STATE OF NEW YORK

6274

2019-2020 Regular Sessions

IN SENATE

May 31, 2019

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to registration and licensing of pharmacy benefit managers; and to amend the public health law, in relation to the substitution of prescriptions by pharmacy benefit managers

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

Section 1. The insurance law is amended by adding a new article 29 to read as follows:

ARTICLE 29

PHARMACY BENEFIT MANAGERS

Section 2901. Definitions.

2902. Acting without a registration.

2903. Registration requirements for pharmacy benefit managers.

2904. Reporting requirements for pharmacy benefit managers.

2905. Acting without a license.

2906. Licensing of a pharmacy benefit manager.

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

2908. Penalties for violations.

2909. Stay or suspension of superintendent's determination.

2910. Revoked registrations or licenses.

2911. Change of address.

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2913. Assessments.

2914. Duty, accountability and transparency.

2915. Contract provisions.

§ 2901. Definitions. For purposes of this article:

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

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

(b) "Health insurer" means an insurance company authorized in this state to write accident and health insurance, a company organized pursuant to article forty-three of this chapter, a municipal cooperative health benefit plan established pursuant to article forty-seven of this chapter, an organization certified pursuant to article forty-four of the public health law, an institution of higher education certified pursuant to section one thousand one hundred twenty-four of this chapter, or the New York state health insurance plan established under article eleven of the civil service law.

(c) "Pharmacy benefit management services" means directly or through an intermediary, managing the prescription drug coverage provided by a health insurer under a contract or policy delivered or issued for delivery in this state or a plan subject to section three hundred sixty-four-j of the social services law, including the processing and payment of claims for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to prescription drug coverage, contracting with network pharmacies, negotiation of rebates, and controlling the cost of covered prescription drugs.

(d) "Pharmacy benefit manager" means a person, firm, association, corporation or other entity that, pursuant to a contract with a health insurer provides pharmacy benefit management services, except that term shall not include:

(1) an officer or employee of a registered or licensed pharmacy benefit manager; or

(2) a health insurer, or any manager thereof, individual or corporate, or any officer, director or regular salaried employee thereof, providing pharmacy benefit management services under a policy or contract issued by the health insurer.

§ 2902. Acting without a registration. (a) No person, firm, association, corporation or other entity may act as a pharmacy benefit manager prior to January first, two thousand twenty without having a valid registration as a pharmacy benefit manager filed with the superintendent in accordance with this article and any regulations promulgated thereunder.

(b) Prior to January first, two thousand twenty, no health insurer may pay any fee or other compensation to any person, firm, association, corporation or other entity for performing pharmacy benefit management services unless the person, firm, association, corporation or other entity is registered as a pharmacy benefit manager in accordance with this article.

(c) Any person, firm, association, corporation or other entity that violates this section shall, in addition to any other penalty provided by law, be liable for restitution to any insurer or insured harmed by the violation and shall also be subject to a penalty of the greater of (1) two thousand dollars for the first violation and five thousand dollars for each subsequent violation or (2) the aggregate economic gross receipts attributable to all violations.

§ 2903. Registration requirements for pharmacy benefit managers. (a) Every pharmacy benefit manager that performs pharmacy benefit management services prior to January first, two thousand twenty-one shall register with the superintendent in a manner acceptable to the superintendent, and shall pay a fee of two thousand dollars for each year or fraction of

a year in which the registration shall be valid. The superintendent, in consultation with the commissioner of health, may establish, by regulation, minimum registration standards required for a pharmacy benefit manager. The superintendent can reject a registration application filed by a pharmacy benefit manager that fails to comply with the minimum registration standards.

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

(c) Every registration will expire on December thirty-first, two thousand twenty regardless of when registration was first made.

(d) Every pharmacy benefit manager that performs pharmacy benefit management services at any time between January first, two thousand nineteen and June first, two thousand nineteen, shall make the registration and fee payment required by subsection (a) of this section on or before September first, two thousand nineteen. Any other pharmacy benefit manager shall make the registration and fee payment required by subsection (a) of this section prior to performing pharmacy benefit management services.

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

§ 2904. Reporting requirements for pharmacy benefit managers. (a)(1) On or before July first of each year, beginning in two thousand twenty, every pharmacy benefit manager shall report to the superintendent, in a statement subscribed and affirmed as true under penalties of perjury, the information requested by the superintendent including, without limitation, disclosure of any financial incentive or benefit for promoting the use of certain drugs and other financial arrangements affecting health insurers or their policyholders or insureds and any information relating to the business, financial condition, or market conduct of the pharmacy benefit manager. The superintendent also may require the filing of quarterly or other statements, which shall be in such form and shall contain such matters as the superintendent shall prescribe.

(2) The superintendent also may address to any pharmacy benefit manager or its officers any inquiry in relation to its provision of pharmacy benefit management services or any matter connected therewith. Every pharmacy benefit manager or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of the pharmacy benefit manager, as the superintendent shall designate, and affirmed by them as true under the penalties of perjury.

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

day beyond the date the report is due or the date specified by the superintendent for response to the inquiry.

(c) All information disclosed by a pharmacy benefit manager shall be deemed confidential and not subject to disclosure unless the superintendent determines that such disclosure is in the public interest, or is necessary to carry out this article or to allow the department to perform examinations or investigations authorized by law.

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

(b) No health insurer may pay any fee or other compensation to any person, firm, association, corporation or other entity for performing pharmacy benefit management services on or after January first, two thousand twenty-one unless the person, firm, association, corporation or other entity is licensed as a pharmacy benefit manager in accordance with this article.

(c) Any person, firm, association, corporation or other entity that violates this section shall, in addition to any other penalty provided by law, be subject to a penalty of the greater of (1) two thousand dollars for the first violation and five thousand dollars for each subsequent violation or (2) the aggregate gross receipts attributable to all violations.

§ 2906. Licensing of a pharmacy benefit manager. (a) The superintendent may issue a pharmacy benefit manager's license to any person, firm, association or corporation who or that has complied with the requirements of this article, including regulations promulgated by the superintendent. The superintendent, in consultation with the commissioner of health, may establish, by regulation, minimum standards for the issuance of a license to a pharmacy benefit manager.

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

(1) conflicts of interest between pharmacy benefit managers and health insurers;

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

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

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

(5) protection of consumers.

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

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

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

(d)(1) Before a pharmacy benefit manager's license shall be issued or renewed, the prospective licensee shall properly file in the office of

the superintendent a written application therefor in such form or forms and supplements thereto as the superintendent prescribes, and pay a fee of two thousand dollars for each year or fraction of a year in which a license shall be valid.

(2) Every pharmacy benefit manager's license issued to a business entity pursuant to this section shall expire on the thirtieth day of November of even-numbered years. Every license issued pursuant to this section to an individual pharmacy benefit manager who was born in an odd-numbered year, shall expire on the individual's birthday in each odd-numbered year. Every license issued pursuant to this section to an individual pharmacy benefit manager who was born in an even-numbered year, shall expire on the individual's birthday in each even-numbered year. Every license issued pursuant to this section may be renewed for the ensuing period of twenty-four months upon the filing of an application in conformity with this subsection.

(e)(1) If an application for a renewal license shall have been filed with the superintendent before October first of the year of expiration, then the license sought to be renewed shall continue in full force and effect either until the issuance by the superintendent of the renewal license applied for or until five days after the superintendent shall have refused to issue such renewal license and given notice of such refusal to the applicant.

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

(f) The superintendent may refuse to issue a pharmacy benefit manager's license if, in the superintendent's judgment, the applicant or any member, principal, officer or director of the applicant, is not trustworthy and competent to act as or in connection with a pharmacy benefit manager, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of such license.

(g) Licensees and applicants for a license under this section shall be subject to examination by the superintendent as often as the superintendent may deem it expedient. The superintendent may promulgate regulations establishing methods and procedures for facilitating and verifying compliance with the requirements of this section and such other regulations as necessary.

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

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

(1) violated any insurance laws, or violated any regulation, subpoena or order of the superintendent or of another state's insurance commis-

sioner, or has violated any law in the course of his or her dealings in such capacity;

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

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

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

(B) demonstrated incompetence;

(C) demonstrated untrustworthiness; or

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

(5) improperly withheld, misappropriated or converted any monies or properties received in the course of business in this state or elsewhere;

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

(7) been convicted of a felony;

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

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

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

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

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

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

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

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

(2) If any such registration or license held by a firm, association or corporation be revoked, no member of such firm or association and no officer or director of such corporation or any controlling person of the registrant or licensee shall be entitled to obtain any registration or

license, or to be named as a sub-licensee in any such license, under this article for the same period of time, unless the superintendent determines, after notice and hearing, that such member, officer or director was not personally at fault in the matter on account of which such registration or license was revoked.

(f) If any registered or licensed pharmacy benefit manager or any person aggrieved shall file with the superintendent a verified complaint setting forth facts tending to show sufficient ground for the revocation or suspension of any pharmacy benefit manager's registration or license, then the superintendent shall, after notice and a hearing, determine whether such registration or license shall be suspended or revoked.

(g) The superintendent shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter against any person or entity who is under investigation for or charged with a violation of this chapter, even if the person's or entity's registration or license has been surrendered, or has expired or has lapsed by operation of law.

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

(i) Within thirty days of the initial pretrial hearing date, a registrant or licensee subject to this article shall report to the superintendent any criminal prosecution of the registrant or licensee taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

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

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

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

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

(2) No person, firm, association, corporation or other entity subject to the provisions of this article shall knowingly employ or appoint any person or entity whose registration or license issued under this article has been revoked, or whose registration or license to engage in the business of pharmacy benefit management in any capacity has been revoked by any other state or territory of the United States, as an officer, director, manager, controlling person or for other services, without the prior written approval of the superintendent, unless such services are for maintenance or are clerical or ministerial in nature.

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

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

(1) if the superintendent determines that the duties and responsibilities of such person are subject to appropriate supervision and that such duties and responsibilities will not have an adverse effect upon the public, other registrants or licensees, or the registrant or licensee proposing employment or appointment of such person; or

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

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

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

§ 2912. Applicability of other laws. Nothing in this article shall be construed to exempt a pharmacy benefit manager from complying with the provisions of articles twenty-one and forty-nine of this chapter and article forty-nine of the public health law or any other provision of this chapter or the financial services law.

§ 2913. Assessments. Pharmacy benefit managers that file a registration with the department or are licensed by the department shall be assessed by the superintendent for the operating expenses of the department that are solely attributable to regulating such pharmacy benefit managers in such proportions as the superintendent shall deem just and reasonable.

§ 2914. Duty, accountability and transparency. (a) A pharmacy benefit manager shall have a fiduciary relationship with and an obligation to the health insurer and shall perform pharmacy benefit management services with care, skill, prudence, diligence, and professionalism.

(b) All funds received by a pharmacy benefit manager in relation to providing pharmacy benefit management services shall be received by the pharmacy benefit manager in trust for the health plan and shall be used or distributed only pursuant to the pharmacy benefit manager's contract, or other terms in the absence of a contract, with the health insurer or applicable law; except for any administrative fee or payment expressly provided for in the contract, or other terms in the absence of a contract, between the pharmacy benefit manager and the health insurer or provider to compensate the pharmacy benefit manager for his or her services.

(c) Each pharmacy benefit manager shall periodically account to the health insurer for all funds received by the pharmacy benefit manager. The health plan or provider shall have access to all financial and utilization information of the pharmacy benefit manager in relation to pharmacy benefit management provided to the health plan or provider.

(d) The pharmacy benefit manager shall disclose in writing to the health insurer the terms and conditions of any contract or arrangement between the pharmacy benefit manager and any party relating to pharmacy benefit management services provided to the health insurer.

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

(f) Any information required to be disclosed by a pharmacy benefit manager to a health insurer under this section that is reasonably designated by the pharmacy benefit manager as proprietary or trade secret information shall be kept confidential by the health insurer, except as required or permitted by law, including disclosure necessary to prosecute or defend any legitimate legal claim or cause of action.

(g) The superintendent shall establish, by regulation, minimum standards for pharmacy benefit management services which shall address the elimination of conflicts of interest between pharmacy benefit managers and health insurers; and the elimination of deceptive practices, anticompetitive practices, and unfair claims practices.

§ 2915. Contract provisions. No pharmacy benefit manager shall, with respect to contracts between such pharmacy benefit manager and a pharmacy or, alternatively, such pharmacy benefit manager and a pharmacy's contracting agent, such as a pharmacy services administrative organization:

(a) prohibit or penalize a pharmacist or pharmacy from disclosing to an individual purchasing a prescription medication information regarding:

(1) the cost of the prescription medication to the individual, or

(2) the availability of any therapeutically equivalent alternative medications or alternative methods of purchasing the prescription medication, including but not limited to, paying a cash price;

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

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

§ 2. Subdivision 4 of section 280-a of the public health law is renumbered subdivision 5 and a new subdivision 4 is added to read as follows:

4. No pharmacy benefit manager shall substitute or cause the substituting of one prescription drug for another in dispensing a prescription or alter or cause the altering of the term of a prescription, except with approval of the prescriber or as explicitly required or permitted by law.

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

(b) "Defined violation" means the commission by a person of an act prohibited by: subsection (a) of section one thousand one hundred two, section one thousand two hundred fourteen, one thousand two hundred seventeen, one thousand two hundred twenty, one thousand three hundred thirteen, subparagraph (B) of paragraph two of subsection (i) of section one thousand three hundred twenty-two, subparagraph (B) of paragraph two of subsection (i) of section one thousand three hundred twenty-four, two thousand one hundred two, two thousand one hundred seventeen, two thousand one hundred twenty-two, two thousand one hundred twenty-three, subsection (p) of section two thousand three hundred thirteen, section two thousand three hundred twenty-four, two thousand five hundred two, two thousand five hundred three, two thousand five hundred four, two thousand six hundred one, two thousand six hundred two, two thousand six hundred three, two thousand six hundred four, two thousand six hundred six, two thousand seven hundred three, two thousand nine hundred two, two thousand nine hundred five, three thousand one hundred nine, three thousand two hundred twenty-four-a, three thousand four hundred twenty-nine, three thousand four hundred thirty-three, paragraph seven of subsection (e) of section three thousand four hundred twenty-six, four thousand two hundred twenty-four, four thousand two hundred twenty-five, four thousand two hundred twenty-six, seven thousand eight hundred nine, seven thousand eight hundred ten, seven thousand eight hundred eleven, seven thousand eight hundred thirteen, seven thousand eight hundred fourteen and seven thousand eight hundred fifteen of this chapter; or section 135.60, 135.65, 175.05, 175.45, or 190.20, or article one hundred five of the penal law.

§ 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2019.