

STATE OF NEW YORK

9902

IN ASSEMBLY

February 26, 2020

Introduced by M. of A. GOTTFRIED, CAHILL, DARLING, DINOWITZ, EPSTEIN, GRIFFIN, STERN, TAGUE, TAYLOR, THIELE, ZEBROWSKI -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to pharmacy benefit managers; to amend the insurance law, in relation to registration and licensing of pharmacy benefit managers; and to repeal certain provisions of the public health law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 280-a of the public health law is REPEALED and a
2 new section 280-a is added to read as follows:

3 § 280-a. Pharmacy benefit managers. 1. Definitions. As used in this
4 section, the following terms shall have the following meanings:

5 (a) "Health plan or provider" means an entity for which a pharmacy
6 benefit manager provides pharmacy benefit management including, but not
7 limited to: (i) a health benefit plan or other entity that approves,
8 provides, arranges for, or pays for health care items or services, under
9 which prescription drugs for beneficiaries of the entity are purchased
10 or which provides or arranges reimbursement in whole or in part for the
11 purchase of prescription drugs; or (ii) a health care provider or
12 professional that acquires prescription drugs to use or dispense in
13 providing health care to patients where the prescription drug is the
14 subject of the pharmacy benefit manager's pharmacy benefit management
15 services.

16 (b) "Pharmacy benefit management services" means the service provided
17 to a health plan or provider, directly or through another entity, and
18 regardless of whether the pharmacy benefit manager and the health plan
19 or provider are related, or associated by ownership, common ownership,
20 organization or otherwise; including the procurement of prescription
21 drugs to be dispensed to patients, or the administration or management
22 of prescription drug benefits, including but not limited to, any of the
23 following:

24 (i) mail service pharmacy;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (ii) claims processing, retail network management, or payment of
2 claims to pharmacies for dispensing prescription drugs;

3 (iii) clinical or other formulary or preferred drug list development
4 or management;

5 (iv) negotiation or administration of rebates, discounts, payment
6 differentials, or other incentives, for the inclusion of particular
7 prescription drugs in a particular category or to promote the purchase
8 of particular prescription drugs;

9 (v) patient compliance, therapeutic intervention, or generic substi-
10 tution programs;

11 (vi) disease management;

12 (vii) drug utilization review or prior authorization;

13 (viii) adjudication of appeals or grievances related to prescription
14 drug coverage;

15 (ix) contracting with network pharmacies; and

16 (x) controlling the cost of covered prescription drugs.

17 (c) "Pharmacy benefit manager" means any entity that performs pharmacy
18 benefit management services for a health plan or provider.

19 (d) "Maximum allowable cost price" means a maximum reimbursement
20 amount set by the pharmacy benefit manager for therapeutically equiv-
21 alent multiple source generic drugs.

22 (e) "Controlling person" means any person or other entity who or which
23 directly or indirectly has the power to direct or cause to be directed
24 the management, control or activities of a pharmacy benefit manager.

25 (f) "Covered individual" means a member, participant, enrollee,
26 contract holder or policy holder or beneficiary of a health plan or
27 provider.

28 (g) "License" means a license to be a pharmacy benefit manager, under
29 article twenty-nine of the insurance law.

30 (h) "Spread pricing" means the practice of a pharmacy benefit manager
31 retaining an additional amount of money in addition to the amount paid
32 to the pharmacy to fill a prescription.

33 (i) "Superintendent" means the superintendent of financial services.

34 2. Duty, accountability and transparency. (a) The pharmacy benefit
35 manager shall have a duty and obligation to the covered individual and
36 the health plan or provider, and shall perform pharmacy benefit manage-
37 ment services with care, skill, prudence, diligence, and professional-
38 ism, and for the best interests of the covered individual, and the
39 health plan or provider. Where there is a conflict in the pharmacy
40 benefit manager's duty or obligation under this paragraph to the covered
41 individual and any other party, the duty or obligation to the covered
42 individual shall be primary.

43 (b) All funds received by the pharmacy benefit manager in relation to
44 providing pharmacy benefit management services shall be received by the
45 pharmacy benefit manager in trust for the health plan or provider and
46 shall be used or distributed only pursuant to the pharmacy benefit
47 manager's contract with the health plan or provider or applicable law;
48 including any administrative fee or payment to the pharmacy benefit
49 manager expressly provided for in the contract to compensate the pharma-
50 cy benefit manager for its services. Any funds received by the pharmacy
51 benefit manager through spread pricing shall be subject to this para-
52 graph.

53 (c) The pharmacy benefit manager shall account, annually or more
54 frequently to the health plan or provider for any pricing discounts,
55 rebates of any kind, inflationary payments, credits, clawbacks, fees,
56 grants, chargebacks, reimbursements, or other benefits received by the

1 pharmacy benefit manager. The pharmacy benefit manager shall ensure that
2 any portion of such income, payments, and financial benefits is passed
3 through to the health plan or provider in full to reduce the reportable
4 ingredient cost. The health plan or provider shall have access to all
5 financial and utilization information of the pharmacy benefit manager in
6 relation to pharmacy benefit management services provided to the health
7 plan or provider.

8 (d) The pharmacy benefit manager shall disclose in writing to the
9 health plan or provider the terms and conditions of any contract or
10 arrangement between the pharmacy benefit manager and any party relating
11 to pharmacy benefit management services provided to the health plan or
12 provider including but not limited to, dispensing fees paid to the phar-
13 macies.

14 (e) The pharmacy benefit manager shall disclose in writing to the
15 health plan or provider any activity, policy, practice, contract or
16 arrangement of the pharmacy benefit manager that directly or indirectly
17 presents any conflict of interest with the pharmacy benefit manager's
18 relationship with or obligation to the health plan or provider.

19 (f) Any information required to be disclosed by a pharmacy benefit
20 manager to a health plan or provider under this section that is reason-
21 ably designated by the pharmacy benefit manager as proprietary or trade
22 secret information shall be kept confidential by the health plan or
23 provider, except as required or permitted by law, including disclosure
24 necessary to prosecute or defend any legitimate legal claim or cause of
25 action.

26 (g) The superintendent, in consultation with the commissioner:

27 (i) may make regulations defining, limiting, and relating to the
28 duties, obligations, requirements and other provisions relating to phar-
29 macy benefit managers under this subdivision; and

30 (ii) shall establish, by regulation, minimum standards for pharmacy
31 benefit management services which shall address the elimination of:
32 conflicts of interest between pharmacy benefit managers and covered
33 individuals, health benefit plans and health care providers; spread
34 pricing; and deceptive practices, anti-competitive practices, and unfair
35 claims practices.

36 (h) A health care provider and a covered individual shall be deemed to
37 be third-party beneficiaries of the duties, obligations and requirements
38 applicable to the pharmacy benefit manager under this section and shall
39 be entitled to legal or equitable relief for any injury or loss to the
40 health care provider or the covered individual caused by any violation
41 of such duties, obligations or requirements.

42 3. Prescriptions. A pharmacy benefit manager may not substitute or
43 cause the substituting of one prescription drug for another in dispens-
44 ing a prescription, or alter or cause the altering of the terms of a
45 prescription, except with the approval of the prescriber or as explicit-
46 ly required or permitted by law.

47 4. Appeals. A pharmacy benefit manager shall, with respect to
48 contracts between a pharmacy benefit manager and a pharmacy or, alterna-
49 tively, a pharmacy benefit manager and a pharmacy's contracting agent,
50 such as a pharmacy services administrative organization, include a
51 reasonable process to appeal, investigate and resolve disputes regarding
52 multi-source generic drug pricing. The appeals process shall include the
53 following provisions:

54 (a) the right to appeal by the pharmacy and/or the pharmacy's
55 contracting agent shall be limited to thirty days following the initial
56 claim submitted for payment;

1 (b) a telephone number through which a network pharmacy may contact
2 the pharmacy benefit manager for the purpose of filing an appeal and an
3 electronic mail address of the individual who is responsible for proc-
4 essing appeals;

5 (c) the pharmacy benefit manager shall send an electronic mail message
6 acknowledging receipt of the appeal. The pharmacy benefit manager shall
7 respond in an electronic message to the pharmacy and/or the pharmacy's
8 contracting agent filing the appeal within seven business days indicat-
9 ing its determination. If the appeal is determined to be valid, the
10 maximum allowable cost for the drug shall be adjusted for the appealing
11 pharmacy effective as of the date of the original claim for payment. The
12 pharmacy benefit manager shall require the appealing pharmacy to reverse
13 and rebill the claim in question in order to obtain the corrected
14 reimbursement;

15 (d) if an update to the maximum allowable cost is warranted, the phar-
16 macy benefit manager or covered entity shall adjust the maximum allow-
17 able cost of the drug effective for all similarly situated pharmacies in
18 its network in the state on the date the appeal was determined to be
19 valid; and

20 (e) if an appeal is denied, the pharmacy benefit manager shall identi-
21 fy the national drug code of a therapeutically equivalent drug, as
22 determined by the federal Food and Drug Administration, that is avail-
23 able for purchase by pharmacies in this state from wholesalers regis-
24 tered pursuant to subdivision four of section sixty-eight hundred eight
25 of the education law at a price which is equal to or less than the maxi-
26 mum allowable cost for that drug as determined by the pharmacy benefit
27 manager.

28 5. Contract provisions. No pharmacy benefit manager shall, with
29 respect to contracts between such pharmacy benefit manager and a pharma-
30 cy or, alternatively, such pharmacy benefit manager and a pharmacy's
31 contracting agent, such as a pharmacy services administrative organiza-
32 tion;

33 (a) prohibit or penalize a pharmacist or pharmacy from disclosing to
34 an individual purchasing a prescription medication information regard-
35 ing:

36 (i) the cost of the prescription medication to the individual, or
37 (ii) the availability of any therapeutically equivalent alternative
38 medications or alternative methods of purchasing the prescription medi-
39 cation, including but not limited to, paying a cash price;

40 (b) charge or collect from an individual a copayment that exceeds the
41 total submitted charges by the pharmacy for which the pharmacy is paid.
42 If an individual pays a copayment, the pharmacy shall retain the adjudi-
43 cated costs and the pharmacy benefit manager shall not redact or recoup
44 the adjudicated cost; or

45 (c) require a pharmacy to meet any pharmacy accreditation standard or
46 recertification requirement inconsistent with, more stringent than, or
47 in addition to federal and state requirements for licensure as a pharma-
48 cy.

49 § 2. The insurance law is amended by adding a new article 29 to read
50 as follows:

51 ARTICLE 29

52 PHARMACY BENEFIT MANAGERS

53 Section 2901. Definitions.

54 2902. Acting without a registration.

55 2903. Registration requirements for pharmacy benefit managers.

56 2904. Reporting requirements for pharmacy benefit managers.

1 2905. Acting without a license.

2 2906. Licensing of a pharmacy benefit manager.

3 2907. Revocation or suspension of a registration or license of a
4 pharmacy benefit manager.

5 2908. Penalties for violations.

6 2909. Stay or suspension of superintendent's determination.

7 2910. Revoked registrations or licenses.

8 2911. Change of address.

9 2912. Applicability of other laws.

10 2913. Assessments.

11 § 2901. Definitions. For purposes of this article:

12 (a) "Controlling person" is any person or other entity who or which
13 directly or indirectly has the power to direct or cause to be directed
14 the management, control or activities of a pharmacy benefit manager.

15 (b) The terms "covered individual", "health plan or provider", "phar-
16 macy benefit manager" and "pharmacy benefit management services" have
17 the same meanings as defined by section two hundred eighty-a of the
18 public health law.

19 § 2902. Acting without a registration. (a) No person, firm, associ-
20 ation, corporation or other entity may act as a pharmacy benefit manager
21 on or after April first, two thousand twenty and prior to January first,
22 two thousand twenty-two, without having a valid registration as a phar-
23 macy benefit manager filed with the superintendent in accordance with
24 this article and any regulations promulgated thereunder.

25 (b) Any person, firm, association, corporation or other entity that
26 violates this section shall, in addition to any other penalty provided
27 by law, be liable for restitution to any health plan or provider or
28 covered individual harmed by the violation and shall also be subject to
29 a penalty not exceeding of the greater of (1) one thousand dollars for
30 the first violation and two thousand five hundred dollars for each
31 subsequent violation or (2) the aggregate economic gross receipts
32 attributable to all violations.

33 § 2903. Registration requirements for pharmacy benefit managers. (a)
34 Every pharmacy benefit manager that performs pharmacy benefit management
35 services on or after April first, two thousand twenty and prior to Janu-
36 ary first, two thousand twenty-two shall register with the superinten-
37 dent in a manner acceptable to the superintendent, and shall pay a fee
38 of one thousand dollars for each year or fraction of a year in which the
39 registration shall be valid. The superintendent, in consultation with
40 the commissioner of health, may establish, by regulation, minimum regis-
41 tration standards required for a pharmacy benefit manager. The super-
42 intendent can reject a registration application filed by a pharmacy
43 benefit manager that fails to comply with the minimum registration stan-
44 dards.

45 (b) For each business entity, the officer or officers and director or
46 directors named in the application shall be designated responsible for
47 the business entity's compliance with the financial services and insur-
48 ance laws, rules and regulations of this state.

49 (c) Every registration will expire on December thirty-first, two thou-
50 sand twenty-one regardless of when registration was first made.

51 (d) Every pharmacy benefit manager that performs pharmacy benefit
52 management services at any time prior to April first, two thousand twen-
53 ty, shall make the registration and fee payment required by subsection
54 (a) of this section on or before June first, two thousand twenty. Any
55 other pharmacy benefit manager shall make the registration and fee

1 payment required by subsection (a) of this section prior to performing
2 pharmacy benefit management services.

3 (e) Registrants under this section shall be subject to examination by
4 the superintendent as often as the superintendent may deem it necessary.
5 The superintendent may promulgate regulations establishing methods and
6 procedures for facilitating and verifying compliance with the require-
7 ments of this article and such other regulations as necessary to enforce
8 the provisions of this article.

9 § 2904. Reporting requirements for pharmacy benefit managers. (a)(1)
10 On or before July first of each year, beginning in two thousand twenty,
11 every pharmacy benefit manager shall report to the superintendent, in a
12 statement subscribed and affirmed as true under penalties of perjury,
13 the information requested by the superintendent including, without limi-
14 tation,

15 (i) any pricing discounts, rebates of any kind, inflationary payments,
16 credits, clawbacks, fees, grants, chargebacks, reimbursements, other
17 financial or other reimbursements, incentives, inducements, refunds or
18 other benefits received by the pharmacy benefit manager; and

19 (ii) the terms and conditions of any contract or arrangement, includ-
20 ing other financial or other reimbursements incentives, inducements or
21 refunds between the pharmacy benefit manager and any other party relat-
22 ing to pharmacy benefit management services provided to a health plan or
23 provider including but not limited to, dispensing fees paid to pharma-
24 cies.

25 The superintendent may require the filing of quarterly or other state-
26 ments, which shall be in such form and shall contain such matters as the
27 superintendent shall prescribe.

28 (2) The superintendent may address to any pharmacy benefit manager or
29 its officers any inquiry in relation to its provision of pharmacy bene-
30 fit management services or any matter connected therewith. Every phar-
31 macy benefit manager or person so addressed shall reply in writing to
32 such inquiry promptly and truthfully, and such reply shall be, if
33 required by the superintendent, subscribed by such individual, or by
34 such officer or officers of the pharmacy benefit manager, as the super-
35 intendent shall designate, and affirmed by them as true under the penal-
36 ties of perjury.

37 (b) In the event any pharmacy benefit manager or person does not
38 submit the report required by paragraph one of subsection (a) of this
39 section or does not provide a good faith response to an inquiry from the
40 superintendent pursuant to paragraph two of subsection (a) of this
41 section within a time period specified by the superintendent of not less
42 than fifteen business days, the superintendent is authorized to levy a
43 civil penalty, after notice and hearing, against such pharmacy benefit
44 manager or person not to exceed one thousand dollars per day for each
45 day beyond the date the report is due or the date specified by the
46 superintendent for response to the inquiry.

47 (c) All information, documents and material disclosed by a pharmacy
48 benefit manager under this section and in the possession or under
49 control of the superintendent shall be deemed confidential and not
50 subject to public disclosure except (1) by court order when relevant and
51 material in a civil or criminal action or proceeding, or (2) where and
52 as the superintendent determines that disclosure is in the public inter-
53 est. This subsection shall not apply to information, documents and mate-
54 rials where they are in the possession and under the control of a person
55 or entity other than the superintendent.

1 § 2905. Acting without a license. (a) No person, firm, association,
2 corporation or other entity may act as a pharmacy benefit manager on or
3 after January first, two thousand twenty-two without having authority to
4 do so by virtue of a license issued in force pursuant to the provisions
5 of this article.

6 (b) Any person, firm, association, corporation or other entity that
7 violates this section shall, in addition to any other penalty provided
8 by law, be subject to a penalty not exceeding the greater of (1) one
9 thousand dollars for the first violation and two thousand five hundred
10 dollars for each subsequent violation or (2) the aggregate economic
11 gross receipts attributable to all violations.

12 § 2906. Licensing of a pharmacy benefit manager. (a) The superinten-
13 dent may issue a pharmacy benefit manager's license to any person, firm,
14 association or corporation who or that has complied with the require-
15 ments of this article, including regulations promulgated by the super-
16 intendent. The superintendent, in consultation with the commissioner of
17 health, may establish, by regulation, minimum standards for the issuance
18 of a license to a pharmacy benefit manager.

19 (b) The minimum standards established under this subsection may
20 address, without limitation:

21 (1) conflicts of interest between pharmacy benefit managers and health
22 plans or insurers;

23 (2) deceptive practices in connection with the performance of pharmacy
24 benefit management services;

25 (3) anti-competitive practices in connection with the performance of
26 pharmacy benefit management services;

27 (4) unfair claims practices in connection with the performance of
28 pharmacy benefit management services; and

29 (5) protection of consumers.

30 (c)(1) Any such license issued to a firm or association shall author-
31 ize all of the members of the firm or association and any designated
32 employees to act as pharmacy benefit managers under the license, and all
33 such persons shall be named in the application and supplements thereto.

34 (2) Any such license issued to a corporation shall authorize all of
35 the officers and any designated employees and directors thereof to act
36 as pharmacy benefit managers on behalf of such corporation, and all such
37 persons shall be named in the application and supplements thereto.

38 (3) For each business entity, the officer or officers and director or
39 directors named in the application shall be designated responsible for
40 the business entity's compliance with the insurance laws, rules and
41 regulations of this state.

42 (d)(1) Before a pharmacy benefit manager's license shall be issued or
43 renewed, the prospective licensee shall properly file in the office of
44 the superintendent a written application therefor in such form or forms
45 and supplements thereto as the superintendent prescribes, and pay a fee
46 of two thousand dollars for each year or fraction of a year in which a
47 license shall be valid.

48 (2) Every pharmacy benefit manager's license shall expire thirty-six
49 months after the date of issue. Every license issued pursuant to this
50 section may be renewed for the ensuing period of thirty-six months upon
51 the filing of an application in conformity with this subsection.

52 (e)(1) If an application for a renewal license shall have been filed
53 with the superintendent before November first of the year of expiration,
54 then the license sought to be renewed shall continue in full force and
55 effect either until the issuance by the superintendent of the renewal
56 license applied for or until five days after the superintendent shall

1 have refused to issue such renewal license and given notice of such
2 refusal to the applicant.

3 (2) Before refusing to renew any license pursuant to this section for
4 which a renewal application has been filed pursuant to paragraph one of
5 this subsection, the superintendent shall notify the applicant of the
6 superintendent's intention to do so and shall give such applicant a
7 hearing.

8 (f) The superintendent may refuse to issue a pharmacy benefit manag-
9 er's license if, in the superintendent's judgment, the applicant or any
10 member, principal, officer or director of the applicant, is not trust-
11 worthy and competent to act as or in connection with a pharmacy benefit
12 manager, or that any of the foregoing has given cause for revocation or
13 suspension of such license, or has failed to comply with any prerequi-
14 site for the issuance of such license.

15 (g) Licensees and applicants for a license under this section shall be
16 subject to examination by the superintendent as often as the superinten-
17 dent may deem it expedient. The superintendent may promulgate regu-
18 lations establishing methods and procedures for facilitating and verify-
19 ing compliance with the requirements of this section and such other
20 regulations as necessary.

21 (h) The superintendent may issue a replacement for a currently
22 in-force license that has been lost or destroyed. Before the replacement
23 license shall be issued, there shall be on file in the office of the
24 superintendent a written application for the replacement license,
25 affirming under penalty of perjury that the original license has been
26 lost or destroyed, together with a fee of two hundred dollars.

27 (i) No pharmacy benefit manager shall engage in any practice or action
28 that a health plan or provider is prohibited from engaging in pursuant
29 to this chapter.

30 § 2907. Revocation or suspension of a registration or license of a
31 pharmacy benefit manager. (a) The superintendent may refuse to renew,
32 may revoke, or may suspend for a period the superintendent determines
33 the registration or license of any pharmacy benefit manager if, after
34 notice and hearing, the superintendent determines that the registrant or
35 licensee or any member, principal, officer, director, or controlling
36 person of the registrant or licensee, has:

37 (1) violated any insurance laws, section two hundred eighty-a of the
38 public health law or violated any regulation, subpoena or order of the
39 superintendent or of another state's insurance commissioner, or has
40 violated any law in the course of his or her dealings in such capacity
41 after such license has been issued or renewed pursuant to section two
42 thousand nine hundred six of this article;

43 (2) provided materially incorrect, materially misleading, materially
44 incomplete or materially untrue information in the registration or
45 license application;

46 (3) obtained or attempted to obtain a registration or license through
47 misrepresentation or fraud;

48 (4)(A) used fraudulent, coercive or dishonest practices;

49 (B) demonstrated incompetence;

50 (C) demonstrated untrustworthiness; or

51 (D) demonstrated financial irresponsibility in the conduct of business
52 in this state or elsewhere;

53 (5) improperly withheld, misappropriated or converted any monies or
54 properties received in the course of business in this state or else-
55 where;

1 (6) intentionally misrepresented the terms of an actual or proposed
2 insurance contract;

3 (7) admitted or been found to have committed any insurance unfair
4 trade practice or fraud;

5 (8) had a pharmacy benefit manager registration or license, or its
6 equivalent, denied, suspended or revoked in any other state, province,
7 district or territory;

8 (9) failed to pay state income tax or comply with any administrative
9 or court order directing payment of state income tax; or

10 (10) ceased to meet the requirements for registration or licensure
11 under this article.

12 (b) Before revoking or suspending the registration or license of any
13 pharmacy benefit manager pursuant to the provisions of this article, the
14 superintendent shall give notice to the registrant or licensee and to
15 every sub-licensee and shall hold, or cause to be held, a hearing not
16 less than ten days after the giving of such notice.

17 (c) If a registration or license pursuant to the provisions of this
18 article is revoked or suspended by the superintendent, then the super-
19 intendent shall forthwith give notice to the registrant or licensee.

20 (d) The revocation or suspension of any registration or license pursu-
21 ant to the provisions of this article shall terminate forthwith such
22 registration or license and the authority conferred thereby upon all
23 sub-licensees. For good cause shown, the superintendent may delay the
24 effective date of a revocation or suspension to permit the registrant or
25 licensee to satisfy some or all of its contractual obligations to
26 perform pharmacy benefit management services in the state.

27 (e)(1) No individual, corporation, firm or association whose registra-
28 tion or license as a pharmacy benefit manager has been revoked pursuant
29 to subsection (a) of this section, and no firm or association of which
30 such individual is a member, and no corporation of which such individual
31 is an officer or director, and no controlling person of the registrant
32 or licensee shall be entitled to obtain any registration or license
33 under the provisions of this article for a minimum period of one year
34 after such revocation, or, if such revocation be judicially reviewed,
35 for a minimum period of one year after the final determination thereof
36 affirming the action of the superintendent in revoking such license.

37 (2) If any such registration or license held by a firm, association or
38 corporation be revoked, no member of such firm or association and no
39 officer or director of such corporation or any controlling person of the
40 registrant or licensee shall be entitled to obtain any registration or
41 license, or to be named as a sub-licensee in any such license, under
42 this article for the same period of time, unless the superintendent
43 determines, after notice and hearing, that such member, officer or
44 director was not personally at fault in the matter on account of which
45 such registration or license was revoked.

46 (f) If any corporation, firm, association or person aggrieved shall
47 file with the superintendent a verified complaint setting forth facts
48 tending to show sufficient ground for the revocation or suspension of
49 any pharmacy benefit manager's registration or license, and the super-
50 intendent finds the complaint credible, then the superintendent shall,
51 after notice and a hearing, determine whether such registration or
52 license shall be suspended or revoked.

53 (g) The superintendent shall retain the authority to enforce the
54 provisions of and impose any penalty or remedy authorized by this chap-
55 ter against any person or entity who is under investigation for or
56 charged with a violation of this chapter, even if the person's or enti-

1 ty's registration or license has been surrendered, or has expired or has
2 lapsed by operation of law.

3 (h) A registrant or licensee subject to this article shall report to
4 the superintendent any administrative action taken against the regis-
5 trant or licensee in another jurisdiction or by another governmental
6 agency in this state within thirty days of the final disposition of the
7 matter. This report shall include a copy of the order, consent to order
8 or other relevant legal documents.

9 (i) Within thirty days of the initial pretrial hearing date, a regis-
10 trant or licensee subject to this article shall report to the super-
11 intendent any criminal prosecution of the registrant or licensee taken
12 in any jurisdiction. The report shall include a copy of the initial
13 complaint filed, the order resulting from the hearing and any other
14 relevant legal documents.

15 § 2908. Penalties for violations. (a) The superintendent, in lieu of
16 revoking or suspending the registration or license of a registrant or
17 licensee in accordance with the provisions of this article, may in any
18 one proceeding by order, require the registrant or licensee to pay to
19 the people of this state a penalty in a sum not exceeding the greater of
20 (1) one thousand dollars for each offense and two thousand five hundred
21 dollars for each subsequent violation or (2) the aggregate gross
22 receipts attributable to all offenses.

23 (b) Upon the failure of such a registrant or licensee to pay the
24 penalty ordered pursuant to subsection (a) of this section within twenty
25 days after the mailing of the order, postage prepaid, registered, and
26 addressed to the last known place of business of the licensee, unless
27 the order is stayed by an order of a court of competent jurisdiction,
28 the superintendent may revoke the registration or license of the regis-
29 trant or licensee or may suspend the same for such period as the super-
30 intendent determines.

31 § 2909. Stay or suspension of superintendent's determination. The
32 commencement of a proceeding under article seventy-eight of the civil
33 practice law and rules, to review the action of the superintendent in
34 suspending or revoking or refusing to renew any certificate under this
35 article, shall stay such action of the superintendent for a period of
36 thirty days. Such stay shall not be extended for a longer period unless
37 the court shall determine, after a preliminary hearing of which the
38 superintendent is notified forty-eight hours in advance, that a stay of
39 the superintendent's action pending the final determination or further
40 order of the court will not unduly injure the interests of the people of
41 the state.

42 § 2910. Revoked registrations or licenses. (a)(1) No person, firm,
43 association, corporation or other entity subject to the provisions of
44 this article whose registration or license under this article has been
45 revoked, or whose registration or license to engage in the business of
46 pharmacy benefit management in any capacity has been revoked by any
47 other state or territory of the United States shall become employed or
48 appointed by a pharmacy benefit manager as an officer, director, manag-
49 er, controlling person or for other services, without the prior written
50 approval of the superintendent, unless such services are for maintenance
51 or are clerical or ministerial in nature.

52 (2) No person, firm, association, corporation or other entity subject
53 to the provisions of this article shall knowingly employ or appoint any
54 person or entity whose registration or license issued under this article
55 has been revoked, or whose registration or license to engage in the
56 business of pharmacy benefit management in any capacity has been revoked

1 by any other state or territory of the United States, as an officer,
2 director, manager, controlling person or for other services, without the
3 prior written approval of the superintendent, unless such services are
4 for maintenance or are clerical or ministerial in nature.

5 (3) No corporation or partnership subject to the provisions of this
6 article shall knowingly permit any person whose registration or license
7 issued under this article has been revoked, or whose registration or
8 license to engage in the business of pharmacy benefit management in any
9 capacity has been revoked by any other state, or territory of the United
10 States, to be a shareholder or have an interest in such corporation or
11 partnership, nor shall any such person become a shareholder or partner
12 in such corporation or partnership, without the prior written approval
13 of the superintendent.

14 (b) The superintendent may approve the employment, appointment or
15 participation of any such person whose registration or license has been
16 revoked:

17 (1) if the superintendent determines that the duties and responsibil-
18 ities of such person are subject to appropriate supervision and that
19 such duties and responsibilities will not have an adverse effect upon
20 the public, other registrants or licensees, or the registrant or licen-
21 see proposing employment or appointment of such person; or

22 (2) if such person has filed an application for reregistration or
23 relicensing pursuant to this article and the application for reregistra-
24 tion or relicensing has not been approved or denied within one hundred
25 twenty days following the filing thereof, unless the superintendent
26 determines within the said time that employment or appointment of such
27 person by a registrant or licensee in the conduct of a pharmacy benefit
28 management business would not be in the public interest.

29 (c) The provisions of this section shall not apply to the ownership of
30 shares of any corporation registered or licensed pursuant to this arti-
31 cle if the shares of such corporation are publicly held and traded in
32 the over-the-counter market or upon any national or regional securities
33 exchange.

34 § 2911. Change of address. A registrant or licensee under this article
35 shall inform the superintendent by a means acceptable to the superinten-
36 dent of a change of address within thirty days of the change.

37 § 2912. Applicability of other laws. Nothing in this article shall be
38 construed to exempt a pharmacy benefit manager from complying with the
39 provisions of articles twenty-one and forty-nine of this chapter and
40 articles forty-four and forty-nine and section two hundred eighty-a of
41 the public health law, section three hundred sixty-four-j of the social
42 services law, or any other provision of this chapter or the financial
43 services law.

44 § 2913. Assessments. Pharmacy benefit managers that file a registra-
45 tion with the department or are licensed by the department shall be
46 assessed by the superintendent for the operating expenses of the depart-
47 ment that are solely attributable to regulating such pharmacy benefit
48 managers in such proportions as the superintendent shall deem just and
49 reasonable.

50 § 3. Subsection (b) of section 2402 of the insurance law, as amended
51 by section 71 of part A of chapter 62 of the laws of 2011, is amended to
52 read as follows:

53 (b) "Defined violation" means the commission by a person of an act
54 prohibited by: subsection (a) of section one thousand one hundred two,
55 section one thousand two hundred fourteen, one thousand two hundred
56 seventeen, one thousand two hundred twenty, one thousand three hundred

1 thirteen, subparagraph (B) of paragraph two of subsection (i) of section
2 one thousand three hundred twenty-two, subparagraph (B) of paragraph two
3 of subsection (i) of section one thousand three hundred twenty-four, two
4 thousand one hundred two, two thousand one hundred seventeen, two thou-
5 sand one hundred twenty-two, two thousand one hundred twenty-three,
6 subsection (p) of section two thousand three hundred thirteen, section
7 two thousand three hundred twenty-four, two thousand five hundred two,
8 two thousand five hundred three, two thousand five hundred four, two
9 thousand six hundred one, two thousand six hundred two, two thousand six
10 hundred three, two thousand six hundred four, two thousand six hundred
11 six, two thousand seven hundred three, two thousand nine hundred two,
12 two thousand nine hundred five, three thousand one hundred nine, three
13 thousand two hundred twenty-four-a, three thousand four hundred twenty-
14 nine, three thousand four hundred thirty-three, paragraph seven of
15 subsection (e) of section three thousand four hundred twenty-six, four
16 thousand two hundred twenty-four, four thousand two hundred twenty-five,
17 four thousand two hundred twenty-six, seven thousand eight hundred nine,
18 seven thousand eight hundred ten, seven thousand eight hundred eleven,
19 seven thousand eight hundred thirteen, seven thousand eight hundred
20 fourteen and seven thousand eight hundred fifteen of this chapter; or
21 section 135.60, 135.65, 175.05, 175.45, or 190.20, or article one
22 hundred five of the penal law.

23 § 4. Severability. If any provision of this act, or any application
24 of any provision of this act, is held to be invalid, or ruled by any
25 federal agency to violate or be inconsistent with any applicable federal
26 law or regulation, that shall not affect the validity or effectiveness
27 of any other provision of this act, or of any other application of any
28 provision of this act.

29 § 5. This act shall take effect on the ninetieth day after it shall
30 become a law and shall apply to any contract for providing pharmacy
31 benefit management made or renewed on or after that date. Effective
32 immediately, the superintendent of financial services and the commis-
33 sioner of health shall make regulations and take other actions reason-
34 ably necessary to implement this act on that date.