

# 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 Section 280-a of the public health law is REPEALED and a  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 macies 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.