

# 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 22- Deadline for COVID Vaccine Providers to Verify DDL Thermometer to OPH**

**May 25 – 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**

### Calling All Pharmacists that Can Come to Capitol Tuesday 5/17 for House Insurance Committee Meeting

The House Insurance Committee is scheduled to hear Senate Bill 32 by Senator Fred Mills on Tuesday morning of next week (5/17). **We are asking as many of you as possible to come to the meeting to show support for Senator Mills, our patients and our profession.** You will also have the opportunity to testify in the committee to share your experiences with aggressive audits and how they affect patient care. We know that it may be difficult to step away from serving patients behind the counter, so if you are unable to attend the meeting you can always call or email the committee members using the contact info below. **SB 32** simplifies and adds transparency to the pharmacy audit process by:

- Clarifying one year as the maximum period of time after adjudication that a claim can be audited.
- Ensuring your pharmacy receives a comprehensive list of claims, capped at 100, to be audited.
- Clarifies that discrepancies from scribes' error, are not subject to recoupment.
- Limits onerous requirements of take-it-or-leave-it contracts.
- Requires the auditor to attest to their knowledge of Louisiana's laws prior to conducting an audit.
- **IMPORTANTLY**, SB 32 does **not** impair a fraud or abuse audit in any way.

To find other legislator's contact info you can visit [www.legis.la.gov](http://www.legis.la.gov) or download the "2022 PAR Guide" to the Legislature through your device's app store. You can also contact House members on the floor at (225) 342-6945. If you have any questions or concerns, don't hesitate to contact your LIPA team at (225) 308-2030.

## Week 9 Legislative Update

With under one month left in the 2022 Regular Session, the Legislature has started to move at a faster pace to ensure all business is concluded by the June 6th end date. The House Health and Welfare Committee met Tuesday morning and passed, as amended, [Senate Bills 83](#) and [99](#) by Senator Fred Mills. SB 83 creates a council on Medicaid Pharmacy Reimbursement within LDH and requires an enhanced payment and appeals process to cover the acquisition cost for prescription drugs in the Medicaid program; SB 99 clarifies that all PBMs must be licensed by the Board of Pharmacy. We saw an active discussion in the committee about the regulation of PBMs, particularly their activities that are considered the practice of pharmacy. These bills will move to the House floor, where they will wait to be scheduled for debate.

The House Health and Welfare Committee also met Wednesday morning, chaired by Representative Chris Turner, the Vice Chairman of the committee, to engage in the discussion of Pharmacy Benefit Manager business practices. LIPA staff attended the meeting where the committee heard testimony from several community pharmacists about the unfair and secretive business practices they have seen from PBMs. They also answered a plethora of questions from members about patient access, DIR fees, and reimbursement concerns. Representative Michael Echols suggested that a Joint Legislative PBM Oversight Committee may be necessary to address the issues preventing pharmacists from serving their patients.

We appreciate pharmacists who were able to attend and speak at the meeting and those who contacted legislators directly. Legislators expressed concern about the issues raised by pharmacists and are actively looking for ways to help \_\_\_ of the legislative session. We will continue to help them understand the severity of the situation, and we want to thank the Health & Welfare Committee for giving time to hear real experiences from Louisiana pharmacists about the everyday issues they face.

Louisiana has even deeper pockets after an additional [\\$454 million](#) in forecasted revenue was recognized by the Revenue Estimating Conference on Monday. As a result, lawmakers will have an extra \$350 million in the state general fund for the current fiscal year and \$104 million in the upcoming fiscal year to spend as they see fit. There is no shortage of proposals for how to spend those dollars—some include increased teacher pay raises, more state support for local law enforcement, and stowing money away for a new bridge over the Mississippi River near Baton Rouge. ‘Fiscal Hawks’ of the Legislature are leaning towards a more conservative spending approach, noting that the upcoming sunset of the temporary sales tax passed in 2018 would leave the state with a \$420 million shortfall if the tax is not extended past its expiration in 2025. It is rumored that the Senate will be prepared for the final passage of House Bill 1 by the end of next week—which would put the state budget on the Governor’s desk in time for the Legislature to override any vetoes in the budget and capital outlay bills. With a whole lotta money and a lot less time, lawmakers are in a crunch to pass a smart spending plan.

Another massive win for Louisiana was [announced](#) on Capitol Hill this week. Congresswoman Julia Letlow was appointed to the only open seat on the House Appropriations Committee—making two members of the Louisiana Delegation sit on the House and Senate budget-writing committees. Congresswoman Letlow is the first Louisiana representative to serve on the House committee since former Congressman Rodney Alexander left office in 2013.

Tensions were at a boiling point in anticipation of Rep. McCormick’s abortion bill on Thursday, when a suspicious package was reported at the Capitol a few minutes before the bill was set to be heard on the House Floor. The Capitol was evacuated, but the box reportedly belonged to a news crew member, who left the camera case unattended. The Senate decided to call it a week and adjourned shortly after, but to stay on track, they moved the Friday floor meeting to Sunday, May 15th at 5 pm. The House eventually returned to the chamber and finished the remaining agenda items. Since the House was able to stay on track, they will convene again on Monday the 16th at 1 pm.

## **Be Advised: PBMs Reimbursing Pharmacies with Mastercards**

We are aware Aetna is attempting to reimburse pharmacies for prescription claims via a prepaid Mastercard; Pharmacies should be aware that these cards come with a service fee ranging from 2-4% and should not be considered a legal tender for the purpose of reimbursing the pharmacy. Aetna provided the following number to call with questions: (877) 705-4230. We suggest that all pharmacies preemptively contact Aetna to ensure that you are reimbursed via check, ACH or any other form of payment that does not charge a transaction fee. It is important that we are all looking at accurate remittance advices with full information. Our remittance advice laws require the PBM to send you the remittance advice and payment without having to request it. Please contact the LIPA office if you have any questions.

## **A Good Week for Louisiana Independent Pharmacies**

We saw a number of positive developments impacting our members this week.

1. HB 99 was passed out of committee moving us closer to removing ambiguity in the current PBM licensing law.
2. The House Health & Welfare Committee expressed interest in assuming greater role in PBM oversight Fifth FTC Commissioner Alvaro Bedoya was confirmed by the Senate, increasing the likelihood that FTC will take meaningful action related to PBM unfair trade practices, which are under their jurisdiction.
3. Bold moves in sister states—Arkansas filed suit against insurers and PBMs relative to insulin prices and the Mississippi Board of Pharmacy assessed a whopping \$800K fine against Aetna.
4. In-depth analysis of CMS's DIR changes indicates that while not perfect, the requirements that will go into effect 1/1/24 are a "huge step forward."

## **Why Confirmation of Alvaro Bedoya as FTC Commissioner Matters to Indy Pharmacists**

Earlier this year, the FTC accepted written testimony and held a meeting to consider whether to "study" PBM business practices. Despite compelling testimony –both written testimony from hundreds of pharmacies, including LIPA members, and oral testimony given that day, the four confirmed FTC members split 2-2 as to whether to conduct a study and ask PBMs for more information, resulting in the issue being deferred. LIPA congratulates Alvaro Bedoya for the Senate's confirmation of his appointment to the FTC. We have had lengthy discussions with him related to your private data, as it is important to your health. Mr. Bedoya is interested in ensuring the transparency and privacy of your information. It's one thing to go online, buy a product and start seeing ads for similar companies because the web engine was able to sell your information to other competitors. It's a totally different situation when the drugs you take, and other medical info is sold out to these websites so PBMs can move you from your choice of pharmacy provider.

In his November 2021 nomination hearing before the Senate Commerce Committee, Bedoya endorsed prioritizing smaller competitors' ability to compete against larger incumbents. Nodding to Louisiana's independent pharmacies in his opening statement, Bedoya said, *"Small business owners struggling in the face of unprecedented consolidation. On this last point, I'll just give one example. We spend a lot of time with family in Louisiana. A lot of them are in health care. And they talk about how when a hurricane comes through, the last pharmacies to close and then the first to reopen, are independent pharmacies. These community pharmacies are critical to rural America and urban America. And yet it's precisely these pharmacies that are shutting down due to unprecedented consolidation."*

## **CMS Changes to DIR Fees: Not Perfect, But a HUGE Step Forward**

Our federal partner NCPA issued a six-page member summary of the Medicare Part D 2023 Final Rule. Their conclusion? While it is not perfect, it is a huge step forward. We urge you to read their summary that is well organized and includes the key wins that NCPA helped to secure, background, summaries of "The Good," "The Not So Good," "The Unknown" and "Miscellaneous."

For those interested in taking a "deeper dive," we will be paying attention to and invite you to attend a free webinar titled **NCPA's Take on the CMS Final Rule** on May 17th at 7 PM Central Time. You can register for the webinar [here](#). The discussion will include how the action taken by the Medicare Program relative to DIR fees affects your local pharmacy.

### **DOI Resolution of PBM Complaints**

Our vision for resolution of PBM-related complaints filed with the Louisiana Department of Insurance (LDI), Louisiana Board of Pharmacy, et al. includes conferring with the PBM or insurer to confirm or dispute facts, followed by the governing entity making an actual determination as to the validity of the complaint. If a violation of state law has in fact occurred, action needs to be taken, including an assessment of the maximum possible financial penalties, and requiring corrective measures. On Wednesday, May 11th, the Mississippi Board of Pharmacy hit Aetna with an \$800K fine--\$775K for operating a PBM without a license for 31 days at \$25 K per day plus \$25 K for just one count of patient steering.

While DOI voiced questions about their authority to regulate self-insured health plans during Wednesday's legislative committee hearing regarding PBM practices, there is no question or debate that LDI has the authority to enforce state laws for fully insured insurance plans in Louisiana. Daily violations of state law by PBMs can be documented for patients enrolled in fully insured plans with formal complaints filed. Prompt pay, remittance advice content, and patient steering are among the most obvious violations we see on a daily basis. In addition, Blue Cross [member ID cards](#) contain language indicating whether the health insurance plan is "fully insured" or an Administrative Services Only (ASO) self-insured plan in which the employer sets premiums and the insurer does not assume any financial risk.

LIPA is willing and able to assist you in filing PBM complaints with LDI in any manner you like. Please send us the context of the complaint, along with any relevant documentation, and we will draft a letter to the department on your behalf. The letter will formally list out each Louisiana law that is being violated and the corresponding complaint. You can also call the office at (225) 308-2030 to get started on a complaint. Your LIPA team is always available to help you in any way that we can; please reach out to the office if you have any questions or concerns.

### **Just Twelve Days Left to Share Your PBM Experiences with the FTC**

The FTC continues to receive Comments on PBM business practices through May 25. This week, 9 more [written comments](#) were posted on the FTC website. In skimming them, we did not identify any from Louisiana that we can share with you but here's the [link to a Comment](#) in the form of a multipage letter from the National Association of Community Health Centers (FQHCs) that makes dozens of excellent points. This letter and others make it clear that harm to providers and their patients as a result of PBM business practices goes far beyond pharmacy providers!

Have you submitted your comment yet? It can be a few sentences or multiple pages but it matters and it is critically important to get from the abstract to real world implications. You can best tell your story. The FTC indicated that they are interested in learning more about PBM **contract terms**, rebates, fees, pricing policies, **steering methods**, conflicts of interest, and consolidation practices. LIPA members are "subject matter experts" in all these areas. You can view the Call for Comments that gives more detail on what the FTCs wants to hear from the public about [here](#). 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](#).

### **Medicaid Drug Rebate Transparency Requirements in Federal Law**

Medicaid drug rebate information is an area in which we have almost **no** transparency, regardless of the payer. In response to questions to the Medicaid Program about rebates, we are told the information is "confidential." [Federal law](#) stipulates confidentiality of rebate information in the Medicaid Program and

states that a State agency (or contractor therewith) shall not disclose the identity of a specific manufacturer of wholesaler or prices charged for drugs such as the manufacturer or wholesaler. While Medicaid drug rebates are outside the purview of state legislators, that is not necessarily the case for other payers.

### **Attention Certified Immunizers: Medicaid Requires Individual Enrollment**

Pharmacists who are certified immunizers and order/prescribe immunizations for which Medicaid is billed under the pharmacy's Medicaid provider #) are required to be enrolled in Louisiana Medicaid as a "prescriber only." Some pharmacists enrolled as a prescriber a dozen years ago—as early as 2009—and no longer have their Medicaid Provider number—or even recall completing the enrollment. It could have been handled by their employer at the time. A substantial number of individual pharmacists enrolled as prescribers in Louisiana Medicaid are no longer at the address reflected on the Medicaid Provider File and have not received the "invitation" or reminders to re-enroll that were snail-mailed by Gainwell.

**The bottom line is if a pharmacist is a certified immunizer and orders or prescribes immunizations for which Louisiana Medicaid enrollee is billed, they should be enrolled as a prescriber only and must re-enroll via the online portal no later than 6/30/22. or claims for which they are the prescriber will be denied.**

LIPA continues to do one-on-one outreach to pharmacists on the Medicaid list of pharmacists who have not yet re-enrolled and who are associated with a LIPA-member pharmacy or other independent community pharmacy. The chains and institutional providers have (many) hundreds on the list as well.

We have identified some certified immunizers for whom Gainwell is not showing a Medicaid Provider # and need to enroll as a pharmacist "prescriber only" (Provider Type 33). Here is the link for that [https://www.lamedicaid.com/provweb1/provider\\_enrollment/PT33\\_Prescriber\\_Only.pdf](https://www.lamedicaid.com/provweb1/provider_enrollment/PT33_Prescriber_Only.pdf)

The critical information needed to re-enroll is the Medicaid Provider ID # and NPI along with city, state, and zip on the Medicaid file. Do you have questions about your Medicaid Provider Re-enrollment Status? LIPA can confirm pharmacies and pharmacists that are listed as pending as of the first week of May. You can check your status by e-mailing (please include NPI and/or Medicaid Provider #) [kennedy@lipa.org](mailto:kennedy@lipa.org).

### **DDL Thermometer/Current Calibration is Fast Approaching**

LDH's Immunization Program previously advised COVID vaccine providers that they must have a digital data log thermometer and provide a current and valid certificate of calibration no later than May 22. Those who do not will be removed as a COVID-19 vaccination provider. As a reminder, providers who are currently out of compliance must obtain the DDL device by May 22, 2022, or they will be removed as a COVID-19 vaccination provider. Certificates can be emailed to the individuals listed below:

- Region 1: [Jean Marie Baudouin](#)
- Region 2: [Jennifer Carter](#)
- Region 3: [Peggy Bowers](#)
- Region 4: [Julia Ceaser](#)
- Region 5: [Peggy Bowers](#)
- Region 6: [Susan Babineaux](#)
- Region 7: [Primette Braden](#)
- Region 8: [Danielle Hudleston](#)
- Region 9: [Melanie Williams](#)

Refer to the [2022 Louisiana Vaccines for Children Program Digital Data Logger Thermometer Guide](#) for more information on storage and handling requirements, and for a list of DDL vendors.

## **The PBM Audits Keep Coming**

We are hearing reports from members across the state that one of the auditors performing ESI's audits looks for calculation of insulin, creams and ointments. In these cases, have you documented the package size of ointments and creams being the smallest package size available to ensure the administration of the pharmaceutical is in accordance with the prescriber's orders. As we have typically seen with pharmacy audits, they do not address patient health and safety concerns, much less fraud or abuse. Instead, the PBM or auditor manufactures discrepancies instead of working with the prescriber, pharmacy, or patient to ensure the proper continuation of care each of you provide daily.

**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. Also, please reach out to us if you see any audit practices that you think may violate Louisiana laws.** RS [22:1856](#), [22:1856.1](#) and [22:1860](#) 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)

Legislation that was passed unanimously out of the Senate Health & Welfare Committee would clarify audit procedures 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 and additionally requires a PBM to notify the Department of Insurance when fraud or abuse is suspected. SB 32 is currently pending the House Insurance Committee. LIPA will provide an update once it is put on the agenda.

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

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.

### [Example Letter](#)

## **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).

### **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.

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

Feedback from LIPA members who have submitted applications for the Louisiana Medicaid COVID Uninsured coverage group is that enrollment has been “same day.”

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](#).

### **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 5.11.22**

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 price increases on 5 drugs. Three are brand names and two are generic. The brand drugs increased in price ranging from \$0.00110 – \$100.46630 while the generic price increases ranged from \$0.21711 - \$0.84831.

The brand name drug rate changes were WAC Adjustments (changes in WAC published prices), Golytely solution is retroactive to April 29, 2022, Lovaza is retroactive to May 4th, and Annovera Vaginal Ring is retroactive to May 1st. The two generic drug rate changes were Help Desk Inquiries (Appeals) and are retroactive to May 11th.

### [Weekly NADAC Report](#)

#### [5.11.22 NADAC by Percent Change](#)

#### [5.11.22 NADAC by Price Change](#)

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.