

STATE OF NEW YORK

2836--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 25, 2019

Introduced by M. of A. GOTTFRIED, GUNTHER, ABINANTI, KIM, SAYEGH, STECK, McDONALD, REILLY, FAHY, CAHILL -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 Section 280-a of the public health law is REPEALED and a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,

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

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1 organization or otherwise; including the procurement of prescription
2 drugs to be dispensed to patients, or the administration or management
3 of prescription drug benefits, including but not limited to, any of the
4 following:

5 (i) mail service pharmacy;

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

8 (iii) clinical or other formulary or preferred drug list development
9 or management;

10 (iv) negotiation or administration of rebates, discounts, payment
11 differentials, or other incentives, for the inclusion of particular
12 prescription drugs in a particular category or to promote the purchase
13 of particular prescription drugs;

14 (v) patient compliance, therapeutic intervention, or generic substi-
15 tution programs;

16 (vi) disease management;

17 (vii) drug utilization review or prior authorization;

18 (viii) adjudication of appeals or grievances related to prescription
19 drug coverage;

20 (ix) contracting with network pharmacies; and

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

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

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

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

30 (f) "Covered individual" means a member, participant, enrollee,
31 contract holder or policy holder or beneficiary of a health plan or
32 provider.

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

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

38 2. Duty, accountability and transparency. (a) The pharmacy benefit
39 manager shall have a duty and obligation to the covered individual and
40 the health plan or provider, and shall perform pharmacy benefit manage-
41 ment services with care, skill, prudence, diligence, and professional-
42 ism, and for the best interests primarily of the covered individual, and
43 the health plan or provider.

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

54 (c) The pharmacy benefit manager shall periodically account to the
55 health plan or provider for any pricing discounts, rebates of any kind,
56 inflationary payments, credits, clawbacks, fees, grants, chargebacks,

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

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

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

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

27 (g) The commissioner shall establish, by regulation, minimum standards
28 for pharmacy benefit management services which shall address the elimi-
29 nation of conflicts of interest between pharmacy benefit managers and
30 health benefit plans and health care providers; and the elimination of
31 deceptive practices, anti-competitive practices, and unfair claims prac-
32 tices.

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

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

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

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

54 (b) a telephone number through which a network pharmacy may contact
55 the pharmacy benefit manager for the purpose of filing an appeal and an

1 electronic mail address of the individual who is responsible for processing appeals;

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

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

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

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

30 (a) prohibit or penalize a pharmacist or pharmacy from disclosing to
31 an individual purchasing a prescription medication information regard-
32 ing;

33 (1) the cost of the prescription medication to the individual, or
34 (2) the availability of any therapeutically equivalent alternative
35 medications or alternative methods of purchasing the prescription medi-
36 cation, including but not limited to, paying a cash price;

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

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

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

48 ARTICLE 29

49 PHARMACY BENEFIT MANAGERS

50 Section 2901. Definitions.

51 2902. Acting without a registration.

52 2903. Registration requirements for pharmacy benefit managers.

53 2904. Reporting requirements for pharmacy benefit managers.

54 2905. Acting without a license.

55 2906. Licensing of a pharmacy benefit manager.

56

1 2907. Revocation or suspension of a registration or license of a
2 pharmacy benefit manager.

3 2908. Penalties for violations.

4 2909. Stay or suspension of superintendent's determination.

5 2910. Revoked registrations or licenses.

6 2911. Change of address.

7 2912. Applicability of other laws.

8 2913. Assessments.

9 § 2901. Definitions. For purposes of this article:

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

13 (b) The terms "health plan or provider", "pharmacy benefit manager"
14 and "pharmacy benefit management services" have the same meanings as
15 defined by section two hundred eighty-a of the public health law.

16 § 2902. Acting without a registration. (a) No person, firm, associ-
17 ation, corporation or other entity may act as a pharmacy benefit manager
18 on or after April first, two thousand twenty and prior to January first,
19 two thousand twenty-one, without having a valid registration as a phar-
20 macy benefit manager filed with the superintendent in accordance with
21 this article and any regulations promulgated thereunder.

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

30 § 2903. Registration requirements for pharmacy benefit managers. (a)
31 Every pharmacy benefit manager that performs pharmacy benefit management
32 services on or after April first, two thousand twenty and prior to Janu-
33 ary first, two thousand twenty-one shall register with the superinten-
34 dent in a manner acceptable to the superintendent, and shall pay a fee
35 of one thousand dollars for each year or fraction of a year in which the
36 registration shall be valid. The superintendent, in consultation with
37 the commissioner of health, may establish, by regulation, minimum regis-
38 tration standards required for a pharmacy benefit manager. The super-
39 intendent can reject a registration application filed by a pharmacy
40 benefit manager that fails to comply with the minimum registration stan-
41 dards.

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

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

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

55 (e) Registrants under this section shall be subject to examination by
56 the superintendent as often as the superintendent may deem it necessary.

1 The superintendent may promulgate regulations establishing methods and
2 procedures for facilitating and verifying compliance with the require-
3 ments of this article and such other regulations as necessary to enforce
4 the provisions of this article.

5 § 2904. Reporting requirements for pharmacy benefit managers. (a)(1)
6 On or before July first of each year, beginning in two thousand twenty,
7 every pharmacy benefit manager shall report to the superintendent, in a
8 statement subscribed and affirmed as true under penalties of perjury,
9 the information requested by the superintendent including, without limi-
10 tation,

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

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

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

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

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

43 (c) All information disclosed by a pharmacy benefit manager under this
44 section shall be deemed confidential and not subject to public disclo-
45 sure except by court order.

46 § 2905. Acting without a license. (a) No person, firm, association,
47 corporation or other entity may act as a pharmacy benefit manager on or
48 after January first, two thousand twenty-one without having authority to
49 do so by virtue of a license issued in force pursuant to the provisions
50 of this article.

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

1 § 2906. Licensing of a pharmacy benefit manager. (a) The superinten-
2 dent may issue a pharmacy benefit manager's license to any person, firm,
3 association or corporation who or that has complied with the require-
4 ments of this article, including regulations promulgated by the super-
5 intendent. The superintendent, in consultation with the commissioner of
6 health, may establish, by regulation, minimum standards for the issuance
7 of a license to a pharmacy benefit manager.

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

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

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

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

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

18 (5) protection of consumers.

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

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

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

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

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

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

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

53 (f) The superintendent may refuse to issue a pharmacy benefit manag-
54 er's license if, in the superintendent's judgment, the applicant or any
55 member, principal, officer or director of the applicant, is not trust-
56 worthy and competent to act as or in connection with a pharmacy benefit

1 manager, or that any of the foregoing has given cause for revocation or
2 suspension of such license, or has failed to comply with any prerequi-
3 site for the issuance of such license.

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

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

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

19 § 2907. Revocation or suspension of a registration or license of a
20 pharmacy benefit manager. (a) The superintendent may refuse to renew,
21 may revoke, or may suspend for a period the superintendent determines
22 the registration or license of any pharmacy benefit manager if, after
23 notice and hearing, the superintendent determines that the registrant or
24 licensee or any member, principal, officer, director, or controlling
25 person of the registrant or licensee, has:

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

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

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

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

38 (B) demonstrated incompetence;

39 (C) demonstrated untrustworthiness; or

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

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

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

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

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

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

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

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

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

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

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

26 (2) If any such registration or license held by a firm, association or
27 corporation be revoked, no member of such firm or association and no
28 officer or director of such corporation or any controlling person of the
29 registrant or licensee shall be entitled to obtain any registration or
30 license, or to be named as a sub-licensee in any such license, under
31 this article for the same period of time, unless the superintendent
32 determines, after notice and hearing, that such member, officer or
33 director was not personally at fault in the matter on account of which
34 such registration or license was revoked.

35 (f) If any corporation, firm, association or person aggrieved shall
36 file with the superintendent a verified complaint setting forth facts
37 tending to show sufficient ground for the revocation or suspension of
38 any pharmacy benefit manager's registration or license, then the super-
39 intendent shall, after notice and a hearing, determine whether such
40 registration or license shall be suspended or revoked.

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

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

53 (i) Within thirty days of the initial pretrial hearing date, a regis-
54 trant or licensee subject to this article shall report to the super-
55 intendent any criminal prosecution of the registrant or licensee taken
56 in any jurisdiction. The report shall include a copy of the initial

1 complaint filed, the order resulting from the hearing and any other
2 relevant legal documents.

3 § 2908. Penalties for violations. (a) The superintendent, in lieu of
4 revoking or suspending the registration or license of a registrant or
5 licensee in accordance with the provisions of this article, may in any
6 one proceeding by order, require the registrant or licensee to pay to
7 the people of this state a penalty in a sum not exceeding the greater of
8 (1) one thousand dollars for each offense and two thousand five hundred
9 dollars for each subsequent violation or (2) the aggregate gross
10 receipts attributable to all offenses.

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

19 § 2909. Stay or suspension of superintendent's determination. The
20 commencement of a proceeding under article seventy-eight of the civil
21 practice law and rules, to review the action of the superintendent in
22 suspending or revoking or refusing to renew any certificate under this
23 article, shall stay such action of the superintendent for a period of
24 thirty days. Such stay shall not be extended for a longer period unless
25 the court shall determine, after a preliminary hearing of which the
26 superintendent is notified forty-eight hours in advance, that a stay of
27 the superintendent's action pending the final determination or further
28 order of the court will not unduly injure the interests of the people of
29 the state.

30 § 2910. Revoked registrations or licenses. (a)(1) No person, firm,
31 association, corporation or other entity subject to the provisions of
32 this article whose registration or license under this article has been
33 revoked, or whose registration or license to engage in the business of
34 pharmacy benefit management in any capacity has been revoked by any
35 other state or territory of the United States shall become employed or
36 appointed by a pharmacy benefit manager as an officer, director, manag-
37 er, controlling person or for other services, without the prior written
38 approval of the superintendent, unless such services are for maintenance
39 or are clerical or ministerial in nature.

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

49 (3) No corporation or partnership subject to the provisions of this
50 article shall knowingly permit any person whose registration or license
51 issued under this article has been revoked, or whose registration or
52 license to engage in the business of pharmacy benefit management in any
53 capacity has been revoked by any other state, or territory of the United
54 States, to be a shareholder or have an interest in such corporation or
55 partnership, nor shall any such person become a shareholder or partner

1 in such corporation or partnership, without the prior written approval
2 of the superintendent.

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

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

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

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

23 § 2911. Change of address. A registrant or licensee under this article
24 shall inform the superintendent by a means acceptable to the superinten-
25 dent of a change of address within thirty days of the change.

26 § 2912. Applicability of other laws. Nothing in this article shall be
27 construed to exempt a pharmacy benefit manager from complying with the
28 provisions of articles twenty-one and forty-nine of this chapter and
29 articles forty-four and forty-nine and section two hundred eighty-a of
30 the public health law, section three hundred sixty-four-j of the social
31 services law, or any other provision of this chapter or the financial
32 services law.

33 § 2913. Assessments. Pharmacy benefit managers that file a registra-
34 tion with the department or are licensed by the department shall be
35 assessed by the superintendent for the operating expenses of the depart-
36 ment that are solely attributable to regulating such pharmacy benefit
37 managers in such proportions as the superintendent shall deem just and
38 reasonable.

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

42 (b) "Defined violation" means the commission by a person of an act
43 prohibited by: subsection (a) of section one thousand one hundred two,
44 section one thousand two hundred fourteen, one thousand two hundred
45 seventeen, one thousand two hundred twenty, one thousand three hundred
46 thirteen, subparagraph (B) of paragraph two of subsection (i) of section
47 one thousand three hundred twenty-two, subparagraph (B) of paragraph two
48 of subsection (i) of section one thousand three hundred twenty-four, two
49 thousand one hundred two, two thousand one hundred seventeen, two thou-
50 sand one hundred twenty-two, two thousand one hundred twenty-three,
51 subsection (p) of section two thousand three hundred thirteen, section
52 two thousand three hundred twenty-four, two thousand five hundred two,
53 two thousand five hundred three, two thousand five hundred four, two
54 thousand six hundred one, two thousand six hundred two, two thousand six
55 hundred three, two thousand six hundred four, two thousand six hundred
56 six, two thousand seven hundred three, two thousand nine hundred two,

1 two thousand nine hundred five, three thousand one hundred nine, three
2 thousand two hundred twenty-four-a, three thousand four hundred twenty-
3 nine, three thousand four hundred thirty-three, paragraph seven of
4 subsection (e) of section three thousand four hundred twenty-six, four
5 thousand two hundred twenty-four, four thousand two hundred twenty-five,
6 four thousand two hundred twenty-six, seven thousand eight hundred nine,
7 seven thousand eight hundred ten, seven thousand eight hundred eleven,
8 seven thousand eight hundred thirteen, seven thousand eight hundred
9 fourteen and seven thousand eight hundred fifteen of this chapter; or
10 section 135.60, 135.65, 175.05, 175.45, or 190.20, or article one
11 hundred five of the penal law.

12 § 4. Severability. If any provision of this act, or any application
13 of any provision of this act, is held to be invalid, or ruled by any
14 federal agency to violate or be inconsistent with any applicable federal
15 law or regulation, that shall not affect the validity or effectiveness
16 of any other provision of this act, or of any other application of any
17 provision of this act.

18 § 5. This act shall take effect on the ninetieth day after it shall
19 become a law and shall apply to any contract for providing pharmacy
20 benefit management made or renewed on or after that date. Effective
21 immediately, the commissioner of health shall make regulations and take
22 other actions reasonably necessary to implement this act on that date.