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## State of Louisiana

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To: M. Joseph Fontenot, Jr.  
Executive Director  
Louisiana Board of Pharmacy

From: Terrence "Joe" Donahue, Jr.  
Louisiana Department of Justice, Civil Division  
Occupational Licensing Review Program

Date: September 5, 2023

Subject: OLRP File No. 23-06-OR-0014  
Proposed LAC 46:LIII.Chapter 30 – Pharmacy Benefit Managers

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### I. Summary

The Louisiana Board of Pharmacy (the "Board") proposes amending and re-promulgating LAC 46:LIII.Chapter 30, pertaining to pharmacy benefit managers. The Board published a Notice of Intent to amend and re-promulgate the regulations on February 20, 2023, invited comments on the regulations and proposed amendments, and conducted a public hearing on March 28, 2023. One public comment was received commending the Board for amendments to Chapter 30, to which the Board provided a formal response on June 5, 2023, in accordance with La. R.S. 49:961(B)(3).

Licensing and permitting requirements create barriers to market entry for individuals desiring to engage in a profession or occupation and Chapter 30 is therefore comprised of occupational regulations with reasonably foreseeable anti-competitive effects.<sup>1</sup> Pursuant to La. R.S. 49:260, the Board submitted the proposed amended version of Chapter 30 to the Louisiana Attorney General and a review of the regulations was initiated on June 8, 2023. The Attorney General invited public comments on the proposed amendments for a 30-day period ending on July 8, 2023, and received no comments. As set forth below, the Attorney General has determined the amended version of Chapter 30 proposed by the Board adheres to clearly articulated state policy and therefore approves the regulations for adoption as drafted.

### II. Analysis

The Louisiana Pharmacy Practice Act, La. R.S. 37:1161 *et seq.*, subjects the practice of pharmacy in the state of Louisiana to regulation by the Board for the purpose of

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<sup>1</sup> La. R.S. 49:260(G)(4).

promoting, preserving, and protecting the public health, safety and welfare.<sup>2</sup> In furtherance of these purposes, the legislature has authorized the Board to control and regulate all persons and sites that sell drugs or devices to consumers within the state.<sup>3</sup> The Board is charged with issuing and renewing licenses, permits, certifications, registrations, and any other designations deemed necessary to engage in the practice of pharmacy. In doing so, the Board may require applicants to provide information verifying their identity and may obtain state and national criminal history information for any person who applies for a permit.<sup>4</sup> As a result of Act 536 of the 2022 Louisiana Legislative Regular Session, all pharmacy benefit managers (“PBMs”) that administer, develop, maintain, perform, or provide pharmacy services in Louisiana must be permitted by the Board.<sup>5</sup> PBMs that are permitted by the Board are required to comply with the applicable provisions of the Louisiana Pharmacy Practice Act and the rules and regulations promulgated by the Board.<sup>6</sup>

In 2019, the Louisiana Legislature enacted the Pharmacy Benefit Manager Licensing Law, La. R.S. 40:2861 *et seq.*, providing for the licensing, permitting, and monitoring of PBMs in order to effectively control and regulate their activities; maintain and enforce order regarding the prescribing, dispensing, marketing, selling, managing, and use of prescription drugs in Louisiana; and to protect the health, safety, and general welfare of the state’s citizens and residents.<sup>7</sup> A PBM is statutorily defined as any person or business who administers the prescription drug or device program of one or more health plans on behalf of a third party in accordance with a pharmacy benefit program.<sup>8</sup> Agents or representatives of a PBM that have been hired or contracted to assist the PBM in administering a drug program and any wholly or partially owned or controlled subsidiary of a PBM are also considered PBMs for purposes of the Pharmacy Benefit Manager Licensing Law.<sup>9</sup> PBMs owe the beneficiaries of the pharmacy benefit management plans they administer, and the entities with whom they have contracted, duties of good faith, honesty, trust, confidence, and candor.<sup>10</sup>

No permit may be issued to a PBM who has not registered with the Louisiana Secretary of State.<sup>11</sup> In addition, permits issued to PBMs are valid only for the applicant identified on the application form, and are not subject to sale, assignment, or other transfer.<sup>12</sup> If the ownership of a PBM changes by fifty percent or more after the Board’s initial issuance of a permit, a new permit must be obtained from the Board.<sup>13</sup> Continued operation of a PBM after its ownership has changed by fifty percent or more is sufficient basis for a finding

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<sup>2</sup> La. R.S. 37:1163; La. R.S. 37:1171.

<sup>3</sup> La. R.S. 37:1163. “Permit” is defined as a grant of authority by the Board to any person authorizing the practice of pharmacy at a site. La. R.S. 37:1164(34).

<sup>4</sup> La. R.S. 37:1182(A)(8), (22), and (23); La. R.S. 37:1216.

<sup>5</sup> La. R.S. 37:1256(B); La. R.S. 40:2865(A); La. R.S. 40:2868.

<sup>6</sup> La. R.S. 40:2868(B).

<sup>7</sup> La. R.S. 40:2861; La. R.S. 40:2862.

<sup>8</sup> La. R.S. 40:2863.

<sup>9</sup> *Id.*

<sup>10</sup> La. R.S. 40:2864(A).

<sup>11</sup> La. R.S. 40:2865(B); La. R.S. 40:2870(A)(20).

<sup>12</sup> La. R.S. 40:2865(C), (D)(1), and (D)(2).

<sup>13</sup> La. R.S. 40:2865(D)(3).

that the PBM is operating without a valid permit in violation of the Pharmacy Benefit Manager Licensing Law.<sup>14</sup>

The Board is responsible for investigating and enforcing the provisions of both the Louisiana Pharmacy Practice Act and the Pharmacy Benefit Manager Licensing Law with respect to PBMs.<sup>15</sup> The legislature has therefore authorized the Board to promulgate rules and regulations pertaining to PBMs, and to assess fees for the issuance of PBM permits.<sup>16</sup> The Board is also authorized to refuse issuance of a permit, or revoke a permit that has already been issued, for the following reasons: violations of applicable laws; conviction for a felony or other public offense involving moral turpitude; revocation or non-issuance of a permit or other designation by another state, territory, or country; or the failure to report adverse actions taken by another licensing jurisdiction, government agency, or court.<sup>17</sup>

LAC 46:LIII.Chapter 30 is comprised of just two regulations – LAC 46:LIII §§ 3003 and 3005. The language of § 3003 closely tracks the relevant statutory language of both the Louisiana Pharmacy Practice Act and the Pharmacy Benefit Manager Licensing Law and provides that: (1) a PBM must obtain a pharmacy benefit manager permit from the Board if it administers, develops, maintains, performs, or provides pharmacy services within the state;<sup>18</sup> (2) issuance of a permit by the Board authorizes a PBM to administer pharmacy benefit management services;<sup>19</sup> (3) the Board shall not issue a permit to any PBM that is not registered with the Louisiana Secretary of State;<sup>20</sup> (4) PBM permits issued by the Board are non-transferable and cannot be sold or assigned;<sup>21</sup> (5) a change in fifty percent or more of the ownership of a permitted PBM necessitates issuance of a new PBM permit;<sup>22</sup> and (6) continuing to operate a PBM without obtaining a new permit after its ownership has changed by fifty percent or more is sufficient to find a violation of La. R.S. 40:2865.<sup>23</sup> Louisiana courts have found that restating the provisions of an authorizing statute is an acceptable means of promulgating rules under the Louisiana Administrative Procedure Act, particularly when the rules implement newly enacted legislation.<sup>24</sup>

With respect to § 3005, Subsection (A) addresses initial PBM permit applications and provides that the Board shall develop an application form that is suitable for use in issuing PBM permits, which may be revised on the Board's own initiative in order to collect the information deemed necessary to properly evaluate applicants seeking such permits.<sup>25</sup> In its current form, the regulation also requires applicants to submit governance documents,

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<sup>14</sup> La. R.S. 40:2865(D)(4).

<sup>15</sup> La. R.S. 40:2871(A)(2).

<sup>16</sup> La. R.S. 37:1257.

<sup>17</sup> La. R.S. 37:1241(A)(1), (4), (6)–(9).

<sup>18</sup> Compare LAC 46:LIII.3003(A) with La. R.S. 37:1256; La. R.S. 40:2865; La. R.S. 40:2868.

<sup>19</sup> Compare LAC 46:LIII.3003(B) with La. R.S. 37:1256; La. R.S. 40:2865; La. R.S. 40:2868.

<sup>20</sup> Compare LAC 46:LIII 3003(C) with La. R.S. 40:2865(B); La. R.S. 40:2870(A)(20).

<sup>21</sup> Compare LAC 46:LIII 3003(D) with La. R.S. 40:2865(D)(1) and (2).

<sup>22</sup> Compare LAC 46:LIII 3003(D) with La. R.S. 40:2865(D)(3).

<sup>23</sup> Compare LAC 46:LIII 3003(D) with La. R.S. 40:2865(D)(4).

<sup>24</sup> See e.g. *Louisiana Vaping Association v. Department of Revenue*, 20-0816, p. 6 (La. App. 1 Cir. 2/19/21), 318 So.3d 221, 225, writ denied, 21-0415 (La. 5/11/21), 315 So.3d 869.

<sup>25</sup> LAC 46:LIII.3005(A)(1).

such as articles of incorporation, partnership agreements, or shareholder agreements, as well as the “standard generic contract template” used to contract with pharmacies or pharmacy services administrative organizations.<sup>26</sup> The proposed amended version of § 3005 eliminates the need for applicants to submit governance documents and standard contract templates prior to receiving a PBM permit.<sup>27</sup>

It is implicit in the directive to the Board to issue permits that the application and permitting process must fairly effectuate the law as enacted by the legislature.<sup>28</sup> When the legislature does not mandate use of a particular form or procedure for the permitting process, the Board may utilize such forms and procedures as are adequate for the purposes intended by the legislature.<sup>29</sup> Here, neither the Pharmacy Benefit Manager Licensing Law nor the Louisiana Pharmacy Practice Act prescribe the use of specific forms or procedures for the issuance of PBM permits, and the Board is therefore free to implement such forms and procedures as will further the legislature’s purposes in enacting these laws. In accordance with La. R.S. 49:1308, the Board has made the content of its PBM application form available on its website, which was obtained and evaluated for adequacy and consistency with legislative intent.<sup>30</sup>

The Board’s PBM permit application form consists of ten sections: (1) directions; (2) applicant information; (3) application contact; (4) ownership; (5) applicant management; (6) owner’s managing officer; (7) consumer complaint contact; (8) additional information; (9) prior history; and (10) document submission. Section 1 of the application form correctly identifies the laws governing the issuance of PBM permits and indicates a permitting fee of \$500 per year, which accords with the provisions of La. R.S. 37:1184(6). Sections 2, 4, and 5 of the application form seek information regarding the identity of the applicant, the applicant’s owners, and other individuals exercising control or influence over the applicant’s affairs. The Board has been explicitly authorized to request such identifying information from applicants, and this information is clearly relevant to the legislative purposes underlying the Pharmacy Benefit Manager Licensing Law and the Louisiana Pharmacy Practice Act, as well as being integral to the Board’s enforcement of these laws.<sup>31</sup> The same is true for Section 3 of the application form, which requests identifying and contact information for the individual serving as the Board’s primary point of contact during the permitting process, and Section 6, which requests the same information for the individual who will serve as the Board’s primary point of contact after issuance of the PBM permit.

Section 7 of the application form requests identifying and contact information for an individual to whom the Board may refer any consumer complaints, and Section 8 includes

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<sup>26</sup> LAC 46:LIII.3005(A)(2)(a) and (b).

<sup>27</sup> Notice of Intent, Louisiana Register, Vol. 49, No. 2 at p. 363 (February 20, 2023).

<sup>28</sup> See *Daigle v. Authement*, 96-1662, pp. 3-4 (La. 4/8/97), 691 So.2d 1213, 1214-1215.

<sup>29</sup> *Id.*

<sup>30</sup> A copy of the sample PBM application form obtained from the Board’s website is attached hereto.

<sup>31</sup> See La. R.S. 37:1182(A)(23) (authorization to require identifying information); La. R.S. 40:2871(A)(2) (Board is responsible for certain investigations and enforcement actions against PBMs); see also La. R.S. 40:2863(9) (definition of PBM includes agents and representatives); La. R.S. 40:2865(D)(3) (ownership reporting obligations).

an inquiry regarding the applicant's maintenance of internal grievance procedures for patients and pharmacies, both of which are in accord with the statutorily imposed duties PBMs owe to such individuals.<sup>32</sup> Section 8 also seeks confirmation that the applicant is a PBM as defined in La. R.S. 40:2863 and asks which of the pharmacy services listed in La. R.S. 40:2868 the applicant is involved in and specifically references the statutes that provide for the Board's issuance of permits only to PBMs engaged in certain specified activities. Section 8 also requires applicants to identify changes to its name, ownership, or management structure occurring within the five years preceding the application, and any such changes the applicant contemplates in the foreseeable future. Such inquiries are relevant to the Board's evaluation of an applicant as the requested information may be necessary to evaluate the applicant's prior history, as discussed below, and because the governing statutes provide that changes in ownership are significant events necessitating evaluation by the Board.<sup>33</sup> Section 8 also requests information regarding any pharmacies the applicant owns, operates, or is affiliated with, which aligns with prohibitions the legislature has imposed with respect to pharmacies in which a PBM has an ownership or controlling interest.<sup>34</sup>

Section 9 of the Board's PBM permit application form requests information regarding prior and pending regulatory actions taken by state or federal authorities, including the denial, suspension, or revocation of a permit or similar designation, the issuance of cease and desist orders, the imposition of fines, placement in a program of regulatory supervision or rehabilitation, and other circumstances. Section 9 also requests information regarding the existence of litigation, arbitration proceedings, and contract terminations involving allegations of fraud, dishonesty, or breach of trust, as well as information relating to bankruptcy or liquidation proceedings involving the applicant. The section further asks for criminal history information for the individuals that exercise control or influence over the applicant, as well as information regarding any data security breaches or HIPAA violations involving the applicant. Each of the above areas of inquiry contained within Section 9 finds support in the statutes governing PBMs. These statutes identify adverse regulatory actions arising in other jurisdictions as providing a sufficient basis for enforcement action by the Board, including the denial, suspension, or revocation of a permit.<sup>35</sup> The Board is also statutorily authorized to take enforcement action if an applicant has engaged in fraud or misrepresentation, or fails to report information regarding adverse judgments or settlement agreements.<sup>36</sup> The same is true for criminal convictions, and the legislature has enacted a statute specifically authorizing the Board to request and obtain criminal history records in connection with permit applications.<sup>37</sup> The legislature has also expressed its intent for the Board to ensure that PBMs safeguard a patient's confidential information, and that a failure to do so warrants enforcement action by the Board.<sup>38</sup> Section 10 of the PBM permit application form does not seek any

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<sup>32</sup> La. R.S. 40:2864.

<sup>33</sup> See La. R.S. 40:2865(D).

<sup>34</sup> See La. R.S. 40:2870(A)(5) and (6)

<sup>35</sup> La. R.S. 37:1241(A)(2), (6), (7), and (8).

<sup>36</sup> La. R.S. 37:1241(A)(2), (9), (11), and (19).

<sup>37</sup> La. R.S. 37:1182(A)(22); La. R.S. 37:1241(A)(4); La. R.S. 37:1216.

<sup>38</sup> La. R.S. 37:1241(A)(16); La. R.S. 40:2870(A)(3), (17), and (18).

additional information, but rather documentation that supports the information supplied by the applicant in the other sections of the form.

While the PBM permit application form available on the Board's website adheres to clearly articulated state policies, as set forth above, the Board must still engage the Louisiana Administrative Procedure Act's (LAPA) rulemaking process before either the form, or the substantive provisions thereof, may be formally adopted.<sup>39</sup> This is particularly true since the Board has elected to exercise its authority to require information from PBM permit applicants that the legislature has not expressly identified in either the Louisiana Pharmacy Practice Act or Pharmacy Benefit Manager Licensing Law.<sup>40</sup> Moreover, while the Board remains free to later modify the PBM permit application form on its own initiative, it must also comply with the provisions of the LAPA if and when it chooses to take such action.<sup>41</sup>

The remainder of § 3005(A) provides that: (1) applications will not be processed if they are incomplete, transmitted by facsimile, or lack payment of the required fee;<sup>42</sup> (2) applications for PBM permits expire one year after receipt by the Board;<sup>43</sup> (3) applicants must notify the Board in writing of any changes to information contained in a PBM permit application that occur prior to issuance of a permit;<sup>44</sup> (4) applicants may be required to appear before the Board or its committees while an application is pending;<sup>45</sup> and (5) upon approval of the application, the Board shall issue a PBM permit to the applicant.<sup>46</sup> As with the contents of the PBM permit application form, these provisions are within the authority the legislature has delegated to the Board and further the legislative purposes of the Pharmacy Benefit Manager Licensing Law and the Pharmacy Practice Act.<sup>47</sup>

The provisions of § 3005(B) address applications for the renewal of PBM permits, and provides for the expiration of both initial and renewed permits two years from the date of issuance.<sup>48</sup> As with initial permit applications, § 3005(B) also states that the Board will not process incomplete applications or applications that are submitted via facsimile transmission.<sup>49</sup> The regulation further provides that PBM permits issued by the Board will be rendered null and void at the time it expires if the PBM has not submitted a renewal

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<sup>39</sup> See La. R.S. 49:951(8) (defining "rule" for purposes of the LAPA to include all agency statements, guides, or requirements for conduct or action that: (1) prescribe the agency's procedure or practice requirements, (2) adopt fees to be imposed upon the affairs, actions, or persons regulated by the agency, or (3) set forth the criteria or qualifications for agency licensure or certification).

<sup>40</sup> See *Liberty Mut. Ins. Co. v. Louisiana Ins. Rating Comm'n*, 96-0793 (La. App. 1 Cir. 2/14/97), 696 So.2d 1021, 1027, *writ denied*, 97-2069 (La. 12/19/97), 706 So.2d 451, and *writ denied*, 97-2062 (La. 12/19/97), 706 So.2d 452 (where agency laws are silent, it is the function of the LAPA to fill in the gaps and to provide rules for procedure").

<sup>41</sup> See La. R.S. 49:951(8) (also defining "rule" to include the amendment or repeal of an existing rule).

<sup>42</sup> LAC 46:LIII.3005(A)(3).

<sup>43</sup> LAC 46:LIII.3005(A)(4).

<sup>44</sup> LAC 46:LIII.3005(A)(5).

<sup>45</sup> LAC 46:LIII.3005(A)(6).

<sup>46</sup> LAC 46:LIII.3005(A)(7).

<sup>47</sup> See La. R.S. 37:1182(A)(1), (8), and (24); La. R.S. 37:1257.

<sup>48</sup> LAC 46:LIII.3005(B)(1).

<sup>49</sup> LAC 46:LIII.3005(B)(2).

application prior to the expiration date, and that continuing to operate as a PBM with an expired permit provides a sufficient basis for the Board to find a violation of La. R.S. 40:2865.<sup>50</sup> Finally, § 3005(B) states that the failure to submit a renewal application within 30 days after the expiration of a PBM permit will result in termination of the permit, necessitating submission of a reinstatement application for the PBM to continue operating.<sup>51</sup> The Louisiana Pharmacy Practice Act explicitly authorizes the Board to promulgate regulations specifying requirements for the renewal of permits generally, and for PBM permits specifically.<sup>52</sup> The law also provides that applications for the renewal of any permit must be made available on or before the date designated by the Board, and that the failure to timely submit a renewal application renders the existing permit null and void.<sup>53</sup> The legislature has also authorized the Board to establish requirements the holder of an expired permit must meet in order in order to have the permit reinstated.<sup>54</sup> Thus, the provisions of § 3005(B) are within the Board's authority and authorized by the statutes referenced above.

Section 3005(C) pertains to applications for reinstatement of a terminated, suspended, or revoked permit, and mandates the use of an application form developed for this specific purpose.<sup>55</sup> The regulation further provides that applications for reinstatement will be forwarded to the Board's reinstatement committee, and that the applicant shall be notified of the time and place the committee will consider the application.<sup>56</sup> As stated above, the legislature has authorized the Board to designate requirements the holder of an expired permit must meet in order to have its permit reinstated.<sup>57</sup> The Board's existing regulations provide for the reinstatement committee's consideration of such applications and the making of a recommendation to the full Board of the action to be taken on a reinstatement application.<sup>58</sup> These regulations provide that a reinstatement application should be granted if the application establishes rehabilitation of the circumstances resulting in the permit's termination and if reinstatement will not pose a danger to the public's health, safety, or welfare.<sup>59</sup> As a result, the provisions of § 3005(C) also comply with the clearly articulated requirements established in La. R.S. 37:1230.

Subsection (D) of § 3005 is directed to the maintenance of PBM permits, and provides that a PBM permit is valid only for the entity to whom it is issued, and cannot be sold, assigned, or otherwise subject to any voluntary or involuntary transfer.<sup>60</sup> Section 3005(D) also provides for the issuance of a duplicate PBM permit upon written request and payment of a statutorily prescribed fee, while precluding such permit from authorizing any

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<sup>50</sup> LAC 46:LIII.3005(B)(3).

<sup>51</sup> LAC 46:LIII.3005(B)(4).

<sup>52</sup> La. R.S. 37:1230(B); La. R.S. 37:1257(B).

<sup>53</sup> La. R.S. 37:1230(C).

<sup>54</sup> La. R.S. 37:1230(D).

<sup>55</sup> LAC 46:LIII.3005(C)(1).

<sup>56</sup> LAC 46:LIII.3005(C)(2).

<sup>57</sup> See La. R.S. 37:1230(D).

<sup>58</sup> LAC 46:LIII.357.

<sup>59</sup> *Id.*

<sup>60</sup> LAC 46:LIII.3005(D)(1).

activity outside the scope of the existing permit.<sup>61</sup> The limitations § 3005(D) places upon the transfer of a PBM permit mirror the statutory restrictions imposed by the legislature.<sup>62</sup> In addition, the legislature has also prescribed fees for photocopies of documents, certification of documents as true copies, certification of documents as an office record, and shipping and handling, all of which may be involved in processing a request for a duplicate PBM permit.<sup>63</sup> The Board is therefore authorized to adopt the provisions of § 3005(D), and these provisions further the legislative purposes of the Pharmacy Benefit Manager Licensing law and the Louisiana Pharmacy Practice Act.

Finally, § 3005(E) addresses permitted PBMs that permanently close with the intent to exit the PBM business.<sup>64</sup> This portion of the regulation requires a permitted PBM that intends to permanently close its business to notify the Board at least ten days in advance of the anticipated closure, and for the associated PBM permit to be surrendered when the PBM closes.<sup>65</sup> The regulation also requires the aforementioned notice to acknowledge the former PBM's continuing duty to maintain its business records for a minimum of two years, and to identify a point of contact for inquiries and requests regarding such records.<sup>66</sup> All Board licensees and permit holders are statutorily required to notify the Board if they intend to cease operations and permanently close.<sup>67</sup> The legislature has also authorized the Board to establish minimum standards for maintaining the integrity of information pertaining to prescriptions and patient health care and has established a two-year record retention period for other Board permittees.<sup>68</sup> Thus, the provisions of § 3005(E) are a valid exercise of the Board's authority in furtherance of the clearly articulated legislative policies reflected in the Pharmacy Benefit Manager Licensing Law and the Louisiana Pharmacy Practice Act.

As addressed above, the Board possesses the authority to adopt both the existing provisions of LAC 46:LIII.Chapter 30 and the proposed amendments to these regulations pursuant to the Pharmacy Benefit Manager Licensing Law and the Louisiana Pharmacy Practice Act. In addition, the adoption of Chapter 30 as proposed by the Board will further the legislative purposes underlying these laws. While the Board is authorized to require governance documents and contract templates from applicants for PBM licenses, removal of these requirements will lessen the regulatory burden placed upon PBMs, and therefore adheres to the additional and overarching state policy of imposing the least restrictive regulatory burden that will continue to adequately protect the public from present, significant, and substantial harm.<sup>69</sup>

### **III. Determination**

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<sup>61</sup> LAC 46:LIII.3005(D)(2).

<sup>62</sup> See La. R.S. 40:2865(D)(1) and (2).

<sup>63</sup> See La. R.S. 37:1184(1)(a)-(c), and (h).

<sup>64</sup> LAC 46:LII.3005(E).

<sup>65</sup> LAC 46:LIII.3005(E)(1).

<sup>66</sup> LAC 46:LIII.3005(E)(2).

<sup>67</sup> La. R.S. 37:1231(B)(1).

<sup>68</sup> La. R.S. 37:1182(B)(7); La. R.S. 37:1229(A).

<sup>69</sup> See La. R.S. 49:260(A).



As the Attorney General has determined the existing provisions and proposed amendments to LAC 46:LIII.Chapter 30 adhere to clearly articulated state policies, the regulations are approved and may be finally adopted as proposed by the Board.

JEFF LANDRY  
ATTORNEY GENERAL

BY:   
Terrence J. Donahue, Jr.  
Assistant Attorney General

Print

<b>Fees</b>
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New Permit Fee	\$500.00
New Permit Fee - 2nd year of 2 year term	\$500.00
	<b>Total</b>
<b>Fees:</b>	<b>\$1,000.00</b>

<b>PBM.Section1.Directions</b>
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**The authorizing legislation for this permit is Act 124 of the 2019 Louisiana Legislature, the effective date of which was July 1, 2020. The Pharmacy Benefit Manager Licensing Law requires any pharmacy benefit manager which administers, develops, maintains, or performs one or more of the pharmacy services itemized in La. R.S. 40:2868 for the benefit of a Louisiana resident to obtain and maintain a PBM permit from the Louisiana Board of Pharmacy.**

**The authorizing legislation required the Board to promulgate administrative rules to implement the PBM Licensing Law. The Board promulgated Chapter 30 – Pharmacy Benefit Managers on May 20, 2021. All of the Board’s laws and rules are available on the Laws & Rules page of the Board’s website at [www.pharmacy.la.gov](http://www.pharmacy.la.gov).**

**This application shall be valid for up to one year after the date of its receipt in the Board office. In the event the permit is not issued by that date, the application shall become null and void and any fees attached hereto shall be forfeited. The permit fee is \$1,000 (\$500 per year; valid for two years after the date of issuance). After completing the application, you must pay the invoice. Your application will not submit until the required fee has been paid.**

**Please do not use entries such as “See attached”; an appropriate entry shall be made in each section.**

**We encourage you to review your application and attachments prior to submission to the Board. Our experience shows the most common reason to return an application is for incomplete documents. This will only delay the processing of your application.**

**When the licensing staff confirms receipt of a complete application package, the application contact person will be provided information to that effect. The application will be forwarded to an administrative officer for the scheduling of an administrative hearing with the Board’s Application Review Committee. Following the administrative hearing, the committee may authorize staff to issue the permit. In the alternative, the committee may develop a recommendation for the full Board to issue the permit with one or more restrictions or deny the application and refuse to issue the permit. In that event, the full Board may only act on such recommendation following an additional administrative hearing during which the original committee members will be recused.**

**The initial PBM permit shall be valid for two years after the date of issuance. A permit renewed timely shall expire two years thereafter, on the anniversary date of its initial issuance.**

**PBM.Section2.ApplicantInformation**

**1. Are you applying for a new permit or ownership transfer?**

New Permit

**2. If this application is being submitted due to an ownership transfer, enter the existing permit number.**

Example Only

**3. Enter the legal name of permit owner.**

Example Only

**4. Enter the applicant's trade name [d/b/a].**

Example Only

**5. Enter the physical address of the applicant.**

Example Only

**6. Enter the telephone number of the applicant.**

(000) 000-0000

**7. Enter a facsimile number for the applicant.**

(000) 000-0000

**8. Enter the email address of the applicant.**

ExampleOnly@pharmacy.la.gov

**9. Enter the mailing address at which you would like to receive mail from the Louisiana Board of Pharmacy. Please note that mailing addresses are a matter of public record; we are required to make them available. If you have security concerns, we encourage your use of alternative services, e.g., post office boxes, etc.**

Example Only

**10. Enter the US Internal Revenue Federal Employer Identification Number (FEIN) for the applicant below.**

**Note: Later in the application, you will be required to upload one of the following documents: the US Internal Revenue Service Assignment of Federal**

**Employer Identification Number, or in the alternative, a signed copy of the W-9 form dated within 90 days prior to your application date. All W-9 forms must be the current version.**

Example Only

**11. Enter the applicant's Louisiana Secretary of State Charter Number.**

Example Only

**12. Enter the state which the applicant is domiciled.**

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**13. Enter the date of the fiscal year end for the applicant. You may use either of the following:(1) month and day, using MM/DD; or (2) ending date of the previous fiscal year, using MM/DD/YYYY.**

Example Only

**14. Enter the URL of the applicant's website.**

Example Only

**PBM.Section3.ApplicationContact**

**The Board will communicate only with the application contact person during the credentialing process. Answer the follow questions regarding the designated application contact person.**

**15. Enter the name of the application contact person.**

Example Only

**16. Enter the title / position of the application contact person.**

Example Only

**17. Enter the mailing address including city, state, and zip for the application contact person.**

Example Only

**18. Enter the telephone number for the application contact person.**

(000) 000-0000

**19. Enter the facsimile number for the application contact person.**

(000) 000-0000

**20. Enter the email address for the application contact person.**

ExampleOnly@pharmacy.la.gov

**PBM.Section4.Ownership**

**For the legal entity identified as the "Legal Name of Permit Owner", previously in the application, please identify the owner(s) and provide the following information for each such natural person and legal entity identified:**

**4.1 - Full legal name (no initials) and mailing address, as well as the percentage of the total ownership held by that natural person or legal entity.**

**4.2 - In the event an owner holds 20% or more of the ownership, please provide the Social Security Number (SSN) if a natural person or the Federal Employer Identification Number (FEIN) if a legal entity. Further, in the event an owner holding 20% or more of the ownership also holds, or has ever held, a professional license from any state or federal licensing or regulatory authority, please indicate the type of credential, its current status, and whether or not that credential has ever been the subject of any disciplinary action by the state or federal licensing or regulatory authority. If there has been action, please provide a copy of the decision, judgment, or other similar document.**

**4.3 - In the event no owner holds 20% or more of the ownership, a statement to that effect is required.**

**Note: You will see this information referenced as Section 4, Subsection 4.1, 4.2, and 4.3 later in the application when you are asked to upload this information.**

**PBM.Section5.ApplicantManagement**

**For the legal entity identified in Section 2 of this application, please provide the full legal name (no initials), mailing address and position with the applicant for all natural persons responsible for the applicant's conduct of affairs. This list should include all officers, directors, partners (in the case of a partnership), trustees, executive committee members, and any other person who exercises control or influence over the affairs of the applicant.**

**Note: You will be asked to upload this information later in the application process. This information will be referenced as Section 5.**

**PBM.Section6.OwnersManagingOfficer**

**After issuance of the permit, the Board will address all requests for information to the owner's managing officer.**

**21. Enter the name of the owner’s managing officer.**

Example Only

**22. Enter the title / position of the owner’s managing officer.**

Example Only

**23. Enter the mailing address including city, state, and zip of the owner’s managing officer.**

Example Only

**24. Enter the telephone number of the owner’s managing officer.**

(000) 000-0000

**25. Enter the facsimile number of the owner’s managing officer.**

(000) 000-0000

**26. Enter the email address of the owner’s managing officer.**

ExampleOnly@pharmacy.la.gov

**In the event this person holds, or has ever held, a professional license from any state or federal licensing or regulatory authority, please indicate the type of credential, its current status, and whether or not that credential has ever been the subject of any disciplinary action by the state or federal regulatory authority. If there has been action, please provide a copy of the decision, judgment, or other similar document.**

**Note: You will be asked to upload this information later in the application. This information will be referred to as Section 6.**

**PBM.Section7.ConsumerComplaintContact**

**The Board will direct all consumer complaints to the designated complaint contact.**

**27. Enter the name of the consume complaint contact.**

Example Only

**28. Enter the title / position of the consume complaint contact.**

Example Only

**29. Enter the mailing address including city, state, and zip of the consume complaint contact.**

Example Only

**30. Enter the telephone number of the consume complaint contact.**

(000) 000-0000

**31. Enter the facsimile number of the consume complaint contact.**

(000) 000-0000

**32. Enter the email address of the consume complaint contact.**

ExampleOnly@pharmacy.la.gov

**PBM.Section8.AdditionalInformation**

**All questions below require and yes or no answer. Several questions require the uploading of addition documents if you provide an affirmation answer. Please read carefully so you are able to prepare the appropriate documents prior to submitting your application.**

**33. Is the Applicant a pharmacy benefit manager as defined in La. R.S. 40:2863?**

No

**34. Which of the following services described in La. R.S. 40:2868 does the Applicant administer, develop, maintain, perform or provide? Select all that apply.**

Adjudication appeals/grievance related to prescription drug coverage, Drug formularies, Disease management programs, Drug regimen reviews, Prescription drug management programs, Processing of prior authorization requests, Step therapy procedures, Quality care dosing services, Utilization management and utilization review

**35. Is the Applicant or its parent corporation a publicly traded organization?**

**Note: If yes, you will be required to upload the most recent 10K or equivalent filing later in the application. This will be referenced as Subsection 8.2.**

Yes

**36. Within the five year period preceding the date of this application, has the Applicant changed its name?**

Yes

**37. Within the five year period preceding the date of this application, has the Applicant undergone a change in domicile? (relocations within the same state need not be acknowledged)**

Yes

**38. Within the five year period preceding the date of this application, has the Applicant merged or consolidated with any other entity?**

Yes

**39. Within the five year period preceding the date of this application, has the Applicant undergone a change in ownership (direct or indirect) of 20 percent or more?**

**Note: If yes, later in the application you will required to upload a full explanation of the change in ownership plus an organizational/ownership chart clearly demonstrating the ownership of the Applicant before and after the transaction. This will be referenced as Subsection 8.6.**

Yes

**40. Is the Applicant presently negotiating or inviting negotiations or acting as party to a counter letter which would result in a merger or consolidation with any other entity or which would result in a change of ownership of 20 percent or more of the Applicant?**

Yes

**41. Does the Applicant contemplate a change in management or any transaction which would normally result in a change of management within the foreseeable future?**

Yes

**42. Does the Applicant have a contingency plan detailing how contracted pharmacy benefit management services will be provided in the event of insolvency of the Applicant?**

**Note: If yes, later in the application you will be required to upload a copy of the plan document. This will be referenced as Subsection 8.9.**

Yes

**43. Does the Applicant own, operate or affiliate with any pharmacy to dispense or deliver, in any manner, prescription drugs or devices, controlled substances or durable medical equipment to Louisiana residents?**

**Note: If yes, you will be required to upload a list with names, contact information, and Louisiana permit numbers later in the application. This will be referenced as Subsection 8.10.**

Yes



**44. Does the Applicant maintain an internal grievance process for patients or pharmacies?**

**Note: If yes, you will be required to upload procedure and contact information later in the application. This will be referenced as Subsection 8.11.**

Yes

**PBM.Section9.PriorHistory**

**An affirmative reply to any of the questions in this Section requires two attachments: (1) a letter of explanation, and (2) certified copies of decision documents from the relevant administrative or judicial agency. Please have these documents prepared to upload later in the application. This will be referenced as Section 9.**

**45. Has the Applicant ever been refused a registration, permit, license or certification to act or provide the services of a Pharmacy Benefit Manager, Pharmacy Benefit Management Plan, Pharmacy Benefits Processor, or Third Party Administrator, or has any registration, permit, license or certification to act as such been denied, suspended, revoked or non-renewed for any reason by any state or federal regulatory authority?**

Yes

**46. Has the Applicant ever been the subject of any regulatory action including cease and desist orders, fines, consent agreements or other similar actions by any state or federal regulatory authority?**

Yes

**47. Has the Applicant ever been placed into any type of regulatory supervision or rehabilitation by any state or federal regulatory authority?**

Yes

**48. Has the Applicant ever been the subject of any litigation or arbitration proceeding alleging fraud, dishonesty or breach of trust on the part of the Applicant or its officers, directors, trustees or members by any state or federal regulatory authority in connection with the administration of pharmacy benefit management services?**

Yes

**49. Has the Applicant had a business relationship with an insurance company, provider or payor terminated for allegations of fraudulent or dishonest activities in connection with the administration of pharmacy benefit management services?**

Yes

**50. Is the Applicant currently involved in any dispute or controversy with any state or federal regulatory authority?**

Yes

**51. Is the Applicant currently undergoing an examination or audit (whether routine, targeted or otherwise) being conducted by any federal or state regulatory authority?**

Yes

**52. Has the Applicant ever been the subject of bankruptcy or liquidation proceedings?**

Yes

**53. Has any person identified in Section 5 above ever been convicted of, or plead guilty or nolo contendere to, or been pardoned for, any felony or misdemeanor other than minor traffic violations in any jurisdiction?**

Yes

**54. Has the Applicant, parent company or any other company or organization controlling the operations of the Applicant experienced any data security breaches or HIPAA security breaches?**

Yes

**PBM.Section10.UploadDocuments**

**This section of the application will require that you upload several documents. Many of the documents are required of all applicants while others are required based on previous answers. Do not submit your application until you have uploaded all of the documents required. Your application is not complete without the uploaded documents. Our office does not accept paper documents for this application.**

**55. Copy of all governance documents, including articles of incorporation, articles of association, partnership agreements, trust agreements, shareholder agreements, and all amendments to such documents, all to be certified by the proper domiciliary state official and dated within the 90-day period prior to the date of this application.**

[PDF TEST.pdf](#)

**56. Copy of U.S. Internal Revenue Service Assignment of Federal Employer Identification Number, or in the alternative, a signed W-9 form, using the current version of that form and dated within the 90-day period preceding the date of this application.**

[PDF TEST.pdf](#)

**57. Certificate of Good Standing (or Certificate of Existence or similar document confirming the corporate existence of the applicant in the domiciliary state) issued by the proper domiciliary state official and dated within the 90-day period preceding the date of this application.**

[PDF TEST.pdf](#)

**58. Certificate of Good Standing (or Certificate of Existence) issued by the Louisiana Secretary of State and dated within the 90-day period preceding the date of this application.**

[PDF TEST.pdf](#)

**59. Verification of current licensure as a third party administrator by the Louisiana Department of Insurance dated within the 90-day period preceding the date of this application.**

[PDF TEST.pdf](#)

**60. Documents as required by Section 4 of this application. With respect to any owners identified in Subsection 4.2 of this application, please include a copy of the SSN card for each such natural person and a copy of a signed W-9 form for each such legal entity, using the current version of that form and dated within the 90-day period preceding the date of this application.**

[PDF TEST.pdf](#)

**61. Documents as required by Section 5 of this application (identification of management).**

[PDF TEST.pdf](#)

**62. Documents as required by Section 6 of this application (owner's managing officer).**

[PDF TEST.pdf](#)

**63. Document required by Subsection 8.2 of this application (10K or equivalent filing).**

[PDF TEST.pdf](#)

**64. Document required by Subsection 8.6 of this application (prior ownership change).**

[PDF TEST.pdf](#)

**65. Document required by Subsection 8.9 of this application (contingency plan for operations).**

[PDF TEST.pdf](#)

**66. Document required by Subsection 8.10 of this application (pharmacies).**

PDF TEST.pdf

**67. Document required by Subsection 8.11 of this application (grievance procedures).**

PDF TEST.pdf

**68. Copy of an audited financial statement for Applicant's previous fiscal year.**

PDF TEST.pdf

**69. Copy of Applicant's standard generic contract template which it uses for contracts entered into by the Applicant and pharmacies or pharmacy services administrative organizations in this state in the administration of pharmacy benefits for healthcare insurers, providers or payers.**

PDF TEST.pdf

**70. For any question within Section 9 of this application answered in the affirmative, please attach a letter of explanation as well as a certified copy of the decision document from the relevant administrative or judicial agency.**

PDF TEST.pdf

**PBM.Section11.Attestations**

**71. All attestations and signatures must be completed by the Chief Executive Officer.**

**I certify that I am the Chief Executive Officer for the legal entity listed in Section 2 of this application.**

**On behalf of Applicant, I submit this Application for New Pharmacy Benefit Manager (PBM) Permit to the Board for the purpose of obtaining a PBM permit.**

**I understand the information required by this application is continuing in nature and that I am responsible for ensuring amendments thereto are communicated to the Board in a timely manner.**

**I understand the submission of any false information or misrepresentation in this application or any of its exhibits shall constitute a basis for the Board to deny the application and refuse to issue the permit, or if the permit has already been issued, then its suspension or revocation.**

Yes

**72. The use of this electronic application or form fully satisfies any requirement that it be provided to me in written form. I agree that I am responsible for understanding this application or form, and I agree to conduct business by electronic means. I agree that my use of an electronic signature to sign the application form legally binds me in the same manner as if I had manually signed the form. I verify that I have read, printed, and/or saved the**

**application form and that I do not need a copy to be mailed to me.**

Yes

**73. As a component of your electronic signature, please type your name in the text box below.**

Example Only

**74. As a component of your electronic signature, please enter today's date in the text box below.**

03/13/2023