain and related costs, including rebates, reimbursements, and other payments, Louisiana Medicaid and Louisiana citizens needlessly pay inflated drug prices. In a statement, Randal Johnson, President of LIPA, said, "PBMs reap these unconscionable profits on the backs of Louisiana patients and taxpayers as a benefit of being an unregulated monopoly."

For more information, please view the lawsuit and a press release from the Attorney General's office, which are both linked below.

[Press Release - AGLandry 04142022\[72\].pdf](#)

[Signed Petition United-Optum.pdf](#)

### **Louisiana Medicaid Will Pay for COVID Vaccine Administration for Most Uninsured**

While the federal program that paid for vaccine administration for the uninsured no longer accepts claims, Louisiana Medicaid has a [COVID-19 program](#) that will pay for vaccine administration (as well as testing, treatment, and other services) if the primary diagnosis is COVID. The only people who are not eligible are those who are either undocumented, incarcerated or have other health insurance. There is no income or resource test.

People approved for this program will not receive a Medicaid ID card. Instead, the approval letter they receive is their proof of eligibility and contains the information you need for billing. Providers have the option of putting their address on the application form, and if they do so, they will receive a copy of the letter as well.

Eligibility is very easy to establish, beginning with the completion of a [simplified application](#), including the three months before the application month, and is good until the public health emergency ends.

You can find all the information you will need to help patients enroll and submit claims in the [program guide](#).

### **Updated LDH COVID Graphics**

The Louisiana Department of Health recently released a new set of COVID-19 resources, including FAQ sheets for the booster shots, pediatric-friendly infographics, and other posters to share on social media and on display. We encourage all our pharmacies to use these resources wherever they see fit. Click the link below to view the files and download them for your use.

[April 2022 Social Graphics](#)

### **Comments to LDI Regarding PBM/PSAO Regulation 122**

Several weeks ago, the Louisiana Department of Insurance (LDI) sent out a notice of intent to promulgate Regulation 122 – Roles and Responsibilities of Pharmacy Benefit Managers and Pharmacy Services.

This notice was required by law following the final passage of HB 244 Act 192 in the 2021 legislative session. LIPA supported the bill in its' original version and expressed our concerns when provisions were added that we believed would jeopardize LDI's ability to regulate effectively and address the issues the legislation intended to solve. This Act relieved the PSAO of acts defined as "solely within the purview" of the PBM and vice-versa. Conversely, we would not want to see the PBM avoid responsibility by alleging items or actions that were solely the responsibility of the PSAO. Essentially – we believe that there are more of the listed actions "solely" under the purview of the PSAO. We discussed the regulation with a number of members, who shared their own concerns, and submitted official comments to LDI last week.

[Reg. 122 Comments](#)

### **LIPA Relief Pharmacist and Technician Signup Form**

LIPA's Pharmacist Toolkit, which can be found on our [website](#), includes a relief pharmacy and technician spreadsheet that we are looking to populate with licensed pharmacists and certified pharmacy technicians interested in acting as relief pharmacists or as-needed staff. However, the list will only be accessible to LIPA members through the 'Member Library' section on the website. I have attached a link to the form below so that members can forward it to any contacts that may be interested in signing up. Again, our goal is to provide LIPA members with a roster of active relief pharmacists and technicians to use whenever they need them. The form will automatically populate the list on the site as soon as it is submitted. If you have any questions or information that you think we should add to the form, please email [cross@lipa.org](mailto:cross@lipa.org). There is also a template email linked below for you to forward as you please.

[Email Template](#)

### **NADAC Price File Watch –Publication Date 4.2722**

The Louisiana Medicaid ingredient cost component of pharmacy reimbursement is based on the NADAC published price. Brand name drugs for which the NADAC list price is **below cost** continues to be a major problem for our pharmacies. The problem—and losses—are exacerbated when coupled with the "brand over generic" requirements of the single Louisiana Medicaid PDL which continues to grow.

This week's NADAC Price Comparison Data shows a price increase for just **one** brand-name drug. The drug price increased by \$0.14366. The rate change was a result of a WAC Adjustment (change in WAC published prices) and is retroactive to April 15th.

### [Weekly NADAC Report](#)

#### [4.27.22 NADAC Comparison List](#)

NADAC represents the national average price paid by chain and independent pharmacies to acquire prescription-covered outpatient drugs, as determined by a monthly survey conducted by Myers & Stauffer for CMS. While the nature of an average is that some are reimbursed above cost, and some are reimbursed below cost, our concerns with Myers & Stauffer's NADAC price is that we are seeing increasing gaps between NADAC prices and the actual cost our pharmacies must pay. By filing appeals to Myers and Stauffer can bring to their attention—and the attention of other stakeholders—the discrepancy between the actual acquisition cost for Louisiana independent pharmacies and the national average.

**Our LIPA staff will file NADAC appeals to Myers & Stauffer on your behalf.** To do so, we need invoices for each drug and a spreadsheet of the drugs containing the information included on the Medicaid reimbursement form found [here](#). (*Excluding the “additional information” section*)

This week we received instructions for the Liberty system report. We have again attached the instructions for Pioneer users to create a report to run weekly along with information on how to best pull and send invoices. Please send all NADAC drug pricing spreadsheets and invoice emails to [appeals@lipa.org](mailto:appeals@lipa.org). Once we have received **both** the invoice and drug information spreadsheet, we will submit appeals as quickly as possible.

### [Pioneer System Instructions](#)

### [Liberty System Instruction](#)

We are still working to develop report criteria for other software systems to help pull the report needed for LIPA to file your NADAC appeals. If you are a pharmacist who uses a system other than Pioneer and would be willing to work with us to develop the report spreadsheet, please email [appeals@lipa.org](mailto:appeals@lipa.org) with your name, your pharmacy's name, and which system you use.

## **Have You Joined LIPA's Chat Groups for Members?**

LIPA hosts two different Chat Groups on the *GroupMe* smartphone application platform that we encourage members to join and participate in either or both. These chat groups were created to serve as a communication tool to facilitate rapid responses to your questions and for sharing with your peers. The two Chat Groups are:

- **Pharmacy Business Practices** This is the newer of the two groups and the focus is the general business of independent pharmacy.
- **LIPA COVID Vaccines/Therapeutics** The primary focus of this group is all things COVID-related including COVID vaccines, therapeutics, testing, and masks.

To join either group, simply send an e-mail to Danielle Hodge ([hodge@lipa.org](mailto:hodge@lipa.org)) with the name, pharmacy name, and cell # of the person to be added. The *GroupMe* application can be downloaded from the Application Store.